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WHAT DO WE WANT FROM A THEORY OF JUSTICE?*

I begin from the general Rawlsian position that the interpretation of justice is linked with public reasoning. The focus has to be, in John Rawls's words, on "a public framework of thought" that provides "an account of agreement in judgment among reasonable agents."¹ Rawls outlines this demand in terms of avoiding what he calls "a personal slant":

We do not look at the social order from our situation but take up a point of view that everyone can adopt on an equal footing. In this sense we look at society and our place in it objectively: we share a common standpoint along with others and do not make our judgments from a personal slant.²

The bearing of *public reasoning* on the theory of justice leads to two further inquiries: *What is the relevant public?* and *On what questions should the reasoning concentrate?* The former query concerns the range of points of view that should count in public reasoning (for exam-

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¹ See Rawls, *Political Liberalism* (New York: Columbia, 1993), pp. 110–13.

² Rawls, *A Theory of Justice* (Cambridge: Harvard, 1971), pp. 516–17. This corresponds to page 453 of the revised edition of the book (Cambridge: Harvard, 1999). On the relation between political objectivity and public reasoning, see also Bruce A. Ackerman, *Social Justice in the Liberal State* (New Haven: Yale, 1980); Joshua Cohen, "An Epistemic Conception of Democracy," *Ethics*, xcvi (1986–87): 26–38; Seyla Benhabib, ed., *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton: University Press, 1996); Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge: Harvard, 1996); Thomas Scanlon, *What We Owe to Each Other* (Cambridge: Harvard, 1998).

ple, whether they must all come from inside a given political state), while the latter relates to the subject matter of public reasoning, in particular what are the questions to be answered for a satisfactory theory of justice? The two issues, I will argue, are linked, and together they lead us to the foundational question: *What do we want from a theory of justice?*

I have begun by drawing on Rawls's lead on the basic connection between objectivity, public reasoning, and the theory of justice. However, I have to argue for a rather different way of pursuing that connection, departing not only from the substantive content of the Rawlsian theory of justice but also from Rawls's diagnosis of the very requirements of a theory of justice, including the subject matter of public reasoning and the reach and coverage of public participation.

THE TRANSCENDENTAL VERSUS THE COMPARATIVE

I begin with the issue of the subject matter of a satisfactory theory of justice. In his analysis of "justice as fairness," Rawls takes the principal question to be: *What is a just society?* Indeed, in most theories of justice in contemporary political philosophy, that question is taken to be central. This leads to what can be called a "transcendental" approach to justice, focusing—as it does—on identifying perfectly just societal arrangements. In contrast, what can be called a "comparative" approach would concentrate instead on ranking alternative societal arrangements (whether some arrangement is "less just" or "more just" than another), rather than focusing exclusively—or at all—on the identification of a fully just society. The transcendental and comparative approaches are quite distinct, and as will be presently discussed, neither approach, in general, subsumes or entails the other.³

The transcendental approach to justice is not new (it can be traced at least to Thomas Hobbes), but recent contributions have done much to consolidate the reliance on this approach. In his investigation of "justice as fairness," Rawls explores in depth the nature of an entirely just society seen in the perspective of contractarian fairness. Rawls's investigation begins with identifying the demands of fairness through exploring an imagined "original position" in which the members of the society are ignorant of their respective individual

³ Social choice theory, pioneered in the modern form by Kenneth Arrow (*Social Choice and Individual Values* (New York: Wiley, 1951)), is based on a fundamentally comparative approach. The analytical priority of the comparative can also be seen in the early formulations of social choice in the eighteenth century, particularly in Marquis de Condorcet, *Essai sur l'Application de l'Analyse à la Probabilité des Décisions rendues à la Pluralité des Voix* (Paris: L'Imprimerie Royale, 1785).

characteristics including their own comprehensive preferences. The principles of justice that emerge in the original position are taken to be impartial because they are chosen by the persons involved under a “veil of ignorance,” without knowledge of their individual identities in the society with specific vested interests and particular priorities.

Later on in this paper, I shall discuss some limitations of this understanding of the demands of fairness (and ask whether the points of view to be considered must all come from the population of a given state), but the immediate point to note in the context of understanding the transcendental approach is that the fairness exercise is aimed entirely at identifying appropriate principles for a fully just society and at isolating the institutional needs for the basic structure of such a society. The working of these institutions, in turn, leads to further societal decisions at later stages in the Rawlsian system, for example through appropriate legislation (in what Rawls calls “the legislative stage”). The sequence moves forward step by step on firmly specified lines, with elaborately characterized unfolding of completely just societal arrangements.

Despite the standing and widespread use of the transcendental approach, the intellectual interest in, and practical relevance of, comparative questions about justice are hard to deny. Investigation of different ways of advancing justice in a society (or in the world), or of reducing manifest injustices that may exist, demands comparative judgments about justice, for which the identification of fully just social arrangements is neither necessary nor sufficient. To illustrate the contrast involved, it may well turn out that in a comparative perspective, the introduction of social policies that abolish slavery, or eliminate widespread hunger, or remove rampant illiteracy, can be shown to yield an advancement of justice. But the implementation of such policies could still leave the societies involved far away from the transcendental requirements of a fully just society (since transcendence would have other demands regarding equal liberties, distributional equity, and so on).

The grand partition between the “just” and the “nonjust,” which is what a theory of transcendental justice yields, would leave the society on the “nonjust” side even after the reform, despite what can be seen, in a comparative perspective, as a justice-enhancing change. Some nontranscendental articulation is clearly needed. To take another type of example, instituting a system of public health insurance in the United States that does not leave tens of millions of Americans without any guarantee of medical attention at all may be judged to be an advancement of justice, but such an institutional change would not turn the United States into a “just society” (since there would remain a hundred other transgressions still to remedy).

A transcendental approach cannot, on its own, address questions about advancing justice and compare alternative proposals for having a more just society, short of proposing a radical jump to a perfectly just world. Indeed, the answers that a transcendental approach to justice gives—or can give—are quite distinct and distant from the type of concerns that engage people in discussions on justice and injustice in the world, for example, iniquities of hunger, illiteracy, torture, arbitrary incarceration, or medical exclusion as particular social features that need remedying. The focus of these engagements tends to be on the ways and means of advancing justice—or reducing injustice—in the world by remedying these inequities, rather than on looking only for the simultaneous fulfilment of the entire cluster of perfectly just societal arrangements demanded by a particular transcendental theory.

