

The Idea of Justice: A Reply

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I must begin by expressing my deep appreciation of the illuminating comments on my book, *The Idea of Justice*, by Deen Chatterjee and Helga Varden. They have been kind and fair in their presentations, and have also raised really interesting questions. I am much stimulated by their arguments.

Response to Deen Chatterjee

Deen Chatterjee's comments clarify and extend the arguments I have tried to present, and he also connects my attempts with the arguments presented by other authors writing on political and moral subjects. What makes Chatterjee's essay particularly important is the way he weaves together different threads of arguments, from his own writings and those of others, to construct an alternative approach to "relationality" which, he shows, is able to accommodate and facilitate a globally inclusive understanding of the demands of ethics and justice—very different from what we get from the standard social contract approach, with its confinement within national borders through its invoking of the instruments of a sovereign state.

I have, of course, reason to be pleased by the fact that Chatterjee shows elegantly how particular concepts I have been occupied with, including the openness of impartiality, the multiplicity of individual identities, the relevance of processes along with substantive opportunities (reflected in capabilities), among other notions, link closely with his comprehensive notion of relationality. I also appreciate Chatterjee's supportive arguments and the kindness of his exposition in discussing my attempts in developing an alternative route to public reasoning about justice.

In commenting on Samuel Freeman's review essay ("A New Theory of Justice") on my book (*The Idea of Justice*),¹ Chatterjee has pointed out that "though Sen is not focused on an ideal theory and an ideal set of institutional arrangements, he in no way disregards the importance of institutions or the need for an appropriate normative theory" (179). I shall perhaps make here a few supplementary observations.

First, do I regard institutions to be unimportant, as has been alleged in some of the reviews? The focus of my work is on comparative assessment of social realizations (and this includes the lives of people as well as the fairness of processes), and as I have explained in my book, institutions figure in the social realizations both when they have intrinsic significance of their own (which may be rare but still quite important), and—indirectly but perhaps more extensively—through the impact that particular institutions (and their combinations) have on the lives of people. In fact, throughout my life I have worked on the importance of institutions, varying from public distribution systems (of food and famine relief, for example), to the organization of health care and of public education, and democratic and judicial institutions. There is, it should be obvious, a central place for institutions, including state institutions, in my exploration of the idea of justice.

What, however, I do resist is the tendency in the social contract tradition, which has been so dominant in mainstream theories of justice (as Chatterjee also discusses), to focus primarily, and sometimes exclusively, on “ideal institutions” and not directly on the lives of people—a tradition that is exemplified even by John Rawls’s otherwise momentous analysis of justice (*A Theory of Justice*).² I do focus primarily on human lives (including what we—as thinking human beings—have reason to value, including the lives of animals and the survival of threatened species), and only secondarily on institutions, but that does not amount to ignoring the role of institutions—for they can be critically important for the lives and liberties of people and for guaranteeing the fairness of processes.

In addition to that departure towards a people-centred view, I have also argued for the importance of *comparative* engagements in assessing justice (will this change enhance justice and reduce injustice?), rather than being mainly confined to talking about “ideal situations,” or—as is more common in the social contract tradition—about “ideal institutions.” Our choices are almost always confined to comparisons of different non-ideal states, and we do need a theory for that, and that theory is not much helped, as I have shown, by any prior identification of ideal institutions, or even of ideal states.

None of this amounts to denying the inspirational—or motivational—role of talking about ideal states or about ideal institutions. I promise that if I were a part of the group that stormed the Bastille, I would have shouted “Liberty, Equality and Fraternity,” and *not* “*more* liberty, *more* equality and *more* fraternity,” even though the actual work to come should be better defined by the latter, rather than the former. Ideals are wonderfully important in arousing us, but we need also a theory of practical reason that can guide our actual choices and actions to be undertaken.

Where more clarification may be particularly needed is in the recognition that my rejection of focusing on “ideal institutions” does not amount to a rejection of the role of what are called “ideal theories” (as is presumed by Samuel Freeman’s review essay on my book in *The New York Review*).³ The two types of uses of the

word “ideal” are completely different. An ideal theory abstracts from some real-life complications, and this can be very useful for the convenience of analyzing the central issues involved in an exercise—and sometimes even for tractability. But “ideal theories” are not confined to the analysis of “ideal institutions.” They can be usefully employed also in clarifying some of the central issues involved in comparative assessments, without having to accommodate all the details of complications that would eventually have to be included—after the ideal theory has done its work. The rejection of the focus on *ideal states* (or on ideal institutions) has, ultimately, nothing much to do with the rejection of the contingent usefulness an *ideal theory*. My scepticism of focusing primarily on ideal states (or ideal institutions) does not, in any way, imply any scepticism of the usefulness of ideal theories.

