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The Adam Smith Review is a multidisciplinary refereed annual review sponsored by the International Adam Smith Society. It provides a unique forum for vigorous debate and the highest standards of scholarship on all aspects of Adam Smith's works, his place in history, and the significance of his writings for the modern world. *The Adam Smith Review* aims to facilitate interchange between scholars working within different disciplinary and theoretical perspectives, and to this end is open to all areas of research relating to Adam Smith. The *Review* also hopes to broaden the field of English-language debate on Smith by occasionally including translations of scholarly works at present available only in languages other than English.

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Impartiality, utility and induction in Adam Smith's jurisprudence

S.M. Amadae

[I]t is harder than expected to find an attractive account of propriety and virtue that turns on correspondence between spectator and agent. When Smith's difficulties with normative utilitarianism are added, it is easier to see why *The Theory of Moral Sentiments* grew obscure while normative utilitarianism and its intuitionist critics prospered.

(Shaver, *Cambridge Companion*, 212)

Given my affinity for Smith's theory of justice, it took this observation of Robert Shaver's in his chapter, 'Virtues, utility, and rules', to jar me into facing the question: why is it that Smith's jurisprudence has been mainly disregarded while his *Wealth of Nations* is celebrated as the chief blueprint for political economy and free markets? This question warrants attention given that Smith's system of natural liberty is predicated on the natural virtue of justice. In Alexander Broadie's words, in his chapter, 'Sympathy and the impartial spectator', Smith's 'economic theory was developed therefore within the context of a moral theory that goes wide and deep, a context that carries the message that an economic theory has to be developed within a moral philosophical framework' (165). In reading *The Cambridge Companion to Adam Smith*, I found new compelling arguments to both counter apparent weaknesses in Smith's jurisprudence, and to respond to an increasingly prevalent tendency to solve the infamous 'Adam Smith problem' by replacing sympathy with self-interest as the basis of social norms and legal standards.¹

The origination of social norms and their source of normativity is a germane topic today. I am particularly interested in Philip Pettit's reworking of Smith's use of sympathy, coupled with approval and disapproval, to present an explanation of normativity that is consistent with rational choice theory (RCT). Quoting the utilitarian economist and Nobel Laureate John Harsanyi, Pettit reminds us that 'People's behaviour can be largely explained in terms of two dominant interests: economic gain, and social acceptance' (Pettit 2002: 309). Pettit's account of norm formation adopts a posture similar to Smith's

sentiment of sympathy. According to Pettit, norms arise from a) positively or negatively evaluating another's conduct; and b) directly sanctioning individuals exhibiting disfavoured behaviour. This individualized process of judging others' conduct, insofar as regular patterns emerge, sustains norms as agents seek to conform their actions to others' expectations in order to gain approval and avoid shame. Pettit defends his theory of norm creation by suggesting that it is consistent with Smith's theory of justice. He quotes Smith: 'What reward is most proper for promoting the practice of truth, justice and humanity? The confidence, esteem and love of those we live with. Humanity does not desire to be great, but to be beloved' (Pettit 2002: 311).

In the following discussion, I contrast a 'classic Smith' rendering of justice developed from the *Cambridge Companion's* essays with Pettit's version. I discuss the essays of Broadie, Shaver, and David Lieberman respectively, addressing the themes of impartiality, utility and induction in Smith's jurisprudence.

I: Broadie – What role does impartiality play for Smith and is it attainable?

Broadie tells us up front that Smith's impartial spectator is the hero of the Enlightenment (175). This conclusion is fitting as impartiality itself is the key to the Enlightenment inquiry.² Impartiality plays a particular role in anchoring justice because, for Smith, it is necessary to attain third-party distance from an injury that permits an unbiased appraisal of whether an individual was actually injured, and has a legitimate cause for resentment. It is the achievement of an impartial vantage point, initially towards the conduct of others, but eventually towards our own conduct, that gives rise to judgments which, when considered society-wide, serve as the basis of the general laws of justice. The subject matter of justice is unique for Smith because, unlike matters of fashion or taste, or of the positive virtues including benevolence and charity, it is exact and categorical (TMS II.ii.2.2). The consensus that emerges on the principles of justice is not a mere social artifact, but instead represents a process of comprehension that may best be compared to the relationship between Newton's principles of motion and our observations of the actual regular motions of the bodies they describe (176–7). Thus, impartiality serves the crucial role of distancing individuals from their private interests, and of permitting the apprehension of a generalizable appropriateness of fit between circumstances, the passions they arouse, and an agent's reaction. If normativity is considered to embody the recognition of rules which individuals cannot control but must conform to, Smith suggests that the realization of the standards of justice is similar to imagining the laws of mechanics. In both cases, there is a beauty to appraising the harmonious system, and misconstruing the laws of justice or physics leads not only to internal dissonance, but also to a breakdown of social intercourse or mechanical integrity (TMS II.ii.3.4).³

