**Utilitarianism and Some of Its Critics: On Some Alternative ‘Incomplete’ Theories of, and Approaches to, Morality and Justice.\***

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*Introduction*

The leading modern theory of justice – John Rawls’ theory - was presented, at least in part, as an attempt to provide an alternative to the ‘moral’ or ‘ethical theory’ which was dominant at the time that Rawls published *A Theory of Justice*. His motivation was that in the absence of a properly worked out ‘alternative’ moral theory, utilitarianism had, he believed, remained dominant since the writings of those who advanced classical utilitarianism - notably Jeremy Bentham, John Stuart Mill and Henry Sidgwick – in spite of a variety of criticisms. Yet it is not clear that a theory of justice of the sort Rawls developed is a genuine alternative to the sort of moral doctrine or theory which the classical utilitarians offered and, in his later works, Rawls clarified that his theory was a political rather than moral doctrine. Much of Amartya Sen’s work in moral and political philosophy, and indeed his interventions in welfare economics, also started from a critical engagement with utilitarianism and with Rawls’s theory of justice. Unsurprisingly, some have interpreted Sen as attempting, like Rawls, in his early work, to advance an alternative to utilitarianism, which might help to undermine the status of that doctrine, but also as advancing an alternative to Rawls’s own theory of justice. However, Sen has often used the word ‘approach’ rather than ‘theory’ to describe some of his views. And it may be that what he means by an ‘approach’ falls short – at least in the degree of its theoretical ambitions - of the sorts of ‘theories’ which were advanced by the utilitarians or by Rawls, and so does not offer a genuine alternative to these. By contrast, Martha Nussbaum has attempted to provide a version of the ‘capabilities approach’ which might, in the level of detail at which it engages with some issues, constitute a genuine ‘counter-theory’ at least to Rawls’ position in his later works. These are some of the views I consider in this paper.

In discussing these views, I distinguish various ways in which a theory might be ‘incomplete’, since each of the alternatives to utilitarianism discussed in this paper can be considered as an ‘incomplete’ theory or approach of some sort. In particular, a theory can be ‘incomplete’ because: it is restricted in scope; it is ‘open-ended’ in the sense that it can be filled out in distinct ways by different people; and it fails to generate a complete ‘at least as good as’ relation (so that it is not true that, for all states of affairs, one is at least as good as the other, nor is the other at least as good as the one). The relevant sense(s) in which a theory is ‘incomplete’ is relevant to the task of evaluating it and of comparing it to utilitarianism. In this paper I attempt to illuminate the nature of specific ‘approaches’ and ‘theories’ of morality and justice by clarifying various ways in which they are ‘incomplete’. I also discuss the question of whether an ‘approach’ need in itself constitute a theory.

1. *Preliminaries: Utilitarianism as an ‘Ethical Theory’, ‘Moral Theory’ and Doctrine.*

Anyone who has looked at the literature on ‘ethical’ or ‘moral theory’ will be struck by the lack of any consistency in the use of these terms. No doubt in part as a consequence of this state of affairs, Bernard Williams remarked in his *Ethics and the Limits of Philosophy* that ‘[i]t does not matter much how the expression “ethical theory” is used, so long as one’s use is made clear’ (Williams, 1985, 72). Williams’ own definition in that volume runs as follows: ‘[a]n ethical theory is a theoretical account of what ethical thought and practice are, which account implies a general test for the correctness of basic ethical beliefs and principles or else implies that there cannot be such a test’ (Williams, 1985, 72). Williams classifies those theories which imply that there is such a test as positive and those which imply that there cannot be one as negative. There are others who, when they use the term ‘moral theory’, refer to some specific moral principle which tells us what right or wrong action consists in or which moral code or set of virtues (or dispositions or motives) is right, (or appropriate). This is a distinct and narrower notion of ‘moral theory’ which I use in this paper unless otherwise specified.

Classical utilitarianism no doubt provides an ethical or moral theory on both definitions just discussed. In the statements of Jeremy Bentham and J.S. Mill, though, it appears more obviously to be a moral *doctrine* or - to use Mill’s word - *creed*. As Mill puts it: ‘[t]he creed that accepts as the foundation of morals, Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness.’ Mill goes on to explain what he means by happiness and its reverse, but adds that ‘[t]o give a clear view of the moral standard set up by the theory, much more requires to be said’ and adds that ‘these supplementary explanations do not affect the theory of life on which this theory of morality is grounded – namely, that pleasure, and freedom from pain, are the only desirable ends’ (Mill, 1962, 257).

