

Comments on Sterba's *The Triumph of Practice over Theory in Ethics*¹

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In his book, James Sterba argues that the major ethical theories can be reconciled so that they yield the same practical prescriptions. Much of the work to achieve this reconciliation, he believes, has already been done by interpreters of Kant, Aristotle and Mill who attempt to reinterpret these historically significant theories in ways plausible and relevant to us. The possibility that the major traditions of ethical thought are converging, Sterba claims, represents "the triumph of practice over theory in ethics." This convergence represents the triumph of practice over theory because what has led interpreters of Kant, Aristotle, and Utilitarianism to produce theories that are more similar to one another is a desire to present a defensible guide to ethical practice.

One question prompted by this diagnosis is whether the pressure toward convergence stems in part from a practical need to resolve actual ethical and political disagreements. I am not sure whether this is what Sterba thinks, but this hypothesis would seem to give further sense to the idea that the practical has triumphed—that it has made a positive difference to the way that theory is done and, in fact, that theory has been harnessed for practical benefit. This idea seems to connect well with Sterba's claim that once the common ground between Aristotelianism, Kantianism and Utilitarianism is identified, practical ethical problems will be easier to solve.

I think the triumph of practice over theory in ethics, as Sterba understands it, involves recognizing the importance of deciding matters of political morality on the basis of shared principles. This is similar to Rawls's idea of public reason, although Sterba's hypothesis seems to me more ambitious. Sterba seems to believe that there is enough common ground, ethically speaking, among parties to political controversies to help to frame the controversies he considers in a manner that bodes well for their public resolution.

I agree with Sterba that we should attempt to settle matters of political justice on common ground and that much common ground is available to the proponents of familiar ethical theories. But while this is something we might well expect advocates of the moral views Sterba examines to come to accept, we must recognize that there is broader resistance to this search for common ground that stems from a lack of common commitment to the sorts of ethical considerations that Sterba thinks could bridge the gap between theories. Thus, isolating these considerations may not take us as far as Sterba hopes. This seems especially true

in connection with the practical ethical questions Sterba takes up: How to understand and eliminate sexual harassment, whether affirmative action is defensible, and whether the Iraq War II was justified as a response to terrorism. These controversies arise squarely within the realm of "nonideal theory" or, rather, political reality, in which some relevant parties lack moral motivation and fail to conduct themselves reasonably. Ethical reasoning will not bring them to reasonable common ground.

Sterba's thesis that theoretical differences have little or no practical significance is interesting in view of the enormous numbers of books and articles that shape and reshape Kant's, Aristotle's and Mill's philosophies in an effort to present them charitably and to make them relevant to us. Nevertheless, I think Sterba underestimates the depth of the theoretical disagreements. I will look, in particular, at Rawls's quarrel with utilitarianism and libertarianism, something Sterba discusses.

Rawls develops what he has described as a procedural interpretation of Kant's Categorical Imperative. Principles of justice are those principles that rational persons would agree to behind a veil of ignorance that obscures their knowledge of their gender, race, social class, natural talents and abilities, and good or bad fortune. The rationale for the veil of ignorance is that it would be unfair for one's distributive shares to be determined by "morally arbitrary" features of one's person and circumstances. Behind the veil each party is ignorant of such features and is constrained to accept only those principles that would be acceptable from every social vantage point. Principles of justice that would be chosen in Rawls's "original position" would in effect be universalizable across the relevant class of citizens. Each member of society would be respected as an end in herself; none would be used as a mere means to increasing the overall social utility or advancing some other social goal.

The favored principles, argues Rawls, would guarantee equal basic rights and liberties for all and permit only those inequalities that would be to the greatest advantage of the least well-off (the difference principle). He presents these two principles in contrast with those a utilitarian might favor. It seems utilitarians would reject at least the difference principle, instead preferring a distributive principle that would produce a higher average utility, even if the least well-off are thereby made worse-off. But utilitarians might also reject Rawls's commitment to equal basic rights and liberties for all, permitting instead restrictions on the rights of some persons when the restrictions confer a greater benefit on others. Rawls argues that considerations of general utility are insufficient grounds for restricting basic rights and liberties or permitting inequalities. The original position thought experiment is meant to focus and sharpen our intuition that it would be unfair and hence objectionable to restrict the life chances of those who are worst-off in order to secure greater benefits for those who are better-off. Moreover, it is meant to strengthen our conviction that no one's basic rights and liberties should be restricted except when doing so is necessary to maintain a scheme of equal basic liberties for all.