There are many other issues of importance contained in—or related to—Chatterjee’s discussion of my book. Since his exposition is very clear, there is no need for me to try to supplement what he says on these issues—other than, of course, expressing my appreciation of the reach of his wide-ranging review essay. I should, however, make a clarificatory remark, since Chatterjee comments, helped by his discussion with Sally Scholz, that I “should have counted Rousseau on [my] side than lumping him with other contractarians.” I do, of course, count Rousseau as an ally in many respects, and have also noted that Rousseau’s ideas have many features that distinguish him from other contractarians. The starting point of my first attempt at writing on justice (jointly with W. G. Runciman) in a 1965 essay called “Games, Justice and the General Will,”⁴ was Rousseau’s analysis of the general will. And Rousseau’s concern about equality and solidarity was one of the inspiring motivations behind my analysis of inequality, as I noted at the beginning of my book, *On Economic Inequality*.⁵

In the book under discussion—*The Idea of Justice*—I have placed Rousseau with other contractarians to the extent that he too pursues a social contract approach. But as I have also noted in this book, despite the disagreement with the social contract approach in general, we have much to learn from the many contributions to our thinking that have come from the specific formulations of the contractarian approach (flawed as, I believe, the general approach is). Rousseau, along with Kant and Rawls, has lessons for us that surely go far beyond their use of the social contract approach. None of the great social contract theorists are *only* social contract theorists, and one would have to be oddly narrow-minded if one were to miss the richness of the ideas and analyses of Rousseau—or of Kant or Rawls—merely because of the reservations we may have about the social contract approach.

Response to Helga Varden

I am both touched by the generosity with which Helga Varden has described my work and much engaged by the interesting questions she has raised. Even though

I shall presently discuss why the points of disagreement between us that she has identified do not appear to me to be entirely compelling, I am delighted that she has directed our attention to really serious issues that need to be addressed both by social contract theorists and by those who, like me, are sceptical of that tradition.

There are five points of disagreement with me that Varden has clearly identified. First, she says: “Contrary to Sen, I will argue that justice requires enforceable rights, including for the disabled, and that states have in principle necessary role to play here” (193). My primary problem with this diagnosis lies in my attempt at understanding what Varden could mean by saying “contrary to Sen.” Perhaps the problem arises from Varden’s abstinence from considering fully the comparative approach and its demands. In a comparative approach, we are involved in a set of comparisons of justice and injustice, and in some of these comparisons (but not in all of them), the role of the state and that of enforceable rights would be absolutely central.

By liberating the assessment of justice from merely identifying (or trying to identify) a situation of perfect justice, a comparative approach gets involved in comparing different changes that can be brought about—or considered for being brought about—in terms of their contributions to the enhancement of justice and reduction of injustice. In the world that I know (and have written about), in overcoming the huge injustices from which many people, for example the disabled, presently suffer, extensive supportive arrangements are needed, provided by the state and the society. So that cannot be a point of division between Varden and me. For example, the grossness of the definitions of poverty that are typically used for state-supported relief, leading to insufficient state support for the capability-deprived disabled even in countries with a “welfare state” (for example, Britain), has been a particular subject of my critique of on-going social arrangements (particularly poverty relief programmes), in *The Idea of Justice* (258–60, 267–8).

There can, however, be a disagreement if Varden wishes to claim that no changes in anything other than state action, for example modification of social attitudes, of community activities, or of cooperative organizations, can possibly enhance justice in any way whatever: that is (according to this view), justice can be influenced only by state action and nothing else. That would be, I would argue, an odd necessity to insist on, and the removal of that constrained thought does not, in any way, compromise the understanding that a more fully functioning system of justice would require the state to get into the act.

The debate here, if there is one, is really about Varden’s insistence, in line with what her transcendental institutional position, that nothing but ideal institutions matter in the discussion of justice.⁶ The merit of a comparative approach is that we need not insist that the only changes that achieve perfection make any difference to justice. That transcendental obstinacy (if I may call it that) would be, as it happens, also at variance with (as I have discussed in my book) the idea of justice that we get

from some of the great thinkers who were so preoccupied with removing injustice in the world. In the Enlightenment period, the list would include not only Smith (with his investigation of the role of moral sentiments and public attitudes) and Condorcet (with his particular focus on education, especially of girls, and the importance of open public dialogue), but also Mary Wollstonecraft (and her elaborate discussion of the multitude of changes, including those in public understanding, media coverage and respect for people across the barriers of class, race and gender), and Tom Paine (and his attempts to introduce various state interventions to remove poverty without insisting that the package must be perfect for it to count at all as a justice-enhancing change). Justice depends on many things, and it does not sink or float only with a perfect package of state action.

