

EIPE

# What we want from non-ideal theories of justice

## EIPE Master Thesis

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This thesis covers the topic of non-ideal theories of justice. Different types of discussions have been associated with non-ideal theories of justice, but an overarching theme has been a frustration with the lack of influence political philosophy can have in the world. I will claim that, while the discussions surrounding the topic are diverse, if the aim of non-ideal theories of justice is to influence the world, two conditions have to be satisfied: feasibility and comparability. However, both of these concepts are not yet properly defined, and in both cases some shortcomings exist. In this thesis I will show the shortcomings in these concepts related to bringing political philosophy closer to action guidance, and will give a contribution where I can.

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# What we want from non-ideal theories of justice<sup>1</sup>

## Chapter 1: Introduction

### Introduction

In recent years, there has been a movement in political philosophy discussing the distinction between ideal theories of justice and non-ideal theories of justice. The concept non-ideal theories of justice has been used in many different ways, sometimes in ways that have quite little in common with each other. However, an overarching theme has been a frustration of the lack of influence political philosophy can have on real-world politics. There are several different obstacles deterring mainstream theories of justice from having an effect on the real world. It may be that they make unrealistic assumptions (for example, regarding human motivation), that would never hold in the real world. It could also be the case that while philosophers develop a grand theory of the perfectly just society, they give no indication on how to deal with any society that falls short of this perfectly just society. The latter is the point made extensively by Amartya Sen in his 2006 paper “What do we want from a theory of justice?” and his 2009 book “The Idea of Justice” (Sen, 2006b, 2009). In this thesis, I will analyze the main problem non-ideal theory wants to address, and based on this, establish what exactly we want a non-ideal theory of justice to offer us. I will show that the common theme in discussions surrounding non-ideal theories of justice is the lack of influence mainstream theories of justice can have on real-world politics. In order for non-ideal theories of justice to be helpful, they need to be able to avoid the obstacles that have prevented ideal theories of justice to guide action, like the lack of sensitivity to facts, and the insistence on identifying the perfectly just society instead of dealing with issues of trade-offs.

The concept of non-ideal theory of justice started gaining momentum in the more recent political philosophy literature. Although the term has been used by John Rawls in his book “A Theory of Justice”, the term started getting a much broader definition in recent years. A lot of work is still needed in properly defining non-ideal theories of justice (Robeyns, 2008, Valentini, 2012), a project to which I hope to contribute with this thesis. In order to put the reader in the context of the literature, I will start with a literature overview covering several

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<sup>1</sup> I would like to thank Constanze Binder, Attilia Ruzzene, Thomas Wells, Akshath Jitendranath and Willem van der Deijl for comments on previous drafts of this thesis.

different authors. I will then discuss issues of disagreement between them. However, there is a broad consensus between authors with respect to the motivation that brought the need for non-ideal theory of justice, namely the inability of mainstream theories of justice to influence politics. Based on this motivation, I argue that non-ideal theories of justice should aim at offering a general framework which is able to make comparative judgments about feasible social states. In order to avoid the obstacles to ideal theory, I will argue that the two following criteria in particular are necessary for non-ideal theories of justice: *comparability of social states* (i.e. the ability to compare social states), and *feasibility*. I will delve into each of these criteria in more detail. I will show that while both of these criteria are necessary, they also both have some issues that are not yet appropriately dealt with among its advocates. My contribution will be to a larger degree to the aspect of feasibility, however. With respect to the criterion of comparability, I will show some problems to Sen's comparative approach, as he is the main proponent of this approach, but unfortunately I am unable to give definitive resolutions to these problems.

It is important to stress that due to the diverse ways the concept of non-ideal theory of justice has been used, some philosophers may disagree with the broad, all-encompassing role I am giving the term here. However, the main point to take home from the thesis is that *if* non-ideal theories are meant to be more able to guide action in the real world, *then* comparability and feasibility are necessary criteria.

The next chapter will cover a literature overview, in order to give the reader the context of the discussion at the moment. In chapter 3 I will show disagreements between the philosophers mentioned, and I will offer my own conception of non-ideal theories of justice. I will establish that, based on the motivation that gave rise to non-ideal theories of justice, namely the wish to influence real-world politics, two criteria are necessary. In chapters 4 and 5 I will cover these criteria, comparability and feasibility respectively, in more detail. Lastly, I will conclude.

## **Chapter 2: Literature Overview**

In order to put the reader in the context of the literature, I will first outline the views expressed in contemporary literature, including the 2009 book by Sen, and papers by three political philosophers who have contributed to the topic (Robeyns, 2008, Valentini, 2012, Gilabert, 2012). The views that are presented in this literature review are not always entirely

consistent with my own views (or with each other, for that matter). The purpose the literature review serves is to show a) the plurality of discussions associated with the label ideal vs. non-ideal theories of justice, and b) the overarching theme in all of these discussions of the ability of political philosophy to guide action in the real world. My views and disagreements will be discussed in the section after the literature review, and will be used to generate what I believe non-ideal theories of justice should offer, namely *a general framework to compare feasible social states with one another in terms of justice*.

## **2.1 Valentini (2012)**

In order to fully appreciate what is meant by non-ideal theory it is useful to distinguish between separate aspects of the debate. These separate aspects were composed by Laura Valentini (2012), and she claims that a lot of confusion in the literature stems from not keeping these different strands separate enough. She identifies the following interpretations of this debate:

### **i) Full compliance vs. Partial compliance theory**

The first interpretation relates mostly to the question whether we are expected to keep the same principles that are developed under the assumption that everybody else will comply with them in the real world, where this may not be the case. More specifically, ideal theory assumes “full compliance”, and asks what principles should be held when assuming everyone would comply with them. Non-ideal theory instead assumes “partial compliance”, and covers the question of which principles we should have assuming not everybody will comply with them. For example, Michael Phillips, argues that what is appropriate to the ideal world is not always appropriate to the real world. It may be the case that with full compliance, it is moral for us to do only our fair share to help the poor. However, if there is only partial compliance, it may be moral to do more than our fair share (Phillips, 1985).

### **ii) Utopian vs. Realistic theory**

The Utopian vs. Realistic theory debate can be described in two different ways: firstly, it asks the question whether feasibility constraints should matter at all in normative political theorizing. Secondly, if they should matter at all, it asks what type of feasibility constraints should matter. Regarding the first question, utopian theorists would argue that justice principles are completely independent of factual constraints. G.A. Cohen can be said to be an example of a utopian theorist, as he claims that theories of justice do not have to direct our actions, they only have to tell us how we should think (Cohen, 2003). As such, he criticizes

Rawls, who developed a principle for justice stating that inequalities may come about if they are to the benefit of the worst-off (1999), as this principle relies on the need for personal rewards as incentives. According to Cohen, such considerations should not be taken into account for justice. Justice would be one amongst other considerations, such as efficiency. Thus, for Cohen it is of no importance whether the principles a theory describes are realizable in the actual world. This is an example of ideal theorizing. Realistic theory, on the other hand, is the interpretation of non-ideal theory. According to realistic theory, political theory should be constrained by feasibility constraints, such as limited altruism and moderate scarcity. In turn, if one agrees that feasibility constraints should be taken into account, a following question is: which type of feasibility constraints exactly should be taken into account? While Cohen has criticized Rawls for being too sensitive to facts, others have criticized him for being too optimistic about human nature, as exemplified by his assumption of full compliance<sup>2</sup>, (this relates to what I will say about feasibility in chapter 5) and for not taking into account that individuals may disagree about what constitutes justice. I will claim that in the literature, the question surrounding feasibility has not focused enough attention on the epistemological issue, namely: how do we *know* what is feasible or not feasible?

### iii) End-state vs. Transitional theory

Finally, the third type of discussion is referred to by Laura Valentini as End-state vs. Transitional theory. Here, the focus is on whether a normative political theory should aim at identifying an ideal of societal perfection, or whether it should focus on transitional improvements in advancing justice or reducing injustice. Valentini frames Sen's comparative approach to fit into this discussion. Sen's comparative theory is described in detail in Sen's paper "What do we want from a theory of justice" (2006b). To summarize the gist of it: the comparative approach differs from what Sen refers to as transcendental approach, in that it does not require a completely worked-out theory before it can make judgments on how just a state of affairs is with respect to another one. Whereas the transcendental approach asks the question "What is a perfectly just society", the comparative approach would be concerned with the question "how do we reduce injustice or advance justice?" As such, the transcendental approach can only decide whether a society is just or non-just, but it cannot decide when a society is *more* or *less* just, which the comparative approach can do (Sen, 2006b). Moreover, Sen states the transcendental approach is not sufficient for us to make

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<sup>2</sup> This point shows how the first 'strand', as it has been laid out by Valentini, can be covered by this second 'strand'. This is why I will not discuss the first 'strand' myself.



comparative statements, as departures from spotlessness cannot be compared and ranked. Finally, he states it is not necessary to find an “ideal society” first in order to make comparative statements about what is more or less just. To illustrate this point, he uses as an example that it is not necessary to decide that Mona Lisa is a perfect picture, in order to decide whether a Picasso is better than a Dali (Sen, 2006b).

This section has shown us that several discussions can be placed under the ideal/non-ideal theory of justice debate. In all cases, the non-ideal aspect of the debate is concerned with an approach which is more suitable for guiding action in real-world politics. However, the different strands of the discussion have not always been kept separate, as can be seen later on in Ingrid Robeyns’s paper. I will now first cover Sen’s position in more detail.

## **2.2 Sen (2009)**

Part of the contemporary discussion around non-ideal theories of justice was sparked by Amartya Sen’s writings (despite his own reluctance to use the term non-ideal theory of justice). His book *The Idea of Justice* (Sen, 2009) portrays an elaborate discussion of the many aspects related to justice. One recurring theme is the discussion of transcendental justice as opposed to comparative justice. He argues against what he refers to as “transcendental justice”. This is a tradition in justice theory that emerged from the Enlightenment period led by Thomas Hobbes, and was practiced by the philosophers John Locke, Jean-Jacques Rousseau and John Rawls, where the focus of the investigation was to find the ideally just society (Sen, 2009).

Sen argues that establishing what is a perfectly just society is neither sufficient nor necessary in order to assess the comparative states of affairs. According to him, what we want from a theory of justice is to tell us how to compare states in order to advance justice or reduce injustice (Sen, 2006b). This is what he calls “the comparative approach” to justice, and it is the approach that is more in line with the tradition of Adam Smith, Jeremy Bentham and John Stuart Mill, amongst others. Sen has been criticized for offering an approach which is also unusable or unhelpful for comparing states of affairs (the capability approach) (Shapiro, 2011) and for not offering any other algorithm at all for settling trade-offs when comparing different alternatives that fall short of the ideal (Gilbert, 2011, p.7). On the first point, it is important to note that the capability approach, by itself, is not a fully-fledged theory of justice and thus is not supposed to provide answers to all of these questions. Rather, it provides the

space which a theory of justice could use in order to evaluate the well-being of people. On the second point, regarding the lack of an algorithm for settling trade-offs, I agree that not enough attention is being devoted to this very important point. A large part of Sen's comparative approach consists of a process of public deliberation to establish how to handle problems of trade-offs. However, I argue that too many of these questions are being left for public deliberation, which risks solving only the most trivial questions of justice. This point will be elaborated in chapter 4.

This section shows that Amartya Sen is mostly concerned with the question of what question we would want theories of justice to answer; the question "what is a just society?" or "how to advance justice/reduce injustice?". He suggests it is the latter question. He does not discuss issues concerning feasibility to a large extent. However, he does believe theories of justice ought to be more focused on advancing justice in the real world, and if this is the case, feasibility becomes a necessary condition, as I will argue in section 3.4.

### **2.3 Robeyns (2008)**

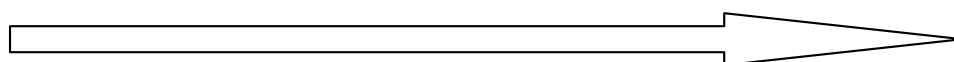
An attempt at defining the role of non-ideal theory of justice has been made by Ingrid Robeyns (2008). Her discussion helps frame the place of non-ideal theories of justice vis-à-vis ideal theories of justice and action design, and includes some useful points regarding feasibility constraints which will help in explaining my views of what non-ideal theories of justice should do. I will therefore briefly discuss the main relevant points of this paper.

