

## THE LIBERAL ORDER, CIVIL SOCIETY AND SKEPTICISM ABOUT PUBLIC REASON: REMARKS ON SEN AND SMITH\*

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**Resumen:** La idea de la razón pública es prominente en la teorización sobre la forma de un gobierno liberal. Sostengo que hay relaciones importantes que se refuerzan mutuamente entre el orden liberal y la sociedad civil, y que las disposiciones de civilidad son más importantes para un orden político liberal sano, pluralista y duradero, que un criterio de razón pública. Esto último implica inevitablemente restricciones iliberales a la gama de factores apropiados para la inclusión en el discurso y la deliberación política. También sostengo que el empleo que Sen hace del espectador imparcial de Smith en *La idea de justicia* no reconoce compromisos sustantivos cruciales para Smith, compromisos que lo distancian de la noción de razón pública.

**Abstract:** The notion of public reason is prominent in theorizing regarding the liberal polity. I argue that there are important relations of mutual reinforcement between the liberal order and civil society, and that dispositions of civility are more important to a healthy, pluralistic, enduring liberal polity than is a criterion of public reason. The latter unavoidably involves illiberal restrictions on the range of considerations suitable for inclusion in political discourse and deliberation. I also argue that Sen's employment of Smith's impartial spectator in *The Idea of Justice* does not acknowledge substantive commitments crucial to Smith's view, commitments that distance it from the notion of public reason.

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My purpose here is to sketch out a case for two connected claims. One is that there are multiple reasonable conceptions of the liberal order, a fact that complicates attempts to specify what constitutes a just liberal order. The other is that there are reasons for skepticism regarding the notion of ‘public reason.’ I shall argue that, in fact, much of what a standard of public reason purports to achieve depends crucially on what I shall call ‘civility,’ the character and efficacy of which can be described independent of such a standard. If that is correct, it would show that there is a significant role for considerations of moral psychology in politics.

In the course of sketching a case for these claims I will comment on Amartya Sen’s use of Smith’s notion of the impartial spectator. Sen accords it a central role in the argument he develops in *The Idea of Justice*, in particular, on account of its merits in contrast to contractarian methods of explicating principles of justice. My discussion of Sen’s employment of the notion of the impartial spectator is intended to raise some questions about the relation between public reason and the impartial spectator rather than attending to other elements of the lines of argument Sen develops. The upshot of the discussion overall is that a habit of civility is crucial to a political culture favorable to liberalism, whatever specific form liberalism takes. A liberal polity cannot well do without civility, whether it is libertarian order with a minimal role for the state, or an order shaped along the sorts of lines of John Rawls’ view in *A Theory of Justice*, or an order aspiring to realize Prof. Sen’s capability approach.

Whatever the specific conception of justice, civility is vitally important to a liberal polity, and because the nature of a just liberal polity is likely to remain contested civility is especially important. It is not clear how putative standards if public reason could resolve disputes between rival conceptions of liberalism. In fact, insisting on one or another specific standard of public reason could aggravate such disputes. Moreover, even if a standard of public reason could be formulated, the issue of whether it would be effective depends to a large extent, on a habit of civility. Like Sen, I wish to credit Adam Smith’s *The Theory of Moral Sentiments* with insights helpful in understanding liberalism though I will not employ those insights in the way Sen does.

Smith's impartial spectator can help us in thinking about justice in a liberal polity but that is because of how it illuminates elements of moral psychology important to a liberal civic culture, not because of how it illuminates the notion of public reason.

## I.

The fact that there are multiple, reasonable conceptions of the liberal political order can, in some ways, be a source of strength for a liberal polity. It is quite clear that no single conception of liberalism is so compelling in its character and so cogent in its rationale that other conceptions cannot also be considered as genuine rivals to it. However, there are ways in which persistent disagreements about what justice requires can be salutary for a liberal polity. They can lend energy to critical reflections on liberalism and they can sustain constructive debates. The lack of complete, stable, rational consensus regarding liberalism (even among those who endorse it with conviction) need not be a weakness. That various features of liberalism remain open to argument can help participants in a liberal order remain engaged with the reasoning supporting it. It is not as though some single episode of constitutional arrangement—even a hypothetical episode—settles matters. One of the reasons is that there are competing reasonable conceptions of the method of ascertaining what constitutes a just liberal order.

