

## Justice and Democracy in Amartya Sen: another procedural approach?

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### Abstract

*The present paper aims at delivering a critical view of the links between justice and democracy as set by Amartya Sen's paramount work on these themes, "The Idea of Justice", by considering the constitutional and political experience of India. A central role will thus be given to the importance of public discussion and reasoning as the basis of democratic thought throughout the world, as Sen postulates. Nevertheless, an analysis of the Indian constitutional process shows how the mere reliance on reason and justice is not sufficient for a successful democratic tradition: the role of liberal values and of the underlying institutional developments is indeed capital for a wider understanding of the democratization process of India. The intertwining of these two aspects, the former socio-philosophical, the latter institutional, will help in reviewing the Indian experience as a demonstration of the maintenance of traditions within a clear framework, and in further expanding the notion to other contexts.*

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## Introduction

The theme of justice gained momentum again thanks to John Rawls's paramount work *A Theory of Justice* and has so far been the object of investigation of several authors (as Nozick), who generally followed the "contractarian" approach, in line with the tradition started with Hobbes, Locke and Rousseau on the existence of a social contract. This new tendency towards studies on justice, and especially on the related concept of fairness,<sup>2</sup> has found in Amartya Sen a major contribution, thanks to the elaboration of a complete theory on reasoning and the public sphere. Sen's approach reached a capital point for a more comprehensive understanding of the theme of justice with the links created between the reason-based idea of justice and the relevance of democracy and of the democratic process. In fact, the concepts of justice and democracy are more deeply analyzed in *The Idea of Justice*, where Sen explores these two inherently intertwined notions with a view to a global understanding of the subject, deriving his arguments from both the Western and the Oriental historical experiences.

In order to investigate the connection between justice and democracy, a proper definition of both notions will be helpful for clarifying the limits of the analysis. Justice could be intended, as Rawls does, as the "first virtue of social institutions", associated with fairness. Nevertheless, while maintaining the self-evident link with fairness, Sen adds a more feasible argument: instead of framing justice within an institutional scheme, he derives the

notion from actual accomplishments, that could be eventually ranked. This notion of justice is linked to democracy by association with the method: as justice stems from an open and reason-based approach characterized by discussion, so is democracy defined in terms of public reasoning, with an emphasis on informational availability and possibility of choice. Although this framework is indisputably correct for a philosophical analysis of the two concepts, the institutional and procedural characters of democracy could not be neglected. From a minimal procedural perspective, democracy could be conceived as "*the institutional arrangement for arriving at political decisions (...) in which individuals acquire the power to decide by means of a competitive struggle for the people's vote*", as Schumpeter defined the notion (Schumpeter, 1942, 269). A broader explanation is given by Sartori, according to whom democracy is "*a system fictitiously based on the will of the majority, which is in fact produced and safeguarded by the government of a minority*", thus presenting the elitist version of the notion (Sartori, 1957, 96). What Sen proposes seems to be a sort of procedural conception of democracy as a method characterized by open discussion that could eventually lead to just or fair outcomes thanks to the procedure itself. Despite the agreement on the relevance of the dimension of the public sphere, is this the correct path to understand the inherent link between justice and democracy, and the definition of democracy itself?

The present analysis will be initially devoted to the study of the question of justice in Amartya Sen's thought, through a comparison with the contractarian tradition lately embodied by Rawls. Then, the focus will switch to the notion of democracy, from a general perspective to the links that Sen establishes with the concept of justice. Finally, the critical examination of the theory

<sup>2</sup> *Justice as Fairness* is in fact the title of the first article by John Rawls in 1958, and a key association developed in his work of 1973.

of justice and democracy will concentrate on the role of institutions and of liberalism in the general framework of a democratic theory.

### **The ideas of justice**

In *The Idea of Justice*, Amartya Sen classifies the theories of justice according to two streams of philosophical reflection: the contractarian school and the comparative approach, both stemming from the Enlightenment tradition. The former category, including Rousseau and Rawls among others, deals with the identification of the just institutional agreements for a society, with the purpose of finding the right institutions that could ensure perfect justice; on the contrary, the latter concentrates on an accomplishment-based view of justice, taking into account the different possibilities of reaching the goal of less injustice and ranking the alternative choices (Sen, 2009, Introduction).

