

THE *LECTURES ON JURISPRUDENCE*

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Adam Smith was professor of moral philosophy at the University of Glasgow from 1752 to 1764.¹ He taught two classes, the “public class” on moral philosophy and a more advanced class in which he presented the new rhetoric and belles lettres (now LRBL) that he had first taken up in a series of public lectures in Edinburgh prior to his appointment in Glasgow. The former class encompassed jurisprudence, a subject that Smith had likewise first presented to the public in Edinburgh and that is the subject of the present chapter. Smith did not write a work called “lectures on jurisprudence”; the works that have been published under this title are transcriptions that derive from students’ handwritten reports of Smith’s lectures. Three such reports have been found, one from the early part of Smith’s tenure in Glasgow, probably from the period 1753–55, one from 1762–63, and one virtually certainly from his last year as professor, 1763–64. In addition, we have other much shorter accounts of Smith’s lectures, of which the most important one will be mentioned below. These miscellaneous writings are the main sources for the present overview of Smith’s teaching of jurisprudence, and we shall begin with a brief characterization of each.

The earliest notes were found in a commonplace book of John Anderson, who had been a student at Glasgow and later became a professor.² It seems that Anderson made excerpts from a student’s set of notes from Smith’s lectures, and the result is a quite incomplete and in places somewhat confused record (of ten printed pages). The Anderson Notes have mostly been ignored by Smith scholars, but they are in fact important for several reasons. They confirm that Smith from early on followed the general order of presentation that he presumably maintained continuously until his

final year of teaching and that he had taken over this order from his teacher, Francis Hutcheson, to whose textbook he gives specific page references.³ The notes also make it clear that Smith was already deeply interested in Montesquieu's recent *Spirit of Laws* (1748). Not least, Smith had formulated two principles that remained basic to his jurisprudence, and which seem to show the influence of David Hume.

The notes from 1762–63, now known as the “A” set of notes, form a large manuscript (nearly four hundred pages in print) that a student probably wrote up from shorthand notes taken in class.⁴ On nearly all the topics covered, it is the most detailed record, but it has gaps and is incomplete, for no notes have been found from the final part of the lectures. Only discovered half a century ago and published in 1978, this set has played a major role in modern scholarship, as it seemed to provide significant information about the work on law and government that Smith maintained an ambition of publishing until the very end, when he had friends burn his papers as he lay dying.⁵

The “B” notes virtually certainly stem from 1763–64. In fact, Smith left in the middle of that academic year, but his assistant, Thomas Young, completed the course from Smith's lecture notes.⁶ These notes were first discovered and published in the 1890s but had only a limited impact on the interpretation of Smith, until they were supplemented by the A notes. The former are dated 1766, when they presumably were professionally copied from a student's class notes. These notes are shorter (some 160 printed pages) and less detailed than the A notes, but they cover the whole of Smith's series of lectures on “Justice, Police, Revenue and Arms” (plus the law of nations). A remarkable thing about this set is that it records Smith as having made a drastic change in the order of his presentation for this final year of lecturing, a matter to be returned to below.

The three sets of notes mentioned so far are all concerned with jurisprudence, politics, economics, defense, and international relations. In Smith's course on moral philosophy there were, however, two preceding subjects, natural theology and “Ethics, strictly so called,” as John Millar said. Millar, Smith's former student and

