



# Smith's Humean Criticism of Hume's Account of the Origin of Justice

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IN THIS PAPER, we argue that Adam Smith criticizes David Hume's account of the origin of and continuing adherence to the rule of law for being not sufficiently Humean. What we mean by "Humean" will become clear in the course of the paper; we use the term to call attention to Hume's tendency to provide proto-evolutionary explanations of social phenomena in terms of psychological and material causes that act on individuals in contrast to more rationalistic accounts. According to Hume, adherence to the rule of law originated in the self-interest to restrain self-interest (*Treatise*, 3.2.2.13–14, 316).<sup>1</sup> Yet, according to Smith, Hume's account is, though the product of "enlightened reason," too "refined" (TMS II.ii.3.5, 87).<sup>2</sup> Hume does not pay enough attention to the "unsocial" passion of "resentment" as well as to the passion of admiration, which have their source in the imagination. Smith's criticism offers a more Humean account of the psychological pre-conditions of the establishment and morality of justice than Hume had. Smith's account also makes room for a thin conception of Lockean natural right to property, while rejecting the contractualist and rationalistic elements in Locke. This paper sketches Hume's approach to the origin of justice,<sup>3</sup> occasionally contrasting it with Hobbes and Locke. Then it explains Smith's main criticism.

<sup>1</sup> All quotes from David Hume, *A Treatise of Human Nature*, eds. David Fate Norton and Mary J. Norton (Oxford: Oxford University Press, 2000). We cite book, part, section, paragraph, and page-number.

<sup>2</sup> All quotes from Adam Smith, *The Theory of Moral Sentiments*, eds. D.D. Raphael and A.L. Macfie (Indianapolis: Liberty Fund, 1984; a reprint of the Glasgow edition of the works and correspondence of Adam Smith; v. 1, [Oxford: Oxford University Press, 1976]). We cite part, section, chapter, paragraph, and page-number.

<sup>3</sup> We will draw on all of Hume's writings, ignoring potential discrepancies among them.

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## I. HUME ON THE ORIGIN AND MORALITY OF JUSTICE

For Hume the rule of law is based upon “convention.” He presupposes, “a sense of common interest; which sense each man feels in his own breast, which he remarks in his fellows, and which carries him, in concurrence with others, into a general plan or system of actions, which tends to public utility . . . in this sense, justice arises from human convention” (second *Enquiry*, Appendix III.7, 172).<sup>4</sup> Moreover, “When men have found by experience, that ‘tis impossible to subsist without society, and that ‘tis impossible to maintain society, while they give free course to their appetites: so urgent an interest quickly restrains their actions, and imposes an obligation to observe those rules, which we call the *laws of justice*” (*Treatise*, 3.2.11.4, 363, emphasis in original). The laws of justice should be respected because they serve the needs of society.

Hume lists three “inconveniences, which proceed from the concurrence of certain qualities of the human mind with the situation of external objects,” that are ultimately addressed by the human institution of the rule of law: our “limited generosity” or “selfish” nature; the mobility of external goods; and these goods’ relative “scarcity in comparison of” our “wants and desires” (*Treatise*, 3.2.2.16, 317; 3.2.2.18, 318). As he says in the second *Enquiry*: “[W]herever any benefit is bestowed by nature in an unlimited abundance, we leave it always in common among the whole human race, and make no subdivisions of right and property” (3.1.4, 83–84). These three conditions are inconvenient because, according to Hume, “avidity” is an “insatiable, perpetual, universal” part of human nature, so that we go unsatisfied; “there scarce is any one, who is not actuated by it”; this is the main passion that is “directly destructive of society” (*Treatise*, 3.2.2.12, 316;<sup>5</sup> by contrast, “envy and revenge, tho’ pernicious . . . operate only by intervals”). It appears that Hume accepts, following Locke (*Some Thoughts Concerning Education*, §110),<sup>6</sup> that this passion is innate. For example, at *Treatise* 3.2.5.9, 334, Hume talks about the “natural and inherent principles and passions of human nature; and as these passions and principles are inalterable.” Hume thus rejects, in advance, Rousseau’s claim in the Second Discourse that it is only acquired as one of the negative effects of civilization. Hence, it is no surprise that Hume rejects the poetic “fiction . . . of the golden age” (*Treatise*, 3.2.2.15, 315). If there had been such an age, there would have been no reason for it to end (3.2.2.16, 317). Hume also rejects the “mere philosophical fiction” of the Hobbesian “state of nature” (3.2.2.12, 316–317).<sup>7</sup>

<sup>4</sup> David Hume, *An Enquiry concerning the Principles of Morals* [Second *Enquiry*], ed. Tom L. Beauchamp (Oxford, Oxford University Press, 1998). We cite section, part (if any), paragraph, and page-number.

<sup>5</sup> But for a different view of avarice, see “Of Avarice” in David Hume’s *Essays, Moral, Political, and Literary* [EPS], rev. and ed. Eugene F. Miller (Indianapolis: Liberty Fund, 1985).

<sup>6</sup> John Locke, *Some Thoughts Concerning Education and the Conduct of the Understanding*, eds. Ruth W. Grant and Nathan Tarcov (Indianapolis: Hackett, 1996). See, for discussion (although they do not supply the reference), Istvan Hont and Michael Ignatieff, “Needs and Justice in the *Wealth of Nations*: an introductory essay” [“Needs and Justice”], 39, in *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment*, eds. I. Hont and M. Ignatieff (Cambridge: Cambridge University Press, 1993).

<sup>7</sup> In his footnote to second *Enquiry*, 3.15, Hume points out that Hobbes did not invent the concept of a state of nature because Plato also argues *against* such a conception in Books 2–4 of *Republic*.

Now, it is worth pausing at Hume's criticism of the contract tradition. For, at first sight, it seems as if Hume's list of "inconveniences" and his insistence that "the opposite passions of men impel them in contrary directions" (3.2.2.11, 315) has considerable affinity with Hobbes's account, especially the insistence on self-interested human nature. Furthermore, Hume seems to echo one of the striking moments in Hobbes when he asserts that justice is the sense that "all the members of the society *express* to one another, and which induces them to regulate their conduct by certain rules" (3.2.2.10, 315; emphasis added). For, in *Leviathan*, the commonwealth is, when not founded through conquest, instituted by a covenant "of every man with every man . . . as if every man should say to every man, I Authorise and give up my Right of Governing my selfe, to this Man, or to this Assembly of men," (II.17, 227; see also, II.18, 228).<sup>8</sup> Both thinkers seem to be claiming that the rules of justice originate at a particular moment in time when all the potential members of a society say something to all the other members about their wish to be ruled by law. However, Hume's descriptions of the events leading to the origins of justice sit uneasily with some of his other more 'evolutionary' claims in the same paragraph and elsewhere in the *Treatise*.<sup>9</sup> For example, "the rule concerning the stability of possession," Hume writes, "arises gradually, and acquires force by a slow progression" (3.2.2.10, 315). In the same paragraph, Hume also goes on to describe the development of languages, and (later in human and societal evolution) money as a universal equivalent in the exchange of commodities as arising gradually. Hume is here at the very cusp of developing what would become Smith's theory of the unintended results from human actions. Moreover, the evolutionary picture is supported by Hume's understanding of the psychology of "rude and savage men" in the state of nature; they are not capable of dreaming up the "idea of justice" (*Treatise*, 3.2.2.7, 313–314). Justice is, then, for Hume a distinct intellectual achievement.<sup>10</sup> Hume's story makes clear what the conditions for it are.