Robeyns describes the process of moving towards real-world justice as going through several stages: (i) ideal theories of justice, where ideal principles of justice are developed (ii) non-ideal theories of justice, where these principles are further developed for non-ideal circumstances, (iii) action design, where feasibility constraints and unintended consequences are taken into account and (iv) implementation (p. 350). The two main tasks of non-ideal theory specifically are, according to her: to enable us to make comparisons between different social states (what Sen refers to as comparative justice) and to guide our actions to move closer to ideal society. Action design and implementation are two parts of a stage which is separate from non-ideal theory and they necessitate information on feasibility and unintended consequences, which demands empirical work from social scientists, going beyond the expertise of the political philosopher (Robeyns, 2008). She does not specify what exactly the feedback is between the social scientist and the philosopher with respect to feasibility constraints. As such, I do not know whether in her view political philosophers should take

into account the results of social scientists regarding feasibility constraints in order to develop their theory more realistically or whether they can develop theories independently of feasibility constraints and social scientists can then determine which course of action is actually feasible and which one is not. From the way she framed her discussion, it seems to me more intuitive that she meant the latter. I interpret this to mean that feasibility constraints are not yet part of non-ideal theory per se; they only become important once policies have to be designed in order to move to a more just society. I disagree with this relationship between feasibility and comparisons with respect to justice. I will elaborate on the different types of relationship there are between feasibility and comparisons in section 3.5. The graph in Figure 1 (below) represents my interpretation of her idea, of normative social justice passing through several stages (A-D).

**Figure 1**

<b>A.</b> Ideal theory of justice	<b>B.</b> Non-ideal theory of justice	<b>C.</b> Action Design	<b>D.</b> Implementation
Develop ideal principles of justice	Further develop principles for non-ideal circumstances. Make comparative statements with respect to justice. Guide action.	Social scientists establish feasibility constraints and unintended consequences	Policy (design and/or implementation?)



The main point of her appeal is to convince justice theorists that they have spent too little attention explicitly mentioning the idealizations made, and that their theories should be further developed into non-ideal theories. Furthermore, she emphasizes that much more work is needed on developing the definition of non-ideal theory.

In any case, Robeyns also considers the lack of relevance of political philosophers for real-world issues to play a considerable role in the rise of non-ideal theories of justice. She finds

that ideal theories of justice may describe what an ideally just society looks like, while not having anything to say about how to move in that direction from the world we live in. More work is required which describes the road to the ideally just society, what she refers to as the theory of transition. This includes the ability to make trade-offs between different valuable things in order to compare imperfect social states.

## **2.4 Gilabert (2011)**

Gilabert's paper on the question what our theorizing about social justice should aim at takes a slightly different route. Firstly, he disagrees with the contrast between transcendental and comparative approaches to justice as they are outlined by Amartya Sen. Instead of defining the two methods as different types of theory, he considers ideal and non-ideal theory of justice two parts of a "single, but internally complex, comparative assessment" (Gilabert, 2011, p.12). Gilabert stresses that while philosophers should engage with political feasibility constraints involved in implementation of their theories, he warns that philosophers should not shy away from theorizing about perfect justice. He outlines several reasons why theorizing about the ideal is useful for making comparative statements about justice. For example, developing an ideal of justice helps determine the relevant aspect of justice. But also criticizing the status quo (the world we live in) is an important role for philosophers; because of this, theories of justice should help identify long-term processes of justice enhancement in addition to short-term processes. They are supposed to inspire and motivate, and therewith expand political possibilities, instead of taking limitations as given, which in Gilabert's eyes risks cynical realism (as exemplified in Realpolitik). In his paper, instead of describing ideal and non-ideal theories of justice in terms of their respective roles, he proposes a broader approach to comparative assessments of justice. He outlines seven desiderata such an approach should have:

- D1: Pluralism: A theory of justice should acknowledge that there is a plurality of impartially plausible grounds of justice.
- D2: Action guidance: A theory of justice should be fit for guiding action in the real world.
- D3: Theoretical feasibility: A theory of justice should not claim to demonstrate what it cannot demonstrate.
- D4: Theoretical ambition: A theory of justice should seek comparative assessments involving as much depth and breadth as it is reasonably possible to achieve.

- D5: Dimensions of a conception of justice: A theory of justice should distinguish between principles, their implementation, and the political processes leading to implementation.
- D6: Practical ambition: A theory of justice should help envisage long-term besides short-term processes of justice-enhancement.
- D7: Political feasibility: A theory of justice should help propose reforms that are politically feasible.

(Gilabert, 2011, p. 11).

Furthermore, on the issue of feasibility constraints, he emphasizes that different feasibility constraints apply depending on which dimension of justice one is covering. For the core principles of justice, less narrow feasibility constraints should be adopted. When speaking of practical implementation, some more stringent feasibility constraints should be considered, and even more stringent feasibility constraints have to be considered once the actual political processes are set in motion. This seems to bear some similarity to Robeyns's different stages of normative social justice theory, where ideal theory demands less strict feasibility constraints than later stages such as action design and implementation. As I will show, also in my thesis more stringent feasibility constraints start to apply as we move closer to implementation.

To conclude the literature overview, Gilabert (2012) just like Valentini (2012), Sen, (2006b, 2009), and Robeyns, (2008), argues in favor of a more real-world oriented approach to theorizing about justice. Among his desiderata, he outlines that theories should take political feasibility into account, and be fit to guide action in the real world.

### **Chapter 3: What do we want from non-ideal theories of justice**

In this chapter I will first outline difficulties in defining non-ideal theories of justice. Firstly, there are points of disagreement in the literature concerning the nature of non-ideal theories of justice. Secondly, there are different dimensions according to which a theory can be ideal or non-ideal, as is shown by Laura Valentini (2012). In order to develop a concept of non-ideal theories of justice, I will specify the motivation which gave rise to the literature on non-ideal theories of justice in the first place, and from this, I will outline what the aim of a non-ideal

theory of justice ought to be. Subsequently, I will offer two necessary conditions which must hold, based on the aim that has been outlined.

### **3.1 Disagreements**

There seems to be quite some tension between the different scholars. Firstly, while Ingrid Robeyns presents the stages of ideal theory and non-ideal theory to be separate, Pablo Gilabert presents the relationship of non-ideal theories of justice and ideal theories of justice as slightly more complicated; he regards the opposition between the two as artificial and sees them as two components of a “single, internally complex, comparative assessment” (Gilabert, 2012). My own perspective will be somewhere in between these two views; in contrast with Gilabert, I will attempt to separate non-ideal theories of justice from ideal theories of justice, instead of describing a broad approach where the two types are hard to separate from each other. However, I will also not agree with Robeyns’s view of the process of normative social justice (as I have described it), as I will argue some type of feasibility constraints have to limit the social states that are to be compared in non-ideal theories of justice, instead of in the stage of action design. My position on the relationship between feasibility and comparisons is elaborated in section 3.5.

It is also important to point out an apparent difference in the terminology; where Valentini uses “transitional theory” as interchangeable to Sen’s “comparative theory”, A J Simmons points out a difference between the two. Where the transitional approach can be seen as an integral part of the process of moving towards an ideal, the comparative approach as outlined by Sen does not need an ideal to move towards (Simmons, 2010). It is instead a piecemeal approach of comparing social states with each other. These two interpretations can mean very different things depending on whether transcendental theorizing is taken to be necessary, or at least helpful, also for making comparative statements about social states (which is the task I ascribe to non-ideal theories of justice). While Amartya Sen believes ideal theory to be of “no direct relevance” for the task of comparing social states (Sen, 2009, p. 17), many other theorists (e.g. Gilabert, 2011, Robeyns, 2008, Valentini, 2011) see ideal theory as a useful (or even necessary) tool also for guiding non-ideal theories. The discussion of whether transcendental theory is necessary for making comparative statements or not is an important one, but it is not the main project of this thesis. Some authors grant that while the identification of transcendental justice is not strictly necessary for comparative statements of justice, theorizing about perfect justice still has an important role to play in its own right (e.g.

Gilabert, 2012). I will remain neutral on the point of whether the comparative approach to justice is dependent on an “end-state” of justice, as Valentini calls it. Therefore, I believe Sen’s terminology of “comparative” and “transcendental” justice to be more appropriate, as this terminology allows for neutrality in this debate. This is the terminology I will henceforth use in my thesis when discussing this topic.

Interestingly, despite the fact that Sen’s name often appears in the ideal/non-ideal theory literature, he does not use this particular terminology much himself. According to Sen, ideal theories of justice and non-ideal theories of justice cover only one question, namely the point that not everybody might comply with the principles that are set (which in Rawls’s principles is assumed). However, he stresses that all other points he raises against Rawls’s approach to theories of justice (including the comparative approach vs. the transcendental approach) should *not* be included in the ideal/non-ideal debate (Sen, 2009, p.90). These words of caution were however not taken into account in the recent literature on non-ideal theories of justice (Robeyns, 2008, Hamlin & Stemplowska, 2012, Valentini, 2011), and by now they have become an integral part of the discussion. In addition, the way I will describe the aim of non-ideal theory (under section 3.4), it will become clear that the ability to make comparative statements is a key ingredient, or so I will argue.

### **3.2 Two dimensions of non-ideal theory**

Following the literature, there is difficulty in answering the question of whether a particular theory is ideal or non-ideal. This is because the discussion of ideal vs. non-ideal theories of justice can take up completely different dimensions. These different dimensions accommodate the possibility of a theory of justice being ideal in one interpretation, and non-ideal in another interpretation. Three strands are presented by Laura Valentini: Full/Partial Compliance; Fact-sensitivity/fact-insensitivity; comparative/transcendental approach. As I describe the discussions, the second strand can be reduced to the first strand; I believe the assumption of full compliance to be insensitive to facts whereas partial compliance is more sensitive to facts. Thus, two questions remain: do feasibility constraints apply, and do we make comparative statements about justice or a transcendental statement? These cannot be reduced to each other, as I will show. Thus a theory can be “ideal” in the sense that it does not take feasibility constraints into account, but “non-ideal” in the sense that it makes comparative statements. I will refer to these two strands as being different dimensions of a theory of justice, and I will elaborate on each dimension now.

For clarity, figure 2 shows how the dimensions intersect. The first dimension (in the top row of the graph) asks: “what question do we want a theory of justice to answer?” This question could be answered with “what is a just society” (in the case of transcendental approach), or “what advances justice/reduces injustice?” (in the case of the comparative approach).<sup>3</sup> This dimension covers two ways to evaluate social states with respect to their *moral desirability*. Both questions ultimately deal with making statements about justice; the only difference is that they have different methods of answering this question. The former question takes the concept of a just society to be dichotomous – a just society is either just or it is not just. The latter question takes the extent to which a society is just or not to be a matter of degree. I will elaborate on this evaluative aspect in chapter 4.

The second dimension (in the left column of the graph, Figure 2) covers the question: “how does the theory respond to facts?” Two answers to this could be that it disregards facts (in the case of fact-insensitive theories) or that it takes facts into account (in the case of fact-sensitive theories). Fact sensitive theories cover feasible social states. This dimension is not concerned with moral desirability, but with positive theory and empirical data determining what is *feasible*. Fact-insensitive theories of justice are those that need not await the answer to this question, whereas fact-sensitive theories of justice do respond to them. I emphasize that they are different dimensions because I wish to discuss each question independently. The graph below (Figure 2) shows how these dimensions may intersect.

**Figure 2**

	Transcendental (ideal)	Comparative (non-ideal)
Fact insensitive (ideal)	Transcendental Utopian (Cohen?)	Comparative Utopian (Sen?)
Fact sensitive (non-ideal)	Transcendental Realistic (Rawls?)	Comparative Realistic (Sen?)

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<sup>3</sup> This is not an exhaustive list. These are merely the questions I will cover.



The insertions of philosophers in the above table are tentative and may differ depending on who you ask. The main point to take home from the figure is that it shows the difficulty in defining a theory as being ideal or non-ideal. Hamlin and Stemplowska mention that neither fact-sensitivity nor comparability holds the key to ideal/non-ideal status. (Hamlin and Stemplowska, 2012). While Sen is clearly in the “comparative” field when looking at the “comparative vs. transcendental” discussion, his ideas have been criticized for not being realistic (Stewart & Deneulin, 2012). Arguably, it is also possible to have a theory which is transcendental, but fact-sensitive. John Rawls is placed by Sen in the transcendental field.<sup>4</sup> This could lead one to believe John Rawls’s book “A Theory of Justice” is an example of ideal theory. Yet some authors state that Rawls is too sensitive to facts in his book “A Theory of Justice”, as G. A. Cohen does in “Facts and Principles” (2003). Indeed, in chapter 22 of “A Theory of Justice”, Rawls outlines several conditions of justice that are realistic, such as limited altruism (Rawls, 1999). This makes him an ideal theorist in the sense of being focused on the perfectly just society, but a non-ideal theorist in the sense that he is sensitive to facts. Strictly speaking, it is also plausible to have a theory which is comparative but fact-insensitive, and thus non-ideal in the former respect but ideal in the latter.

