

Justice Implicit: The Pragmatism of Amartya Sen

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Abstract

This paper offers a pragmatist reading of the political thought of Amartya Sen. In his recent book, *The Idea of Justice* (2009), Sen argues against the transcendental institutionalism of John Rawls in favour of a comparative approach that differentiates what is more from what is less just. Sen's fallibilistic approach to justice bears a strong affinity to classical and contemporary pragmatism. Reading Sen in a pragmatist light enables us to appreciate the nature, strengths, and weaknesses of his project. Relying on the thought of Robert Brandom, this paper argues that the ongoing and indeterminate process of working out the details of an imperfect and evolving idea of justice through public reason is an example of what Brandom calls "making explicit in principle what is implicit in practice." Brandom's inferentialism offers a useful corrective to Sen's intuitionism about the idea and perception of "manifest injustice."

Keywords

Amartya Sen – John Rawls – Robert Brandom – pragmatism – justice – public reason

1 Introduction

John Rawls is without question the most influential political philosopher of the twentieth century. When Rawls published his paper "Justice as Fairness" in 1958, he sparked considerable excitement and discussion within professional philosophy.¹ After a long period of neglect, justice was once again a topic of serious philosophical attention. However, it was not until the publication of *A Theory of*

¹ John Rawls, "Justice as Fairness," *The Philosophical Review* 67 (1958): 164–194.

Justice in 1971 that Rawls revolutionized moral and political philosophy, thereby establishing the study of justice as we know it today.² In so doing, he inspired a generation of political theorists who have either built upon his approach to justice or sought to revise its weaker aspects.³ However, Rawls also inspired numerous critics—some sympathetic, others hostile—from various schools of thought: libertarianism, communitarianism, feminism, Marxism.⁴ In articulating their own approaches to justice, these critics have nonetheless positioned themselves in relation to Rawls. It is therefore a testament to the power of his thinking that more than half a century after first introducing his theory of justice, John Rawls remains *the* political philosopher to be reckoned with.

While many of Rawls's critics have left a lasting impact upon political philosophy, none have managed to dislodge the preeminence of his basic approach to justice. One critic, however, who may well succeed in bringing about a radical change in the way we think about justice is the economist and philosopher Amartya Sen. In his recent book, *The Idea of Justice*, Sen proposes an alternative way of thinking about the theory and pursuit of justice, one that challenges the most basic principles and assumptions of Rawls's theory.⁵ Sen's political philosophy is shaped by his work as an economist devoted to the study of poverty, hunger, and gender inequality, and by an alternative tradition of political philosophy whose leading lights include Adam Smith, Mary Wollstonecraft, the Marquis de Condorcet, John Stuart Mill, and Karl Marx. Unlike Rawls, who believed in the necessity of an ideal theory of justice, Sen believes that such a theory is unnecessary; that the point of theorizing about justice is not to seek perfection in theory, but rather to make the world more just by removing injustice.

Because of his perspective as an economist devoted to the study of facts on the ground, Sen rejects what he calls "transcendental" theories in favor of an alternative approach that concentrates upon the contingent, the social, and the

2 John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).

3 For notable examples, see Thomas Pogge, *Realizing Rawls* (Ithaca, NY: Cornell University Press, 1989); Thomas Nagel, *Equality and Partiality* (Oxford, UK: Oxford University Press, 1991); Christine M. Korsgaard, *Creating the Kingdom of Ends* (Cambridge, UK: Cambridge University Press, 1996); Thomas Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 2000).

4 See, respectively, Robert Nozick, *Anarchy, State, and Utopia* (New York, NY: Basic Books, 1974); Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge, UK: Cambridge University Press, 1981); Michael Walzer, *Spheres of Justice* (Oxford, UK: Blackwell, 1983); Iris Marion Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press); G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2009).

5 Amartya Sen, *The Idea of Justice* (Cambridge, MA: Belknap Press, 2009).

practical, albeit without sacrificing a commitment to rigor and rationality.⁶ In so doing, Sen's approach bears a strong resemblance to pragmatism. Like Sen, pragmatism rejects the transcendental in favor of the contingent, the social, and the practical. Also like Sen, pragmatism places significant emphasis upon communication, the discursive basis of social and political life. In fact, communication is a key theme in the writings of both Sen and the classical and contemporary pragmatists.⁷ Reading Sen in a pragmatist light enables us to appreciate the nature, strengths, and weaknesses of his project.⁸ In this paper, I focus on what I take to be the principal weakness of Sen's alternative approach to justice: the lack of an adequate model of how our idea of justice is shaped by public discourse. I argue that the ongoing and indeterminate process of working out the details of an imperfect and evolving idea of justice through public reason is an example of what Robert Brandom calls "making explicit in principle what is implicit in practice."⁹ By focusing on the developmental nature of moral concepts, we can account for the evolution of both our ideas and perceptions of

6 Rawls appears never to have used the term *transcendental* to designate his own theory. While it is doubtful that he would have accepted this label, it is very likely that he would have accepted the term *ideal* instead.

7 For the theme of communication in the writings of the classical pragmatists, see John Dewey, *Experience and Nature* (Peru, IL: Open Court, 1929) and George Herbert Mead, *Mind, Self, and Society: From the Standpoint of a Social Behaviorist*, edited by Charles W. Morris (Chicago, IL: University of Chicago Press, 1967). Among contemporary pragmatists, see Richard J. Bernstein, *Beyond Objectivism and Relativism: Science, Hermeneutics, and Praxis* (Philadelphia, PA: University of Pennsylvania Press, 1983); Jeffrey Stout, *Ethics After Babel: The Languages of Morals and Their Discontents* (Princeton, NJ: Princeton University Press, 1988); Stout, *Democracy and Tradition* (Princeton, NJ: Princeton University Press, 2004); Robert Brandom, *Making it Explicit: Reasoning, Representing, and Discursive Commitment* (Cambridge, UK: Cambridge University Press, 1994). For recent commentary on the theme of communication in contemporary and classical pragmatism, see Mats Bergman, *Peirce's Philosophy of Communication: The Rhetorical Underpinning of the Theory of Signs* (London, UK and New York, NY: Continuum, 2009); Chris Russell, "William James Among the Machines," in Jason Hannan, *Philosophical Profiles in the Theory of Communication* (New York, NY: Peter Lang, 2012); Vincent Colapietro, "Richard J. Bernstein: Engaged Pluralist and Dialogical Exemplar," in Hannan, *Philosophical Profiles in the Theory of Communication*; Eli Dresner, "Davidson's Philosophy of Communication," *Communication Theory* 16 (2006): 155–172; and Kevin Scharp, "Communication and Content: Circumstances and Consequences of the Habermas-Brandom Debate," *International Journal of Philosophical Studies* 11 (2003): 43–61.

