

Context-dependent Normativity and Universal Rules of Justice

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Jack Russell Weinstein correctly asserts that Adam Smith proposes a contextual normativity in his *Theory of Moral Sentiments*, where moral rules are “after-the-fact constructs, developed from social interaction.”¹ This is one of the reasons why some important scholars claim that the TMS inevitably slides into relativism. Weinstein acknowledges this tension when he affirms that “[Smith] implies a universal ethics throughout his work, yet he adopts a context-dependent moral psychology” (p. 101). Relying on some of Weinstein’s insightful observations, I will propose that despite Smith’s endorsement of contextual normativity, his TMS describes a pluralistic moral theory. This means that together with culture-dependent norms, his theory is also able to justify a central core of universally valid moral norms. In other words, my aim is to take advantage of Weinstein’s insights into Smith’s pluralism, understood as “the political situation in which people of different fundamental beliefs and histories share equally in common governance, and live within common borders” (p. 264), in order to claim that Smith is also a *moral pluralist*, and explore the consequences of this position for moral judgments “beyond the common borders.”

In general, we can distinguish three kinds of moral theories: universalistic, pluralistic and relativistic. Universalists hold that moral norms ought to be the same for everyone in every culture without exception. Morality is culturally

neutral and ahistorical. Clearly, Smith’s theory is not universalistic in this strong sense. Pluralists suggest that there are some rules that should apply equally to everybody, while the rest would be culture-dependent. Relativists, in turn, assert that moral standards depend on each community and that there is no culturally unbiased absolute order to which every particular code of ethics ought to conform itself. Moral judgments would be incommensurable.

Given this framework, my claim is that even without the necessity of appealing to transcendent or metaphysical frameworks to provide warrant for universal moral truths, Smith’s empiricist moral psychology nonetheless has sufficient resources to overcome moral incommensurability and cultural relativism. There is a small group of norms that are simultaneously context-dependent *and* universal. These are the rules of justice: a core set of rules with absolute authority that precludes relativistic interpretations of the TMS and lay the ground for an empiricist justification of universal human rights. Moreover, my contention is that context-dependency is precisely the feature that enables a defense of the existence of these universally binding norms.

In order to show how Smith accounts for his pluralistic theory I will start in Section I by explaining why some interpreters claim that the TMS slides into relativism: it doesn’t admit of a universal criterion to evaluate the particular impartial spectators’ judgments or legitimate intercultural as-

assessments. In Section II I focus on the objective justification of moral judgments, the first step towards moral commensurability. In Section III I show how intercultural judgments may be assessed; finally, in Section IV I claim that Smith's moral psychology supports a group of moral norms with universal authority, norms that enable people to judge the practices of other cultures.

EMPIRICISM AND MORAL RELATIVISM

What speaks most in favor of the relativistic interpretation of the TMS is the empirical origin of the moral conscience. Indeed, when Smith describes its genesis, he clearly says that the impartial perspective is not innate to us; on the contrary, we acquire it in “the great school of self-command” where “through the sense of propriety and justice, [we are taught] to correct the otherwise natural inequality of our sentiments” (TMS III.3.3). Smith explains that we are all born with a strong desire to sympathize with our neighbors and a desire for their approval. This is easily achieved within the family, since their partiality means they will indulge almost any passion we express. However, when “we go out to the world” and face indifferent people for the first time, we realize that not everybody approves of our conduct. We experience a lack of sympathy and the frustration of one of our strongest natural desires. Henceforth, motivated by our desire for the pleasure of mutual sympathy, we break away from our innate self-centeredness by looking at ourselves through the eyes of those indifferent bystanders. In that moment we realize that, from their point of view, we are nothing but one in a multitude of equals and that if we don't restrain our egotism and act impartially we will gain neither their approval nor the pleasure of mutual sympathy (TMS II.ii.2.1; III.3.4; VI.ii.2.2). From then on we begin to train ourselves in this new attitude. We strive to acquire the habit of looking at ourselves and others from this new perspective, from which we discover what conduct an impartial spectator might approve of. This is, for Smith, the moral perspective: a new standpoint in the world. Taking it is not innate, but is nonetheless a natural development of our original tendencies.

Consequently, in this theory, morality is like a second-order structure built upon our innate psychological drives. In the first part of the TMS Smith describes how those drives incite the sympathetic process. He explains his particular understanding of the notion of sympathy: identification with the other, an entering—as he describes it—into the agent's breast in order to understand, from the inside, her feelings

and actions in each particular situation. This tendency corresponds to some extent to what we now call empathy: a skill we learn in childhood, and which basically consists in re-focusing our egocentric map in order to become, in our imagination, the other person. It's a job actors generally do: a know-how, a habit that we improve by experience, and which Smith characterizes as “changing persons and characters” with the agent (TMS VII.iii.1.4). We bracket out our particularities in order to see the world through the eyes of the other.

