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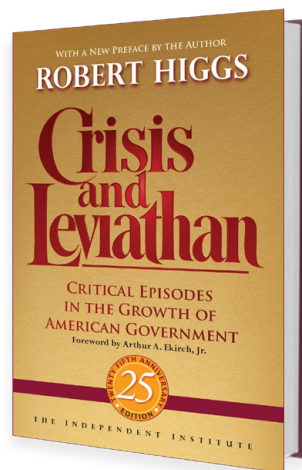
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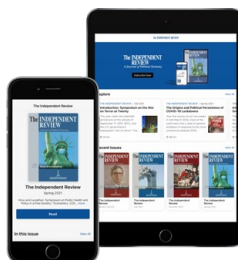
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# Why Justice? Which Justice? Impartiality or Objectivity?

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DOUGLAS B. RASMUSSEN  
AND DOUGLAS J. DEN UYL

Objectivity . . . is now conceived as inter-subjectivity. Inter-subjective norms are not agreed to by the members of a society because they are objective, but, in effect, become objective because they are jointly accepted.

—Henry D. Aiken, *The Age of Ideology*

**O**n its book jacket, we find Amartya Sen's *The Idea of Justice* (2009) described by Hilary Putnam as "the most important contribution to the subject since John Rawls' *A Theory of Justice*." We also learn there that Kenneth Arrow regards it as "a major critical analysis and synthesis." And although it may be news to some that a Nobel Laureate in economics is dealing with a basic issue of philosophy, it is no surprise to those who have followed the vast array of articles and books that Sen has produced over the years. He has dealt with questions of justice, inequality, and freedom for a long time.

Although we cannot provide here a comprehensive analysis and evaluation of this work, we ask three probing questions about it. First, why is justice among the necessary principles for organizing society? Indeed, there is much evidence that social cooperation and coordination can be based on advantage-based reasoning and relationships of mutual benefit without having to use the scarce resource of justice.

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Second, if in response to the first question, it is claimed that the issue is neither one of merely organizing society or invoking personal morality but instead of determining if the structure of society is just overall, this claim seems to raise questions regarding the multiple senses of “justice.” In particular, it raises the question of whether the norms of justice are all of the same type and have the same function. For example, are the norms that determine a just political-legal order the same as those for personal and social life? Which justice? Finally, these questions raise the issue of determining philosophy’s role in “social choice” and so-called public reasoning. Can Sen’s account of “public reasoning,” which he links closely with deliberative democracy, supply answers to these questions? Is impartiality *the* central determinant of reasonableness? Does Sen confuse impartiality with objectivity, and does he therefore fail to come to grips with the problem of finding a just structural order for a regime of integrated political diversity?

In part I, we consider our first two questions. Our consideration begins with an examination of the difference between two forms of responsibility—relationships of effective power and those of mutual benefit—and we then move to an examination of how Sen conceives of both human rights and social choice. We argue that neither of these two forms of responsibility is suited to providing structural norms on which a political-legal order depends. Nor do we find Sen’s conception of human rights or his appeal to public reasoning in making basic choices between alternative states of the world adequate to this task. In fact, his entire approach to public reasoning begs the question in regard to social choice because it assumes without justification the need for a centralized comprehensive vision and intricate system of regulating obligations in making such a choice.

In part II, we consider our third question and thus examine Sen’s views of public reasoning, impartiality, and philosophy’s place in such reasoning. We argue that public reasoning is inadequate to the task of determining basic structural norms because it is based on an unjustified impersonalist view of impartiality—a view that is also incompatible with the individualist and personal features of human flourishing. We conclude that Sen’s account of public reasoning fails overall to incorporate all perspectives. Thus, it either misrepresents other opposing positions or begs the question as to why public reasoning should be accepted as the way to determine justice.

## I

### *Effective Power, Mutual Benefit, and Human Rights*

In the closing paragraph of chapter 9 of *The Idea of Justice*, Sen writes: “Mutual benefit, based on symmetry and reciprocity, is not the only foundation for thinking about reasonable behavior towards others. Having effective power and the obligations that can follow unidirectionally from it can also be an important basis for impartial reasoning, going well beyond the motivation of mutual benefit” (2009, 207). In one respect,

the point is obvious. Not all our behavior toward others is a form of securing mutual benefits. As Sen observes earlier in the chapter, we sometimes might use our “effective power” to right a wrong or simply to help out. We might also keep a promise even if we do not benefit by doing so, or we might respect a right no matter what our immediate interests. Sen mentions each of these forms of reasoning as part of the plurality of reasons that might be proffered in the name of impartiality and that might constitute part of a discourse about the nature and meaning of justice. Later in this article we examine the notion of objectivity in Sen’s conception of reason and reasonableness, but our immediate point here is to show that “unidirectional” obligations that flow from “effective power” must be understood as having a form that need not be adopted at the structural level and that they stand in opposition to relations of mutual benefit that are more readily implied in the actions protected by the norms that constitute the structural level. By “structural level,” we mean the level at which the basic parameters for interpersonal relations will be defined and enforced by the political-legal order or state—in this respect, the basic rules of political justice. As it turns out for us, mutual benefit is also not the structurally preferred format either, but its character more closely reflects the moral purpose of the structural level of interpersonal relationships than does effective power and is thus superior to effective power as a form of social organization. As we shall see, the appropriate structural form allows for both effective power and mutual benefit, but there is a strong tendency away from mutual benefit if effective power dominates structural thinking.