 Henry Sidgwick’s use of terms is a little different. In *The Methods of Ethics* Sidgwick starts by noting that ‘Utilitarianism is, at the present day, in common use, and is supposed to designate a doctrine or method with which we are all familiar’ (Sidgwick, 1981, 411). Nonetheless, Sidgwick notes that ‘it seems to be applied to several distinct theories’ so that he needs to give a more precise definition. His definition runs: ‘[b]y Utilitarianism is here meant the ethical theory, that the conduct which, under any given circumstances, is objectively right, is that which will produce the greatest amount of happiness on the whole; that is, taking into account all those whose happiness is affected by the conduct’ (Sidgwick, 1981, 411). Here ‘ethical theory’ might easily be replaced by ‘moral principle’. Nonetheless, Sidgwick also thinks that ethics must provide a ‘positive ethical theory’ of the sort Williams has in mind since for him: ‘[t]he aim of Ethics is to systematise and free from error the apparent cognitions that most men have of the rightness or reasonableness of conduct, whether the conduct be considered as right in itself, or as the means to some end commonly conceived as ultimately reasonable’ and he goes on to identify the relevant ‘cognitions’ as ‘”dictates” or “imperatives”’ … which ‘are accompanied by a certain impulse to do the acts recognised as right’ and which are ‘normally accompanied by emotions of various kinds known as “moral sentiments”’ (Sidgwick, 1981, 77). So, on Sidgwick’s view the aim of ethics is more expansive than merely to provide a ‘moral theory’. As regards what Mill meant by a ‘creed’ and what Sidgwick meant by a ‘doctrine’ I shall assume that they had in mind either the principle of utility itself – in which case a ‘creed’ or ‘doctrine’ is simply a moral theory or the more general set of beliefs or opinions held by those who endorsed this principle so that it contains further elements of what Williams means by a positive ethical theory.

1. *The Search for an Alternative: Rawls’ Theory of Justice and Moral Theory.*

In motivating his theory of justice, Rawls notes that ‘[d]uring much of modern moral philosophy the predominant systematic theory has been some form of utilitarianism’. Rawls adds that ‘one reason for this is that it has been espoused by a long line of brilliant writers’ and that the ‘great utilitarians … were social theorists and economists of the first rank’ (Rawls, 1972, vii). He also suggests that ‘[t]hose who criticized them often did so on a much narrower front. They pointed out the obscurities of the principle of utility and noted the apparent incongruities between many of its implications and our moral sentiments’. Importantly, he suggests that ‘they failed … to construct a workable and systematic moral conception to oppose it’ (Rawls, 1972, viii). Rawls thinks that his own theory provides an ‘alternative systematic account of justice that is superior … to the dominant utilitarianism of the tradition’ (Rawls, 1972, viii).

 In his original statement, Rawls did not exclude the possibility that his theory of justice may also be extended to constitute a theory of morality. Indeed, its development in that direction would have been desirable – given his motivation – in providing an alternative to utilitarianism. But in its initial articulation, Rawls’ theory is restricted in its scope and ambition. In extending the social contract tradition his conception of justice - ‘justice as fairness’- Rawls notes that ‘[j]ustice as fairness is not a complete contract theory’. Indeed, Rawls is very clear about the ‘incompleteness’ of his theory, at least in as much as it might be construed as an ‘ethical’ or ‘moral’ theory of some sort. He writes that:

It is clear that the contractarian idea can be extended to the choice of more or less an entire system, that is, to a system including principles for all the virtues and not only for justice. Now for the most part I shall consider only principles of justice and others closely related to them; I make no attempt to discuss the virtues in a systematic way. Obviously if justice as fairness succeeds reasonably well, a next step would be to study the more general view suggested by the name ‘rightness as fairness’. But even this wider theory fails to embrace all moral relationships, since it would seem to include only our relations with other persons and to leave out of account how we are to conduct ourselves toward animals and the rest of nature. (Rawls, 1972, 17).

Justice as fairness is here understood as an ‘incomplete’ theory of morality in as much as it is restricted in its scope. Nonetheless, even in its early formulation ‘justice as fairness’ does have elements of what Williams means by an ‘ethical theory’, to the degree that it provides part of a ‘theory of moral sentiments’. Rawls writes:

I wish to stress that a theory of justice is precisely that, namely, a theory. It is a theory of moral sentiments (to recall an eighteenth century title) setting out the principles governing our moral powers, or more specifically, our sense of justice. … A theory of justice is subject to the same rules of method as other theories. (Rawls, 1972, 51)

So Rawls’ project in *A Theory of Justice* is clearly one which is ambitious in providing a *theory*, but the theory he develops is incomplete in as much as it covers only part of what one would think of as the domain of morality and as a theory of the virtues.