later colleague and friend, gave an overview of the whole of Smith's course in a few paragraphs as part of information requested by Dugald Stewart, when the latter was preparing his memorial address for Smith to the Royal Society of Edinburgh. Only Stewart's quotations from Millar's letter have been preserved. About Smith's treatment of natural theology they say only that it dealt with the proofs of the existence and attributes God and the principles on which the mind thinks about the divinity, that is, the standard topics of the discipline, presumably complemented by the psychology of projecting human characteristics to an image of divinity that he sketches in *The Theory of Moral Sentiments*. In contrast to the rest of Smith's course, the lectures on natural theology had no subsequent publication history, and we can infer from circumstantial evidence that they were brief. About the other parts of Smith's lectures Millar was more helpful. He confirmed that "Ethics" was largely published in *The Theory of Moral Sentiments*,⁷ and he also explained that Smith's lectures on "the political institutions relating to commerce, to finances, to ecclesiastical and military establishments . . . contained the substance of the work he [Smith] afterwards published under the title of *An Inquiry into the Nature and Causes of the Wealth of Nations*."⁸ This judgment has been confirmed in general terms by subsequent scholarship, which has discussed the development of Smith's views on the themes mentioned.⁹ Apart from natural theology, which Smith evidently had no interest in pursuing, this leaves the lectures on justice without any published equivalent from his own hand. This is not, however, quite accurate, for these lectures were centrally concerned also with government and law, both of which are significant subjects in the *Wealth of Nations*, while the general theory of justice is developed in *The Theory of Moral Sentiments*. Still, it is in the justice section of the lectures on jurisprudence that we find the fullest systematic exposition of law and government, and the nexus of justice, law, and government will be the main subject for our analysis.

Smith began his lectures on jurisprudence nearly verbatim as he had concluded his *Theory of Moral Sentiments*: "Jurisprudence is that science which inquires into the general principles which ought to be the foundation of the laws of all nations" (LJB 1; cf.

TMS VIII.iv.37). What did he mean by “ought” and by “general principles”? Smith never formulated any fundamental law of nature, and in tune with this he never indicated any authoritative legislator. The divinity of revealed religion was never considered. He did acknowledge the providence of nature’s God, but this was never a criterion for people’s choice of behavior. The thought of acting in accordance with God’s purpose could be an encouraging confirmation of our conscience, when, in hard cases, we imagined that we were acting morally right. But the divine purposes could not be specified in the form of moral or juridical norms; these humanity would have to formulate in response to its needs. The normative force of the “general principles” consists in the necessity to meet human needs as these are known in the history of the species; they specify what is required for human life in society. Our means of knowing these requirements is the empirical investigation of human life as it is and has been lived, and this is what Smith attempted both systematically and historically. The principles that may be found in this way are “general” in the sense that they are generalizations that are derived from empirical mores and historical societies, but while we may be unable to imagine life without some of them, this does not lend them transcendental authority.

What are those “general principles”? In *The Theory of Moral Sentiments* (VII.iv.7–37) Smith discussed what he considered the two main lines of thought concerning moral, including juridical, rules: the casuistry that had become a prominent part of scholastic theology (and been taken over by Protestant moral theology) and the natural law that had flourished in the wake of Hugo Grotius. Smith was critical of both. He rejected the attempt by casuists “to direct by precise rules what it belongs to feeling and sentiment only to judge of” (VII.iv.33); they were so to speak not casuistical enough, in the hackneyed sense of the term. Furthermore, these moral theologians thought that they could formulate such rules into a system that covered all aspects of morals, not only duties to avoid harm, but also injunctions to do good. The latter was futile, as the natural lawyers recognized. The jurists did separate the just from the good, but they did not adhere to the distinction and often seemed to be confused about its implications (VII.iv.15). Smith

even referred to three of the leading lawyers, Samuel Pufendorf, Jean Barbeyrac, and Hutcheson, as themselves casuists (VII.iv.11). He continued this criticism in the introduction to the lectures on jurisprudence, where he brushed Pufendorf aside as being no better than “the divines” in answering Hobbes. The Englishman had maintained that only with the contractual creation of civil sovereignty was common human morality possible, whereas Christian natural lawyers, including Pufendorf, had maintained that law and rights were characteristic for humanity also in its natural state. This may not be a very satisfactory reading of Pufendorf, but the point here is that Smith saw this as a meaningless debate, “as there is no such state [as the natural] existing” nor, as mentioned, any basic natural law (LJB 3). All law in the proper sense is positive law, but “[s]ystems of positive law . . . can never be regarded as accurate systems of the rules of natural justice” (TMS VII.iv.36).

