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Citation for published version:
Garza Vazquez, O 2013 'From the Idea of Justice to the Idea of Injustice:Mixing the Ideal, Non-ideal and DynamicConceptions of Injustice' Bath Papers in International Development and Wellbeing, no. 27, Centre for Development Studies, University of Bath.

Publication date:
2013

Document Version
Publisher's PDF, also known as Version of record

Link to publication

University of Bath

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Bath Papers in International Development and Well-Being no. 27

October, 2013

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University of Bath, Bath, BA2 7AY
http://www.bath.ac.uk/cds/

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bath papers in international development and well-being

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Abstract

Recent legal reforms in Mexico demonstrate that, it, like many other countries, still relies on an understanding of development as economic growth in order to justify social policies. The widespread social costs of this framework, however, demand now more than ever before a framework of social justice that can counteract the justification and legitimisation of social policies solely based on such a view of development. While there is a strong demand for social justice to inform political action, in recent years, *ideal* theories of justice have also come under severe criticism due to their (apparent) lack of practical policy relevance. This paper departs from this view and argues that ideal theories are essential for the reduction of injustice in the present but that it is necessary to reconcile and complement ideal and non-ideal approaches to justice. The paper takes Rawls's *Theory of Justice* and Sen's *Idea of Justice* as illustrations of my argument. In the light of the labour reform in Mexico, this paper, however, argues that both *ideal* and *non-ideal* conceptions of justice are necessary but are still insufficient in reducing injustice. Without a dynamic understanding of injustice and how it is reproduced, approaches to social justice would remain transcendental and, thus, their effective applicability in the real world is highly compromised. This implies the need to go beyond the usual all-purpose conceptions of justice (whether ideal or non-ideal) and establish what the paper calls a 'multi-level' conception of justice to effectively inform social policies and reduce injustice 'in the real world'.

1   Introduction

In November 2012, Mexico approved amendments to labour laws. In the words of recently elected President of Mexico (EPN), the main feature of these reforms is the promotion of 'competitiveness, the flexibility of labour markets and the ease of job hiring' (La Grilla 2012; my translation). The policy has generated conflicting opinions, but what is important to note is that most of the arguments in its favour were related with its (expected) positive impact on the country's economic growth and hence for its 'development'.

For instance, according to the Mexican representatives of the Organisation for Economic Co-operation and Development (OECD), the reform would increase the GDP of Mexico by 4% (Hernández 2012). Similarly, a financial rating agency called Standard & Poor's (S&P) expressed sympathy with the labour reform because it enhances country's attractiveness for investment purposes (Cruz 2012). Likewise, the Mexican Business Coordinating Council (CCE) signalled that this was a positive step in increasing the productivity and economic growth on account of an added clause of 'modern' relationships in labour practices. This position is also shared by the Mexican Association for Human Resources Management (AMEDIRH) which expressed its support in the following words:

> The way to create jobs in modern society is [through] the companies. So we must be clear that the law that best protects workers, is one that protects the companies where they work (Borda Hartmann cited by Acosta 2012; my translation)

The speculated benefits of this reform, however, do not come without associated social costs, as these 'modern' relations of labour threaten historical movements for labour rights. One danger is that formal work can now be made temporary ('determinate', 'by season', 'indeterminate', 'by unit of time [i.e. hourly]', or even for a one time job). Now, therefore, employment relationship in systematic short contracts can occur employees gaining seniority and pension benefits (Art. 39 – F). Also, employees can now be placed under the condition of 'subject to be tested' (probation) for a period of 90 days, or until 180 days for high level jobs. Meanwhile, redundancy payments are significantly reduced, as a result, corporations are now able to dismiss employees 'without [involving] any responsibility for the employer', that is, without any compensation to the employee (Art. 35, 39-A). Besides, outsourcing employment is now supported by the reform (Art. 13)[1] (for a more comprehensive analysis of the labour reform see Bensusán 2013, Fuentes 2012; only available in Spanish).

In short, although the labour reform threatens workers' protection and their employment stability, it does so for increasing the productivity and competitiveness of the country and, hence, for its 'development'. Certainly there is no clear way to evaluate the reform as none of these worries are unreasonable. However, until now these ethical decisions are usually based, or at least legitimised, within a utilitarian framework which in practice has been reduced to an understanding of development as economic growth and this has been the dominant approach over the last centuries. Although the approach has been challenged from different fronts, its

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[1] Note that outsourcing is usually considered to be beneficial for corporation's productivity but detrimental for labourer's work conditions and workers' discontent has been already shown in the country (e.g. see Informador 2013, de Buen 2008).

underlying framework is still disturbingly dominant when it comes to promoting and legitimising social policies in most countries today.

Although development is a contested concept, the new labour reform in Mexico shows that this dominant definition determines many aspects of policies, and ultimately affect how people's lives are lived. Precisely, it is the growing discontent with the kind of structures, the widespread inequalities across the world, and the type of relationships shaped by the utilitarian view of development which is creating a strong demand for an alternative framework to counteract the legitimisation of social policies based on the utilitarian view. This alternative framework, I argue, can be provided by reconsidering theories and approaches to social justice.