In his later restatement of his theory Rawls takes a slightly different view. In the preface of *Justice as Fairness: A Restatement* he notes that – because of his remarks about ‘rightness as fairness’ - readers of *A Theory of Justice* might conclude that ‘justice as fairness was set out as part of a comprehensive moral doctrine that might be developed later should success encourage the attempt’ (Rawls, 2001, xvii). In his restatement he is clear that justice as fairness is ‘much narrower in scope than comprehensive philosophical moral doctrines such as utilitarianism … [i]t focusses on the political … which is but part of the domain of the moral’ (Rawls, 2001, 14).

In the light of his later restatement, Rawls’ comparison of his own theory to utilitarianism in *A Theory of Justice* also appears a little misleading. There he treats utilitarianism, for the purposes of comparison. as a theory of justice. He writes:

[t]he kind of utilitarianism I shall describe here is the strict classical doctrine which receives perhaps its clearest and most accessible formulation in Sidgwick. The main idea is that society is rightly ordered, and therefore just, when its major institutions are arranged so as to achieve the greatest net balance of satisfaction summed over all the individuals belonging to it. (Rawls, 1972, 22).

And here Rawls cites a wide variety of contributions to utilitarian thought, including Sidgwick’s *The Methods of Ethics*. Nonetheless, it is perhaps difficult to compare the respective merits of a moral theory and a theory of justice (of the sort Rawls advanced), since these differ in their subject matter. As we have already seen, in *The Methods of Ethics* Sidgwick’s definition of ‘utilitarianism’ was concerned with right conduct rather than the right or just ordering of society. Nonetheless, Sidgwick does consider the relationship between ethics and politics, and, in that context, considers ‘what rules of conduct for the governed should be fixed by legislators and applied by judges’ and concludes that in this case also ‘we shall endeavour to estimate and balance against each other the effects of such rules on the general happiness’ (Sidgwick, 1981, 457). While his definition of utilitarianism is restricted to right conduct, in another passage Sidgwick also suggests that utilitarianism ‘furnishes us with a common standard to which the different elements included in the notion of Justice may be reduced’ (Sidgwick, 1981, 447) and adds that such a standard is imperatively required in certain political contexts. To this degree, Rawls’ comparison may have been intended as a comparison between his theory and Sidgwick’s utilitarianism, to the degree that the latter offers a theory of politics and justice. Nonetheless, Sidgwick’s utilitarianism is a primarily a moral theory and his remarks about its relevance to the realms of politics and justice (at least in *The Methods of Ethics*) are rather limited. The ‘main idea’ of Sidgwick’s utilitarianism is about right conduct and not about how ‘society is rightly ordered’.

 Before moving onto the views of Amartya Sen and Martha Nussbaum, I should further explain some of Rawls’ views since these set the scene for some of Sen’s and Nussbaum’s interventions. There are some minor changes in the wording of the principles of justice in Rawls’ theory over time. In the restatement of his theory one of his principles of justice – ‘the difference principle’ - is described as follows: ‘[s]ocial and economic inequalities … are to be to the benefit to the least-advantaged members of society’ (Rawls , 2001, 42-43). In interpreting this principle it is important that advantage is understood in terms of an index of social primary goods (or ‘primary goods’ for short). Rawls tells us that ‘[p]rimary goods are things needed and required by persons seen in the light of the political conception of persons, as citizens who are fully co-operating members of society, and not merely as human beings apart from any normative conception. These goods are things citizens need as free and equal persons living a complete life’ (Rawls, 2001, 59). Furthermore, in later versions of the theory, justice as fairness is presented as a form of ‘political liberalism’. The goal of political liberalism is to find a ‘political conception of justice’ which people with different comprehensive doctrines can endorse. For this reason a ‘political conception of justice’ can be the focus of an ‘overlapping consensus’ between people who hold distinct reasonable comprehensive doctrines (Rawls, 1993, 134). A ‘political conception of justice’ is a moral conception ‘worked out for a particular kind of subject, namely for political, social and economic institutions’ (Rawls, 1993, 11) – that is, for the ‘basic structure of society’ in a constitutional democracy.

 Finally, Rawls mentions a limitation of his theory. He writes that:

we are concerned for the most part with the nature and content of a well-ordered society. Discussion of this case is referred to in justice as fairness as ideal, or strict compliance, theory. Strict compliance means that (nearly) everyone strictly complies with, and so abides by, the principles of justice. We ask in effect what a perfectly just, or nearly just, constitutional regime might be like… Nevertheless, the idea of a well-ordered society should also provide some guidance in thinking about nonideal theory, and so with difficult cases of how to deal with existing injustices (Rawls, 2001, 13).

For this reason, Rawls thinks that ‘justice as fairness is realistically utopian’ in the sense that ‘it probes the limits of the realistically practicable, that is how far in our world … a democratic regime can attain complete realization of its appropriate political values’. These remarks are relevant, as we will see, to Sen’s and Nussbaum’s discussions of Rawls.

