Individual Rights and the Social Good: A Choice-Theoretic Analysis

Steven Strasnick

Follow this and additional works at: http://scholarlycommons.law.hofstra.edu/hlr

Part of the Law Commons

Recommended Citation
Available at: http://scholarlycommons.law.hofstra.edu/hlr/vol10/iss2/5
INDIVIDUAL RIGHTS AND THE SOCIAL GOOD: A CHOICE-THEORETIC ANALYSIS

Steven Strasnick*

I. INTRODUCTION: THE INDIVIDUAL VS. THE SOCIAL GOOD

In any model of the just society, the possibility of conflicting interests among individuals is a basic problem that must be resolved. This problem is particularly apparent when a society attempts to base its conception of justice on some account of the public interest or social good. Given the existence of conflicting interests, there is no single, noncontroversial path that society can tread between individual interests and collective interests that does not engender the frustration of at least some individual interests. When it appears that a society has traversed this route successfully and has defined some unifying conception of the social good, the basic conflict may still not have disappeared but may merely have changed its character. Individual interests, once in conflict with other individual interests, are now in conflict with the social good.

It is in this latter form that the problem of the conflict between individual interests most frequently appears in the contemporary literature on justice.1 Until recently, the dominant concept of the social good has been some variant of the moral philosophy of utilitarianism,2 which many thought solved the problem of defining the public interest successfully on the basis of individual interests.3 The utilitarian solution, first seriously articulated by Jeremy Bentham,4 was striking in its simplicity: Since a society is composed of individual members, the interest of society could be nothing else but "the

---

* Assistant Professor of Philosophy, Stanford University. S.B., 1970, Massachusetts Institute of Technology; 1972, M.A., 1975, Ph.D., Harvard University.


2. R. Dworkin, supra note 1, at ix.

3. See id.

sum of the interests of the several individuals who compose it.\textsuperscript{5} Further, since the interests of all individuals are defined in terms of their happiness, the interest of society is defined as the summed happiness of its members and is measured in terms of utility.\textsuperscript{6} While this solution to the problem of conflicting individual interests is appealing, its consequences—the sacrifice of particular individuals' interests to the interests of the greatest happiness or social good—has proven unpopular at both ends of the political spectrum. Those on the left fear that the interests of the socially downtrodden will be unjustly sacrificed, in the name of general expediency, to the interests of the more well-to-do,\textsuperscript{7} while those on the right fear that the interests of the socially established will be unjustly sacrificed, in the name of general expediency, to those of the less fortunate or deserving.\textsuperscript{8}

In light of these suspected failings in utilitarian theory, the last ten years have witnessed a renewal of interest in the concept of individual rights. A number of distinguished works have manifested a common intent to articulate a conception of justice that defends the interests of the individual against those of society.\textsuperscript{9} Ronald Dworkin, in the introduction to \textit{Taking Rights Seriously},\textsuperscript{10} has recently suggested that “[i]ndividual rights are political trumps held by individuals,” and that “[i]ndividuals have rights when, for some reason, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do, or not a sufficient justification for imposing some loss or injury upon them.”\textsuperscript{11} In \textit{A Theory of Justice},\textsuperscript{12} John Rawls has made a similar statement concerning individual rights:

Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many.\textsuperscript{13}

\begin{itemize}
\item 5. \textit{Id.} at 18.
\item 6. \textit{See id.}
\item 7. \textit{See R. Dworkin, supra note 1, at x.}
\item 8. \textit{See id.}
\item 9. \textit{See sources cited note 1 supra.}
\item 10. R. Dworkin, \textit{supra} note 1.
\item 11. \textit{Id.} at xi.
\item 12. J. Rawls, \textit{supra} note 1.
\item 13. \textit{Id.} at 3-4.
\end{itemize}
In the preface to *Anarchy, State, and Utopia*, Robert Nozick has made an even stronger statement:

Individuals have rights, and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do. How much room do individual rights leave for the state? These recent works bring into sharp focus both the potential conflict between individual interests, downplayed in the utilitarian tradition of single-minded pursuit of the greatest happiness, and the impossibility of resolving this conflict simply through some conception of the social good. Recognition of individual rights is acceptance that the conflict between individual interests will not be dissolved by focusing on abstract issues of social goods; moreover, it is acceptance that this conflict is legitimate: that individuals have interests they are entitled to press against other individuals and against society as a whole.

Although expression of this conflict is basic to recent treatments of rights in a theory of justice, another potential conflict may be more troublesome. A basic feature of the utilitarian conception of the social good was its willingness to sacrifice individual interests in the pursuit of the greatest happiness. It is possible, however, to define a conception of the social good that does not involve this kind of sacrifice. This conception has evolved from the work of Vilfredo Pareto and has undergone sophisticated development in the hands of neoclassical economists. Simply stated, Pareto defined the social good as whatever is consistent with the stated interests of all individuals in society. If all individuals agreed that a certain policy was in their interests, Pareto's principle would identify that policy as in the public interest. Pareto's principle is one that hypothesizes the idea of a unanimous social consensus, and it is hard to imagine a weaker and more ingenious conception of the social good. Harder to imagine, perhaps, is how this conception of social consensus could conflict with individual rights. It is easy to see how a majoritarian conception

---

15. Id. at ix.
16. See J. RAWLS, supra note 1, at 22-23.
19. Id.
of social consensus could conflict with individual rights, but where this conflict could be found in the case of unanimity is indeed puzzling. If the existence of this kind of conflict could be demonstrated, however, it would be a powerful indictment of the concept of rights and would serve to undercut much of the critique of the utilitarian conception of the social good.

At about the same time as new works defending individual rights began to appear, the economist Amartya Sen published a paper purporting to demonstrate the existence of this conflict between the Pareto principle and a conception of individual rights. Using social choice analysis, Sen argued that any society following Pareto's principle, and what he called a weak principle of personal liberty, would sometimes be forced to make inconsistent or irrational choices. If society is to subscribe to basic principles of rationality, either the conception of individual rights or the consensus conception of the social good must be abandoned. Since both conceptions seem to be part of any viable theory of justice, Sen's result is challenging.

