

In any event, this seems a rather minor quibble with an otherwise commendable addition to the existing literature on Canadian elections.

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Amartya Sen

Development as Freedom

Alfred A. Knopf, 1999

This is a brilliant book. Sen ranges over a vast intellectual landscape, from the history of economic thought and the social implications of ancient eastern religions to the intricacies of social choice theory and the econometrics of applied development. Many authors try this kind of *tour d'horizon* but few succeed as well as Amartya Sen. He is a multi-faceted scholar who has thought deeply and rigorously and has published extensively. Although *Development as Freedom* covers immense territory, it is subtle and nuanced and its careful scholarship is manifest at every turn—particularly in the form of copious cross-references to Sen's earlier works and to a wide variety of other research.

One way of reading the book is as an attempt to reconcile the work of Sen the eminent development economist (perhaps best known for his work on famines and entitlements) and Sen the social choice theorist and moral philosopher (with running commentary by Sen, the historian of economic thought). Writing in the former voice, Chapter 2 distinguishes between the ends and means of development, Chapter 4 discusses poverty as capability deprivation and chapters 7 to 9 survey famines, women's agency and social change, world food production and the determinants of population growth. Writing in the latter persona, the topic of Chapter 3 is "Freedom and the Foundations of Justice" while Chapter 11 analyzes "Social Choice and Individual Behaviour" and the concluding Chapter 12 is entitled

"Individual Freedom as Social Commitment."

However, there is lots more as well. Chapter 10, "Culture and Human Rights," draws on Sen's reading of Asian history and religious thought and is aimed at disproving the proposition that there is something called "Asian Values" that is antithetical to the case for basic freedoms. Chapter 5 discusses the relative role of markets and the state in generating social opportunity. Sen is profoundly dubious of what he calls the new superstition of unbridled faith in market solutions and of radicalism in the cause of zero inflation. Chapter 6 emphasizes the manifold impacts of democracy as a system of government.

The organizing concept in all of this is "freedom, seen in the form of individual capabilities to do things that a person has reason to value." Of course, some may be cynical that when an economist says "freedom" they really mean "markets." Sen does not underplay either the instrumental role of freely functioning markets in facilitating economic growth or the intrinsic value of individuals' freedom to engage in voluntary exchange. However, he is very clear that market freedoms by themselves are far from sufficient. An inherent part of his concept of freedom as capabilities is that individuals are not free if they are hungry, illiterate, homeless or ill.

Sen lays a good deal of stress on the proposition that a satisfactory conception of freedom must be fairly broad, and that its virtues are both intrinsic and instrumental. In general, he argues that political and social freedoms are both inherently desirable and conducive to economic growth. He notes, for example, that freedom of speech and democratic elections are highly valued, in themselves, by the world's poorest people as well as by the richest—so political freedoms have to be seen as an intrinsic objective of development. All too often economists have limited their discussion to the impacts of public policy on economic growth, and Sen does argue that democracy is also valuable because of the instrumental importance of a responsive government for the de-

velopment process. However, he never lets the reader forget that economics is only part of life, and argues throughout that income may be an imperfect indicator of the capabilities possessed by individuals.

When Sen argues for substantial public expenditure on the education of the whole population, he does so both because it directly increases freedom (in the sense of the capability to self-consciously choose the life one has reason to value) and because it indirectly increases economic freedom by increasing the income at people's disposal. He stresses the importance of female literacy (and female empowerment and labour force participation more generally) both because of the direct impact on women's effective freedom and because it is the surest route to long run stability of the world population. His argument for freedom is a powerful one, because it ties together both direct and indirect benefits. However, because his vision of personal freedom is one of individual capabilities, his vision of a politics that maximizes freedom cannot be one of a minimal state, whose only role would be to enforce private property rights. Since such a state would leave unprotected the capabilities of the disadvantaged, Sen argues strongly for the social responsibility of the state in education, health care, unemployment compensation, social assistance and the maintenance of adequate levels of employment.

Why is it then that countries differ so widely in affluence and in the freedoms they offer their citizens? Even a writer as gifted as Sen cannot answer all questions in a single book, but he does provide a hint. As he notes: "While capitalism is often seen as an arrangement that works only on the basis of the greed of everyone, the efficient working of the capitalist economy is, in fact, dependent on powerful systems of values and norms. Indeed, to see capitalism as nothing other than a system based on the conglomeration of greedy behaviour is to underestimate vastly the ethics of capitalism, which has richly contributed to its redoubtable achievements." Once one sees the reciprocal importance of the

framework of values and institutions (what some would call “social capital”) for economic development, Sen’s career choice to specialize in both economic development and moral philosophy makes perfect sense.