Effective power has a connection with the discussion of capabilities and freedom that dominates a number of Sen’s works (1982, 1985, 1999b). In simplest terms, having effective power to accomplish one’s ends, either directly or indirectly through the aid of others, is for Sen a form of freedom. If one is in a position to use one’s own effective power to affect the life of another, *ceteris paribus*, then the responsibility to do so would be present in a way that would seek to enhance the other’s effective power and thus increases the other’s capabilities and hence freedom. Sen gives the example of the responsibility we have toward animals because of our power over them, but parent to child, boss to employee, rich to poor would do as well. The discussion of effective power and of capabilities and empowerment in general is meant to contrast with the mutual-benefit approach that individuals may take to one another. Sen believes that both approaches are important to a full conception of freedom and a full conception of justice and that one cannot simply replace the other in public discourse. They do, however, contrast in form.<sup>1</sup> In the case of effective power and capabilities, we can describe the responsibilities Sen portrays as he defines them. In the case of relations of mutual benefit, we might say that the responsibilities are open. What it means for a responsibility to be defined is that the power or capability at issue must be exercised in accordance with a determinate description of a projected action that serves as the sole standard for measuring the appropriateness

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1. Sen allows both types to be forms of “individual advantage” (2009, 231ff.).

or success of the action. Thus, if A is an action that purports to be responsible under effective power, then A is successful if it accords with some rule R or some end E that defines the character of A prior to its execution. As a consequence, if W is well off and P is poor, and the relationship between W and P is one of effective power (perhaps because W is in proximity to help P), then either some R or some E will define A for W.<sup>2</sup> By contrast, if mutual benefit governs the relationship between W and P, then the success of A will be determined by neither R nor E, but rather by another factor, C—namely, that the action accords with an agreement between W and P on the nature of action A.

Notice that although effective power and mutual benefit have rather different standards of success—respectively, following the rule (or achieving the end) or being based on agreement—it is conceivable that a given A might satisfy both. For example, if W offers P a job that P accepts, it may be that effective power is satisfied as well through mutual benefit. It is equally important to notice, however, that the reverse does not exactly hold. If W hires P under effective power, it may not matter whether C is present or not. In other words, in this case, A might satisfy R or E (1) if only P agrees, (2) if only W agrees, (3) if both agree, or (4) if neither agrees. What matters here is whether A accords with R or achieves E. Standard forms of coerced transfers of wealth might serve as examples here of a case of defined responsibility in an effective-power mode. And for the sake of completeness, it should also be noted that in the usual cases of mutual benefit, any given R or E might be ignored as well. Some might therefore argue that, as a consequence, A cannot ever satisfy *both* mutual benefit and effective power at the same time under mutual benefit because a relevant R or E has not been considered or factored into the agents' motivations (that is, the agents made the agreement with no thought of the appropriate rule or end). Although this point is important, it does not show that under conditions of mutual benefit A does not satisfy both mutual benefit and effective power unless one is also willing to require that certain *intentions* be a part of what A needs to include under conditions of effective power in order to be successful. We believe such a condition will only distort Sen's argument because it complicates the issue and diminishes the inherent normative power of any given effective power relationship as well. The intentional dimension does not seem to be present in Sen's account of effective power in any case. "Common sense" does typically suggest that having the "right reasons" for doing something matters morally. Our general point here, however, is that mutual benefit may sometimes also capture effective power, but effective power always renders mutual benefit virtually irrelevant because agreement is not in any way needed to satisfy the normative requirements of effective power.

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2. For example, "if someone has the power to make a difference that he or she can see will reduce injustice in the world, then there is a strong and reasoned argument for doing just that" (Sen 2009, 271). Notice that we must understand first what "reduces injustice" means, but once we understand that, we can determine the success of A.

Because effective power trivializes mutual benefit, we would want to claim that at a structural level its uses should be severely limited and circumscribed. As just defined, the structural level will be universal—that is, apply to all under a given political-legal order. Because of that universality, the question arises as to what form the structural rules should take. Sen’s point seems to be that neither effective-power nor mutual-benefit rules should dominate exclusively. The exact mixture of these forms of responsibility, for Sen, would presumably be determined by the public discourse on this very question of their mixture. We might expect that some situations of effective power would be so compelling that the associated defined responsibilities would be accepted by virtually all. In other cases, mutual benefit would rule, and the remaining circumstances would be more or less of one or the other. Sen allows for both mutual-benefit and effective-power relations to be the basis for reasonable behavior, so we cannot say unilaterally that mutual benefit fails to qualify as being impartial. Partiality may motivate the actors, but the relationship itself can be considered to be impartial. Society structurally, then, could conceivably be governed by defined or open responsibilities or combinations thereof.

Precisely at this point, Sen introduces a third form of responsibility. As he puts it, “I end this discussion of the plurality of impartial reasons by making one final observation. The understanding of obligations related to what is now called the human rights approach . . . has always had a strong element of social reasoning” (2009, 206).<sup>3</sup> In essence, then, human rights might differ from either responsibilities falling under effective power or mutual benefit. Sen does differentiate human rights from mutual benefit, but he immediately puts them in the class of responsibilities generated under a condition of effective power.<sup>4</sup> In fact, however, a human right is not something that should be understood as falling under effective power because it is not something that arises because of a power relation but rather is something to be respected *regardless* of power relations. Sen does not help in this regard by seeing human rights as “really strong ethical pronouncements as to what *should* be done” (2009, 357, emphasis in original). In this way of looking at the matter, not only can virtually any effective-power relationship be a candidate for a human right, but so can some mutual-benefit relationships. If, however, we think of a human right as something that functions regardless of any power relationship (or with respect to all) and, by the way, that would function independently of any benefits as well, then we would have an additional independent third form of obligation to consider when thinking about justice and social reasoning.

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3. We prefer the term *natural rights* to *human rights*, but both terms can work for the point being made at this juncture.

4. “Arguments that do not draw on the perspective of mutual benefit but concentrate instead on unilateral obligations because of asymmetry of power are not only plentifully used in contemporary human rights activism, but they can also be seen in the early attempts to recognize the implication of valuing the freedoms—and correspondingly human rights—of all” (Sen 2009, 206–7).

