

JUSTICE AND IDENTITY

AMARTYA SEN

Harvard University, USA
asen@fas.harvard.edu

This paper discusses the relationship between justice and identity. While it is widely agreed that justice requires us to go beyond loyalty to our simplest identity – being just oneself – there is less common ground on how far we must go beyond self-centredness. How relevant are group identities to the requirements of justice, or must we transcend those too? The author draws attention to the trap of confinement to nationality and citizenship in determining the requirements of justice, particularly under the social-contract approach, and also to the danger of exclusive concentration on some other identity such as religion and race. He concludes that it is critically important to pay attention to every human being's multiple identities related to the different groups to which a person belongs; the priorities have to be chosen by reason, rather than any single identity being imposed on a person on grounds of some extrinsic precedence. Justice is closely linked with the pursuit of impartiality, but that pursuit has to be open rather than closed, resisting closure through nationality or ethnicity or any other allegedly all-conquering single identity. Christian List

1

Well, whiles I am a beggar, I will rail
And say that there is no sin but to be rich;
And being rich, my virtue then shall be
To say that there is no vice but beggary.

So said Philip the Bastard in Shakespeare's play *King John*. Our own situations and placing vis-à-vis others can indeed influence our moral attitudes and political beliefs about the social arrangements that we would tend to think as fair or just. Precisely for this reason, in most

theories of justice, there is a strong demand to remove this type of position-dependent variation of our allegedly ethical claims. If our pronouncements vary with our individual advantages and disadvantages, then there would be reason enough to doubt whether we are considering the ethical demands of impartiality seriously enough.

Impartiality has been seen as a requirement of ethics and of reasonable political evaluation for a long time. However, the ways and means of ensuring impartiality vary in different theories. In the Rawlsian theory of 'justice as fairness' the demands of impartiality are captured by the requirement of proposing and choosing the 'principles of justice' in the 'original position', a hypothetical position of primordial equality in which individuals in a society choose between principles without knowing exactly who they are respectively going to be (Rawls 1999a [1971]). In a different formulation of the demands of impartiality, Thomas Scanlon (1998: 5) has argued, 'thinking about right and wrong is, at the most basic level, thinking about what could be justified to others on grounds that they, if appropriately motivated, could not reasonably reject'. Immunity from reasonable critical scrutiny from others differently placed is, thus, given a significant role in taking us beyond our self-centred priorities into reasonable evaluation in relation to other people. One way or another the requirements of justice urge us to go beyond loyalty to the simplest identity that we all have, to wit, being just oneself. This much seems to be shared ground. But where do we go from here?

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The question that arises from within that common ground is this: how far must we go in moving away from pure self-centredness – away from only 'self-love', as Adam Smith called it? Indeed, Smith himself went on to demand that we must evaluate situations by placing ourselves at a certain 'distance' from us:

We can never survey our own sentiments and motives, we can never form any judgment concerning them; unless we remove ourselves, as it were, from our own natural station, and endeavour to view them as at a certain distance from us. But we can do this in no other way than by endeavouring to view them with the eyes of other people, or as other people are likely to view them. (Smith 2002 [1759]: 128)

This, as I will presently discuss, is a critically important demand as well as a very strong requirement.

However, the need to go beyond one's personal self-interest towards some kind of group consideration is widely shared in one form or another. Even in Philip the Bastard's caricature, people do not identify

only with themselves in an entirely *ad hominem* sense. Rather, the claim is that each individual would identify only with his or her own group of similar opulence or poverty (such as 'being rich'). There is a broadening there – from the individual person to the corresponding 'vested interest group'. But this is clearly not enough for impartiality and fairness – the extension to a group has to be very much broader than that. The Rawlsian device of the 'original position' that demands, in line with fairness, that each citizen views the requirements of justice in an impartial way would not allow anyone to *know* whether he or she is rich or poor while choosing principles of justice. In his different formulation of impartiality, Scanlon does not withhold any such knowledge even in the hypothetical exercise. Instead he demands that the principles that a person advances must satisfy the requirement that others – with different predicaments or vested interests – 'could not reasonably reject'. While the formulations differ, it is required in one way or another that when one moves from an individual-based assessment to some kind of a group-based evaluation, the group must not be chosen in terms of congruence of interests and advantages. It is not good enough to go from oneself to a group of people whose interests are much the same.