8 For a similar argument, see Brian Butler, "Sen's Theory of Justice: Back to the (Pragmatic) Future," *Contemporary Pragmatism* 7 (2010): 219–229. However, whereas Butler provides a broad overview of the link between Sen and pragmatism, this paper focuses specifically on Sen's neglect of the evolutionary character of our ideas and perceptions of injustice.

9 Brandom, *Making it Explicit*.

justice and injustice. Sen argues that our passion for justice is driven, not by an ideal theory of justice, but rather by our perception of injustice. While Sen makes a valid point, he does not account for the nature of this perception. Brandom, I will argue, offers the conceptual tools to fill this critical gap.

2 Rawls and Institutional Justice

At the heart of Rawls's theory of justice is the ideal of fairness, which provides shape and substance to the more concrete principles of his theory. The ideal of fairness serves as the guiding basis for a just political order. By *fairness*, Rawls simply means the total and perfect absence of arbitrary privilege. In a just political order, the basic institutions would not arbitrarily serve the interests, goals, or desires of any one individual or group over anyone else. Hence, those institutions would not be influenced by preference for or against anyone. Fairness in this sense is synonymous with impartiality.

So, why fairness? Why impartiality? Rawls proposes the concept of the "original position" to ground or justify this foundational core to his theory of justice. According to Rawls, the original position is "the appropriate initial status quo which insures that the fundamental agreements reached in it are fair."¹⁰ In keeping with the social contract tradition, a just political order is founded on agreement, and agreement itself is based on rational choice between different principles competing for our allegiance. For choice to be *rational*, it must be non-arbitrary, or uninfluenced by bias for or against anyone. The conceptual tool that Rawls devises to achieve this rationality of choice is the "veil of ignorance," a form of elective blindness to each other's personal and group identities.¹¹ From behind the veil, we are deprived of any knowledge of such personal details as race, class, gender, sexual orientation, religion, and language. Reasoning from behind the veil enables us to select foundational principles that would serve everyone while privileging no one. Rationality therefore requires impartiality through an absolute disregard for the personal.

According to Rawls, two basic principles of justice would emerge from behind the veil of ignorance:

- a. Each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all.

¹⁰ Rawls, *A Theory of Justice*, p. 17.

¹¹ *Ibid.*, pp. 136–141.

- b. Social and economic inequalities are to satisfy two conditions. First, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged.¹²

It is on the basis of these two principles that the institutions of society would be selected. Rawls's ordering of the two principles is deliberate, denoting the priority of individual liberties over all else. It is also clear that the focus of justice is the basic structure of society. Justice is essentially about institutions. If the institutions are chosen fairly, and if they uphold fairness after the fact, then a society may be said to be just. In the light of this conception of justice, we would then be able to identify specific instances of injustice in a given society. Put differently, our idea of justice determines our perception of injustice.

It is worth mentioning the nature of the conceptual tools Rawls uses to ensure fairness in the identification of the basic principles of justice and the institutions of society. Contracts are agreements reached through discourse and communication. The very idea of the social contract is meaningless if it is the product of unilateral declaration. For this reason, Rawls likens the original position to a neutral referee arbitrating between different parties engaged in communication:

We can view the choice in the original position from the standpoint of one person selected at random. If anyone after due reflection prefers a conception of justice to another, then they all do, and a unanimous agreement can be reached. We can, to make the circumstances more vivid, *imagine that the parties are required to communicate with each other through a referee as intermediary*, and that he is to announce which alternatives have been suggested and the reasons offered in their support. He forbids the attempt to form coalitions, and he informs the parties when they have come to an understanding. *But such a referee is actually superfluous, assuming that the deliberations of the parties must be similar.*¹³

The superfluity of an actual referee in this description denotes the superfluity of communication itself. The original position does not require actual practices of communication and dialogue for the selection of the basic principles of justice. Reasoning in the original position, as Rawls makes clear, is a monological activity through and through.

¹² *Ibid.*, pp. 42–43.

¹³ *Ibid.*, p. 139, emphasis added.

Rawls does later introduce the concept of an “overlapping consensus” to respond to the challenge of a diversity of worldviews and belief systems, or what he terms “comprehensive doctrines.”¹⁴ A comprehensive doctrine is a substantive, albeit historically particular, conception of what constitutes a moral life. Examples of comprehensive doctrines include religious belief systems such as Judaism, Christianity, and Islam, as well as non-religious belief systems, such as Utilitarianism and communism. Because of the diversity of comprehensive doctrines, Rawls contends we must deliberate with one another “on terms that others cannot reasonably reject.”¹⁵ He therefore draws a distinction between public and private reasons, the former being reasons that can be defended “on terms that others cannot reasonably reject,” and the latter being reasons that can only be defended by recourse to private belief. Hence, the necessity of either translating religious beliefs into secular terms or leaving them out of the arena of public discourse altogether.

3 Sen and Comparative Justice

Sen’s departure from Rawls concerns the motivating reasons for being interested in justice in the first place. “What moves us,” Sen writes, “is not the realization that the world falls short of being completely just — which few of us expect — but that there are clearly remediable injustices around us which we want to eliminate.”¹⁶ To use Sen’s examples, the sense of injustice that motivated the storming of the Bastille, or that motivated Gandhi to challenge the British empire, or that led Martin Luther King to lead the march on Washington, was in each case far more compelling, far more visceral, than any formal calculation that our world does not meet the standards of perfect justice.¹⁷ In Sen’s view, the sense of injustice, and the impulse to fight it, take conceptual and practical priority over formal theorizing about the nature, principles, and structure of a perfectly just society. The theory of justice, as Sen sees it, can suffice with the conceptual tools for “enhancing justice and removing injustice,” and this without getting mired in elaborate theoretical reflection about the nature of perfect justice.¹⁸ In fact, Sen goes so far as to say that we do not require a theory of what a perfectly just society would look like. In the practical

14 Rawls, *Political Liberalism* (New York, NY: Columbia University Press, 1993).

15 *Ibid.*, p. 124.