However, becoming completely absorbed in the other person doesn't allow us to judge. In order to judge we need a critical distance, a point of comparison, which could very well be our imagined attitude when facing a similar situation. This is in fact the first notion of sympathy that Smith describes, concluding that “[e]very faculty in one man is the measure by which he judges of the like faculty in another. I judge of your sight by my sight, of your ear by my ear ... of your resentment by my resentment” (TMS I.i.3.10). In other words, in exercising this kind of sympathy, frequently emphasized by the relativistic interpreters of the TMS, we make ourselves the measure of propriety.

Nonetheless, for Smith, these are not yet *moral* judgments. Morality is rooted in and supported by this psychological constitution, but isn't reducible to it. Moral judgments are not based on the correspondence of subjective feelings between partial and naturally biased agents. Moral judgments have the same structure, except that they depend on the pleasure of—let's say—mutual *moral* sympathy, which is the correspondence of the agent's feelings with the impartial spectator's. This difference will not be clear until Smith explains the emergence of the moral conscience. Moral sympathy arises when the *appropriate* feelings coincide: the feelings that “the situation deserves” (TMS I.i.3.4). Sympathy—says Weinstein—is “the fellow feeling that guides moral deliberation and empathetic judgment” (p. 17) and “the spectator builds on context rather than on perceived sentiments alone. He or she must create a story that allows for understanding as to why the actor responds in a given way and only then is judgment possible” (p. 184).²

The problem is that, given the empirical origin of conscience, each spectator will “create a story”—or try to make sense of other people's attitudes—according to her own experiences, references and values. These references are more or less shared between people of the same culture, but might be quite different from those of distant cultures, separate in space and time. Hence the relativistic interpretations of the

TMS, which claim that in the absence of a common measure for evaluating different practices, there cannot be legitimate cross-cultural judgments.³

For instance, Charles Griswold asserts that “[i]n Kant’s terms, Smith’s ethics is at heart ‘empirical’ and [therefore] not appropriately principled”;⁴ and that if the impartial spectator is the ultimate source of normativity for Smith “the problem is obvious: how can history yield general normative principles that are everywhere and always the same? Is not the process either circular or inherently impossible?”⁵ More directly, Forman-Barzilai asks: “How might [Smith] have sought to generate universality without abstracting morals from their empirical roots?”⁶ And: “We need to ask Smith and those persuaded of the trans-cultural significance of his theory: how do spectators overcome cultural bias, detach themselves from their own experiences as agents disciplined in a world of values? How does sympathy avoid speculation and assumption, avoid becoming an arrogant, smothering intrusion?”⁷

A partial solution to this problem was given by Samuel Fleischacker, who interpreted “human nature” in the TMS as “a general sketch to be filled in differently in different cultures and historical circumstances.”⁸ This would mean that there is neither complete variation nor dogmatic insistence on a thick human universality. Rather, he says, Smith reasonably “presents cultural variations possible only within a universal human nature,” variations that satisfy the general conditions necessary for any society to survive.⁹ Along the same interpretive line, Knud Haakonssen states that there are some areas of morality that are so basic and universal in their humanity, that the impartial spectator needs to know little or nothing about the context in order to judge.¹⁰ He further says that resentment, or the feeling from which justice arises, is one of these cases, and that Smith’s theory of jurisprudence presupposes that the virtue of justice is “natural” in the sense that it is somehow beyond the reach of social change.¹¹

Smith himself seems to endorse these claims when he affirms that, unlike other virtues, in the case of justice “the Author of nature has not entrusted to reason to find out that a certain application of punishments is the proper means of attaining this end [i.e. the preservation of society]; but has endowed him with an immediate and instinctive approbation of that very application which is most proper to attain it” (TMS II.i.5.10). Further, he even compares justice with our basic biological desires, such as nutrition and reproduction (cf. TMS II.i.5.10). Accordingly, if Smith is comparing

“justice” to our biological tendencies, he’s clearly relating it *more* to natural principles than to any cultural construction.¹²

However, in discussing Haakonssen’s idea of natural universal justice, Fleischacker changes his mind about his sketch-filling interpretation.¹³ He says that if justice is based on resentment, and resentment is the feeling that arises when the spectator sympathizes with the victim of an unjust action, any kind of “natural justice” should be the result of an equally “natural” harm. The problem is that “harm” is a culturally mediated concept, and thus “justice” must also be culturally mediated.¹⁴ In other words, if what counts as harm is essentially a social category, we cannot judge other cultures’ practices using our own conceptions of harm. In the Middle Ages it was entirely appropriate to kill a man for dishonoring the family name. Today that would be a glaring injustice.

However, if we accept that one of Smith’s main concerns was “the necessity of coming to terms with the diversity in the world” (p. 191) and that his moral psychology intended to allow “for communication and judgments amidst differences” (p. 25), we must look closer into his theory before concluding that he failed at one of his main purposes.

MORAL OBJECTIVITY AND SYMPATHETIC JUDGMENTS

The first step in arguing against moral relativism in the TMS is to explain why context-dependent judgments are objective. Moral justifications are not arbitrary. They depend on reality and may be discovered by any competent spectator. They are objectively justified.