What I will do in the remainder of this chapter is establish what I believe to be necessary ingredients for a theory of justice to be non-ideal. In order to determine this, I will first establish why non-ideal theories of justice rose to prominence in the first place. I will refer to this as the *motivation* for the emergence of the concept of non-ideal theories of justice, as it is being used in contemporary literature. Thereafter, I will develop the aim of non-ideal theories of justice based on this motivation. From the aim of non-ideal theories of justice, necessary conditions can be established.

### 3.3 Motivation

This section will indicate the motivation behind the rise of non-ideal theories of justice. From this, I will argue what the aim of non-ideal theories of justice should be, and therewith what the necessary conditions should be.

A common recurring theme in literature related to non-ideal theories of justice is for political philosophy to be able to guide action in real world politics. This particular motivation has

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<sup>4</sup> It must be noted that the description made by Sen of transcendental approach is heavily stylized, and even Rawls may not agree with it as it has been presented (Gilabert, 2012). What I will refer to as transcendental approach is simply that the theory is addressing the question “what is a just society”, as opposed to “what is *more or less* just”.

appeared in the literature on several occasions, as has been shown in the literature review. I will now offer some obstacles which may prevent political philosophy to have an effect on real-world politics. From these obstacles, I will generate necessary conditions for a theory which aims to influence real-world politics.

One reason a theory would be unable to influence politics is that it is *not responding to facts of nature*. Principles which are developed in an ideal world are not immediately applicable to a non-ideal world, as is argued by Michael Phillips (1985). If the principles that are developed are suitable only for a world which is unrealistic, it will not be at all helpful for showing us what to do in this imperfect, realistic world.

Another reason a theory may be unable to influence real world politics is if it only states what *the perfectly just* looks like. Even assuming a perfectly just society exists, and assuming this society to be completely sensitive to facts, we are probably going to be unable to leap from the current world to this perfectly just society. We may not know how to reach this society, and if a theory only tells us what the perfectly just society looks like we do not know how to compare those societies that fall short. If we did know of ways to reach this society, we would not know which way towards this society would be more just than the others. Thus, theories that are focused on the perfectly just society will be unhelpful at guiding action.

### **3.4 Aim**

I argue that if we want non-ideal theories of justice to bypass these obstacles mentioned above, namely fact-insensitivity and non-comparability, we want non-ideal theories to offer us:

*A general framework to compare feasible social states with one another in terms of justice.*

This task has several key features:

1. A general framework
2. Ability to compare social states in terms of justice
3. Social states must be feasible

I will discuss items 2 and 3 in chapter 4 and 5, respectively. I will not claim these features are jointly sufficient for guiding action; other ingredients may have to be added as well, such as rules of implementation. I do aim to argue for their necessity. I will now elaborate on what I

mean with “a general framework”. What I wish to avoid is a theory of justice which is applied to a certain context specifically, and cannot be used for other contexts. I wish to set up a notion of non-ideal theories of justice, which can be further adapted for any country’s more specific contexts.

The task I described is, as far as I see it, consistent with Robeyns’s view. It may seem to diverge from her as she ascribes a dual task to non-ideal theory, namely of (i) comparing social states and (ii) guiding action. However, she does not specify on what distinguishes the task of comparing social states from the task of action guidance, and I consider them to be one and the same. In other words, I consider the task to be the comparison of social states *in order to* guide action. It is also consistent with Valentini’s view of what a non-ideal theory of justice should do, namely to offer a flexible framework for comparing social states across different contexts, which is in turn consistent with Sen’s view. Later in the thesis, I will add to this task that the social states that are to be compared should also be *known to be feasible*. I will elaborate on this in chapter 5.

I will now argue why, in order to overcome the aforementioned obstacles, both comparability and feasibility are necessary conditions.

### Comparability is necessary

I argue that the comparability criterion is a necessary condition for non-ideal theories of justice. With comparability, roughly, I mean the ability to rank social states with each other in terms of justice. This criterion can take two forms among those who advocate it for the use of non-ideal theory, as there is disagreement about whether the broader exercise of justice demands both transcendental justice and comparative justice, or whether comparative justice can exist independently of transcendental justice. On the question of the necessity or not of transcendental theory for making comparative statements, one can take two stances: Either we do not believe transcendental theory is necessary, or even particularly helpful at making comparative evaluations about justice (this is the stance Amartya Sen takes), or we do need a transcendental theory to strive towards (which is more consistent with Ingrid Robeyns, Pablo Gilabert and Laura Valentini). I will argue that whatever stance one takes on this question, the comparability criterion is a necessary condition.

I will first handle the former case, where the identification of an ideal end-state is not considered to be helpful at making comparative judgments with respect to justice, which in

turn is the very goal of (non-ideal) theories of justice. This is the view expressed by Sen (2006b). According to Sen, theories of justice ought to tell us how to remove current injustices, in order to move to a more just social state. As soon as such a theory of justice fails to make comparisons of social states and evaluate which social state is more favorable in terms of justice than the current one, it fails at the very goal ascribed to it. We would not know whether another social state we could move to is more just or less just. Thus, comparability is a necessary criterion.

However, some of the proponents of non-ideal justice believe in an ideally just society that we should strive towards. Ingrid Robeyns refers to this as ‘Paradise Island’, and non-ideal theories of justice are to guide us on our way there. Pablo Gilabert warns against philosophers being satisfied with the good, or the better, instead of striving for the best, and Laura Valentini also insists that we *do* want to know what the ideal society is. Where Amartya Sen argues that we do not need to know the ideally just society in order to know that slavery is an injustice, she counters by saying that even if we eradicate slavery, we still need to know what perfect justice entails in order to deal with all other such issues. In all these cases, the final goal may be ideal theories of justice. However, they are also all aware that, granting the existence of ideal justice, and human being’s capacity to determine this, we may not know how to reach it (yet). In such a case, if we want to guide action, we would need to evaluate which of the social states that fall short of perfection is more just. Alternatively, there may be several paths towards the perfectly just society. In such a case, in order to reach an ideal state, we need to determine which path towards it is *more just* than another path towards it. In any case, a method of ranking those social states that are imperfect is necessary in the real world, even if we believe the end-goal to be the identification of a perfectly just society.

Thus, no matter whether one believes in the necessity or usefulness of theorizing about the ideally just society, one needs a method of evaluating states that are imperfect, and determine which one is more just. Hence, non-ideal theories of justice need to be able to compare social states. There may still be some ambiguity around the term *comparability* so far. What does it mean exactly to be able to compare social states with one another? Does a theory need to provide a full ranking of all possible social states? These questions will be answered in chapter 4. The chapter will also cover issues regarding the method of comparing, in order to see that future research is still needed for this.

### Feasibility is necessary

Since one of the salient reasons for the discussion to come about in the first place is the frustration of political philosophers with the apparent lack of influence on real-world politics (Valentini, 2012), it seems crucial to include the “feasibility” criterion, in order to ascertain that the theory is built on plausible assumptions, and the principles it proposes are feasible. Feasibility is necessary, roughly, because “ought implies can” (Kant, 1998). If a theory of justice aims to be normative at all (which is the only type of theory of justice I will cover in this thesis) it cannot cover social states, which are beyond the reach of access. An addition I will make to the criterion of feasibility in non-ideal theories of justice is a distinction between social states that we know to be feasible, and social states of which we are not certain whether they are feasible or infeasible. I aim to argue that non-ideal theories of justice should cover only the former. However, I will elaborate on this in chapter 5.

### **3.5 Relation between fact and principle**

As I will discuss comparability and feasibility separately, it is useful to first discuss how I imagine the two of them to be related to each other, as there are multiple ways of interpreting how feasibility constraints should apply to theories of justice. One possibility is that theorizing about justice occurs firstly in a fact-free world, and is purely evaluative (that is, it expresses only moral desirability). Afterwards, facts and feasibility issues can be combined with this evaluative exercise in order to make normative statements. This is akin to what Cohen seems to believe theorizing about justice should look like (Cohen, 2003). Another way of theorizing about justice is to be constrained from the start by certain feasibility constraints. Thus, the social states that would be evaluated in terms of justice are in a set of feasible social states. However, if the theory is to be general, and needs to be applicable anywhere in the world, the feasibility constraints should not be context-dependent. Thus, the only feasibility constraints that are to be taken into account would be feasibility constraints anywhere, at any time. Finally, it could be that a theory wants to take context-dependent feasibility constraints into account, but then it cannot be a general framework but it would have to be specific to the situation.

Since I would like to develop a general approach, as explained in section 3.4, I will not be concerned with the third view. Furthermore, because the purpose of non-ideal theories of justice is to guide action it would not make sense for the theory to make judgments about social states which are unfeasible. Therefore, I will take the relationship between feasibility

and comparability as follows: comparative judgments are made about a set of feasible social states. This way, once a set of feasible social states has been identified, the exercise of making an evaluative ranking no longer needs to be concerned with empirical data. I will elaborate on the method of finding feasible social states in chapter 5.

## **Chapter 4: Comparability**

Before I delve into the finer details of comparability, it is worth emphasizing that the criterion of comparability refers to the purely evaluative role of a theory of justice.

### **4.1 Evaluative role**

With “evaluative role” I mean the role of evaluating social states in terms of moral desirability, taken separately from other, more practical considerations. An example may illustrate what exactly I mean with this distinction. Imagine we are in social state A, and have to consider whether to go to social state B or C. Now also consider that C has a considerably higher chance of being reached. In this chapter, the fact that C has a higher chance of being reached will not contribute to how it compares. This chapter will be limited solely to evaluating justice in terms of moral desirability, and thus the fact that C has a higher probability of being reached will have no effect on how it scores in terms of justice.

An evaluative role with respect to justice can take different forms; it can either take a binary approach, where a theory determines whether something is just or not just, or it can take a scalar approach, where a theory determines what is more just and what is less just. The transcendental approach to justice takes a binary approach, whereas the comparative approach to justice takes a scalar approach. As I have mentioned in previous discussion, I take the ability to compare social states as a necessary criterion for non-ideal theories of justice. This chapter will describe what it means for a theory to be able to compare, and will outline necessary and sufficient criteria which can determine whether a theory of justice is able to compare social states.

Before going further, I will spare a few words on certain conditions of moral reasoning. Many would agree that the nature of truth in morality is more complex than the nature of truth in the sciences. Among moral philosophers there are widely diverging views and perspectives. I do not have the space to enter into a large meta-ethical discussion about the nature of moral truths, but I do wish to elaborate on certain minimal criteria that would have to be satisfied in

moral reasoning, no matter what conclusions one arrives to in the end. These conditions should make moral reasoning as objective as reasonably possible. I will therefore start by introducing necessary criteria for any evaluative approach, whether it takes the transcendental or the comparative route. Subsequently, I will introduce the comparative tradition and how it came about. Thereafter I will specify what is meant by having the ability to compare social states.

## **4.2 Necessary criteria for evaluating justice**

I will delineate some necessary components of the evaluative aspect of justice theory, no matter whether it is about transcendental justice or comparative justice. This will help in establishing whether a theory of justice is comparing social states in an appropriate manner.

Firstly, a theory of justice should be based on impartial reasoning. No principle or social state can be said to be just due to an advantage conferred upon whoever asserts it to be just. This condition is relatively uncontroversial, although it takes several different forms. John Rawls refers to the “original position”, where everybody of a certain society is behind a “veil of ignorance”, lacking the information of which position they will take up in society. As such, a contract that is determined based on these conditions will be free of personal bias and thus impartial (1999). Adam Smith has a slightly different approach, namely by imagining an “impartial spectator”, which is not part of the society in question, in order to make sure one is not subject to parochial bias. Amartya Sen takes inspiration from Smith by distinguishing between “open impartiality” and “closed impartiality” to allow for voices from outside a focal society (in the former case) as opposed to focusing only on voices within one society (Sen, 2002). As I will use it, impartiality will mean that no individual or group of individual is to have more weight in considerations of justice for arbitrary reasons.