It seems, as well, that there are diverse sorts of good reasons for endorsing a liberal order. It is not clear that the reasons supporting a liberal order need to have only certain quite specific sources. Reflective persons may have different plausible reasons for endorsing liberalism. Some persons may endorse it because it is fundamentally important to them to lead the sorts of lives they think important, and they are willing to allow others extensive liberty to do the same, despite having some different ends and values. Others may endorse liberalism for reasons anchored in a religious or cultural tradition. Thinking of all human beings as having equal standing as God's creatures created in God's image, or as equally loved by God, might lead to deep and genuine

support for liberalism. Some might believe that, as rational beings, all persons merit a type of moral respect that underwrites liberal principles on strictly secular grounds. Some persons may support a liberal order because they believe that human government is so susceptible to corruption and abuse of power, that the powers of the state should be limited. There are multiple, reasonable grounds for finding slavery and indentured servitude morally abhorrent, and in much the same way, there can be different reasonable grounds for endorsing liberalism. It is not clear that it is essential to identify a single set of considerations all would –or should– find cogent in the same way.

The plasticity of conceptions of liberalism is not unlimited. In a liberal order extensive rights and liberties of individuals are to be protected and preserved. A liberal order does not seek to enforce or impose some specific, comprehensive conception of a well-lived life or of the goods that persons are to pursue. Individuals are to have wider, rather than narrower scope for deciding what goods and interests to pursue, and what they take to be most worthwhile, gratifying, and important. There are limits to this, the main contours of which are shaped by what is required for each person's rights and liberties to be consistent with others' like rights and liberties. Moreover, even if a liberal polity accommodates considerable pluralism of values, agreement on fundamental values is needed to provide the stable framework in which liberty is exercised.

Kant has had a powerful influence on many contemporary theories of justice inasmuch as they often maintain some version of the view that "Right is...the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom" (Kant, 1996:24). Kant's thought has shaped much of recent liberal theory and the conception of justice as preserving the standing of individuals as free and equal. Kant's articulation of the notion of persons as having a distinct and a significant moral standing has resonated widely throughout liberal political theory, whether or not a particular theory exhibits other pronounced features owing to Kant's influence. In addition, Mill's influence has been very great, in particular, through the significance of the 'harm principle' and its role in the case for austere legal moralism.<sup>1</sup>

It may seem odd that Kant and Mill should be regarded as so congenial to liberalism, given the multiple, significant differences—even antitheses—in their thought. But there are ways in which each articulated considerations of considerable normative significance to liberalism.<sup>2</sup> Kant made a crucial point about the basic normative architecture of any justifiable political order; Mill formulated a key claim about the limits on the justified exercise of state power over individuals.

Nevertheless, there is considerable diversity in conceptions of the liberal order and of what justice requires in a liberal order. Rival conceptions differ over what justice requires of the liberal state, the spectrum of views being quite broad, given different notions of what an individual requires in order to be a free and equal participant in a political community under the liberal rule of law. Morally earnest, informed, and reasonable persons can and will disagree about such matters. Such debates do not necessarily sap strength from a liberal polity. They can be important to the political metabolism of a healthy one. Plus, it is really only in a liberal polity that such debates can be genuine and can be effective in institutionally regular ways, acknowledged as legitimate.

It is important to seek agreement on basic matters of a just State, and to regard settled agreement as a desideratum; otherwise, questions of policy also become questions of legitimacy and justification in potentially very problematic ways. Nonetheless, it may be a rationalistic conceit to assume that there is some one, conclusive case for the liberal polity and one conception of what justice requires in that polity. To be sure, there is a difference between pluralism and an incoherent medley but it is not essential, and perhaps not reasonable, to expect or insist that there should be one and only one doctrine of liberalism, even within a particular polity.

It is also important to recognize that for many people political considerations are not the most fundamental, and for many people, the notion of fundamental, distinctively political considerations, clearly distinct from other types of valorative concern and commitment, seems artificial and even threatening. Neither is it clear that it is a failure of reason for them to maintain that position. To many persons, the notion that there are distinctively political considerations

to which persons can be genuinely and effectively committed in their own terms, apart from substantive considerations of identity and valorative commitment may even seem illiberal as well as implausible. It insists on giving political considerations a kind of priority inappropriate to them.