There is, however, still an important disconnection between the abstract nature of theoretical work advanced within social justice literature and the practical guidance it offers to build policies, institutions, and actions that are likely to be effective in reducing injustice in societies. The literature of social justice still has a long way to go at this level of application.

This paper, therefore, is concerned with the applicability of justice via political action. By exploring Rawls' *Theory of Justice* and Sen's *Idea of justice*, I will argue that both ideal and non-ideal conceptions of justice, when taken alone, are inadequate in successfully informing policies to advance justice; and even when taken together, they are still insufficient in offering a conceptual framework for reducing injustice. Although both these conceptions of justice fail on different grounds, they share a common shortcoming: their weaknesses in diagnosing injustice and how it is reproduced in the real world. Such shortcomings would ultimately limit the kind of political guidance provided, either by remaining within 'transcendental' recommendations or by being insufficient in tackling the underlying causes of injustice. Hence, the paper asserts that the coming together of ideal and non-ideal theories has to be further complemented by a framework of (in)justice that is capable of understanding the social roots of injustice in the world. In doing so, the paper suggests a multi-level approach to justice that refutes understanding different theories as mutually exclusive. This paper invites the reader to appreciate the fact that each of these approaches is valuable for reducing injustice in the real world.

The rest of the paper is organised as follows. In the light of these labour reforms, Section 2 problematizes the application of ideal theories of justice by highlighting its insufficiency in effectively guiding the political action in the here and now. Section 3 examines whether non-ideal theory can substitute ideal theory in terms of reducing injustice via political action. Section 4 demonstrates that the juxtaposition between ideal and non-ideal theories remains inadequate, thereby highlighting the need for a framework that is capable of interrogating perpetuation of injustice in order to effectively reduce it.

2   Do we need an *ideal* theory of justice?: Rawls as illustration

In Mexico, a strong focus on economic growth and increasing the national income has become the most important goal of society ignoring the social costs of this growth on people's lives. To overcome this, we need a framework of justice that can counteract such policies of growth by connecting development with social justice. In order to do this, we first need a definition of justice. This is the terrain in which ideal theories of justice have been discussed.

2.1   Justice as an ideal theory

Broadly speaking, there is a lack of agreement among scholars on what makes a theory of justice *ideal* (e.g. see Hamlin and Stemplowska 2010, Valentini 2009, Swift 2008). Nonetheless, despite their differences, scholars recognise that ideal theories of justice contain two simultaneous features:

- Ideal theory is mainly concerned with the identification of the nature of fundamental values that we ought to pursue

- The development of its principles of justice is to some extent independently justified from historical, institutional, feasibility and the constraints of human nature.

Notwithstanding the different philosophical conceptions of justice implied by these features, I shall focus only on the main liberal approach that has led these discussions to date. Additionally, in terms of a systematic conceptual framework capable of illuminating what justice is and why utilitarian decision-making is not optimal, Rawls' *Theory of Justice* (1971) serves well for this illustrative purpose. It is a comprehensive (though not complete) framework for defining justice, and provides reasons to defend the theory as the most reasonable conception of justice within ideal theories. Furthermore, it was with the publication of Rawls' work that contemporary discussions of justice started to take place. More importantly, the theory squarely fits into the Mexican context, as the legal constitution of Mexico embraces liberal democratic values.

Rawls' theory is a moderate version within the ideal theories, rather than being a 'purist' version (e.g. Mason 2004, Cohen 2003). Rawls himself considered his ideal theory to be a 'workable conception' of justice, in line with the overall purpose of presenting a practical approach to reducing injustice.[2] But regardless of which ideal theory of justice is used, it is important to underline here that an ideal conception of justice is very much needed in order to reduce injustice. Before corroborating this claim, it is important to decipher what justice entails and why utilitarian ethics is defective to do so. This is precisely what Rawls' theory does.

2.2   A short summary of Rawls' ideal theory (1971)

The purpose of this paper is to show how ideal and non-ideal theories of justice are dependent on each other but are insufficient in reducing injustice in the real world without producing a nuanced account of the reproduction of injustice. Given this, Rawls's ideal theory will not be fully described but only the basic general characteristics of its ideal nature.

Rawls was convinced that utilitarian ethics were deficient in safeguarding social justice. From a utilitarian perspective, increasing national income is the first priority. According to Rawls, this conception implies that some individuals will be (and have been) used as mere means for the end of achieving economic growth. In these cases, some individuals have to bear the costs for the benefits that will be enjoyed by others. So, when utilitarian objectives are pursued as development goals, Rawls claims, justice can be, and has been, infringed. Rawls (1971, pp.3-4), on the contrary, sees justice as 'uncompromising', as 'the first virtue of social institutions, as truth is of system of thought'. In sum, this view of justice is advanced to protect individuals' equal dignity. Under this reasoning, a society would be better structured only if it respects all its

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[2] Moreover, it is usually this moderate version of ideal theory which is usually discussed in the ideal/non-ideal debate. If this moderate version is questionable for practical matters, then the extreme version of ideal theory is even more problematic.

individuals equally and treats them as ends in themselves rather than the means for an externally imposed end.