POSSIBLE DEFENSE OF A TRANSCENDENTAL APPROACH

The argument so far has been, in an important sense, too easy. Surely transcendental answers cannot be all we want from a theory of justice. But there might well be—this is a matter to be investigated—some less obvious connection, some relationship between the transcendental and the comparative that could make the transcendental approach the right way of proceeding to comparative assessments. The formal remoteness of the transcendental approach from the invoking of the idea of justice in debates and discussions on practical affairs does not in itself indicate that the transcendental approach cannot be the right approach.

Thus, at least two further questions must be addressed, related to the possibility, respectively, of (1) the sufficiency, and (2) the necessity, of the transcendental approach for making comparative judgments about justice. First, can the answers to transcendental queries take us indirectly to comparative assessments of justice as well, in particular through comparisons of “distances” from transcendence at which particular sets of societal arrangements respectively stand? Second, can it be the case that the transcendental question (“What is a just society?”) has to be answered first, as an essential requirement, for a cogent and well-founded theory of comparative justice, which would otherwise be foundationally disjunctive and frail? For an adequate critique of the transcendental approach to justice from the comparative perspective, we have to assess these possibilities critically.

Implicit beliefs in the sufficiency or the necessity (or both) of a transcendental approach for comparative assessment clearly have had a powerful role in the widespread belief that the transcendental

approach is crucial for the entire theory of justice. Indeed, even in social choice theory, where the analytical framework is firmly relational and altogether grounded on pairwise comparisons, the investigations of justice in particular has been standardly elongated to move relentlessly from the basic comparative rankings to the identification of transcendental justice (often in the Rawlsian mold).⁴ In arguing for a more robustly comparative approach to justice, with which this paper is concerned (and for which social choice theory can play, I would suggest, an important role), it would be necessary to examine whether comparative conclusions either *follow from*, or *need*, some transcendental identification.

DOES TRANSCENDENTAL SPECIFICATION YIELD
COMPARATIVE RANKINGS?

I begin with the issue of *sufficiency*. Does a transcendental approach produce, as a by-product, relational conclusions that are ready to be drawn out, so that transcendence may end up giving us a great deal more than its overt form articulates? In particular, is the specification of an entirely just society sufficient to give us rankings of departures from justness in terms of comparative “distances” from perfection, so that a transcendental identification might immediately entail comparative gradings as well?

The answer here is a firm no. The main difficulty lies in the fact that there are different features involved in identifying distance, related, among other distinctions, to (1) different fields of departure, (2) varying dimensionalities of transgressions within the same general field, and (3) diverse ways of weighing separate infractions. The identification of transcendence does not yield any means of addressing these problems to arrive at a relational ranking of departures from transcendence.

For example, in the context of the Rawlsian analysis of the just society, departures may occur in many different spaces. They can include the breaching of liberty, which, furthermore, can involve di-

⁴ The comparative conclusions have typically been pieced together to arrive at some ultimately transcendental claims (a translation that is possible with rather restrictive and limiting assumptions, as will be discussed presently). See, for example, Sen, *Collective Choice and Social Welfare* (San Francisco: Holden-Day, 1970); Kotaro Suzumura, *Rational Choice, Collective Decisions, and Social Welfare* (New York: Cambridge, 1983); Peter J. Hammond, “Equity, Arrow’s Conditions and Rawls’ Difference Principle,” *Econometrica*, XLIV (1976): 793–804; Claude d’Aspremont and Louis Gevers, “Equity and the Informational Basis of Collective Choice,” *Review of Economic Studies*, XLVI (1977): 199–209; Arrow, “Extended Sympathy and the Possibility of Social Choice,” *American Economic Review*, LXVII (1977): 219–25. The influence of the Rawlsian perspective on justice has been very strong on the application of social choice theory, despite the basic distance between the respective comparative and transcendental approaches.

verse violations of distinctive liberties (many of which figure in Rawls's capacious coverage of liberty and its priority). There can also be violations—again in possibly disparate forms—of the demands of equity in the distribution of primary goods (there can be many different departures from the demands of the Difference Principle which forms a part of Rawls's second principle). Similarly, diverse transgressions can occur in other transcendental theories of justice (for example, those that would replace the Rawlsian focus on "primary goods" in the Difference Principle by concentrating respectively on "capabilities" or "resources" or "opportunities," or some other way of formulating the allocational and distributional needs of transcendental justice).

There are also disparate ways of assessing the extent of each such discrepancy and of appraising the comparative remoteness of actual distributions from what the principles of full justice would demand. Further, we have to consider departures in procedural equity (such as infringements of fair equality of public opportunities or facilities), which figure within the domain of Rawlsian demands of justice (in the first part of second principle). To weigh these procedural departures *against* infelicities of emergent patterns of interpersonal distribution (for example, distributions of primary goods), which also figure in the Rawlsian system, would require distinct specification—possibly in axiomatic terms—of relative importance or significance (or "trade-offs" as they are sometimes called in the crude vocabulary of multidimensional assessment). But these extensions, helpful as they would be, lie well beyond the specific exercise of the identification of transcendence, and are indeed the basic ingredients of a "comparative" rather than a "transcendental" approach to justice. The characterization of spotless justice does not entail any delineation whatever of how diverse departures from spotlessness can be compared and ranked.

The absence of such comparative implications is not, of course, an embarrassment for a transcendental theory of justice, seen as a freestanding achievement. The relational silence is not, in any sense, an internal difficulty of a transcendental theory of justice. Indeed, some pure transcendentalists would be utterly opposed even to flirting with gradings and comparative assessments, and may quite plausibly shun relational conclusions altogether. They may point in particular to their understanding that a "right" social arrangement must not, in any way, be understood as a "best" social arrangement, which could open the door to what is sometimes seen as the intellectually mushy world of graded evaluations in the form of "better" or "worse" (linked with the relationally superlative "best"). The ab-

soluteness of the transcendental “right”—against the relativities of the “better” and the “best”—may well have a powerfully reasoned standing of its own. But it does not help at all in *comparative assessments* of justice.