If people see certain value commitments and perspectives as constitutive of who they are and as essential to their guiding concerns then to be asked or expected to think in political terms apart from those commitments is asking them to see those commitments as discretionary or as accessories to who they are –precisely what their anchoring commitments and guiding concerns will not allow. This is not a failure of rationality or because they are bigots or because they exhibit an objectionable partiality. It is because of the significance to them of their anchoring commitments. It is reasonable to ask them to think about politics in such a way that others, with other commitments and perspectives, are able to lead self-determined lives. That is not the same as asking people to reason their way to political principles in exclusively political terms.

An element of the explanation for this diversity of groundings is that people often acquire their moral education in ways that are thickly informed by a tradition, a culture, a group of guiding ideals, images, and perspectives, which remain important anchors and references for moral understanding and moral aspiration. Acquiring fluency with a moral concept sometimes involves a kind of original, rigid designation in the respect that a certain case or action is taken as a grounding exemplar, which can also function as a motivational anchor because of its significance as a paradigm. An individual becomes increasingly articulate with the concept by using it in new situations and by seeing how it is related to other concepts. This can bring with it an increase in depth of understanding and increases in breadth, connection, and integration. (Consider how one might come to understand more about loyalty's relation to prudence, courage, honesty, and compassion. A person almost surely could not enlarge his understanding of loyalty except through such relations. These sorts of understanding can be crucial to moral commitment and to effective moral concern.)

Moral learning, even of universally applicable ideas and principles, may be connected in important ways with elements, images, and narratives from

within a particular tradition or perspective, and universally applicable moral ideas may continue—helpfully—to resonate with meaning tied to the tradition of origin. Rational reflection upon values can refine them and help to articulate their moral validity in broader terms but we should not expect or require that the refinement should be accompanied by distancing and separating them from their grounding in tradition. The grounding is not, as such, a threat to objectivity or universality.

Smith's moral theory is a good example of this (Smith, 1982). The impartial spectator attains clarified, refined conceptions of what is morally required, and is able to do so on the basis of numerous substantive commitments and perspectives regarding what is morally sound and morally permissible. The impartial spectator does not engage in moral thought without presuppositions. In some important respects the spectator, so to speak, knows what to look for. Moral judgment is not simply an endorsement of what he or she already thinks, but neither is it a process of striking discovery, leading the moral agent to surprising results, some of which might require significant revision to one's moral commitments. Smith's impartial spectator needs a sensibility and a measure of conceptual fluency in order to engage successfully in impartial moral reflection involving the perspectives of others in their role as spectators. It is quite plausible to suggest that Smith's spectator sought impartiality on the basis of a widely shared set of moral ideas and commitments, much of it reflecting culturally rooted conceptions and dispositions, which could, by Smith's time, be largely detached from specific theological commitments and could be shared without the threat of sectarian division.

Even with that extent of moral sharing at least some matters of law and public policy, and even institutional arrangement, remain politically live in the respect that they are contested and subject to changes in public attitudes and new directions of political attention, rather than being constitutionally settled. Obviously, differences in values and differences in conceptions of the liberal polity can become can be divisive and dangerous. It is also true, however, that openly contested matters can reflect and can contribute to the vigor of political culture, and can be indicative of the genuineness of its liberalism.

Persons who differ in respect of cultural heritage and who have different vocabularies regarding many moral matters can nonetheless recognize important common goods. By ‘common’ I do not mean something along the lines of utilitarian maximizing. I mean something more like a framework of values, commitments, and principles within which persons’ freedom and equal standing are preserved, along with genuine pluralism. The general character of the liberal order permits valuative diversity, and diversity of grounds for one’s reasons, yet it also requires a framework of widely agreed, stable values and principles within which liberty can be exercised. For many defenders of the liberal order that framework itself is a crucial element – perhaps the most important element– of the common good.

## II.

How is civility related to these issues? The liberal framework protects and preserves the political space for civil society. By ‘civil society’, I mean all of those activities, contexts, and institutions constituted by the voluntary involvement and initiative of persons. In a liberal polity religious life, education, a great deal of economic activity, the arts, cultural activities and leisure activities are all thickly informed and shaped by the voluntariness of individuals and groups. Civil society comprises the many kinds association and activity not ordered and managed by the state. A liberal polity is distinguished from an illiberal polity in large measure by the character of civil society. There is an important relation of mutual reinforcement between the liberal order and civil society. The basis for that is that the liberal rule of law makes possible an open, diverse, dynamic civil society; and a flourishing civil society with those features can provide people with strong reasons to value and preserve the liberal order. Persons enjoying the exercise of liberty and voluntariness within the framework of a liberal rule of law are likely to want to preserve the scope for that exercise.