In Smith’s theory, taking the moral point of view is an acquired ability. Morality is a second-order structure that naturally emerges in us, and establishes human equality as the ultimate moral justification. It is a new map with a new standpoint, one from which we no longer consider ourselves as the center of the world, but just as one among a multitude of equals. Hence this impartial standpoint is the same for all human beings. And in spite of its empirical origin, moral conscience has the same formal structure in all human beings. It is as it is because of our humanity, not our culture.

Nevertheless, formal universality does not rule out the question of ethical relativism. As Forman-Barzilai asserts: “We might say that the formal category of propriety is universal for Smith... but its content is necessarily plural.”¹⁵ The relativistic interpretation claims that, since moral judgments

depend on the approval of the impartial spectator after her sympathetic identification with the feelings of *that* agent in *that* situation, moral norms are by definition un-universalizable. Moral judgments are context-dependent; they take into account all the contingent, unpredictable and un-repeatable conditions of each situation, and cannot be thus codified in universal norms.

This is true. But it must not be understood as meaning moral judgments are arbitrary. In Smith's theory every impartial spectator, when faced with the same circumstances, should judge in the same way. In different cultures the standard of propriety might be different, but nonetheless it is the impartial spectator who knows the values of that culture, and it is "her" faculty of judgment that determines the morally right attitude in that context. Such judgments are like the *phronetic* judgments of ancient virtue ethics. They take into account all the contingencies of each situation and cannot be captured in universal rules of conduct. But since they are guided by what Aristotle called *right reason*—and Smith, who in endorsing that theory uses the figure of an *impartial* spectator¹⁶—, moral judgments always imply some participation of universal reason that precludes them from being arbitrary. For Aristotle—says Weinstein, explaining the consequences of a context-dependent normativity—"there is an objective standard of virtue even given shifts of context. The same is true for Smith" (p. 150).

The objectivity of moral justifications is warranted by "the sympathetic feelings of the impartial and well-informed spectator" (cf. TMS VII.ii.1.49). Impartiality, in the TMS, is not a disengaged, third-person and abstract impartiality, a view from nowhere. If our innate perspective is a first-person perspective, impartiality in Smith is related to what Stephen Darwall calls the second-person perspective, meaning that it regulates our moral judgments by determining how the spectator enters into the agent's feelings.¹⁷ In assessing moral judgments, the spectator must bracket out her partial feelings and biases in order to put herself into an impartial spectator's perspective and to evaluate things as any and every impartial spectator would do. Moral rationality is the process of stepping outside of oneself in order to judge the propriety of—first—our own actions (cf. p. 141). The impartial spectator—as Weinstein affirms—is an attempt to reach an ideal objectivity in moral judgments (cf. p. 201).¹⁸ Obviously, this is limited by human capacities, because it is impossible to be completely outside oneself or to be completely outside one's community (i.e. bracketing out all our socialization and acculturation).¹⁹ However, knowing these limits induces the moral actor to devise methods for overcoming our biases as

much as possible until, ideally, one has acquired the "sympathetic feelings of the impartial and well-informed spectator" that Smith points to as the "precise and distinct measure" for moral judgments.²⁰

However, impartiality is not enough for assessing objective judgments. Sympathetic identification is an equally essential requirement—and the most difficult to attain in contexts of diversity or in cross-cultural judgments. Nonetheless, following Weinstein's characterization of the richness of the sympathetic process, I claim that Smithian sympathy, "the fundamental mechanism for human connectedness (... that) bridges the discrete individualism" (p. 184), has the resources to overcome this obstacle.

According to Weinstein, "[s]ympathy' is the term Smith uses to denote the means by which moral actors consider normative rules and empirical facts to determine propriety. It is a complicated process, involving inborn faculties and learned skills" (p. 68). Sympathy involves emotions and can be fostered with new information, reason, argument, reflection and particularly—one of Weinstein's salient points—the creation of narratives. "[S]ympathy organizes the discrete pieces of information regarding moral judgment" (p. 179), and this organization is done through "narratives": "narratives allow for all these disparate elements, [and] organizes them for deliberation... For Smith, understanding requires a narrative structure" (p. 132). Imagination—through the creation of narratives that try to "make sense" of other people's attitudes and actions—"allows individuals to understand the context and motivation of moral actors" (p. 182). And "[w]hen agents are skilled enough [e.g. having a refined ability to sympathize], they use [their] capacities and passions to create narratives that contextually communicate and adjudicate actors' and spectators' sentiments" (p. 195). The better we sympathize, the more accurate our judgments.

This characterization shows the reciprocal dependence and co-operation of reason and emotions in the sympathetic process. Indeed, "[i]n combination with the sympathetic imagination, emotions and rationality create the possibility of entering into the perspective of others and balancing moral judgments on the basis of our commitments, the conviction of others, and a normative ideal..." (p. 267). Emotions are particularly important because they are intentional, "they are responsive to the way the world is" (p. 114) and thereby can be warranted or unwarranted, true or false with respect to the situation at stake. Intentionality enables objectivity.