To make such a third alternative work, one would have to give up the equinormativity implied by Sen's view of what it means for something to be a human right. More precisely one would have to be open to the possibility that something might be a really important moral obligation that, if unfulfilled, would not necessarily violate a human right.<sup>5</sup> No doubt Sen hopes that what separates human rights from other sorts of moral obligations is the strength of the obligation, with strong ones but not weaker ones being candidates for human rights. Some process of public discourse would then determine what is strong and weak. However, this approach assumes that all moral norms serve the same function—that is, are equinormative—such that what differentiates them is their strength. We argue elsewhere (Rasmussen and Den Uyl 2005) against this proposition and suggest that human rights actually perform a different sort of function from other moral norms when considered under the rubric of a certain type of moral theorizing. But even if we ignore the latter position, all the questions about consensus that have been raised so far will come back here again in any effort to divide moral norms on the basis of strength alone. More important, human rights do not arise at all because of an effective-power context. They arise instead from one's humanity—that is, from the fact that one is a member of the human race; otherwise, the term *human* has no use. Hence, a power relation is not their source.

Sen perhaps believes that human rights are *granted*, and therefore a more powerful government or set of social elites has an obligation toward others in society simply because of its superior power and position. Yet if a human right is something that measures any given relationship in some way, the obligation would stand independently of any particular power relation. The power relation would at most be the occasion for exercising an obligation, which is quite different from saying that the obligation is somehow a function of the power relationship itself. Consequently, if human rights are indeed the sort of things that apply to any human relationship, they would be of consideration even under conditions of absolute equality and no government. This formulation is another way of saying that human rights are to be respected rather than granted. Similar things can be said, of course, concerning the relationship of human rights to interactions of mutual benefit.

### *Social Choice, Public Reasoning, and Voluntary Exchange*

Whatever the correct way of understanding human rights may be,<sup>6</sup> Sen clearly hopes that some relations that fall under effective power would have such a status that a failure to act in those cases would indeed be a violation of a human right. So, for example, a group of people might be in such a condition of poverty that state

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5. Indeed, even Aquinas notes a difference between demands of justice that are morally binding and demands of justice that are morally *and* legally binding (1920, II-II, q. 23, art. 3, ad 1, and q. 80, art. 1).

6. See our discussion of Sen's and Martha Nussbaum's view of rights (Rasmussen and Den Uyl 2010).

resources should be used to help alleviate that poverty even if coercive measures (such as confiscatory taxation) are imposed on those with effective power in the process of that alleviation. For Sen, however, such a situation must be understood in terms of a context of “social choice.” Social choice involves being able to compare the relative merits of alternative states of the world. It is opposed to what Sen regards as “transcendental” notions of justice, where some optimal ideal state of justice is fixed and used to measure the level of justice in the actual world around us (2009, chap. 4). Thus, a world in which certain forms of alleviation of poverty are used will be compared to worlds in which other forms are used or none is employed for the same ends, and the world that offers the best relative array of arrangements will finally define the meaning of social justice. Sen would no doubt be worried that our earlier comments about justice standing outside of power relations altogether might approach a transcendental notion of justice.

Yet simply because there might be a way to assess the relative merits of different social arrangements does not in itself show that any given optimal form of those arrangements should be instituted or thereby come to define what allowable measures may be taken to establish those arrangements. We may very well need first to ask what purpose those social arrangements are to serve before we can assess their relative merits.<sup>7</sup> One purpose for employing a comparative analysis is to improve social well-being or to institute rules and programs that will increase the amount of some value, such as justice, in the world. This sort of purpose, however, is a *very* different standard from one that sees the principles of justice in a social-political context as being rules for protecting the possibility of self-directed action. No meliorism resides in the second of these standards as it does in the first. Sen advocates the first—and we the second—and the forms of “social choice” or “public discourse” would differ greatly under each. In the first case, the mechanism of social choice would be used to fashion political society in accordance with the directives produced by exercising the social choice mechanism itself. In the second case, the mechanism of social choice operates *after* the rules of engagement are defined. There can be no “voice at the table” for the second option in the world of the first or vice versa because they differ fundamentally in their nature. There is, in this case, no reconciling matrix or algorithm for the competing frameworks themselves—they share only their respective ability to point to truth. It is possible, in other words, to claim that the reconciliation of ideas is a different matter from their truth, thus suggesting that giving all perspectives a “voice at the table” is already to exclude one of the voices. Philosophical debate is not, in fact, an exercise in public reasoning or discourse because its measure is truth, not consensus, agreement, or institutionalization. In short, however sophisticated the reconciliation of perspectives through some mechanism of social choice might become in the hands of a Sen or a

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7. Sen might insist that we cannot ask to know the purpose of social arrangements before the process of public reasoning has taken place, but this constraint would mean not only that we cannot really know why we are having the discussion, but also that those who question whether public reason alone determines the aims of social arrangements may not participate in this discussion.



Rawls, it does not remove the alternative of rejecting the social choice approach altogether along with its end of managing society for the sake of promoting citizens' well-being. In the end, the plausibility of one framework over the other will not depend on the incorporation of all relevant positions and the rejection of transcendentalism, but on the tethering of a framework to more comprehensive views that underlie the alternative conceptions of how to think about justice and thereby give each alternative its meaning.