To be sure, members of any polity can contemplate how a gigantic and totally comprehensive reorganization may be brought about, moving us *at one go* to the ideal of a fully just society. A no-nonsense transcendental theory can serve, in this sense, as something like the “grand revolutionary’s complete handbook.” But that handbook would not be much invoked in the debates on justice in which we are constantly engaged, which focus on how to reduce the manifold injustices that characterize the world.⁵

Even if we think of transcendence not in the “gradingless” terms of “right” social arrangements, but in the graded terms of the “best” social arrangements, the identification of the best does not, in itself, tell us much about the full grading, such as how to compare two nonbest alternatives. The identification of the best does not specify a unique ranking with respect to which the best stands at the pinnacle; indeed the same best may go with a great many different rankings with the same pinnacle. To consider an analogy, the fact that a person regards the *Mona Lisa* as the best picture in the world, does not reveal how she would rank a Gauguin against a Van Gogh. The search for transcendental justice is an engaging exercise in itself, but irrespective of whether we think of transcendence in terms of the gradeless “right” or in the framework of the graded “best,” it does not tell us much about the comparative merits of many—indeed typically most—of the different societal arrangements.

IS A TRANSCENDENTAL THEORY NECESSARY FOR COMPARISONS OF JUSTICE?

I now take up the second question, concerning the hypothesis that the identification of the best is necessary, even if not sufficient, to rank any two alternatives in terms of justice. In the usual sense of necessity, this would be a somewhat odd possibility. In the discipline of comparative judgments in any field, relative assessment of two alternatives tends in general to be a matter between them, without there being the necessity of beseeching the help of a third—

⁵ It is worth noting here that the diagnosis of injustice does not demand a unique identification of the “just society,” since many different identifications of perfectly just social arrangements may all agree on the diagnosis of a remediable deficiency of a particular social arrangement (say, with manifest hunger or illiteracy or medical neglect).

“irrelevant”—alternative. Indeed, it is not at all obvious why in making the judgment that some social arrangement x is better than an alternative arrangement y , we have to invoke the identification that some quite different alternative z is the “best” or the “right” social arrangement. In arguing for a Picasso over a Dali we do not need to get steamed up about identifying the perfect picture in the world, which would beat the Picassos and the Dalis and all other paintings in the world.

It might, however, be thought that the analogy with aesthetics is problematic since a person might not even have any idea of a perfect picture, in a way that the idea of a perfectly just society has appeared to be identifiable, in transcendental theories of justice. I will argue later on that the existence of a best, or a transcendent, alternative is actually not guaranteed even in the field of justice, but I am ready to proceed, for the moment, on the presumption that such an identification can somehow be made. However, despite this tentative acceptance, the existence of an identifiably inviolate, or best, alternative does not indicate that it is necessary (or indeed useful) to refer to it in judging the relative merits of two other alternatives. For example, we may indeed be willing to accept, with great certainty, that Everest is the tallest mountain in the world, completely unbeatable in terms of stature by any other peak, but that understanding is neither needed, nor particularly helpful, in comparing the heights of, say, Kanchenjunga and Mont Blanc. There would be something very deeply odd in a general belief that a comparison of any two alternatives cannot be sensibly made without a prior identification of a supreme alternative.

Thus, the hypothesis of necessity in the standard sense would be hard to sustain. There is, however, a weaker form of the hypothesis of necessity, which merely asserts that if comparative assessments can be systematically made, then that discipline must also be able to identify the very best. The claim, in this case, would be not so much that two alternatives cannot be compared in terms of justice without first knowing what the best or the perfect alternative is, but that the comparative ranking of the different alternatives must *inter alia* also be able to identify the answer to the transcendental question regarding the perfectly just society. Or, to put it in another way, if the transcendental question cannot be answered, then nor can be the comparative. This understanding of necessity would not vindicate the need to go *via* the transcendental approach to comparative assessments, but it would at least give transcendental identification a necessary presence in the theory of justice. We have to examine this considerably weaker claim of “necessity” as well.

COMPARATIVES WITHOUT TRANSCENDENCE

Would a sequence of pairwise comparisons invariably lead us to the very best? That presumption has some appeal, since the superlative might indeed appear to be the natural end point of a robust comparative. But this conclusion would, in general, be a *non sequitur*. In fact, it is only with a “well-ordered” ranking (for example, a complete and transitive ordering over a finite set) that we can be sure that the set of pairwise comparisons must also identify a “best” alternative.

We must, therefore, ask: How complete should the assessment be, for it to be a systematic discipline? In the “totalist” approach that characterizes the standard theories of justice (including Rawls’s), incompleteness tends to appear as a failure, or at least as a sign of the unfinished nature of the exercise. Indeed, the survival of incompleteness is sometimes seen as a defect of a theory of justice, which calls into question the positive assertions that such a theory makes. In fact, however, a theory of justice that makes systematic room for incompleteness allows one to arrive at possibly quite strong judgments (for example, about the injustice of continuing famines in a world of prosperity, or of persistently grotesque subjugation of women), without having to find highly differentiated assessment of every political and social arrangement in comparison with every other arrangement (for example, addressing such questions as: Is a top income tax rate of 45 percent more just or less just than a top rate of 46 percent?)

I have discussed elsewhere why a systematic and disciplined theory of normative evaluation, including assessment of social justice, need not take a “totalist” form.⁶ Incompleteness may be of the lasting kind for several different reasons, including unbridgeable gaps in information, and judgmental unresolvability involving disparate considerations that cannot be entirely eliminated, even with full information. For example, it may be hard to resolve the overall balance of the comparative claims of equity considerations that lie behind Rawlsian lexicographic maximin, compared with, say, sum-ranking in a gross or equity-adjusted form.⁷ And yet, despite such durable incompleteness,

⁶ Sen, “Consequential Evaluation and Practical Reason,” this JOURNAL, xcvi, 9 (September 2000): 477–572. See also Sen, *Collective Choice and Social Welfare*; “Maximization and the Act of Choice,” *Econometrica*, lxxv (1997): 745–79; and “The Possibility of Social Choice,” *American Economic Review*, lxxxix (1999): 349–78; and also “Incompleteness and Reasoned Choice,” *Synthese*, cxl (2004): 43–59. See also Isaac Levi’s response to the last, in “Amartya Sen,” in the same number of *Synthese*, pp. 61–67.