Sympathy's core element is the affective reaction we experience in our imaginative identification with the respec-

tive other. This reaction is triggered by what Charles Taylor calls the “import” of a situation, or the particular aspect(s) to which we affectively react according to the kind of being we are.²¹ Cats, for instance, belong to a species that fears dogs; thus any cat will tend to flee at the sight of a dog. Human beings also react to imports. Some of them are related to our culture, like situations that cause embarrassment, signs of honor, etc. Others are culture-neutral: they produce the same reaction in every human being only because of the kind of being she is.

The importance of “imports” for defining propriety in the TMS is manifest in two atypical cases of sympathy. One is “conditional sympathy,” when the spectator, for whatever reason, cannot identify himself with the agent, but knows “from experience” what the appropriate feelings for those circumstances are and thus approves of them (cf. TMS I.i.3.4). This non-normal situation confirms that, for Smith, the judgment of propriety relies more on context than on an identification with the contingent feelings of the actors. The other case is “illusive sympathy,” as when we sympathize with a dead person who is incapable of feeling what we imagine we would feel if we were consciously “living” in her circumstances (TMS II.i.2.5). Again, there is no actual correspondence of feelings; but the spectator’s affective reaction is triggered by what he imagines are the appropriate feelings for that situation or what “the situation deserves.”

Consequently, the impartial spectator determines the point of propriety according to the relevant import for each particular situation. Her recognition of the morally relevant imports for *that* agent in *that* situation is the clue for her judgment. This is an essential point in the TMS because it reveals that the impartial spectator does not *project* values onto reality but *discovers* them through her affective reactions, according to the kind of natural and cultural being she is. Indeed, despite Smith’s strong commitment to fallibilism he believes that, using the various resources at its disposal for attaining a better perception, a better identification and a more accurate moral judgment, the sympathetic process discovers truth (objective appropriateness) and normative ethics (cf. p. 162).

In sum, Smith’s moral normativity is context-dependent but not relativistic. First, it depends on the import of the specific situation and is thereby objective. Second, moral judgments are validated by the mediation of the impartial spectator, who moderates our innate self-preference in order to provide warrant for treating ourselves as we treat others. This double rapport, the agent with the import through the

impartial spectator, is what allows Smith to propose objectivity amidst variations.

Nevertheless, the “sympathetic foundation of morality functions best in small communities” (p. 69) and “both sympathy’s accuracy and motivational power diminish as cultural and physical distance between individuals increases” (p. 68). Naturally, sympathy works better with those we know better, we understand better and share cultural references with. In these cases it’s easier to identify the imports to which people react because—given our similar acculturation—we would react to the same features of the situation. For this reason Weinstein warns that a lack of *commonalities* is the biggest barrier to sympathy and thus to accurate and objective moral judgments (cf. p. 179). Within the same community it’s easier to find common references than among the immense diversity of human cultures. This poses a problem for intercultural judgments.

INTERCULTURAL JUDGMENTS AND SYMPATHETIC REFINEMENT

The TMS describes a context-dependent normativity, which relies on the ability to bracket out our particularities and to sympathize or identify ourselves with the respective other to discover the imports to which she reacts. This possibility of identification depends on the commonalities shared by the agent and the spectator. Context-dependent normativity enables Smith’s TMS to account for personal and cultural differences without threatening the objectivity of moral judgments. Smith himself affirms that the impartial spectator’s judgments of propriety vary according to culture, age, profession, etc. (cf. TMS I.ii.introd.2). What is expected from a soldier is different from that which is expected from a priest. Most rules of conduct vary because they depend on a particular culture’s sense of propriety and its ideals of perfection. This means that what is proper and praiseworthy for one person in one culture, may not be—at least to the same extent or in relation to other possible courses of actions—equally proper or praiseworthy for another person in another culture.²² Normativity depends on contexts, and different cultures represent different (sometimes extremely different) contexts.

The lack of commonalities entails that the spectators of one culture may be incompetent to appropriately judge the practices of others. “The farther removed a spectator is from the actor, the more difficult a true understanding of the situation becomes. [...] The more knowledge one person has about the other, the more capacity he or she has to sympathize” (p.

73). If there are no commonalities, there can be no identification, sympathetic processes or valid moral judgments. Moral judgments depend on proximity, on shared references and the possibility of identification. But “the commonality between people is often made invisible by differences in experiences” (p. 176). Thus Forman-Barzilai may legitimately ask “[H]ow does this process of becoming a more mature, proper and congenial member of *my society* better help me understand someone who has learned [...] what it means *in her world* to be ‘in command’ of herself, sociable, proper, polite, etc.?”²³ As a result, distance seems in principle to impede any possibility of intercultural moral judgments.²⁴

Perhaps a problem with the TMS is that Smith basically describes “micro-sympathetic processes” (cf. p. 226), i.e. sympathy within roughly homogeneous communities. However, he also provides some clues that allow reconstructing an argument that explains how legitimate intercultural moral judgments may be assessed and even—as I will explain in the next section—to defend certain judgments of universal justice. Following Amartya Sen, I contend that “Smith saw the possibility that the impartial spectator could draw on the understanding of people who are far as well as those who are near”;²⁵ despite the fact that some sympathetic processes may imply a greater effort and are thus not always equally accurate.²⁶ My argument is greatly aided by Weinstein’s particularly detailed account of the sympathetic process and the devices human beings have at hand to refine it.