16 Sen, *The Idea of Justice*, p. vii.

17 *Ibid.*, pp. vii.

18 *Ibid.*, pp. ix.

realm, a transcendental theory would prove irrelevant to the task of fighting injustice.

To be sure, Sen does appreciate the contributions of John Rawls to political philosophy. He acknowledges his own enthusiasm when he first read Rawls in the 1950s, and the influence that Rawls had on his thinking about justice. Sen mentions in particular his appreciation for the ideals of fairness and impartiality, the need for objectivity in public deliberation, the priority of liberty in the political constitution of society, the affirmation of our cognitive capacity as reasoning agents to recognize the difference between justice and injustice, the need for procedural fairness in our governing institutions, and the role of freedom in enabling an individual to live a life of her or his own imaginative design.¹⁹ However, beyond these rather basic points of appreciation, all of which are staples of Enlightenment thought and therefore by no means unique to Rawls, there is an expansive gap between Sen and Rawls concerning the theory of justice.

Sen illustrates his fundamental differences with Rawls through two Sanskrit concepts taken from classical Indian jurisprudence. The first, *niti*, refers to an exclusive focus on obedience to the law, a focus so extreme that it leads to blindness with respect actual social outcomes. In a world governed by *niti*-based principles, obedience to the law takes first priority, even if the entire world is burning down. By contrast, *nyaya* attends both to the law and to social outcomes. The holistic focus of *nyaya* permits revision or compromise of the law if failure to do so would lead to a disastrous outcome. His admiration for Rawls notwithstanding, Sen clearly sees Rawls as promoting a *niti*-based approach to justice.²⁰

The contrast between *niti* and *nyaya* can be further illustrated through Sen's comparison between the transcendental and comparative approaches to justice, the latter being Sen's preferred approach. Again, according to the transcendental model, a perfect conception of justice is necessary to make sense of our moral and political circumstances and to be able to diagnose specific instances of injustice. The transcendental approach insists upon a single, correct way that society should be structured. Everything other than that ideal model is categorically incorrect. A society is either perfectly just or it is unjust; there are no further or finer distinctions. The comparative approach, however, distinguishes between better from worse social conditions, and assesses the prospects for the best or strongest social possibilities. It allows for a ranking of possible outcomes from the most to the least desirable, as well as from the

¹⁹ *Ibid.*, p. 64.

²⁰ *Ibid.*, pp. 22–22.

most to the least feasible. Comparative evaluations are therefore different in terms both of aims and of methods from the either/or nature of transcendental judgments.

Beyond these differences, Sen offers two particularly damning criticisms of the transcendental project. First, in discussing the exclusive preoccupation with institutions, he rightly observes that the transcendental approach lacks a global perspective on justice. He notes that Thomas Nagel, a transcendental political philosopher inspired by Rawls, denies the possibility of global justice in the absence of a global social contract. Nagel ties justice to political sovereignty, thereby leading him to the disturbing conclusion that “the idea of global justice without a world government is a chimera.”²¹ To those active in the global justice movement, Nagel’s conclusion would seem not only false, but preposterous. Nagel’s reasoning appears to be an extreme example of how fidelity to theory—in this case, transcendental institutionalism—can lead to profoundly misguided conclusions.

Second, Sen takes the transcendental approach to task for its unconvincing claim to moral objectivity. There is little reason to believe that the original position would consistently yield the same foundational principles irrespective of time, place, or circumstance. Given the diversity of worldviews, it is perfectly conceivable that a very different set of principles would have emerged from the original position in a different cultural and historical context. Moreover, by grounding moral objectivity in the social contract, a grounding necessarily limited by political geography, the transcendental approach excludes external perspectives that might challenge its formal judgments concerning matters of justice and injustice. As an heir to Adam Smith, Sen believes the perspective of “an impartial spectator” looking in from the outside is indispensable to the task of advancing justice. Put simply, by excluding external perspectives, we run the risk of overlooking injustice in our backyard.²²

4 The Capabilities Approach to Justice

Sen’s model for comparative justice is the capabilities approach, a framework widely adopted in development economics that differs from the transcendental model by its focus on people and their well being, as opposed to institutions and their procedural fairness. Sen was the first to propose the capabilities approach as a framework for the assessment and pursuit of justice and the

21 Thomas Nagel, “The Problem of Global Justice,” *Philosophy & Public Affairs* 33 (2005): 115.

22 Sen, *The Idea of Justice*, pp. 124–152.

diagnosis of injustice.²³ It has since been developed and expanded by Martha Nussbaum,²⁴ as well as a number of researchers in the social sciences.²⁵ At the heart of the capabilities approach is the principle of freedom, defined not in negative terms as the absence of coercion, but rather in positive terms as the capability to live a meaningful and fulfilling life of one's choosing. Because it focuses on something contingent, particular, plural, and evolving, the capabilities approach is by design flexible, dynamic, and able to respond to shifting variables.

The conception of freedom on the capabilities approach has two fundamental aspects. The first is the *opportunity* to pursue those ends that we have reason to value. It is one thing, for example, to possess the freedom to choose which career to pursue. It is quite another to have the opportunity to do so. Not everyone who dreams of becoming a teacher, for instance, has the opportunity to pursue that dream. Poverty, gender discrimination, or disability may limit one's opportunities. The second aspect of freedom is the *process* by which we choose to pursue what we have reason to value. Suppose one dreams of getting married and having children, but is also expected and pressured by one's parents and culture to do so. Is the choice to get married and have children, then, really free? According to the capabilities approach, it is not enough to possess the opportunity to pursue this or that end. The circumstances under which opportunities are pursued are another factor in the assessment of freedom.²⁶

23 Sen, "Rights and Capabilities," in Sen, *Resources, Values, and Development* (Cambridge, MA: Harvard University Press, 1984, pp. 307–324); *Commodities and Capabilities* (New Delhi: Oxford University Press, 1987); "Well-being, Agency and Freedom: The Dewey Lectures 1984," *Journal of Philosophy* 82 (1985): pp. 169–221.