Varden's second point is that she can "boost [her] arguments for the necessity of states by arguing that rightful resolutions of many of the indeterminacies Sen points to require the establishment of public authorities, including states" (193). As has just been discussed, there is no need for any "boosting" in the need for state action for some critically important enhancements of justice (which is a part of my own claim). So that can hardly be the issue involved here. It is important to recognise that the possibility of "indeterminacies" in the assessment of justice arises, in my analysis, only from residual disagreements between different people—and sometimes even in the mind of the same person—that survive open and informed public discussion. I very much hope that Varden would not like to use the machinery of the state to "eliminate" disagreements that people may continue to have despite serious engagement in public reasoning. I do not believe she is pointing to that authoritarian route, and I must therefore conclude that she is, again, concerned with the necessity of the state for something that she would see as an "ideally just" situation. But that is an argument that I have already addressed.

Varden's third point is that "Kant's suggestion that justice—for ideal, rather than merely prudential reasons—requires the establishment of public authorities constituted by a certain set of institutions is not . . . a drawback for the theory [Kant's "republican" theory]. Quite the contrary, it is a significant strength" (193). It certainly is that for Kant's republican characterization of ideal situations. Having institutions that make people independent of the help others would surely be a part of the picture of an ideal society, but this does not entail that in the absence of such independence, there is no issue of justice left.

So that cannot be a point of difference either, even though we do seem to differ on whether justice is *only* about contractarian perfection or about republican independence, for reasons I have discussed in *The Idea of Justice* (including my argument that we do not get much help from the identification of the ideal to make comparisons of justice and injustice in non-ideal states to which our choices may be actually confined [98–105]). The kind of world with which I am particularly concerned is not one in which everyone can be entirely independent of the actions

of others. To be willing to provide help to others is not beyond the demands of justice, even though some commentators have presented the odd argument (this is not Varden, I should explain) that if something could conceivably be a part of “kindly behaviour,” then it cannot have anything to do with the justice and injustice in the world in which we live.

Varden is quite right to claim that “even a world in which the rich continuously give money to beggars so that none of them starve still is not a just world” (104). Justice cannot be based only on charity, or even primarily on charity. And yet a world in which, in the absence of adequate public institutions, millions are left to starve, with others, living in luxury, refuse to help the famished in any way, is surely a more unjust world than the one that Varden describes. There is no puzzle in appreciating the distinction when the comparative demands of justice are understood. The vision of a world in which there is no need whatever for what Smith called “sympathy,” “generosity” and “public spirit,” should not hold us back from seeing *more* injustice in a world in which many people suffer terribly with the others doing nothing to help their fellow human beings. I do not think Kant has ever advocated that extremist position, and that is not a respect in which he differed from his contemporaries like Smith or Condorcet or Wollstonecraft.

Varden’s fifth point is that “although I find Sen’s proposal that ideal theories should spend more time taking people’s bad or non-ideal behavior into account compelling, questions concerning non-ideal-behaviour are primarily important for the institutional design for a theory of justice” (103). They are certainly very important for institutional design, and there is no disagreement between us on that. And I applaud Varden’s illustration of the relevance of this issue for Thomas Pogge’s visionary initiative of the “Health Impact Fund” (HIF). I would only add that even a fully functioning HIF will not make the world perfectly just, and we have to see what it does to a world that remains non-ideal. The great strength of HIF is that it does not have to assume a world in which the demands of perfect justice (if they could be identified) have been, in other respects, already achieved. The IHF is, happily, not meant to work only in the world of cosmopolitan perfect justice, since it can be expected to do much good—and significant enhancement of justice and reduction of injustice—even in a world that remains very imperfect in many other respects.

If I may take the liberty of ending with a general point of my own, concerning Helga Varden’s interesting arguments and engagements. If she were to take the comparative approach more seriously, rather than trying to fit all her justice-related thoughts within the limited world of perfect justice (and even more restrictively, of perfect institutions), she would find, I believe, much greater use for her powerful concerns and commitments, and even for her arguments, liberated from the tight box of transcendental institutionalism. And this applies, I would argue, also to her interesting work on public and private rights. But this reply is far too long already

for me to give myself the liberty of following up that quick remark. So I just end by thanking Varden, along with Chatterjee.

Notes

1. Samuel Freeman, "A New Theory of Justice," *New York Review of Books*, October 14, 2010.
2. John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).
3. However, in a later essay, presented at a symposium on my book arranged by Rutgers University (in particular, by its Institute of Philosophy and Law), Samuel Freeman has clarified the issue, and has emended his earlier reading in the appropriate direction.
4. *Mind* 74 (1965).
5. *On Economic Inequality* (Oxford: Oxford University Press, 1973; extended edition, with new annexe, written jointly with James Foster, 1997).
6. I hasten to affirm, since the point seems to worry Varden from time to time, that I use the word transcendental in the sense of being unbeatable (as I explained in my book), which is, of course, different from the much more extensive way Kant uses that term (I merely presume that Kant has not put some kind of a "bolt" on any other—including simple mathematical—use of that common word).