Hume rejects the state of nature as a possibility because "every parent, in order to preserve peace among his children," must establish some rule for the "stability of possession" so that "'tis utterly impossible for men to remain any considerable time in that savage condition" (*Treatise*, 3.2.2.14, 316). But, even if true, this does not differentiate him much from the state of nature theorist. Hobbes, too, insists that the state of nature is compatible with "government of small Families," (*Leviathan*, I.13.63, 187, although for Hobbes this is maintained by "naturall lust"). In fact, Hobbes seems to be agreeing with Hume: "It may peradventure be thought, there was never such a time, nor condition of warre as this; and I believe it was never generally so, over all the world; but there are many places, where live so now." Hobbes then goes on to describe "the savage people of America," but he immediately concedes that, even there, there is no state of war with the family.

<sup>8</sup> Thomas Hobbes, *Leviathan*, ed. C.B. Macpherson (Harmondsworth, Middlesex, England: Penguin Books, 1980).

<sup>9</sup> See Knud Haakonssen, *The Science of Legislator: the Natural Jurisprudence of David Hume and Adam Smith* [*The Science of Legislator*], (Cambridge: Cambridge University Press, 1981), 17–18, for excellent discussion of this tension in Hume.

<sup>10</sup> Cf. "Of Public Credit," EMPL, 358, where Hume talks of the "hand of nature" that instituted "several ranks of men, which form a kind of independent magistracy in a state."

Hume would insist this means the “very first state and situation may justly be esteem’d social,” but it seems that Hume is merely offering a different name for the same situation.<sup>11</sup>

However, Hume’s other argument against the state of nature theorist is more fundamental; he attacks the idea that justice has its origin in a simple promise or contract. While Hume admits that even “savage and uncultivated” people can be made sensible of the *interest* in keeping promises (*Treatise*, 3.2.5.11, 335; emphasis added), he claims, anticipating Nietzsche, that a “promise . . . is naturally [Hume means here in the state of nature] something altogether unintelligible” (3.2.5.4, 332).<sup>12</sup> Note, again, Hume’s insistence that the “savage” will not understand something that the Contract-tradition ascribes to it. Moreover, for Hume, “promises have no force, antecedent to human conventions” (*Treatise*, 3.2.5.7, 333). The condition of justice, which creates some stable property relations, and thus, an *interest* in keeping promises, is—to use a Kantian sounding phrase—a condition of the possibility for the giving of promises (*Treatise*, 3.2.5.8–10, 333–35). That is, for Hume promises first arise, and then necessarily (3.2.6.1, 337),<sup>13</sup> only when there is an interest in keeping them. As he explains in the second *Enquiry*, “the rules of equity and justice . . . owe their origin and existence to that utility, which results to the public from their strict and regular observance” (Section 3, Part I, 12, 86).

We do not want to give the impression that Hume’s rejection of contract theories was absolute; as he wrote in “Of the Original Contract”:

My intention here is not to exclude the consent of the people from being one just foundation of government where it has place. It is surely the best and most sacred of any. I only pretend, that it has very seldom had place in any degree, and never almost in its full extent. And that therefore some other foundation of government must also be admitted. (EMPL, 474)

Hume’s critique of contract theorists was not confined to the observation that such contracts rarely take place (and there is no evidence that they take place in the so-called state of nature, especially because his arguments suggest they cannot); he also rejects the *Lockean* idea that only governments founded on contracts are legitimate (*Second Treatise*).<sup>14</sup> He thought this a pernicious doctrine: “Let not the establishment at the [Glorious] Revolution deceive us, or make us so much in love with a philosophical origin to government, as to imagine all others monstrous and irregular” (EMPL, 472). Indeed, Hume’s narrative in the *History of*

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<sup>11</sup> On the similarities between Hume and Hobbes see Jean Hampton, “The Hobbesian Side of Hume” in *Reclaiming the History of Ethics: Essays for John Rawls*, eds. Andrews Reath, Barbara Herman, Christine M. Korsgaard. (Cambridge: Cambridge University Press, 1997), 66–101. The importance of Smith for moral philosophers is that he attempts to answer some of the major problems discussed by Hampton in Hume’s philosophy; Smith does this in a Humean manner and the effect is to move away from Hobbes.

<sup>12</sup> Cf. Nietzsche’s *Genealogy of Morals*, Second Essay.

<sup>13</sup> For Hume, conventions can be necessary.

<sup>14</sup> Locke admits that, in a just war, conquest can generate despotical power over the lives, but, somewhat counter-intuitively (as Locke admits), not the property, of those overcome (see John Locke *Second Treatise of Government* [*Second Treatise*], ed. C.B. Macpherson [Indianapolis: Hackett, 1980], XVI, §180). Of course, for Hobbes governments can legitimately originate in conquest.

*England* shows that whatever else one can say about the Glorious Revolution, it was not a compact between all the citizens of Great Britain and their new sovereign. Hume is no doubt worried about encouraging revolutions.

Let us return to the larger picture. For Hume it is our greed that is the prime cause of the origin of the convention of law.<sup>15</sup> It is only by “establishing the rule for the stability of the possession, that this passion restrains itself” (*Treatise*, 3.2.2.14, 316). So, justice comes into being to defend property rights (especially external goods); as Hume writes, “the origin of justice explains that of property” (3.2.2.11, 315). Hume’s summary in the second *Enquiry*, is quite clear:

Few enjoyments are given us from the open and liberal hand of nature; by art, labour, and industry we can extract them in great abundance. Hence the ideas of property become necessary in all civil society: Hence justice derives its usefulness to the public: And hence alone arises its merit and moral obligation. (3.1.13, 86–87)

Although Locke’s description of the operation of the “hand of nature” (at *Second Treatise*, V §26)<sup>16</sup> may appear similar to Hume’s, there are subtle differences between their views.<sup>17</sup>

As the summary in the second *Enquiry* makes clear, Hume insists that the moral obligation that justice can command is also derived from its utility to society. He explains in the *Treatise* that after the interest in the law is “establish’d and acknowledge’d, the sense of morality in the observance of these rules follows naturally, and of itself; tho’ ’tis certain, that it is also augmented by a new artifice, and that the public instructions of politicians, and the private education of parents, contribute” to a sense of duty involved in observing property rights (*Treatise*, 3.2.6.11, 342). Moreover, it is a good thing that there is education in the morality of justice because, as Hume notes in a different context, many individual instances of justice (say, returning some stolen food from a poor man to a miser) may appear quite “cruel” (*Treatise*, 3.2.1.13–14, 310). This sense of morality is supported by the “pleasure” we receive “from the view of such actions as tend to the peace of society, and an uneasiness from such as are contrary to it” (*Treatise*, 3.2.6.11, 342; see also second *Enquiry*, ch. 5). Now, while Hume admits that the establishment of a right to property involves the use of some reason—after all, it involves a gradually evolving recognition among individuals through “ballancing the account” (*Treatise*, 3.2.2.22, 319) of a “general sense of common interest” (3.2.2.10, 315, see also 3.2.2.22, 319)—it is also founded on a pleasurable sentiment.