24 Martha Nussbaum, "Nature, Functioning and Capability: Aristotle on Political Distribution," *Oxford Studies in Ancient Philosophy* 6 (1988): pp. 145–84; *Women and Human Development: The Capabilities Approach* (Cambridge, UK: Cambridge University Press, 2000); "Capabilities as Fundamental Entitlements: Sen and Social Justice," *Feminist Economics* 9 (2003): pp. 33–59.

25 Sabina Alkire, *Valuing Freedoms: Sen's Capability Approach and Poverty Reduction* (Oxford, UK: Oxford University Press, 2002); Enrica Chiappero-Martinetti, "A Multidimensional Assessment of Well-Being Based on Sen's Functioning Approach," *Rivista Internazionale di Scienze Sociali* 108 (2000): 207–239; David A. Crocker, *Ethics of Global Development: Agency, Capability, and Deliberative Democracy* (Cambridge, UK: Cambridge University Press, 2009); Ingrid Robeyns, "The Capability Approach: A Theoretical Survey," *Journal of Human Development* 6 (2005): 93–117; Flavio Comim, Mozaffar Qizilbash, and Sabina Alkire, eds., *The Capability Approach: Concepts, Measures and Applications* (Cambridge, UK: Cambridge University Press, 2010).

26 Sen, *The Idea of Justice*, pp. 228–230.

As Sen points out, all theories of justice have an “informational focus,” which allows for the assessment of justice and injustice. For Rawls, that focus is institutions. For many economists, perhaps the majority, the focus is income, wealth, and GDP, or what Sen calls the “resource-based” approach to justice. By contrast, the capabilities approach focuses on “individual advantages.”²⁷ This focus allows for a very different set of criteria for the assessment of justice and injustice. Consider, for example, an individual with a disability. On the capabilities approach, the disadvantage this individual might face in pursuing what she or he has reason to value would be an injustice. By comparison, a focus on either institutional fairness or the general wealth of a population would overlook the disadvantages of people with disabilities, and therefore remain blind to their injustice.

The focus on individual advantages cultivates an awareness of the differences in our ability to convert individual rights and opportunities into living well. This is a major point of departure from the focus on institutional fairness or the wealth of a given population. For Rawls, for example, an equality of basic rights and freedoms, or what Rawls refers to as “primary goods,” is a decisive criterion of justice.²⁸ Sen strongly disagrees, since an equality of basic rights and freedoms does not translate into an equality of living well. Consider again the example of people with disabilities. They may enjoy the same rights and freedoms as everyone else, but lack the ability to translate those rights and freedoms into the kind of lives they have reason to value. The ability to convert rights, freedoms, and opportunities into living well is therefore the decisive criterion of justice for the capabilities approach. Sen identifies four factors that lead to variations in the capability to convert basic goods into living well: 1) differences in physical characteristics between individuals; 2) differences in environmental conditions; 3) differences in social and institutional conditions; 4) and “differences in relational perspectives.”²⁹ Thus, an individual who has a disability, or who lives in a polluted city, or who lives in a region afflicted by violence, or who faces greater social burdens on account of being poor, would face an obvious barrier to converting her or his primary goods into living well.

The capabilities approach also draws a sharp distinction between achievement and opportunity. Paul Streeten and Frances Stewart, for example, have argued that the assessment of justice should concentrate on individual

27 *Ibid.*, pp. 231–235.

28 Rawls, *A Theory of Justice*, pp. 90–94.

29 *Ibid.*, p. 255.

achievements, rather than opportunities.³⁰ Sen offers three powerful arguments against this view. First, a preoccupation with achievements may blind us to the inequality of the paths that led to those achievements. For example, while an African-American from a low-income family and an Anglo-American from a wealthy family might both complete a college education in the United States, one is likely to have faced greater disadvantages relative to the other in the pursuit of that achievement. Second, while it is certainly an achievement for the members of a persecuted religious group to be able to practice their faith upon migrating to a more tolerant country, there is a material difference between being expected by the group to practice the faith and doing so freely. As Sen puts it, "The importance of capability, reflecting opportunity and choice, rather than the celebration of some particular lifestyle, irrespective of preference or choice, is central to the point at issue."³¹ Third, an emphasis upon achievements will have different policy implications than one upon capabilities. For example, an individual who elects not to take advantage of a public health care system may achieve the same health outcomes as an individual who lacks access to such health care. Concentrating upon achievements is therefore not a reliable basis for determining health policy.³²

There are three more important features of the capabilities approach worth noting for the purposes of this paper. The first is the diversity and heterogeneity of capabilities and the measures for well being. Here, the capabilities approach is sharply distinguished from utilitarianism, which reduces well being to a single measure, namely, happiness. As Sen rightly observes, one of the principal motivations for such reductive models is the fear of grappling with multiple measures of well being. The problem lies in comparing goods and ends that lack a common standard, a nightmare for those economists and political philosophers who prefer simplicity and perfection. But, as Sen notes, this fear is no justification for ignoring the complexity and heterogeneity of social reality.

The second feature is the role of public reasoning in acquiring a better understanding of the different capabilities and conceptions of well being in a given society. Through public reasoning, we can identify important freedoms the recognition of which can aid in the design of more intelligent public policies. Sen offers the example of certain cultural constraints upon women in India, constraints that have been a considerable disadvantage in the pursuit of living a meaningful and fulfilling life. The third feature of the capabilities approach is

30 Paul Streeten, *Development Perspectives* (London, UK: Macmillan, 1981); Frances Stewart, *Planning to Meet Basic Needs* (London, UK: Macmillan, 1985).