The only thinker who escaped relatively unscathed from Smith’s brief survey of modern jurisprudence was Grotius. Both in *The Theory of Moral Sentiments* and in the lectures on jurisprudence Grotius was said to have given not only the first, but also “the most compleat work on this subject” (LJB 1; cf. TMS VII.iv.37). Smith’s characterization of Grotius’s *De iure belli ac pacis* (1625) is remarkable: “It is a sort of casuistical book for sovereigns and states determining in what cases war may justly be made and how far it may be carried on” (LJB 1). This had led Grotius to analyze the internal jurisprudence of states, and although the latter could achieve greater clarity and certainty than was possible in casuistry, it appears that what Smith appreciated in Grotius was his “particularism,” namely his focus on rights, conflict, and peace settlement in jurisprudence (cf. Smith’s Grotian approach to the law of war, LJB 339–54). It is through these concepts that we can grasp what he meant by the general principles of jurisprudence.

The very earliest preserved statement of Smith’s jurisprudence, the Anderson Notes, begins with two principles:

- [1] To deprive a man of life or limbs or to give him pain is shocking to the rudest of our species when no enmity or grudge subsists, i.e., where no punishment is due or danger apprehended.

- 2 Principle[:] We acquire a liking for those creatures or things which we are much conversant with. and thus to deprive us of them must give us pain. (Anderson Notes, p. 467)

The first principle is a simple version of the idea that the integrity of the individual person is something basic in people's mutual recognition of each other, and that it is constituted by third persons' reaction to violations of it. The second principle concerns the "extension" of the individual person because of its pursuit of satisfaction of its desires, which leads to a more complex personality and hence a wider scope for violations of that person. The bulk of the Anderson Notes are concerned with the extension of personality through the acquisition of possessions and property and through contractual relations with others. Smith seems already here to be applying Hume's theory of association to account for the connections between the person and its surroundings. It is remarkable how confident Smith already is in undertaking historical analyses of these matters, and the influence of Montesquieu is evident from his sure-footed criticism of specific points in *The Spirit of Laws*, such as the historical role of bills of exchange, the connection between interest and the quantity of money (where he leans on Hume), polygamy, and other matters that remained in his teaching and writing.

It is the two principles stated at the opening of the Anderson Notes that are developed into Smith's theory of rights as the cardinal point of his jurisprudence. In the case of the first principle, the connecting link is the *Theory of Moral Sentiment's* analysis of the formation of personal identity.¹⁰ This Smith sees as a sociopsychological process of interchange between each individual and the persons surrounding him or her. As we grow aware that we are the objects of observation simply by living among others, we become observers of ourselves, and this is the root of self-awareness as a person and, eventually, of the formation of our conscience. Since our very being as self-conscious agents is dependent upon our social context, we learn that we are vulnerable to harm not only as physical beings but also as social individuals, namely through multiple forms of misrecognition by others. Our appreciation of this condition can be articulated in the form of claims to our basic natural rights,

namely, the rights to life, bodily integrity, freedom to make use of our person in intercourse with the surrounding world, including with other individuals (e.g., right to marriage), and the integrity of one's social identity ("reputation"). The second principle from the Anderson Notes becomes Smith's theory of the "adventitious" (or acquired) rights that arise when the person is associated with things or with other persons in the world; in other words, rights to property and to fulfillment of contracts. The natural and adventitious rights together make up the juridical status of the person considered simply as an individual.