Broadly, civility is to be understood as including a disposition of respect for persons as having equal moral standing and meriting humane concern,



and a disposition of restraint in regard to imposing one's values on others or demanding that the state enforce moral conceptions more specific than those necessary for a liberal rule of law. Of course, it is nearly a certainty that a liberal polity's laws will reflect several elements of morality, especially those indicative of majority views. Still, if civility has a significant presence it will be a brake upon the democratic process in a liberal-democracy aggressively encroaching upon the liberalism of the polity.

I want to suggest that civility, as a habit and as an aspiration of persons participating in political culture, may be more important than a standard of public reason. At the least, the efficacy of such a standard, were it formulated, and the aspiration to identify it and fulfill its requirements, depend upon civility.

Emphasizing the significance of civility Edward Shils wrote, “[l]iberal democracy is especially in need of the virtue of civility because liberal democracy is more prone to bring latent conflicts into actuality, simply because it permits their open pursuit” (Shils, 1997:76). “Civility is compatible with other attachments to class, to religion, to profession, but it regulates them out of respect for the common good” (Ibid.:49). This is not a utilitarian common good. The relevant notion of common good here has to do much more with the willingness to restrain partisanship and to consider interests of the whole community yet, without abandoning one's particular commitments. Civility, for Shils, is

an outlook which attempts to do justice to all the interests –which involves also holding them in check– and thus maintaining the traditional pattern of plurality within a common society which is of intrinsic value... This quiescence [of ideological politics] can be sustained only if an effective alternative is available. Civil politics are this alternative (Ibid.:15,49).

Though there is not space to develop the argument here, it is important to acknowledge the significance of the market with respect to civility. Participation in a market economy can be an education on prudent self-determination and accountability. To be sure, there are respects in which the

market gives free rein to, or aggravates some persons' tendencies to selfishness, greed, and callous unconcern for others. However, the notion that the market is unique in that regard or even that it is especially objectionable in that regard is often more a matter of hostile caricature than plausible argument. The market's considerable scope for voluntariness, imagination, innovation, and collaboration is also scope for encouraging habits of trust, good faith, and mutual benefit. Moreover, those habits cannot be inculcated by doctrine, coercion or command; their genuineness depends upon being formed through voluntary activity accompanied by acknowledgment of their value. Indeed, it is difficult to see how mature self-determination and the sort of prudence responsive to the complex contingencies of life could develop outside of a context with the features of the market. The market –when it is free of distortions that protect monopolistic practices, heighten barriers to entry, and control prices– encourages and rewards habits that comport with and complement civility.

A habit of civility and a concern to maintain and strengthen it can obviate the need for a standard of public reason while also being accommodative with regard to diverse grounds and anchoring of people's values and perspectives. Again, civility reflects respect and a measure of humane concern on the one hand, and restraint with regard to imposing one's values on the other. This contrasts with a requirement to satisfy a criteriological demand –a standard of public reason– and civility diminishes the likelihood of politics 'going ideological' by way of mutual accusations over who is failing to meet the test of public reason.

Public reason has figured prominently in recent liberal theory. Rawls wrote: "As reasonable and rational, and knowing that they affirm a diversity of reasonable religious and philosophical doctrines, [people] (they) should be ready to explain the basis of their actions to one another in terms each could reasonably expect that others might endorse as consistent with their freedom and equality" (Rawls, 1971:218). And, in thinking about justice we are to "look at our society and our place in it objectively: we share a common standpoint along with others and do not make our judgments from a personal slant" (Ibid.:516-7). Jurgen Habermas writes, "The truth contents of religious

contributions can enter into the institutionalized practice of deliberation and decision-making only when the necessary translation already occurs in the pre-parliamentary domain, i.e., in the political public sphere itself” (Habermas, 2008:131). Robert Audi regards the “principle of civically adequate reasons” as important to liberal politics (Audi, 1998:157). Thus, “civically virtuous citizens in a liberal democracy have a prima facie obligation to have, and under appropriate conditions to be willing to offer, publicly comprehensible and evidentially adequate reasons for their support of laws and public policies” (Audi, 1998:157). In an examination of Habermas’ view of ‘postmetaphysical philosophy” N. Wolterstorff, characterizes it as “based solely on premises and inferences that all cognitively competent, adult human beings would accept if those premises and reasons were presented to them, if they understood them, if they possessed the relevant background information, and if they freely reflected on them at sufficient length” (Wolterstorff, 2010: 7).