31 Sen, *The Idea of Justice*, p. 238.

32 *Ibid.*, pp. 235–238.

the reliance upon social choice theory in evaluating the diversity of goods and values, and ranking them by order of priority. Social choice theory has roots in the work of the Marquis de Condorcet. Its modern version was developed by the American economist Kenneth Arrow to address the challenges of collective decision-making and to guide social policies by ensuring their reasonableness. Sen himself has made notable contributions to the field of social choice theory and has become a strong advocate on account of its comparative nature.³³

Sen draws a number of distinctions between the transcendental approach and the comparative possibilities afforded by social choice theory. First, by focusing on the formal structure of institutions, the transcendental approach requires a final and authoritative perspective from which to issue final and authoritative judgments. By contrast, social choice theory allows for incomplete and provisional perspectives, which do not undermine its primary goal of making critical assessments about social conditions. Second, because the transcendental approach assumes perfection and absoluteness, it does not allow for the possibility that we might be on a path to a destructive outcome. It therefore lacks a feedback mechanism for self-critique and for identifying destructive social trends and patterns. Social choice theory, on the other hand, allows for and even encourages ongoing revision of its assessments, especially in the light of changing circumstances and improvements in our empirical understanding. Third, the transcendental approach disregards the diversity of basic possibilities for social policy by imposing foundational principles from the outset. By contrast, social choice theory takes the diversity of basic possibilities into account, seeking to determine where different possibilities might conflict. For this reason, social choice theory thrives—heavily—on public reasoning. While the transcendental approach makes room for public reasoning, it is decidedly circumscribed. Devices such as the original position and the overlapping consensus avoid the problem of the diversity of basic reasons altogether.³⁴

5 Sen and Pragmatism

What, then, qualifies Sen as a pragmatist? First, it is imperative to be clear about what is meant here by *pragmatism*. Following Richard Bernstein, I take

33 Amartya Sen, “The Impossibility of a Paretian Liberal,” *Journal of Political Economy* 78 (1970): 152–157; *Choice, Welfare and Measurement* (Oxford, UK: Blackwell, 1982); “Liberty and Social Choice,” *Journal of Philosophy* 80 (1983): 5–28; “The Possibility of Social Choice,” *The American Economic Review* 89 (1999): 349–378.

34 *Ibid.*, pp. 87–113.

pragmatism to be a philosophy of contingency and indeterminacy that begins with a recognition of the basic and inescapable plurality of the world: a plurality of worldviews, a plurality of value systems, a plurality of experiences.³⁵ Plurality is the condition into which we are thrown and with which we must contend. Bernstein identifies two basic responses to this condition in modern thought: *objectivism* and *relativism*. Objectivism can best be understood as “the basic conviction that there is or must be some permanent, ahistorical matrix or framework to which we can ultimately appeal in determining the nature of rationality, knowledge, truth, reality, goodness, or rightness.” Relativism, by contrast, can be understood as the rival conviction that each of these categories is, in the end, “relative to a specific conceptual scheme, theoretical framework, paradigm, form of life, society, or culture.”³⁶

Despite being fundamentally incompatible convictions, objectivism and relativism nonetheless share something in common: they both undermine the human conversation. Those who uphold an objectivist point of view insist that our primary task is to identify and make explicit universal standards of truth and rationality for use in formal inquiry and public life. Without these standards, we presumably would lack guidance and parameters concerning how to think and act. By contrast, those who uphold a relativist point of view insist that any claim to have identified *the* standards of truth and rationality as such can be no more than an attempt to elevate the standards of one idiosyncratic culture over another by claiming for those standards a status of timelessness and universality they could not possibly possess. Any such attempt is necessarily ethnocentric, imperialistic, or tyrannical. It is therefore our responsibility to question and challenge such claims by exposing their historical and cultural particularity. The objectivist thus shuts down discussion by unilaterally declaring the truth from the outset and ruling out the possibility of collectively deliberating over what the truth might be. The relativist, in being cynical about truth and reason, attacks all claims to truth as arbitrary will and power masquerading as rationality and impersonality, thereby turning discussion into warfare.

Pragmatism, on Bernstein’s view, is the movement beyond the twin tendencies of objectivism and relativism. It does this by adopting what is valid and helpful in each while abandoning what is false and detrimental to the human conversation. Like the relativist, pragmatism rejects universalism and affirms

35 Bernstein, *Beyond Objectivism and Relativism*. For this reading of Bernstein, I am indebted to Colapietro, “Richard J. Bernstein: Engaged Pluralist and Dialogical Exemplar,” in Hannan, *Philosophical Profiles in the Theory of Communication*.

36 Bernstein, *Beyond Objectivism and Relativism*, p. 8.

difference and incommensurability. Like the objectivist, it rejects cynicism about reason and affirms the possibility of rational choice. What emerges is an intellectual and practical orientation to the world with several key themes: difference without incommunicability, incommensurability without incomparability, relativity without relativism, objectivity without objectivism, contingency without pointlessness, indeterminacy without imprecision, and rational choice without foundations.

How does a pragmatist maintain so fine and delicate a balance? The answer is through a thoroughgoing spirit of *fallibilism*. To be a fallibilist is to recognize that we can neither stand on solid or eternal foundations nor discard the entirety of our beliefs and begin from scratch. Rather, our existing beliefs, our social and linguistic practices, and our historical traditions provide the starting point for all inquiry and action. Fallibilism leaves no belief, no matter how basic, no matter how cherished, immune from scrutiny. At the same time, neither does it entertain the possibility of putting all of our beliefs in question at once, for even skepticism requires reasons which cannot themselves simultaneously be objects of skepticism. To borrow the metaphor of Neurath's boat, to repair the planks on one side of a boat at sea requires that we stand on the other side; we cannot repair everything at once.

What does fallibilism mean for inquiry and public reasoning? Because no one can claim to possess the answers by default, because no one point of view deserves to be privileged from the outset, fallibilism requires free and open communication, respect for alternative points of view, a capacity to listen and understand others, and a willingness—indeed, the maturity—to live with difference, contingency, uncertainty, and imperfection. Yet, pragmatism is not simply a philosophy of coexistence. The commitment to rigor and rationality, to getting things right, to seeking and making the difference that makes a difference, requires that we put each other's arguments and perspectives to the test, and ultimately make a hard, if provisional, choice based on the strongest reasons and evidence available so far.

Given this view, it is easy to see how Sen can be understood as a pragmatist. His rejection of transcendental foundations and of anti-Enlightenment attitudes toward reason follows pragmatism's movement beyond objectivism and relativism.³⁷ His development of the comparative approach to justice, as well as his reliance upon social choice theory as an analytical tool, demonstrates his commitment to rigor, precision, and results. Social choice theory is also a rather impressive example of fallibilism in practice, with its openness

37 For Sen's rejection of skepticism about reason, see *The Idea of Justice*, pp. xvii–xviii.

to self-correction, its demand for ongoing assessment and reassessment of social conditions and prospects, and its tolerance of imperfection and incompleteness of perspectives. Moreover, Sen's respect for the plurality of reasons and his strong endorsement of communication and public reasoning, even concerning the basic principles of justice, reveal yet another obvious parallel with pragmatism. Finally, Sen's view that the theory of justice should be primarily concerned with removing injustice in the world bears an obvious similarity to John Dewey's *Reconstruction in Philosophy* and *The Quest for Certainty*, classic pragmatist texts in which Dewey argues that the aim of ethics is not to seek out universal principles or to build elaborate systems, but rather to solve social problems.³⁸ Sen's commitment to results over abstraction, and to advancing justice and removing injustice in the world, makes him an obvious kindred spirit to Dewey.