Rawls (1971, p.6) is convinced that the subject matter of justice is 'the basic structure of society' – understood as a scheme of all major social institutions where the benefits and burdens of society are distributed – because of its profound impact on people's 'life prospects, what they can expect to be and how well they can hope to do'. It is because of this profound effect that the basic structure of society exerts upon us and our reasoning that the principles of justice must be developed under ideal conditions, that is, not influenced by the specific current social circumstances or particular social positions or specific conceptions of the good. Instead, to determine a just society, these principles should be the outcome of a hypothetical scenario where rational people deliberate under conditions of freedom and equality for all. To do this, Rawls designed what he called the 'original position'. To understand this, we are required to imagine that we are in a situation in which people do not know their social positions such as race, social attributes, or anything that could create biases, and he called this the 'veil of ignorance'. In the original position, although people do not know their goals or conceptions of the good, they do know that to advance such ends they will need certain 'primary goods'. These primary goods are 'things which a rational man wants whatever else he wants' (Rawls 1971, p. 92). They include: rights and liberties, opportunities, income and wealth, and the social bases of self-respect.

It is from this hypothetical situation, Rawls argues, that we can obtain a fair conception of justice because in it, people are represented as 'free and equal' to deliberate about the principles on the basic structure of society is arranged. He further argued that under these circumstances, the most reasonable conception of justice would include two principles: first, *the liberty principle* (equal liberties for all); second, fair equality of opportunity and *the difference principle* (i.e. economic inequalities are tolerable only when they are meant to ameliorate the least-advantaged members of society). The implementation of these principles would *make* a society *qualify* as just.

Rawls' theory provides an alternative framework for evaluating different social arrangements, as well as social policies. Based on his conception of justice we can assess whether the labour reform in Mexico could be morally acceptable. Hence, the labour legislation in Mexico could be considered just if it does not threaten the stability of the demands for justice. For space constraints, this paper cannot offer a thorough analysis of new labour reform in Mexico, but it is important to delineate some basic social and economic indicators of Mexico to carry forward a discussion on justice.

Mexico is one of the most unequal countries in the world with a rampant income and social inequality. In Mexico, the richest man in the world in 2010 was living alongside 51.3% of the population living below the poverty line (defined as $2 a day income) (World Bank 2012). In terms of social inequality, the country's Office of National Statistics (INEGI 2013) has recently categorised the majority of people as of low social class (59.1%) in contrast with 1.7% belonging to the upper social class. Moreover, this inequality takes place within a country with extremely limited social mobility. If one is born in the lowest 20% of the social scale, the probability to remain there is up to 50%, whereas about four out of five (81%) who are born as rich remain

rich. Likewise, only 6 out of 100 people are able to perform a different job than that their parents did (Vélez, Campos & Huerta 2013).

Furthermore, discrimination and differential treatment of certain groups have been a continuous phenomenon. According to the report of National Council for the Prevention of Discrimination (CONAPRED 2012), discrimination within legal, economic, and social services in Mexico is the biggest social problem of the country. Added to this list is the issue of corruption at the political level, which played a central role in the recent presidential elections (Tuckman 2012), and at the corporate level, in which Mexico is considered the most corrupt country of Latin America by the Global Fraud Survey (Cruz 2013, Hernández 2013).

In this context, the labour reform in Mexico (which in general terms reduces workers' protection while increasing employers' power) could not be considered acceptable under Rawls' framework. This is because access (or lack of access) to education is also very unequal. Consequently, those who already have education opportunities are most likely to be assured a stable job; whereas those at the bottom of the social scale are more likely to be discriminated against (CONAPRED 2012, Molina 2013). This means they will be disadvantaged on account of the 'flexible' and 'modern' labour relations, which, in effect, means no job security and no benefits. Hence, there is a danger that this reform will exacerbate social inequality in Mexico (Bensusán 2013) by worsening the situation of the least-advantaged groups. Indeed, the labour reform prioritises economic growth rather than fundamental liberties and rights (which is a priority in Rawls' theory). Therefore, under Rawls' theory, this labour reform could not be considered just even if economic growth is promoted as a result of it. The relevance of economic growth for the wellbeing of society is not denied here but merely questioned when it is defined as the highest goal of society. What is really being questioned here is whether the policies based on economic growth should override the worth and value of human lives.

As such, ideal theories of justice provide an alternative to the utilitarian framework to morally assess social arrangements, institutions, and policies. Still, one could wonder, and many scholars have, what is the use of knowing what a perfectly just arrangement is for the aim of reducing injustice? Can we use an ideal conception of justice to inform policies aiming to reduce injustice here and now?

2.3 The insufficiency of ideal theories of justice

The concern noted above precisely prompted the growth of literature on non-ideal theories of justice. In this genre of literature, theorists have argued that ideal theories are far from influencing actual social policies in the world (e.g. Wolff and De-Shalit 2007). In general, they problematised the idea concerning the translation of ideal principles, developed under ideal circumstances (such as in Rawls' original position), into the historical non-ideal circumstances of the real world (see, e.g. Phillips 1985)[3]. To illustrate this idea of translating ideal conception of justice into practice, we can take the example of informal domestic work in Mexico, which is quite a common practice in most Latin American countries. Domestic work here implies the hiring of women by usually middle-class or affluent families to undertake household chores.