The basis for rights, in Smith's view, is injury. In recognizing something as injury to a person, we ascribe that in which the person has been injured as a right to the injured person—his or her physical integrity, freedom of movement, property in things, voluntary relations with other individuals, and so on. The idea of rights that is the key to his jurisprudence is thus an important part of the spectator theory of justice as developed in *The Theory of Moral Sentiments*.¹¹ This raises the question of why he singles out some rights as natural; if the ascription of rights is a matter of spectator recognition, are not all rights in a sense social? The simple answer is yes, all rights and, indeed, the whole of morality arise from the interaction of humanity. Smith worked in a conceptual world that had been shaped by repeated discussions about the man-made character of moral, including social, phenomena. First of all there had been the many attempts to formulate this idea in terms of contracts of one kind or another, and these attempts continued right through the seventeenth and eighteenth centuries, not least because of the perceived need to limit, and later to exploit, their radical potential as theories of political authority. Second, and more recently, there had been concerted attempts to replace the idea of contract with theories of spontaneous social interaction. Here the most important effort in Smith's world had been David Hume's theory of the "artificiality" of important sections of morality, notably justice. Smith must be seen as driving Hume's argument more or less to the limit by simply dissolving the distinction between natural and artificial parts of morality, an effort epitomized in his declaration that there is no such thing as a state of nature, his associated ne-

glect of the idea of a fundamental law of nature, and his spectator theory of natural rights. In this perspective the contract theory had cleared a conceptual space in which culture, including economic culture, according to Hobbes and Pufendorf, could arise thanks to the exercise of power, whereas Hume and especially Smith filled the same space with a theory according to which power was an integral part of culture. This is the point where Smith's theory glides over into a historical theory of government, as we shall see.

When Smith counts the rights to personal integrity as natural, despite their social origins, it is because they are obvious and therefore pervasive; they come, as it were, naturally to people “[t]he origin of natural rights is quite evident. That a person has a right to have his body free from injury, and his liberty free from infringement unless there be a proper cause, no body doubts” (LJB 11). He thinks that the injuries that define these rights are among the most generally recognized aspects of the moral life of the species. However, generality is not universality, and Smith accepted that there were societies and periods in which even bodily injury was differently conceived than in contemporary European society. When the “savages in North America” accepted torture or the early Greeks exposure of children as part of their social practice, Smith certainly did not like it, he thought it barbarous, and he had no doubt that modern mores were much preferable, but he did not seem to think that the indigenous Americans or the very early Greeks had set aside a natural right in some cosmopolitan sense. The limit he saw to such customs was, rather, that of the viability of societies that harbored them.¹² Similarly, when he discussed how the idea of incestuous relations has varied greatly, his critical attitude to several of these arrangements was held in terms of social utility and personal revulsion; there is no invocation of natural rights to indict the cases as unjust.

In the big picture of human history, however, natural rights are considered natural because they tend not to change in such a way that one can say that they have a history. This is the crucial difference between them and the adventitious rights. While natural rights are self-referential, in the sense that they refer to the person alone, the adventitious rights are relational, in the sense that they

concern the relationship between the person and the surrounding world, and these relationships vary, giving the rights a history. The simple human needs for sustenance, shelter, and procreation could be considered part of the natural history of the animal creation; but the satisfaction of such needs for humans will vary with opportunities and tastes in different kinds of situations, and it will therefore have a moral history. Smith sought to order the situations in which humanity satisfies its needs by describing four types of subsistence and social organization, namely, those of the hunter-gatherer society, nomadic society, agricultural society, and commercial society. Again the concept of injury was a basic tool in his analysis, for one can say that the four forms of society are characterized by different forms of possible injuries and consequently have different kinds of rights. The theory may also be regarded as an extensive replacement of John Locke's labor theory of property, which Smith clearly had in his sights. It was not the labor as such that created a property right; labor, or more broadly the productive activity, was instead an important factor in inducing the social group—the spectators—to recognize the relationship between the productive person and the thing produced, and it was this recognition that was the basis for property. But what counted as labor would vary from one type of society to another.