For Smith, “the ability to sympathize rests either in pre-existing commonalities or the ability to create commonalities by learning the contexts and perspectives of others” (p. 96). For this reason the only insurmountable obstacle for sympathizing is fanaticism: “[V]iolence, conflict, factionalism and fanaticism are the impartial spectator’s greatest enemies” (TMS III.3.43). Fanaticism—which at a global level is also expressed in chauvinism, nationalism, fundamentalism, etc.—implies an explicit rejection of the sympathetic process and silences the voice of the impartial spectator. Diversity, the lack of commonalities, is a problem for identification, but if there is *the will to sympathize*, there are then rational ways to enter into the experience of others when sympathy is hindered by wide gaps in experiences, beliefs or actions (cf. p. 162).

“In essence,” says Weinstein, “Smith is trying to create a mechanism through which individuals can become interested in others despite their lack of commonality” (p. 133). Rather than “creating a mechanism,” he tries to identify the resources at our disposal for bridging our discrete natures and cultures. One of these resources is the creation of narra-

tives that help to make sense of others’ reactions. Narratives isolate the elements of the situation that an alien spectator recognizes, organize them in a coherent whole and enable the spectator to reconstruct the rest of the story. In this way they facilitate identification and sympathetic judgments. This is why Smith affirms that “poets and romance writers ... are... much better instructors than Zeno, Chrysippus or Epictetus” (TMS III.3.14). Storytelling—says Weinstein—is “part of the human condition, and the need to resolve these stories is also part of human nature” (p. 236).

Another resource for refining sympathy is argumentation. Reasoning is part of the sympathetic process, and “argumentation is tied to growth of social awareness. To mature is to absorb and modify socially constructed identity and argument procedures. It is also to gather vast amounts of data and to systematize them in such a way that one becomes aware of an objective standard of propriety” (p. 162). Finally, speaking more generally, the main ally of moral sympathy is education. Sympathy can be cultivated by education, and a wide-ranging education resists ignorance and prejudice, and finds commonalities without erasing otherness (cf. p. 107). “Education serves several purposes in moral growth throughout Smith’s corpus. It cultivates our capacity to interpret the sentiments of others; it provides a mechanism by which we cultivate moral judgment; and it offers us standards by which we can temper our own sentiments or suggest to others that they do so” (p. 183). Education helps to bridge differences enabling the spectator to enter into the experiences of others (cf. p. 81).

But why would a spectator “go through the trouble of sympathizing with others, especially in those instances when it requires so much effort[?]” Smith’s answer in the TMS—says Weinstein—“is the same as in HA. One seeks to sympathize with others because it is enjoyable to do so” (p. 183). Smith gives the same sentimentalist account of human motivation for the scientific, political and moral spheres. A lack of understanding produces discomfort, while a coherent, inclusive narrative, in contrast, has a calming effect. Learning soothes anxiety (cf. p. 178).

Consequently, the sympathetic process that Smith describes mainly for limited scenarios may well be extended to a broader scale: the impartial spectator, using these different resources, is able to “adjust its references” to diverse cultures and successfully judge the propriety of alien practices and customs with respect to their own contexts. Distance is an obstacle, but not an absolute impediment for developing objective moral judgments. For instance, before judging the morality of killing another for dishonoring the family name,

a cross-cultural spectator should first “adjust her references” to the context and examine whether dishonoring the family name is or is not considered to be damaging within that culture. If it were damaging, the agent would be acting for appropriate reasons and his action would be punishment, not injustice.

INTERCULTURAL SYMPATHY AND UNIVERSAL RULES OF JUSTICE

There are ways to overcome an initial cultural incompetence, to understand other cultures and to judge according to their own standards of propriety. However, this still doesn't rule out cultural relativism. A relativist may accept the possibility of sympathizing with different cultures and judging their practices according to their own criteria. However, she would never accept the possibility of judging other cultures' standards of propriety, or to condemn a practice that is considered legitimate in that culture. A typical case is slavery. There must have been multitudes of slave-owners who never suspected they were harming an equal, and if the impartial spectator adjusts her references to that culture, she will conclude that, in that context, these people were not in the wrong. Do we have a right to blame them on the basis of our own criteria and say that they were unjust? Or should we say that a few decades ago, in North America for instance, black people were worthless, had less dignity, were inferior?

In this section I will claim that Smith is a pluralist, in the sense that together with allowing wide room for cultural variations, his ethics also includes a group of moral rules that ought to be the same in all times and places. These are the rules of justice, which are exact, absolute and universally binding. My contention is that Smith's moral psychology is able to give a solid foundation to a central core of norms that, despite being “after the fact” and context-dependent, ought to be respected in any and every particular human culture. It's not just that human beings may make legitimate intercultural judgments; they are also entitled to judge, to condemn or to approve of certain customs and practices that don't belong to their own culture *employing the same norms that apply to their culture*.