The basic choice we face follows from our foregoing comments about responsibility being either defined or open. Even if we agree that under conditions of effective power the rich should be doing something for the poor, we may discover that one way to accomplish that task is to *define* exactly what the rich should do, whereas another way might be to leave *open* exactly how the task be accomplished. We might, for example, define a level of taxation that will contribute to a scheme of redistribution of income or not define any such program but leave the way open for job creation, voluntary charity, and direct negotiations to handle the matter in undefined ways and to undefined degrees. The key in the latter case would be to structure the rules that govern interpersonal relationships so that how one satisfies the obligation and the degree to which one does so is left completely unspecified at this structural level, perhaps in the belief that the solution is best achieved through maximizing alternatives or adaptability. Openness here is the belief not only that the solutions to a problem may be more numerous than we can imagine in constructing any specific program, but also that achieving an end is a function of adapting to circumstances that may affect the outcome, making adaptability itself a feature of the meaning of openness. This Hayekian point certainly cannot be ruled out of court as an alternative framework to a model of social choice that favors institutional design in the end. The key to cooperation, progress, wealth, and social problem solving may be more a function of undesigned liberal openness than a specification of obligations, duties, and requirements. As one commentator has noted, "The market is a bottom-up world with nobody in charge. . . . Nobody planned the global capitalist system, nobody runs it, and nobody really comprehends it. . . . [R]ules and institutions [are] evolutionary phenomena, too, emerging bottom-up in society rather than being imposed top-down by fortuitously Solomonic rules. . . . Human history is driven by a co-evolution of rules and tools. The increasing specialization of the human species, and the enlarging habit of exchange, are the root cause of innovation in both" (Ridley 2010, 102, 118–19). If one really seeks a solution to human problems, the best strategy may be to find means of securing a minimum of defined interpersonal obligations and maximizing the openness and adaptability that come from voluntary exchange.

Of course, in regard to our last point, it might be thought that a system of public reasoning such as Sen advocates can accommodate just such a conclusion if people find it sufficiently compelling. The openness strategy would be one among many positional perspectives that, in the course of being taken into account along with these other alternatives, comes to dominate in the end. In principle, then, Sen does

not rule out such a conclusion a priori. By embracing such a view, however, one still misses our earlier point about frameworks. There is a fundamental incompatibility between a framework that sees its mission as one of arriving at an appropriate set of rules for specifying a just society (understood to include the promotion of significant capabilities) and one that seeks to understand the sorts of rules that would make practicing the moral virtues, including numerous dimensions of justice, possible.<sup>8</sup> In the former case, one seeks some form of social well-being. In the latter case, one expects it.<sup>9</sup>

For the moment, let us suppose that we treat openness of exchange as one positional perspective among others and give it a say among a plurality of voices on how to organize social life. Openness position O would be one among a number of positions—P, Q, R, and so forth—vying for acceptance as the one that best combines feasibility with normative power. The problem is that from this starting point Sen effectively adds another voice to the discussion that need not be there and that cannot be *assumed* to be present: the voice of the institutionalizers or the exercisers of power. In the real world, of course, such a voice is not only present, but no doubt all too present. In our theoretical world of normative reflection, however, the exercise of power has and can have no voice because it, as pure power, is purposeless and devoid of normative content. Thus, for Sen or anyone else to give it a voice—that is, to bring into the plurality of voices the social managers’ positional perspective—is to presume a certain approach to social choice. Sen introduces this voice because he presumes that some person or group will be charged with instituting the rules arrived at by the mechanism of social choice he advocates. But we may question this assumption. We may suppose instead that without that voice in the mix, each of the various remaining voices would have the choice of dealing with its counterparts either by means of voluntary exchange or by violence. In other words, it may either find a basis on which to agree and compromise or try to force the others to submit to its favored social scheme. We can imagine both without the additional step of creating a class of social managers to institute the conclusions of the social choice mechanism. So if the alternative of violence were simply prevented or remained absent, leaving only voluntary exchange, the plurality of voices with which we began would remain as they were, and some other basis for reconciling their differences would have to be accepted—namely, mutual benefit.<sup>10</sup>

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8. A third possibility different from Sen’s own is the conservative one that works incrementally to change existing social structures rather than to design new ones to accord with some specified set of principles of justice or to be limited to structuring rules for the possibility of well-being rather than managing with an eye to well-being itself. The taxonomy of choices can thus be described as constructivist, liberal, and conservative.

9. Frédéric Bastiat comes close to this point when he says in *The Law*, “[T]o say that *the object of the law is to make justice prevail* is to use an expression that is not strictly exact. One should say: *the object of the law is to prevent injustice from prevailing*” (1964, 66, emphasis in original).

10. This position strikes us as somewhat similar to Gerald Gaus’s (2011), wherein public reasoning is more a function of acceptance by the parties involved than of reconciling perspectives.

Our point here is another version of the framework point: a model of how society is managed toward some value—say, justice—differs from a model that seeks only structural definition of enabling rules and cannot be presumed from the outset to be the model we must choose. The point, in other words, is that to suppose that “we” will have a public discussion about which rules of justice to adopt so that “we” might impose them on ourselves is to introduce implicitly the mode of institutionalization as a voice at the table, whether that voice be one or many. Perhaps, however, people can coordinate themselves by making their own arrangements without centralized institutionalization, if only violence is outlawed. Thus, what would be needed is not structuring institutions to accord with the rules of justice, but rather considering the rules of justice themselves be the product of voluntarily developed forms of institutionalization. Questions that arise from putting the matter in this way are: What exactly are the roles of political theorizing and political philosophy with respect to social order? Are theorists effectively legislators such that their conclusions may be regarded as social directives aimed at managing elites? Can the theorist *not* be a legislator and thus not a voice at the table, but rather a spectator of political life while seeking insight into its nature and the nature of justice (or any other value)? Is it Sen’s and others’ hubris to suppose that justice is made, at least institutionally, rather than discovered?