In Broadie's analysis, even though a concordance of the spectator's sympathy with an injured party may generate pleasure, there is an important distinction between the sentiments evoked by sympathetic reflection of another's circumstances, and the feeling of concordance produced if agent and observer share like assessments (174). Firstly, impartial sympathy yields a judgment of appropriateness of action independent from any personal utility or implications. In assessing your circumstances and actions as an external observer, your fate is separate from mine, and your realization of ends is immaterial to me. Therefore as I reflect on your reactions, my judgment is not predicated on whether your fate may promote my ends. Second, as the sympathetic judgment is prior to potential concordance among first or third party's perspectives, though concordance may generate pleasure, this pleasure is the unintended outcome of impartial judgment, and does not itself represent the telos or end of judgment. Here Smith suggests that justice has much in common with mathematics because the judgment of normative appropriateness, or philosophically surmising the 'connecting principles of nature', first meets an independent standard of aptness, and only having done so, gives rise to satisfaction.⁴ Justice is exact for Smith, precisely in analogue to the general laws of natural science which must stand the test of countless idiosyncratic observations (TMS III.4.7–8).⁵

Broadie's essay focuses more on the feasibility of attaining impartiality, and less on the metaphysics, or basis of the universal basis of approbation; yet he avers with Shaver that this universal basis is *not* any consideration of personal or public utility (Broadie 163; Shaver, 194–203; I concur, 212–19). According to Broadie, the impartial spectator is neither the general 'we' of society, nor an omniscient God's eye perspective: this spectator is human, but has a critical stance, separate from what may be mass consensus or psychosis, as a function of being able to take on an outside observer's role. Crucially, this impartial spectator is not the normal, typical, or average individual, but one who can ultimately serve as the personal faculty of conscience (181). It is well-known that this privileged seat of judgment must exhibit a degree of self-command, and even in many ways must possess commendable virtue (TMS III.2.33; see also Shaver 208). However, Smith's theory of justice functions adequately on the assumption that most of us can be sufficiently impartial in the third person stance to tap in to what Smith argues is generally acknowledgeable conformity of judgment in the case that an individual has been wronged by another (185).

II: Shaver – does Smith's theory of justice depend on utility?

Shaver, I believe, is sympathetic to Smith's project, but worries that 'Smith gave few meta-ethical arguments to keep the twentieth century attentive' (212). Specifically, as is tacit in the preceding discussion, Smith could not in fact articulate the metaphysical basis that secures the uniformity of

impartial judgments; neither did he articulate the general rules of jurisprudence that he long promised. Newton deductively postulated his laws of motion, and they seemed (over time) to hold up to empirical verification, but Smith was not able to do the same, even if he did propose the negative virtue commitment upholding the integrity of personhood, property and contract (Lieberman 214–6).

Accepting Smith's theory of convergence of judgments concerning injustices, but leaving aside the source of this convergence, Shaver focuses his essay on the point that Smith consistently disavows any role for utility in justice. Critics of Smith could find a role for utility in three locations throughout Smith's system: (1) as a normative justification for the legitimacy of justice; (2) as the empirical basis of individual judgments over others' actions; and (3) as the rationale for punishment. I agree with Shaver, who in his turn is consistent with Knud Haakonssen's conclusion in his *Science of a Legislator*, that although Smith suggests that his system of justice does serve the public utility, his argument for justice is wholly disconnected from such justification (Haakonssen 1981: 67–74; Amadae 2003: 211). However, the fact that were Smith's system of justice to contradict public utility, it would be suspect, leaves Shaver to conclude that Smith's system offers nothing that we do not gain by a more straightforward derivation of normative justification from utilitarian concerns (197). I will engage this point further, suggesting that a utilitarian account of justice ultimately fails for Smith because it offers a forward-looking, teleological motive for agents' actions causing justice to arise, rather than a backwards-looking appraisal of events that is independent from either realizing self-gain and or any intention of bringing about just consequences.