And Amartya Sen writes:

The crucial role of public reasoning in the practice of democracy makes the entire subject of democracy relate closely with the topic that is central to this work, namely justice. If the demands of justice can be assessed only with the help of public reasoning, and if public reasoning is constitutively related to the idea of democracy, then there is an intimate connection between justice and democracy, with shared discursive features (Sen, 2009:326).

Sen does not endorse a contractarian model for ascertaining the requirements of justice. He focuses on what he calls realization-focused comparison, which looks at “the actual behaviour of people, rather than presuming compliance by all with ideal behaviour” (Ibid.:7). He criticizes what he calls “institutionalist fundamentalism,” wherein institutions are given an overwhelming priority, and immunity “to the nature of the actual consequences generated by the agreed institutions” (Ibid.:83). He says of Rawls’ approach, that while it is “developed with admirable consistency and skill,” it involves

a formidable and drastic simplification of a huge and multi-faceted task –that of combining the operation of the principles of justice with the actual behaviour of people– which is central to practical reasoning about social justice (Ibid.: 69).

He writes of the contractarian framework of ‘justice as fairness’ that

there is no systematic way of opening up the reflections in the original position to the eyes of mankind. What is a matter of concern here is the absence of some procedural insistence on forceful examination of local values that may, on further scrutiny, turn out to be preconceptions and biases that are common in a focal group (Ibid.: 127-8).

Rawls’ focus on primary goods as the core concern of distributional fairness “does not... give concern for capabilities enough room for influence at the institutional phase with which his principles of justice are directly concerned” (Ibid.:262). “The problem with Rawls’s focus on distributing primary goods is that it ignores the vast differences in people’s abilities to convert primary goods into actual functioning” (Reiman, 2011:29). Thus, Sen argues that capability is fundamental to a theory of justice because it is a basis for obligations.

Sen is critical of institutional fundamentalism without abandoning public reason. He argues for a significant role for social choice theory understood in conjunction with the procedure of a Smithian impartial spectator. The former enables us to make comparative judgments without seeking “unanimity or total agreement in the way that the institutional straitjacket of Rawlsian theory of justice demands” (Sen, 2009:135). And Smith’s impartial spectator is “a device for critical scrutiny and public discussion” in a way that involves “open impartiality” and requires us to undertake a “forceful examination of local values that may, on further scrutiny, turn out to be preconceptions and biases that are common in a focal group” (Ibid.:135,128).

The outcomes of the social choice procedure take the form of ranking different states of affair from a ‘social point of view’, in the light of the assessments of the people involved.

This is very different from a search for the supreme alternative among all possible alternatives, with which theories of justice from Hobbes to Rawls and Nozick are concerned (Ibid.:95-96).

Social choice and the procedure of the impartial spectator make it possible to ascertain what justice requires without agreement on a unique ideal of justice. We should focus instead “on the advancement or retreat of justice” (Ibid.:8). How successful is the strategy of linking public reason to the impartial spectator in order to ascertain what justice requires?

Smith’s impartial spectator is meant to show how moral judgment can be explained just in terms of sympathy and imagination without needing foundations or metaphysical commitments supplied from any other source. No specific theological premises are explicitly involved, and neither is rational intuition, *a priori* principles, Platonist ontological commitments, or any transcendental apparatus. The perspective is “reason, principle, conscience, the inhabitant of the breast, the man within, the great judge and arbiter of our conduct” (Smith, 1982:137). To Smith, it may have made sense to describe the impartial spectator in these terms –which are often interpreted as having quite distinct meanings– because fine points of moral epistemology were not his main concern. Instead, he was emphasizing certain features of moral anthropology, habits and perspectives crucial to the morally concerned, morally aware individual. In that respect sharp differences between reason and ‘the inhabitant of the breast’ were not crucial.

Moreover, the perspective of the impartial spectator is accessible to everyone and requires no special knowledge. All that is needed is participation in the community of human beings and the willingness to honestly assess whether one’s heart “beats in time” with others’ hearts by looking at one’s own affect from their point of view. That is not to say that the assessment is easy. Still, it requires no special faculties or objects. Instead, it involves ways of looking and responding, which are the basis for ascertaining what constitutes correct judgment.