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<sup>15</sup> There seems to be surprisingly little scholarly literature on Hume’s understanding of avarice. This will be discussed more at length in Eric Schliesser and Halley Faust, “Hume on Greed” (in progress). See also, Eugene Rotwein’s introduction to *David Hume: Writings on Economics* (Madison: University of Wisconsin Press, 1955), xlv–xlvii.

<sup>16</sup> “And tho’ all the fruits it naturally produces, and beasts it feeds, belong to mankind in common, as they are produced by the spontaneous hand of nature.”

<sup>17</sup> Lurking in the background is the debate about the proper characterization of money: whether or not money is merely an instrument of commerce, as Hume maintained (“Of Money,” *EMPL*, 281), or whether it is responsible for allowing the creation of scarcity, and, hence, the need for commerce, as Locke, following Pufendorf, seems to claim in the *Second Treatise*, V §37 and §46–49. (See Hont and Ignatieff, “Needs and Justice,” 34–40.)

Of course, Locke, too, thought that property rights were very useful. But, for Locke, property rights were derived not from a sense of utility,<sup>18</sup> but from a law of reason (*Second Treatise*, V §30). For Locke, to say something is a law of reason (i.e., a principle of action) is, we think, to say it agrees with (the law of) nature.<sup>19</sup> One of the crucial elements of Locke's account is his claim that property originates without social interaction in the state of nature (V §27–28). Hence, for Locke, property precedes society, and the rules of justice (and the other political and legal institutions of society) merely ratify this.<sup>20</sup> Hume's attack on Locke's views contains, thus, two important elements. (1) As we have seen, property rights are not natural, but conventional; they come into being only within a social context. (2) Reason is a dangerous and false foundation for legitimizing political arrangements.

To sum up Hume's views: he distinguishes among (1) nature, which creates us wanting more than is provided, (2) reason, which, however weakly and slowly, allows us to discover over time with others (3) conventions that enable us, by harnessing our interest, to overcome some of the limitations of nature. For Hume, the origin of and continuing adherence to justice, as "a whole plan or scheme" (*Treatise*, 3.2.2.22, 319), are founded on its perceived utility to society as well as the pleasure this brings us. The utility consists mainly in the "peace and order" it establishes in society (3.2.2.22, 319; recall also 3.2.2.14, 316).

## 2. SMITH'S CRITICISM OF HUME

Let us, first, explain how Smith differs from Hume's approach in explaining continuing adherence to the law. This will allow us to call attention to relevant differences in their respective approaches to the origin of justice. Let us see how Smith understands how (political) authority and obedience to the law works:

Our obsequiousness to our superiors [i.e., kings and princes] more frequently arises from our admiration for the advantages of their situation, than from any private expectations of benefit from their good-will . . . Neither is our deference to their inclinations founded chiefly, or altogether, upon a regard to the utility of such submission, and to the order of society, which is best supported by it. Even when the order of society seems to require that we should oppose them, we can hardly bring ourselves to do it. That kings are the servants of the people, to be obeyed, resisted, deposed, or punished, as the public conveniency may require, is the doctrine of reason and philosophy; but it is not the doctrine of Nature. (TMS I.iii.3, 52–53)

This is a complicated passage, and we cannot do justice to all the important nuances contained in it. Nevertheless, the last few lines are an attempt, by provid-

<sup>18</sup> Nevertheless, Sam Fleischacker has called attention to several passages in the *Essay Concerning Human Understanding*, ed. Peter H. Niddich (Oxford: Clarendon Press, 1975), that seem to push Locke into an opposite direction. Locke lets the aptness to produce pleasure be called 'good' and an object that tends to produce pain 'vice' (*Essay*, II.xxi.43 and II.xxviii.5–8). This suggests that utilitarian considerations cannot be far removed from Locke's thought.

<sup>19</sup> Locke seems to use the two terms almost interchangeably in the *Second Treatise*; see also his *Essays on the Law of Nature*, ed. W. von Leyden (Oxford: Oxford University Press, 2002), 111.

<sup>20</sup> Sam Fleischacker was kind enough to let us look at the manuscript for his *On Adam Smith's Wealth of Nations: A Philosophical Companion* [*Philosophical Companion*] (Princeton: Princeton University Press, 2004), which has been extremely helpful.

ing an appeal from experience about human nature, to undermine Locke's political philosophy, which allowed for the doctrine of active resistance on the part of the citizenry when the executive attacked property rights (e.g., *Second Treatise*, XIII, §149, §155). Smith claims that while Locke's philosophy is supported by reason (and he makes no attempt to refute Locke's *arguments*), it is not supported by (human) nature. Here Smith uses the word nature to refer to the feelings, sentiments and passions of humans. Furthermore, in his subsequent examples, Smith implies that only rarely will our natural obedience break down—and then not so much by reasoned arguments, but because passions of citizens have been “excited to the highest degree.” The problem with Locke's philosophy is, for Smith, not that it is conceptually incoherent or irrational, but that it does not take into account how human beings really feel and act. It is not empirically accurate.

Yet, Smith does not wholeheartedly agree with Hume either. For, in the quote he dismisses the idea that an appreciation of the utility of our whole system of laws, and the order they provide, can, as Hume thinks, be the whole or chief source of our acceptance of authority. Moreover, as Smith explains, “it is seldom this consideration which first animates us” against “licentious practices.” All men, “even the most stupid and unthinking, abhor fraud, perfidy, and injustice, and delight to see them punished. But few men have reflected upon the necessity of justice to the existence of society, how obvious soever that necessity may appear to be” (TMS II.ii.3.9, 89). In fact, Smith devotes the whole of Part IV of TMS to a respectful criticism of Hume's views, which he thinks more suitable to “men of reflection and speculation” (TMS IV.2.12, 192)—note the irony in Smith taking Hume's explanation to task for being too reflective!<sup>21</sup> Smith's main complaint is that the perception of utility is a secondary consideration that may enhance and enliven the sentiment that gives rise to the moral sentiment, but is not the “first or principal source.”<sup>22</sup> It is indeed a contingent fact of nature that the useful and the virtuous coincide (IV.2.3, 188). Nevertheless, Smith maintains that the “sentiment of approbation always involves in it a sense of propriety quite distinct from the perception of utility” (IV.2.5, 188). In contradistinction to Hume, Smith writes: “It seems impossible that the approbation of virtue should be a sentiment of the same kind with that by which we approve of a convenient and well-contrived building; or that we should have no other reason for praising a man than that for which

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<sup>21</sup> Smith is providing a Humean critique of Hume. See Marie A. Martin, “Utility and Morality: Adam Smith's Critique of Hume,” *Hume Studies* 16 (1990): 107–20. Along with Kant, Smith can be viewed as Hume's profoundest follower and critic. Of course, Smith should not be viewed as a mere follower of Hume. In both his economic work (see Joseph Schumpeter's *History of Economic Analysis* [New York: Oxford University Press, 1954], 181–94), and his philosophic work, Smith attempts to be an admirable systematizer and synthesizer.