I do agree with Shaver that perhaps a more important point to distinguish Smith from utilitarian critics is with respect to individual judgments over others' actions. I believe this is the more crucial part of Shaver's argument because Smith is clear throughout *Theory of Moral Sentiments* that he is discovering the *efficient* causes of justice, and not the *final* causes. The question at hand is whether in judging the appropriateness of others' actions, the third person consults how these actions affect public or personal utility. Using utility-based judgment as the explanation of justice runs counter to Smith's entire enterprise because otherwise, insofar as justice is individually beneficial for people, it would necessarily merit intentional action. Smith's unintended consequences argument for the formation of justice assumes that individuals act without awareness that they are contributing to a system of justice; neither in contributing to justice are individuals moved by the prospect of satisfying personal preferences. Shaver argues that according to Smith, 'We are neither smart enough to make reliable utilitarian calculations nor motivated by appeals to utility' (197). Shaver finds that 'The case against explanatory utilitarianism remains. Here Smith is probably right that we often do not, and did not originally, arrive at our approvals by reflections on utility' (201). However, it remains the case that, just as with

not contradicting utility for normative justification of justice, individuals' judgments of others actions by and large 'track utility', even if 'utility is not the original or motivating explanation of punishment' (201).

Shaver finds Smith's non-utility based rendering of justice reasonable, apart from that Smith identifies a basic difference between judgments about material things which he agrees are subject to personal preference, and judgments about persons, which exhibit 'a special sentiment of approval felt only toward persons' (203). Shaver suggests that Smith's inability to provide reasoning for a categorical distinction in contemplating 'things' or 'people' again gives explanatory utilitarianism the upper hand, as both may serve individuals' ends. He goes on to express concern over Smith's staunch reliance on the impartial spectator, and maintains, counter to Broadie, that impartiality requires a super-human degree of self-command and virtue (208-11). However, perhaps the decisive point here is not how readily accessible impartiality is, but that it does represent an attainable posture.

III: Lieberman – Induction, or how do general rules arise from isolated judgments?

In introducing Lieberman's essay, 'Adam Smith on justice, rights, and law', I take another line from Shaver: 'Smith's "remedy" [for injustices] is to introduce "general rules"... These are formulated by induction on past impartial approvals (rather than by deduction from utility or by direction intuition)' (204). It is the question of Smith's delivery on his premise that the general principles of justice can be induced from numerous idiosyncratic and anecdotal cases of judgment that I now turn my consideration.

Lieberman's essay draws attention to the somewhat odd fit between Smith's inductive promise, which Lieberman emphasizes was not kept, and Smith's own historical method. A strength of Smith's method, we learn, is to contrast reflections on justice with the actual historical processes that lead to specific positive laws. Smith delighted in showing that the original aims behind a law's formation may be sufficiently out of synch with a contemporary practice that the law may fail to serve its original purpose. One example is that of primogeniture, which originally served the role of guaranteeing nobles sufficient strength in resources and arms to protect themselves and their subjects. In the eighteenth century, however, this legal convention no longer served the purpose for which it was designed. Lieberman observes of this example that it exemplifies Smith's historical jurisprudence: 'This was the manner in which his historical research frequently complemented the purposes of normative criticism by making clear the antiquated or anachronistic character of many of those positive laws which most glaringly violated natural justice' (229). Lieberman's point in discussing Smith's historical jurisprudence is that Smith acknowledges that in the formation of positive law 'human purpose and normative reflection, as well as ... political contingency and the machinations of social elites' play a role (231).

Lieberman argues that Smith's project was to contrast positive law, and the processes by which it arises, with the precise principles of natural jurisprudence.

Lieberman echoes what we are familiar with: Smith firmly believed that his system of natural liberty is all that is required to ensure economic growth and opulence. But we are left with the puzzle of how, given the historical manner by which actual laws are formed in accordance with normative reflection, contingency, and elite interest, Smith's inductive method of generating general laws from particular cases of sympathetic impartial judgment can lead to effective law. There seems to be a gap between isolated individuals' sympathetic judgments, and the powers that actually create laws most often to preserve the property of the rich from the poor (239).

Lieberman provides an innovative solution to this puzzle by considering Book V of *Wealth of Nations* that treats the 'impartial administration of justice'. Lieberman argues that Smith fills the gap between individual case of impartial judgment and the process of legal formation with the British example of institutionalizing an 'increasing independence of the "judicial from the "executive" power' (240). He maintains that for Smith, judicial independence is far more important than parliamentary representation in establishing the basis for a just and prosperous civil society. It is crucial for Smith that justice is impartially administered. This impartiality anchors 'stable structure of rights', and protects the rights of the least well-off Brito equally to the most wealthy's (241). If I accept, with Broadie and Shaver the possibility of impartial judgment, no matter how remote, then the problem of its achievement may be solved by the institutionalization of the condition for impartiality. In modern societies described by Smith, an independent judiciary makes up for the fact that the distance between the protagonist and the observer may not be sufficiently great as to foreclose on consideration of private interest entering into judgments of appropriate action. If the judiciary is constituted free from political intrigue and personal gain, then it embodies Smith's impartial spectator.