Despite its main concentration on the establishment of just institutions, Rawls's theory is fundamental in the understanding of the entire question of justice. The reasoned conclusions drawn by Rawls are shared by Sen as well, acknowledging the "*firm footing*" (Sen, 2009, 53) set by Rawls for the theory of justice. The starting point of Rawls's theory is the basic idea of justice seen as a demand of fairness, following the traditional theory of the social contract. The institutional question is thus at the core of Rawls's investigation: from a social contract equally agreed by everyone, just institutions that satisfy shared principles of justice arise. The idea of social contract is here developed at a higher level: the aim of the act is a joint decision over "*the principles which are to assign basic rights and duties and to determine the division of social benefits*" (Rawls, 1973, 10). The theoretical stratagem invented by Rawls in

order to pass from a state of nature to a just society is the well-known "veil of ignorance": thanks to this original position of restriction of knowledge concerning his place in society or his social status and also his conception of the good (Rawls, 1973, 112), a reasonable person could not but choose a fair social contract. This unanimous agreement will be based on two principles of justice:

*First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.*

*Second: social and economic equalities are to be arranged so that they are both reasonably expected to be to everyone's advantage, and attached to positions and offices open to all* (Rawls, 1973, 52).

Thus, two pillars constitute the concept of justice: a liberty principle and a difference principle, with the former having priority over the latter. After having selected these principles, two further stages are provided: a "constitutional" stage for choosing institutions, and a "legislative" stage to implement social decisions by means of laws.

As Sen notes, two elements in Rawls's theory of justice are capital: the use of reason for the choice of the agreement and the importance of freedom. Both elements underlie the existence of a public sphere sufficient to reach conclusions by the use of reason and through discussion, which is a common point with the comparative approach (Rawls, 1973, 62-64). The difference lies in the content of the "programme" and in the role of institutions: while Rawls clearly states the content of the agreement in the "basic liberties" (political; of speech and assembly; of thought; of the person; personal property and freedom from arbitrary arrest), Sen develops his own reasoning according to the concept of

capabilities, which is more real but more vague as well. This same argument of capabilities, typical of Sen's attention to actual achievements, leaves to the background the question of institutions. According to Sen, "just institutions" could not properly work if the actual behaviour is not in line with the expected reasonable behaviour.

In fact, the comparative approach neglects the role of institutions to focus on actual realizations. The theoretical device employed by Sen is the "impartial spectator" that Adam Smith used in his *Theory of Moral Sentiments*, according to whom a comparative assessment of different options becomes possible through a variety of viewpoints. This comparative view on justice is also developed from the traditional difference between two concepts of justice in Sanskrit, *niti* and *nyaya*: while the former term identifies a procedural concept of justice, the latter encompasses the actual achievements, the social realizations (Sen, 2009, Introduction). Sen's theory clearly aims at reaching *nyaya* by means of public reasoning and comparison of different possibilities. The typical example is delivered with the illustration of the competing reasons for the property of a flute. Three children, quarrelling for a flute, have good reasons for owning the instrument: the first one because he is so poor that he has no toys; the second because he produced the flute; the third one because he can play it (Sen, 2009, 12-15). The three alternatives are equally valid according to a contractarian view, but from a comparative approach they can be ranked through public reasoning: the prevention of manifest injustice will be the parameter used to assess the claims. Sen's approach thus gives an open perspective convenient to impartially rank demands of justice. Moreover, this same concern for open discussion links the concept of justice to the

broad understanding of democracy in his thought.

### **The quest for a comprehensive notion of democracy**

In Amartya Sen's academic production, the relevance of open discussion in the achievement of freedom is essential. As in Rawls, the importance of freedom for the attainment of one's objectives is at the basis of his philosophical investigation. Nevertheless, the emphasized aspect is the fulfillment of "comprehensive outcomes", as in the Sanskrit notion of *nyaya*. In order to insert these considerations in the framework of a comprehensive theory of justice and of the link with democracy, the system presented by Sen relies on the capability approach.

What is meant by capability is a person's "real opportunity (...) to do things he or she has reason to value" (Sen, 2009, 233): this calls for the necessity of judging and comparing several individual advantages (what Sen calls "combinations of functionings") from an "informational focus". So, the idea of capability guarantees the actual possibility for people to freely choose, according to a comprehensive range of opportunities. An important feature of this approach is the use of reason and public discussion, shared with the contractarian views of Rawls. Unlike him, though, Sen opens the possibility for different solutions: instead of a single social contract embodying unanimous principles of justice, the approach based on social choice theory, here proposed, aims at giving to each person the chance to find a way for reaching an actual position of less injustice by means of free and open discussion (Sen, 2009, 225-252).<sup>3</sup>

<sup>3</sup> This aspect is developed in Chapter XI of *The Idea of Justice, Lives, Freedoms and Capabilities*.

