

should be construed not in terms of overarching principles (however these might be defined) but through a comparative lens that distinguishes differences and variations among people in differing situations. He criticizes theories of justice, notably that of the eminent liberal political theorist John Rawls, who elaborates “justice as fairness,” by deploying a version of transcendental social contract theory that has formed the basis of liberal thinking since Thomas Hobbes and John Locke. Rawls’s version used the “original position,” a thought experiment in which people in an ideal presocial state had to imagine what kind of society they would support if they did not know in advance the position they were to be allocated to within it. Rawls’s argument was that people would choose a society that not only embraced freedom but also in which inequalities were not ascribed, since they would be mindful of the possibility that they might initially be placed at the bottom of any unequal social order. They would therefore support a liberal model in which there were meritocratic possibilities of social mobility.

Sen argues that this approach to justice defaults to a narrow instrumental concern with the extent to which effective procedures are in place to ensure that such transcendental principles can be enacted. The result is that it loses sight of the actual outcomes and practices that exist in specific societies. It can be maintained that this is exactly what has happened in recent decades: Formal legal procedures to deal with different aspects of discrimination are now commonplace, but attention to actual social outcomes is more muted. Sen (2009: 17) draws on Indian jurisprudence concepts of *niti* and *nyaya*:

The former idea, that of *niti*, relates to organizational propriety as well as behavioural correctness, whereas the latter, *nyaya*, is concerned with what emerges and how, and in particular the lives that people are actually able to lead.

In pursuing this concern with *nyaya*, Sen directs attention away from abstract principles of justice (such as those of Rawls) toward a concern with identifying better and worse actual outcomes across numerous cases.<sup>16</sup> Sen’s argument is prescient, because it is precisely in this comparative spirit that the inequality paradigm has gathered force by documenting the accumulating evidence of how people’s actual lives have been blighted by forces generating inequality. By avoiding transcendental (which thereby become