In the end, however, this reviewer is left with a puzzle and a concern. The puzzle is the relationship between rights and freedoms. Sen begins the book by noting that:

Sometimes the lack of substantive freedom relates directly to economic poverty, which robs people of the freedom to satisfy hunger, or to achieve sufficient nutrition, or to obtain remedies for treatable illnesses, or the opportunity to be adequately clothed or sheltered, or to enjoy clean water or sanitary facilities. In other cases, the unfreedom links closely to the lack of public facilities and social care, such as the absence of epidemiological programs or of organized arrangements for health care or educational facilities, or of effective institutions for the maintenance of local peace and order. In still other cases, the violation of freedom results directly from a denial of political and civil liberties by authoritarian regimes and from imposed restrictions on the freedom to participate in the social, political and economic life of the community.

However, could one not also frame this comprehensive idea of freedom in terms of a comprehensive list of citizenship rights? It is puzzling that there is no reference in the volume to the international jurisprudence growing out of the UN Universal Declaration of Human Rights, which outlined in 1948 a comprehensive list of social and economic rights. For example, article 25 enshrines “the right to security in the event of unemployment, sickness, disability, widowhood, old age or other loss of livelihood in circumstances beyond his/her control.” As General Assembly Resolution 32/130 stated: “The full realization of civil and political rights, without the enjoyment of economic, cultural and social rights is

impossible.” In emphasizing that “All human rights and fundamental freedoms are indivisible and inter-dependent,” the Resolution of 1977 drew on the conception of effective citizenship in a democratic polity, and the rights which that requires. It is just not clear to this reviewer how Sen’s conception of freedom as individual capability differs, in the end, from this older conception of rights and social citizenship. If people actually had the rights which the UN Universal Declaration of Human Rights mandates, would they not also then be free, in Sen’s sense of “freedom”?

The concern is that Sen does not really address the issue of where preferences come from, and he is not very explicit about what they should be. As a moral philosopher of liberal persuasion, Sen may take the position that we ought not to query the validity of individual values, other perhaps than to engage in reasoned public discussion regarding our common attempts to realize our individual conceptions of the good life. However, the primacy of individual freedom and the moral position of tolerance of whatever individual values happen to be sits uneasily with Sen’s recognition of the practical importance of some commonality of norms and values.

Common social attitudes may have negative consequences—for example, Sen argues that the roots of British inaction during the Irish famines lay in their common cultural attitudes of dissociation and superiority. More positively, in his discussion of social choice and the finding of workable solutions to collective problems, he notes the importance of preference formation through social interaction. At numerous points, the importance of some common moral and ethical framework, for good or for ill, recurs. But should societies do anything about this? If so, what values should they push and how?

Discussing what choices society should make in shaping the formation of preferences might leave an author

open to charges of paternalism, or worse. But social attitudes are produced somehow and some social choices about that process are inescapable. Although illiteracy is a form of “unfreedom,” in a country like Canada we do not actually give children (or their parents) the freedom to choose that option—school attendance is compulsory. And schools do socialize children and transmit values—Canadian schools do actually now teach tolerance of diversity, as well as knowledge of arithmetic. However, for some Canadians, teaching tolerance (e.g., of homosexuality) is controversial. And many who agree with the values now taught in schools would disagree with some of the values taught in the past.

Furthermore, television, and the mass media more generally, are also vectors of values and instigators of behaviour. Although one would hope that freedom of the press would always produce reasoned social dialogue, it may also produce the inflammatory ethnic rhetoric observed in the former Yugoslavia. Mass media are also subject to regulation in some countries (such as Canada) that wish to preserve aspects of local identity, despite the lower marginal cost of global cultural homogeneity. Whether by action or inaction, society cannot avoid some choices about which norms and attitudes are preferable, and the fact that such choices are often controversial is



all the more reason for them to be carefully examined. It would be useful to have Sen's opinion about the process by which values are generated.

However, one should not interpret it as a criticism to say that this book leaves some questions as yet unanswered. Rather, it should be seen as a good reason to look forward to Sen's next book.

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F.L. Morton et Rainer Knopff

The Charter Revolution & the Court Party

Peterborough, Broadview Press, 2000

A la frontière entre l'analyse universitaire et le manifeste politique, l'ouvrage *The Charter Revolution & the Court Party* ne pouvait manquer de susciter la controverse dans les cercles intéressés à la politique et au droit au Canada. Ses auteurs, les professeurs F.L. Morton et Rainer Knopff de l'Université de Calgary, y soutiennent en effet la thèse qu'en provoquant un glissement de l'exercice effectif du pouvoir politique des assemblées électives vers des juges non élus, l'adoption de la Charte canadienne des droits et libertés a provoqué une révolution anti-démocratique caractérisée par une juridicisation et une judiciarisation des débats publics sans précédent dans l'histoire canadienne. Or, loin de découler du texte même de la Charte, cette judiciarisation aurait selon eux résulté de l'activisme de ses principaux interprètes, les juges, qui, profitant de l'indétermination relative des droits garantis dans cet instrument, auraient succombé à la tentation du pouvoir en s'arrogeant des prérogatives exorbitantes (chapitre 2).