Despite these parallels, though, it is nonetheless possible to identify a critical weakness in Sen's project in light of the above understanding of pragmatism. This weakness concerns Sen's treatment of justice and injustice as unitary and stable concepts. Although he rejects the transcendental approach on account of its irrelevance to comparative assessments of social outcomes and possibilities, Sen nonetheless retains a transcendental mode of thinking in his views about justice and injustice. He calls for making the world more just and less unjust, but does not identify the source from which our ideas of justice and injustice derive. Sen speaks repeatedly of "manifest injustice," as though what counts as injustice were stable, fixed, and self-evident. He suggests that the problem of the identifying injustice lies, not in our understanding of what counts as injustice, but rather in the accuracy of our perceptions (ex. Do people in this region really lack adequate health care? Do people in that region really suffer from chronic malnutrition?) He does not consider the possibility that the idea and perception of justice and injustice vary across time and culture. Given the synchronic and diachronic heterogeneity in our perceptions of injustice, it is surprising that Sen should have overlooked this obvious problem. A theory of justice purporting to abandon the transcendental approach and focus instead on making the world more just and less unjust surely needs to say something about the evolutionary character of our ideas and perceptions of justice and injustice.

38 John Dewey, *Reconstruction in Philosophy*, in Dewey, *The Middle Works*, v. 12, ed. Jo Ann Boydston (Carbondale, IL: Southern Illinois University Press, 1976); *The Later Works, 1925–1953*, v. 4, 1929: *The Quest for Certainty*, ed. Jo Ann Boydston (Carbondale, IL: Southern Illinois University Press, 1976).

6 Justice as an Evolving Concept

I would like now to offer an account of the evolutionary character of concepts with the aim of making explicit why we cannot rely on the idea of “manifest injustice” to guide us in making the world more just and less unjust. My model here is Robert Brandom’s account of Hegel’s conceptual idealism.³⁹ Brandom’s interest concerns not just the meaning, or content, of concepts, but also the power and authority that concepts wield over us. Why, for example, do we take accusations of racism and sexism seriously, but not, say, accusations of “hand-ism” or “earism”? Why do some concepts have a grip over us, but not others?

Brandom begins his account by drawing a distinction between Kant and Hegel concerning the nature of conceptual normativity. Kant had shown that judgments and actions, two key species of sapient activity, can be objects of critical assessment concerning their correctness and incorrectness. It is for this reason that sapient creatures can be held responsible for what they say and do, as opposed to the behavior of merely sentient creatures. This, then, raises the question: from where do the norms that determine the correctness and incorrectness of judgments and actions derive? According to Kant, conceptual norms are determined transcendently. That is, they are derived from a noumenal realm beyond the sphere of everyday social and linguistic practice. As such, conceptual norms are fixed, unchanging, universal, and ahistorical. They are not subject to the flux of time and history. On Kant’s view, concepts are selected and then applied to particular circumstances. If the application of a concept (a judgment) is determined to be faulty, then it merely needs to be replaced by another concept. Thus, “racism,” “sexism,” and “injustice” each have one meaning, and one meaning only—fixed for all eternity. If the concept of racism, sexism, or injustice were to be applied to a particular circumstance that, for some reason or other, resists such application, then the application is unsuccessful. The success or lack of success in the application of a concept is determined by conceptual norms operating entirely *independently* of the language user applying the concept. Language users thus have no power or authority in shaping determinations of successful applications. This much is in keeping with Kant’s staunch intolerance of personal arbitrariness in his philosophical system.

As Brandom shows, Hegel takes a very different approach to explaining the normative nature of concepts. For Hegel, judgment and action entail more than the mere selection and application of concepts; they also entail

39 Brandom, *Tales of the Mighty Dead: Historical Essays in the Metaphysics of Intentionality*, Cambridge, MA: Harvard University Press, 2002.

the possibility that concepts can *evolve* through novel applications to new and different circumstances. Unlike Kant, who in Hegel's eyes treats concepts as lifeless and dead, Hegel sees concepts and the norms that govern their application, as organic and living, and therefore subject to evolutionary change and growth over time. On this view, the meaning of concepts is determined, not by rules deriving from a noumenal realm, but rather by their application in everyday social and linguistic practice. How are we to understand this departure from Kant?

According to Brandom, the keys to Hegel's view concerning the nature of concepts are *mutual recognition* and *reciprocal authority*. What Brandom calls the "recognitive structure of reciprocal authority" consists of three distinct "dimensions."⁴⁰ The first dimension is *social*. Hegel holds that concepts are synthesized in the same way that selves are synthesized. Hence, the priority of comprehending the nature of the self in order to comprehend that of concepts. The self comes into being through mutual recognition. To become a self, one must be regarded by others the way one regards those others. That is, to become a self is to become a part of a community. It is also to be defined in normative terms, or as Brandom puts it, to become "a locus of commitment and responsibility."⁴¹ Commitment and responsibility are, on the Hegelian view, the basis of freedom. They mark the difference between rational authority and non-rational force. To act according to a norm one does not endorse is to submit by force. Conversely, to act according to a norm one does endorse is to act freely. Freedom on the Hegelian view thus entails, not the total absence of norms, but rather the acknowledgment and endorsement of at least some norms.

But norms are neither natural nor transcendental. They neither fall from the sky nor derive from a noumenal realm. Rather, norms are instituted through social recognition. To the extent that norms achieve social recognition within a community, to that extent do they afford the possibility of freedom within that community. This freedom entails both independence and dependence. One endorses a norm independently. But in committing oneself to that norm, one becomes dependent upon others to be held accountable to it. Moreover, what it is to which one is committed is determined through a process of social negotiation and recognition. Thus, both the *authority* and the *meaning* of norms and commitments are grounded in recognition. The link between selves and concepts, then, is simply this: because selves and concepts are constituted by norms, each is therefore grounded in the same process of social recognition. Without recognition, there would be neither selves nor concepts.