This paper develops a perspective within which Sen's theory may be examined and his result understood. From within this perspective, not only will the conflict between individual rights and a rational Pareitian society disappear, but it will be shown how the conception of this kind of society will lead directly to the recognition of a strong theory of individual rights. Properly conceived, a rational society that accepts a Pareto-like principle of consensus is not simply consistent with the possibility of individual rights; it requires them. The Pareitian liberal is not an impossibility: He is a matter of conceptual necessity.

II. SOCIAL CHOICE AND THE IMPOSSIBILITY OF THE PARETIAN LIBERAL

Social choice theory has had a long lineage and has developed in many different directions. For the purposes of this investigation,

20. See Sen, The Impossibility of a Paretian Liberal, 78 J. Pol. Econ. 152 (1970) (the original paper) [hereinafter cited as Sen, Impossibility]. For a discussion of the result in the larger context of social choice theory, see A. Sen, supra note 18, passim. For a detailed discussion of the result in relation to the numerous papers that have appeared in response to the original paper, as well as a detailed bibliography of the literature, see Sen, Liberty, Unanimity and Rights, 43 Economica 217 passim (1976) [hereinafter cited as Sen, Liberty].
21. See A. Sen, supra note 18, at 197-98; Sen, Liberty, supra note 20, at 217-45.
23. For classic discussions of social choice theory as a field of study, see K. Arrow, Social Choice and Individual Values (2d ed. 1963) and A. Sen, supra note 18.
I will employ the social choice theory articulated by Kenneth Arrow in *Social Choice and Individual Values*. This theory analyzes the effect of individual inputs on social outcomes by examining the logic and structure of various social choice mechanisms. Arrow's theory asks "if it is formally possible to construct a procedure for passing from a set of known individual tastes to a pattern of social decision-making, the procedure in question being required to satisfy certain natural conditions." A society has many different procedures to generate its decisions; social choice theory seeks to evaluate these procedures through an analysis of their formal properties.

The basic conceptual unit of social choice theory is called a preference relation. If the letters x, y, z, . . . represent the possible outcomes that could be generated by the action of society, then xPy represents the choice or the assignment of priority by society of outcome x over y, while xIy means that society is indifferent between the two. Similarly, if individuals are represented by the numbers 1, 2, 3, . . . , then xP1y represents the preference of individual 1 for the realization of outcome x in society instead of y, and xI1y represents the individual's indifference between the two. A social choice procedure (SCP) will be any social mechanism that defines a preference relation between two possible social outcomes on the basis of information about individual preference relations for those outcomes. Social choice procedures have two general kinds of properties. One concerns the logical relationship between a society's preference relations. An SCP will be rational if its preference relations are logically related in such a way as to define an ordering of all possible social outcomes for any possible set of individual orderings. To be ordered, preference relations must have the following properties:

a. Completeness. For all x, y, either xPy, xIy, or yPx.
b. Asymmetry. For all x, y, if xPy, then not yPx or xIy.
c. Transitivity. For all x, y, z, if xPy & yPz, then xPz; if xIy & yIz, then xIz.

I assume that individual preference relations satisfy these properties as well. Given the usual meaning of preference, these kinds of properties appear to be quite natural. Completeness requires that society have some kind of preference between any two possible outcomes. Asymmetry requires that if society prefers one outcome to a
second, it does not also prefer the second to the first, nor is it indifferent to the two. Transitivity requires that if one outcome is preferred to a second, and the second to a third, then the first is preferred to the third as well. A society whose social choice procedures manifest these properties is rational since its decisions will always be consistent.

The second kind of property used for evaluating social choice procedures concerns the logical relationship between individual and social preference relations. The Pareto principle is the most well known example of this type of property. Using the language of preference relations, Pareto's condition may be thus expressed: For all $x,y$, if for all individuals $i$ in society $x \succ_i y$, then $x \succ y$; if for all $i$, $x_i \preceq y$, then $x \preceq y$. This condition states that if all individuals in society share the same preference, society will as well.

Surprisingly, given this very minimal formal apparatus, Sen's impossibility result follows from his representation of the concept of individual rights. Sen regards it as a minimal condition of individual rights that each individual have the right to dictate at least one pair of possible social outcomes, even if those outcomes are of legitimate personal concern to that individual only:

Some choices between alternative social states may involve differences that are personal to someone; e.g., with everything else the same Jack sleeps on his back ($x$) or on his belly ($y$). Choices of this type—though formally between alternative social states—may be taken to be the "concern" only of the relevant person. Even if persons other than Jack entertain preferences as to how Jack should sleep, it seems reasonable to argue that the choice between $x$ and $y$ should be settled by Jack's preference only.\textsuperscript{27}

The property stating that for every individual there must exist a pair of social outcomes that the individual's preference is sufficient to determine, Sen terms the condition of \textit{weak libertarianism}.\textsuperscript{28} Although this is a very weak conception of rights, Sen's result demonstrates that if even two individuals in society are assumed to have this right, a rational Pareitian SCP will fall into contradiction for a particular set of individual preference relations.\textsuperscript{29} For example, suppose that individual 1 has the weak right to decide the social outcome between $x$ and $y$ while individual 2 has the right to decide between outcomes

\textsuperscript{27} Sen, \textit{Liberty}, supra note 20, at 217-18 (emphasis omitted).
\textsuperscript{28} \textit{Id.} at 218.
\textsuperscript{29} For the details of Sen's demonstration, see Sen, \textit{Liberty}, supra note 20, at 217-43.
v and w. Assume the individual orderings over the four outcomes are as follows:

1. \( w_R x \, \leq_1 v \)
2. \( y \, \leq_2 w \, \leq_R x \)
3. for all \( i \neq 1, 2 \)
   \( w \, \leq_R x \, \& \, y \, \leq_R v \)

These orderings will define a series of social choice situations:

4. \( x \, \leq_R y \, , \, y \, \leq_R x \)
5. \( y \, \leq_R v \, , \, y \, \leq_R v \)
6. \( w \, \leq_R v \, , \, v \, \leq_R w \)
7. \( w \, \leq_R x \, , \, w \, \leq_R x \)

According to the weak-libertarian condition, \( x \, \leq_R y \) holds for (4), since that is individual 1's right. For (5) Pareto entails \( y \, \leq_R v \). In (6) the condition of weak libertarianism leads to \( v \, \leq_R w \), since that is individual 2's right. Thus, by transitivity,\(^{30}\) since \( x \, \leq_R y \, \& \, y \, \leq_R v \, \& \, v \, \leq_R w \) should hold for (7). But Pareto requires \( w \, \leq_R x \) for (7) since all individuals agree. This is a contradiction.