Sterba argues that Rawls's differences with utilitarianism are not formulated carefully enough. He understands Rawls to be objecting to utilitarianism on the grounds that imposing harms on some persons for the sake of greater benefits to others could never be justified. But, Sterba argues, this cannot be right. "Suppose," writes Sterba, "that the only way a doctor can get out of a crowded subway in an emergency situation is by stepping on a few people's toes. Surely, the harm that the doctor inflicts on these innocent individuals would be justified by any defensible moral theory by the benefit the doctor is able to do in an emergency situation" (41). Sterba argues that what's wrong with utilitarianism, as it has been understood, is not that it permits trade-offs but that it permits trade-offs that cannot be justified. He claims that what is needed, and what Rawls fails to provide, is a principle that would help us to determine which trade-offs could be justified. Sterba proposes the principle that "ought" implies "can." "According to this principle," he writes, "people are not morally required to do what they lack the power to do or what would involve so great a sacrifice that it is unreasonable to ask, and in cases of severe conflict of interest, unreasonable to require them to abide by" (42). Sterba likens this principle to Scanlon's contractualist formula, which maintains that moral requirements are those to which no one who is suitably motivated could reasonably object. Sterba claims that the "ought" implies "can" principle is a principle whose components are universally accepted.

Suppose, as Sterba does, that a reasonable utilitarian would accept the "ought" implies "can" principle. Sterba interprets the principle to imply that "whenever a practical requirement would be unacceptable to those occupying the least-advantaged position behind Rawls's veil of ignorance, that same practical requirement, according to the 'ought' implies 'can' principle, would be unreasonable for those in the least-advantaged position in the real world to accept." (45) But if the utilitarian accepts the principle, as by hypothesis we suppose she does, she may well reject this interpretation of it. Sterba's claim is that when utilitarianism is appropriately interpreted to be constrained by the "ought" implies "can" principle, it appears not to have the practical implications to which Rawls objects. But this claim is question-begging.

The utilitarian could differ with Rawls in two ways. She might reject the original position setup as giving too much power to individuals to, in effect, veto what might be in the common interest. She might argue, for example, that it is too expensive to care for persons with complex and ongoing medical problems, or certain serious birth defects, or who suffer accidents as a result of their own reckless behavior, and that limits on this sort of treatment are justifiable for the sake of maintaining a higher average utility. Or suppose the religious liberty of certain illiberal religious minorities were to be restricted by, say, limiting their right to educate their children in religious schools. Perhaps this is done in order to cultivate through public education greater adherence to the ideals of liberal democracy which, we might suppose, would generate social cohesion and, as a result, greater overall social utility. The utilitarian could argue that although these proposals might be unacceptable to self-interested persons behind a Rawlsian veil

of ignorance, they should not be unacceptable to the least-advantaged in the real world. There are difficult questions here about what sorts of sacrifices it is reasonable to ask persons to make, and the utilitarian's position marks a real disagreement with Rawls about what we owe to each other as a matter of justice. Sterba's "ought" versus "can" principle does not provide any practical guidance for resolving this disagreement.

Now suppose a utilitarian were to accept the Rawlsian proposal of the original position as a reasonable choice situation. There is room for the utilitarian to argue that, provided a suitable social minimum is guaranteed for all, it would not be irrational or unreasonable for the least well-off to accept less than they might secure under the difference principle, for the sake of significant improvements to the average person's welfare. Once the veil is lifted, the utilitarian might argue, we should not expect the least well-off with a healthy sense of justice to object to or to defect from the scheme to which they agreed behind the veil. That scheme guarantees them basic rights, equal opportunity and a healthy social minimum, and limits their claims on the division of social advantages above the minimum only when granting those claims would hinder most people from doing better.

Again, Rawls and the utilitarian disagree about what we owe to each other. Rawls's objection to utilitarianism is not that it could never be permissible to impose harm on some persons in order to secure a greater benefit for others. Rather, it is that the basic life prospects of those who are least well-off should not be restricted for the sake of improving the lot of those who are better-off when there are alternatives that would better serve the worst-off without violating anyone's rights. He uses the original position thought experiment to help to illuminate the considerations that bear on this conclusion. The original position can be thought of as a mechanism for interpreting which trade-offs it is reasonable to require or expect as a matter of justice. Appealing to the "ought" versus "can" principle would not obviate the need for such an interpretive exercise. Nor does it show how Rawls and the utilitarian can be reconciled.