One need not be against “social choice,” even according to a number of Sen’s instincts on this matter. Market exchange, by its nature, meets most of the central criteria that he and others demand for public discourse. It is open, pluralistic, diverse in its participants’ perspectives, impartial, and nontranscendental. Furthermore, it can produce rules and cooperation and police its own activities. It lacks a centralized comprehensive vision and intricate system of regulating obligations, but why should we want that system? True, voluntary exchange sometimes produces outcomes to which some, including no doubt ourselves, would object. But is not such objection part of the decentralized form of public discourse that open-ended voluntary exchange presents, in opposition to the forms of defined exchange that Sen, Rawls, and others would have us accept? It is not and never has been our position that the market cannot produce injustice. Left without any rules to define the nature of violence and the rules of exchange, it can produce significant injustice.<sup>11</sup> However, with the appropriate rules designed to prevent violence and maximize choice—rules that perform a different function than ordinary ethical norms—the flexibility and adaptability intrinsic to voluntary exchange will bring out the justice that lies latent in relations of mutual benefit. At the structural level, our obligations should be largely procedural and boundary setting instead of being modeled on the sorts of defined responsibilities said to be implicit in relations of effective power.

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11. Even here, however, some evolutionary stories suggest a propensity to evolve appropriate rules of exchange and to minimize violence without social design.

## II

*Public Reasoning, Impartiality, and Impersonalism*

To this point, we have shown that Sen's approach to justice at a structural political level remains controversial. No doubt any theory may be controversial, but the model of public reasoning Sen uses to theorize about justice is thought to have the advantage of finding a way to consider, if not reconcile, differing plausible theories of justice. How does public reasoning make all this possible, and why does Sen conclude that this approach trumps any particular comprehensive theory? To answer these questions, we must consider what Sen understands by objectivity.<sup>12</sup> Sen holds that objectivity will reduce any comprehensive theory of justice to a positional perspective to be groomed for incorporation with others. Notwithstanding the differences between the kinds of arguments that Rawls, Habermas, and Smith use, Sen follows them in claiming that each links the objectivity of an ethical or political belief directly or indirectly to its ability to endure an informed examination coming from varied places. Further, he holds that there is "an overarching similarity among them in the shared recognition of the need for reasoned encounter on an impartial basis" (2009, 46).<sup>13</sup> Sen endorses their public-reasoning approach to objectivity and declares that he will follow it in determining what justice is, comparatively speaking. He also identifies this approach as central to democracy understood as a process of deliberation—that is to say, democracy not as something that is merely aggregative and that works by majority rule, but as collective engagement in practical reasoning—and he argues that democracy's deliberative character is what makes it so valuable. Finally, given public reasoning's crucial role in deliberative democracy, Sen notes that democracy so understood is closely related to 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" (2009, 326). Thus, his approach to objectivity is tied not only to an account of public reasoning, but also to deliberative democracy.

Whether public reasoning is essential to objectivity (and the determination of comparative justice) and how deliberative democracy fits into this process are questions whose answers are tied to the link Sen posits between objectivity and impartiality. Thus, we need to consider now how Sen understands the relationship between

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12. Sen explicitly aligns himself with Hilary Putnam in rejecting the idea that objectivity in ethical or political matters has anything to do with tracking ethical objects or explaining how what is valuable, worthy, or obligatory is grounded in what is (2009, 41; Putnam 2004). Moreover, Sen agrees with Putnam that talk of an "is" that exists apart from human conceptual schemes, practices, conventions, and "valuings" is unintelligible, and he therefore rejects appeals to ontology to explain ethical objectivity (2009, 119). Putnam's approach to ethical and political objectivity thus sets the parameters for Sen's approach to objectivity. Putnam uses the term *valuings* to mean "value judgments of every sort" (2004, 74).

13. Sen notes further that their approaches differ largely on the domain of required impartiality.

impartiality and objectivity in public reasoning. Certainly, nothing seems controversial about claiming that impartiality requires participants in public reasoning to refrain from distorting anyone's values, reasons, and rankings—that is, Vs—or seeking to replace them by “favored” Vs. The Vs of everyone affected by the deliberations of public reasoning need to be examined in a straightforward manner and not ignored. Nor is it unusual, in discussions of justice, to forbid the exclusion of particular human beings from consideration. Everyone's valuations must be assessed. Moreover, this moral and political accounting must involve open communication and interpersonal comprehension—every voice is to be heard and understood—which may not seem controversial as an ideal. Finally, there is no a priori reason for assuming that any human being is incapable of acting in accord with these procedures. We can thus describe the foregoing as an ordinary or commonplace understanding of impartiality with no controversial assumptions because it makes no claim about the nature of the Vs to be used in the process of public reasoning. We have no objection to this noncontroversial understanding of impartiality.

However, an ordinary or commonplace understanding of impartiality has very little “argumentative punch” in making comparative judgments of justice. To take a real-world example from the United States: Should the political-legal order attempt to provide for the health-care needs of those at lower income levels by legally mandating that nearly all citizens purchase health care from designated insurance companies? As ordinarily understood, impartiality provides minimal guidance in answering this question. It does not tell us why it is more just to pass such a health-care mandate than not to pass it. It does not tell us how to choose between conflicting Vs. And although other questions of comparative justice may have seemingly obvious and intuitively appealing answers, it is by no means clear that such appeal has anything to do with this ordinary understanding of impartiality. Such an understanding of impartiality is thus inadequate in providing an objective basis for comparative judgments of justice.

Sen's account of impartiality, however, also relates to how he grasps the Kantian principle of universalizability—“Act always on such a maxim as thou canst at the same time will to be a universal law” (Kant 1907, 66)—and to his understanding of impartiality in light of a certain interpretation of it. As stated, the principle of universalizability presents no difficulties because it is perfectly general.<sup>14</sup> However, if we distinguish (a) an approach to morality that is agent centered and treats all morally salient values, reasons, and rankings (Vs) as fundamentally *personal* and (b) an approach that is not agent centered and treats all morally salient Vs as fundamentally *impersonal*, difficulties with certain interpretations of the principle of universalizability may arise.

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14. It might be charged that we are giving much too thin a reading of Kant's principle of universalizability, but if a thicker understanding of this principle exists, it must be spelled out and justified, and then it must appeal to deeper and more controversial premises.