Looking at this example, it is difficult to diagnose the nature of the ill that has infected the SCP. If it is assumed that society should be able to produce consistent social outcomes, despite the nature of individual preferences, and that society should not frustrate the unanimous preferences of individuals, one must then identify the cause of the contradiction as the condition of minimal libertarianism. One would expect any viable theory of rights to grant the individual the right to decide the social preference in any number of cases where only the individual's legitimate concerns\(^{31}\) were involved: not solely in the case of one pair of social outcomes. Some explanation of Sen's result must therefore be found that does not identify the cause of the inconsistency as society's acceptance of the legitimacy of individual rights; otherwise the widespread belief in the importance of individual rights to social justice will be called into serious question.

III. A POSSIBILITY RESULT FOR A FREE SOCIETY

To help identify the underlying cause of Sen's impossibility result, the properties of a particular kind of social choice procedure will now be analyzed. This social choice procedure will be unique in the sense that its social preferences will be sensitive to the nature of

\(^{30}\) See text preceding note 27 supra.

\(^{31}\) See text accompanying notes 50-53 infra (discussing legitimate claims).
the relationship between individual preferences and particular kinds of social outcomes. It will be shown how this sensitivity will lead to a possibility result, rather than an impossibility result, with respect to the social incorporation of a conception of self-regarding individual rights. The example will be developed for a three-person society but the structure of the preference situation may be generalized to any number of individuals.

Consider a society of individuals 1, 2, and 3 with social choice procedures for ranking the relative priority of the following social outcomes:

| Table I |
|-----------------|-----------------|-----------------|-----------------|-----------------|
| Outcome a.      | Individual 1’s self-regarding behavior is protected. |
| Outcome b.      | Individual 2’s self-regarding behavior is protected. |
| Outcome c.      | Individual 3’s self-regarding behavior is protected. |
| Outcome d.      | Individual 1’s self-regarding behavior is regulated. |
| Outcome e.      | Individual 2’s self-regarding behavior is regulated. |
| Outcome f.      | Individual 3’s self-regarding behavior is regulated. |

Suppose, as did Sen, that society’s social choice procedures are represented by a rational Paretian SCP. In place of Sen’s weak-libertarian condition, however, assume that individual rights are represented by a weaker requirement, which will be called the condition of non-censorship. This condition states that no individual i has the right to impose on society, over the objections of everyone else, a preference that someone else’s activities be regulated instead of individual i’s. This condition is, in one sense, the inverse of Sen’s in that it requires the existence of social situations where one individual does not have the right to dictate social policy over the objections of everyone else. Sen’s condition on individual rights, on the other hand, assumes that there exist certain situations in which the individual does have this right. The main difference between this condition and Sen’s is that individual rights are defined for the case where a special relationship exists between an individual’s preference and the outcomes for which it is defined, whereas in Sen’s condition, no such relationship is assumed to exist.

Suppose that the following individual preference relations exist:

(1) All individuals prefer that their own activities remain protected

32. See Sen, Impossibility, supra note 20, passim.
33. See text accompanying notes 26-27 supra.
34. See text accompanying notes 28-30 supra.
35. See Sen, Impossibility, supra note 20, at 153; Sen, Liberty, supra note 20, at 218.
while those of everyone else are regulated. In terms of preference relations, this requires:

(a) for individual 1: \( aPz, xPb, yPc; \)
(b) for individual 2: \( bPx, yPc, zPa; \)
(c) for individual 3: \( cPy, zPa, xPb. \)

(2) Similarly, all individuals prefer that someone else's activities be regulated instead of their own. Thus:

(a) for individual 1: \( xRz, yRz; \)
(b) for individual 2: \( yRx, zRx; \)
(c) for individual 3: \( zRy, xRy. \)

(3) All individuals prefer that their activities be protected rather than someone else's regulated:

(a) for individual 1: \( aRx, aPy; \)
(b) for individual 2: \( bPy, bPz; \)
(c) for individual 3: \( cPx, cPz. \)

(4) Some measure of agreement exists between individuals that it is better that the protection of certain individuals' activities be given priority over the regulation of the activities of certain others. In particular:

(a) for all individuals \( i \): \( aPix, bPly, cPiz. \)

(5) Complete individual orderings are defined by the remaining preferences:

(a) for individual 1: \( xPy, bPz, xPc; \)
(b) for individual 2: \( yPa, yPz, cPx; \)
(c) for individual 3: \( aPy, zPb, zPx. \)

The complete individual orderings defined by these preference relations are summarized in the following table, ranging from top and most preferred to bottom and least preferred:

<table>
<thead>
<tr>
<th>INDIVIDUAL 1</th>
<th>INDIVIDUAL 2</th>
<th>INDIVIDUAL 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>( a )</td>
<td>( b )</td>
<td>( c )</td>
</tr>
<tr>
<td>( x )</td>
<td>( y )</td>
<td>( z )</td>
</tr>
<tr>
<td>( b )</td>
<td>( c )</td>
<td>( a )</td>
</tr>
<tr>
<td>( y )</td>
<td>( z )</td>
<td>( x )</td>
</tr>
<tr>
<td>( c )</td>
<td>( a )</td>
<td>( b )</td>
</tr>
<tr>
<td>( z )</td>
<td>( x )</td>
<td>( y )</td>
</tr>
</tbody>
</table>

Looking at the structure of the individual orderings defined in table II, some readers will recognize that it is very similar to the one employed in the well-known paradox of majority voting, which has the following structure:36

For this latter configuration of preferences, if each individual's preference is regarded as expressing one vote and each vote counts equally, the social ordering would be \( xPy, yPz \) and \( zPx \). This ordering contradicts the social preference of \( xPz \) that transitivity requires. Similarly, if majority voting was followed for table II, the following inconsistent preferences would result: \( aPx, xPy, yPa \). This structure of preferences is widely used in social choice theory to generate impossibility results due to the cyclical structure of the individual preference relations, and is precisely the structure used by Sen to generate the contradiction discussed in section 11.38 In the present example, the structure of preferences results from a society in which only a limited degree of social consensus exists and individual preferences are, for the most part, determined on the basis of what might be called strict rational self-interest; that is, from the individual's viewpoint, it is better that everyone else's activity be regulated while the individual's activity is protected. This is an expression of most individuals' natural desire, whenever possible, to be free riders and let others pay the cost of producing social benefits which can then be enjoyed without cost.