What is striking about Smith’s project is the attempt to show that there is a moral epistemology grounded in human sensibility without also being

subjective in a sense threatening to the genuineness and validity of moral judgments. Impartiality is not attained by satisfaction of a principle but by sympathetic confrontation through the reflective encounter with different perspectives, sensibilities, and concerns. Whether or not we think that the project succeeded or can be made to succeed, that Smith was able to articulate a conception of moral judgment –a conception enabling us to distinguish between correct and incorrect judgments, and between subtle, discriminating judgments and simplistic, judgments– and without appeal to *a priori* principles, theological doctrine or special epistemic faculties is a notable achievement.

Part of the appeal to Sen of the impartial spectator is that

The Smithian procedure includes...the insistence that the exercise of impartiality must be open (rather than locally closed), since ‘we can do this in no other way than by endeavouring to view them [local presuppositions] with the eyes of other people, or as other people are likely to view them.’<sup>3</sup>

The impartial spectator acknowledges that people are likely to have parochial values and perspectives and that to see beyond them “we remove ourselves, as it were, from our own natural station, and endeavor to view them as at a certain distance from us”.<sup>4</sup> Smith says of our propensity to be especially partial to ourselves, “We must, here, as in all other cases, view ourselves not so much according to that light in which we may naturally appear to ourselves, as according to that in which we naturally appear to others” (Smith, 1982: 83). A discipline of reflective sensibility, a governing affect of civility to which sympathetic recognition of the perspectives of others is vital to Smith’s account.

### III.

There are two points I would like to suggest regarding Smith’s view, and they are related. The first is that it differs from conceptions of public reason. The second is to reiterate a point made earlier, namely, despite the way in

which it opens up impartiality it still depends, in important respects, upon shared sensibility and moral perspective. These are not offered as objections to Smith's view. Rather, the point is to suggest what may be some complications Smith's view brings to Sen's argument in *The Idea of Justice*.

Smith could explicate moral judgment on the basis of sympathy and imagination because there was a sufficiency of civic community for such a project to be intelligible. Smith's impartial spectator could presuppose a considerable commonality of sensibility and shared anchoring points of valuative commitment and concern. It is important to Smith's view that it can presuppose a rather high degree of what I have called 'civility.' That is important because it means that the impartial spectator's primary task is to attain clarity, unobstructed vision, and perspective undistorted by particularities of his own sensibility, resentments, anxieties, and urgent interests. That is different I think, from a conception of public reason or a standard, the application of which is claimed to ascertain what justice requires.

Public reason, even when freed from transcendental or *a priori* elements, is typically meant to supply criteria for what sorts of considerations can be included in a liberal polity's political discourse and deliberation. Compared to Smith's impartial spectator, public reason is more criteriological and less dependent upon shared sensibility, what Smith—in at least dozen places in *The Theory of Moral Sentiments*—refers to as one's heart 'beating in tune' with others'.

The impartial spectator assesses the propriety of one's sentiments, motives, and inclinations by trying to see them as others do and considering thereby whether they are agreeable, fit, well suited to the situation. That is different from there being standard of what can count as an admissible consideration of say, moral or political judgment or deliberation.

As we saw above, Sen claims that the demands of justice, public reasoning, and democracy, have an "intimate connection". There are (at least) two questions to ask about this. The first is whether it is clear that a standard of public reason can effectively ascertain what justice requires of the state. The second is whether, even if it can be effective, does its effectiveness depend upon civility. If a standard of public reason requires that people should

separate the considerations to be entered into political deliberation from their non-political anchoring then the prospects for public reason are dimmed. Apart from the issue of what should constitute the criteria for what is admissible in accord with a notion of public reason, how reasonable is it to expect people to be willing to regard a standard of public reason as having authority regarding politically permissible considerations? A standard of public reason runs the risk of inhibiting openness and encouraging a kind of brittleness rather than a more exploratory dialectic. When supported by habits of civility, the latter might be constructive in ways that cannot be anticipated.