The relevance of the chosen group is, thus, an inescapable part of a theory of justice. Since justice is quintessentially a group-based concept, our social identity cannot but be involved in the idea of justice. We have an obligation to consider other people – those who do not belong to a particular group with which we may closely identify. This is the issue of 'identity transcendence'. No matter how our sense of identity is formed (whether mainly by discovery or largely by choice) and what shape our identities have (whether singular or multiple), we still have to consider the claims of other people who do not share our own identities. This is, of course, a very big subject and one in which a universalist understanding of the discipline of ethics and political justice can make very exacting demands on the necessity of transcending identity-based morality.

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And indeed this is where the rub is. Because of the way the theory of justice has evolved within the social contract tradition, beginning with Thomas Hobbes's pioneering contributions in the 17th century, the demands of impartiality have tended to be confined to other members of the same nation or same polity (or what Rawls calls the same 'people'). This has led to the confining of the domain of 'justice as fairness' to each nation taken separately. So the demands of justice, in this approach, could not give voice in any immediate sense to non-citizens from beyond the borders of a polity.

In his later book *The Law of Peoples* (1999b), Rawls has supplemented this local confinement by presenting the possibility of another 'original position', this time involving representatives of different 'peoples'. At the risk of some oversimplification, the two 'original positions' can be seen as being respectively *intranational* (between individuals – or their representatives – within a nation) and *international* (between representatives of different nations). As may be expected, Rawls analyses the demands of justice in each case with great insight, rigour and reach. And yet the overall approach to justice remains rather severely confined and constrained, since the demands of justice, as opposed to those of decency and humanitarianism, are given no systematic reach beyond the national boundary. Indeed, Rawls does not even propose any 'principles of justice' for the second exercise (among nations or 'peoples'), and confines the demands to rather elementary requirements of good and reasonable behaviour towards each other across the boundaries, including respecting the human rights of people outside the national borders. Since we cannot have a global social contract to be enforced by a global sovereign state, the contractarian approach in its basic form cannot yield any theory of global justice. Indeed, despite some illuminating – and hugely appealing – theories of a global (or 'transnational') social contract, presented by philosophers such as Thomas Pogge (e.g. 1989, part III), the social contract approach has not yielded any firm basis for going beyond the limits of our national or citizenship identities in pursuing what can be called global 'justice as fairness'.

This is why even Thomas Nagel – despite his great global sympathies – ends up dismissing 'the idea of global justice' as completely illusory in the world in which we live. As he puts it, 'It seems to me very difficult to resist Hobbes's claim about the relation between justice and sovereignty', and 'if Hobbes is right, the idea of global justice without a world government is a chimera' (Nagel 2005: 115). When it comes to beyond-border political or ethical demands, Nagel thus confines his analysis to clarifying *other* demands – distinguishable from the demands of justice – such as 'minimal humanitarian morality' (which 'governs our relations to all other persons'; 2005: 131), and also to long-run strategies for radical change in institutional arrangements ('I believe the most likely path toward some version of global justice is through the creation of patently unjust and illegitimate global structures of power that are tolerable to the interests of the most powerful current nation-states'; 2005: 146).

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The constraints imposed by the social-contract approach have prohibitive effects. It might be thought that this is indeed reasonable since the importance of nationality and citizenship for matters of practical politics

cannot be denied in the contemporary world. And yet can it really be the case that there is no issue of justice at all in the way other peoples' interests and concerns can be brushed aside, as in the classic social contract approach, in the assessment of justice? The effects on the lives of people who come from beyond the national boundaries may not only be relevant for humanitarian considerations but also for the assessment of justice and injustice in the world.

If the pursuit of impartiality is confined only to the citizens of a country (or to some other exclusive group), we get what can be called 'closed impartiality'. We can contrast this with 'open impartiality' which would not exclude anyone anywhere from consideration. There are no exclusions on grounds of identity in this alternative approach, and if we must insist on seeing the inclusion in terms of identity, we would have to use here the idea of an unconstrained global identity. This is, of course, what theories of 'human rights' standardly do (without getting much involved with the theory of justice behind them), but a well-formulated theory supporting such an inclusive and universalist understanding of justice can be found in Adam Smith's early exploration of impartiality in global politics. In Smith's analysis the pursuit of impartiality, which is essential for justice, must demand going beyond the boundaries of each state.

There are two principal grounds for requiring that the encounter of public reasoning about justice should go beyond boundaries of a state or a region: (1) the relevance of other people's *interests* which may be affected by what we do, and (2) the pertinence of other people's *perspectives* to broaden our own investigation of relevant principles, for the sake of avoiding our own parochialism based on the values and presumptions in the local community.