IV: Pettit's RCT Smith

Next I briefly consider the mechanism by which social norms are formed according to Pettit's rational choice-inspired reading of Smith. I must note that Pettit realizes that he is complementing a legally-based coercive sanctions account with his discussion of informal norms and sanctions however, Pettit believes he is true to Smith's analysis of how justice arises. According to Pettit: 1) An agent reacts to a set of circumstances. 2) A third party observes this agent's actions and either approves or disapproves. 3) If the outside observer disapproves of the action, and it is effectively costly to apply some form of sanction, then this person will shame the observing agent. 4) Norms then arise, by Pettit's account, because a) there is some sort of uniformity of pattern of negative responses to particular forms

behaviour; and b) these norms are abided by via informal sanctions because individuals seek each other's approval (Pettit 2002: 316–37).

We proceed to examine Pettit's Smith on the themes of impartiality, utility and induction. For Pettit's Smith, impartiality has no role to play. Pettit clarifies: 'Approval in my sense is nothing less than that broad sort of attitude to which acts of expressing approval testify' (313). Approval is an idiosyncratic feature of an individual's preferences and the perceived usefulness of others' actions to satisfy these private preferences. If a norm arises, this indicates a uniformity of preferences among individuals over third parties' actions. In the case of the canonical 'free-rider' problem, each prefers others to contribute to the joint effort, even as each seeks to ride for free. Pettit is interested in how deviance from a norm, or regular pattern of activity, evokes disapproval and censure, which in turn serves as the mechanism by which the norm is enforced. Pettit uses this process of disapproval to account for how norms arise, how they may be justified and enforced, and why agents conform to norms (317). He supposes that the particularly important social norms are those that solve Prisoner's dilemma, or collective-action type situations, in which, unless a particular norm is followed by most or all, the population in question will waste resources (319–27).

Although Pettit does not invoke 'impartiality' as the basis of the judgment leading to sanction, he does invoke 'utility'. The utility in question is that recognized to be lost when agents perceive others as 'free riders', or 'foul dealers' (322, 333). Therefore, for Pettit the decision to sanction another agent is ultimately based on an individualistic cost-benefit analysis: I watch someone free ride on my efforts by using an invalid bus pass, I disapprove and frown at him intently as he gets on the bus. He feels my furious disapproval, and in the future adds this potential sanction into his calculation of whether to cheat the system or not. It is this agent-relative, utility-based cost-benefit analysis that provides the motive force impelling norm creation and stabilization for Pettit. In a collective action problem, everyone sees the benefits of joint cooperation, even if everyone privately seeks to cheat, if he can get away with it. The standard of joint cooperation, then, is mutually preferred to others' free-riding, and serves as a baseline motivating and justifying the punishment of defectors. Pettit draws on utility three times over in his analysis. Once, as an individual's judgment is based on an assessment of utility of another's compliance with specific norms. Twice, because the utility of the norm in achieving mutually preferred outcomes is manifestly evident to any one either looking for justification or for explanation of the abiding value of specific norms. Three-times, as conformity to the jointly preferred norm is achieved by imposing negative utilities on norm breakers.

Conclusion

Pettit puts forward a theory of norm creation that seems to have Smith's imprimatur because it brings self-love to the fore as a single motive for action. Indeed, Pettit's mechanism resembles Smith's in isolating individuals'

judgments of others' actions as the inductive base from which generalized rules of conduct are derived. In light of the *Cambridge Companion's* contributions, we are able to ascertain two equally misleading departures in Pettit's account. First, Smith's jurisprudence is mischaracterized by Pettit who locates the source of social norms in personal preferences rather than impartiality.⁶ Second, this misrepresentation of Smith's jurisprudence suggests the practice of deriving just social laws from considerations of agent-relative utility. We must recall that for Smith, the point is not 'I like what you do because your action suits my ends'. The point rather is, 'I approve of your demonstrated passions given my sympathetic reflection on your situation'. Smith provides us with the vantage point to view free-riding as a categorically unjust action that steals the fruit of others' to promote personal ends, rather than simply as an action preferred for oneself, but dispreferred in the case of others (TMS III.ii.22). Smith's jurisprudence demands that standards apply universally to the self and others, and thus provides a rationale for action independent from sanctions and calculations for self gain. Smith's solution to the problem of social order is unconditionally distinct from Pettit's RCT rendering because the efficient cause of justice is non-consequentialist, backward-looking judgment of appropriateness, and not a forward-looking judgment of potential pay-offs.