Smith explains that the rules of justice arise when the spectator feels resentment and approves of punishment because of her sympathetic identification with the sufferer of an aggression, and the consequent feeling that the injustice was done, so to speak, to her. This is why, for Smith, rules of justice are “sacred” (TMS II.iii.3.4): No spectator would ever accept seeing an equal treated as an inferior when her reason

is constantly telling her that we all are but one in a multitude of equals. Darwall emphasizes that the norms of justice are more vivid and more binding than other norms because they implicitly express our equality as human beings,²⁷ the ultimate moral justification in this theory. For Smith—says Weinstein—“people are in some sense fundamentally similar”²⁸; he “starts with the presumption of natural equality: for him there is no ‘originall difference’ between individuals (LJ (A) vi. 47-48)” (p. 96). Our differences are never so radical as to affect our equal entitlement to justice and rights. Therefore, when the spectator sympathizes with the sufferer she feels the sufferer's worth to be her own and cannot bear such a violation of human equality. This is why judgments of justice are different from other moral judgments: they are the ones that draw the line between what is morally permissible and what is absolutely forbidden.²⁹

Recognizing another person as a being of equal worth, an attitude implicitly involved in the feeling of resentment, demands from us what Darwall has called “recognition respect.”³⁰ This is the proper attitude towards things of intrinsic value; it's a kind of respect we either give or fail to give, and doesn't allow for degrees. My assumption is that Smith's virtue of justice safeguards this “recognition respect,” and that's why these norms are negative, expressing moral constraints (things we cannot do to others). Rules of justice are so important for Smith that he even states: “[n]ature, antecedent to all reflections upon utility of punishment, has ... stamped upon the human heart, in the strongest and most indelible characters, an immediate and instinctive approbation of the sacred and necessary law of retaliation” (TMS II.ii.3.9). Haakonssen also explains that justice involves a stronger feeling than other virtues because it reflects the lack of something that should have been given but was not.³¹ According to my interpretation, the “something” that produces this reaction, the “import” of the situation is precisely the lack of recognition respect. And given that we ought to respect all our equals, this is a culture-neutral import: human beings are human beings regardless of the culture to which they belong.³²

Virtue, for Smith, is having the appropriate degree of all passions (TMS I.ii.introd.2). For the virtue of justice, this means *absolute* respect for the dignity of all our fellow-creatures; anything less is immoral. The context, as for all other virtues, is also important. The difference is that in judgments of justice the only relevant aspect of the context that must be taken into account is whether the one who is being wronged is a human being. Harry Frankfurt says that what is of genuine moral concern is that “every person should be accorded

the rights, the respect, the consideration and the concern to which he is entitled by virtue of what he is and of what he has done.”³³ Applied to the Smithian virtue of justice, this entails treating a person according to what she *naturally is*: a human being.

Injustices, for Smith, imply treating an equal as an inferior, or inappropriately doing harm to an equal. Fleischacker’s argument against the possibility of universal rules of justice in the TMS was that the concept of “harm,” to which we react in cases of injustice, was a culturally mediated concept. He said that Smith’s concept of impartiality does not warrant universal rules of justice for it would be perfectly possible to “impartially hurt all children” without turning it into a good practice. This is true; but he is not considering the foundation of moral judgments: the sympathetic process. Sympathetic identification implies that the moral standpoint includes a reversibility test. That is to say, in order for an action to be morally justified the agent must be prepared to be treated in the same way. In the TMS, impartiality is not enough for being moral.

However, like all other moral judgments, judgments of justice are also challenged by distance; and the reversibility test only discriminates where people may indeed identify with each other, i.e. where (a) they see the other as an “equal” and (b) they share the same standards for what is considered “harmful.” Thus Fleischacker’s objection would still be valid. The only possibility for rejecting cultural relativism would be to demonstrate that there exist at least some *universal injustices*, or injustices that do not depend on culture-relative notions of harm or of who is considered an equal.

Harm is indeed, to a large extent, a cultural-mediated concept. Killing a man for dishonoring the family name, stoning women, putting earrings on little babies, circumcision, etc., are seen as appropriate practices in some cultures and inappropriate in others. In order to judge these practices, the intercultural impartial spectator must try to adjust her references (create narratives, argumentation, etc.) before sympathizing. If she succeeds and these are legitimate practices in their original cultures, she should conclude that, regardless of the scandal that these practices may represent to external spectators, they are perfectly appropriate in their cultures. Or is the spectator allowed to condemn as unjust practices that in their own culture are not considered as such?

If we focus only on the notion of harm, it seems difficult to justify the right to condemn other cultures’ practices on the basis of our own criteria. However, if we begin our analysis by focusing on the second element of Smith’s concept of justice, the group of equals, we encounter another clue with

which to understand moral judgments in the TMS. Is equality also a culturally mediated concept? Who are our “equals”: barbarians, women, blacks, Indians, embryos, whales? Many cultures have not recognized some of these groups as equals. Within our society many exclude unborn people and others include non-human animals as members of the group. Therefore, factually, equality seems to be as culture-relative as harm: moral good and evil in Smith’s theory would thus be, unavoidably, conventional.