Despite the equal importance of public reasoning in Rawls's and Sen's theories, the results diverge not only in the absence of a social contract, but also in the relevance of equality. Indeed, Sen does not claim the necessity of equality of capabilities, because the concept itself is related to individual advantages, not to a general ordering (Sen, 2009, 295-298). Thus, the priority of freedom is repeatedly stated, the procedure of reaching freedom through public discussion is shared, but the outcomes are different for each person. This understanding of justice, equality and freedom leads to the comprehensive notion of democracy proposed by Amartya Sen.

Amartya Sen tries to elaborate a concept of democracy that is universally applicable to experiments of local government both in the Western and Eastern worlds. Indeed, the tendency for public reasoning for the decision-making process is not a Western monopoly that started in Athens in the 5<sup>th</sup> century B.C., since ancient India testifies of several experiences of local governance. What Sen regularly stresses is the *"intimate connection between justice and democracy, with shared discursive features"* (Sen, 2009, 326). So, the character of open discussion is the capital element in democracy, in contraposition with Schumpeter's idea of a method for reaching decisions by means of a majority vote, but also of Sartori's view, which poses at the forefront the elitist idea of a government by a minority supported by an initial majority decision.

Sen's view of democracy is said to be content-based: by means of open discussion, through which a plurality of reasons can be compared, a just solution is to be found. According to this view, the procedural and institutional features of democracy look secondary if compared with the inherently

primary discursive element of the concept, that always leads to the establishment of free alternatives, to *nyaya*-based solutions. The institutional elements of democracy, from the Western tradition, and especially the practice of elections, are thus given minor attention, to leave space for the establishment of an open *forum* for dealing with tolerant values and priorities. Several examples are provided in order to support this claim, all derived from the Indian experience since 1947: the prevention of famines in democratic countries thanks to the attention of the media to natural and social disasters; the prevention of sectarian violence; the role of educational rights.

Notwithstanding the coherence of this approach and the evident results, the inference that derives the success of democracy only thanks to the discursive features seems overemphasized. In fact, what Sen proposes is another procedural notion of democracy, and not a content-based approach: by means of the discursive method, that brings to the forefront reasoned claims for justice and reasoned solutions, just and democratic achievements can be reached, independently from the institutional features of a society. Thus, it is the discursive method, that in itself should completely guarantee the rise and acceptance of just decisions by impartially-reasoned ranking of the alternatives, that defines the concept of democracy. While the philosophical derivation of this conception is not questionable, is this view historically consistent?

### **Comprehensive and traditional notions of democracy**

If Amartya Sen's view is correct, what about the fall of the Weimar Republic? Wasn't it one of the best examples of the burgeoning of open discussion and of

cultural vitality ever achieved? This mere example should be sufficient for understanding that the role of institutions should not be neglected in the study of democracy. A democracy that does not defend itself<sup>4</sup> by means of institutional devices is deemed to failure sooner or later, because the protection of minorities and of human rights and freedoms, which are at the basis of the concept itself, must be supported by some protective framework. Weimar Germany was an example of public discussion without public reasoning, especially towards the end of the democratic period, but the existence of public reasoning is not to be taken for granted, as Amartya Sen seems to do. Least of all should it be considered for building a complete system of thought, regardless of previous experiences.

Trust on human capacities and on the use of reason is certainly the ground for Sen's understanding of the notion of democracy. Nobody denies that, and nobody could speculate about the supposed Western monopoly of reasoned discussion: the historical examples provided by Sen suffice to deny the conception of decision-making by open discussion as purely Western, and the experience of the Indian democracy after 1947 is there as a proof of the universal relevance of the democratic values. But the confusion between values and the notion itself is misleading. Sen tries to defend the

new democratic experiences, in Asian countries especially, from the idea that Asian values are not compatible with democracy: an idea promoted in the 1990s by Mahatir Mohamad and Lee Kwan Yew, the Prime Ministers of Malaysia and Singapore, in order to justify the authoritarian regimes in South-East Asia.