⁴⁰ *Ibid.*, p. 57.

⁴¹ *Ibid.*, pp. 53–54.

The second dimension of the recognitive structure of reciprocal authority is *inferential*. Brandom observes that Kant and Hegel alike equate norms with concepts. As Brandom puts it, both see “talk of norms and talk of concepts” as “alternatives for addressing one fundamental common phenomenon.”⁴² Unlike Kant, however, Hegel understands the content of concepts as determined through their role in inferences. On this view, there are two distinct types of inferential relationship that determine the meaning of a given concept: “mediation” and “determinate negation.”⁴³ First, a concept is a concept by virtue of its ability to play a mediating role by serving as the premise of one inference and the conclusion of another, or as the middle term of a syllogism. Consider the following syllogism:

Inequality is an injustice.
 Injustice is intolerable.
 ∴ Inequality is intolerable.

Here, “injustice” serves as the middle term, mediating the inference from the application of the concept of inequality to that of intolerability. The meaning of *injustice* is thus determined in part by articulation through inferences linking it to other concepts, like *equality* and *intolerability*. Determinate negation, on the other hand, results when the application of one concept rules out the application of another. So, for example, if inequality is an injustice, then inequality cannot be just. If injustice is intolerable, then injustice cannot be tolerated.⁴⁴ Taken together, these “material inferential” and “material incompatibility” relationships determine the meaning of concepts and the norms that govern their application.⁴⁵

Inferential relationships demonstrate the reciprocal authority on which the meaning of concepts is based. Through inferential articulation, as in the syllogism above, the meaning of universals is determined by their relationship to other universals and by their application to particulars. In asserting that inequality is an injustice, I am shaping the meaning of both “inequality” and “injustice.” By calling a particular circumstance an “injustice,” I apply the

⁴² *Ibid.*, p. 223.

⁴³ *Ibid.*, pp. 181–182.

⁴⁴ These are examples of formal negation. Brandom also includes within the category of determinate negation non-logical instances of negation. So, for example, to call something “red” is to rule out calling it “green,” and vice versa. Brandom, *Tales of the Mighty Dead*, p. 223.

⁴⁵ *Ibid.*, p. 191.

authority of a universal to characterize that circumstance. At the same time, that circumstance might be such as to demand such characterization, in which case it would exert a certain authority over the universal, further shaping the meaning of “injustice.”

Brandom therefore distinguishes between *mediate* and *immediate* judgments. Mediate judgments are those that follow from other judgments.⁴⁶ For example, “Country *x* has inequality. Therefore, there is injustice in country *x*.” By contrast, immediate judgments are direct applications of universals to particulars. For example, “There is inequality in country *x*.” Judgments are not always seamless or straightforward, however. Sometimes, there is disagreement about the application of a concept. Consider the following judgment: “Factory farming is an injustice.” While many would disagree with this judgment, many others would agree that factory farming is indeed an injustice. It is through a process of negotiation between a community of mutually recognized interlocutors concerning the application of universals to particulars that the meaning of universals thus evolves.

The third dimension is *historical*. The application and negotiation of concepts is not merely a synchronic process within a given discourse community; it is also a diachronic process spanning multiple generations over time. The way in which reciprocal recognition determines the meaning and authority of concepts over time is through the authority that past and future applications exercise over each other. Because the application of concepts requires some historical precedent to be meaningful and intelligible, past applications establish the boundaries or parameters that distinguish legitimate from illegitimate future applications. However, past applications may not be entirely compatible with one another. Hence, the need to evaluate past applications to differentiate legitimate from illegitimate past applications. Thus, past and future applications hold each other accountable.

Brandom acknowledges that the historical dimension thus characterized might seem to introduce the problem of asymmetry. If past applications are to be evaluated by a future generation, then who or what is to hold that future generation accountable for its assessments of past applications? Does that future generation not enjoy final authority? The answer is that any future generation assessing past applications will be held accountable by a still later generation. Applications in the present (the future of the past) may be deemed incorrect in the future (the future of the present). Thus, the process of 1) applying concepts, 2) negotiating the application of concepts, and 3) contributing to

46 *Ibid.*, pp. 224.

the evolution of concepts over time is open-ended; there is no finality or conclusion to this process.

Consider an example. When Thomas Jefferson wrote in the Declaration of Independence that “all men are created equal,” he did not fabricate the concept of equality out of the blue, but rather applied it according to the established historical precedents of his time. Thus, for Jefferson, equality did not apply to all men as such, but rather only to wealthy, land-owning, white, Anglo-Saxon, Protestant men, such as himself. It was not until the administration of Andrew Jackson that suffrage was expanded to include white males generally; not until the administration of Ulysses S. Grant that suffrage was expanded to include blacks; and not until the administration of Woodrow Wilson that suffrage was expanded to include women. With respect to voting rights in the American context, then, we can see how the concept of equality has evolved over time. Moreover, it continues to evolve to this day. With respect to the institution of marriage, the concept equality has been expanded to include gays and lesbians. With respect to institutional rights and opportunities, the concept of equality has been expanded to include people with disabilities. Thus, a moral concept initially applied within one context and purpose has since been applied in others, thereby enabling it to expand and evolve.

When we therefore look back upon the history of the idea of equality, we see that its evolution and development is the outcome of an ongoing process of negotiation, in which novel applications of the concept have secured social recognition. According to Brandom, it is through reflecting upon the history of our reasoning that we can identify commitments that were implicit all along in our use of certain concepts, commitments that enabled us to apply those concepts in novel ways. Bringing those commitments out into the open when pressed to justify new applications of a concept is what Brandom calls “making it explicit.” Thus, the initial reason for challenging Jefferson’s view of equality was that it excluded the poor, the landless, and those from non-Protestant denominations. The reason for challenging the revised version of equality was that it excluded blacks. The reason for challenging the subsequent version was that it excluded women. To assert that excluding the poor and landless is an injustice, or that excluding blacks is an injustice, or that excluding women is an injustice, is thus to make explicit in propositional terms objections to earlier applications of the concept of equality based on the principle that arbitrary exclusion is wrong.