A further condition for the evaluative approach (which is closely related to the previous but not identical) is that evaluation is universal. In other words, principles of justice should not apply to some people and not to others without justificatory reason. Universality can take two different forms: universality within one society, and universality between societies. With the former I mean that if a theory determines a principle to be just, it should be so for all of the society and not a select few. For example, the American Revolution was supported by Edmund Burke for its emphasis on freedom of American citizens. However, Mary Wollstonecraft at that time criticized it because freedom was not extended to the entire

population, (to be specific, not to African Americans). The evaluation of justice should not distinguish differently between people based on arbitrary reasons. When I say there should be universality between societies in evaluation I mean that evaluation should not differ between countries due to a different culture. I do not mean to enter a debate in this essay about moral universalism against moral relativism, as this falls beyond the scope of this thesis. It will instead be an assumption that the evaluation in terms of justice should be independent of culture or tradition. Having said this, this assumption bears a similarity to what has been said by theorists in the discussion; namely open impartiality advocated by Amartya Sen, which is meant to avoid parochial bias. In his book he also mentions that Mary Wollstonecraft wrote that it is in the very nature of “justice” that it has a universal reach, and is not only applicable to the problems of some people (Sen, 2009, p.117). In addition, Gilabert and Lawford-Smith explicitly mention that somebody’s culture should not be a trumping excuse to refrain from a given principle of justice (Gilabert & Lawford-Smith, 2012). In any case, I grant that this assumption may not be entirely uncontroversial or agreed upon amongst philosophers.

This section has given two necessary criteria which the act of evaluating social states must live up to. As I mentioned, the evaluative aspect of theories of justice can be either transcendental or comparative, and thus the criteria apply to both. It is important to keep these criteria in mind in order to evaluate whether a non-ideal theory of justice is comparing social states in an acceptable manner. I will now introduce the comparative tradition.

### **4.3 The comparative approach**

The comparative approach as a tradition can take many different forms. Amartya Sen separates Smith, Condorcet, Wollstonecraft, Marx and Mill as thinkers who fell in line with this tradition, although these thinkers may have had ideas which were very different from one another. What unites them, however, is an emphasis on removing injustice and abstaining from the attempt to answer the question of a perfectly just society. For example, Smith, Condorcet and Wollstonecraft were active in presenting the perspective of slavery being unjust, but they were not relying on a completely worked out theory of justice to argue for this, nor did they expect the world to be perfectly just once slavery was abolished (Sen, 2009). In contrast to the transcendental approach, the comparative approach relies on the idea that not all questions have to be solved in order to solve some questions. If the purpose of a theory is to find a perfectly just society, every question with respect to justice has to be solved. For comparative questions, individual aspects can be covered; for example, the issue of women’s



rights can be covered without determining whether taxation is just or unjust. According to Sen, there is no need to opine on every possible comparison, and instead the main questions that should be covered are those that can be reached with personal and public reasoning. Public reasoning plays a very large part in Sen's account for comparing social states, as I will show further on in this chapter.

#### **4.4 Completeness and incompleteness**

In chapter 3 I have established that a non-ideal theory of justice should be able to make comparative statements when evaluating justice. A more elaborate discussion is needed of what exactly is meant by having the ability to compare social states. This section will address limitations involved in this task.

As I mentioned in section 4.3, evaluating social states with respect to justice should be based on impartial reasoning and the conclusions should be universal. However, this is quite a minimal framework and a large diversity of conclusions can be made while satisfying these conditions. In other words, there can be a plurality of impartial reasons which would guide one in different directions. This point has been extensively made by Amartya Sen in "The Idea of Justice" with the help of an example. Sen describes an example where three kids all want a flute; the first kid is the one who made it, the second kid is the poorest and the third knows how to play it and thus would gain most happiness from it. Libertarians, egalitarians and utilitarians, reasoning from three respected, impartial theories in their own right, would not come to an agreement on who should get the flute; the libertarian may argue the first kid deserves it on the ground of enjoying the fruits of one's labor, the egalitarian may argue the second kid deserves it so the resources are distributed more equally and the utilitarian may argue the third kid deserves it on the grounds of maximizing happiness (Sen, 2009). Ian Shapiro reviewed Sen's book the Idea of Justice, and criticized him on the ground that Sen's own proposed theory of justice (the capability approach), did not offer any guidance in who the flute should go to (Shapiro, 2011). However, this misses the point Sen wanted to make with the example. What Sen wanted to convey is precisely that there are situations where no evaluative ranking can be made with a theory of justice. This is because there is a plurality of views on justice that can be accepted as *impartially reasonable*. If two social states can both be defended on impartial grounds they are incomparable. In contrast to alternative methods to compare social states that I will shortly discuss, Sen does not believe one method can trump

all others. The main point to take home is that based on the minimal standards of impartiality and universality, a large diversity of methods could emerge.

Based on this, it is argued by Sen that we should not require *completeness*. In other words, we do not need to be able to compare each and every social state with each other, as this can safely be said to be infeasible. Sen argues for this by showing that purely impartial reasoning can be applied to a situation to determine the just outcome, where different outcomes cannot be compared in terms of justice. However, as I will argue, we should also not want *complete incompleteness*, as this is useless.

Some incompleteness must not be a problem, as there are still situations where agreement can be reached. We do not need a fully worked out ranking of evaluations to decide that persistence of endemic hunger or exclusion from medical access is a social injustice (Sen, 2006b, p. 224). He states that often a complete ranking is not feasible, but this should not stop us from taking action against clear injustices. His preferred approach of comparing social states is what he calls “maximization”. This should not be interpreted as having to choose the *best* alternative, which would better be defined as “optimization”. Maximization, on the other hand, demands that an alternative is selected to which there is none better. Thus, if there happens to be incompleteness such that, for example, A and B cannot be compared to each other, but they are each better than all other alternatives, maximization would imply that either A or B is chosen (Sen, 2000).

Sen has also stated, however, that while allowing for incompleteness, we should strive to get rid of incompleteness as much as possible (2004). This particular point deserves some additional emphasis: a theory of justice should be as ambitious as possible in being able to evaluate two social states; even in cases where social states A and B are both preferable to the world we live in, if a theory could tell us which of the two is more just it should do this. We should want it to offer more than simply a set of options that are more acceptable than the status quo. We should also want several options, which are all better than the status quo to be ranked relative to each other. As Pablo Gilabert puts it, while it is true we should not let the best be the enemy of the good, we also should not have the good be the enemy of the better (Gilabert, 2011). In other words, we do not want complete incompleteness.

What to make of this when evaluating a non-ideal theory of justice on its ability to compare? It seems dangerous to be too tolerant towards excessive incompleteness, as in such a way, a non-ideal theory of justice can never really be said to fall short of its aim. To show this: whenever the theory is confronted with two social states it cannot compare, this could be said to be due to its incompleteness. If we want a non-ideal theory of justice to have the ability to compare social states, it should be able to do this wherever possible. In order to evaluate whether a non-ideal theory of justice is appropriate, there should be a way to separate the non-ideal theories of justice that are unable to compare social states due to the incomparability of the social states, from the non-ideal theories of justice that are unable to compare social states due to having some flaw.

While allowing for incompleteness, I would like to re-emphasize that there are still some necessary criteria that a process of evaluation should satisfy, namely impartiality and universality. As such, an unacceptable reason for incompleteness is when it is due to biased reasoning. For example, if a process of public deliberation is unable to compare the status quo with a social state with more rights for lower-class people, simply because the elites of that society would prefer to have more power for themselves, this ought not to be an acceptable form of incompleteness. This is because the incompleteness does not result from impartial reasoning but from an arbitrary allocation in power. This relates to the earlier point I made that for any theory of justice, the evaluation of justice has to be impartial.

In his 2004 paper “Interpersonal Aggregation and Reasoned Choice”, Amartya Sen makes a separation between tentative incompleteness and assertive incompleteness. Tentative incompleteness is incompleteness that awaits resolution, and could be resolved with deeper analysis. Assertive incompleteness, on the other hand, means two options simply cannot be compared, and also should not be compared (Sen, 2004). Thus, if a theory of non-ideal justice is unable to compare two social states, it should only be admissible if this is due to assertive incompleteness.

The point of this section has been to establish how to determine whether a theory has the ability to compare or not. There are occasions where even a good theory is unable to compare social states. However, incompleteness should only be allowed if it is not due to biased reasoning and when enough information has been gathered.

## 4.5 Method of comparing

While alternative methods of comparison exist, Sen shows with his flute example how he believes none of them can have trumping priority over all others. The methods of theorizing about justice have all been criticized in some way or another. His approach is largely dominated by public scrutiny and deliberation. Through public deliberation, he hopes that those social states which are obviously unjust get identified, without fretting too much about those social states which cannot be ranked relative to each other. In this thesis, I will not have space to rigorously analyze all alternative methods of comparison. Instead, I will focus on Sen's comparative approach, considering he is one of the main proponents of this approach to theorizing about justice. In addition, it is the theory that acknowledges the plurality that may emerge from purely impartial reasoning and is willing to make statements on only those situations that are clearly unjust. However, I aim to show that even his approach, which is supposed to overcome the obstacles ascribed to other theories, has other deficiencies.

As I mentioned, while comparability is a necessary criterion, current literature on the topic has some shortcomings which require further investigation. In this section, I will discuss the method of comparing social states (How is it decided that A and B are both better than all other alternatives<sup>5</sup>?). I will not be able to discuss everything that has been said on comparing social states with respect to justice, but I will focus on Amartya Sen's writings which indicate how he believes social states are to be compared. This is because he is one of the main advocates of the comparative approach in theorizing about justice, and he admits to the plurality of views which may emerge from impartial moral reasoning. Firstly, in order to see what type of input is required in order to make comparative judgments in terms of justice, it is helpful to discuss the "ingredients" of a method for comparison. I will separate two different aspects of a method of comparison: the *space* and the *social function*, as I will call them, in order to facilitate discussion. Keeping this distinction in mind, I will briefly introduce prominent views in political philosophy: utilitarianism, egalitarianism and libertarianism. I am afraid in the space I have I cannot but offer an oversimplification of each of these views, but it will be helpful to see where impartial disagreement may emerge. For each aspect I will elaborate on Sen's views. I will not personally comment on which *space* or which *social function* I believe to be the most appropriate; what I hope to show is that even in the work of one of the most active proponents of the comparative approach (Amartya Sen), many

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<sup>5</sup> This questions is how Sen describes *maximization*, as a preferable approach to *optimization*.

questions remain unsettled with respect to how to compare social states. I believe that while Sen avoids the mistake of ignoring the plurality of views that can emerge, he risks not being able to make any comparative judgment at all, except for trivial cases. As such, in the last section I will show how his discussion is incomplete in both of these aspects, and a fuller description is needed for the comparative approach to be fruitful. The main point is that while having the ability to compare social states is a necessary ingredient of non-ideal theories of justice, a full method of comparing social states requires further work.

An essential aspect of Sen's comparative approach is that according to him, not everything is to be determined philosophically; there are parts of a theory of justice which are to be determined by public deliberation. I will aim to show as accurately as possible which parts he believes should be determined in public deliberation.

#### **4.5.1 Two aspects of a method of comparison: “space” and “social function”**

I will first separate different aspects of a method of comparing social states, including the methods that are generally used in other theories of justice. Generally, methods of comparing social states make use of two different “inputs”, on which disagreement may exist: The first is the “space”; the metric of justice for each individual, and the second is the “social function” (as I will refer to it), that takes the evaluation of individuals and determines from this which social state is better.

##### ***Space***

Regarding the first issue of the space, there is a high diversity of suggestions by philosophers and economists. Utilitarians believe we should look at so-called utilities, though this may mean different things to different types of utilitarians. Classical or hedonistic utilitarians (such as Jeremy Bentham, John Stuart Mill and many others) believe a person's happiness is what matters for individual evaluations. More recently, utilitarians tend to shift away from this thought and instead focus on the degree to which a person's preferences have been satisfied (Harsanyi, 1976). In his book “A Theory of Justice”, John Rawls proposes we look at primary goods as a metric of justice, instead of utilities (Rawls, 1999). Capability theorists such as Amartya Sen and Martha Nussbaum argue that we should evaluate people's metric of justice based on the capabilities people have: the real opportunity individuals have to do or be that which they have reason to value (Sen, 2009, Nussbaum, 2003). Libertarians (or specifically, Nozick) give priority to the liberty of people, but they may not tolerate trade-offs in these liberties (Nozick, 1974). Some types of “space” have the characteristic that everything can be

reduced to one metric. For example, many economists believe all well-being can be reduced to “utility”. This method would allow us to subsequently simply pick the option which scores highest on this metric. Other metrics (such as Sen’s capabilities), are non-commensurable, which means they are irreducibly diverse. Sen believes capabilities cannot be reduced to each other. In fact, he strongly opposes any method which pretends that all good things can be reduced to each other, and finds that there are ways to make comparisons other than simply being required to count (Sen, 2004). There can be a large set of valuable features which are diverse and cannot be reduced to one another. Sen states that non-commensurability is not a problem for decision making, as long as there are *clear* weights or priorities assigned to different valuable features (Sen, 2004, p.44). In “The Idea of Justice”, he further posits that the weights need not be unique. Even a broad range of not fully congruent weights can yield guidelines that help establish certain social states to be unacceptable. For example, unique weights of priorities are not necessary for determining that slavery is detrimental to justice (Sen, 2009, p. 243). These weights are to be reached through personal and public reasoning.