The claim for the universality of the value and method of public reasoning and discussion is undisputable. Nevertheless, the historical experience shows that from the 19<sup>th</sup> century onward the only institutional system that could sustain the value of public discussion and at the same time guarantee peaceful coexistence has been the liberal-democratic framework as designed by the Western tradition. What Sen correctly points out is the fact that the seeds of democracy, meant as government allowing discussion and just decisions, are present in each society and in each human context. However, the method of open discussion is not sufficient to define democracy, because it is only the prerequisite for the establishment of a democratic system: it is a procedural feature that is deprived of content. The issue is not about installing just institutions, as Rawls indicates in line with the contractarian theory: the real problem concerns the association of institutions that embody a certain idea of liberty and of protection of minorities, and that help guaranteeing it by the discursive method, with the eventual accomplishment of actual progress in justice.

The two aspects are strictly linked: the respect of democratic values does not arise by itself by means of discussion. The respect of individual rights and freedoms is the essence of a democracy: Sen acknowledges this view by giving priority to freedom, but then leaves to the "unknown" forces of human reason the task of supporting this priority. But a blind trust on

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<sup>4</sup> The concept of defence is introduced with a view to the parallel of the two democratic experiences of Germany: the Weimar Republic from 1919 to 1933 and the re-democratization of 1949 with the new *Grundgesetz*. This new constitution established a system of institutional clauses aimed at preventing a return to authoritarianism that allows to define it as a *wehrhafte Demokratie*, a democracy that defends itself, a fortified democracy.

human reason is not a reasonable point of departure: the framework for decisions is itself important. The idea of democracy is characterized by a plurality of elements, whose basis is the possibility of open discussion, as Sen emphasizes, but this is not an exhaustive definition.

Besides the precondition of public discussion, another procedural element lies in the participation in the government by an elected minority: government by the people is the characteristic of the concept, and the etymology of the word states this evidence. According to Hans Kelsen, this procedural component is the essence, "*the liberal element being of secondary importance*" (Kelsen, 1955, 4). But the rule of the majority, the procedural framework, must be supported by a content, and this content lies in an agreement (a social contract?) on the values to be protected, promoted and embodied by the institutional system. The values of freedom and of justice seem to gather a secure agreement from the representatives of both the contractarian and the comparative approaches.

The comprehensive notion of democracy thus encompasses three aspects: two procedural elements, the government by discussion and by majority rule; and a content-related feature, the protection of freedoms and the promotion of justice. The embodiment of these three elements has been so far guaranteed only by the institutional system derived by the liberal tradition: the successful implant of Western liberal institutions in contexts alien to the liberal experience shows how this type of institutions are able to universally serve societies in which the precondition of public discussion is already present, but miss the organizational structure necessary for dealing with today's world challenges.

### **Open conclusions: liberalism and traditional values**

This short study on the concepts of justice and democracy has tried to present a critical view of the currently most acclaimed theory of justice as linked with universal democratic thought. By the analysis of Amartya Sen's *The Idea of Justice*, some points of discussion arise about the necessity of eliminating the institutional element in the concept of democracy so as to universalize the notion. While a common ground seems to be found in the definition of justice and in the link of the philosophical notion with the concept of democracy, the definition of the latter is still a matter of dispute. The mere definition of democracy as public reasoning is clearly insufficient, because it lacks the empirical basis, which is given by the institutions derived by the Western tradition. Thus, a notion of democracy, to be considered sufficient to respond to the aspiration of people in both a demand for justice and freedom and a way to guarantee this demand, must be related to content and method.

The case of India is of high significance in showing this evidence. The Constitution of India was framed between 1947 and 1949 by men who at the same time possessed both the lessons of liberalism and the awareness of the Indian tradition of discussion. Nevertheless, the result was a text that derives its features from the liberal thought, as Bhimrao Ambedkar, the Chair of the Drafting Committee, admitted in contrast with the ecumenical views purported by Gandhi and his "Republic of *Panchayats*" (villages). A traditional system, as supported by Gandhi, could never have come into being, because of the necessity of having a functioning state. But the seeds of democratic thought were present, and the

fact that the Indian democracy still survives today is an evidence of the success reached by allying public discussion with institutions protecting individual freedoms at a broader level, ensuring at the same time the participation of the popular will to the decisions. Social realizations, actual advancement of justice intended as *nyaya*, seem to be possible nowadays only through a democratic system in which institutions play a role.

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