Responsible participation in politics and in the determination of what justice requires does indeed require striving to be intelligible to others by making one's reasons clear. But an insistence that a standard of public reason should govern that effort is bound to encounter at least the (significant) difficulty that it is *itself* a contested notion. It is no less susceptible to rival formulations than the notion of natural law or the notion of fundamental rights. It is certainly appropriate in an aspirational sense. That, though, is different from an insistence that such a standard should determine what can and cannot be admitted into political discourse. What people regard as satisfying the standard of public reason might depend in large part on how extensive civility characterizes political discourse and debate.

Sen writes: “[n]ot least of the achievements of democracy is its ability to make people take an interest, through public discussion, in each other's predicaments, and to have a better understanding of the lives of others.”<sup>5</sup> Sometimes, in liberal democracies there are tensions between liberalism and democracy. There can be enormous popular –democratic– pressure to enforce or impose values in ways that are in conflict with liberal principles. A liberal democracy requires not only wide scope for effective political participation but also a measure of restraint in regard to how comprehensively prevailing majorities' values are politically institutionalized. Democracy in a liberal democracy requires habits of civility. Those are habits by which individuals and groups are willing to be restrained with respect to imposing their values and perspectives on others and are willing to show concern for others as members of a common moral world. Otherwise, democracy is at risk of being



reduced to the ballot alone, a form in which democratic process is preserved but without habits of sympathetic concern and without a conception of a common good. However, civility can be maintained by public reasonableness without an insistence on a specific standard of public reason as the measure of what is politically admissible.

Overall, the effective employment of the impartial spectator depends upon certain affective habits and concerns. Certain types of exercises of sympathy and imagination need to be learned and made habitual. The perspective of the impartial spectator is not blank or empty. The impartial spectator looks at actions, motives, and agents from a perspective shaped by normatively governing conceptions, chiefly, conceptions of propriety and virtue, and those depend on already established conceptions of what is praiseworthy and meritorious. The impartial spectator needs to see clearly but his negotiation of the moral landscape is guided by notions of what to look for, and by a willingness to look in that way.

The perspective of the impartial spectator and civility are mutually reinforcing. Civility involves restraint with regard to imposing one's values and it involves extending humane concern such that one regards oneself as inhabiting a shared moral world, many members of which may have values different from one's own. Seeing matters in the way the impartial spectator sees them can give shape and guidance to that concern. It supplies a perspective that reflects willingness to regard one's own values critically and to regard the values of others inclusively. Thereby, one can ascertain whether and how both sets of values can be accommodated in a shared moral world.

In addition, as suggested above, there is an important role for the market in regard to civility. Participation in the market can encourage a combination of humility, enterprise, and imagination. It can accustom agents to choosing, acting, and planning in an overall context that is rule-governed but also fraught with contingency. Effort, informed anticipation, and resolve can make a great deal of difference yet, at the same time, no one has firm, altogether predictable control over even their own affairs and fortune, good or bad. Exercising practical reason in such a sphere of activity can encourage the development of prudence and relationships of cooperation and mutual benefit. It can also encourage

types of awareness and dispositions well suited to the impartial spectator. Attaining some reflective awareness of the way in which the social/economic/moral world is rule-governed while also rich with contingency can educate agents in the perspective of the impartial spectator and the ways in which it is illuminating. Without developing the claim in detail, that is, I believe, a significant point of contact between Smith's thought in *The Theory of Moral Sentiments* and his thought in *The Wealth of Nations* (Smith, 1981).

I have said very little about the requirements for a just liberal order. I suspect that the diversity in the reasonable conceptions of liberalism will sustain debate about those requirements indefinitely. That is not to say 'anything goes' in regard to a liberal order. But it does allow for considerable plasticity, even in terms of how to discriminate considerations of justice from other moral considerations. Perhaps the chief upshot of the present discussion is that the crucial political task is the extension of civility. Sen acknowledges limits public reason runs up against. He writes,

If the importance of public reasoning has been one of the major concerns of this book, so has been the need to accept the plurality of reasons that may be sensibly accommodated in an exercise of evaluation... [j]udgements about justice have to take on board the task of accommodating different kinds of reasons and evaluative concerns (Sen, 2009:394-395).

This is not only because there are incommensurable values and a complete ordering may not be possible. It is also because there can be reasonable, but different, constellations of incommensurable values.