The difference with libertarianism is even starker. Sterba argues that libertarians are staunch defenders of liberty per se who fail to recognize that a conflict between rich and poor can be viewed as a conflict of liberties. What is at stake in this conflict for the poor is the liberty "not to be interfered with in taking from the surplus possessions of the rich what is necessary to satisfy their basic needs" (47–48). But libertarians would simply reject the notion that this liberty should have any protection. The liberty of the poor not to be interfered with in appropriating the holdings of the rich would violate the property rights of the rich. What is basic for libertarians is not liberty per se, in any possible form, but a strong self-ownership right that generates rights to property and makes us responsible for our own welfare. The liberty to appropriate the possessions of other people is incompatible with the more basic self-ownership right on which property rights are based.

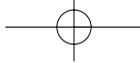
What would seem to give the poor greater distributive claims is a notion of equality that libertarians reject: The idea that the terms of social cooperation

should be mutually acceptable to all cooperating members viewed as equals. That as cooperating members of a productive social scheme we should have an equal claim on the product of our joint venture is foreign to libertarians. Sterba argues that it would be unreasonable to ask the poor to relinquish their liberty not to be interfered with in taking from the rich what they require to meet their basic needs (48). The “ought” implies “can” principle, argues Sterba, establishes the moral superiority of the liberty of the poor over the liberty of the rich. But the libertarian would disagree. Comparing the relative sacrifices imposed on rich and poor under various redistributive scenarios is ethically misleading, argues the libertarian. It ignores the ethical relevance of how a social distribution of goods has come about. Even extreme inequalities in wealth may be unobjectionable if persons acquired their holdings legitimately via their own labor or at the bequest of another.

Let me now turn briefly to Sterba’s discussion of affirmative action. Sterba proposes a definition of affirmative action that he claims “should be acceptable to all sides (110).” He suggests that we understand affirmative action as “a policy of favoring qualified women and minority candidates over qualified men or non-minority candidates with the immediate goals of outreach, remedying discrimination, or achieving diversity, and the ultimate goals of attaining a colorblind (racially just) and a gender-free (sexually just) society (111).” Even strong critics of affirmative action, he argues, accept some forms of it, such as that remedial affirmative action is sometimes justified (112). He writes that, “Although the U.S. Supreme Court has adopted different positions at different times, it has always held that it is permissible to adopt remedial affirmative action as compensation for identifiable acts of purposeful discrimination committed by that very institution (114).” Sterba’s proposed strategy is to use the more comprehensive definition he offers to leverage conservatives to accept broader forms of affirmative action than the measures they are inclined to favor, by showing how a commitment to the ideal of racial equality requires these broader forms (including compensation for past discrimination, promoting diversity, etc.).

The problem, as I see it, lies with Sterba’s assumption that we can use the ideal of racial equality, together with a fruitful definition of possible measures to promote it, to bring about a social consensus. Many conservatives simply are not committed to the ideal of racial equality, either of outcome or opportunity. Sterba seems to recognize this when he remarks that “conservatives on this issue seem to be in the grips of an odd notion of racial equality” (132). The other possibility is that they are not committed to equality at all, oddly construed or not. No reasonable standards of public justification will bridge the gap between these conservatives and their more liberal counterparts.

Let me end by stressing two points that I like about the book. Sterba is most convincing when he discusses how ethical reasoning about particular cases can give content to our judgments of what is reasonable or fair. The different claims ethical theories might make about what is reasonable or fair are best resolved on the ground, so to speak, when we argue about how best to think about the issues



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that matter morally to us. Sterba's catalog of pro-affirmative actions reasons is helpful. It might advance the thinking of people who are committed to the ideal of racial equality. Sterba's proposals help to flesh out his "ought" implies "can" principle, which I have argued is, on its own, relatively uninformative.

I think Sterba is also right about the need to conduct political discussion in the public forum as much as possible on the basis of public reasons. The success of public reason will be hindered by the bad faith of some political actors. Its reach may also be limited; thinking through some ethical questions of public importance may well require going beyond the common ground that public reasons represent. But we should, as far as we can, attempt to justify the policies we support on the basis of political values that we might reasonably expect our fellow citizens to be able to accept. What is at stake is nothing less than our fragile democracy itself.

Note

¹James P. Sterba, *The Triumph of Practice over Theory in Ethics* (New York: Oxford University Press, 2004).