First, let us clarify these two approaches to ethics or morality. For (a), all morally salient Vs are “agent relative,”<sup>15</sup> and they are agent relative if and only if their distinctive presence in world  $W_1$  is a basis for some person  $P$  to rank  $W_1$  over world  $W_2$ , even though they may not be the basis for *any other* person to rank  $W_1$  over  $W_2$ . Simply put, there are no morally salient Vs *full stop*. Rather, Vs are always and necessarily Vs *for* some person. For (b), all morally salient Vs are “agent neutral,” and what makes them so is that they do *not* involve as part of their description an essential reference to the person for whom the value or reason exists or the ranking is correct. “For any value, reason or ranking  $V$ , if a person  $P_1$  is justified in holding  $V$ , then so are  $P_2$ – $P_n$  under appropriately similar conditions. . . . On an agent-neutral conception it is impossible to weight more heavily or at all,  $V$ , simply because it is one’s own value” (Den Uyl 1991, 27; see also Mack 1989). In the description of a value, reason, or ranking, it does not matter ethically *whose* value, reason, or ranking it is.<sup>16</sup>

Second, nothing about the principle of universalizability precludes a personalist approach to ethics. Let us say that the values, reasons, and rankings,  $V_1$ , for a person,  $P_1$ , are agent relative, and further let us say the same holds true, respectively, for values, reasons, and rankings  $V_2$ – $V_n$  for persons  $P_2$ – $P_n$ . Conduct based on such agent-relative Vs can be universalized as follows: if  $V_1$  provides a basis for  $P_1$  to act, so does  $V_2$  provide a basis for  $P_2$  to act, and  $V_n$  provides a basis for  $P_n$ . One cannot claim that  $V_1$  provides  $P_1$  with a legitimate reason to act without acknowledging that  $V_2$  provides  $P_2$  with a legitimate reason to act, and so on. What is universalized here is the knowledge that being a  $V$  for some person is what provides a basis for this person’s conduct. Yet nothing about universalization requires that a  $V$  for one person must be so for another (Rasmussen 1999; Rasmussen and Den Uyl 2005, 134–36).<sup>17</sup> Universalizability as a logical matter does not mean or require impersonalism.<sup>18</sup>

If the principle of universalizability does not preclude a personalist approach to morality, Sen’s account of public reasoning has a basic problem because he wants to show that “the impartiality of evaluation can provide an understandable and plausible idea of objectivity in moral and political philosophy” (2009, 118). But is this claim so *if* impartiality of evaluation is understood only in terms of what we have called an “ordinary or commonplace” account without any hint of impersonalism? How does one choose between competing Vs? Sen needs to show that public reasoning has a justifiable method for the comparative judgments it issues in regard to differing

15. They might also be called “agent specific.”

16. Parts of this paragraph and the next are taken with slight modifications from Rasmussen 2008, 81.

17. Agent relativity does not imply, however, that  $P_1$  is an ethical egoist because it is possible for  $P_1$ ’s morally salient values, reasons, or rankings to be agent relative and entirely altruistic. Yet, this possibility does not show that these values, reasons, and rankings are agent neutral because benefiting others must still be a value, reason, or ranking *for*  $P_1$  but not necessarily for  $P_2$ – $P_n$ . Further, the question remains as to whether it is desirable for  $P_1$  to be entirely altruistic.

18. The last two sentences in the paragraph are claims about universalizability, not claims about Vs. In a personalist approach to ethics, the relevance of universalization has to do with the nature of providing a justification for courses of conduct, not with the unique character of ethical concerns.

ethical and political claims.<sup>19</sup> He needs a viable account of objectivity that does not appeal to ethical objects.

Underlying Sen's belief that impartiality of evaluation can provide a basis for objectivity is his use of Henry Sidgwick's statement of the principle of universalizability: "That whatever is right for me must be right for all persons in similar circumstances" (1981, xix).<sup>20</sup> But this statement is not clear. It allows for two understandings of universalizability. If, on the one hand, we interpret "in similar circumstances" in a concrete manner—that is, as pertaining not only to the situation, but also to the respective identities of me and others so that we have no differences—then *ex hypothesi* there can be no differences between my Vs and others' Vs that result from individual differences between me and others. Nothing about this interpretation of Sidgwick's statement is particularly problematic. Indeed, it has the same logical form as Kant's principle of universalizability.<sup>21</sup> Yet nothing about it is useful in helping Sen develop a viable account of objectivity because it cannot offer a way to deal with conflicts between my Vs and others' Vs that may arise from the real differences in our respective identities. If, on the other hand, we do not concretely interpret "in similar circumstances" and allow for me to be different from other persons and vice versa, more than a logical claim about the nature of ethical justifications is being made. Rather, a substantive claim about the nature of ethical or moral Vs is being made—namely, that they are agent neutral in character. Thus, the impartial deliberative evaluations of public reasoning are to be understood as proceeding in an impersonal fashion in dealing with conflicting Vs. Sen needs this interpretation for his version of public reasoning to have sufficient "argumentative punch." It allows public reasoning to factor out Vs that are grounded in the individuality of persons.

However, this substantive interpretation of Sidgwick's statement of the principle of universalizability raises a host of further questions as to what justifies proceeding in such an impersonalist manner. Is it evident that what is good for me is necessarily good for you in the same circumstances (or vice versa)? Are we interchangeable? Why should the status of persons as individuals be precluded from consideration in public reasoning? In particular, why should "the set of circumstances, talents, endowments, interests, beliefs, and histories that descriptively characterize the individual"—what we call an individual's "nexus" (Rasmussen and Den Uyl 2005, 144)—be excluded? Is an individual's nexus irrelevant to moral evaluations? Does it play no role in considering the scope and character of the principles that determine justice for the political-legal order? Does not the exclusion of personal Vs lack justification?

19. To return to our earlier example, can public reasoning justify claiming that passing the health-care mandate is comparatively more just than not?