1. *Sen’s Criticisms and Proposals: Incomplete Theory or Approach?*

In ‘Utilitarianism and Welfarism’ Sen (1979a) decomposes utilitarianism into three component parts. The initial decomposition is of ‘act-utilitarianism’, but it can be generalised so that it applies to rules or motives instead. The first component of utilitarianism is consequentialism, and he defines act-consequentialism as follows:

*Act consequentialism:* an action α is right if and only if the state of affairs *x* resulting from α is at least as good as each of the alternative states of affairs that would have resulted respectively from the alternative feasible acts (Sen, 1979a, 464).

On Sen’s account, act-utilitarianism combines act-consequentialism with a second principle:

*Outcome Utilitarianism*: Any state of affairs *x* is at least as good as any alternative state of affairs *y* if and only if the sum total of individual utilities in *x* is at least as large as the sum of utilities in *y.* (Sen, 1979a, 464)

This in turn is factorised into the following principles:

*Welfarism*: The judgement of the relative goodness of alternative states of affairs must be based exclusively on, and taken as an increasing function of, the respective collections of individual utilities in these states. (Sen, 1979a, 468)

and

*Sum-ranking:* One collection of individual utilities is at least as good as another if and only if it has at least as large a sum total. (Sen, 1979a, 468).

Sen (1979a, 468) rejects sum ranking – as Rawls (1972, 77) does – on the grounds that it is ‘indifferent as to how a constant sum of benefits is distributed’. He also rejects welfarism. In ‘Utilitarianism and Welfarism’ this is primarily because welfarism, by definition, excludes all ‘non-utility information’ (Sen, 1979a, 471-479). In other works Sen also finds fault with ‘utility’ – whether defined as pleasure, desire satisfaction or happiness - as a measure of welfare or advantage because people can adapt or adjust their desires to the circumstances they find themselves in so that their desires are easily satisfied, or find pleasure in small mercies or learn to find happiness in whatever form is available in their straitened situations. If they do adjust in this way, then ‘utility’ if defined in these ways may be a misleading measure of advantage (e.g. Sen, 1987, 45-47). The second of these lines of criticism leads to the search for an alternative metric of advantage – and Sen’s proposal as regards the currency of advantage for judging egalitarian claims initially recommends ‘basic capability’ (Sen, 1980) and in later versions, more generally, ‘capability’ (Sen, 1990a and 1992) – what one is able to do and be in leading a valuable life (or a life one has reason to value) – and ‘functionings’ – which refer to the relevant ‘beings’ and ‘doings’ which constitute such a life - as providing potentially important information in the evaluation of egalitarian claims. In advancing capability as a currency of justice, Sen also criticises Rawls’ use of a primary goods index in his difference principle not least because he thinks that various people need different amounts of such goods to be able to do and be what they value (or have reason to value). He argues that Rawls’ position falls short because it involves a form of fetishism about goods and a neglect of human diversity (Sen, 1982, 367-8). But it is interesting that Sen *also* chastises Rawls for excluding all information relating to happiness and desire satisfaction. As regards the ‘original position’ in which the parties in Rawls’ theory decide on the principles of justice, Sen tells us that ‘it is not at all clear why people in this primordial state should be taken to be so indifferent to the joys and sufferings in occupying particular positions’ and ‘why their concern about these joys and sufferings should be taken to be morally irrelevant’ (Sen, 1982, 367). And in his concluding remarks in that paper he adds that in his advocacy of the currency of (basic) capability, he does not wish to claim that ‘basic capability equality is the sole guide to the moral good’ (Sen, 1982, 369).