<sup>22</sup> For evidence that Smith may have misunderstood (or oversimplified) Hume's views, and that Hume nevertheless anonymously published a favorable review of Smith's book that silently corrected some of these misunderstandings or misrepresentations, see David R. Raynor, “Hume's Abstract of Adam Smith's *Theory of Moral Sentiments*” *Journal of the History of Philosophy* 22 (1984): 51–80; also D. D. Raphael and Tatsuya Sakamoto, “Notes and Discussions: Anonymous Writings of David Hume,” *Journal of the History of Philosophy* 28 (1990): 271–81. For insightful commentary on the contrast between Hume and Smith, see James Otteson, *Adam Smith's Marketplace of Life* (Cambridge: Cambridge University Press, 2002), 50–58. Smith's criticism anticipates Nietzsche's attack on the “naïve” English psychologists in *Genealogy of Morals*, Essay 1, sections 1–3, and Essay 2, section 12.

we commend a chest of drawers" (IV.2.4, 188). Moreover, from remarks that Smith makes elsewhere, we can infer that Smith is not inclined to take very seriously the *moral* authority of appeals to utility even after establishment of justice. For instance, he is quite adamant that, in general, one should not "sacrifice the ordinary laws of justice to an idea of publick utility, to a sort of reasons of state"; this can be "pardoned only in cases of the most urgent necessity"<sup>23</sup>

Inspired, perhaps, by Hume's analysis (second *Enquiry*, 6.2.30, 128), for Smith, political authority is maintained more by the natural deference to superiors by most people, due to admiration of the rich and powerful and the workings of the sympathetic process described in TMS (e.g., I.iii.2.1, 51), than on a rational calculation or expectation by the governed of any benefits to be derived from continuing obedience.<sup>24</sup> Therefore, it is neither our perception of the useful order nor our self-interest that explains our obedience to the powerful; rather we actively imagine and want to be (a small) part of *their* happiness. Note that, while not everybody will immediately agree with Smith's moral psychology here, we think there is much truth to the following related observation: "A stranger to human nature, who saw the indifference of men about the misery of their inferiors, and the regret and indignation which they feel for the misfortunes and sufferings of those above them, would be apt to imagine, that pain must be more agonizing, and the convulsions of death more terrible to persons of higher rank, than to those of meaner stations" (TMS I.iii.2.2, 52). And, while Smith tends to look much more favorably on the workings of the imagination than, say, Hume does (e.g., footnote 71 on the rules that determine property at *Treatise* 3.2.3.4, 323), he also thinks it can paint in "delusive colours" (TMS I.iii.2.1, 51; our imagination can and does mislead us [see e.g. TMS I.i.13, 12–13, where Smith discusses the implications of our illusory sympathy with the dead]).<sup>25</sup>

Of course, Smith does not think that admiration for superiors alone holds a society together, if only because our tendency to "admire, and almost worship, the rich and powerful" is *also* "the great and most universal cause of the corruption of our moral sentiments" (TMS I.iii.3.1, 61). Something else is required. As Smith wrote in a famous passage, "Justice . . . is the main pillar that upholds the whole edifice. If it is removed, the great, the immense fabric of human society . . . must in a moment crumble into atoms" (TMS II.ii.3.4, 86). It requires the "enforcement of the laws of justice by the punishment of those who violated them;" it is "necessary for preserving the order of society" (TMS II.ii.3.6–7, 87–88).

<sup>23</sup> *An Inquiry into the Nature and Causes of the Wealth of Nations* [WN], eds. R.H. Campbell, A.S. Skinner, and W.B. Todd (Indianapolis: Liberty Fund, 1984), IV.v.b.39, 539. This is a reprint of the Glasgow edition of the works and correspondence of Adam Smith, v. 2 (Oxford: Oxford University Press, 1976), and reprinted with minor corrections in 1979.

<sup>24</sup> See Elias L. Khalil, "Is Adam Smith Liberal?" *Journal of Institutional and Theoretical Economics*, 158 (2002), 674–83.

<sup>25</sup> The imagination makes sympathy (TMS I.i.i.10, 12ff.), and, by extension, the workings of the Impartial Spectator possible (III.2.9, 188). And in Smith's "The History of Astronomy," II.10–12, 43–47, the imagination plays a positive crucial role in constructing theories of natural philosophers. This essay can be found in Adam Smith's *Essays on Philosophical Subjects* [EPS], eds. W. P. D. Wightman and J. C. Bryce (Indianapolis: Liberty Fund, 1982) (reprint of the Glasgow edition of the works and correspondence of Adam Smith; v. 3, [Oxford: Oxford University Press, 1980]). For discussion, see Eric Schliesser "Realism in the Face of Scientific Revolutions: Adam Smith on Newton's "Proof" of Copernicanism," *British Journal for the History of Philosophy* 13 (2005): 697–732.



Moreover, admiration or even obsequiousness to superiors cannot solely explain the origin of adherence to justice.<sup>26</sup> For, in the state of nature, men are, by definition equal; as Smith writes in the *Wealth of Nations* there is nobody to admire or be subservient to: “universal poverty establishes there universal equality” (WN V.i.b7, 712).<sup>27</sup> Subordination, while antecedent to civil institutions, presupposes growth of property (WN V.i.b.3–4, 710). For regardless of how Smith viewed the state of nature, it is only the division of labor that produces significant inequalities of any kind among people (WN I.i.8–9, 19–22 and I.ii.4, 28–29).<sup>28</sup> Admiration of others, as a source of subordination, is, then, a relatively late addition to humanity’s moral psychology. So, we need to look for another source of the origin of justice in Smith’s philosophy. While many commentators focus on the student notes of Smith’s *Lectures of Jurisprudence*, here we want to focus on Smith’s published writings.<sup>29</sup>

While explaining the nature of expense involved with justice in the *Wealth of Nations*, Smith offers the following account of its origin; we quote in full before we comment on the passage:

Among nations of hunters, as there is scarce any property, or at least none that exceeds the value of two or three days’ labour, so there is seldom any established magistrate or any regular administration of justice. Men who have no property can injure one another only in their persons or reputations. But when one man kills, wounds, beats, or defames another, though he to whom the injury is done suffers, he who does it receives no benefit. It is otherwise with the injuries to property. The benefit of the person who does the injury is often equal to the loss of him who suffers it. Envy, malice, or resentment are the only passions which can prompt one man to injure another in his person or reputation. But the greater part of men are not very frequently under the influence of those passions, and the very worst of men are so only occasionally. As their gratification too, how agreeable soever it may be to certain characters, is not attended with any real or permanent advantage, it is in the greater part of men commonly restrained by prudential considerations. Men may live together in society with some tolerable degree of security, though there is no civil magistrate to protect them from the injustice of those passions. But avarice and ambition in the rich, in the poor the hatred of labour and the love of present ease and enjoyment, are the passions which prompt to invade property, passions much more steady in their operation, and much more universal in their influence. Wherever there is great property there is great inequality. For one very rich man there must be at least five hundred poor, and the affluence of the few supposes the indigence of the many. The affluence of the rich excites the indignation of the poor, who are often both driven by want, and prompted by envy, to invade his possessions. It is only under the shelter of the civil magistrate that the owner of that valuable property, which is acquired by the labor of many years, or perhaps of many successive generations, can sleep a single night in security. He is at all times surrounded by unknown enemies, whom, though he never provoked, he can never appease, and

<sup>26</sup> Actually, by itself this human proclivity can be a major source of injustice, as humans cater to the wishes and whims of their superiors, while casually abusing their inferiors (TMS I.iii.3, 66ff).