Smith used the theory of the four forms of society to transform another of the standard issues in natural law, namely, the idea that government was founded upon a contract, whether explicit, tacit, or implied. A crucial feature of British political thought in general, the idea of a social contract was felled by Smith because it had neither historical nor psychological foundation. Only rarely had government arisen from a contract, and if it had, the grounds for its continuing support over time must be sought elsewhere. Furthermore, people simply did not think of allegiance as a matter of contractual duty. Instead political allegiance had to be accounted for in terms of the social psychology set out in *The Theory of Moral Sentiments*, and this showed that humanity had a general tendency to sympathize with people of “[s]uperiour age, superior abilities of body and of mind, ancient family, and superiour wealth”; those “seem to be the four things that give one man authority over an-

other” (LJB 13). In addition, people would always be looking for the benefit of government, especially in providing protection and settling disputes. These two “principles of authority and utility,” not contract, provide the basis for government; they are present in all societies, the former being the more prominent in monarchical government, the latter in republican. However, just as with the basis for rights, namely injury, so with authority and utility as the bases for allegiance: they demand a history. What counts as a public benefit (Smith discounts private utility as a historical force in this connection) depends upon the type of society. And among the factors that confer authority, people “give the preference to riches,” since “superior abilities of body and mind are not so easily judged of by others” (LJB 13).¹³ However, riches, or property, are inherently subject to historical variation, and the four forms of society are models of these variations.

The theory of these four forms is, in other words, about types of social relations, namely, of exclusion, dependence, and power. Hunting and gathering for survival require little social organization, establish only the simplest possession, and cater for only relatively few individuals at a time. Such societies need only powerful warrior figures whose ad hoc utility is obvious but yield nothing that resembles government and law. Nomadic society is dramatically different. Here is real property in moveable goods, as distinct from mere physical possession, and the fourth source of authority, “superior wealth,” accordingly becomes the dominant factor. Property is an objective, external, and potentially alienable feature of the person (in contrast to the subjective characteristics of ability and age). It is in fact an abstract relationship, and as such it can be sustained only by force, and shepherd society therefore produces central features of government and law. Due to the nexus of concentrated wealth, authority, and power in the hands of individual chiefs, this is the most unequal type of society. Agricultural society is again entirely different because it makes social living much more stationary and requires the exclusion of outsiders from the actual ground on which any social group lives. This necessitates much stronger government to provide external security, and when ownership of the land is divided up and transferred from the collectivity to

individuals, further strengthening of government as well as elaborate rules of ownership become necessary. Furthermore, the exclusion of some people from the cultivated areas and the need for places of refuge in times of war lead to the concentration of non-agriculturalists in towns and a division of labor between town and country. With the formation of cities, the possibility arises that other forms of “superior wealth” will support authority, especially in actual city-states. In a purely agricultural society authority arises from the ownership of land, but in cities commercial wealth is decisive. Commerce in the sense of the exchange of goods is, of course, to be found in all types of society, but in commercial society not only the relation between proprietor and property but the property itself is completely abstract, namely, the symbolic property of money and credit for investment. This requires a still more elaborate legal system, and it tends to come about first in small city-states, but eventually it spreads in some degree to larger societies that are also agricultural. This leads to new challenges to existing forms of government, such as the British, as agricultural, commercial, and monetary interests vie for influence.

Smith often talked of the types of society as “ages,” which seems to imply a historical sequence, and in some measure he did think in this way. He certainly used the rhetoric of the “natural” order of development, when he needed it to chastise the special interests that exploited government. It is nevertheless misleading to see the theory as simply and straightforwardly historical. First, he offered only relatively little explanation of the factors that will make one age turn into another, and those are mostly the broader circumstances that may make change possible, especially population pressure that requires more productive forms of labor and organization, but also the need for leadership in order to face external threats to the social group. Second, his account of the actual course of history was not a four stages sequence. Ancient Greece and Rome were developing commerce alongside agriculture, and, most crucially for modern Europe, it was the wandering barbarians of Northern Europe who destroyed the agricultural and proto-commercial society of the Roman Empire, thus upsetting the whole of subsequent European history in such a way that com-

merce developed long before agriculture had reached proper flourishing. Furthermore, Smith was well aware of the existence of both nomadic and hunting societies that interacted with contemporary commercial society; and it was not exactly a historical necessity that all of Europe itself would successfully become commercial.