As regards ‘consequentialism’, in his later work Sen (2000) defends a particular version of this view which is consistent with a broad definition such as that provided by Philip Pettit when he suggests that ‘roughly speaking consequentialism is the theory that the way to tell whether a particular choice is the right choice for the agent to have made is to look at the relevant consequences of the decision; to look at the relevant effects of the decision on the world’ (Sen, 2009, 218-9). To the degree that Sen defends consequentialism against some standard objections, he defends a class of moral theory rather than a specific theory since many moral theories, including utilitarianism, classify as consequentialist. Indeed, given his critical responses to utilitarianism, Sen might well have more fully developed a ‘non-welfarist consequentialism’ which rejects sum ranking. This tendency is particularly evident in some of his discussions and statements of the ‘capability approach’ including essays on the relationship between capability and rights (e.g. Sen, 1981a and 1984). We have further hints of what a ‘non-welfarist consequentialist’ view might look like in a response to Philippe Van Parijs where Sen writes that ‘an important difference’ between his views and Van Parijs’ ‘concerns the fact that the Van Parijs scheme gives complete priority to the demands of equality, whereas the uses of the capability perspective for which I have argued must take note of aggregative considerations as well as egalitarian ones’ (Sen, 1990b, 468). An example of a more developed version of consequentialism is Brad Hooker’s ‘rule-consequentialism’ (Hooker, 2000, 32-45) which takes a similar line to Sen’s in relation to Sen’s and Rawls’ critique of ‘sum ranking’ but articulates a specific moral principle. It is, however, welfarist and so on Sen’s view would be guilty of excluding morally relevant information. Sen’s view would also be unlikely to emerge as a form of ‘capability consequentialism’ (see Qizilbash, 2008, 65-66) since, as we have seen, Sen does not want to claim that capability equality is the only object of moral value and furthermore that he does not wish to restrict information to ‘capability’ information. In part for this reason, in his later works, he stresses the limits of what the capability approach can on its own do (see for example, Sen, 2009, 295-8 and Qizilbash, 2012). Others who discuss or develop his views on capability do, nonetheless, advance some form of principle – as, for example, Marc Fleurbaey does in discussing a view which gives priority to the least well off group when advantage is measured in terms of a particular form of functionings index (Fleurbaey, 1995, 53) and as Martha Nussbaum (2006, 178-79) does in advancing her own version of the capabilities approach in which justice requires that everyone achieves a threshold level in terms of a list of central human capabilities.

Since he does not articulate a fuller non-welfarist consequentialism, Sen’s view is best characterised as an ‘incomplete’ moral theory. ‘Incompleteness’ can be understood in very different ways and Sen’s account is ‘incomplete’ in more than one way. If by ‘completeness’ one means the axiom invoked in choice theory (e.g. Sen, 1979b, 8) then ‘at least as good as’ is complete if and only if for all (non-identical) states of affairs (or alternatives) *x* and *y* in the set of states of affairs (or alternatives), *x* is either at least as good as *y* or *y* is at least as good as *x*. If ‘at least as good as’ is complete, all states (or alternatives) are comparable. ‘Incompleteness’ is a violation of this axiom and emerges when any pair of states (or alternatives) is not comparable. To distinguish it from other senses of ‘incompleteness’, I shall refer to this as *evaluative incompleteness.* On this sense of ‘incompleteness’, in their introduction to *Utilitarianism and Beyond* Sen and Bernard Williams suggest that ‘[i]t is far from clear that completeness should be seen as a virtue’ (Sen and Williams, 1982, 18) in a moral theory. And in discussing theories of inequality and justice Sen argues along similar lines that: ‘[t]he need to admit incompleteness in inequality evaluation is inescapable, and there is much to be said for addressing that question explicitly’ (Sen, 1992, 134). For this reason he thinks that ‘in a “totalist” approach that characterises the standard theories of justice (including Rawls’), incompleteness tends to appear to be a failure, or at least a sign of the unfinished nature of the exercise’ (Sen, 2006, 223). Here Sen has in mind evaluative incompleteness (rather than a restriction of the scope of a theory) and he insists that a ‘theory of justice which makes systematic room for incompleteness allows one to arrive at possibly quite strong judgements’ (Sen, 2006, 223).

An important source of evaluative incompleteness in Sen’s views is that he does not insist on any particular set of weights in interpersonal comparisons of advantage in the way that utilitarianism and Rawls’ difference principle do. His rejection of sum ranking implies that, some importance be given to the least advantaged and to equity as opposed to ‘aggregative’ considerations. But there may also be evaluative incompleteness because Sen does not insist on any particular set of weights as regards other matters such as the relative importance of different functionings in evaluating the quality of life, and the relative weight to be given to capability and functionings.

On Sen’s view a theory may also be ‘incomplete’ in another way which is not primarily about non-comparability of states. For example, in the context of moral theory, if one looks to Sen for an alternative version of consequentialism, one might want to know if his view is a form of act- or rule-consequentialism. And he shows no inclination to engage with that debate. Rather, his views can be filled out in different ways: they are ‘incomplete’ inasmuch as they are ‘open-ended’. ‘Open-endedness’ can of course relate to evaluative matters. For example, one way in which Sen’s capability approach is open-ended is that it does not advance any particular all purpose list of functionings for the purpose of evaluating advantage in the way that Rawls does in proposing a list of primary goods for his index of advantage in the context of his difference principle. But open-endedness and evaluative incompleteness are distinct, if sometimes related, concepts. Open-endedness is particularly important in Sen’s work because it allows people with otherwise very different views to endorse some of his views, most notably his capability approach.