<sup>27</sup> There may indeed be some subordination based upon the feeble foundations of age or personal qualities. In the quotation, Smith is talking about a “hunting” society, but that does not undermine the argument here. We say more about this in the body of the text below.

<sup>28</sup> Smith denies, of course, that the division of labor is originally the result of any human wisdom that “foresees and intends that general opulence to which it gives occasion.”

<sup>29</sup> We believe there may be serious discrepancies between the *Lectures on Jurisprudence* and Smith’s published writings, but we will not argue that here.

from whose injustice he can be protected only by the powerful arm of the civil magistrate continually held up to chastise it. The acquisition of valuable and extensive property, therefore, necessarily requires the establishment of civil government. Where there is no property, or at least none that exceeds the value of two or three days' labour, civil government is not so necessary. (WN VI.b.2, 709–10)

Smith's account presupposes his four stages of civilization (itself an elaboration and extension of Hume's sketch of a three-stage model in "Of Commerce," EMPL, 256):<sup>30</sup> those based on hunting, herding, agriculture, and manufacture (WN V.I.a, 689–708).<sup>31</sup> Smith thought that "progress" from one stage to the next was the "natural course of things." On the whole, Smith thought it was better to advance to a higher stage, but he was aware that important moral qualities (magnanimity, courage, self-command, etc.) could be lost in the transition. Moreover, he vigorously combated the idea, promoted by Hume ("Of Refinement in the Arts," EMPL, 271), that advanced societies always exhibit more "humanity" (TMS V.2.9, 205–10). Smith did not believe that it was inevitable that one moved from one stage to the next, nor that all stages needed to be passed through (WN III.i.3, 377).<sup>32</sup> Each stage is, for Smith, distinguished by a predominant form of socioeconomic organization. Smith recognizes an "early and rude state of society which precedes both the accumulation of stock and the appropriation of land" (WN I.vi.I., 65). This state, when the social division of labor has barely, if at all, taken place yet, is the hunting society. For Smith, the division of labor is the "necessary, though very slow and gradual consequence of a certain propensity in human nature . . . the propensity to truck, barter, and exchange one thing for another. Whether this propensity be one of those original principles in human nature, of which no further account can be given; or, whether, as seems more probable, it be the necessary consequence of the faculties of reason and speech, it belongs not to our present subject to enquire" (WN I.II.I–2, 25; on the deep-rooted nature of this propensity, see the remarkable echo in Nietzsche's *Genealogy of Morals*, Second Essay, Section 8). This passage, first, implies that Smith thought it likely that one can at least imagine human nature (at one point in the perhaps mythical past even prior to the division of labor) without this propensity; the more "probable" view is, in fact, one in which some now stable propensities of human nature require the previous development of some faculties. This is entirely compatible with the picture that Smith presents in his (published) essay *Considerations Concerning the First Formation of Languages* (eventually appended by Smith to the third edition of TMS) where the capacity for abstraction, reason and language, themselves, are slow cultural/societal *achievements* and not fixed givens of human nature. More-

<sup>30</sup> See John B. Stewart *The Moral and Political Philosophy of David Hume* (New York: Columbia University Press, 1963). Ronald L. Meek's *Social Science and the Ignoble Savage* [*Social Science*] (Cambridge: Cambridge University Press, 1976), 30–31, criticizes this, although helpfully calls attention to *Treatise* III.ii.8.

<sup>31</sup> For an account and intellectual context of the (Marxist) reception of Smith's four-stage theory, see Meek, *Social Science*, and Ronald L. Meek *Smith, Marx and After: Ten Essays in the Development of Economic Thought* (London: Chapman and Hall, 1977), or Andrew S. Skinner, *A System of Social Science: Papers Relating to Adam Smith*, 2nd ed. (Oxford: Clarendon Press, 1996).

<sup>32</sup> For more discussion, see Eric Schliesser, "Some Principles of Adam Smith's 'Newtonian' Methods in the Wealth of Nations," in *Research in History of Economic Thought and Methodology* 23 (2005): 35–77.

over, at the start of WN, Smith is deliberately bracketing questions about the fixed or unfixed nature of human nature. For the purposes of the inquiry at hand, Smith thinks he can take some elements or propensities of human nature as given. But this does not mean that he believes them to be unchanging. In any event, Smith's account of the hunting society is as close as he gets to a description of a state of nature in his published writings.

Let us now turn to the passage quoted at length from book V of WN. Note, first, that Smith agrees with Locke and against Hume that there can be *some* property before there is justice. Nevertheless, he assumes that in a hunting society, property will always be fairly limited. (Smith's position is by no means obvious because bows and arrows and, say, cooking utensils could be accumulated.) It is no surprise, then, that Smith, in the context of a critical discussion on attempts to prevent competition, (i.e., guild and apprenticeship laws, etc.), echoes Locke:

The property which every man has in his own labour, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of a *poor man* lies in the strength and dexterity of his *hands*; and to hinder him from employing this strength and dexterity in what manner he thinks proper without injury to his neighbour is a plain violation of this *most sacred property*. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him. (WN I.x.c.12, 138; emphasis added)

Smith's conception of property rights is narrower, however, than Locke's. Note, for example, that in the passage not all property is called "sacred and inviolable." Rather, "the property which every man has in his own labour" is called "the most sacred and inviolable." This is noteworthy because it implies that different kinds of property may have differing ranges of protection accorded to them. Moreover, Smith's conception, with its emphasis on the work performed by a poor person's *hands* (cf. WN I.ii.40, 469), is quite narrow in absolute terms; even his contemporary, Turgot, who held a similar view, has a broader understanding.<sup>33</sup> Surprisingly enough, perhaps, for those who tend to think of Rousseau as one of the intellectual fathers of the French Revolution and, more broadly, different strands of modern radicalism, Rousseau also has a much wider conception.<sup>34</sup>

<sup>33</sup> Emma Rothschild, *Economic Sentiments: Adam Smith, Condorcet, and the Enlightenment*. (Cambridge, MA: Harvard University Press, 2001), 84–85, quotes Turgot as advocating "respect for the most sacred of all property...the property of man in the fruit of his labor." (See also *ibid.*, 102.) The protection of the "fruits of labor" is broader than focusing on protecting the body that produces these fruits.