⁷ The vast literature on this include, among other contributions, S.-Ch. Kolm, “The Optimum Production of Social Justice,” in J. Margolis and H. Guitton, eds., *Public Economics* (London: Macmillan, 1969), pp. 145–200; A.B. Atkinson, “On the Measurement of Inequality,” *Journal of Economic Theory*, ii (1970): 244–63; James Mirrlees, “An

we may still be able to agree readily that there is a clear social injustice involved in the persistence of endemic hunger or exclusion from medical access, which calls for a well-specified remedying for the *advancement* of justice (or reduction of injustice), even after taking note of the costs involved. Similarly, we may acknowledge the possibility that liberties of different persons may, to some extent, conflict with each other (so that any fine-tuning of the demands of equal liberty may be hard to work out), and yet strongly agree that torturing accused people would be an unjust violation of liberty and that this injustice calls for an urgent rectification.

There is a further consideration that may work powerfully in the direction of making political room for incompleteness of judgments about social justice, even if it were the case that every person had a complete ordering over the possible social arrangements. Since a theory of justice invokes agreement between different parties (for example, in the “original position” in the Rawlsian framework), incompleteness can also arise from the possibility that different persons may continue to have some differences (consistently with agreeing on a lot of the comparative judgments). Even after vested interests and personal priorities have been somehow “taken out” of consideration through such devices as the “veil of ignorance,” there may remain possibly conflicting views on social priorities, for example in weighing the claims of need over entitlement to the fruits of one’s labour.

Conflicts of distributive principles that are hard to eradicate can be illustrated with an example, which I have discussed in another context. The example is concerned with the problem of deciding which of three children should get a flute about which they are quarrelling.

Exploration of the Theory of Optimal Income Taxation,” *Review of Economic Studies*, xxxviii (1971): 175–208; Sen, *On Economic Inequality* (New York: Oxford, 1973; enlarged edition with a new addendum jointly written with James Foster, 1997); Claude d’Aspremont and Louis Gevers, “Equity and the Informational Basis of Collective Choice,” xlv (1977): 199–209; Eric Maskin, “Decision-making under Ignorance with Implications for Social Choice,” *Theory and Decision*, xi (1979): 319–37; Kevin W.S. Roberts, “Interpersonal Comparability and Social Choice Theory,” *Review of Economic Studies*, xlvii (1980): 421–39; Charles Blackorby, David Donaldson, and John Weymark, “Social Choice with Interpersonal Utility Comparisons: A Diagrammatic Introduction,” *International Economic Review*, xxv (1984): 327–56; d’Aspremont, “Axioms for Social Welfare Ordering,” in Leonid Hurwicz, David Schmeidler, and Hugo Sonnenschein, eds., *Social Goals and Social Organization: Essays in Memory of Elisha Pazner* (New York: Cambridge, 1985), pp. 19–76; and d’Aspremont and Gevers, “Social Welfare Functionals and Interpersonal Comparability,” Blackorby, Walter Bossert, and Donaldson, “Utilitarianism and the Theory of Justice,” and Bhaskar Dutta, “Inequality, Poverty and Welfare,” the last three in Arrow, Sen, and Suzumura, eds., *Handbook of Social Choice and Welfare*, Volume I (Amsterdam: North-Holland, 2002), chapters 10–12.

Child *A* is the only one of the three who knows how to play the flute (the others do not deny this); child *B* is the only one without any toys of his own (the other two concede that they are much richer and well supplied with engaging amenities); child *C* has worked hard to make the flute all on his own (the others confirm this). Theorists of different persuasions—utilitarian or egalitarian or libertarian—may believe that a just resolution can be readily spotted here, though, alas, they would respectively see totally different resolutions as being exactly right. The main point to note in the present context is that the different resolutions all have serious arguments in support of them, and we may not be able to identify exactly one of the alternative arguments as being the only one (to invoke Thomas Scanlon's criterion) that "could be justified to others on grounds that they, if appropriately motivated, could not reasonably reject."⁸

Even when each of the parties involved has his or her own complete specification of justice, the "intersection" between the rankings—that is the *shared* beliefs of the different parties—can yield a partial ranking, if the judgments are not all congruent.⁹ The acceptability of evaluative incompleteness is indeed a central subject in social choice in general, and it is relevant to theories of justice as well, even though Rawlsian and other theories assert (and it *is* an assertion rather than something that is established in any clear way) that a full agreement will definitely emerge in the "original position" and in other such formats.¹⁰

Indeed, for reasons both of incomplete individual evaluations and of incomplete congruence of individual assessments, incompleteness may be a hardy feature of judgments of social justice. This can be problematic for the identification of a perfectly just society, and make transcendental conclusions difficult to derive.¹¹ And yet, such incompleteness would not prevent making comparative judgments of justice

⁸ Scanlon, *What We Owe to Each Other*, p. 5; see also his "Contractualism and Utilitarianism," in Sen and Bernard Williams, eds., *Utilitarianism and Beyond* (New York: Cambridge, 1982), pp. 103–28.

⁹ The formal characteristics of "intersection partial orderings" are discussed in Sen, *On Economic Inequality*, and "Maximization and the Act of Choice."

¹⁰ For an early expression of skepticism about the plausibility of unanimous judgments in the "original position," see my joint essay with W.G. Runciman, "Games, Justice and the General Will," *Mind*, lxxiv (September 1965): 554–62.

¹¹ On a mathematical point, it must be acknowledged that a transitive but incomplete ordering over a finite set will invariably yield one or more "maximal" elements, in the sense of there being no element that is better than a maximal element. Maximality does not, however, guarantee the existence of a best element. The foundational nature of the mathematical distinction involved and its significant implications are investigated in N. Bourbaki, *General Topology*, Parts I and II, English translation (Reading, MA:

in a great many cases, where there might be fair agreement on particular pairwise rankings, about how to enhance justice and reduce injustice. A partial ordering can be very useful without being able to lead to any transcendental identification of a fully just society.

The question “What is a just society?” is, therefore, not a good *starting point* for a useful theory of justice. To that has to be added the further conclusion that it may not be a plausible *end point* either. A systematic theory of comparative justice does not need, nor does it necessarily yield, an answer to the question “What is a just society?”

INSTITUTIONAL BARRIERS AND TRANSCENDENTAL SILENCE

I turn now to a different—though not unrelated—feature of the transcendental approach to justice, in particular the extremely demanding institutional requirements of accomplishing pristine justice. The achievement of a fully just society would require a plethora of institutions, including the unfettered operations of a sovereign state. Some of these institutions are absent or defective in many countries in the world; nor can these countries readily establish them. Even without the possibility of setting up some of these institutions, it is, of course, possible to advance justice—or to reduce injustice—to a considerable extent, but while that is good enough for applying the comparative approach to justice, it does not yield the achievement of transcendental justice. If such spotless justice were the only focus of attention in a theory of justice, then the institutional preconditions would form a kind of “entry barrier,” leading to an abstinence from applying justice theory to situations in which those exacting institutional demands are not only not currently met but cannot be met in the foreseeable future.