On questions of open-endedness and evaluative incompleteness, Sen’s views differ from other views (of both of morality and justice) in suggesting that some evaluative questions, it is important to look for an agreed set of objects of value and weights which are socially acceptable. And in his later works he argues that ‘the search for any agreed set of weights or values is a “social choice” exercise, and it requires public discussion and a democratic understanding and acceptance’ (Sen, 1999, 78-9). He adds that: ‘we are not prevented, by any means, from proposing that some particular formula – rather than any alternative formula – be used for aggregation, but in this inescapably social choice exercise its status must depend on its acceptability to others’ (Sen, 1999, 79). Thus while in many theories – including utilitarianism - these questions are settled within the theory, in Sen’s theory open-endedness and evaluative incompleteness create space for democratic and public reasoning to settle them. The way in which Sen creates this space can be seen as either part of the theoretical view he is developing or as a recognition of the limitation of what pure theory can, on its own, achieve (Sen, 2004, 78). On either interpretation, this aspect of his view may make it an unattractive alternative to utilitarianism, especially for those who think that the (evaluative) completeness of that view, and its articulation of a single overarching principle of morality (which can resolve conflicts between different considerations) is its key strength. Part of Sen’s response to this line of thinking must be that utilitarianism fails to give public reasoning and democratic deliberation any significant role within its account of morality and that his incomplete theory has the virtue that it is more democratic about these matters. Indeed, this must be seen as an important limitation of utilitarianism on his view and needs to be discussed and assessed.

 As we have already seen Sen also uses the word ‘approach’ in advancing the relevance of capability as a currency of advantage. He has used the same word more recently to advance his views on justice, though, as we shall see, he somewhat confusingly also uses the word ‘theory’ in these discussions of justice (Sen, 2009, ix and 1). Is an approach an ‘incomplete’ theory? The use of the word ‘approach’ is not restricted to Sen’s works in moral and political philosophy. He uses the same word in advancing his view of famine, when he develops his ‘entitlement approach to famine’ which is contrasted with what he calls the ‘food availability decline’ view (Sen, 1981b). The purpose of advancing the entitlement approach is, in part, to depart from what (according to Sen is) a mistaken but dominant view in the realm of famine analysis. When Sen talks about the ‘capability approach’ to the evaluation of egalitarian claims, the quality of life and development and later about his various ‘approaches’ to justice, his goal is to explain various ways in which dominant views – such as those endorsed by some utilitarian or Rawls – are mistaken and to advance something like an alternative ‘approach’ to, or ‘perspective’ for thinking about, the relevant issues. In each case when Sen advances an ‘approach’, he also typically introduces new conceptual distinctions. One notable distinction that he makes is between a ‘transcendental’ and ‘comparative’ approach to justice. In motivating the distinction he writes that because ‘Rawls takes the principal question to be: *What is a just society?*’ this leads to ‘what might be called a “transcendental” approach to justice, focussing – as it does – on identifying perfectly just societal arrangements’ (Sen, 2006, 216). And he wants to contrast this with a ‘comparative’ approach which ‘would concentrate instead on ranking alternative societal arrangements (whether some arrangement is “less just” or “more just” than another) rather than focussing exclusively – or at all – on the identification of a fully just society’ (Sen, 2006, 216). As is clear from the description of Rawls’ view above, Rawls himself thought that his focus was on what a ‘perfectly just, or nearly just, constitutional regime might be like’ is a limitation of his theory. In advancing a new ‘approach’, here also Sen’s goal is to advance an alternative to a dominant perspective.

But is a new ‘approach’ of this sort, in itself a ‘theory’? In *The Idea of Justice* Sen uses both ‘theory’ and ‘approach’ to describe his view. In the preface he writes: ‘[w]hat is presented here is a theory of justice in a very broad sense. Its aim is to clarify how we can proceed to address questions of enhancing justice and removing injustice, rather than offer resolutions of questions about the nature of perfect justice…’. (Sen, 2009, ix and x) In describing the nature of this theory, he goes on to list various ways in which his views differ from Rawls’ stressing, the comparative nature of the approach, the fact that the approach need not resolve all comparative questions and the need to go beyond a focus on the nature of social institutions. These ways of differentiating his position from Rawls’ and making it the basis of an alternative view of justice seem to me primarily to constitute an approach (or a set of approaches) - in the terms I have been using - to justice because it is (or they are) for the most part articulated through differences between it (them) and the dominant theory of justice of its time. When one combines this approach (or these approaches) to justice with some of Sen’s other views – for example, his views about consequentialism, objectivity, impartiality and so on which are also presented in *The Idea of Justice* we find the building blocks of a theory of justice which is incomplete in being open-ended and evaluatively incomplete. But some of these building blocks – the ‘comparative approach’ to justice, the ‘capability perspective’ and so on - of that ‘theory’ are, on their own ‘approaches’ rather than an ‘incomplete’ theory itself, just as in Sen’s later views on human rights (Sen, 2004a) the capability perspective is only an ‘element’ of a theory.