Nonetheless, unlike the notion of harm, the reality of the group of “equals” does not depend on our recognition of it. Acknowledged or not by their cultures, black slaves have always had the same dignity as free white men. They have now been *recognized* as equals, but they have not been *made* equals. Women did not acquire their dignity as they started to be *considered* equals. Recognizing the equal dignity of *x* does not create or invent that dignity. It has always been there, but we were blind to it. It is a feature of *x* and not of our knowledge of *x*. My proposal, then, is that this essential difference between the concepts of “harm,” which up to some point is indeed conventional, and that of “equality as human beings,” which has an independent, intrinsic content, may give us a tool to identify some universal injustices and lay the basis for the recognition of universal human rights.

In general, in cross-cultural judgments, after adjusting our references, we can know if that particular practice is appropriate or not in that particular culture. However, in judgments of justice things are different. In assessing justice, the import to which the impartial spectator reacts is an improper harm inflicted on an equal, and given that the group of equals is a culture-neutral import, there are some moral judgments that may legitimately be made. Only “some,” since the notion of “harm” is to some extent culturally mediated and there will always be “grey zones” that are open for discussion. Nonetheless, if there is an objective or culture independent group of equals, to treat any of them as an inferior is to commit a *material* injustice, which may and must be condemned by every spectator.

Therefore, setting aside the “interpretable” grey zone of culture-relative harms, we can be sure that any unjustified hurt deliberately inflicted on a human being in *any* culture will be a material injustice in *every* culture. This is why the objective group of equals is so important to identifying the central core of universal norms. These rules have universal authority and also apply when the victim is not recognized as an equal in her culture, even when the victim herself does not resent the harm received. The external spectator, in this

case, sympathizes with *illusive sympathy*. And that culture's specific practice must be condemned.

The immediate objection against this thesis is that there are no culture-neutral or uninterpretable harms, or that there are no harms which must always be condemned. But reality belies this claim. Slavery is an injustice everywhere, as is torturing innocents or trafficking in women. Jerry Evensky, using the same argument, says that for Smith there are some principles that should, it can be persuasively argued, be absolute.³⁴ If there is an objective group of equals, and if there are also some injuries that don't admit of interpretation, it is plausible to suggest that Smith's empiricist and context-dependent theory does contain a core of absolutely and universally applicable moral norms, even if they are not always recognized.

But can an empiricist ethics convincingly support the claim that there are real though unknown moral norms? Smith believes it can, hence the prominent role of self-deceit in his theory (cf. TMS III.2.32; III.4.3). Moral blindness may be personal or cultural. People can close their ears to the impartial spectator's voice. Moreover, given the weakness and imperfection of our knowledge, we can never be completely certain about our particular moral judgments. And if there are communities that don't see women, black people or children as "equals" it is because justice requires moral sympathy, and sympathy demands *the will* to sympathize. However, when interests or passions are too strong, or traditions too deeply ingrained, self-deception can be difficult to eradicate. Smith notes this when saying that the slave-owner is too far from the daily life of a slave to spontaneously sympathize with a slave's emotions (cf. WN V.2.9). As long as the slave-owner does not care, as long as he is not "attentive" to the other, the conditions for the sympathetic identification are not met, and, unless his impartial spectator is "awakened" from the outside, he will remain in his epistemological error (cf. p. 86 ff).³⁵ However, if we are certain that an objective group of equals exists, and if we have good reason to believe that our standards are better than others', we might legitimately make cross-cultural judgments regarding this kind of practice.

Once again, Weinstein's illuminating comments regarding the different devices available to our natural drive to sympathize shed light on this topic. The example of slavery is paradigmatic.³⁶ There had to be a creation of narratives until people could see their "common humanity" (a basic *commonality*) and recognize the respective other as an equal, even in the case of a slave who somehow accepted his condition.³⁷ Narratives are a fundamental device to strip away per-

sonal or cultural self-deceit. Argumentation increases social awareness. Education, information, diversity of experiences, reflection, comparison, etc., are some of the means we human beings have in order to face the differences regarding our responsibility for political pluralism and for advancing towards global justice.

CONCLUSION

Smith accepts that in practical matters there are many culture-dependent norms that cannot be validly assessed using alien cultural standards. However, in the case of equals treated as inferiors he immediately calls it injustice. Consequently, even though in Smith's ethics the moral conscience is empirically engendered, the moral standpoint that naturally arises from our first-order psychological constitution allows his theory to affirm certain universally binding culture-neutral moral norms. This small central core of rules of justice is enough to rule out relativistic interpretations of his ethics, setting up a precise and severe limit between the permissible and the immoral. The TMS is a pluralistic theory; not only in Weinstein's terms but also—as it can be shown using his insightful description of the sympathetic process and the conditions for sympathy—at a global level. The universal or "sacred" rules of justice ought to be respected, and their violation condemned, in every human culture.