The institutional preconditions would be particularly hard to meet in dealing with, say, problems of global justice. The claim that we need a sovereign state to apply the principles of justice—a claim that was well articulated by Thomas Hobbes—is substantially connected with the elaborate institutional demands of a transcendental understanding of justice. Thomas Nagel’s strongly argued dismissal of the

Addison-Wesley, 1966), and *Theory of Sets* (Reading, MA: Addison-Wesley, 1968). The presence of maximal elements is sufficient for reasoned choice of an alternative that is no worse than any other. It will not, however, in general allow the unfolding of a perfectly just social arrangement, not to mention a unique arrangement of perfect justice (as in the Rawlsian and other transcendental systems). On the far-reaching relevance of the distinction between maximality and optimality (and transcendence), see Sen, “Internal Consistency of Choice,” *Econometrica*, LXI (1993): 495–521, and “Maximization and the Act of Choice,” *Econometrica*, LXV (1997): 745–79.

relevance of “the idea of global justice” draws on his understanding that these extensive institutional demands cannot be met at the global level at this time. As he puts it, “It seems to me very difficult to resist Hobbes’s claim about the relation between justice and sovereignty,” and “if Hobbes is right, the idea of global justice without a world government is a chimera.”¹² In the global context, Nagel concentrates, therefore, on clarifying other demands, distinguishable from the demands of justice, such as “minimal humanitarian morality” (which “governs our relations to all other persons”), and also to long-run strategies for radical change in institutional possibilities (“I believe the most likely path toward some version of global justice is through the creation of patently unjust and illegitimate global structures of power that are tolerable to the interests of the most powerful current nation-states”).¹³

In the Rawlsian approach too, the application of a theory of justice requires an extensive cluster of institutions that determines the basic structure of a fully just society. Not surprisingly, Rawls actually abandons his own principles of justice when it comes to the assessment of how to go about thinking about global justice. In a later contribution, *The Law of Peoples*, Rawls invokes a “second original position,” with a fair negotiation involving representatives of different polities—or different “peoples” as Rawls call them—who serve as parties under this second veil of ignorance.¹⁴ However, Rawls does not try to derive principles of justice that might emanate from this second original position, and concentrates instead on certain general principles of humanitarian behavior. The Rawlsian vehicle of justice that would take us rapidly forward in pursuit of some justice in a justiceless world remains stalled and stationary in the wintry morning of a world without a global state.

To be sure, Rawls need not agree that the world is really unjust if he remains fully attached to the belief that the concept of justice does not apply at the global level. Nagel, on the other hand, seems definitely convinced that “we do not live in a just world” (the opening sentence of “The Problem of Global Justice” (*op. cit.*, p. 113)). While I firmly agree with that conclusion (given what I see as the role

¹² Nagel, “The Problem of Global Justice,” *Philosophy and Public Affairs*, xxxiii (2005): 113–47, here p. 115.

¹³ Nagel, “The Problem of Global Justice,” pp. 130–33, 146–47. An important critique of what Joshua Cohen and Charles Sabel describe as Nagel’s “statism” can be found in their “Extra Rempublicam Nulla Justitia?,” *Philosophy and Public Affairs*, xxxiv (Spring 2006): 147–75, in which see also A.L. Julius, “Nagel’s Atlas,” pp. 176–92.

¹⁴ Rawls, *The Law of Peoples* (Cambridge: Harvard, 1999).

of a theory of justice, the subject matter of this paper), it is not entirely clear to me how Nagel can make statements of this kind given his conviction that the idea of global justice is “a chimera.”¹⁵

The challenge of making the world less unjust, thus, remains unaddressed within the transcendental approach. It is not, however, at all clear why we should be reduced to silence, so far as justice is concerned, merely because the reach of institutional possibilities does not prepare us for transcendental justice. The question how global justice can nevertheless be advanced remains pertinent to ask, unless we are forcibly removed from the territory of justice on the ground that transcendental justice is the only satisfactory—or the only understandable—idea of justice. Indeed, that question about advancement of justice (or about reduction of global injustice) can be a fruitful part of the subject matter of the deliberative framework of public reasoning. A “public framework of thought,” which Rawls has taught us to value and use, should not become wholly inoperative merely because the institutional demands of a perfectly just society have turned out to be infeasible.

There is, thus, a real tension between making good use of public reasoning (drawing on Rawls’s powerful, general arguments in that direction) and remaining silent whenever some exacting institutional conditions needed for transcendental justice cannot be entirely fulfilled (a conclusion that emerges from the special transcendental form that Rawls gives to his theory of justice). There is a serious loss here. Public deliberation can be important and useful both in pursuing institutional reform (even when the totality of the institutional reforms needed for perfection cannot be carried out) and in examining what can be done to reduce injustice—a basic question in the comparative approach to justice—even when not all the right institutions are in place.¹⁶ A non-Rawlsian comparative (rather than transcendental) approach to justice can be a good conceptual base for such—essentially Rawlsian—public reasoning.

TRANSCENDENTAL LOCALISM AND GLOBAL CONCERNS

The importance of public reasoning for dealing with global problems of justice is a subject of importance on its own. However, it must

¹⁵ If Nagel is relying on a possible formal interpretation (by stretching a point) that in the absence of an applicable theory of justice it can indeed be said that “we do not live in a just world,” then he could have, with equal ease, also said, “we do not live in an unjust world.” That may not, however, have served quite so well as the opening sentence of Nagel’s finely argued and sensitive essay, and there is, I would argue, reason to ask ourselves how this asymmetry arises if the idea of global justice is really such a chimera.