Disputes over what justice requires are almost certainly to be among the most difficult and complicated ongoing issues in a liberal polity. They are often also disputes over how to distinguish between what is a matter of justice and what is a matter of other values. Consider Smith's account of the role of resentment in regard to retributive justice. It is not difficult to imagine quite different views of that issue of moral psychology and its relation to normative principle. In addition, different reasonable persons may agree that justice requires X but disagree over what is the morally and politically the

soundest approach to the provision of X. If someone insists that provision of X is not a requirement of the just state that does not imply that the person regards the provision of X as morally unimportant. Debates about what are the obligations of the State in respect of justice may go on indefinitely with different emphases at different times. Neither the original position, the state of nature, claims regarding human or fundamental rights, nor any other methodological device is likely to conclude those disputes in a final, fixed manner, determining a fixed constitutional and institutional order of a liberal polity.

Civility is supported by the liberal order but a liberal order has little prospect unless it is supported by civility. The latter is required if individuals and groups with different and incommensurable values are to be willing to respectfully include each other in a conception of the common good.

Without civility, people will not be inclined to adopt the perspective of the impartial spectator. Without adopting that perspective, civility is likely to be stunted and brittle. The effective realization of a just liberal order may depend upon habits and perspectives anchored in values grounded in commitments that are not fundamentally political. For many people political considerations and a standard of public reason do not have standing or significance apart from other valuative considerations and commitments. Those can be crucially relevant to the conception of justice and how it is to be realized. That is one of the most important facts the aspiration of a just liberal order needs to face.

## NOTES

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- 1 See Mill's *On Liberty* (1859) for a classic presentation of austere legal moralism.
- 2 See Jeffrie G. Murphy (2006) for a discussion of some of the tensions between austere legal moralism and the justification of punishment in a liberal polity.
- 3 Sen quoting Smith, *TMS*, III. 1. 2, in p. 110.
- 4 Sen quoting Smith, in p. 128.
- 5 Sen, 2009:344

## REFERENCES

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- Audi, Robert, 1998, "A Liberal Theory of Civic Virtue," in *Virtue and Vice*, eds. Ellen Frankel Paul, Fred D. Miller, Jeffrey Paul, Bowling Green: Social Philosophy & Policy Center, 1998, pp. 149-170.
- Habermas, Jurgen, 2008, "Religion in the Public Sphere: Cognitive Presuppositions for the 'Public Use of Reason' by Religious and Secular Citizens," in Jurgen Habermas, *Between Naturalism and Religion: Philosophical Essays*, Cambridge, MA: Polity Press, pp. 114-147.
- Kant, Immanuel, 1996, *The Metaphysics of Morals*, Cambridge: Cambridge University Press.
- Mill, John Stuart, 1859, *On Liberty*, in John Stuart Mill, *On Liberty and The Subjection of Women*, (New York: Henry Holt and Co. 1879), at <http://oll.libertyfund.org/title/347>
- Murphy, Jeffrie G., 2006, "Legal Moralism and Retribution Revisited," *Proceedings and Addresses of the American Philosophical Association*, 80:2, November, pp. 45-61.
- Rawls, John, 1971, *A Theory of Justice*, Cambridge: Belknap Press.
- Reiman, Jeffrey, April 2011 "No Idea of Justice," *Criminal Justice Ethics*, Vol. 30, No. 1, pp. 23-38.
- Sen, Amartya, 2009, *The Idea of Justice*, Cambridge: Belknap Press.
- Shils, Edward, 1997, *The Virtue of Civility*, Indianapolis: Liberty Fund.
- Smith, Adam, 1981, *An Inquiry Into the Nature and Causes of the Wealth of Nations*, Vol. I and II, ed. R. H. Campbell and A. S. Skinner, vol. II of the Glasgow Edition of the Works and Correspondence of Adam Smith (Indianapolis: Liberty Fund), <http://oll.libertyfund.org/title/220> and <http://oll.libertyfund.org/title/200>
- Smith, Adam, 1982, *The Theory of Moral Sentiments*, eds. D. D. Raphael, A. L. MacFie, Vol. I of the Glasgow Edition of the Works and Correspondence of Adam Smith (Indianapolis: Liberty Fund), at <http://oll.libertyfund.org/title/192>
- Wolterstorff, Nicholas, 2010, "Habermas on Religious Reasons in the Public Sphere," unpublished manuscript. A revised version has recently appeared in a collection of N. Wolterstorff's papers, *Understanding Liberal Democracy: Essays in Political Philosophy*, 2012, New York: Oxford University Press.