1. *Sen’s and Nussbaum’s Approaches to Capability and Justice: A Contrast.*

To further clarify how Sen uses the term ‘approach’ it is instructive to compare his works on capability and justice with Martha Nussbaum’s. Nussbaum’s views on capability have been advanced in two distinct periods. In the first, her interest in capability emerged in the context of Aristotle on political distribution (Nussbaum, 1988). In several papers Nussbaum developed a version of what she called ‘Aristotelian Social Democracy’ (1990, 1992, 1995a and 1995b). In this first articulation of the approach one significant difference between Nussbaum’s view and Sen’s was that Nussbaum developed a list of human capabilities on the basis of an Aristotelian view of the good life whereas Sen resisted taking his version of the capability approach further in that direction (see especially Sen, 1993). It is notable that part of Sen’s motivation for resisting was that he wished to leave his approach open-ended so that it might be adopted by people with different views of the good life. Indeed, in responding to Nussbaum, he asked the question of why he should ‘pause at outlining a general approach, with various bits to be filled in?’ He answered: ‘the motivation for the pause relates to the recognition that an agreement on the usability of the capability approach … need not *presuppose* an agreement on how the valuational exercises may be completed’ (Sen, 1993, 48). He added that: ‘[i]f reasoned agreement is seen as an important foundational quality central to political and social ethics, then the case for the pause is not so hard to understand’. It is this line of thinking which led Sen, in his later works, to advance public reasoning as a way to advance such reasoned agreement.

For the remainder of this paper I focus on Nussbaum’s later articulation of her version of the ‘capabilities approach’ (see Nussbaum, 1998, 1999, 2000, 2003, 2006 and 2014 *inter alia*). Like Sen’s capability approach, Nussbaum’s later view remains, in part, an attempt to offer a corrective to some dominant views, such as utilitarianism and Rawls’ theory of justice. Like Sen’s approach it is relevant to a wide range of contexts, from questions about development (in Nussbaum, 2000 and 2011) to feminism (Nussbaum, 1999, 2000 and 2003 *inter alia*) and theories of justice (Nussbaum, 2006). Nonetheless, in the context of addressing three pressing problems – disability, justice across borders and other species - within theories of justice in her *Frontiers of Justice,* Nussbaum is very clear in stating that, like Rawls’ conception of justice, her version of ‘[t]he capabilities approach is a political doctrine about basic entitlements, not a comprehensive moral doctrine’ (Nussbaum, 2006, 155). And at the start of that work, Nussbaum describes some of the virtues which might characterise theories of justice.

 It should be clear from this very brief description of *Frontiers of Justice* that Nussbaum’s goal in advancing the ‘capabilities approach’ in this context is to produce an alternative - or as she expresses this in another context (Nussbaum, 2011a, 46), a ‘counter-theory’ - to Rawls’ theory in some specific areas. Similarly, Nussbaum (2006, 5) tells us that in her earlier work *Women and Human Development* (Nussbaum, 2000) she compared her approach to (preference-based) utilitarianism and argued that it was superior to that view. Her ‘capabilities approach’ aspires, in itself, to the status of a theory in a way that Sen’s capability approach does not – even if Sen’s approach can be seen as an element in a larger incomplete theory of some sort. In this respect discussions of the status of the capability approach are likely to be confused and some of the recent literature does attempt to clarify some of the confusion (see Qizilbash, 2012 and Robeyns, forthcoming *inter alia*).

In *Frontiers of Justice* Nussbaum’s project is defined in a way which is in broad terms consistent with Rawls’ – even if in her recent writings (notably Nussbaum, 2011b and 2014) she explains some important points where she differs from Rawls. In particular, her goal is to produce a political conception of justice which can be the object of an ‘overlapping consensus’ amongst people who hold different moral doctrines. Yet, if Nussbaum’s approach is a political doctrine, it will, like Rawls’ later views, be hard to compare to utilitarianism since the latter is *primarily* a moral rather than political doctrine.