¹⁶ On this see my “Elements of a Theory of Human Rights,” *Philosophy and Public Affairs*, xxxiv (Fall 2004): 315–56.

be acknowledged that even though Rawls was a visionary leader of thought on the importance of public reasoning, he had considerable skepticism about the use of public reasoning at the global level. It is important to separate out two possible grounds for Rawls's reluctance. One issue, which has already been mentioned, is the inapplicability of the exacting framework of transcendental justice at the global level, because of institutional limitations. A second reason for Rawls's reluctance is his insistence on linking public reasoning with the contractarian format of the "original position." This involves a devised deliberative exercise that would appear to be hard to apply beyond the limits of a particular society (or a particular "people," as Rawls defines this collectivity in his later works).¹⁷

Rawls's statement about the need for a "common standpoint" which was quoted (from *A Theory of Justice*) at the beginning of this paper was immediately followed by the invoking of this particular conceptual device:

Thus our moral principles and convictions are objective to the extent that they have been arrived at and tested by assuming this general standpoint and by assessing the arguments for them by the restrictions *expressed by the conception of the original position*.¹⁸

The deliberation thus takes the form of fair negotiation, in which the fairness of the reasoned negotiation is grounded on the demand that the reasoning occurs under a specially conceived veil of ignorance. But the participants in the deliberation are exactly the parties to the social contract for the society in question. A person's voice counts because he or she is directly involved in the social contract, which will "regulate the institutions" of the society of which he is a member.¹⁹

In contrast with this negotiational justification of the confinement to local points of view, there is a different approach to impartiality which brings in different voices, possibly even from "a distance" (to use Adam Smith's articulate phrase), precisely because these voices illuminate public decisions and help to make them impartial. In the

¹⁷ It is, however, important to note that in the version of "contractualism" that Scanlon has developed and explored, which requires judgment about what it "would be reasonable for those affected by a principle to reject," citizenal confinement is neither necessary nor indeed sensible, since the policies and institutions of a nation, or state, or "people," as Rawls calls this collectivity, can significantly affect other people elsewhere. See Scanlon's *What We Owe to Each Other*, and also his earlier contribution, "Contractualism and Utilitarianism."

¹⁸ Rawls, *A Theory of Justice* (1971), pp. 517, and (1999), p. 453; italics added.

¹⁹ Rawls, *A Theory of Justice* (1971), p. 23.

terminology of conflict resolution, this is more like arbitration, rather than negotiation; the arbitrators need not themselves be parties to the dispute. I have argued elsewhere that the interpretation of fairness and impartiality through an understanding of “fair arbitration” is a serious rival to the route of “fair negotiation,” which is the exclusive direction in which the contractarian feature of Rawls’s transcendental approach—“justice as fairness”—proceeds.²⁰

The approach of fair arbitration is well exemplified by Smith’s invoking of the perspectives of “impartial spectators.” The impartial spectators are imagined observers who need not be members of the society, and their impartiality does not come, as in the Rawlsian system, exclusively—or even primarily—through the thought experiment of a veil of ignorance about the personal circumstances of individual members of a given society. Rather, the thought experiment by members of society, in the Smithian system of fair arbitration, invokes the judgments of disinterested observers who are not themselves parties to the societal decisions that are to be taken.

In itself this may not seem like a big difference, since both are merely thought experiments that must be undertaken, within the respective formats, by the people in the actual society. Also, there is nothing to prevent the imagined fair arbitrators from undertaking the exercise of placing themselves in the position of the parties involved under a devised veil of ignorance, so that fair arbitration can make good use of the insights that may come from fair negotiation.

However, there are two sources of substantial difference between the Smithian and the Rawlsian procedures. First, the contractarian approach standardly proceeds toward identifying the demands of transcendence (the principal inquiry in the original position is aimed at the demands of a just society), whereas Smith’s impartial spectators are typically invoked for contrasting alternatives to throw light on specific issues of advancement or retardation of justice in a comparative approach. A second difference arises from the fact that the impartial observers may be imagined as coming from far as well as near, with questions being asked about how the decisional problem would look to those who may have had different social and institutional experience (a question of some importance, as Smith has argued). While the imagined impartial judges may find it useful to ask *inter alia*

²⁰ Sen, “Open and Closed Impartiality,” this JOURNAL, XCIX, 9 (September 2002): 445–69.

what things would look like had they actually been the involved parties (here the exercise would be, in effect, rather similar to the Rawlsian one), they could also be seen as bringing perspectives that are altogether different from the ones generally accepted in the local society and culture.

In the Rawlsian exercise, while there is a procedural requirement of ignorance of personal interests, personal aims, and personal circumstances, nothing is demanded about the knowledge and approbation of shared beliefs—and prejudices—of the society in which these individuals happen to live. In contrast, what the Smithian model of fair arbitration demands is that the people in any society must put in an effort to examine how their own practices and conventions would look to others, including people who are informed about, but not entirely reared in, that society.²¹

GLOBAL PERSPECTIVES, LOCAL INTERESTS, AND PAROCHIALISM

The reasons to go beyond the contracting parties in a nation state include at least three distinct concerns: (1) the interests of other people may be affected (for example, by national policies on “global warming,” or for that matter what is called the “war against terror”); (2) the local parochialism shared by all (or nearly all) the persons within a given society may call for a distant challenge in the interest of objectivity; and (3) additional knowledge about what is feasible can be acquired from the experiences of other countries.²²

On the first subject (that is the interests of people beyond borders which may be significantly affected), the arbitration approach allows the possibility of taking note of some of the broader concerns, including distributive ones, about global justice that have led in recent years to attempts to consider a “cosmopolitan” version of the original position, so that the interests of people in other countries, which may be

²¹ The Rawlsian formulation of the “original position” suffers also from a further problem in specifying the allegedly fixed set of negotiators when the results of the negotiation can change the size and composition of the population involved. This problem of “inclusionary incoherence” (as I called it), which the Smithian approach does not have, was discussed, among other issues, in an earlier essay in this journal, “Open and Closed Impartiality.” I shall not, however, further pursue here this rather different type of difficulty.

²² On the last issue, it is worth mentioning that the understanding in different countries of social feasibilities (relevant, for example, for gender justice) and economic feasibilities (relevant, for example, for policies against poverty) is significantly influenced in the contemporary world by learning from the experiences—successes and failures—of other countries; on this see my *Development as Freedom* (New York: Knopf, 1999).

influenced by policies in this country, are not neglected.²³ This is aimed at extending the reach of justice.