In light of Sen's demonstration, and given these kinds of selfish motivations, one would certainly not expect a recognition of individual rights to emerge as the outcome of the assumption of individual preferences in rational Paretian social choice. This is, however, precisely what happens. Let an SCP define a free society where the individual is given the right to veto the proposed regulation of that individual's activities by all the other individuals in society. Given the individual preferences defined above:

(6) The SCP is a free society if

(a) given \( aPa, zRa, zPa, aPz \) is the social preference;
(b) given \( bRx, xRb, xRb, bPx \) is the social preference;
(c) given \( cPy, yRc, yRc, cPy \) is the social preference.

The following result may now be established:

<table>
<thead>
<tr>
<th>INDIVIDUAL 1</th>
<th>INDIVIDUAL 2</th>
<th>INDIVIDUAL 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>( x )</td>
<td>( y )</td>
<td>( z )</td>
</tr>
<tr>
<td>( y )</td>
<td>( z )</td>
<td>( x )</td>
</tr>
<tr>
<td>( z )</td>
<td>( x )</td>
<td>( y )</td>
</tr>
</tbody>
</table>

37. See, e.g., Sen, Impossibility, supra note 20.
38. See id.
Free-Society Result. For the preference orderings defined in table II, the only rational Paretian SCP that satisfies the non-censorship condition is a free society.

This result is the same for the three-person case, and can easily be generalized to the n-person case by defining the appropriate preference relations.

To see why this result follows, consider first what the condition of non-censorship will require for the individual preference relations defined above. By examining tables I and II, it can be determined that the following social preferences must hold:

- (7) (a) not xPz when xPz, zPx, zPX;
- (b) not yPx when xPy, yPx, xPy;
- (c) not zPy when yPz, yPz, zPy.

In case (7)(a), not xPz must be the social preference because the non-censorship condition provides that individual 1 does not have the right to dictate to society, over the opposing preferences of everyone else, the preference that individual 2’s behavior be regulated instead of individual 1’s. Similar reasoning applies to cases (7)(b) and (7)(c).

Consider the following social situations where individual 1 prefers that 1’s activities be protected.

<table>
<thead>
<tr>
<th>Table IV</th>
</tr>
</thead>
<tbody>
<tr>
<td>(8) aRx</td>
</tr>
<tr>
<td>(9) xRy</td>
</tr>
<tr>
<td>(10) aPy</td>
</tr>
<tr>
<td>(11) yRz</td>
</tr>
<tr>
<td>(12) aRz</td>
</tr>
</tbody>
</table>

For (8), aRx follows from the Pareto condition. For (9) the condition of non-censorship and (7)(a) requires not yPx. For (10), completeness and transitivity require aPy. And for (11), non-censorship and (7)(c) require not zPy. Thus, by completeness and transitivity, aPz follows for (12) as required by (6)(a). This satisfies the free-

---

39. See text preceding note 27 supra.
40. See text accompanying notes 32-35 supra.
41. See text accompanying note 26 supra.
42. See text accompanying notes 32-35 supra.
43. See text preceding note 27 supra.
44. See text accompanying notes 26-27 supra.
Identical reasoning holds for the situation of individuals 2 and 3. The argument is summarized in the following table:

<table>
<thead>
<tr>
<th>Table V</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDIVIDUAL PREFERENCES</td>
</tr>
<tr>
<td>(13) $bP_y$  $bP_z$  $bP_b$</td>
</tr>
<tr>
<td>(14) $yP_z$  $yP_z$  $zP_y$</td>
</tr>
<tr>
<td>(15) $bP_z$  $bP_z$  $zP_b$</td>
</tr>
<tr>
<td>(16) $xP_z$  $zP_x$  $zP_x$</td>
</tr>
<tr>
<td>(17) $xP_b$  $bP_x$  $xP_b$</td>
</tr>
<tr>
<td>(18) $cP_z$  $cP_z$  $cP_z$</td>
</tr>
<tr>
<td>(19) $xP_z$  $zP_x$  $zP_x$</td>
</tr>
<tr>
<td>(20) $xP_c$  $cP_x$  $cP_x$</td>
</tr>
<tr>
<td>(21) $xP_y$  $yP_x$  $xP_y$</td>
</tr>
<tr>
<td>(22) $yP_c$  $yP_c$  $cP_y$</td>
</tr>
</tbody>
</table>

The free-society result has therefore been established for the set of individual orderings defined for this society.

IV. SEN'S RESULT RECONSIDERED

Given the free-society result, the nature of the contradiction embedded in Sen's impossibility result may now be better understood. Sen's result established that no rational SCP could consistently satisfy both a Pareto condition and a weak-libertarian-rights condition. Yet in the free-society result, a rational SCP will, on the assumption that individuals in some situations do not have rights to dictate their preferences to society, honor the rights of those latter individuals to dictate their preferences. This has been shown in precisely those cases where the social outcomes concern the interests of particular individuals alone as well as for the same profile of individual orderings employed by Sen. Since the free-society result has only been established for the sets of individuals defined in table II, and not for all possible sets of individual preference orderings, it does not invalidate Sen's result. It does show, however, that it is possible to define a rational Paretian SCP that will, for a particular set of indi-

45. See text accompanying notes 26-27, 33-44 supra.
46. See text accompanying notes 32-45 supra.
47. See text preceding note 27 supra.
48. See generally Sen, Impossibility, supra note 20; Sen, Liberty, supra note 20.
individual orderings, give every individual in society the right to determine the social preference in those situations where the social outcomes are matters of that individual's personal concern.