The difference between the four stages theory and Smith's narrative of the actual course of history is also underlined by the European parochialism of the latter. It has rightly been pointed out that Smith's history was written from an "archipelagic" perspective, hence the pivotal role of the ancient Attic settlements, whereas he did not apply his stages theory to "the river valleys of Asia or Africa. The great cities of Egypt and the Fertile Crescent are excluded from this history."¹⁴ He was simply attempting not a universal history but an analysis of the unique case of Europe. In tune with this, the factors that move things, in Smith's view of history, are particular: physical geography (e.g., Attica's natural inland defenses and access to the sea; elsewhere natural harbors, navigable rivers, etc.), war (invasion of Rome), internal violence (the Dutch and the American rebellions), luck (survival of cities after the fall of the Roman Empire), greed and vanity (feudal landowners), religious fancy (WN V.i.g.iii, passim), technological inventions (oceangoing shipping, armaments), social inventions (paper credit and banking), and other incidental factors. It is this open-endedness that makes it intelligible how government can grasp opportunities and change the course of events, and Smith thought that modern government had a major chance of destroying the remnants of the feudal order, of preventing the perversion of government by the new "moneyed interest" of capitalists, of facilitating social development through education, public works, a stable currency, strong defense, and so on.

The theory of justice that Smith based upon *The Theory of Moral Sentiments* was a theory of rights, and, as indicated, he needed to fuse it with his theory of the four types of society because rights (through injury) were socially determined. However, with the four stages account there is a certain shift of focus from rights to government and law. What is the relationship between rights and law? As we saw, some elementary rights may be recognized even in the first age of society where there is no real government

and law. Similarly, in modern Europe there may be recognition of rights between states, but there is no international government to enforce the law of nations, as Smith stresses. Furthermore, people recognize rights that are no part of the law within established government; and in line with this, one of the reasons for Smith's preference for common law was that it was a fund of rights that was independent of the government's law. As might be expected in view of his cavalier attitude to the distinction between natural and conventional—as signaled by his peremptory rejection of the idea of a “natural” state of humankind—the important point for him was not whether rights were “natural” in the technical sense of the natural lawyers. The important thing was that humankind had a distinct tendency to generate rights also independently of government, thus presenting government with its main challenge, namely how to enforce rights.¹⁵ The ability of government to meet this challenge depended on the type of government that was possible, and the latter was itself a historical question that was necessitated by *The Theory of Moral Sentiments*, namely, the necessity of giving contextual content to the two principles of authority and utility.

Smith's overriding ambition was to integrate the theory of rights with the theory of law and government, and it is a mistake to see one or the other as the more fundamental. Both were directly dependent on his moral psychology, and in that sense he provided an alternative naturalism to that of traditional natural law. At the same time, this moral psychology necessitated historical accounts of the key features of civic life, namely, rights, law, and government. This tightly constructed analysis was his solvent for the problems he found in the post-Grotian natural law that provided the framework and much of the idiom with which he worked. If we understand rights to be the core of the theory of justice and allegiance to be equally basic to the theory of government, and if we accept that both rights and allegiance of necessity are historically determined in human life, then we have a reasonable idea of the sort of construction Smith had in mind with his project of a natural jurisprudence that encompassed the general principles of justice and of law and government. This would obviously be distinct, as he maintained, from the specific history of “the different revolutions

[the principles] have undergone in the different ages and periods of society,” and from the positive jurisprudence of “the particular institutions of any one nation” (TMS VII.iv.37), but it would be a demonstration of why the principles had to have a history and how they functioned in different contexts. Failure to understand this nexus between the permanent (“natural”) features of social psychology and the historicity of humanity’s mode of living was a failure to understand the “principles that ought to run through and be the foundation of the laws of all nations” (TMS VII.iv.37).