It is helpful to distinguish what Sen believes should be determined by the philosopher and what should be determined by public deliberation. He believes capabilities should be the relevant metric of justice (2009). Thus, this is not something he believes public deliberation should decide upon. However, even here he is not willing to subscribe to the view that capabilities should be the only space where equality matters. In addition, we have to consider economic advantage, resources, utilities and achieved quality of life (Sen, 2009, p. 297). Moreover, Sen agrees with Rawls that some priority should be given to personal liberty. He disagrees with the extreme extent Rawls argues for, as he gives personal liberty lexicographic priority (Rawls, 1999). Sen does think personal liberty may be curtailed in order to prevent severe harm to others’ capabilities, and believes that “the exact extent of priority that may be given, in a particular case, to personal liberty would certainly be a good subject for public reasoning” (Sen, 2009, p. 300). In addition to this trade-off, I will show many trade-offs to be left open for a process of public deliberation to decide upon.

Sen does not want to determine how different capabilities should be weighed against each other, in order to determine which should weigh more heavily when there is a conflict of different capabilities. He also does not want to make a list of capabilities that matter. These decisions are to be made through public deliberation. In contrast, Martha Nussbaum described 10 specific basic capabilities that people should have (Nussbaum, 2003). Robeyns criticized

Nussbaum, as her theory does not describe how to judge one situation to be more just than another (Robeyns, 2008). Interestingly, the same could be said about Amartya Sen, or even to a higher degree, for in his version of the capability approach he refrains from specifying on basic capabilities at all. Amartya Sen has distanced himself from Nussbaum's list, stating he wanted to leave the specification of a list to the public (Sen, 2006a). At least, by specifying on ten basic capabilities, Nussbaum makes a claim that these ten should weigh more heavily than others that are not included. According to Sen, there have been suggestions that his lack of specification on basic capabilities makes his approach not usable (Sen, 2009, p. 242).<sup>6</sup>

To sum up: Amartya Sen believes the metric of justice should be related to the capabilities each individual has. How these capabilities are traded off against each other is less clear and according to him should emerge from a process of public deliberation. He also believes personal liberty is important, but the extent to which it should be prioritized should be discussed in public deliberation. He does not believe any metric of justice can have trumping priority over all others. As such, he does not think personal liberty should be protected at all costs, for example in the face of risking huge famines. In "Development of Freedom" (1999) Sen explains that each of the traditional theories of justice has its merits, but none are without limitations, which he wants to acknowledge (Sen, 1999, p. 86).

In addition to questions of trade-offs within each individual's well-being, there are questions of trade-offs between individuals. This will be discussed in the next section covering social functions.

### ***Social functions***

I will cover three types of "social functions" that can be used to compare social states. The first is equality, the second is aggregation and the third is maximin. I am not hereby claiming this is an exhaustive list. Furthermore, these social functions are more focused on consequent social states. There may also be deontological theories of justice that are focused on whether rules are broken or not, instead of what consequences to aim for. In addition, libertarians may focus on whether the individuals' rights to the fruits of their labor are unharmed, and they may be indifferent whether it follows that there is equality or inequality, as long as no libertarian rights have been harmed.

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<sup>6</sup> An elaborate discussion on the topic of lists of capabilities can be read in Claassen (2011)

There are many different ways in which individual functions could be translated into a social choice function. For example, the aim may be to maximize the unit of the “space”. This is the preferred approach of utilitarians; generally, it does not matter to utilitarians how equally utilities are distributed. As such, a utilitarian would be indifferent between a unit of utility going to a person who is already very well-off, or a person who is badly off. Egalitarians would rather focus on whether resources are spread equally, instead of being concerned with maximizing. John Rawls has developed the notion of maximin in theories of justice; his so-called difference principle allows inequalities to exist only insofar as they benefit the worst-off (Rawls, 1999).<sup>7</sup> Hypothetically, the “space” that is being used by some theory could be applied for a different social function. For example, one could theorize the maximin principle should be applied to utilities, so that inequality in utility exists only where it is to the benefit of the least happy. I am not familiar with any such example however.

Sen is not particularly clear about how he believes a more just society is to be determined based on capabilities. He advocates equality, but he does not want to promote equality of capability at any cost. In his view, the process aspect of freedom should not be disregarded so easily. As an example, he shows that true equality of capability would imply more medical resources to be spent on men than on women, as women naturally live longer. However, giving women less attention than men violates a requirement of process equity, namely of treating people similarly in questions of life and death (Sen, 2009, p. 296). This example shows a difficulty in using his theory consistently in comparing social states, as there is not enough guidance in how to handle violations of process equity. For example, progressive taxation may be more suitable in eradicating poverty, but this would also be a violation of process equity<sup>8</sup> as the rich would have to contribute more than the poor. In order for his thoughts to be incorporated as a non-ideal theory of justice, Sen could hold one of three views: (1) no violation of process equity is to be allowed, (2) situations where process equity is violated are to be regarded as incomparable to situations where they are not, forming part of the incompleteness that he discusses and (3) some violation of process equity is to be allowed.

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<sup>7</sup> Sen claims that all theories of justice revolve around equality in some sense (2009). As such, he claims that although utilitarians are not interested in equality of utility, they do insist on equality in the sense that utility should be valued equally for any individual, in other words, that no individual carries a higher priority to utility than others. This is similar to what I referred to as the criteria of universality in section 4.2. For the sake of the discussion I am having, it makes more sense to interpret social functions to show how different individuals’ well-being (however defined) lead to an evaluation of social justice. Equality, as I will use it, will be referring to an issue of *distribution*. Using the word equality in the broad sense Sen wishes to use it would be confusing for my argument.

<sup>8</sup> Equal treatment of process (as opposed to outcome).



The first view seems to me problematic, for the reason mentioned above regarding progressive taxation, and many other scenarios that require some violation of process equity. The second view similarly leaves quite a high degree of restriction on the amount of scenarios where we can make comparative judgments. Lastly, if he holds the third view, he would have to specify which violations of process equity are to be allowed, and which are not to be allowed. It may be that he considers this question to enter the realm of public deliberation as well. In addition, Sen believes equality should not be the only value in a theory of justice. A social state may also be defended without having any impact on equality, but instead advancing aggregate capabilities of all (Sen, 2009, p. 298). However, in situations of conflict between aggregate advantages or more equality in distribution, Sen does not specify how to handle such a trade-off.

To summarize this section, Sen ascribes high importance to equality, but does not emphasize how to handle trade-offs between capability equality and process equity, and between equal distribution and aggregate advancement.

#### **4.6 Problems in contemporary literature**

Ironically, while Sen is the most prominent advocate of the comparative approach, he seems to offer the least guidance in how to compare social states. Methods other than Sen's might appear preferable in the sense that they may actually give us an answer to comparative questions. As such, when we have to choose among two social states and we base our decision on Rawls's two principles, provided both social states have guaranteed the primary liberties of its subject, we will decide that the social state where the position of those who are worst-off is maximized. In the case of utilitarianism, the social state which produces the highest net happiness is to be preferred.

However, despite the fact that alternative methods can give *an* answer in more cases, it may be an answer with severe drawbacks which one should not simply ignore. Libertarians might over-emphasize the right over the fruits of one's labor, and its principles may lead to dramatic consequences (e.g. a famine may be caused by the unwillingness to enforce the wealthy to redistribute); Utilitarians might overly emphasize ends over means (e.g. it may imply a healthy person should be killed to distribute his organs to dying patients), whereas economic egalitarians might sacrifice equality of rewards for effort for the sake of equality of income

(where a person who works 12 hours a day will have the same income as someone who lays idle all day).

From what I interpret, Sen is of the belief that it is naïve to ignore limitations simply because they prevent us from being able to decide. Instead, he aims to focus on those questions where we can actually decide. Amartya Sen has refuted any method as being the ‘golden rule’ in comparing social states, as situations may occur where none of these methods can be impartially agreed to be decisive. The flute example helps to show this. Considering Sen is the more prominent philosopher promoting the comparative approach, I will discuss shortcomings in his work.

What makes Sen’s account especially complicated, is that he believes neither capabilities, nor equality thereof, should have overall priority. In addition he does not believe social states should be evaluated independently from the procedure that led to them. Inevitably, many questions remain unresolved, or to be solved by a process of public deliberation. After reading the “Idea of Justice”, it seems that the views he takes a stance on are the following: (i) capabilities are an important way of evaluating well-being, and (ii) equality is valuable in a theory of justice.

However, he also stresses that neither capabilities, nor the equality thereof should have trumping priority. Equality of capability seems to be very valuable in his opinion, but it will not be an approach to follow blindly. Firstly, capabilities by themselves are not enough to tell us about the equity of the process involved. Secondly, it cannot capture whether people are receiving fair rewards for their efforts. Thirdly, he stresses that there may remain ambiguities in the relative importance of capabilities and lastly, equality should not always be a priority as some social states may be better because they increase the aggregate capabilities.

Thus, questions that remain unresolved concern how to handle the following trade-offs:

- Conflicting capabilities against each other;
- Capabilities and economic advantages, utilities, resources
- Increased aggregate capabilities versus improved equality of capabilities when they conflict
- Equality of capability and process equity
- (Economic) equality and liberty

From this large list it seems like very few questions can actually be resolved. Indeed, it is not Amartya Sen's intention to deliver an algorithm that can simply solve all dilemmas of justice. Sen mentions his method, even when only being able to come up with a range of weights to deal with trade-offs of valuable things, would be functional enough to tell us that slavery, the absence of a guarantee to medical attention, or severe undernourishment is detrimental to justice (Sen, 2009, p. 243). However, are these types of answers what we expect from a theory of justice? Surely we would like a theory of justice to tell us more than something as trivial as the injustice of slavery. The point of establishing weights between different valuable features has been made by other scholars, including Robeyns (2008). Sen would apparently leave all above bullet points to be discussed in a process of public deliberation. I see this as problematic.

Firstly, in order for social states to be compared in an appropriate manner, comparison should be impartial and universal (as established earlier in this chapter). Allowing a process of public deliberation to settle such questions, while demanding these criteria to be satisfied, would rest on the assumption that people will not try to abuse their power to steer the discussion in their favor. It assumes that people in minority situations would have as much voice as the people in the highest ranks of a society, and it assumes people will not be biased by bigotry. This seems like a rather strong assumption to make. I am sympathetic to the argument that due to a plurality of views which cannot be refuted objectively, an ever-decisive algorithm of justice is not possible. However, if Sen wants to use public deliberation as a method to fix such shortcomings, a process of public deliberation is to be specified that can avoid the trouble mentioned above.

Secondly, even when assuming that individuals would be selfless and reasonable enough to remain unbiased in the process of public deliberation, they would still have to find some sort of an agreement on all of the above points in order to make comparative statements, which seems to me highly implausible. I have established feasibility of the social states proposed by non-ideal theories to be a necessary condition, and I have argued for this by recalling the aim to influence real-world politics to be an important motivation for non-ideal theories of justice. However, if the very procedure which establishes the comparative ranking of social states were to be unfeasible, this would make for a very flawed non-ideal theory of justice due to similar reasoning; it would not actually be able to influence real-world politics.

This section shows how even for the main advocate of the comparative approach, many questions remain unresolved, and much work is still needed to have an accurate description of how to compare social states. This relates to the main question “what do we want from non-ideal theories of justice”, because we want to be able to compare social states, but there are many open questions left in how exactly to do this.

## **4.7 Conclusion**

The conclusion to chapter 4 is that for a theory to have the ability to compare social states means that it is able to rank different social states in terms of which one is more and which one is less just. It would be unrealistic to expect a full, complete ranking of social states however, since there is a plurality of ways to evaluate social states that are acceptable. A method of evaluation is unacceptable if it does not satisfy the necessary requirements of universality and impartiality. Still, a non-ideal theory of justice has to strive for as little incompleteness as possible, for otherwise it risks being completely unable to make any critical statement of the status quo that is not trivial.