The significance of the free-society result, in light of Sen's result, is that the existence of individual rights is not assumed as an arbitrary fact; that is, it is not considered independent of the nature of social outcomes and social choice procedures sensitive to features of those outcomes. Rather, these rights emerged as the result of the social choice procedure's interaction with the preferences of individuals over certain kinds of outcomes. Sen's weak-libertarian condition assumes the existence of some arbitrary pair of outcomes over which the individual has rights, but it provides no connection between these rights and the preferences of individuals regarding different kinds of outcomes. The non-censorship condition, on the other hand, ties its restrictions regarding individual rights not only to particular features of the individual preferences involved but also to characteristics of the social outcomes over which the preferences range. It does not assume simply that there must exist some pair of outcomes for which the individual does not have the right to dictate social preference. Instead, it specifies the nature of these outcomes relative to the individual preferences. It was this specification and its interaction with the given individual preferences that produced the recognition of individual rights—not over some unspecified pair of outcomes, but over the kind of outcomes one would expect a viable theory of rights to require—namely, those of particular concern to the individual involved.

If this analysis is correct, the inconsistency of Sen's weak conception of rights and a rational Paretian SCP does not arise because a conception of individual rights in the context of social choice theory must necessarily be incoherent; rather, the inconsistency arises because of Sen's failure to place his conception of rights within the context of social choice theory. Given its definition, a social choice procedure must base its judgments on information about individual preferences and the outcomes over which they range. If social choice theory is to be able to represent consistently the concept of individual rights, a way must be found to tie the existence of individual rights to features that social choice procedures are able to take into account: namely, features about individual preferences and their relationship to social outcomes. It is not enough to ask if rational Pare-

49. See text accompanying notes 32-35 supra.
tian SCP's are consistent with certain conceptions of individual rights. Rather, individual rights must be shown to emerge as logically necessary features of any rational SCP's that satisfy certain desirable formal properties. In the free-society result, it has been shown how a rational Pareitian SCP can, for a particular set of individual orderings, logically require the existence of individual rights. What remains to be shown is how this kind of result can be extended generally to all possible situations and orderings. With such a result, the conception of individual rights that has been so widely explored in the literature of social justice will once again return to firm conceptual ground.

V. SOCIAL CHOICE AND THE FULL RESPECT OF INDIVIDUAL RIGHTS

In this section, I will demonstrate that it is possible to place conditions on a rational SCP\(^5\) that will logically require the existence of strong individual rights for any possible set of individual preferences.\(^5\) This result shows that individual rights are not only consistent with rational Pareitian SCP's, but that they are a logically necessary feature of a strengthened version of such SCP's. Further, it will confirm the supposition of the last section that the explanation for the inconsistency between individual rights and the rational Pareitian SCP in Sen's result lies not in some incoherency in the nature of rights but rather in the fact that Sen's conception of rights was divorced from key features of the relationship between individual preferences and social choice.

As before, I assume that a rational SCP will define preference relations between possible social outcomes on the basis of information about individual preference relations for those outcomes. In the present context, however, the following change is made in the way these preference relations are interpreted. Rather than simply representing an individual's preference between two social outcomes, \(xP_y\) will now represent a legitimate claim made by individual \(i\) against society for the choice of outcome \(x\) over outcome \(y\). This claim will

---

50. See text accompanying notes 26-27 supra.
51. Cf. Strasnick, The Problem of Social Choice: Arrow to Rawls, 5 PHILOS. & PUB. AFF. 241 (1976) (arriving at formally equivalent result). This paper contained a detailed discussion of Arrow's original impossibility result and shows how a modification of that result leads to important results for theories of distributive justice. The result in the present paper employs the same formal apparatus, but provides new interpretations of the conceptual components of the original result to show its relationship to issues of individual rights.
be called a preference claim and will be legitimate when the individual is entitled to make it. The nature of entitlement will be discussed in the next section, but on the basis of earlier discussions one would expect this entitlement to be based on features of the social outcomes among which the individual is making claims. In subsequent discussions in this section, it will be assumed that all preference claims are legitimate.

In order to have a basis for adjudicating between the conflicting preference claims of individuals, the SCP will be required to make priority judgments. The claim $xPy$ will be judged to have a greater priority than the opposing claim $yPx$ if the social choice in the society which consisted of these two individuals alone would be $xPy$. This judgment of greater priority will be represented as $xPy > yPx$. The judgment of equal priority will be $xPy \sim yPx$. Assume that the SCP is able to order for any pair of outcomes all possible preference claims in terms of their relative priority. The procedure by which these priority orderings are obtained will be analyzed in the next section, but assume that the priority of preference claims should be some function of the nature of the individual's entitlement to make these claims.

In this context, a rational SCP will be required to satisfy three conditions. An SCP will be based on priority judgments if it satisfies the following condition:

**Priority-Independence Condition.** The social choice between any outcomes $x$ and $y$ is to depend solely on the individual preference claims over $x$ and $y$ and on the priority ordering of these claims.

Given a particular priority ordering of individual preference claims, the social preference will be uniquely determined. The SCP may thus be understood as a procedure for adjudicating between conflicting claims on the basis of judgments concerning the relative priority of these claims. Such a procedure will be required by any society that regards individuals as having the right to make claims against it for particular social action and recognizes the fact that these legitimately made claims of individuals will often conflict.

The SCP will also be required to be just. It is one of the basic requirements of justice that like cases be treated alike and that individuals and social outcomes not be discriminated against solely on
the basis of their names. Thus, the SCP will be *just* if it satisfies the following condition:

*Impartiality Condition.* The social choice between any outcome is to be independent of the manner in which individuals or alternatives are named.

According to this condition, any changes in the names of individuals will leave the social choice unchanged, while any changes in the names of social outcomes will produce the same change in the social preference. In combination with the priority-independence condition, the impartiality condition will require that if there exist two different social situations in which the same priority orderings hold for the same preferences, the same social preference will hold for both situations, relative to the different names of the social outcomes. This result will hold even though these preferences may be assigned to different individuals and over different outcomes.

