

NONIDEAL THEORY: WHAT IT IS & WHAT IT NEEDS TO BE

Nonideal theories are best characterized indirectly, as logical complements of, or in any case rejections of, ideal theories. Ideal theories make idealizing assumptions in order to simplify a problem or otherwise facilitate theoretical progress. There are, accordingly, as many kinds of nonideal theory as there are theoretical idealizations worth challenging.

Rawls set the stage for one token of this debate when he said he was formulating principles for members of a society on the assumption that every member would fully comply w/ whatever rules turned out to be a society's principles of justice. He of course knew perfectly well that the assumption was unrealistic and that the rationality (and/or the reasonableness) of choosing the principles would be *affected* by the relaxing of the assumption. Still, he saw value in imagining what rational contractors (or reasonable noumenal selves) would choose in that circumstance.

In his eyes, the 1st task in theorizing @ justice is to come up w/ IDEAL theory, saving for later the task of adjusting for a world of partial compliance.

One kind of *nonideal* theorist might say, however valuable that exercise may have been in its time and place, the time has come to get on w/ the 2nd stage & start theorizing @ the world of partial compliance as it actually is.

This is not my view. Real world compliance is partial, to be sure, but the far more theoretically momentous fact about real world compliance is that it is *contingent*. It isn't only *partial*. It's *variable*.

Moreover, compliance is an *endogenous* variable. That is to say, the extent of compliance is not determined independently but is in fact highly dependent on the nature of the chosen principles. Simply put, whether people are going to do what your principle asks them to do depends on what your principle is asking. Which affects from the start what a reasonable principle would ask.

To choose a principle is to choose whatever compliance problem *goes w/ that principle*. To set aside questions @ which compliance problem goes w/ that principle is to misconstrue the NATURE of the choice.

Amartya Sen says that if we are serious, we need to leave our offices, hit the streets, look around, and ask how things are going. We have to ask about the actual functioning of principles as actually realized in a society's basic structure. If a principle asks people to "give according to ability and take

according to need,” then (when we go out and look, as Sen urges us to do), we discover that even partial compliance will be an unrealistic expectation. A society trying to be grounded in a principle like that will have had to institute an enforcer like the KGB to create even a semblance of compliance.

Cooperation for mutual advantage is the essence of genuine society, as Rawls well knew. But in worlds of “give according to ability & take according to need,” the forms of cooperation for mutual advantage that occur in the real world will have been made illegal & will have gone underground.

Assuming away compliance problems is *not* like assuming away friction in order to simplify the task of predicting a falling stone’s acceleration.

More like assuming away friction in order to simplify the task of designing a better car tire. It is not a good start. The resulting reasoning could have no more than a spurious appearance of bearing on the real problem.

WHAT IS IDEAL THEORY?

That gives you some idea why I sympathize w/ Amartya Sen. Sen says, in world where Rawls’s WILD BEHAVIORAL ASSUMPTIONS don’t hold, real people’s actual responses to attempts to implement Rawls’s DP principle won’t deliver kind of SOCIAL REALIZATION that reasonable people would consider even minimally just.

Wild behavioral assumptions? How wild?

Not *so* unrealistic to suppose someone is motivated by a sense of justice. But people have different conceptions of justice. So, even if we can assume that everyone could be motivated by a sense of justice, it is one thing to have a sense of justice, & another thing to have a given conception of justice. And Rawls is not merely assuming we have a sense of justice but that so long as we are motivated by a sense of justice, we’ll be motivated to comply with the principles that form a conception of justice. That inference is not valid even in an ideal world. Even in an ideal world, the conception of justice that we’ll be fully motivated to comply with is our own, not Rawls’s.

If I said we can safely assume we’re all motivated to comply w/ the rules of the road, I *might* be right.

If I said we can safely assume we’re all motivated to comply w/a given traffic planner’s conception of what the rules ought to be, that would be a different & far more implausible claim.

TUCSON tried to solve its rush-hour traffic problem w/ a plan that assumed compliance. (Explain.)

Can't we assume that, say in an ideal world, all bargainers will converge on the same theory? If they are contracting, perhaps, but not if they're reasoning as we do in our world, namely somewhat independently.

But to explain that, I need to step back. I've said a bit @ what an ideal theory is. Now I need to talk @ what theory is. What are we doing when we theorize?

Not coming up w/ necessary & sufficient conditions. Not analysis in philosophical sense. Instead, a theory is a tool. More specifically, a map.

When we theorize, we're drawing a map.

Like a map, a theory is a functional artifact, a tool created for a specific purpose.

What's the purpose of a map? A map is supposed to help us understand a particular terrain. Not supposed to be REPLICA of a terrain, but a *distilled* representation of relevant information.

If a map took form of a biconditional, right side won't be a 1 inch = 1 inch mapping. If you accuse right side of being neither a necessary nor sufficient condition for the left side, you'll be right as a matter of course.