<sup>34</sup> See *Discourse on Political Economy* (DPE), paragraph 42: "[I]t is certain that the right of property is the most sacred of all the rights of citizens, and more important in some respects than freedom itself; either because it bears more directly on the preservation of life; or because, goods, being easier to usurp and more difficult to defend than persons, greater respect ought to be accorded to what can more easily be seized; or finally, because property is the true foundation of civil society, and the true guarantee of the citizens' commitments: for if goods were not in accord with person nothing would be so easy as to elude one's duties and scoff at the laws." We have consulted and slightly modified V. Gourevitch's translation in *Rousseau: The Social Contract and Other Later Political Writings* (Cambridge: Cambridge University Press, 1997). DPE is a crucial, and unfortunately neglected, source for understanding Smith's aims in WN, but a detailed study must await another occasion. Quesnay, whom Smith admired most among the Physiocrats, also advocated a much wider and stricter notion of property rights; see Hont and Ignatieff, "Needs and Justice," 16.

Second, Smith recognizes harms to one's frame of mind, body, and property (cf. *Treatise*, 3.2.2.7, 313). According to Smith, in a hunting society, men can harm each other's reputation and person. In affirming the former, Smith disagrees with Hume, for whom we "are perfectly secure in the enjoyment" in the internal satisfaction of the mind.<sup>35</sup> But, while "Envy, malice, or resentment" may prompt us to injure others, according to Smith, there is little reason to expect this to happen very often because in a hunting society we are not frequently ruled by these passions (in this Smith agrees with Hume, recall *Treatise*, 3.2.2.12, 316). There is little "interest" to be derived from inflicting such harm. Let's assume, for the sake of argument,<sup>36</sup> that this is correct. In a hunting society, then, there will be no need for the rule of law or extensive property-rights because there is little or no harm that needs to be prevented by it. Therefore, "Men may live together in society with some tolerable degree of security, though there is no civil magistrate to protect them from the injustice of those passions."<sup>37</sup> Before one assumes that Smith ascribes entirely to the poetic "fiction of the golden age," it is worth noting that Smith speaks only of a "tolerable degree of security." This accords well with his criticism of Rousseau in his earliest publication, *The Letter to the Edinburgh Review*; Smith finds Rousseau's description of life in the state of nature one-sided: "Mr. Rousseau, intending to paint savage life as the happiest of any, presents only the indolent side to view." According to Smith, Rousseau leaves out the "most dangerous and extravagant adventures" (§12, 251).<sup>38</sup>

For Smith, law arises only when there is an interest in it (recall Hume's account of the origin of promises).<sup>39</sup> Smith thinks an "advantage" in harming others only can arise when there is more extensive and unequal property distribution. This cannot occur in a hunting society, and comes about only after a major

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<sup>35</sup> Smith thinks that various forms of tranquility of mind can be available to prudent men (TMS VI.i.11–13, 215–16), and, especially, mathematicians and (natural) philosophers (III.2.20, 124). Smith believes the former can be tranquil because they live within their means and avoid upheaval. The latter can become tranquil because they are not dependent on "public opinion"; they are not withdrawn from the world, but experience the satisfaction of knowing that their success in it is justified (by the norms validated by their Impartial Spectators). Of course, not everybody in society can achieve tranquility; in TMS, Smith talks of the "vain splendor of successful ambition" (VI.i.13, 216) that causes men to elude tranquility, while in WN "the mean rapacity...of merchants and manufacturers" is singled out for such failure (WN IV.iii.c.9, 493).

<sup>36</sup> It is a bit strange to see Smith denying that there is any benefit at all from harm to the reputation of others. After all, it does provide a situational benefit, although not a material benefit—which is perhaps what Smith had in mind. (On the frequent distinction between the passions and the interests, see Albert Hirschman, *The Passions and the Interests: Political Arguments for Capitalism before Its Triumph* [Princeton, NJ: Princeton University Press, 1977].) Elsewhere, Smith is explicit about our need for status: "to be observed, to be attended to, to be taken notice of with sympathy, complacency, and approbation" (TMS I.iii.2.1, 50; the whole of I.iii.2 is relevant). See also D.A. Reisman *Adam Smith's Sociological Economics* (London: Croom Helm, 1976), ch. 4, "Consumer Behaviour."

<sup>37</sup> Cf. the last few lines of Hume's "Of Commerce": "the fewer goods or possessions people enjoy, the fewer quarrels are likely to arise amongst them, and the less necessity will there be for a settled police or regular authority to protect and defend them from foreign enemies, or from each other" (EMPL, 267).

<sup>38</sup> This essay is reprinted in EPS. See also "History of Astronomy," EPS, III.1–III.2, 48–50. Smith's main criticism of other moral philosophers is precisely that their systems are also "derived from a partial and imperfect view of nature" (TMS VI.i.1, 265).

<sup>39</sup> This is explored more fully in Eric Schliesser "Articulating Practices as Reasons: Adam Smith on the Conditions of Possibility of Property," *The Adam Smith Review*, Vol. 2, forthcoming.

change; shepherding must become a predominant form of social organization (WN V.i.b.12, 715). Now, even in this stage, it may take considerable time before formal rules of justice are developed; not only must inequality arise, but, at first, this inequality will enable the rich ones to have a “natural authority over all the inferior shepherds or herdsmen of his horde or clan” (V.i.b.11, 714).<sup>40</sup> Yet, eventually, “avarice and ambition in the rich” and “hatred of labor and the love of present ease and enjoyment” as well as the sheer “indignation” and “envy” in the needy poor make another person’s property a tempting target. In Smith’s view, the poor and rich are motivated by very different passions. Note that while for Hume greed is the prime cause of the origin of the convention of law, Smith assigns it only a partial cause in the smallest (for “one very rich man there must be at least five hundred poor”), albeit most powerful, part of society. Unlike Hume, Smith does not offer a single-passion explanation here. In this, Smith is merely following Hume’s *methodological* advice in avoiding a “love of simplicity” in explaining human affairs (Second *Enquiry*, Appendix 2, “Of Self-Love”).

Moreover, Hume’s account gives the impression that the rule of law is in the interest, both initially as well as thereafter, to everybody. Now, it is true that Smith thinks the rich and the poor both eye each other’s property, so both could benefit from order following its establishment. Nevertheless, he has no doubt that “Civil Government, so far as it is instituted for the security of property, is in reality instituted for the defence of the rich against the poor, or of those who have some property against those who have none at all” (WN V.i.b.12, 715). After all, at V.i.b.2, Smith singles out only the rich man’s nocturnal security!