It is, however, important to see clearly that the invoking of impartial spectators from elsewhere does not make the Smithian exercise of arbitration by impartial spectators similar to the “cosmopolitan” version of the contractarian approach (which could take the form of including all the people in the world in one gigantic original position, yielding one huge global social contract for an entirely just world). The route of fair arbitration is fundamentally different from that of fair negotiation and of social contract, because of the way impartiality is interpreted.²⁴ The institutional demands of the contractarian procedure if aimed at the identification of transcendental justice take us immediately to the need for a sovereign nation, which was the bone of Thomas Nagel’s contention. This is a problem that does not arise in a similar way in the case of invoking the device of the impartial spectators to assist in the assessment of justice in a comparative framework.²⁵

Nevertheless, there are some similarities between the cosmopolitan version of the social contract and the Smithian invoking of distant observers. The Rawlsian exclusion of foreign nationals from having a voice in the assessment of policies of a country that have influences on the rest of the world is restrained in both the cosmopolitan social contract and in the Smithian exercise of invoking observers from far as well as near.

Second, the approach of the impartial spectator can bring in, *inter alia*, distant perspectives that are detached not only from the particular vested interests of individual citizens, but also from any parochialism of local beliefs that may be generally shared by all members of a given polity or community. One of the possible advantages of the route of fair arbitration is, thus, the greater versatility that the latter has, which can incorporate a systematic procedural challenge to the distortion of parochial convictions.

The avoidance of parochialism was, in fact, one of the principal reasons for Smith’s insistence that the impartial spectators must *inter alia* represent perspectives from (as Smith put it) “a certain distance.” Smith put the point thus: “we can do this in no other way than by

²³ See, for example, Thomas Pogge, ed., *Global Justice* (Malden, MA: Blackwell, 2001). See also Deen Chatterjee, *The Ethics of Assistance: Morality and the Distant Needy* (New York: Cambridge, 2004).

²⁴ For example, it can be shown that the cosmopolitan version of the Rawlsian original position is also vulnerable to “inclusionary incoherence” in a way that the Smithian approach is not, as is discussed in my “Open and Closed Impartiality.”

²⁵ Here again it must be noted that in the version of “contractualism” presented by Scanlon (*What We Owe to Each Other*), which has many affinities with the Smithian exercise of impartiality, the focus need not be on transcendence only.

endeavoring to view them with the eyes of other people, or as other people are likely to view them.”²⁶

In a chapter in *The Theory of Moral Sentiments* entitled “On the Influence of Custom and Fashion upon the Sentiments of Moral Approbation and Disapprobation,” Smith argued that “the different situations of different ages and countries are apt...to give different characters to the generality of those who live in them, and their sentiments concerning the particular degree of each quality, that is either blamable or praise-worthy, vary, according to that degree which is usual in their own country, and in their own times.”²⁷ One of Smith’s illustrations of such parochial values was the tendency of all political commentators in ancient Greece, including sophisticated Athenians, to regard infanticide as perfectly acceptable social behavior. Even Plato and Aristotle did not depart from expressing approval, Smith noted, of this extraordinary practice which “uninterrupted custom had by this time...thoroughly authorized” in ancient Greece.

The Rawlsian device of losing information about personal identities in a given society, which does much to eliminate the influence of individual vested interests, does not provide any systemic way of avoiding prejudices that are broadly *shared* by everyone within a given society. As it happens, the localism of the contractarian approach is, in fact, reinforced by Rawls’s insistence that the transcendental exercise in the original position should concentrate on “the basic structure” of “a closed society: that is, we are to regard it as self-contained and as having no relations with other societies.”²⁸ Smith’s argument that we must *inter alia* view our sentiments from “a certain distance from us” is motivated by the need to ask the question whether some appearance of justice is socially biased through the impact of entrenched tradition and local custom. Smith’s actual example of infanticide remains distressingly relevant in some societies even today (though no longer in Greece), but there are also many other practices for which justice being seen to be done may usefully invoke, as Smith put it, “the eyes of the rest of mankind.”²⁹

While an American audience may find it easy to believe that distant perspectives may be usefully brought in, in the case of “backward” societies such as Sudan or Afghanistan, in which, for example, honor killings occur and adulterous women might be stoned to death, there

²⁶ Smith, *The Theory of Moral Sentiments*, III, 1, 2, p. 110.

²⁷ Smith, *The Theory of Moral Sentiments*, Volume 2.7, p. 204.

²⁸ Rawls, *Political Liberalism*, p. 12.

²⁹ Smith, *Lectures on Jurisprudence*, R.L. Meek, D.D. Raphael, and P.G. Stein, eds. (New York: Oxford, 1978), p. 104.

may be no corresponding recognition of the need to do this for more advanced countries like the United States. However, well-established practices that receive widespread support within the borders might be seen as unacceptable to people in many other countries, spread across the world, from Europe to Japan. For example, plentiful use of capital punishments, with or without being accompanied by public jubilation, may need to be addressed not only by asking whether they appear “cruel and unusual” *within* the local U.S. culture, but also in “the eyes of the rest of mankind,” which, Smith thought, must be invoked to understand whether “a punishment appears equitable” (*ibid.*, p. 104).

The relevance of distant perspectives has a clear bearing on some current debates in the United States, for example, that in the Supreme Court not long ago, on the appropriateness of using capital punishment for crimes committed in juvenile years. The demands of justice being seen to be done even in a country like the United States cannot entirely neglect the understanding that may be generated by how the problem is assessed in other countries in the world. The majority judgment of the Court did not simply “defer to like-minded foreigners” (as Justice Scalia suggested), but accepted that in the deliberations to arrive at grounded but nonparochial American judgments, it may be useful to take into account the enlightenment that nonlocal perspectives provide, after subjecting them to critical scrutiny in a better informed local framework.

Indeed, the apparent cogency of parochial values often turns on the lack of knowledge of what has proved feasible in the experiences of other people. The inertial defence of infanticide in ancient Greece could be influenced not only by the knowledge of societies in which infanticide is taken to be entirely unacceptable, but also from the fact that these societies are not crumbling into chaos and crisis as a result of not permitting such killing. Despite the undoubted importance of local knowledge, global knowledge has some value too, and can contribute to the debates on parochial values and practices.

DIVERGENCE AND THE FEASIBILITY OF THE COMPARATIVE APPROACH

In a model of arbitration there is likely to be some divergence of voices on a number of issues, especially when the perspectives sought come from far and wide. Even though there may be considerable convergence of values through global public reasoning, there might well be lasting differences between how the outcomes of such deliberations may emerge in different social and cultural settings. For a transcendental approach to justice dependent on the emergence of a complete agreement on the nature and demands of “global justice,” this would of course be an overpowering problem. It is not, however,

similarly problematic for the use of the comparative approach to justice. The focus here will be on whether there are significant issues on which agreements or consensus may emerge, especially after public interaction, with exchange of knowledge and understanding. The demands of global justice may not go beyond the agreed ways of enhancing justice in the world in the comparative route to judgments of justice.