Map *should* be a simplification for purposes of illuminating general features reasonably expected to be of importance to users in NORMAL CASES.

Should abstract away from a terrain's details & home in on key features that help us understand that terrain well enough to navigate.

So any theory, including a nonideal theory, will be an ABSTRACTION.

Because the map is not even intended to be a replica, it's INEVITABLE that interpreting it perversely or even mechanically could lead users astray.

It's not meant to be the kind of thing that has no counterexamples.

Looks like a pretty good map. But Mr. Counterexample says, what if the purpose you bring to the map is the aim of backpacking from one end of Greenland to the other?

Answer to Mr. Counterexample is, look, if you deliberately seek to imagine purposes for which the map would be oversimplified, you can find some.

If you deliberately look, you will find, points where a cartographer had to make a hard choice @ how to project from 3-D onto 2-D, or how to project from a lifetime of experience onto a single sentence. There will be distortion.

But true test is not, "If a user is bent on going somewhere counterintuitive, does the theory make that impossible?"

True test: “If a user is honestly seeking illumination regarding a particular terrain, will this theory help, or will it mislead?”
Eliminating the logical possibility of being misled is not in the cards.

II. A THEORY CAN BE INCOMPLETE

Sen says a theory need not be complete. Indeed, searching in vain for a theory that answers all questions is itself a recipe for distortion.

Easy to imagine situations where location of a particular stalled car or closed bridge has everything to do w/ what a motorist should do next, yet it doesn't show up on the map. Doesn't mean the map is a bad map.

A map can be a critically important supplement to (but can't replace) alertness & wisdom regarding changing road conditions.

Theorists I know don't expect theories of justice to tell them what grade to assign, how to vote when hiring committee meets, or whether to cancel class.

Wisdom & insight that enable us to see what to do are not precipitates of a theory in any straightforward way.

As Sen sees it, fairness is @ avoiding bias, & Rawls goes beyond fairness. To Rawls, we not only need *unbiased* theory; we also need a *complete* theory.

But if impartial is \exists other than complete, we should worry that if we insist on completeness, we're probably insisting on \exists other than impartiality.

If we have to stipulate that bargainers are risk averse, & don't care @ their lot in life so long as they have enough, doesn't exactly sound neutral.

If we theorists were ourselves behind a veil of ignorance, having to construct a theory w/out knowing whether our personal convictions are egalitarian or ELITIST, we might still see point of impartiality, but we wouldn't be much tempted to think we need a complete theory.

Sen says, just take impartial theorizing as far as it goes, & let it be. If theorizing by itself doesn't narrow range of possibilities to 1, so what?

It isn't theory's job to leave us w/ only 1 option. We see there are various possibilities, then we let a society pick.

They pick different things, & that's OK.

W/in limits. You can give theoretical reasons why no community should have a speed limit of 50MPH in a school zone.

And you can say given current technology & culture it should probably be either 15 or 20. Shouldn't be \exists in between because that wouldn't have the psychological salience that multiples of 5 have.

You never see people posting a speed limit of 17. (Wake Forest, last week.)

My theory is: all theories have counterexamples. Bad news, my theory has counterexamples. Good news, therefore it isn't a counterexample to itself.

III. A THEORY CAN HANDLE PLURALISM

Sen sees little evidence of genuine convergence in the reasoning of reasonable people, or even much overlapping consensus.

On my theory @ theorizing, that's to be expected. No map represents *only* reasonable way of seeing terrain.

A truism in philosophy of science: for any set of data, an infinite number of theories will fit the facts. So, even if we were to agree on particular cases, we still, in all likelihood, would disagree on how to pull those judgments together to form a theory. Theorizing doesn't lead to consensus.

We'd be *astounded* if 2 cartography students separately assigned to map same terrain drew identical maps. We'd have no doubt they were working together.ⁱ

So, that's why nonideal theory has to theorize not only for a world of imperfect compliance, but also a world of imperfect convergence.

A just society is going to be a place where people flourish & feel at home, w/out having to buy into any particular conception of justice.

More radically, even for a given person, optimal # of maps is not necessarily one.

If we have more than one map, they could conflict. A possible problem.

Becomes an actual problem when they actually conflict.

Possible solution: get rid of one of the maps. But that sounds like a metaphor for dogmatism.

Maybe a more honest solution: recognize you're on your own, & always were.

Maps are artifacts. They were never guaranteed.

Do a new survey. Identify relevant distortions. Start over.

To be right, a basic structure has to be right for people who have different views @ what basic structure is for. Societies learn to cope w/ pluralism.

Although consensus on theory is not in the cards, there is less discord over how we should treat each other day to day. When we're finished theorizing for day, & leave office, we deal w/ world as it is. I find my car in parking lot.