Making it explicit is what enables us to call out specific forms of injustice by name: elitism, racism, sexism, homophobia, ableism. Having terms for specific forms of injustice enables us to see injustice where we might not have seen or recognized it before. It is through a process of historical struggle, negotiation,

and recognition that we today accept that institutional discrimination on the basis of class, race, and gender is an injustice, and why we today increasingly accept that institutional discrimination on the basis of sexual orientation or physical disability is similarly an injustice. It is thus not just that concepts evolve, but also that our *perceptions* similarly evolve. Perceptions, like concepts, are neither stable nor fixed. Hence, when Sen invokes the idea of “manifest injustice” to guide our social commitments, he invokes an evolutionary phenomenon, not a timeless and universal one. Perceptions of injustice are relative to particular communities with particular histories of reasoning. Brandom’s inferentialist approach, which would treat the idea of “manifest injustice” as evolving and relative, thus challenges Sen’s intuitionist approach, which treats injustice as fixed and universally recognizable. Brandom’s inferentialism also raises the problem of different and incompatible ideas of justice.

7 An Unresolved Dilemma

Although Sen acknowledges the problem of incommensurability, his analysis is limited to different quantitative and qualitative measures of human well being. This limited treatment results from the comparison of the capabilities approach with Utilitarianism, which, again, uses a single standard (utility) as the universal measure of justice. While Sen is right to point out the fundamental flaw in assessing human well being by just one measure, and while it is a welcome improvement upon Utilitarianism to evaluate well being through a variety of measures, he does not address the problem of incommensurable conceptions of what constitutes human well being. The challenge here is one of fundamentally different theoretical foundations and conceptual schema for understanding justice. If different moralities uphold different ideals of justice and well being, how do we choose between rival and incompatible moral judgments, given the potentially radical dissimilarity in our moral perspectives? How do we decide between such judgments if they lack common premises? Put simply, in seeking to advance justice and fight injustice, how do we choose between rival and incompatible conceptions of justice?

To be fair, Sen does acknowledge the problem of “conflicting judgments” in a pluralistic world:

If the importance of public reasoning has been one of the major concerns of this book, so has been the need to accept the plurality of reasons that may be sensibly accommodated in an exercise of evaluation. The reasons

may sometimes compete with each other in persuading us in one direction or another in a particular assessment, and when they yield conflicting judgments, there is an important challenge in determining what credible conclusions can be derived after considering all the arguments.⁴⁷

Although it is tempting to read the above as a description of incommensurability between different conceptions of justice, Sen makes it explicit that his confidence in overcoming competing priorities and “objects of value” pertain to the plurality of reasons within a *single* conception of justice. As he puts it,

...the recognition that a broad theory of justice that makes room for non-congruent considerations *within* the body of that broad theory need not thereby make itself incoherent, or unmanageable, or useless. Definite conclusions can emerge despite the plurality.⁴⁸

Sen’s recognition and treatment of plurality is therefore limited by circumscribing “non-congruent considerations” within one particular and idiosyncratic theory of justice. However broad and accommodating that theory might be, endless accommodation of such considerations is affordable only at the eventual cost of its coherence and intelligibility as a theory. Even the broadest theory necessarily imposes certain limits and exclusions. Sen fails, then, to consider a nagging question for his theory of justice: *why that* theory? Why not some other theory? In the competition between different and incompatible theories of justice, how do we privilege one theory over and above the rest?

The problem can be illustrated through an example. Consider the well being of elderly patients requiring end-of-life care due to a terminal or degenerative illness. From Sen’s perspective, the question of how to increase or maximize their well being might entail a comparison between A) improved palliative medicine or B) greater opportunities for social interaction and community involvement. An elderly individual with a terminal or degenerative illness might ask, “What would enable me live a more happy and meaningful life?” Although A is a form of physical therapy, and B a form of psychosocial therapy, thereby being different measures, they can nonetheless both be accommodated within the type of broad theory that Sen describes. Disagreement between advocates of A and B need not be incommensurable in any serious sense, since they share the same ultimate goal. Sen’s approach would make

47 Sen, *The Idea of Justice*, p. 394.

48 *Ibid.*, p. 397; emphasis in the original.

comparisons of this kind, comparisons between different possible social outcomes *moving in the same general direction*.

However, consider the scenario in which an elderly patient suffers from a terminal illness and wishes for the right to terminate her life. She may wish for this right in order to end what she feels is a life of unbearable suffering, hopelessness, and meaninglessness. Alternatively, she may wish for this right, not to exercise it, but rather to provide her with a guarantee against suffering, hopelessness, and meaninglessness, should she ever find herself trapped in such a condition. Possessing the right to end her life may empower her to keep fighting and living. Should she have the right to terminate her life, even if she chooses not to exercise it? In Europe, North America, and Australia, the fierce battle over the right to physician-assisted suicide, otherwise known as the right to die, has become a serious legislative and policy challenge due to deep moral divisions in Western society. One view holds that the termination of human life, no matter what the reason, is an injustice. A rival view holds that pointless suffering, hopelessness, and meaninglessness for terminally ill patients is itself an intolerable injustice. Different perceptions of injustice therefore yield different judgments regarding physician-assisted suicide. How, then, do we choose between those judgments, given that they reflect very different views about the status of human life? To which meta-ethical standard can we turn to resolve this a conflict of this kind? It is precisely this type of radical disagreement that Sen fails to address.

This failure, however, need not be fatal to his project. Sen's model of comparative reasoning would need to be developed and expanded to deal with more than just a "plurality of reasons". Rather, it needs to develop the theoretical power to decide between basic theories of justice. Sen illustrates the spirit of the comparative approach by way of an analogy with painting. In the choice between a Dali and a Picasso, he points out, it is of no use to be told the Mona Lisa is the greatest painting of all time. We may agree that the Mona Lisa is indeed the greatest painting of all time, but that agreement would not help us in deciding between two purportedly lesser paintings. The appeal to a perfect standard would thus be redundant in the choice between two imperfect options.⁴⁹ Sen uses this analogy to underscore the redundancy of a transcendental theory of justice to the choice between competing policy options. However, this same analogy can, in principle, be applied to the choice between basic worldviews. While Sen's comparativism thus concentrates upon policy options and corresponding social outcomes, it can and must be expanded to deal with something far more basic and fundamental: rival and competing *ideas* of justice. Until then, the practical value of his otherwise distinguished project will remain seriously compromised.

49 *Ibid.*, p. 16.

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