The final condition will be a strengthened version of the Pareto condition. As in Pareto, if all individuals are unanimous in their preference claims regarding a pair of social outcomes, the SCP will adopt this unanimous preference. This notion of consensus will be extended as follows. Suppose a set of separate groups in society using procedures identical to those of the SCP all come up with the same social preference. Then, if these groups are combined into one society, the same social preference must continue to hold for the whole society. If a *partition* of a set of individual preferences may be any division of it into a set of mutually exclusive and jointly exhaustive subsets of preference relations, the SCP will be *democratic* if it satisfies the following condition:

*Social Consensus Condition.* For any set of individual preference relations, (a) the Pareto condition is to hold for any subset in a partitioning, and (b) if, for some partitioning, the SCP prefers the same outcome in each subset, then it will prefer that outcome for the unpartitioned set of preference claims as well.

In order to express, in terms of rights, the result that will follow from these conditions, the following definitions are necessary. An individual may be said to have a right in social choice theory if the individual's preference that a particular outcome be adopted is accepted over the opposing preferences of all other individuals in society.55 An individual *claims a social right* whenever that individual

makes a preference claim that is opposed to the claims of all other individuals. Since the preference claims of individuals can be evaluated in terms of their relative priority, this claim of a social right will be privileged if the individual's claim has a greater priority than that of any of the opposing claims. In other words, an individual may assert a right-claim when that claim isn't of greatest priority; such a claim is privileged vis-à-vis other claims where it is of the greatest priority.

Finally, an SCP fully respects individual rights if its social choice is always consistent with an individual's privileged claim to a social right. A society that fully respects individual rights will always honor the preference claim of the individual who, though opposed by the claims of all other individuals, has the claim of greatest priority. Given the social-consensus condition, this decisiveness will continue to hold when not all other individuals oppose this claim of highest priority. Simply stated, such a society will always make its decisions on the basis of the individual with the highest priority claim. In this kind of society, therefore, individuals agree that the privileged individual's preference is decisive even if they do not agree with that individual's preference.

The claim that an SCP should fully respect individual rights is the strongest claim that a proponent of rights could consistently make. It is considerably stronger than Sen's weak-libertarian condition.\(^5\) In light of Sen's impossibility theorem, it should be difficult to prove that an SCP that fully respected individual rights could consistently satisfy a simple Pareto condition, not to mention a considerably strengthened consensus condition. This kind of proof requires that a particular set of individual preference claims and priority orderings be found that would generate the required set of social preferences. Surprisingly, however, a much stronger result follows that will be valid for all possible sets of individual preference claims and priority orderings.

**Full-Respect Result.** The only possible rational SCP that is based on priority judgments and is just and democratic is one that fully respects individual rights.

**The Full Respect of Rights**

A sketch of the main steps in the proof of the full-respect result

---

56. See note 28 *supra* and accompanying text.
follows.\textsuperscript{57}

\textit{Step 1.} There exists at least one situation in which the social preference is equivalent to the preference claim of greatest priority.\textsuperscript{58}

Let a set of individuals be \textit{decisive} when their preference claims decide the social preference although their claims are opposed by those of everyone else. Let $V^1$ be the smallest possible set that can be found and let $x$ and $y$ be the social outcomes in question. If $V^1$ only contains one member, step 1 is satisfied. Assume that it does not. Let $V^0$ be a particular individual from the set $V^1$ and let $V^2$ be the set of remaining individuals from $V^1$. Assume $V^2$ contains all the individuals whose preferences are opposed to those of the individuals in $V^1$ relative to the outcomes in question. Assume that the following preference claims hold:

\begin{align*}
(1) & \quad x P y, x R_z y, y R_z x \\
(2) & \quad y P z, z R_z y, y R_z z \\
(3) & \quad x P z, z R_z x, z R_z x
\end{align*}

For (1), there is the social preference $x P y$ by construction since $V^0$ and $V^2$ form the decisive set $V^1$ for the outcomes $x$ and $y$. For (2), $z P y$ cannot be the case, because if it were, $V^2$ would be a decisive set smaller than $V^1$ as it has one less individual. $V^1$ is by definition, however, the smallest decisive set with more than one individual. This requires, because of completeness and transitivity,\textsuperscript{59} that the social preference is $x P z$ for (3) and therefore that individual $V^0$ must be decisive for $x$ and $z$. This contradicts the original assumption, and thus the assumption that the smallest decisive set contains more than one individual is false. There must exist some situation where the preference claim of some individual dictates the social preference when that claim is opposed by all other individuals in society. Moreover, this claim must have the highest priority because of the social-consensus condition. Assume the following to be this situation:

\begin{align*}
(4) & \quad x P_D y > y P x, y R x, \ldots, y P x.
\end{align*}

This arbitrary choice of situation (4) presents no problems, as long as no assumptions are made about the preference relations of these individuals regarding any social outcomes other than $x$ and $y$, or concerning the nature of the particular priority judgments that hold

\begin{small}
\textsuperscript{57} For a complete proof, see Strasnick, \textit{supra} note 51, at 263-69.
\textsuperscript{58} See K. Arrow, \textit{supra} note 23, at 100.
\textsuperscript{59} See text accompanying notes 26-27 \textit{supra}.
\end{small}
for the preference claims of individuals 2 through n.

**Step 2.** The social preference is always equivalent to the preference claim of highest priority when this claim is opposed by lesser claims of equal priority.

As an example of how this demonstration would go, assume that we have three individuals opposing individual $D$ in case (4) and that case (4) occurs in two other social groups as well. Use the impartiality condition to normalize the names of individuals and outcomes and combine the three situations together to form the following situation, where $xPy$ is the case because of (4) and the social-consensus condition.\(^6\)

**TABLE VI**

\[
\begin{array}{ccc}
xPy & > & yPx, \\
& > & yPx, \\
& > & yPx, \\
\end{array}
\]

Now rearrange this situation to form the following:

**TABLE VII**

\[
\begin{array}{ccc}
xPy & > & yPx, \\
& > & yPx, \\
& > & yPx, \\
\end{array}
\]

As the set of priority orderings in each row is identical, whatever social preference holds in one row must hold in any other. This is true as well for any case where an individual with the highest priority is opposed by three lesser claims of equal priority. This follows from the priority-independence condition.\(^6\) Moreover, since table VII is the same situation as table VI with the individuals arranged into different subsets, the social-consensus condition will require that $xPy$ be the social preference as well. This, in turn, requires that $xPy$ be the social preference for every row, since they are all identical under the priority-independence condition.