You find yours. We drive off without incident.

Including those of us whose theories entail that property is theft.

To live in peace, we need high level of consensus on a long & mostly inarticulate list of "dos" & "don'ts" w/ which we navigate our social world.

In effect, there are 2 ways to agree: we agree on what is correct, or on who has

jurisdiction—who gets to decide. Freedom of religion took the latter form; we learned to be liberals in matters of religion, reaching consensus not on what to believe but on who gets to decide.

So too w/ freedom of speech.

Isn't it odd our greatest successes in learning how to live together stem not from agreeing on what's correct but from agreeing to let folks decide for themselves?

Generally speaking, justice is @ traffic management. Minimizing extent to which people get in each other's way. Not @ picking people's destinations. We coordinate on who gets to drive which car, & we're so good at solving that problem that it normally doesn't rise to consciousness as a problem.

Maybe a basic structure should REDISTRIBUTE the cars too. Maybe it should redistribute the cars every 2 weeks.

Maybe we shouldn't even ask what it takes to make a car ours to redistribute, beyond knowing how to distribute cars that are ours to distribute.

But there are many ways in which a car-redistribution program could go wrong, & the questions of when such programs go awry, & when they work as intended, are not questions for ideal theory.

IV. A THEORY CAN START FROM HERE

Central to Sen's theorizing that we have to check facts, & be responsive to them.

Leave the office. Hit the street. Look around. Ask how are things actually going. Needless to say, world of social science is messy, & we'll seldom be presented w/ clean falsifications regarding how particular principles of justice bear on the possibility of human flourishing.

Still, Sen thinks, that is the test.

Sen's big point is this: "What really happens to people can't but be a central concern of a theory of justice..." For that reason, critical question is how institutions affect actual behavior, not how *ideally* they affect behavior.

Therefore, anyone who ignores incentive problems doesn't have the interests of the least advantaged at heart.

G. A. Cohen's idea: if bargainers are committed to justice, they should forget @ incentives & just do radically egalitarian thing that justice requires.

Not so. Bargainers behind veil pick basic structure not only for themselves but for whole, real countries, not imaginary ones.

People whose compliance is a given are picking a basic structure for all citizens, not only for people whose compliance is a given.

We can stipulate whatever we want @ a *bargainer's* psychologies—what a

bargainer should or should not be like—but psychologies of citizens at large are exactly what they are.

Bargainers pick for whichever attitudes, beliefs, incentives, & opportunities will still be features of real communities when veil is lifted & life goes on.

In *Idea of Justice*, Sen insists we ought to focus on making the world a BETTER place, not on making it a PERFECT place.

Sen is more idealistic than he lets on, but he makes a crucial point @ not *idealizing the problem*.

“Plessy vs Ferguson,” the 1896 case that upheld the concept of separate but equal as an acceptable way of respecting 14th amendment’s “Equal protection” clause, stands in our history as a paradigm of injustice. Why?

Question not: would segregation foster mutually beneficial multicultural pluralism in world of ideal segregationists fully committed to ideals of racial equality?

“Separate but equal” was unjust in America in 1896 because it of how it predictably was going to work *in America in 1896*.

V. A THEORY CAN BE NONPAROCHIAL

Sen says justice is @ what we owe each other, then asks, how important can it be whether a person is in our NEIGHBORHOOD?

Sen asks this as a rhetorical question, but question’s straightforward answer in *nonideal* theory is: we find out how important it is whether a person is in our neighborhood by going & checking how neighborhoods work.

We ask what leads neighborhoods to break down, & what happens to people when their neighborhoods stop working.

If an ideal theory tells us we don’t need to check, shame on the theory. Sen is missing his own point here.

Sen sees nonparochialism as a requirement of justice. Regarding what he calls reasoning that stops at the border, Sen says “the ethical basis for giving such a hugely disharmonious priority to thinking only about our neighbors is itself in need of some justification.”

Sen never notes the obvious, namely there *is* some justification, having to do w/ avoiding commons tragedies on a planetary scale.

Odd, but he appears here too to be missing his own point. He won the Nobel for documenting that 20th century famines never happened in democracies, & never were caused by a lack of food.

Always caused by imploding distribution mechanisms.

Not caused by eroding *soil* but by eroding *rights*.

I'll pass on that, because for anyone familiar w/ Sen's own work, these points are glaringly obvious. So, I just don't know what's going on here.

VI. A THEORY CAN BE @ CAPABILITIES, BUT PRIMARY GOODS ARE OK TOO

When Sen criticizes Rawls, it sometimes sounds like his problem with Rawls is that Rawls doesn't ask enough of his principles of justice. Problem is that on Sen's own theory, what the principles ostensibly GUARANTEE doesn't matter. What matters is what actually happens.