Pareil activisme judiciaire, toutefois, n'aurait pu se développer sans un environnement capable d'en soutenir la croissance. Cet environnement favorable, les tribunaux l'ont trouvé à la faveur de l'émergence d'une nouvelle classe, que les auteurs appellent le

« Court Party », formée de divers groupes (nationalistes canadiens, groupes libertaires ou égalitaristes, adeptes du perfectionnisme social, intellectuels « postmatérialistes ») qui, malgré leurs intérêts ponctuels parfois divergents, tirent tous profit de cet activisme (chapitre 3). Pouvant difficilement espérer voir les réformes qu'ils appellent de leurs vœux se réaliser par les voies démocratiques normales étant donné leur caractère controversé, les membres du « Court Party » optent pour un court-circuitage de ces voies par diverses stratégies qui visent toutes à infléchir l'interprétation des droits consacrés dans la Charte en fonction de leurs attentes particulières. L'atteinte de cet objectif passe d'abord et avant tout par un recours systématique aux tribunaux afin d'obtenir non seulement la création d'un état de droit correspondant à ces attentes, mais également — Charte oblige — la constitutionnalisation de cet état de droit, ce qui, dès lors, renforce singulièrement la position des membres du « Court Party » dans le débat politique. Ironiquement, Morton et Knopff soulignent qu'alors que l'État s'avère en bout de ligne la « victime » des contestations constitutionnelles du « Court Party » puisque c'est son action qui est mise en cause dans les litiges impliquant la Charte, ce même État soutient largement, de manière directe (par exemple, par le financement de programmes de contestation judiciaire) ou indirecte (par exemple, par le financement de recherches universitaires préconisant une interprétation libérale de la Charte) les instigateurs de ces contestations (chapitre 4).

Les membres du « Court Party » ne pourraient toutefois réussir dans leur entreprise s'ils ne bénéficiaient pas de l'appui d'un réseau d'acteurs sociaux qui disposent d'une position privilégiée pour influencer la formation des opinions au sein même de la communauté juridique. Outre les juges de la Cour suprême, cette « jurocratie », selon l'expression des professeurs Morton et Knopff, compterait comme membres les clerks de ces juges, les juges des tribunaux des droits de la personne, les juristes oeuvrant dans les ministères de la justice à travers le Canada ainsi que

divers organismes chargés de la réforme du droit ou de la formation juridique (chapitre 5). Ces acteurs trouveraient enfin les munitions intellectuelles requises pour assurer le triomphe de leur point de vue dans les écrits des juristes universitaires spécialisés dans le domaine des droits de la personne, lesquels auraient, selon les auteurs, laissé tomber toute velléité de neutralité axiologique au profit d'un militantisme intellectuel débridé (chapitre 6). La conjonction des facteurs susmentionnés expliquerait donc le succès de cette « révolution » qu'ils vouent aux gémonies, d'abord parce qu'elle institutionnalise la position du pouvoir judiciaire comme arbitre privilégié des débats sociaux, mais surtout parce qu'elle érode la culture démocratique en favorisant la création d'un habitus où le compromis politique, qui repose sur la formation d'alliances ponctuelles entre divers groupes sociaux dont les intérêts ne coïncident pas toujours parfaitement, devient quasiment impossible (chapitre 7).

Un des aspects les plus intéressants de cet ouvrage est sans conteste le traitement que les professeurs Morton et Knopff réservent au rôle central qu'ont joué les juges dans l'avènement de cette révolution. Après avoir constaté que l'indétermination des droits consacrés dans la Charte accordent aux juges une très large discrétion que ceux-ci peuvent utiliser dans un sens ou dans l'autre, les auteurs s'ingénient ensuite à réfuter l'argument voulant que les juges exercent cette discrétion dans des limites bien précises que la Charte elle-même imposerait. Leur étude de la jurisprudence de la Cour suprême les incite d'ailleurs à dire que l'interprétation qu'a faite cette cour de la Charte s'est avérée incohérente, sélective, voire opportuniste, les juges choisissant d'une espèce à l'autre la méthode interprétative la plus appropriée pour parvenir au résultat escompté. Du reste, les discours de ces derniers sur la nécessité d'adopter une méthode s'attachant à identifier l'objet du droit en cause (« purposive analysis ») n'auraient servi qu'à rationaliser et légitimer un élargissement considérable de la discrétion judiciaire. Or, selon les auteurs, le problème est que la