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[3] These problems are broadly discussed under the concepts of 'fact-sensitivity' and 'idealisation' of ideal theories, though other authors may treat them under different names or other issues separately (see Hamlin and Semplowska 2010, Stemplowska 2008)

Such work is often done by poor women with little or no education for a very low wage, without any work-related benefits (such as social security and seniority allowance); usually no contract is made, which means that these workers can be dismissed any time with no compensation. Therefore, these poor women workers are highly vulnerable in terms of life conditions.

Now, let us assume that a law is brought into force to formalise domestic work as a result of an ideal of 'equal pay and benefits for equal work', which will ensure paid holidays, redundancy payments, regulated work time, social security for these women workers by their employers[4]. Notwithstanding the possible usefulness of this law for the benefits of these women's living conditions, there is also a danger that it may be counterproductive. For instance, one of the effects of this law is that it may render many of these women unemployed because of a higher cost of hiring. Another outcome could be the non-applicability of the law by continuing an informal agreement between the parties in which women can continue to be employed. For this reason, some theorists claim that ideal theory does not provide effective guidance on how to reduce injustice in the world, and that it can even be detrimental for advancing justice (see Valentini 2009).

These concerns have led many to question the convenience of ideal theory for informing policies for promoting justice. Instead, the need for developing a more practical conception of justice for the real circumstances of the world has been strongly emphasised (Sen 2006). As a matter of fact, some authors have rejected the need for ideal theory altogether (e.g. Farelly 2007). The arguments that some authors advance concerning the (apparent) lack of practical utility of ideal theories, however, clearly miss the point of this kind of theorising (Stemplowska 2008). In fact, it was Rawls himself who first made the distinction between ideal and non-ideal theory (though the distinction has changed since), indicating that it was the role of the latter to deal with the issues of implementation in the real world. Therefore, to ask ideal theories to offer readily solutions for injustices here and now are a misplaced condition to consider it useful and desirable for that aim. That is to say, ideal theories are simply not all-purpose theories.

Even if ideal theories do offer some guidance for developmental policies (Valentini 2009), this is not where their usefulness lies. Rather, ideal theory assists in the overall project of developing a multi-level approach to justice by providing a strong foundation that serves two purposes: one, it provides an 'Archimedean point' to systematically and coherently determine if the situations that we face in everyday life are inconsistent with justice; and two, it sets the direction for social policies, institutions, and actions. That is, it provides a final objective (even if always contestable) of what we should aim for, if we can (e.g. see Swift 2008, Rawls 1971).

So, ideal theory outlines *what* we should aim for and *why*, but it does not tell us *how* to translate it into practice. If we reconsider the example of domestic work, besides illustrating that ideal theory might not be effective in guiding political action (though note that it is the ideal that motivates the intervention), it also reminds us that we still need to think about the best way to ameliorate the situation of domestic workers while aiming towards the ideal. Under this reasoning then, non-ideal theory is expected to prescribe 'policies and courses of action that are likely to be effective and politically possible as well as morally permissible' (Rawls 1993, p.60).

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[4] As a matter of fact, Argentina has recently pronounced such a law based on the stated reasoning (see http://www.trabajo.gob.ar/domestico/derechos.asp).

Implicit in this acknowledgement is the idea that non-ideal theory is strictly transitional (Simmons 2010).

Indeed, ideal and non-ideal theories need to be seen as complementary for the task of reducing injustice (Gilabert 2008). We need to go beyond the ideal definition of justice for guiding policies aimed at advancing justice through political action. However, ideal theory has to be seen as prior to non-ideal theory, i.e. non-ideal principles have to be derived from ideal theory (Rawls 1971). Nonetheless, some find this relationship between ideal and non-ideal theory puzzling. Knowing what the role of ideal theory is (and not demanding its practical use) does not automatically position it as a necessary condition to reduce injustice in practice. Does ideal theory really have the non-negligible role to reduce injustice that this paper has highlighted so far? Is ideal theory really necessary? Or can a non-ideal conception of justice be sufficient on its own to reduce injustice?

3 The need and the insufficiency of non-ideal theories – Sen's Idea of Justice as illustration

The previous section showed that ideal theory is not sufficient to address injustice, and it concluded by posing the question whether ideal theory is needed at all? Some authors do reject ideal theorising altogether. In this regard, Sen's *Idea of Justice* (2009) provides an alternative framework for thinking about advancing justice without the need for a 'transcendental' conception of justice. As such, Sen (2009) proposes an elaborated idea of justice to replace ideal conceptions of justice. Sen (2009) calls for a practicable conception of justice to reduce injustice in the world by asserting that the information provided by ideal theory is redundant (neither sufficient nor necessary) for such purposes. For obvious reasons, an analysis of his approach is of first importance, because if Sen succeeds in presenting such an approach, then proposing a multi-level framework would be pointless.