**Step 3.** The social preference is always equivalent to the preference claim of highest priority, no matter what the relative priorities of

---

60. See text accompanying notes 54-55 supra.
61. See text preceding note 55 supra.
62. See text following note 54 supra.
the opposing claims.

The following example demonstrates the remainder of the proof:

(5)  \( xB_{D}y > y_{D}x > y_{D}x > y_{D}x \).

In case (5), the social preference is unknown, as in step 2.

<table>
<thead>
<tr>
<th>Table VIII</th>
</tr>
</thead>
<tbody>
<tr>
<td>( xB_{D}y ) &gt; ( y_{D}x ) &gt; ( y_{D}x ) &gt; ( y_{D}x )</td>
</tr>
</tbody>
</table>

Again, as in step 2, rearrange this situation into the following:

<table>
<thead>
<tr>
<th>Table IX</th>
</tr>
</thead>
<tbody>
<tr>
<td>( xB_{D}y ) &gt; ( y_{D}x ) ~ ( y_{D}x ) ~ ( y_{D}x )</td>
</tr>
</tbody>
</table>

This latter situation is in fact identical with respect to priorities to that of table VII, where \( xPy \) held. Thus, by priority independence, \( xPy \) must hold for table IX. This requires by social consensus that \( xPy \) hold for table VIII and likewise for (5).

VI. Entitlement and the Determination of Priority

It has now been established that a rational SCP\(^{63}\) that is sensitive to the relative priority of individual preference claims and is just and democratic must always choose between social outcomes on the basis of the preference claim that is highest in priority.\(^{64}\) Such a privileged claim will always have the right to determine the social choice, independent of a consensus opposing it. What remains to be examined is the manner in which the SCP identifies which individual has this highest priority claim. On the basis of the assumption that such a procedure exists, it has been shown that a just and democratic rational SCP must incorporate the strongest conception of rights.\(^{65}\) What must now be shown is that the existence of such a procedure is consistent with this incorporation and the other conditions that have been placed on social choice.

63. See text accompanying notes 26-27 supra.
64. See text accompanying notes 50-62 supra.
65. See text accompanying notes 55-57 supra.
In the evaluation of Sen's result, it was suggested that its main failing was its inability to connect its conception of individual rights with features of the social situation that social choice procedures take into account—specifically, features of individual preferences and their relationship to social outcomes. Making a connection between social choices and special features of individual preference claims that have been identified as the relative priority of these claims avoids Sen's impossibility result. Further, a strong conception of rights has been firmly grounded in the domain of social choice. To complete this analysis, the nature of the relationship existing between these special features of individual preferences and features of the social outcomes must be derived.

In previous discussion of the nature of individual preference claims, it was required that all individual claims against society for the choice of one outcome over another be legitimate in order to be considered by the SCP. This legitimacy was said to be based on the entitlement of the individual to make this claim, and it was suggested that this entitlement arose out of the particular nature of the individual's relationship to the outcomes in question. This relationship will be represented by the concept of an entitlement factor; and it will be assumed that society is able to recognize certain features of the individual's relationship to social outcomes as relevant to the determination of the relative weight of these factors. Thus, if $x_i$ represents individual $i$'s entitlement to outcome $x$, and $y_j$ represents individual $j$'s entitlement to outcome $y$, society will be able to make the judgment that either $x_i > y_j$, $x_i = y_j$, or $y_j > x_i$. On the basis of these kinds of judgments, society will define an ordering of the relative weight of all individual entitlement factors regarding any pair of social outcomes. Given this ordering, the individual preference claim $x R y$ will be legitimate only if $x_i > y_j$. Thus, society determines legitimacy. The individual will have a right to assert a preference claim against society for the choice of one outcome over another if the individual has a greater entitlement to the former outcome than the latter.

As the legitimacy of the individual's preference claim is based on the nature of the individual's entitlements, so too is the judgment of relative priority between two preference claims. One preference

66. See text accompanying notes 46-50 supra.
67. See text accompanying notes 50-52 supra.
68. See text accompanying notes 52-54 supra.
69. See R. Nozick, supra note 1, at 149-232.
claim will have a greater priority than another if the former individual is more entitled to make that claim than the latter. By placing certain weak conditions on the SCP that enable it to take information about entitlements into account, the manner in which the SCP will translate information about the relative weight of entitlement factors into judgments of claim priority, and thus into social choice, can be determined.

Two conditions are required. The SCP will be based on judgments of entitlement if it satisfies the following condition:

**Entitlement-Independence Condition.** The priority judgments between any two preference claims are to depend only on the individual entitlement factors to the outcomes in question.

This condition will require, in the context of the impartiality condition, that where \( x_i = y_j \) and \( y_i = x_j \), \( x^P y > y^P x \). Since the entitlement factors in this situation are identical for both individuals except that they apply to different outcomes, impartiality will require that an SCP based on judgments of entitlement regard both preference claims as equal in priority.

On the basis of the above condition the SCP will be able to identify situations where two preference claims are equal in priority. Surprisingly, all that is required to complete the determination of the relationship between judgments of entitlement and priority is the assumption that there exists one situation in which the SCP is able to make a judgment of greater priority. Suppose in the situation just discussed above that individual i's entitlement to outcome x increases in weight relative to j's entitlement to outcome y, so that \( x_i > y_j \) and everything else stays the same. The SCP will then be said to be *minimally responsive* if there exists at least one situation like this in which the SCP is able to make a judgment of greater priority in favor of individual i.

**Minimal-Responsiveness Condition.** There exists at least one situation where \( x_i > y_j \) and \( y_i = x_j \), and \( x^P y > y^P x \).

With these two weak conditions the following result can be established.\(^70\)

**Entitlement Result.** The only possible rational SCP based on judgments of entitlement that fully respects individual rights and is minimally responsive is one that makes priority judgments between individual preference claims solely on the basis of the relative

---

\(^{70}\) For the demonstration of this result, see Strasnick, *supra* note 51, at 269-73.
weight of the individual's entitlement factors in his or her preferred state.

Thus, for the competing preference claims $x_P y$ and $y_P x$, the following judgments of priority will hold:

1. $x_P y > y_P x$ if $x_i > y_j$;
2. $x_P y \sim y_P x$ if $x_i = y_j$;
3. $x_P y < y_P x$ if $x_i < y_j$.