I have also tried to show that Amartya Sen, one of the main voices arguing for a comparative approach to justice, does not offer a particularly helpful method of comparing social states. In order to avoid the risks in offering an algorithm that claims to solve every question of comparison, despite severe limitations, he risks not proposing anything at all. Many unsettled questions are left for public deliberation to figure out, which to me seems more likely to lead to some kind of collective analysis paralysis rather than guiding action. I do not pretend to have answers to these questions myself, as the trade-offs mentioned in the bullet points in section 4.6 are indeed complex, but I do believe philosophers can give as much guidance as possible in these trade-offs. Since it is a necessary ingredient for a non-ideal theory of justice (that strives to influence real world politics) to be able to compare social states, further work is required on developing a method of comparison.

This concludes the comparability criterion. However, as many political philosophers have pointed out (Sen, 2009, Gilabert, 2012, Swift, 2008), in order for a theory of justice to be applicable to non-ideal circumstances, the social states that are compared to each other should also be feasible. It is not yet fully clear what it means for a social state to be feasible, and how we can know a social state to be feasible. The next chapter will be devoted to this.

## Chapter 5: Feasibility

In this chapter, I will discuss the role of the feasibility condition in non-ideal theories of justice. Although feasibility often comes up in the literature surrounding ideal/non-ideal theories of justice, it is not clear what exactly is meant by feasibility, and what the relation between non-ideal theory and feasibility is. In this chapter, I will first cover feasibility as it has been described, then I will describe some shortcomings with this description. Hereafter, I will offer my contribution to how I believe feasibility relates to non-ideal theory of justice. In short, I will claim that feasible social states are those social states that we *know* not to be infeasible.

### 5.1 Unalterable and Contingent feasibility constraints

In her paper, Robeyns (2008) makes a distinction with respect to feasibility constraints: unalterable and contingent feasibility constraints, where unalterable feasibility constraints are those that make a social state unfeasible now and in the future. Contingent feasibility constraints, on the other hand, imply that the social state is only temporarily infeasible. There is a key difference between my approach to feasibility (which I will present in section 5.4) and Robeyns's approach to feasibility. The way Robeyns presents the distinction can be seen as being time-dependent: unalterable feasibility constraints will always persist, whereas contingent feasibility constraints are only temporary. The account I would like to offer, on the other hand, is geographically dependent. In other words, those social states that have been proven feasible in some countries should be considered.

The advantage of this is that, since we cannot know what might become possible before it has been made possible, the geographically dependent notion can focus on those social states that have been proven to be feasible. Perhaps it was at one time unimaginable that women and men could share equal rights. Similarly, today we do not know what undesirable features of the modern world we can get rid of while maintaining a stable society, if it has not yet been tried anywhere. However, we can know which types of policies have been implemented in different countries and have shown to be successful (such as gay marriage, decriminalization of certain drugs, gender equality).

This approach of dealing with questions of institutional and political feasibility has bearing on a sentiment expressed by Amartya Sen, though originally made by Adam Smith; namely that in their time, Plato and Aristotle gave intellectual support to practices such as infanticide, not

knowing that other contemporary societies functioned well without them (Sen, 2009, p. 130). According to Sen, a theory of justice must have something to say about the social states that are “actually on offer” (Sen, 2009, p. 106). Furthermore, Sen also emphasized that the works of Adam Smith, the Marquis de Condorcet, Jeremy Bentham, Mary Wollstonecraft, Karl Marx and John Stuart Mill (among others) were all involved in “comparisons of societies that already existed or could feasibly emerge, rather than confining their analyses to transcendental searches for a perfectly just societies” (Sen, 2009, p.7). One quick and easy way to determine whether a social state is at all achievable is that a similar social state has been achieved elsewhere in the world. For example, it may have been argued in the past that a society where women and men shared equal rights would be impossible to achieve. Today, however, many examples show the advances that can be made in a country with respect to women’s rights. When a social state has been brought about in a country, I argue it is “known to be feasible”. I will develop my argument for why a social state that has been brought about is “known to be feasible”, and why these are the social states that should be covered by a non-ideal theory of justice, in this chapter. In order to do this, it is useful to introduce concepts related to feasibility constraints that have been introduced by other philosophers.

## 5.2 Hard constraints and soft constraints

To elaborate on feasibility constraints, I will now offer a distinction between different types of feasibility constraints and explain why one type should be taken into account in non-ideal theory of justice whereas the other should not. As mentioned, Robeyns makes a distinction in her paper (2008) between unalterable and contingent feasibility constraints<sup>9</sup>. These can be placed on a continuum from the completely unalterable (such as human mortality) to the completely adaptable, and will include a large grey area in-between. According to her, some unalterable feasibility constraints may imply that something is unfeasible today, but might become feasible in the future<sup>10</sup>. Her purpose in making this distinction is however not clear, as she does not elaborate on it further. She also does not give a lot of information on how to establish what type of feasibility constraint applies.

More recent contributions have been made by Gilabert and Lawford-Smith on the concept of political feasibility, which may be of help in the distinction between unalterable and adaptable feasibility constraints. Firstly, they define a social state as feasible, *roughly, if it is one we*

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<sup>9</sup> However, she discusses both types of feasibility constraints as a part of “action design”, whereas I will argue that unalterable feasibility constraints should be taken into account in non-ideal theory.

<sup>10</sup> Although in my opinion this leaves the question of why to call it unalterable in the first place.

*could actually bring about* (Gilabert & Lawford-Smith, 2012). They also emphasize that in order to be feasible, a social state should not only be accessible; a social state also needs to be stable, as Gilabert and Lawford-Smith call it. For example, if a policy is meant to eradicate poverty, and it eradicates poverty only for a week, the social state has been brought about, but it seems unproductive to then refer to the policy as making poverty eradication “feasible”. Gilabert and Lawford-Smith refer to hard constraints as those constraints which have a binary role: this means, they can rule out certain states as being infeasible. Soft constraints, on the other hand, have a comparative role. This means feasibility according to soft constraints is a matter of degree. They mention many different types of feasibility constraints: Logical, Physical, Biological, Economic, Institutional, Cultural, Psychological, Motivational. Logical constraints are quite uncontroversial hard constraints.<sup>11</sup> Biological constraints can be hard constraints, but technological advancements may cause changes on these constraints in the future, so not all of them are unchangeable. According to Gilabert and Lawford-Smith, policies that are inconsistent with hard constraints are ruled out. Hard constraints are timeless; if something is in conflict with a hard constraint it will always be infeasible<sup>12</sup>. Soft constraints, on the other hand, cannot rule out social states as being infeasible. They do pose some limitations but these limitations are not permanent or absolute. When social states are subject to soft constraints, this does not mean they are strictly impossible, but that it is highly unlikely for such states to be brought about. It is a defining feature of soft constraints that even if they are difficult to overpower now, it is possible to transform them so that they are no longer constraints at some future time (Gilabert & Lawford-Smith, 2012, p. 814). The distinction just described can help clarify Robeyns’s distinction of unalterable and contingent feasibility constraints, where unalterable feasibility constraints are hard constraints and contingent feasibility constraints are soft constraints.

Logical and physical constraints are straightforward and I will therefore not delve into them too much. Briefly, logical constraints apply to those social states that are logically inconsistent. An example I can offer of such a social state is one that requires that conflicting preferences of two different individuals are both fulfilled. If the individuals’ desires are

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<sup>11</sup> Gilabert and Lawford-Smith do not explicitly mention physical constraints as ‘hard constraints’, but I would place them under ‘hard constraints’ as well. Indeed, they also do not place them under ‘soft constraints’ and I am inclined to believe they simply forgot to mention it

<sup>12</sup> Interestingly, in a later paper, Lawford-Smith introduces time-sensitive hard constraints (2013). These are constraints that are hard constraints today, and rule out social states as infeasible now, but may not do so in the future. I will not use this definition, because it goes against the very point of distinguishing hard constraints from soft constraints.

indeed mutually exclusive (e.g. they both want full ownership of a unique object), it would logically follow that not both of their desires can be fulfilled and thus a social state that would require it would not be feasible. An example of a physical constraint is posed by the laws gravity, so a social state which is in conflict with these is infeasible. With regards to biological constraints, Gilabert and Lawford-Smith point out that some of these may be more adaptable than others (Gilabert & Lawford-Smith, 2012). Robeyns gives the relevant example that today, men may be unable to get pregnant, but it is not inconceivable that one day this will be possible, and this may have bearing on some theories of justice (Robeyns, 2008). However, many cases in biological constraints are uncontroversially hard constraints, such as human mortality or our dependence on the presence of oxygen. Gilabert and Lawford-Smith consider cultural, institutional and economic constraints clearly to belong to soft constraints. While they pose some limitations, none of these are permanent or absolute. The following graph may clarify the distinction made by Gilabert & Lawford-Smith.

**Figure 3**

Hard constraints	Soft constraints
<ul style="list-style-type: none"> <li>• Logical constraints</li> <li>• Physical constraints</li> <li>• Most biological constraints (e.g. People are mortal)</li> <li>• Some psychological constraints (e.g. pathological ones)</li> </ul>	<ul style="list-style-type: none"> <li>• Some biological constraints (e.g. those that can be adapted through technology)</li> <li>• Cultural constraints</li> <li>• Institutional constraints</li> <li>• Economic constraints</li> </ul>

A slightly different perspective on feasibility is outlined by Juha Räikkä. According to him, the feasibility of a theory of justice is not one of degrees; a theory of justice either is, or is not feasible. In order to determine this, he echoes Immanuel Kant's view, namely that something is feasible until it is "demonstrably impossible" to fulfil it (Räikkä, 1998). This is distinct from Gilabert and Lawford-Smith's definition of a state that "we can bring about", for Räikkä's account includes all the social states that have simply not been demonstrated to be infeasible, however improbable they may appear. Geoffrey Brennan and Nicholas Southwood give yet another definition for feasibility, namely: 'reasonable probability of success conditional upon trying' (Brennan & Southwood, 2007). This is not consistent with the



definition suggested by Gilabert and Lawford-Smith, who reject the view that there is a threshold, as suggested by the term ‘reasonable’.

We can see that there is some disagreement surrounding the notion of feasibility. Firstly, there is disagreement about whether it is a binary (Brennan and Southwood, Räikkä) or a scalar concept (Gilabert & Lawford-Smith, 2012). Furthermore, even when there is agreement on it being a binary concept, there is disagreement between Brennan & Southwood and Räikkä about where this threshold lies; Räikkä incorporates all social states which are not demonstrably impossible, whereas Brennan and Southwood include only the ones with reasonable probability of success conditional upon trying. Gilabert and Lawford-Smith deny the binary relation of feasibility altogether and visualize feasibility as being a scalar concept (something can be more feasible or less feasible).

These debates are important for the discussion of non-ideal theories of justice, considering the large role the feasibility of social states has in non-ideal theories (or so I have argued) and the high degree of ambiguity that surrounds the term. Due to this large role, I wish to clarify what I mean when I refer to “feasible social states”.

### **5.3 Problems in contemporary literature**

Neither Gilabert and Lawford-Smith, nor Räikkä give much attention to the question of *how to know* whether a social state is feasible or not. They cover the ontological side of feasibility, and seem to assume that this knowledge is available to us. In reality, however, it may be very difficult to decide whether some social state can be brought about at all or not, let alone the type of information Gilabert and Lawford-Smith would assume we have concerning how probable it is that some social state is brought about or not. In the remainder of this chapter, I will therefore include a notion for feasibility that takes epistemological shortcomings into account, and finds a way around them.

I wish to add a new perspective, namely by taking epistemological issues into account. I agree with Räikkä that something is infeasible if it is demonstrably impossible. However, I’d like to add an additional distinction separating the social states we *know* to be feasible from those social states of which we do not know whether they are feasible or not. I will elaborate on this further in the section 5.4.

My account is more usable as it actually has something to say about whether we know whether something is feasible or not, rather than making the somewhat unrealistic assumption that we always have this knowledge available. If the goal of non-ideal theories of justice is to influence the real world, and they aim to say something about feasible social states, we have to be able to determine *whether* something is feasible. If we take R  ikk  's account, namely that something is feasible if it is not demonstrably impossible, we risk including too many social states that, no matter how improbable, cannot be demonstrated to be impossible. Gilabert and Lawford-Smith's account does not distinguish between feasible and infeasible, but instead tries to establish a degree of feasibility. However, as I explained in section 3.5, a non-ideal theory of justice should evaluate *a set of feasible social states*. As such, we would need some kind of threshold to determine when a social state is *feasible*. Secondly, their scalar approach to feasibility also puts a heavy epistemological burden on theories of justice, as it assumes we can actually determine how probable it is a particular social state can be brought about. Robeyns spares little words on feasibility, and does not discuss how we may know whether something is feasible or not. This is why I believe my account, which includes an epistemological level, is more appropriate for non-ideal theories of justice.