In this analysis, I will utilise Sen's proposal as an ad-hoc example of non-ideal theories. Sen's work pursues the non-ideal exercise concerned with the question of *how* to advance justice in gradual steps (Rawls 1993). Hence, Sen's approach can be a useful illustration of the non-ideal level of justice and its insufficiency in reducing injustice on its own. Notwithstanding the problematic aspects of this approach, the selection of the approach should not discredit the main points that will be discussed in this section: that a non-ideal theory cannot be effective on its own in reducing injustice; to be effective, it has to complement what Sen calls a 'transcendental' theory.[5]

3.1 A short summary of Sen's *Idea of Justice* (2009)

Sen's main problem with Rawlsian-like 'transcendentalism' is its starting point: 'What is a just society?' He considers it inappropriate for examining or rectifying injustice in the world. He claims that for the purpose of reducing injustice, there is no need for an ideal transcendental conception of justice. Rather, there has to be an agreement on the notion of injustice regardless of the reasons behind that judgement. His starting point, then, is a notion of injustice of the

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[5] For example, see Pereira (2013) who reaches a similar conclusion from a critical theory perspective. In fact, our overall approaches go in the same direction, however some differences will be pointed out in what I call the ground level of (in)justice.

(non-ideal) world. The core idea of his approach lies in enhancing justice of societies even if this advancement is far from achieving a perfect ideal world. For Sen, a comparative framework is all that is needed to rank different suboptimal social arrangements as more or less just.

Building on his earlier work on development (Sen 1999), Sen (2009) posits an expansion of people's capabilities to *be* and *do* as the criterion to assess when a social arrangement is enhancing justice. A capability-based assessment, in turn, can be seen as the real opportunity someone has (freedom) to choose between (any) different combinations of *beings* and *doings* (i.e. what Sen calls functionings) that she/he has reason to value (see Sen 1980, 1990). A social arrangement where individuals enjoy more capabilities is more just than another. For example, a society where people are capable of being educated, or are free from malnourishment is more just than the one in which they are not. Finally, this capability-enhancement should be the product of inclusive public reasoning between individuals (i.e. democratic in process). To sum up, Sen's conceptual framework relies on 'freedom' (capabilities and agency) and 'reasoning'.

To illustrate how Sen's framework works in practice, let us envisage a scenario wherein racial discrimination is recognised as being unjust by all even if it is guided by different reasoning (i.e. on utilitarian grounds, Rawlsian justice, or any other such grounds). Subsequently, through a process of public reasoning, an agreement is reached about an alternative social arrangement in which discrimination is likely to be reduced through enhancing the capabilities of some. In such a scenario, Sen would argue, injustice has been reduced without actually reaching an agreement about the ideal conception of justice, and even if discrimination still persists. At first this proposal might sound promising. However, there are many reasons why Sen's Idea of Justice might not be an effective approach to advance justice as it is presented (e.g. see Deneulin 2011, Pogge and Alvarez 2010, Valentini 2010). Here, I cannot offer a profound analysis of his proposal. Nonetheless, I will briefly highlight three relevant reasons to show that Sen does not succeed in his attempt to ignore transcendental (ideal) theories for reducing injustice. This helps to reaffirm the complementary role between the ideal and non-ideal theory, and hence its necessity (but not sufficiency) for the overall multilevel approach that is proposed in this paper for a more practical applicability of justice.

3.2 The insufficiency of non-ideal theories

As mentioned above, Sen argues that to call for remedial action for an unjust situation, it suffices to have a shared notion, even if it is guided by different reasoning. However, when thinking about the actual way in which a proposed remedy to such injustice would work in practice, there are reasons to believe that transcendental (ideal) theorising is intrinsically significant. The dominant view behind *why* something is considered unjust will ultimately affect the *how* to rectify it. The dominant ground under which something is considered unjust (*why* to remedy it) is unavoidably linked to the formulation of policies or remedies (*how* to remediate it). These policies in turn will have certain consequences of which some can be detrimental for overall justice (see Simmons 2010). A policy enacted for rectifying a domain-specific injustice can also have a negative impact elsewhere or in the future. Here, it is important to remember that the basic structure of society is a scheme that is holding all major social institutions together. This means that what transpires in one sector of society, it also affects other interconnected sectors.

A second reason is related to what Sen calls the 'redundancy of transcendental (ideal) theories' whereby he claims that they are neither *sufficient* nor *necessary*, for the comparative exercise

that he proposes. The (in)sufficiency argument simply reiterates the earlier conclusion that Rawlsian-like theorising is not sufficient on its own in reducing injustice. Rather, it is the necessity argument which is more difficult to sustain. To make my point, let us consider Sen's art example in which he states that when comparing between 'a Picasso over a Dali', there is no need to know which is the ideal or 'perfect picture in the world, which would beat... all other paintings in the world' (Sen 2006, 2009 p.16). Surely this is not an 'obvious' deduction, not if that perfect picture in the world sets an objective of *what* or *where* we should strive for, and *why* this is so. In order to compare between a Picasso over a Dali, we would need to know the *principles* under which they are to be compared (i.e., precision, abstraction, aesthetics, or all of those). Hence, even if there is no need to know which one is the perfect picture, we certainly need information about the principles that are taken into account to identify it as such. Precisely, this is what is discussed at the level of transcendental (ideal) theories. These principles become even more relevant if we consider that the decisions taken will affect real people in the real world.