But this account raises the question why, for Smith, to be law-abiding is moral at all if it is so clearly partial to the needs of the rich. Smith, too, is not blind to the wide-spread benefits of order that law entails (V.iii.7, 910 and II.i.30, 284–85). Nevertheless, Smith’s attack on Hume’s account of the moral authority of utility undercuts Smith’s ability to point to the benefits of the rule of law as a *source* of our moral obligations to follow the law; at best it is of secondary importance: “it is seldom this consideration which first animates us” against “licentious practices” (TMS II.ii.3.9, 89). Although we are often tempted to use and distinguish between efficient and final causes in our description of the phenomena of nature, and it is often quite natural to do so, we (moderns) know we can account for them with efficient causes. When we contemplate human affairs, however, we find it much more difficult to distinguish between efficient and final causation. Hume’s picture, while the product of “a refined and enlightened reason,” is erroneous because it imputes to reason “the sentiments and actions by which we advance

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<sup>40</sup> The editors of WN usefully refer to WN V.iii.89, 944, and TMS VI.ii.1.20, 226.

those ends” that are really the product of “natural principles” (TMS II.ii.3.5, 87).<sup>41</sup> Not surprisingly, therefore, Smith has recourse to a different story.<sup>42</sup>

“The moment injury begins,” Smith writes, “the moment that mutual resentment and animosity take place, all the bands of [society] are broke asunder, and the different members of which it consisted are, as it were, dissipated and scattered by the violence and opposition of their discordant affections.” Now, Smith has no illusions about people: “the misery of one, who is merely their fellow creature, is of so little importance to them in comparison even of a small convenience of their own” (TMS II.ii.3.3, 86). Nevertheless, he thinks that “when a single man is injured, or destroyed, we demand the punishment of the wrong that has been done to him, not so much from a concern for the general interest of society, as from concern for that very individual who has been injured.” For Smith, this concern is not produced by “love, esteem, and affection.” Instead, all that is required “is no more than the general fellow-feeling which we have with every man merely because he is our fellow-creature. We enter into the resentment even of an odious person, when he is injured by those to whom he has given no provocation” (TMS II.ii.3.10, 90).<sup>43</sup> That is to say, our moral approval of just punishment originates in our feeling of common humanity coupled with our ability to imagine, as impartial spectators, the natural resentment and hence the propriety (I.ii.3.8, 38) of retaliation by the victim. For Smith, just as meritorious acts warrant gratitude and deserved rewards, acts of demerit warrant resentment and deserved punishment.<sup>44</sup> As Smith explains: “Actions of hurtful tendency . . . seem alone to deserve punish-

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<sup>41</sup> Somewhat surprisingly, Smith calls Hume’s position, without mentioning Hume by name, superficial: “When by natural principles we [humans] are led to advance those ends, which a refined and enlightened reason would recommend to us, we are very apt to impute to that reason, as to their efficient cause, the sentiments and actions by which we advance those ends, and to imagine that to be the wisdom of man, which in reality is the wisdom of God. Upon a *superficial* view, this cause seems sufficient to produce the effects which are ascribed to it; and the system of human nature seems to be more simple and agreeable when all its different operations are in this manner deduced from a single principle” (TMS II.ii.3.5, emphasis added). That simple principle is human reason, and it is indeed agreeable to us mortals to think that we are guided by reason rather than by various passions.

Chapter three of Eric Schliesser’s Ph.D. dissertation, *Indispensable Hume: From Isaac Newton’s Natural Philosophy to Adam Smith’s “Science of Man”* [*Indispensable Hume*], treated the passage as exclusively relevant for understanding Smith’s views on different kinds of causation and epistemology. But it neglects to discuss adequately how Smith is here criticizing Hume’s account of the origins of justice. This paper corrects that presentation. As the editors of TMS note, in *Theorie der ethischen Gefühle*, translated and edited by Walter Eckstein (Leipzig, 1925), Eckstein pointed out that Hume is Smith’s target at TMS II.ii.3.6, 87, but Eckstein does not comment on II.ii.3.5. David Raynor (private communication) has suggested that Hume is not here the specific target of Smith’s criticism, but Grotius and Pufendorf. (The editors of TMS consider and reject this possibility.) Here we cannot do justice to Raynor’s detailed and subtle argument. Smith’s criticism, whether directed specifically to Hume or not, is applicable to all rationalistic accounts of the origins of justice.

<sup>42</sup> What follows has been inspired by Haakonssen, “The Science of Legislator” 83–87, Samuel Fleischacker, *Philosophical Companion*, and Stephen Darwall’s presentation at the Eastern APA 2002 in response to Emma Rothschild’s book, published as “Equal Dignity in Adam Smith,” *Adam Smith Review*, Vol. 1 (2004): 129–34.

<sup>43</sup> Cf. Nietzsche’s *Of Genealogy of Morals*. From Nietzsche’s point of view, Smith’s account is accurate as a representation of the development of a ‘slave’ morality.

<sup>44</sup> Thus, Smith’s views of justice and injustice are concerned not merely with propriety. See Stephen Darwall, “Sympathetic Liberalism: Recent Work on Adam Smith,” *Philosophy and Public Affairs*, 28 (1999), 142.

ment; because such alone are the approved objects of resentment, or excite the sympathetic resentment of the spectator” (TMS II.ii.1.2, 78).

Thus, as opposed to Hume, for Smith our moral approval of justice is not primarily derived from its utility (to ensure public order etc.). Rather this approval arises because we *resent* injury and naturally sympathize with the resentment of others.<sup>45</sup> Resentment, “derived from the imagination,” is for Smith one of the “unsocial passions” (I.ii.3.1, 34). Now, the term “unsocial passion” is potentially misleading. Smith does not deny that resentment is one of the glues that can hold society together; he affirms this at TMS I.ii.3.4, 35, although it can also be destructive (TMS II.ii.3.3, 86). All he means to say is that in order to get approval for one’s resentment one often must moderate its expression (in his terms: bring it down a pitch) from what would be the case in one’s “undisciplined nature.” Moreover, he thinks there is always something about “unsocial” passions that “disgusts us,” so we need to know the cause first before we can sympathize with it (I.ii.3.5, 36). No wonder he tries to distinguish among the useful, the beautiful, and propriety! Nonetheless, resentment “seems to have been given us *by nature* for defence, and for defence only” (II.ii.1.4, 79; emphasis added). Our resentment makes possible, even prior to the establishment of the rule of law, our desire for retaliation, which “seems to be the great law which is dictated to us by Nature” (II.ii.1.10, 82), and this sentiment undergirds later systems of justice. According to Smith, “In order to enforce the observation of justice, therefore, Nature has implanted in the human breast that consciousness of ill-desert, those terrors of merited punishment which attend upon its violation, as the great safe-guards of the association of mankind, to protect the weak, to curb the violent, and to chastise the guilty” (TMS II.ii.3.4, 86). Note that Smith asserts that Nature has put this “consciousness of ill-desert” not in our brain or in our reason, but in our breast. Thus, while Smith hedges his bets a bit (note his repeated “seems”), he considers resentment and our desire for retaliation an innate passion.<sup>46</sup> This is, incidentally, compatible with the view expressed in WN, where “resentment” is already present in a hunting society (V.i.b.2, 709).<sup>47</sup>

Hume himself had opened the door to Smith’s move to emphasize the role of the “darker passion” of resentment (second *Enquiry*, Appendix 2, 12, 169). As he writes:

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<sup>45</sup> The importance of resentment for Smith’s moral philosophy tends to be overlooked (but see T. Campbell [1971], *Adam Smith’s Science of Morals*, ch. 9, 186–204), it is, nevertheless, discussed quite extensively in TMS. We have found the following occurrences: I.i.1.4, 10; I.i.1.6–7, 11; I.i.2.5, 15; I.i.3.1, 16; I.i.3.8–10, 18–19; I.i.4.5, 21; I.i.4.10, 23; I.i.5.4, 24; I.ii.Intro.1, 27; I.ii.3, 28; I.ii.2.1, 31; I.ii.3.1–8, 34–38; I.ii.4.3 & I.ii.5.1, 40; I.iii.2.2, 52; I.iii.2.6, 56; I.iii.3.8, 66 (67); II.i.1.2–7, 68–69; II.i.2, 69–71; II.i.3, 71–73; II.i.4.3, 73–74; II.i.5.4–8, 75–76; II.ii.1.2–5, 78–79; II.ii.2.1–3, 83–85; II.ii.3.3, 86; II.ii.3.7, 88; II.ii.3.10–11, 90; II.iii.intro.4, 93; II.iii.1.1–7, 94–97; II.iii.2.3–10, 99–104; II.iii.3.1–2, 105; II.iii.3.4, 106–7; III.2.9–11, 118–19; III.3.5, 137; III.3.19, 144; III.4.4, 158; III.4.8, 159; III.4.12, 160; III.5.4–5, 164–65; III.5.9, 168; III.6.1, 171; III.6.5, 172; III.6.12, 176–77; IV.2.2, 188; V.2.9, 205; VI.ii.intro.2, 218; VI.ii.3.1, 235; VI.iii.18, 244; VI.iii.35, 255; VII.ii.1.4–7, 268; VII.ii.1.50, 294; VII.ii.2.2, 295; VII.ii.2.11, 297; VII.ii.3.4, 301; VII.iii.1.3, 317; VII.iii.3.9–13, 323–24; VII.iii.3.15–16, 326.

<sup>46</sup> See Spencer Pack, “Adam Smith on the Virtues: A Partial Resolution of the Adam Smith Problem,” *Journal for the History of Economic Thought* 19 (1997): 128–30.

<sup>47</sup> As *Philosophical Companion* notes, while resentment can in some circumstances be “generous and noble” (TMS I.ii.3.8, 38), it can also be bad. In the passage that we quoted from TMS II.ii.3.3, 86, the effects of resentment need to be *restrained* by justice lest society perish.

The dilemma seems obvious: As justice evidently tends to promote public utility and to support civil society, the sentiment of justice is either derived from our reflecting on that tendency, or like hunger, thirst, and other appetites, *resentment*, love of life, attachment to offspring, and other passions, arises from a simple original instinct in the human breast, which nature has implanted for like salutary purposes. If the latter be the case, it follows, that property, which is the object of justice, is also distinguished by a simple original instinct, and is not ascertained by any argument or reflection. But who is there that ever heard of such an instinct? Or is this a subject in which new discoveries can be made? We may as well expect to discover, in the body, a new sense, which had before escaped the observation of all mankind (second *Enquiry*, 3.2.40, 96, emphasis added; see also 3.1.18, 88, and Appendix 1.3, 158).

As Stephen Darwall, who called our attention to the role of resentment in Hume, points out, “It’s as if Hume sees the relevance of resentment, but his system requires him to put everything in terms of mutual advantage” (personal communication). To use a Humean viewpoint, we think it is not so much at this point that Hume sees the relevance of resentment; but he does intuitively feel its relevance. This may be why he inserts this otherwise puzzling paragraph on the possible resentment of inferior non-human species (second *Enquiry*, 3.1.18, 88). In any event, Smith, of course, stepped up to this Humean challenge. As we have seen, he agrees with Hume that resentment arises from an original instinct. (Hume limits its presence to those who have a “warm concern for the interests of our species” 5.2.39, 113). But Smith denies that justice is either the result of reflection (recall TMS IV.2.12, 192) or, thus, itself a passion directly derived from some original instinct. For Smith this is a false choice. Paradoxically, for Smith, the same passion, resentment, that can destroy society (TMS II.ii.3.3, 86) is required to get the social institution of justice off the ground, enabling increasingly complex societies.<sup>48</sup> Thus, Smith severs the intimate connection that Hobbes and Hume made between justice and property.<sup>49</sup>

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<sup>48</sup> Smith would no doubt have shown in more detail in his book on justice exactly how the passion resentment works in human history ultimately to help develop the social institution of justice, thus enabling increasingly complex societies to get off the ground. As Smith wrote at the very end of TMS: “I shall, in another discourse, endeavour to give an account of the general principles of law and government, and of the different revolutions they have undergone in the different ages and periods of society, not only in what concerns justice, but in what concerns police, revenue, and arms, and whatever else is the object of law” (TMS VII.IV.37, 342). See also paragraph 2 of the advertisement to the 6th ed. of TMS. Smith never published that work. Nonetheless, it is clear from the student lecture notes of his course in jurisprudence that this account would have been intimately bound up with his four stage theory of socioeconomic development. This four stage theory in turn no doubt influenced Lord Kames’s critique of Hume’s theory of justice (see D. D. Raphael, *Concepts of Justice* [Oxford: Clarendon Press], 105–6). The relationship between Kames, who was instrumental in bringing about Smith’s public lectures in Edinburgh in 1748, and Smith is deserving of further study.

<sup>49</sup> There are, of course, other crucial differences between Smith and Hume. For example, on how the difference between Smith and Hume on sympathy connects to wider disagreements, see Stephen Darwall, “Empathy, Sympathy, and Care,” *Philosophical Analysis* 98 (1998): 264–69; see also David M. Levy and Sandra J. Peart, “Sympathy and Approbation in Hume and Smith: A Solution to the Other Rational Species Problem,” *Economics and Philosophy* 20 (2004): 331–50; and finally, Eric Schliesser, “The Obituary of a Vain Philosopher: Smith’s Reflections on Hume’s Life,” *Hume Studies*, 29 (2003): 327–62.



## 3. CONCLUSION

To sum up succinctly: for Smith *some* property relations can precede the rule of law, which is instituted to defend the rich from the poor. This supports the Lockean idea that *some* property rights are sacred.<sup>50</sup> Moreover, our desire for, and moral approval of justice appears to be a natural, and not merely conventional, response to our resentment over injuries to ourselves or those we witness in others. Justice originates not as a result of our perceived utility by humans—flattering as that may be to our species. The efficient cause of justice for Smith is the passion resentment.<sup>51</sup>

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<sup>50</sup> In Smith's political theory this is put in the service of some redistributionist policies; see Spencer J. Pack, *Capitalism as a Moral System: Adam Smith's Critique of the Free Market Economy* (Brookfield, VT: Edward Elgar Publishing, 1991), Schliesser, *Indispensable Hume*, ch. 5, and Fleischacker, *Philosophical Companion*, for details.

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