The first ground, related to the interdependence of interests, gave Adam Smith reasoned ground for protesting against the injustice of early British rule in India in the 18th century, and condemning the 'mercantile company that oppresses and domineers in the East Indies' (Smith 1976 [1776]: 82), which had proved itself to be 'altogether unfit to govern its territorial possessions' (1976 [1776]: 277). In today's interdependent world, it is easy to appreciate the need to consider the interdependence of interests. Whether we consider the challenges posed by terrorism, or by global warming, or by the world economic crisis that we are currently experiencing, confining the attention to the interests and assessment of citizens of any given state cannot be the basis of understanding the demands of justice. Also AIDS and other epidemics move from country to country, and from continent to continent, and also, on the other side, the medicines developed and produced in some parts of the world are important for the lives and freedoms of people far away. This itself is ground enough for not confining the consideration of justice only to the members of a sovereign state.

In addition to the global features of interdependent interests, there is a second ground – that of avoidance of the trap of parochialism – for accepting the necessity of taking an ‘open’ approach to examining the demands of impartiality. If the discussion of the demands of justice is confined to a particular locality – a country or even a larger region than that – there is a possible danger of ignoring or neglecting many challenging counterarguments that might not have come up in local political debates and not have been adequately accommodated in the discourses occurring in the local culture, but which are eminently worth considering, in an impartial perspective.

Smith was particularly concerned about avoiding the grip of parochialism in jurisprudence and moral and political reasoning. In a chapter entitled ‘On the Influence of Custom and Fashion upon the Sentiments of Moral Approbation and Disapprobation’ in the *Theory of Moral Sentiments* (2002 [1759]), Smith gives various examples of how discussions confined within a given society can be fatally limited by parochial understanding:

the murder of new-born infants was a practice allowed of in almost all the states of Greece, even among the polite and civilized Athenians... Uninterrupted custom had by this time so thoroughly authorized the practice, that not only the loose maxims of the world tolerated this barbarous prerogative, but even the doctrine of philosophers, which ought to have been more just and accurate, was led away by the established custom, and upon this, as upon many other occasions, instead of censuring, supported the horrible abuse, by far-fetched considerations of public utility. Aristotle talks of it as of what the magistrates ought upon many occasions to encourage. The humane Plato is of the same opinion, and, with all that love of mankind which seems to animate all his writings, no where marks this practice with disapprobation. (Smith 2002 [1759]: 246–7)

While this brutal example of infanticide remains sadly contemporary even today, though only in a few societies, some of his other concerns have relevance to many other contemporary societies as well. This applies, for example, to Smith’s general insistence, in *The Theory of Moral Sentiments*, that ‘the eyes of the rest of mankind’ must be invoked to understand whether ‘a punishment appears equitable’. But foreigners can point to questions and concerns that even the natives have reason to consider seriously. Scrutiny from a ‘distance’ may be useful for practices as different as the stoning of adulterous women in Taliban’s Afghanistan, selective abortion of female foetuses in China, Korea and parts of India, and plentiful use of capital punishment in China, or for that matter in the United States.

The relevance of distant perspectives has a clear bearing on some current debates in the United States, for example that in the US Supreme Court not long ago, on the appropriateness of death sentence for crimes committed in a person's juvenile years, with the execution occurring only after the child reaches adulthood (see *Roper versus Simmons*, 543 U.S. (2005); the Court's final opinion can be found at <http://www.supremecourt.gov/opinions/04pdf/03-633.pdf>). The demands of justice being seen to be done even in a country like the United States cannot entirely neglect the understanding that may be generated by asking questions about how the problem is assessed in other countries in the world, from Europe to Brazil and India and Japan. The majority judgment of the Court, then, ruled against the use of the death sentence for a crime that was committed in juvenile years for which the execution is to be held after the minor becomes an adult. But the judgment almost certainly would have been different today, as we know from the newly elected Chief Justice Roberts's opinion on the subject, who has made clear that he would have sided with the minority and also that American judges should not be influenced by arguments and judgments coming from elsewhere. In denying the appropriateness of capital punishment in this case, the majority in the Supreme Court did not simply 'defer to like-minded foreigners' (as Justice Scalia, who joined the minority position, suggested; his dissenting opinion is reported at <http://www.law.cornell.edu/supct/html/03-633.ZD1.html>). Scrutiny from 'a distance' can be very useful, for reasons that Adam Smith analysed, in order to arrive at grounded but non-parochial judgments, taking note of questions that consideration of non-local perspectives can help to raise.

It is important to recognize that to listen to distant voices, which is part of Adam Smith's exercise of invoking 'the impartial spectator', does not require us to be respectful of every argument that may come from abroad. We may reject a great many of the proposed arguments – sometimes even all of them – and yet there would remain particular cases of reasoning that could make us reconsider our own understandings and views, linked with the experiences and conventions entrenched in a given country or culture.