The discussion above shows that Sen's comparative exercise might not be able to disregard transcendental (ideal) theories for reducing injustice in the real world. For Rawlsian-like theorising is necessary not only for the purpose of providing certain principles that may enable the ranking of alternatives, but also because these principles could partially determine the remedies for a given injustice, and thus the outcome. Therefore, this suggests that Sen's approach ought to be considered as a non-ideal approach to justice. This will be elaborated in the following third point. The third point stresses the proposal that ideal and non-ideal theories have to work together to ensure the promotion of justice, and not something else. To do this, the paper will now draw on the context of the labour reform in Mexico to show how Sen's theory is non-ideal in nature and insufficient.

Bear in mind that in order for the comparative framework to be put into practice, we all have to first agree on a certain arrangement as being unjust; otherwise Sen's approach would remain silent about it. So, let's assume that the labour reform in Mexico is unjust (even if for different reasons). The problem is that there is nothing in Sen's proposal that can realistically avoid accepting the labour reform exactly as it is, and even worse, to legitimise it as a justice-enhancement reform. For example, after public discussion, the reform could have been accepted because it enhances people's (men and women) capability to work on account of the flexible 'modern' labour relations (regardless of the conditions under which this is true). In an extreme scenario, the reform could have been accepted as a way to expand the capability of individuals to contribute to the country's 'development' (i.e. economic growth). These possibilities are in line with what Sen's comparative proposal would consider justice-enhancement arrangements, as long as they are presented as a result of 'public' discussion (which did occur in this case to a certain extent).

These possibilities problematise Sen's comparative framework in effectively advancing justice in the real world[6]. Notwithstanding the possible usefulness of this framework, it would still need to prove that the outcome of this framework is in line with an ideal of justice, or with our moral

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[6] To be sure, one could suggest that a list of capabilities could compensate at least partially some of these difficulties associated with Sen's approach. Surely this is an important point that needs to be discussed elsewhere as this is unfortunately out of the scope of this work. However, it seems safe to suggest that rather than solving the problem, it raises other equally problematic concerns and limitations.

intuitions about what is to be considered just. Thus, this section stresses the complementary nature of non-ideal theories – the prior condition of ideal theories. Without the ideal, non-ideal theory lacks a strong philosophical foundation to systematically identify injustice (for which non-ideal theories are not well equipped), as well as the objective that they must pursue in order to verify that justice has been actually enhanced (Rawls 1971, 1993)[7]. More importantly, these difficulties are not necessarily confronted by Sen's approach alone, other non-ideal approaches of justice face similar constraints too (Pereira 2013).

3.3   The non-ideal level of justice

Following the previous discussion, it is possible to determine the role of non-ideal theory for the overall multilevel approach that is proposed in this work. Based on the above analysis, we can now characterise, even if broadly, some elements of a useful non-ideal theory:

- It is feasible: non-ideal principles (i.e. conceptual framework) are situated within the possibilities of the real (non-ideal) circumstances of the world.

- It is transitional: it involves identifying the procedures, achievable policies, background, concepts, and/or outcomes that best serve the aim of reducing injustice while leading towards the ideal; that is, it deals with the question about *how* we can advance justice once we know *what* we should aim for and *why.*

- It is morally desirable: the complementary role of non-ideal theory means that it has to be somehow connected to an ideal theory, and as such its propositions have to be in line with the demands of ideal theory.

Again, these characterisations can be fulfilled by other theories as well. In this paper, I do not undertake the task of assessing which approach best complies with the requirements of a non-ideal theory (though this is certainly an important task). The choice of Sen's theory is justified on the basis of its significance within liberal discussions of justice, and in particular, with Rawlsian justice. Also, contrary to most non-ideal theorists, Sen does actually provide a complete approach on how justice can be advanced (whether his approach is the right one or not for this task is another matter). However, the point that I do want to reiterate is that for the objective of reducing injustice, the complementarity between ideal and non-ideal theory is essential (see also Pogge and Alvarez 2010). Moreover, for their optimal functioning, there has to be a two-way communication between them. In this sense, then, both of these theories intend to be action guiding. While ideal theory has an *informational* (practical) usefulness (by answering what makes a society just); non-ideal theory has a *remedial* (practical) usefulness.

But is this complementarity between the two theories enough to actually reduce injustice of real life situations? Do we obtain sufficient information for the task of guiding policies likely to be effective for reducing injustice?

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[7] As a matter of fact, one can only understand Sen's normative claim that development should be concerned with individual freedoms, instead of economic growth for example, as the result of Rawls' well placed justification for it.