#### **5.4 Social states that are *known* to be feasible**

Firstly I would like to clear the ground on when I believe something to be feasible, and make a distinction between feasible and achievable. I would say a social state is unfeasible if it is in conflict with a hard constraint. If it not in conflict with a hard constraint, but it is in conflict with a soft constraint, it is feasible but not achievable. Finally, if it is not in conflict with either a soft constraint or a hard constraint it is achievable.

As I explained in the last paragraph of chapter 3, there are multiple ways issues of feasibility and comparability may intersect. If one holds the view that a philosopher will only make statements of moral desirability, the philosopher does not have to concern herself with knowledge of feasibility. According to this view, feasibility concerns can be dealt with by social scientists and politicians only when trying to implement a policy. In the view I represent, however, a philosopher will make evaluative statements only about feasible social states. According to this view, there has to be some way of knowing whether a social state is feasible or not.

How do we judge whether a social state is feasible? We may not always know whether a social state is subject to a hard constraint or not. As mentioned, Juha Räikkä determines whether something is feasible, by echoing Immanuel Kant's view, namely that something is feasible until it is "demonstrably impossible" to fulfil it (Räikkä, 1998). I will agree that something is infeasible if it is demonstrably impossible. However, I will refrain from calling everything that is not demonstrably impossible *feasible*. This is because it can be difficult to determine whether an institutional arrangement is truly impossible. As a consequence, this definition of feasibility is too loose, because it includes all those social states which, however improbable they may be, cannot be demonstrated to be impossible. Instead, I would suggest we have to suspend judgment on some social states which we do not know to be feasible or infeasible.

A social state that has been attempted but not achieved has not been demonstrated to be impossible; it may be achieved in the future. We may demonstrate something to be impossible when it is in conflict with logical laws. This is because logical laws can be determined a priori. Some other strong mechanisms may exist, however, which can only be determined a posteriori. An example could be psychological laws, for example that there are limits to human being's altruism<sup>13</sup>. This is particularly relevant for John Rawls's "A Theory of Justice" (1999), as he assumes some degree of inequality may be necessary in order to incentivize skilled people to produce wealth, which would improve the well-being of those who are worst-off. Cohen has criticized Rawls for this assumption, as he believes principles do not have to be fact-sensitive. Rather, principles can be fact-insensitive and facts can be applied to these principles afterwards (Cohen, 2003). One reason a theory of justice should not take the limits to human altruism into account, could be that it is not *demonstrably impossible* for people to produce without being incentivized by personal rewards. This may never be demonstrated to be impossible; just because such a society has not existed so far does not mean it never will. I will emphasize on this in my defense of premise 6, later in this section.

In this thesis I wish to give an account of what can definitely be referred to as non-ideal theories of justice. One aspect of this is that it is aimed at guiding action in the near future. In order to guide action, I believe it is unfruitful to take into account all social states that *might* be feasible, instead of focusing on those states we *know* to be feasible. In light of this, I will

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<sup>13</sup> I am not hereby stating that there is a hard constraint which prevents full altruism. I am assuming that it is a possibility, in order to hypothesize the implications this would have on our knowledge of feasibility.

now introduce a claim and a proposal. My claim is that: if a social state has been achieved in a country, we know it to be feasible. My proposal goes as follows: Non-ideal theories of justice deal with those social states that we know to be feasible.

Firstly, I will defend my claim. In my account, I will rely on the following premises:

Premise 1: Hard constraints are permanent and universal feasibility constraints.

Premise 2: Soft constraints are neither permanent nor universal.

Premise 3: Something is infeasible iff it is in conflict with a constraint that is permanent and universal. Otherwise, it is feasible.

Premises 1-3 If a social state has been brought about in a country<sup>14</sup>, it is not in conflict with a hard constraint.

From this, it follows that when we know a social state to be brought about in a country, we know it to be feasible. However, if a social state has not been brought about in a country, we do not know for sure that it is infeasible (if it is not in conflict with any logical constraints). It could be that the social state will be brought about in the future, even though we have failed so far. This argument will use the following premises:

Premise 4: Universal psychological hard constraints exist (Assumption)

Premise 5: We cannot define psychological hard constraints a priori.

Premise 6: A posteriori, a conflict with an unknown hard feasibility constraint can be falsified (if the social state has been brought about), but it cannot be confirmed, (if a social state fails to be brought about) due to the problem of induction.

Premises 4-6: We cannot *know* a social state to be in conflict with a psychological hard constraint, we can only *know* it *not* to be in conflict with a psychological hard constraint.

I will further explain and defend these principles in section 5.5. The following graph shows the relation between hard constraints and soft constraints, and whether a social state is

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<sup>14</sup> It may be objected that a country is not well-defined enough as a society. Using a country as a U.N. recognized sovereign state is no doubt a simplification. However, my aim with it is to give a delineation of a society under one sovereign which follows the same legal system or institutions. Some obvious outliers are countries which are exceptionally different from others; for example, Vatican city is exceptionally different in nature from all other countries, that if a social state is brought about there, it says very little about its feasibility in e.g. U.S.A.

unfeasible, known to be feasible and unknown whether feasible or unfeasible.

**Figure 4**

	A. We know that infeasible  <i>Infeasible</i>	B. We do not know if feasible or infeasible  <i>Uncertain</i>	C. We do know that feasible  <i>Feasible</i>
Relation with hard constraints.	We know the social state to be in contradiction to a hard constraint.	We do not know whether the social state is in contradiction to a hard constraint.	We know the social state <i>not</i> to be in contradiction to a hard constraint.
Examples	Immortality, Infinite resources	Anarchy, communism, Basic income	Legalization of drugs, Society without slavery
Further comments	Cannot move to a different column	Can move to C, or D	Can move to D

The claim I make is that it is a sufficient criterion for being known to be feasible when a social state has been achieved in a country; as then, it is not in conflict with a hard constraint.

I make the assumption that some psychological hard constraints exist, although they are hard to fully discover. Gilabert wants to find the right balance between cynical realism and impotent idealism, but not taking psychological constraints into account risks staying in impotent idealism. A social state may even be unrealizable due to being in conflict with a psychological hard constraint, although this is hard to ever demonstrate. However, I agree with Gilabert and Lawford-Smith that cultural, economic and institutional constraints are clear cases of soft constraints. I will clarify and defend the premises in the next section.

If a social state has been achieved in a country, it is not in conflict with a psychological hard constraint. Due to the definition I have used for a hard constraint, a social state simply cannot be brought about if it would be in conflict with a hard constraint. Therefore, if it is brought about somewhere, the social state can safely be said not to be in conflict with any hard

constraint. Thus, the social state may be only constrained by soft constraints. These are however surmountable. The social state is therefore known to be feasible in all countries if it has been achieved in one.

## **5.5 Defense of premises**

**Premise 1:** Hard constraints are permanent and universal feasibility constraints.

**Premise 2:** Soft constraints are neither permanent nor universal;

**Premise 3:** Something is infeasible iff it is in conflict with a constraint that is permanent and universal. Otherwise, it is feasible.

The first three premises explain the definition I use of hard constraints and soft constraints. They follow Gilabert and Lawford-Smith (2012) in that the role of hard constraints is to rule out social states as being infeasible and soft constraints cannot rule out. They also follow Rääkkä in that something is only infeasible when it has been demonstrated to be impossible, which can only be done when it is in conflict with a hard constraint.

Taken together, these premises imply that something cannot be strictly infeasible in one country and feasible in another country. This may sound objectionable to some. There may be geophysical constraints that are specific to a country, and are creating strict impossibilities. To this I would like to respond that the sufficient criterion of a social state being achieved in a country is mostly intended for the purpose of falsifying psychological feasibility constraints which may undermine social states. They are to determine the extent to which a society is compatible with the limits of human altruism, whether capacities of different groups can be equal if institutions accommodate for it, and how far human being's incentives reach. The Nordic welfare state may show, for example, that a good safety net does not necessarily imply that everybody will become a parasite to the government. I do not expect geophysical constraints that are unique to a country to have an effect on feasibility constraints in terms of what a society can sustain.

It follows from premise 2 and 3 that those social states which are in conflict with only soft constraints are feasible. This may seem counterintuitive to some, as cultural, economic and institutional constraints are all examples of soft constraint. Surely introducing gay marriage in Uganda, or gender equality in Saudi Arabia does not seem to be feasible. And yet the only barriers are cultural, though these may be very deep-rooted. It may help to repeat that my point in saying the social states are feasible is not the same as saying it can be implemented

tomorrow, or that, say, Saudi Arabia and Uganda are as likely to accommodate gender equality or gay marriage (respectively) as Sweden. The cultural barriers are indeed serious, and should be taken seriously, but I argue they are not insurmountable. How to surmount these barriers goes beyond the role of the political philosopher, however. The fact that gay marriage has been legalized in the Netherlands in 2001, and the country has not fallen into chaos as a result, is enough to show that the institution of same-sex marriage does not run counter to any strict logical or psychological impossibility. This is enough for the political theorist to build a general theory of justice which can be applied to different contexts. It may well be the case that other institutional and cultural features of the Netherlands made it possible, but as I said, I do not consider these features to be hard constraints. Different contexts may necessitate different paths to the social state, or some institutional and cultural changes, but I assume these barriers not to be insurmountable.

**Premise 4:** Universal psychological hard constraints exist

It may help to explain the psychological hard constraint and its function a bit more clearly. I am here supposing there is some fixed “human nature”, which is universal, and unchangeable through education. While this is not the only type of hard constraint of which knowledge may be hard to get by, I believe it to be one of the main possible constraints which cause much debate regarding the feasibility or not of some social state. In his “A Theory of Justice”, John Rawls assumes the circumstances of justice include “limited altruism”. The assumption of the psychological feasibility constraints I intend are similar in nature (but not restricted) to the limitations of our altruism. Although this constraint does not have the same certainty and scientific backing as logical laws or laws of physics, ignoring them would risk staying stuck in utopian thinking. For example, theorizing about a social state where people redistribute riches generated from everyone according to ability, to those people according to need, without a government enforcing this redistribution is making certain assumptions about human nature. It necessitates some kind of altruistic features and the willingness for people to generate wealth in the absence of personal incentives. While it may not be possible to demonstrate the impossibility of such a social state, I assume there is a possibility that there is some psychological mechanism which would prevent it. The assumption that some hard psychological feasibility constraint may exist allows for social states not to be included as a feasible social state also when they are not in conflict with logical or physical laws. In my approach it is not necessary to be able to define these psychological hard constraints. What is valuable is that it is possible to show a social state is definitely *not* in conflict with such a

constraint, namely, if it has been brought about. This “test” gives non-ideal theories of justice the possibility to deal with those social states we *know* to be feasible.

**Premise 5:** We cannot define psychological hard constraints a priori.

This premise serves to separate knowledge of hard constraints in logic from possible knowledge of hard constraints in psychology. What I mean with psychological hard constraints are those underlying constraints which are posed by “human nature”, and thus unrelated to the context, culture or upbringing. This premise is realistic about our epistemological limitations in separating this so-called “human nature” from human upbringing (as exemplified by the famous nature vs. nurture debate).

**Premise 6:** A posteriori, a conflict with an unknown hard feasibility constraint can be falsified (if the social state has been brought about), but it cannot be confirmed, (if a social state fails to be brought about) due to the problem of induction. This can be seen analogously in Popper’s analysis of scientific confirmation (Popper, 1992). Empirical evidence, on its own cannot confirm infeasibility. It can only falsify infeasibility. To illustrate this, I will use an example. We do not know whether people’s moral considerations are such that a society could do well without a legal system. We do not know if human psychology allows for this. Even if a country would try and experiment with this, and fails, this does not prove that a social state without a legal system is unfeasible because of human psychology; it merely means that we have to stay agnostic.

Similarly, we may say that we did not know whether a society with gender equality was feasible. However, when this was introduced, and societies prospered, the hypothesis that there is a hard psychological constraint impeding gender equality was falsified. Thus, it is possible to falsify the *infeasibility* of a social state, namely by bringing a social state about. I would like to use an extended range of “feasibility levels”, which I will argue may illuminate the discussion of feasibility in non-ideal theories of justice. On the basis of this, I propose adding an epistemological dimension. The epistemological dimension can distinguish that what we *know* to be feasible from that which we must suspend judgment on. As such, a social state X may be such that (a) we know X to be infeasible (when we know it to be subject to a hard constraint), (b) we *know* X to be feasible, (when it has been achieved in a country) or (c) we do *not know* X to be feasible. Note that (c) does not imply infeasibility; it implies we must



suspend judgment. Thus, to extend the distinction made by Räikkä, I propose the further distinction of social states that are “demonstrably possible”.