Respect for the rules of justice requires acknowledging some "commonality" between all cultures in order to enter into sympathetic processes. The sympathetic identification comes from the recognition of the common humanity that any attentive spectator sees, with the help, when necessary, of the resources of our moral psychology. Justice, in the TMS, is the virtue that responds to the import of the "kind of being" that is being wronged. If that being is an equal, the aggression is called "injustice," and spectators from far or near must react against it. This is what happens with the violation of human rights, and what also provides sufficient reason to create institutional devices—such as a universal declaration of human rights and global institutions in charge of enforcing them—to prevent their violation.³⁸

The spectators from outside, from different cultures, help to overcome hidden cultural biases and promote global moral progress. "Smithian reasoning," says Amartya Sen, "not only admits, but also requires, the use of impartial spectators at a distance, and the procedure of impartiality to be used open and broad."³⁹ Ultimately, moral pluralism is possible because the context-dependent normativity of the TMS requires being a human being as the only relevant import for

assessing judgments of justice. And it further shows that justice, for Smith, is not only a means for preserving peace and social unity but, first and foremost, the safeguard of the absolute respect that all human beings deserve, exclusively because of the kind of being we are: it is the natural foundation of universal human rights.⁴⁰

NOTES

- 1 Weinstein (2013), p. 59.
- 2 “[S]ympathy is dependent on context, and one must be aware of as many facts as possible” (p. 73).
- 3 I develop this topic in Carrasco (2009).
- 4 Griswold (1999), p. 94.
- 5 Griswold (2006), p. 184.
- 6 Forman-Barzilai (2006), p. 100.
- 7 Forman-Barzilai (2006), p. 96.
- 8 Fleischacker (2004), p. 81.
- 9 Cf. Fleischacker (2004), p. 82.
- 10 Cf. Haakonssen (1981), p. 116.
- 11 Cf. Haakonssen (1981), p. 147.
- 12 Weinstein observes that, for Smith, “the rules of nature are not as precise as what we would now call scientific principles, [however] they still accurately describe the human condition and each of our normal tendencies” (p. 337).
- 13 Cf. Fleischacker (2004), 153-161.
- 14 Cf. Fleischacker (2004), p. 158.
- 15 Forman-Barzilai (2006), p. 90.
- 16 Cf. TMS VII.ii.1.12.
- 17 Darwall (1999), p. 142.
- 18 The impartial spectator is “the anthropomorphization of the rational process and incorporates the sentimental foundation into a reasoned analysis” (p. 72). Amartya Sen, in a more pragmatic definition, states that it is a thought-experiment for “reasoned self-scrutiny” that people are capable of (2013, p. 586).
- 19 Cf. Weinstein, p. 163. “By imagining the impartial spectator ... the actor brings the community with herself or himself at all times.”
- 20 Acknowledging human fallibilism enables the creation of different psychological and institutional processes to balance as much as possible human innate partiality (cf. p. 201). Rules are the most evident example of these devices (cf. TMS III.4.7).
- 21 Taylor (1985), pp. 45-76.
- 22 Different cultures interpret different values within a certain range of variations. However, they will usually keep some “family resemblances” as long as they all point to the same human goods. “[W]e expect truth and justice from (everybody)” (TMS V.2.12).
- 23 Forman-Barzilai (2006), p. 97. My emphasis.
- 24 “Distance between the spectator and the agent should be understood both literally and metaphorically; both physical and psychological separations affect sympathetic ability” (p. 74).
- 25 Sen (2002), “Open and Closed Impartiality,” p. 457.
- 26 Sympathy will always be imperfect (pp. 94, 110), but is also refinable (p. 112).
- 27 Darwall (2005), p. 133.
- 28 In WN I.ii.4 Smith argues that “[t]he difference between the most dissimilar characters... seems to arise not so much from nature, as from habit, custom and education” (cf. Weinstein, p. 81).
- 29 I develop this topic in Carrasco (2014).
- 30 Cf. Darwall (1977), pp. 36-49.
- 31 Haakonssen (1981), p. 86.
- 32 Indeed, a significant example of a culture-neutral import in the TMS is “the dread of death, the great poison to the happiness, but the main restraint upon the injustice of mankind,” which Smith further qualifies as “one of the most important principles of human nature” (TMS I.i.1.13). This statement is particularly suggestive since it already associates justice with a culture-neutral import.
- 33 Frankfurt (1997), p. 6.
- 34 Evensky (2005), p. 52 n28.
- 35 “Rectifying injustice requires truly seeing and learning from one another. We must, in Smith’s words, be attended to and attend to others” (p. 268).
- 36 Cf. pp. 86-91.
- 37 This is, once more, a case of illusive sympathy, similar to that of a woman who, because of her acculturation, sincerely believes that she is inferior to men and deserves to be treated as such. The intercultural impartial spectator ought to react with resentment and denounce this injustice, regardless of the feelings of those women. She may accept the injustice, but what the impartial spectator claims is that she is really being the victim of an *objective injustice*. Smith’s discussion of infanticide in Greece reinforces this point, calling it “the most dreadful violation of *humanity*” (TMS V.2.15. My emphasis).
- 38 “That broad [Smithian] framework of impartiality makes it particularly clear why considerations of basic

human rights, including the importance of safeguarding elementary civil and political liberties, need not be contingent of citizenship and nationality, and may not be institutionally dependent on a nationally derived social contract” (Sen, 2002, p. 468).

39 Sen (2002), p. 451.

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