4   The idea of Injustice – A dynamic conception of injustice

To answer the foregoing questions, let us consider the example of the Mexican labour reform again. Would it be enough if the ideal and non-ideal theories worked together? In the case presented above, with Rawls and Sen playing their parts respectively, one could expect that the list of possible outcomes emerging from public reasoning would now be more constrained by the Rawlsian framework. This might be true in theory, but, are we not concerned with reducing injustice in the real world? In practice, the scenario might be a little less optimistic at least for two reasons. First, in real life we cannot just sit and expect that people will behave justly simply because it was identified to be a reasonable behaviour in theory. In fact, this is advanced as one of Sen's critiques of Rawls' theory, that is, the assumption that people would comply with the demands of justice (Sen 2009). Ironically, this critique is equally valid for Sen's own work, for he also assumes that reasoning alone will change people's actual behaviour towards the just behaviour. Secondly, the kind of public reasoning that Sen demands – that is one where the voices of all people are equally taken into account – is a prior requirement, absent in most if not all societies in the world.

The emphasis on inclusive public reasoning is widely supported among the theorists of justice, even within non-liberal perspectives (see e.g., Fraser 1997). In fact, some scholars claim that justice should be about making all citizens capable of deliberating in public (Pereira 2013, p. 8). Hence, it is crucial to point out that non-ideal theories remain entirely normative by suggesting how justice can be advanced without offering any real practical guidance that can be applied to real unjust contexts. This implies that although non-ideal theories call for more practical conceptions of justice, they themselves fall short to do just that. Even if it is extremely useful and non-dispensable for the overall project, non-ideal theory merely ends up being a wishful list of normative features that need to be in place for advancing justice. In this sense, demands of non-ideal theories remain as 'transcendental' as those of ideal theories. Therefore, there is still a gap between them and its application in the real world.

So, even if the complementarity between ideal and non-ideal theory is necessary, this project is still incomplete for reducing injustice. Both of these theories fail to seriously take into account the unjust context in which they are meant to be applied. That is to say, none of these theories are well-equipped for examining or understanding the reproduction of injustice in the real world. Consequently, their practical recommendations remain either transcendental (as mentioned above) or superficial (Fraser 1997; see also Hickey 2013) thereby remaining ineffective in reducing injustice. This, in turn, highlights the need for the last but not least level of justice that I insist is a part of an overall approach to justice for the purpose of informing social policies here and now. This last level of justice is what I call – paraphrasing Sen – *the idea of injustice*.

4.1   The ground level of (in)justice – the idea of injustice

The main idea behind this level of justice is that it recognises political action on an unjust situation as being ultimately connected to the ability of approaches of justice to examine injustice and its reproduction in the real world. Here, it is important to note that both (liberal) ideal and non-ideal theories have been criticised for offering a limited understanding of such processes (Hickey 2013). Though, it is fair to say that this has not been their primary concern.

As mentioned above, non-ideal theories are not effective in systematically identifying injustice. In the case of Sen, this might be contestable, as one could argue that having a list of capabilities would 'solve' this. Despite the fact that such a position is problematic in itself (even Sen acknowledges this), having a list of capabilities does not solve the problem of diagnosing injustice accurately enough. Sen's focus on remedial action via individual reasoning does not really allow his approach to recognise the structural dimension of injustice (see Deneulin 2011 for this discussion). Ideal theories, on the other hand, face a different problem. It was said that ideal theory provided the right framework to systematically recognise injustices. However, this merely helps us in recognising – by providing enough reasons – which certain practices, situations, or social arrangements are not concordant with demands of justice, and therefore, are unjust. But this does not tell us anything about how injustice is maintained and reproduced. Here, Sen's (2009) critique of Rawlsian ideal justice is extremely useful. He compellingly shows that in the real world, 'the relevance of actual behaviour' - instead of assuming people's compliance - is fundamental in building more just societies. Sen, however, uses this distinction to make yet another normative claim which he underscores throughout the book, i.e. that individuals have to be responsible in their actions.

Clearly, the ground level of (in)justice does not follow this route. Instead, it uses Sen's point to highlight that the practice of injustice (in the real world) does not simply amount to the lack of justice (understood in Rawlsian terms). Rather, it requires to be properly investigated (in any framework of justice) in order to effectively reduce injustice in the real world. Hence, following ideal theories that poses the question 'What is a just society?' to identify what *makes* a society just, to identify what *makes* a society *un*just, the question 'What is an unjust society?' is perhaps an appropriate starting point in examining injustice in the world. For what makes a society unjust is not a mere absence of justice. Rather, it is people's actual behaviour (i.e. people's real exercise of agency) - through our actions and interactions and through the institutions we support - which reinforces a structure that maintains and reproduces (always as a process) the *doings* and *beings* that lead to an unjust world.