Furthermore, the extent of agreement on global rankings may itself go on expanding as the process of interaction continues. The comparative approach does not require an “all or nothing” extremism, and it allows the world to come to grips with intense issues of global injustice (such as famines, widespread hunger, rampant illiteracy, or needless deaths from preventable or manageable diseases), on which consensus may be easier to obtain, without waiting for a full agreement on more contentious evaluations.

A similar thing can be said about taking note of global perspectives in making local decisions that are not primarily matters of global justice: for example, in assessing a national framework of punitive legislation, taking into account whether “a punishment appears equitable,” to use Smith’s phrase, without neglecting how it appears to people reared in a different background and with different informational understanding. The demands of objectivity not only require avoiding a “personal slant” (as Rawls noted), but also national parochialism (as Smith emphasized). This does not, however, yield any obligation to accept the views of others elsewhere, only that they be taken into account in an overall scrutiny (leading to modification of local priorities in some cases and no revision in others).

Indeed, distant voices too are subject to the discipline of critical scrutiny, including the invoking of impartial spectators from far as well as near. The discipline of fair arbitration in the context of global justice can be seen to be globally interactive. General *acceptability*, which must be distinguished from pre-existing ubiquitous acceptance, is an important issue in any social evaluation, and I have tried to discuss elsewhere why open and interactive public reasoning is centrally important for understanding the claims that human rights make, despite differences in manifest practices *between* countries, and also of course *within* each country.³⁰

The common standpoint that may be seen to emerge on the basis of such associative scrutiny may be far from total, and the form of the

³⁰ See my “Elements of a Theory of Human Rights,” *Philosophy and Public Affairs*, xxxii (Fall 2004): 315–56. See also Joshua Cohen, “Procedure and Substance in Delib-

concordance need not, in many cases, go beyond noting that some social arrangements are seriously unjust in a way that can be remedied, even though other comparisons may be hard to make without substantial ambiguity. A theory of justice need not turn up its nose against the vast reach and relevance of acceptable conclusions on human rights, or social justice, arrived at on the basis of public reasoning, even when they do not amount to a complete resolution of all the existing decisional issues about societal organization.³¹

WHAT DIFFERENCE DOES IT MAKE?

I shall not try to summarize the paper but will briefly note some of the issues discussed here. First, I have argued for rejecting the tradition of focusing on the classic—and much invoked—question “What is a just society?” and in favor of concentrating instead on comparative questions of justice (linked to inquiries about advancing justice, or reducing injustice). I have presented some reasons for doubting that the transcendental question can typically be answered, but even if it could be, and a transcendental theory of justice were entirely successful in answering that classic question, it would not yield—directly or even indirectly—a comparative framework, which is needed for the actual assessment of justice. On the other side, a comparative theory of justice may be entirely viable and thoroughly usable without containing—or entailing—any answer to the grand question “What is a just society?”

Second, the specification of the demands of full justice, and of the elaborate institutional paraphernalia which have to be marshaled for the pursuit of Rawlsian modeling of justice, leaves open the question how we should assess whether some social change would advance the cause of justice or hinder it—questions that we constantly face in the world, within each country and in the field of global arrangements. For example, having decent patent laws about the production and distribution of pharmaceutical products may do a lot for the miserable and needlessly doomed AIDS patients in the world today, and arguments can be presented to suggest that this would reduce a

erative Democracy,” in Seyla Benhabib, ed., *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton: University Press, 1996), pp. 95–119; and Charles Beitz, “Human Rights as a Common Concern,” *American Political Science Review*, xcvi (June 2001): 229–82.

³¹ I take up these issues more fully in a forthcoming book to be published by Harvard University Press, called *Freedom and the Theory of Justice*.

manifest injustice in the global society. But it will not, on its own, take us anywhere near the demands of Rawlsian transcendental justice.

Third, an implicit belief, which seems fairly common in a substantial part of political philosophy, that the identification of a fully just society is not only crucial for the comprehension of the nature of justice, but also essential for a well-founded relational understanding of justice, has had the effect of giving a fairly ubiquitous role to transcendental analysis of justice in contemporary philosophy. I have argued that this underlying belief may be entirely mistaken. A transcendental approach is neither necessary nor sufficient for answering questions on the advancement of justice that urgently demand our attention, which call for a robustly comparative approach. That approach is sharply different from the exploration of transcendence.

Fourth, there is a need to allow—and sometimes even to assert—incompleteness of relational comparisons of justice. Incompleteness can arise from unbridgeable gaps in information, but also from decisional unresolvability involving disparate considerations that may resist gradation, even with full information. However, possible incompleteness of judgments emerging from the relational route is not an embarrassment for practical reason. Indeed, far from it.³² The challenge of assessing *advancement*, or identifying *regression*, will very often be not compromised at all by the presence of substantial incompleteness in the rankings of justice.

Fifth, aside from the general importance of incorporating possible incompleteness of evaluations, the admissibility of incompleteness also makes it easier to bring in distant voices in the assessment of justice, which can be critically important for the reach and strength of public reasoning. A procedural requirement to consider nonlocal perspectives can help to avoid undue dominance of local interest as well as possible parochialism of local reasoning shaped by the influence of established conventions and limited informational frameworks (without these being intellectually challenged). We have to go firmly beyond relying on the territorially moored perspectives of “free and equal citizens who are born into that society in which they lead their lives” (to use Rawls’s phrase).³³

The world in which we live is not only unjust, it is, arguably, extraordinarily unjust. It is not frivolous to seek a framework for a theory of justice that concentrates on advancement, not transcen-

³² I have discussed this subject in “Consequential Evaluation and Practical Reason,” and some of the underlying analytical concerns in “Maximization and the Act of Choice.”

³³ Rawls, *Political Liberalism*, p. 23.

dence, and also allows being globally interactive, rather than being intellectually sequestered. We have good reason to abstain from concentrating so fully on the program of identifying the totalist—and possibly parochial—demands of transcendental, contractarian justice. We have to move the theory of justice out of that little corner.

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