When the entitlement result is combined with the result concerning the full respect of individual rights, a general result of social choice in the context of priority and entitlement judgments emerges:

*General Result.* The only possible rational, just and democratic SCP that is based on judgments of priority and entitlement and is minimally responsive is one that always prefers that social outcome to which an individual has the greatest entitlement.

**VII. THE MATTER OF PERSONAL PREFERENCE**

While the general result of this study does not provide any information about the particular contents of a theory of entitlement, it does provide a perspective within which our basic, commonsense, moral intuitions about the nature of justice and individual rights can be formally represented and evaluated. Consider, for example, Sen's basic intuition about the nature of individual rights that motivated much of this study's analysis. This was the intuition that in matters of private and personal concern, the individual's preference should be decisive. Sen's attempt to represent this intuition in the context of social choice ran into difficulty for the kinds of reasons discussed above. To complete this study, this section will once again take up the issue of this intuition and suggest the usefulness of the perspective provided by the general result in understanding why the decisiveness of the individual's preference in private and personal matters is justified.

Consider Sen's example of choice between social outcomes involving differences that are personal to someone: With everything else the same Jack sleeps on his back ($x$) or on his belly ($y$). Sen's approach to rights would require that the preference $x_P Jack y$ be suffi-

---

71. *See* text accompanying notes 67-70 *supra*.
72. *See* text accompanying note 55 *supra*.
73. *See* text accompanying note 27 *supra*.
cient to determine the social preference $xPy$, irrespective of whatever preferences other individuals may have about $x$ and $y$. A problem with this approach that leads to the difficulties already discussed is understanding exactly what is required by the “everything else the same” clause\(^\text{74}\) Sen appended to his description of outcomes $x$ and $y$. Some group of individuals in society may prefer that Jack sleep on his belly instead of his back due, for example, to an unusual religious belief.

Unless Sen’s “everything else the same” clause prohibits causal features in the description of outcome $x$ that explain why these individuals have the preferences they do, this clause will be violated by a complete description of the social outcome. A similar violation would be produced if the description of outcome $x$ contained causal features that would explain why Jack prefers sleeping on his back rather than his belly. Yet, it would seem that any minimally complete description of outcome $x$ would include not just the information that Jack sleeps on his back but also that he likes to sleep on his back for reason $p$ and that other individuals are unhappy with Jack sleeping on his back for reason $q$.\(^\text{75}\) It is of course open to Sen to argue that, from the point of view of social choice, descriptions of social outcomes should be purged of this kind of information. If this is done, however, it is hard to see on what basis society could decide that Jack’s preference should be satisfied over that of the other individuals.

A theory of rights that is based on entitlements in the manner required by the general result will escape this kind of difficulty. Whatever the content of a particular theory of entitlement, it will require its judgments concerning the relative weight of individual entitlements to be based on a complete description of the possible social outcomes. Suppose that for some reason of personal preference Jack wants to sleep on his back instead of on his belly. Further, suppose that anyone who sleeps on her/his back offends the sensibilities of some group of individuals in society. For this situation, a theory of entitlements might base its judgment on the following kinds of descriptions of outcomes $x$ and $y$. With everything else the same:

\textit{Outcome x.} Jack sleeps on his back and knows that sleeping on his back is something that he prefers to do whenever possible. The

\(^{74}\) See Sen, \textit{Impossibility}, \textit{supra} note 20.

\(^{75}\) Such a description of outcome $x$ would still want to provide a \textit{ceteribus paribus} clause. The difficulty with Sen’s account lies not with his use of an other-things-equal clause, but the overly narrow nature of the description of the outcome to which the clause was affixed.
other individuals in society know that Jack is sleeping on his back and are morally indignant about the indecency of it.

*Outcome y.* Jack sleeps on his belly and knows that something has prevented him from sleeping on his back. The other individuals know that Jack is sleeping on his belly and are happy that Jack is a decent, moral sort of fellow.

Suppose, in addition, that the content of this theory of entitlements includes the following principle:

*Privacy Principle.* The entitlement of any individual to a social outcome in which her/his personal preferences concerning her/his private behavior are satisfied is always greater than the entitlement of any individual to a social outcome in which her/his personal preferences concerning the private behavior of other individuals are satisfied.  

In outcome *x*, Jack’s personal preference about his sleeping habits would be satisfied and Jack would know this; in outcome *y*, the personal preferences of others about Jack’s sleeping habits would be satisfied and the others would know this. Thus, given this privacy principle, Jack’s entitlement to outcome *x* would be greater than the entitlement of the other individuals to outcome *y*.

On the basis of the above entitlement judgment, society would be able to decide which individual preference should be the social preference: Jack’s or that of the others. Given the entitlement result, since Jack’s entitlement to his preferred social outcome *x* is greater than that of the other individuals to their preferred outcome *y*, Jack’s preference claim against society for the protection of his right to sleep on his back would be judged to have a greater priority than the preference claims of the other individuals for the protection of their right to enforce their moral beliefs on others. Jack’s preference claim would therefore be privileged and since society fully respects individual rights, Jack’s preference would be adopted.

---

76. The question of what kind of behavior should constitute the individual’s protected private sphere is, of course, one of the most controversial subjects in social and legal philosophy. Ultimately, I suspect, the successful articulation of the individual’s private sphere must be part of a larger theory concerning the property rights of the individual to her/his person and possessions. With such a theory, however, we might provisionally define, for the purposes of the privacy principle, an individual’s private behavior as any behavior that takes place within the boundaries of that individual’s property which does not, in turn, violate the property rights of any individual whose person or possessions are rightfully within those boundaries.

77. See text accompanying notes 55-56 supra.

78. See text accompanying notes 56-57 supra.
VIII. CONCLUSION

The above discussion has shown that a society manifesting the properties of social choice analyzed in this work is fully capable of respecting individual rights in matters of personal preference. All that is required in addition to the formal properties that have been proposed is the acceptance by society of a principle akin to the privacy principle of entitlement. Much more work, of course, needs to be done concerning the nature of particular theories of entitlement. The details of such theories will depend on many factors, including the context in which they will be applied. On the basis of this study, however, it is clear that if acceptable accounts of the nature of entitlement can be found, a society would have all it would need for a rational, just, and democratic social system.