The interdependence of reasoning is part of the ground on which Martin Luther King, Jr., said in a letter from Birmingham jail in April 1963: 'Injustice anywhere is a threat to justice everywhere'. Active public agitation, news commentary and open discussion are among the ways in which global democracy can be pursued, even without waiting for the global state. The challenge today is the strengthening of this already functioning participatory process, on which the pursuit of global justice will to a great extent depend.

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I have been so far contrasting the citizenship-based approach only to the universalist position based on taking note of the interests and points of view of all human beings. We must, however, also ask how we should take note of the relations between different people across borders whose identities include, *inter alia*, solidarities based on classifications *other than* partitions according to nations and political units, such as political beliefs, cultural linkages, religious ties, social connections, bonds of shared deprivation (linked, for example, with class and gender), and other non-citizen affiliations? How do we account for professional identities (such as being a doctor or an educator) and the imperatives they generate, 'without frontiers'?

These concerns, responsibilities and obligations may not only not be parasitic on national identities and international relations, they may occasionally run in contrary directions to international relations. The group identities that we acknowledge and focus on may not be based on – certainly not *only* on – the imperatives mediated by our membership of collectivities such as 'nations' or 'citizenry'. Identity choice is a crucial aspect of many issues of social, political and economic ethics.

Our practical interactions across borders often involve norms or rules that are not derived through the relation between nations. This applies powerfully even to markets and exchanges, particularly in a rapidly globalizing world economy. Indeed, even commercial linkages and market relations can extend the reach of human connections. Indeed, as early as in the 1770s, David Hume noted the importance of increased intercourse in expanding the reach of our sense of justice:

...again suppose that several distinct societies maintain a kind of intercourse for mutual convenience and advantage, the boundaries of justice still grow larger, in proportion to the largeness of men's views, and the force of their mutual connexions. (Hume [ed. Sayre-McCord] 2006: 203)

Global justice cannot but embrace identities that go well beyond citizenship.

These issues have become especially prominent in recent years, partly as a result of protesting demonstrations – from Seattle and Washington to London and Prague. One of the first features to note about the recent demonstrations against globalization is the extent to which these protests are themselves globalized events. They draw on people from very many different countries and distinct regions in the world. And many of their concerns relate to global issues of inequality and disparity. The concerns of the demonstrators are often reflected in roughly structured demands and crudely devised slogans, and the far-reaching *themes* of these protests have been consistently more important than the rather simple *theses* that

are often vocally championed by the protesters. In the present context, it is, however, particularly important to see that the sense of identity which finds expression in these movements – and also in many other expressions of global concern – goes well beyond national identities. The world is not just a collection of nations, but also of persons, and international justice cannot exhaust the claims of global justice.

To see global justice as international justice is to assume that the national identity of a person is the only – or at least the dominant – identity. But people in different parts of the world interact with each other in many different ways – through commerce, through literature, through political agitations, through global NGOs, through the news media, through the internet, and so on. Their relations are not all mediated through governments or representatives of nations.

For example, an American feminist who wants to work, say, towards remedying some features of women's disadvantage in, say, Sudan, draws on a sense of identity that does not work only through the sympathies of one nation for the predicament of another. Her identity as a fellow woman may be more important here than her citizenship. Similarly, many non-governmental organizations – Médecins sans Frontières, OXFAM, Amnesty International, Human Rights Watch and others – explicitly focus on affiliations and associations that cut across national boundaries.

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If the trap of confinement to nationality and citizenship is a danger that faces the theory of justice in a powerful way (particularly because of the hold of the social contract approach), there is also the danger of exclusive concentration on some other identity, related, say, to religion and race. For example, communitarian thinkers have often seen one's community as being unequivocally one's principal – sometimes even the only relevant – identity. The claims of other affiliations – even that of our shared humanity – can then be overlooked or ignored in such community-centred analysis of justice. All the problems of arbitrary exclusion that were discussed in the case of citizenship-based confinement have their corresponding replica in the community-based understanding of justice. I shall not go into that critique here, but would like to point out that the critique draws on the recognition of plurality of identities as well as the acknowledgement of the possibility of choice that we have over the relative priorities of different identity-based analyses of justice.

To conclude, the connection between identity and justice may be quite close, but our understanding of that connection has to go beyond any form of reductionism, focusing only on citizenship, or on community, or on any other such single affiliation. Justice is closely linked with the

pursuit of impartiality, but that pursuit has to be open rather than closed, resisting closure through nationality or ethnicity or any other allegedly all-conquering single identity. The broadness of the world need not be eclipsed by the narrowness of divisive temptations.

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