Smith wanted a “system” of such principles, but this does not seem to have meant the systematic derivation of rules of justice from a *Grundnorm*, such as a basic law of nature. There is no such norm in his thought; humanity has to create its own obligations. And the systematicity that he desired seems to have been the comprehensiveness that he found in Grotius. Grotius of course operated with a plurality of sources of norms, which explains why Smith, in approving of it, characterized his work as “casuistical.” In other words, for Smith there seemed to be no conflict between a pluralism of norms and a “system” of principles. What Grotius did not have was a social psychology that explained why and how the principles of justice arose in their different forms. If Smith could do this—as he proposed—then he would have added to the authority of the rules of justice; not only were they backed by juridical principles, historical practice, international consensus, and so on, as in Grotius, but also by the psychology of social interaction. In a perspective such as Smith’s, the best reason for suggesting that certain rules ought to be heeded was (to echo one of his favorite formulations) that they were heeded, that they could be heeded and under certain circumstances would be heeded, namely, with proper enlightenment—by his “system.”

Smith did not leave us this system, and all we have are the brief outlines at the end of *The Theory of Moral Sentiments* and the students’ notes from his lectures on jurisprudence. If one ascribes to him our modern notion of normativity, it may seem impossible that he could have completed his project. If one accepts instead the pluralism indicated above, there is no reason why he could not have done so. However, he was both a perfectionist and one of the few

major thinkers who actually lived up to the period's ideal of privacy, and so he got his friends to burn what was not ready for the public.

In the records that have survived, it is an open question how he would have preferred to *present* the relationship between the theory of rights and the theory of government. At least since the lectures in circa 1753–55 (the Anderson Notes) and up until his penultimate year of lecturing in Glasgow, he followed the approach that his teacher, Hutcheson, had adapted from Pufendorf:

The end of justice is to secure from injury. A man may be injured in several respects. 1st, as a man[.] 2^{dly}, as a member of a family[.] 3^{dly}, as a member of a state. As a man, he may be injured in his body, reputation, or estate. As a member of a family, he may be injured as a father, as a son, as a husband or wife, as a master or servant, as a guardian or pupil. . . . As a member of a state, a magistrate may be injured by disobedience or a subject by oppression, etca. (LJB 6–7)

Even though the arrangement was Pufendorfian, the method of analysis on each topic was by means of Smith's notion of rights defined by injury. Smith's focus on the particular case as the core of the system of justice is further underlined by his emphasis on the role of courts in the history of society, by his high regard for common law, especially the English (e.g., LJA v.31–32; LJB 74; LRBL ii.200–204), and by his idea of the importance of equity, which he virtually identifies with the reasoning of the impartial spectator and with "natural justice" (e.g., LJA ii.28 and 80). This particularism is clearly the background to Smith's liking for Grotius and his "casuistry."

In his final year of lecturing, Smith made a drastic change in this order of presentation, proposing now to deal first with civil society, then familial society, then the individual person: "The civilians begin with considering government and then treat of property and other rights. Others who have written on this subject begin with the latter and then consider family and civil government" (LJB 11). By the unspecific "civilians" Smith must have meant the Roman law as preserved in Justinian's *Institutes* and *Digest*, which remained very much part of contemporary legal culture both in

the form of scholarly commentary and in the form of adaptations to domestic law. In this literature there was generally some exposition of governmental authority and lawmaking before turning to rights in the family and then the rights of persons. The specific ideas of government were probably not of importance to Smith, but the reference was a readily understood signal of the general shift he intended away from the “others,” by which he meant the natural lawyers whom he had followed hitherto.