## **5.6 Downside**

An obvious downside of this approach is that being bounded by what has been shown to be feasible so far may lead to relatively lower ambitions in moral and political theorizing. Social and moral progress could hardly come about if we were to be limited by what has been shown to be possible, and it may very well belong to the task of philosophers to challenge our own impression of what we believe to be possible. In the past, arguments may have been made against certain policies, on the grounds that human nature would not allow for it, as we are supposedly too selfish or greedy. Giving these arguments too much attention may leave us in a state of cynical realism, as Gilabert argues (Gilabert, 2011). I will grant that there is value in theorizing about what is for now unfeasible but could one day become feasible. Thus, I emphasize that successful implementation in a country is a *sufficient* condition for feasibility, but not a *necessary* condition. Other social states may or may not be feasible, we cannot know. I propose that non-ideal theories of justice cover only those social states, which we know to be feasible.

Pablo Gilabert keeps emphasizing on not being too easily put off by apparent infeasibility in cultural constraints, and may disagree with such a stringent condition. However, this relates to his view of non-ideal justice and ideal justice being one “single, but internally complex, comparative assessment” (Gilabert, 2011, p.12). As I wish to clearly separate the task of non-ideal justice from ideal justice, this does not create a big disturbance in my argument; to be sure, there is value in theorizing about that which we do not know to be feasible. However, as a large reason for the rise of non-ideal theories of justice is precisely this lack of influence political philosophy has in political decisions right here, right now, I see it as a useful contribution to be able to make statements that are short-term oriented (“which social state do we *know* to be feasible”), when speaking about non-ideal theories of justice.

## **5.7 Role of feasibility constraint in each type of theory of justice**

I will firstly point out that hard constraints should be taken into account in any normative theory of justice. With normative, I mean that the theory specifies what ought to be done. This excludes Cohen’s framework, who believes theorizing about justice does not tell us what ought to be done, but merely how we ought to think. As far as I can tell, his view is not widely shared, and for the majority of justice theorists the first point is relatively uncontroversial. For the sake of completeness, an example may illustrate why hard feasibility

constraints should be taken into account. A theory of justice may propose moving to a social state where human immortality is a necessary ingredient. In this case, it is aspiring to reach an infeasible social state. As such, it would be unfruitful to guide action in any context, but also to develop principles that are not directly action guiding, but are aimed to be further developed into action guiding principles. If Immanuel Kant was right in saying that “ought implies can”, its logical equivalent of “cannot implies ought not” is also true. There may be scope for “utopian” theories of justice, as described by Laura Valentini (2012) which do not respond to any feasibility constraint and are useful merely for the intellectual exercise. However, these cannot be considered normative in the sense that I use the term. I argue that there is scope and need for ideal theories of justice that take only hard constraints into account, i.e. those constraints that signal something to be demonstrably infeasible. This type of theorizing is even very important, due to the shortcomings in ambition that derive from only considering that which we know to be feasible, as described previously.

Today, we do not know whether a universal basic income is feasible, as it has never been attempted on a nation-wide scale. This does not mean that political philosophers should stay away from this topic all together. For all progress in social justice, there has always been one country that had to introduce a policy before knowing it to be feasible. It is crucial that political philosophers keep an exploratory and inspirational role. However, my claim is that it would be useful to separate this from non-ideal theory, which is aimed at guiding action here and now, and is thus better suited at evaluating those social states we know to be feasible. A non-ideal theory of justice should thus not only be constrained by hard constraints, but also the grey area. This way, it can safely evaluate those social states we know to be feasible rather than as Sen phrased it, “keep us engrossed in an imagined and implausible world of unbeatable magnificence” (Sen, 2009, p. 106). Non-ideal theories of justice should *not* however, be constrained by soft constraints, I will argue.

To argue for why a non-ideal theory of justice should not take soft constraints into account I will use the following example. An example of soft feasibility constraints are cultural barriers in a given society that do not allow a particular social state to be achieved, at least in the near future. A point to be made is related to non-ideal theory of justice being primarily an *evaluative* exercise. To properly understand its role requires a separation of the dimension of moral desirability and of feasibility. In light of this, an example may illustrate that soft feasibility constraints should not be taken into account for non-ideal theory. Assume that a

non-ideal theory of justice establishes that gay people should have the liberty to get married (call it social state X). It might be the case that for some countries with a highly homophobic culture this is too large of a step to take, to the point that it is *at this moment* not achievable. It may be achievable, however, to erase a current law which makes homosexual *activity* illegal, leading us to a new social state (call it social state Y). If the cultural barrier were to be taken into account as a feasibility constraint for a non-ideal theory of justice, X would not be considered as one of the feasible social states. As such, considering only feasible social states are to be compared in non-ideal theory of justice, Y would be considered to be more just. This would however go against the aim I have previously established for non-ideal theory, i.e. a *general* framework to compare social states in terms of which one is more just. *General* indicates the theory should be able to make statements that are context-independent. *Feasible*, as it is used, should then not be taken too narrowly. Social states that may not be reachable in certain places at a certain time, should be considered feasible if we know that the social state can in some way become reachable, i.e. if it is not in conflict with a hard constraint.

Thus, in terms of the role I ascribe to it, non-ideal theory has to be able to consider X as a feasible social state. The stronger role of action design, on the other hand, incorporates more information on the political landscape. This may very well show us that it is more adequate to design policies to lead us to Y at this moment. However, it would still be desirable that social state X is kept in mind as a goal, and institutional change ought to be directed towards this goal in the long run. This relates to Gilabert's argument that theories of justice can take on the role of being *critical of the status quo*. If something is not directly achievable because of people's opinion or cultural norms, these soft constraints could be affected by philosophers. In other words, moral reasoning may be able to convince people to abandon their opinions (e.g. of bigotry or intolerance), thus making certain social states reachable despite initial cultural barriers.

## **5.8 Action design**

Important to note is that to say something is feasible is not the same as saying we know how to bring it about. It means we know it *can* be brought about. In situations with high cultural barriers this may be quite a challenge. However, this should not impede a political theorist to evaluate a social state in terms of which is more just. Actually getting to a situation where a social state could be brought about may require cultural and anthropological research and political activism.

I covered the question to what extent feasibility constraints are to be taken into account in non-ideal theorizing. Here, I have offered a new way to distinguish between types of feasibility constraints: universal feasibility constraints and context-dependent feasibility constraints. Since the task of non-ideal theorizing is comparing social states in order to guide action in the real world, its recommendations should not be universally infeasible. In any case, some feasibility constraints are context-dependent. In order to be generalizable, such context-dependent feasibility constraints should not be taken into account in non-ideal theory of justice.

## 5.9 Objections

Two objections could be made about this sufficient condition of feasibility constraints. The first two are similar in nature, as they are both problems of coordination:

The first objection is: what if a social state is feasible only if everybody else does it? In “Capital in the 21<sup>st</sup> Century”, Thomas Piketty argues for a global wealth tax (Piketty, 2014). This seems like a wildly ambitious, or even utopian plan, and one may question why his proposal is not more modest, i.e. a wealth tax in France only. The reason for this, is that applying a wealth tax in one country may have very negative effects; companies may relocate, and job opportunities may be lost for a country. However, if the wealth tax is global, countries may not be able to relocate to places with more convenient tax regimes. Taxing highly on wealth may then be possible, which could have big implications on theories of redistributive justice.

This objection indeed shows a shortcoming in the approach I have outlined. However, I would like to emphasize again that this is one of the reasons why there is indeed a place for ideal theories of justice. At this moment we may not have the institutional organizations in place to deal with the coordination problem outlined. However, it is still of high importance that there are theorists who play a more exploratory role and evaluate social states which we do not know for sure to be feasible.

A second objection, and a more serious one, is the opposite question: “what if a social state is feasible only if it is *not* reached in every other country?”<sup>15</sup> This is related to spill-over effects. To use a hypothetical example, one country may successfully ban exploitation of workers. However, if they still import products at low prices from other countries which do practice

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<sup>15</sup> This objection was brought to my attention by Elina Vessonen

exploitation of their workers, they will not have any negative repercussions in terms of excessively high prices. If all countries adopted this ban, on the other hand, it is plausible that there may be negative consequences in terms of untenably high prices.<sup>16</sup>

This objection shows an important clarification that needs to be made, namely in what it means for a social state to be *brought about*. Namely, a social state has been brought about in a country if it no longer relies on the relevant practice. For example, in the case described above, if the social state indicates the absence of exploitation of workers, it means the country should not be benefitting from exploitation of workers in any way, directly or indirectly. If this is the case, then the social state can be said to be feasible. Again, it must be stressed, if it is not achieved the social state is not *unfeasible*; in such a case we simply have to suspend judgment. It is uncertain.

To conclude this section, I will summarize each of the feasibility constraints and how they apply to different types of theory. A social state is known to be infeasible if it is in conflict with a hard constraint; these types of social states are infeasible anywhere. Even ideal theories should refrain from covering these types of social states (insofar as they aim to be normative at all). Then there are those social states of which we do not know if they are feasible or infeasible. I have suggested that ideal theories can cover these states. Finally there are those social states of which we know they are not infeasible. This is the case when a social state has been shown not to be in conflict by a hard constraint by having been achieved somewhere.

## Chapter 6: Conclusion

In this thesis I have argued that in order to be a non-ideal theory of justice, a theory needs to fulfill two necessary conditions: it has to be able to *compare* social states, and it has to be limited by *feasibility constraints*. However, despite both of these conditions being necessary, many questions remain open with respect to both of these conditions. With respect to ability to compare social states, the main proponent of the comparative approach (Amartya Sen) has not offered a full enough framework to be able to make comparative statements on social states. Many issues with respect to trade-offs are unsettled and left in the domain of public deliberation.

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<sup>16</sup> I do not wish to claim with this example that the risk of high prices justifies exploitation of workers. The example is a hypothetical one where such a society would be *completely* unstable.

Furthermore, I argue the literature on feasibility has not devoted enough attention to epistemological concerns regarding feasibility. I argue that in order to be able to guide action, the feasible social states that are to be covered by non-ideal theories of justice are social states which are *known* to be feasible. More context-dependent feasibility constraints which apply to only some countries should not be taken into account by non-ideal theories of justice, as long as the social state is known not to be in conflict with any hard constraint.

It should be stressed, however, that these claims are reliant on some premises which would need to hold in order for the conclusion to be sound. For example, to defend the claim that only those social states that have been achieved are known to be feasible, I am assuming some psychological hard constraints exist. My argument is mostly focused based on this assumption. This does not mean, however, that my conclusion would be false if the assumption were not to hold, but it would mean that the argumentation would have to change. Finally, this thesis has shown the messiness of the concept of non-ideal theories of justice, and the different ways it has been used by different philosophers. While some philosophers may disagree with the broad, all-encompassing role I am giving non-ideal theory here (e.g. Amartya Sen), the main point to take home from the thesis is that *if* non-ideal theories are meant to be more able to guide action in the real world, *then* comparability and feasibility are necessary criteria.

I hope to have contributed to the ongoing discussion by offering a justification for why non-ideal theories of justice should cover those social states that we know to be feasible, and should focus on making comparative statements about these social states. In addition to arguing that comparability and feasibility are necessary criteria, I have shown that both of these concepts are as of yet not fully defined and the contributions to the subject have some shortcomings; in the case of comparability, I conclude that many questions unfortunately remain unsettled. One is faced with a difficult choice: would we rather have a clear algorithm that helps us make final decision although this means we have to ignore some severe limitations, or should we be honest about limitations and focus only on those questions that *can* be agreed upon considering the plurality of views? Providing an answer to this dilemma is however not in the scope of this thesis, but I do ascribe a higher role to philosophers to flesh out those parts where disagreement can be cleared. My contribution has been more substantive in the discussion surrounding feasibility constraints. Not enough attention has

been devoted to potential epistemological shortcomings in what we can know about the feasibility of social states.

Future work thus has to focus on developing a method which can consistently make comparative statements about social states, with a realistic stance on what we can know to be feasible. As such, philosophers can take it upon themselves to find acceptable ways of handling the trade-offs that Sen leaves open, and if a process of public deliberation is an integral part of a theory, the process should be as realistic as possible about human nature. I hope to have contributed to the discussion, and for political philosophy to keep making steps in increasing its public influence.

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