20. The quotation continues: "which was the form in which I accepted the Kantian maxim—[and] seemed to me to be certainly fundamental, certainly true, and not without practical importance" (Sidgwick 1981, xix).

21. As W. D. Ross has observed, "The only safe way of applying Kant's test of universalizability is to envisage the act in its whole concrete particularity" (1954, 34).

### *Trying to Justify Impersonalism*

One way to try to get around these concerns is to emphasize that Sen focuses primarily on justice in an interpersonal sense and to claim that *interpersonal* justice requires *impersonal* justice. In this regard, Sen follows John Rawls, who states in *A Theory of Justice* that “we think of the original position as the point of view from which noumenal selves see the world” (1971, 225). But does commitment to interpersonal living (even in a most open-ended and universal sense) require that one take on the viewpoint of a noumenal self or adopt ethical impersonalism? To say the least, it is highly unlikely that human beings are noumenal selves, and it seems that the goods and personal projects of individual human beings differ in real and legitimate ways. Hence, individuality matters with respect to morals and also in regard to making comparative judgments of justice that are supposed to apply to every human being. Regardless of how inconvenient individuality may be, political philosophers may not simply disregard it. Indeed, among political philosophers’ desiderata is an accommodation of both individualism’s moral propriety and human life’s profoundly social character.<sup>22</sup> Thus, it is by no means clear how helpful Sen’s disregard of the individuality of persons and their lives is as an argumentative ploy.

Of course, one might argue that public reasoning simply is impersonal in character, and such reasoning is the only game in town with respect to objectivity. But why should this claim be accepted? Why should public reasoning be the chief, if not the only, way in which comparative judgments of justice are made? Sen’s answer (2009, 174–93), following a line of argument similar to Putnam’s (1994, 2004, 89–108), would seem to be that public reasoning makes full use of human intelligence. This argument, however, still begs the question: Why cannot free and open markets serve, as F. A. Hayek (1945) argues, as the basic social mechanism for using human knowledge in coordinating and determining the best and most useful—indeed, the most objective—ways to use resources, direct human effort, and solve problems? Cannot free and open markets themselves provide a most vital expression of human intelligence (Ridley 2010, 102, 118–19)? Moreover, despite Sen’s criticism of Robert Nozick for advancing a theory of justice that concentrates only on what justice requires for the political-legal order and that does not deal with the problem of comparative judgments of justice (Sen 2009, 84, 96), this focus may be precisely Nozick’s point! The sorts of comparative judgments that so rightly concern Sen may be resolvable only at the personal level, and Nozick’s insight may be an appreciation that the principles of justice for the political-legal order have to be developed in light of and in appreciation of the personal character of the moral life. Indeed, by thinking in impersonalist terms and not allowing individualism a voice in the discourse, Sen actually discounts much of the most important knowledge that we use in seeking

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22. In a previous work (Rasmussen and Den Uyl 2005), we attempt to find a basis for this accommodation and not paper over human beings’ real and authentic differences.



human flourishing. Such knowledge is not found in a community of knowers examining a common issue but is instead spread among many individuals and pertains only to particular and contingent matters. It is significant that Sen provides little or no discussion of the role of how such diversified knowledge is brought to bear in determining what is best and most useful. In short, what is singularly lacking is any discussion of the virtue of practical wisdom.<sup>23</sup> Thus, unlike Hayek, who does not attempt to identify or limit the voices of public reasoning but sees it as an open-ended process, Sen seeks to identify these voices *ex ante* and thus closes off the open-ended dynamic of the exchange of ideas.

A more productive response to these concerns may be to note that Sen admits that personal Vs can be part of the public-reasoning process—for example, the value of meeting your own child’s needs as opposed to meeting any given child’s. Particular values accordingly may be given weight not because of the outcomes they tend to produce, but because of their relationship to the person. Therefore, Sen believes that agent relativity poses no special problem to the consequence-based evaluation of public reasoning. Furthermore, for agent-relative values, Sen sees no problem of objectivity. All participants in public reasoning may take the parents’ position and come to understand the evaluation they would make of having their child’s needs met as contrasted to some other child’s needs (2009, 160), and for Sen this consideration may enter into the process of public reasoning.

Yet Sen is keen to preserve an impersonalism that does not permit individual identities to play a role in evaluative considerations. “[E]valuator-relativity need not violate any requirement of ‘impersonality’ that may be imposed on the discipline of ethics. Indeed, impersonality must not be confused with what may be called *impositionality*—having to ignore the relevance of a chooser’s position or situation vis-à-vis the choices and results. In contrast with impositionality, position-relative impersonality requires, to put it in mildly mathematical terms, that parametric note be taken of the respective *positions* of the different persons, but not to the exact personal *identities* involved” (2000, 486, emphasis in original). In other words, Vs relationship to the person is not essential or owing to the person’s identity or nexus but rather pertains to the person’s position relative to what is valued. The positional relevance of parenthood<sup>24</sup> is the source of weight accorded one’s own children as opposed to others’ children. As such, the relationship of what is valued to the person is strictly external. Indeed, Sen compares this relationship to the judgment that the sun and moon look similar in size to an observer on earth (2009, 156).

23. Practical reason is not the reasoning of *homo economicus*. “Practical reason is the intellectual faculty employed in guiding conduct, and practical wisdom is the excellent use of practical reason. Practical wisdom is, however, more than mere cleverness or means–end reasoning. It is the ability of individuals at the time of action to discern in particular and contingent circumstances what is morally required. It involves the intelligent management of one’s life so that all the necessary goods and virtues are coherently achieved, maintained, and enjoyed in a manner that is appropriate for the individual human being. It is *the* intellectual virtue of a neo-Aristotelian conception of human flourishing” (Rasmussen 2008, 79 n. 91).