The new arrangement might be seen as a means of putting greater emphasis on law and government, but the internal logic of the argument remained the same as it had been in the preceding years. The individual subject areas were not *substantially* changed, only the order of presentation. As Smith said about the two approaches, “There are several advantages peculiar to each of these methods, tho’ that of the civil law seems upon the whole preferable” (LJB 11). In other words, it did not matter a great deal, yet he did make a change. We may speculate that Smith was beginning to lay more specific plans for the book on “the general principles of law and government” that he had foreshadowed at the end of *The Theory of Moral Sentiments* (VII.iv.37), and which he knew that he might soon expect to have a freer hand to write. (His departure from Glasgow was more or less certain by the beginning of the session in 1763.)¹⁶ He may have wanted to experiment with an exposition free of the limitations of the natural law system. The latter had been a convenient way of proceeding from the moral philosophy to the jurisprudence section of his course, since the spectator analysis of justice had already been provided in the former. But since the conclusion from this philosophical theory was that justice was a situationally dependent practice and hence the sort of thing that always had a historical aspect, a self-contained treatment of the subject—such as an eventual book—might well seem to benefit from an analysis in terms of that which had an actual empirical history, namely, historical types of society within which the enforcement of rights could be analyzed.

“The first and chief design of every system of government is to maintain justice”; “Justice . . . is the foundation of civil government” (LJA i.1; LJB 5). However, as we have seen, Smith did not

consider justice to be the *only* object of law. Also “police,” revenue, arms, and the law of nations had to be taken into account, and a great deal of Smith’s analysis of society was concerned with the ways in which all of them had challenged justice in the past, did so at present, and were likely to continue to do so in the future. He clearly believed that commercial society with its deep and deepening division of labor offered special opportunities of solving some serious problems, especially those of “cheapness of commodities,” the personal independence of working people, the replacement of war by international trade. But at the same time commercial society presented its own problems, such as the “mental mutilation” of the working class due to the ever greater division of labor, the neglect of education arising from the same cause, the loss of public spirit, especially in matters of defense, wealth creation without a firm link to the country, monetary corruption of politics. “To remedy [such] defects would be an object worthy of serious attention” (LJB 333). It all depended on the ability of government to understand these dangers and to take the opportunities, and Smith did not have great faith in this happening. This is shown, not least, by his appreciation of his own voice as part of this contingency: he thought it as absurd to expect his “natural system of liberty” to become reality as More’s Utopia or Harrington’s Oceana (WN IV.ii.43). Indeed, the system was rather an antisystem, inasmuch as it would be based upon the simple principles of negative justice, or the basic rights, that had to be elaborated into law according to historical circumstance and in competition with other needs, such as defense. Piecemeal steps on this path was the best that one could hope for.

NOTES

1. Though he gave some lectures on the subject already in 1751–52 when he was professor of logic. Cf. I. S. Ross, *The Life of Adam Smith* (Oxford: 1995), chaps. 8–9.

2. R. L. Meek, “New Light on Adam Smith’s Glasgow Lectures on Jurisprudence,” *History of Political Economy* 8 (1976), pp. 439–77. The transcription of the Anderson Notes is at pp. 467–77.

3. Francis Hutcheson, *Philosophiae moralis institutio compendiaria*, with *A Short Introduction to Moral Philosophy*, ed. L. Turco (Indianapolis: 2007).
4. LJA. For details of the manuscripts and publication history of this and LJB, see the editors' introduction to LJ.
5. Dugald Stewart, "Account of the Life and Writings of Adam Smith, LL.D.," v.8, in Smith, EPS.
6. Ross, *Life*, p. 123.
7. Stewart, "Account," i.16–22, quotation at i.18.
8. *Ibid.*, i.20.
9. See, e.g., A. S. Skinner, *A System of Social Science. Papers Relating to Adam Smith* (Oxford: 1979), chap. 6.
10. Concerning Smith's spectator theory, see also Eric Schliesser's chapter in this volume on *The Theory of Moral Sentiments*.
11. See especially TMS II.2 and VII.4.
12. See TMS V.2.9–16.
13. The most basic starting point for the whole of Smith's moral thought is the skeptical thesis that we have no sure access to the other person's mind, and a similar skepticism is crucial for his politics.
14. See John Pocock, *Barbarism and Religion*, vol. 3, *The First Decline and Fall* (Cambridge: 2003), p. 389.
15. For a conflicting account, see K. Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge: 1996), chap. 4.
16. Cf. Ross, *Life*, pp. 151–53.

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