To briefly illustrate what this level of (in)justice would look like in practice, we can take the example of labour reform once again. In the labour reform, we already know that while ideal theory would assist in the identification of this situation as unjust, non-ideal theory would suggest what the situation would need for it to be improved (e.g. following Sen, more public discussion). However, this does not tell us anything about how such injustice is reproduced. The ground level of (in)justice would then ask the following questions: What makes the government take sides with employers rather than most of poor employees? What makes public participation so unequal? Is it all about power relations? One could deliberate that in addition to the obvious relevance of power relations, there is another aspect similar to what Fraser (1997) calls '*institutionalized* patterns of interpretation and evaluation' (p. 2; emphasis in original), that can reproduce and exacerbate (or not) the existence of unequal power relations. In a country like Mexico with 'democratic' values, the majority of people who are not in positions of power (and thus not directly benefitting) often follow and support the cause and interests of those who wield power over others. Arguably, it is by maintaining certain values, beliefs and patterns of behaviour that injustice can be reproduced to the extent that it becomes structural and, thus, unconscious (Deneulin et al 2006).

Following on from here, in the case of the Mexican labour reform, it can be argued that because of an institutionalised shared understanding, the wellbeing and liberties of certain people (those who will be affected) are rendered less valuable than the expected outcome of higher levels of investment and economic growth of the country. Such an understanding implies that inequality is natural, hence, not of public concern. Sadly, these institutionalised patterns of interpretation and evaluation are found in several situations within and across borders (e.g. indigenous land disputes throughout Latin America). It is the transmission of these behaviours and beliefs, that is inconsistent with an ideal of justice (Rawlsian in this case), which shed light on the reproduction of injustice. It is in this sense that one can assert that neither ideal nor non-ideal theories of justice are capable to examining the reproduction of injustice.

Then, providing a framework to think about injustice and its reproduction cannot but be fundamental for reducing injustice in the world, because ultimately the policy response will depend on this diagnosis. As highlighted above, liberal theories are often accused of providing only superficial (non-transformative) political guidance (Fraser 1996). To effectively reduce injustice, however, a point of departure capable of examining injustice and its reproduction is required. In other words, just as non-ideal theories need an *objective* (already identified by ideal theory) where to aim, they also need a *ground* from where they can depart. In the absence of this ground, non-ideal theories lack a starting point, that is, the mechanisms that maintain the unjust status quo and its perpetuation over time and space, and this is what I call an *Idea of Injustice*. Such a framework of injustice, however, would have to be provided by theories other than the liberal. The ground level of (in)justice has much to learn from notions of structural injustice and critical theories of justice, who emphasise the relational nature of injustice (e.g. see Fraser 1997). Indeed, it is through the mechanism of individuals' interaction with each other that we could observe whether an unjust structure is being reinforced or transformed.

Consequently, a framework that is capable of accounting for the reproduction of injustice is needed to effectively guide political action. However, it is essential to bear in mind that, this focus on human behaviour and people's interaction should be seen as part of the overall multilevel approach of justice, implying that it has to be seen as subordinated to an ideal conception of justice (i.e. is not perfectionist). Still, the inclusion of the ground level of (in)justice with an overall multilevel framework can signify an advantage for the applicability of justice. To reduce injustice in the world, we might be better off by working within the territory of injustice (i.e. a multilevel approach to justice), rather than departing from injustice but in favour of aiming for advancing justice (an approach formed by a mix of ideal and non-ideal theories only). While in the former, the focus is against the reproduction of injustice (where injustice is identified by ideal theory, and put into practice through processes provided by non-ideal theories), in the latter, an approach starts from injustice (identified by the ideal) but then gets lost trying to identify ways about how to implement the wishful list of normative thinking identified by non-ideal theory.

The main difference lies in the kind of questions asked. When working within the territory of injustice, the question is 'what needs to be done to reduce the perpetuation of injustice?' This is in contrast with the question 'What needs to be done to advance justice (or reduce injustice)?' The change in words might be minimal, though in practice this could be enormous. Just as the concepts of *negative* and *positive* freedom, they both care for freedom but in very different ways. In the first question, it is already assumed that we know the answer to what makes the

world unjust. That is, we already have the ground level of (in)justice in place. In practice, the answers to these questions may reveal that, reducing - the reproduction of - injustice and advancing justice might not be two sides of the same coin. The notion of advancing justice is in line with the concepts of forward looking, remedial action, and symptom reducing. Whereas, reducing (the reproduction of) injustice would be better identified with such concepts as transformative looking, preventative action, and transmission reduction.

5   Conclusion

This paper departed from the urgency of providing a framework capable of counteracting the persistent reproduction of injustice in the world, recognising that there is a gap between the informative work developed among philosophers of justice and the practical guidance that one can obtain from such works. This paper makes an attempt to contribute in that direction. Presenting distinct approaches to justice as rivals limits the possibility of building a conceptual framework capable of informing development policies for reducing injustice in the world. Rather, a convincing argument is made for integrating the strengths of different approaches to justice.

By using the case of the new labour reform in Mexico, the paper showed that if the task of providing effective political guidance to reduce injustice is taken seriously, then a multilevel approach to justice is needed. Such an approach consists of three different levels of justice, each of which provides valuable and non-dispensable information for the purpose. Therefore, to effectively reduce injustice, it is necessary to have three levels of approach: first, an *ideal level* of justice (to identify injustice, to know what we aim for, and to not promote injustice in the attempt of tackling it); second, a *non-ideal level* of justice to identify how we can advance in such direction; and finally, a *ground level* of (in)justice capable of accounting for injustice and its reproduction within societies.

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