24. Sen does not stipulate the basis of this relevance.

He considers such a judgment to be an instance of “positional objectivity,” but he also considers it compatible with “objective illusion” or even “false consciousness” (161–67). Public scrutiny of ethical and political beliefs can acknowledge position-dependent Vs, but its goal is to make assessments that do not vary from person to person (Sen 1993, 145, 2009, 161). In effect, public reasoning’s approach to objectivity is not to allow Vs that are essentially related to a particular person’s identity or nexus.

This response, however, does not consider agent relativity as it was previously described. Sen never considers the possibility that Vs are essentially attached to particular persons.<sup>25</sup> Moreover, he does not consider how *who* an individual is may provide a basis for unique Vs. Others, because of their identities, may have bases for V, but they need not. Of course, one may say: “If I were you, I would not choose to take course of action C because of V, and so I understand the basis for your conduct.” Yet one may also say, “Because I am not you, and we differ in this regard, V is not relevant to me, and I have reason to take action C.” Thus, the ability to understand other persons’ or groups’ Vs does not by itself mean or require that one should make comparative judgments on the basis of their Vs. Thus, agent-relative Vs place severe limits on public reasoning’s effectiveness in finding agreement.<sup>26</sup>

Furthermore, if we permit ourselves to disregard for a moment the stranglehold that Putnam’s view of objectivity has imposed on this discussion, we might note that even if V were objective in some realistic or naturalistic way, nothing about its objectivity (that is, its *being* valuable) requires that it be regarded impersonally—that is, interchangeability with other Vs is not required. Indeed, objective values can be entirely personal. Thus, based on objective Vs, persons may make different (even conflicting) judgments about what course of action to pursue.

Regardless of whether ethical objectivity has a realistic or naturalistic grounding, agent-relative Vs do not require interchangeability, so the question remains, Why ought public reasoning be conducted in an impersonalist manner? Why indeed ought one adopt such a viewpoint? Even more fundamentally, why must “ought” be construed in an impersonalist manner? These questions are ironic because Sen also allies his use of public reasoning with the advancement and development of human capabilities that constitute human flourishing. But this alliance requires the impersonalist mode of public reasoning (as manifested in a deliberative democracy) to be used in determining not only the relevant set of capabilities that constitute human flourishing, but also their respective weights. Sen states: “Even the idea of ‘needs,’ including the understanding of ‘economic needs,’ requires public discussion and exchange of information, views, and analyses. In this sense, democracy has constructive importance. . . . [O]pen discussion, debate, criticism, and dissent are central to the process of generating informed and considered choices.

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25. One should not confuse universalizability with universality or agent neutrality (Rasmussen and Den Uyl 2005, 153–58).

26. This paragraph is adapted from Rasmussen and Den Uyl (2009, 884).

These processes are crucial to the formation of values and priorities, and we cannot, in general, take preferences as given independently of public discussion” (1999a, 10; see also Sen 2009, 321–54). But this account simply does not work, and it smacks of a conformism that is antithetical to the very character of human flourishing. Certainly, to think of human flourishing without thinking of whose flourishing *it is* is not to think falsely, but to think that human flourishing can exist, or provide guidance for conduct, without being the flourishing of some individual or other is to think falsely. Moreover, it is false to regard the individual as simply a place-holder that instantiates the human good or various combinations of human capabilities.<sup>27</sup> Such thinking turns human flourishing into an abstraction and denies it reality, and it forbids the very individuality of persons from entering into an account of human flourishing or playing a role in the judgments of practical reason. Indeed, to hold such a conception is to hold no conception of human flourishing at all.

Sen’s attempt to explain an ethical or political belief’s objectivity in terms of its ability to pass the scrutiny of the public-reasoning process does not suffice because although impartiality understood in an ordinary way is not controversial, it helps very little in providing a basis for determining what to select in making comparative judgments of justice. Moreover, if impartiality is understood in an impersonalist sense, it is unjustified and conflicts with the individualistic and personal features of human flourishing. We have, of course, an alternative way to understand the objectivity of an ethical or political belief: the realistic—and, for us, ultimately naturalistic—account of ethical objectivity that we champion. Such an approach to ethical objectivity is explicitly tethered to specific metaphysical and epistemological positions. Sen has chosen the particular route of public reasoning to account for ethical objectivity because he also has tethered himself to deep philosophical commitments. By accepting Putnam’s rejection of the usefulness of ontological considerations in determining the objectivity of ethical and political beliefs, he has circumscribed how he thinks about ethical and political terms. These boundaries are marked out by the basic tenets of Putnam’s “pragmatic pluralism,” which precludes understanding objectivity in terms of realities that exist apart from human conceptual schemes, practices, and valuing (2004, 21). We have critically examined Putnam’s views in detail elsewhere (Rasmussen 2008), so we need not take them up here. More important, we need not do so because this matter is not germane to our basic point: accounts of human reason and reasonableness are inherently controversial, not in the sense that people may disagree, but in the more radical sense that some alternative approaches are rejected, which forces a person either to carry on the debate at a level other than the one ostensibly in dispute or simply to reject out of hand the alternative position(s). Sen seems to recognize that his doctrine of public reason is tethered to broader

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27. For a critical examination of Sen’s and Martha Nussbaum’s claim that the individuality of human flourishing is maintained because there can be various combinations of human capabilities, see Rasmussen and Den Uyl (2009).

frameworks when he links himself to Putnam and others, but he does not recognize that the public-reasoning approach is not *philosophically* universalist because it does not incorporate all perspectives. Thus, the public-reasoning project either misrepresents the other approaches as being inherently positional or begs the question of why we should accept public reasoning as the right way to identify the nature of justice.<sup>28</sup>

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28. A Spanish version of this article, published by ESEADE (Argentina) with the title “Justicia e imparcialidad en Amartya Sen: una crítica,” is available in *Revista de Instituciones, Ideas y Mercados*, No 57, October 2012, Año XXIX.

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