Nonetheless, there are various senses in which Nussbaum’s approach remains, like Sen’s, ‘incomplete’. First of all, when she advances her list of central human capabilities, Nussbaum invariably reminds us that her list is open-ended. As she puts it: ‘I consider the list as open-ended and subject to revision and rethinking in the way that any society’s account of its most fundamental entitlements is always subject to supplementation (and deletion)’ (Nussbaum, 2006, 78). As a consequence, her approach also makes space for democratic deliberation. Indeed, she also thinks that ‘the list ought to be specified in a somewhat abstract and general way, precisely in order to leave room for the activities of specifying and deliberating by citizens and their legislatures and courts’ (Nussbaum, 2006, 79). And Nussbaum states from the outset that her approach ‘does not even claim to be a complete political doctrine, since it simply specifies some necessary conditions for a decently just society, in the form of a set of fundamental entitlements of all citizens’ (Nussbaum, 2006, 155). In referring to its lack of completeness here, Nussbaum is emphasising the restricted scope of the theory. Nonetheless, Nussbaum articulates her approach so that it covers our relations with non-human animals in a way that Rawls does not, at least in *A Theory of Justice.* There, as we saw, Rawls initially restricted the scope of his theory and argued that even if ‘justice as fairness’ might be extended to ‘rightness as fairness’ ‘this wider theory fails to embrace all moral relationships, since it would seem to include only our relations with other persons and to leave out of account how we are to conduct ourselves toward animals and the rest of nature’. In this particular respect, Nussbaum’s account is more complete than Rawls’ early theory.

 Would Sen agree with some of the core elements of Nussbaum’s ‘capabilities approach’ which go beyond providing a ‘general perspective’? It is clear from his earlier writings that this is unlikely. Sen has earlier been critical of aspects of Rawls’ theory which Nussbaum endorses. In particular, Sen (1992, 76-79) thinks that the notion of a ‘political conception of justice’ is too restrictive and that the idea of justice is often relevant even when the requirements of a political conception of justice do not hold because of the absence of an overlapping consensus. So it is not just that the nature of Nussbaum’s project in advancing her approach in the context of justice is different to Sen’s – at no point does Sen endorse a political conception of justice. Indeed, if the ‘capability approach’ or perspective includes views about matters of this sort, Sen and Nussbaum would of necessity disagree about the content of the ‘approach’. Indeed, to the degree that the capability approach is best considered only one part of his views of justice it is also only one building block in an incomplete theory rather than constituting an incomplete theory in itself.

 As a consequence of some of these differences between Sen’s and Nussbaum’s discussions of justice, it becomes clear that in some respects, Sen’s arguments against Rawls are also potentially arguments against Nussbaum. Indeed, Nussbaum notes this point and goes on to say of these elements of Sen’s critique of Rawls that ‘[i]t is difficult in any case to determine the extent to which those criticisms apply to the version of ideal theory developed in my normative Capabilities Approach’ (Nussbaum, 2011a, 76). And more recently Nussbaum (2014, 3) writes that: Sen ‘raises a fundamental issue for my theory as much as for Rawls’s, since my theory is more like Rawls’s than like the non-ideal theory advanced by Sen, in its overall aims and nature’. Rather than explore any further the differences between Nussbaum’s and Sen’s views at this stage, it is notable that Nussbaum sees her capabilities approach as a version of Rawlsian ideal theory, whereas it would make no sense to see Sen’s capability approach as a *theory* (whether ideal or not) of that sort.

1. **Conclusions.**

John Rawls believed that the failure of critics of utilitarianism to advance a well-worked out alternative moral theory had helped sustain its popularity and pre-eminence. *A Theory of Justice* was ‘incomplete’ as a moral theory, in the sense that it was restricted to the realm of justice, and Rawls’ comparison between his theory and utilitarianism is misleading to the degree that he characterises Sidgwick’s moral theory as a theory about the rightness of social arrangements rather than conduct. In his later thought, justice as fairness is not conceived as a moral doctrine but rather as a political conception of justice. The same is true of Martha Nussbaum’s version of the capabilities approach in the form it is presented in *Frontiers of Justice*. To the degree that these are political rather than moral doctrines, they are hard to compare to utilitarianism. Amartya Sen’s work defends a form of consequentialism – and indeed of a theory of justice - that it is open-ended and evaluatively incomplete. His various ‘approaches’ to the evaluation of advantage, to justice, impartiality and objectivity provide parts of the architecture of an incomplete theory in his *The Idea of Justice*. Yet in that work the view of justice developed is characterised as both a ‘theory’ and an ‘approach’. I have argued that what Sen calls an ‘approach’ is often not a theory but a perspective which is distinct from some dominant views. Various approaches he outlines may nonetheless constitute the building blocks or parts of the architecture of an incomplete theory. If I am right, Sen and Nussbaum use ‘capability approach’ and ‘capabilities approach’ in quite different ways, since for Nussbaum, in the context of justice, her ‘capabilities approach’ is a political conception of justice and a theory of a particular sort, while, for Sen, the capability approach is neither of these things. As a consequence, there is a real danger of confusion amongst those attempting to develop some version of the approach as an alternative, or as part of an alternative, to utilitarianism and Rawls’ theory. Greater clarity about what one means by an ‘approach’ and various senses in which an approach or theory might be ‘incomplete’ should nonetheless advance the cause of some of these views, and clarify differences between them.

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