Sen says his approach does not "relegate the issue of conversion & capabilities into \exists of 2nd-category status, to be brought up and considered later."

But Sen is wrong here. Doing things in proper order need not have anything to do w/ relegating 2nd thing on list to "2nd-category status."

I don't mean to be taking Rawls's side against Sen. All I am saying here is: Sen is (again) missing his own point when he criticizes Rawls for implicitly acknowledging that justice is no more than a foundation for liberalism.

Most of what's good in liberalism *built* on justice but not *guaranteed* by justice.

You could achieve perfect justice & still be a long way from having everything you want in life, for yourself or for people you care @.

Metaphorically, you could have an excellent set of traffic lights in place w/out *guaranteeing* that drivers are getting where they want to go.

If we go out & check & find people not actually getting where they want to go—especially if they aren't even managing to avoid famine—that's when we need to rethink.

VII. WHAT I'D SAY

I've been mentioning bits of my own view, & I don't have much more than bits right now. But I'll close by trying to pull together a list of desiderata I'm looking for in a next generation theory of justice.

1. A theory should start w/ fact that we're formulating principles for a strategic world. Society's basic structure is an incentive structure. People respond. So, don't choose basic structure per se. Choose the pattern of responses.
2. A theory should acknowledge that there's room for division of moral labor. Justice isn't everything. Perfect duties aren't everything. Traffic lights don't do much for us. They just sit there, blinking. Above all they

don't choose our destinations for us.

But they do enable us to minimize extent to which we get in each other's way as we seek out destinations of our own.

In my mind, justice is a lot like that.

We want a compact set of lights. Put traffic lights every 50 feet & we get the very gridlock we were trying to avoid.

Traffic lights can't do everything, & neither can justice. But they can do a lot.

3. Productivity is an endogenous variable too. Principles we choose for organizing basic structure will affect how productive people are. So, again, don't think of yourself as choosing principles per se, or even basic structure. Choose a pattern of productivity within which you and your neighbors will thrive.

4. Related point @ productivity. Contractarianism is in part an idea @ how to model impartiality. We imagine ourselves meeting to decide how to distribute what society has produced.

We imagine ourselves bargaining over what SHARES should look like w/out actually knowing which share will end up being ours.

That's one map of impartiality, also a picture of equality of a procedural kind.

We're all supposed to have an equal say in how the pie is sliced.

But real world is not like that. One difference is hugely important: We don't arrive at bargaining table simultaneously. We're enter world one at a time.

Hard to know how to cope w/ that philosophically, but no matter who we are, by time we get to the table, pie has already been sliced & distributed.

We're also entering a world where we have opportunity to make more pie. But then that raises another question.

How do we give people their due, & make our society distributively just, when there is this momentarily relevant fact @ whatever pie we think is on the table: it didn't get there by itself. It didn't fall from the sky.

It's there because someone PRODUCED it. Even natural resources aren't just sitting there on table.

If oil has value, it's because someone figured out how to get it out of ground, to a refinery, to a pipeline, to a distributor, & to a retailer, & meanwhile someone else was figuring out how to turn red rock into automobiles.

Justice can't be @ taking all that for granted, assuming anything we can grab is ours to distribute, & going straight to the question of how to divide the loot.

Instead, before we decide how to distribute what really is ours to distribute, we have to talk @ what we did to make it ours to distribute. Did we do justice to the people who brought that stuff to bargaining table in 1st place?

5. HLA Hart noted: law has an open texture. At a given moment in its development, a legal system is not even trying to be an answer to all possible questions. Its point is to be useful in solving coordination problems here & now & in immediately foreseeable future. Judges settle disputes as they go—real disputes as brought before their bench by real litigants. Systems evolve, new forms of conflict emerge in process, & judges will always be needed. Judges will face hard cases where they need to say more than has previously been said @ what people have a right to expect from one another.

So, one reason why nonideal theory is incomplete: nonideal theory is @ bottom-up **conflict resolution**. No such thing as anticipating every novel conflict that will require further elaboration, discovery, or invention.

Judges move us toward completeness, case by case. We never GET to completeness because solution has to evolve to keep up w/ a continually evolving problem.ⁱⁱ

ⁱ Related point: If you find that someone else's theory is different from yours, you naturally want to find a flaw in their theory. Thing is, you can. As any cartographer knows, when drawing a 2-D map of a 3-D terrain, one can't avoid distortion altogether. Maybe there's ∃ like that going on w/ philosophical theorizing too. If we seek to boil a complex truth down to a simple sentence, we'll end up leaving out details that can matter in imaginable cases, or pretending to a completeness that amounts to distortion. You can always find a flaw in someone else's theory. Flaws are not necessarily reasons for rejecting a theory. The one really solid reason for rejecting a theory is, you have a better alternative.

ⁱⁱ Think @ *Hinman*. Think @ *Jacque*.