Smith's classic liberalism premised on impartial judgment of injury to personhood, property and contract, hang in the balance if we accept Pettit's contemporary reading (TMS II.ii.2.2). For the classic Smith of the *Cambridge Companion*, individual judgments over actions are independent from preferences or consequences, may be impartial, and are informed by sympathy. The standards that result from numerous judgments apply equally to others and to the self, and they may guide action independent from considerations of individual gain or external censure. The impartial spectator embodies the Enlightenment idea of inducing generalized law from disparate phenomena regardless of locality or perspective, and serves as template for the institutionalization of rules of conduct dependent on an independent judiciary. Emphasizing Smith's commitment to a judicial system reflecting judgments unencumbered by considerations of self-gain, Emma Rothschild and Amartya Sen in 'Adam Smith's economics' note that the 'reasonably impartial administration of justice . . . [is] the single most important condition . . . for the progress of opulence' (350). Without an Archimedian reference-point in impartial judgment over agents' actions that may apply seamlessly to oneself or to agents at large, Pettit's rendering of Smith's system of natural liberty prospectively reduces justice to a consensual framework for manipulating others' actions in accordance with the preferences of the majority, or of the disproportionately empowered.

Notes

- 1 See, for example, Buchanan and Tullock (1962); see also Pettit (2002). For discussion of this tendency see Amadae (2003: 133–55).

- 2 In Smith's words, 'The well informed and impartial observer will bring to view what the Ignorant or prejudiced would overlook', (Mossner 1960: 228).
- 3 In 'History of Astronomy', Smith acknowledges that 'unprotected by the laws of society. . . [individuals are] exposed, defenseless. . . [and feel their] weakness upon all occasions' (III.2), therefore knowledge of social law is a necessary condition of security and prosperity. Natural philosophy can only be developed after social law is established, and although it is pursued as a 'good in itself', its appreciation grants the achievement of ends (III.5–8).
- 4 Broadie, 164; Smith, 'History of Astronomy', II.9. For an in-depth discussion of the epistemological parallels between Smith's philosophies of social and natural science see Schliesser (2005).
- 5 Smith observes, 'What is agreeable to our moral faculties, is fit, and right, and proper to be done . . . Since these, therefore, were plainly intended to be the governing principles of human nature, the rules which they prescribe are to be regarded as the commands and laws of the Deity. . . All general rules are commonly denominated laws: thus the general rules which bodies observe in the communication of motion, are called the laws of motion. But those general rules which our moral faculties observe in approving or condemning whatever sentiment or action is subjected to their examination, may much more justly be denominated as such' (TMS III.5.5–6).
- 6 In his discussion of the 'Adam Smith problem', Broadie emphasizes that for Smith, sympathy is not a motive at all (165).

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Whose impartiality? Which self-interest?

Adam Smith on utility, happiness and cultural relativism

Dennis C. Rasmussen

Robert Shaver's chapter, 'Virtues, utility, and rights', in the *Cambridge Companion to Adam Smith* begins by noting that '*The Theory of Moral Sentiments* was a great success upon publication; now it is obscure' (189). 'Obscure' may be a bit of an overstatement, as the existence of this *Companion* attests, but it is certainly true that Smith's moral philosophy is not nearly as widely studied as those of Hume and Kant, for example. Shaver aims to offer one reason why this might be the case, and he finds an explanation in the fact (or, rather, the claim) that Smith's moral theory is weaker than a utilitarian moral theory in many respects. Shaver concedes that Smith's theory is an attractive one, but he points to a number of what he sees as defects in it that might help to explain its relative obscurity. His arguments on this score are numerous, but there are three contentions that seem to be central to his case: that Smith's explanatory moral theory has no real normative weight, that he relies on utility in making (some) normative claims even while insisting that doing so is illegitimate, and that his moral theory is susceptible to a kind of cultural relativism. I will briefly touch on the first two of these criticisms before discussing the third at somewhat greater length.

One of the most appealing elements of Smith's moral theory, Shaver concedes, is that it seems to constitute an improvement over utilitarianism as a description or explanation of our moral psychology: our moral feelings – approval and disapproval, gratitude and resentment – are generally motivated not by utilitarian calculations but by feelings or sentiments. People typically demand that murderers are punished, for example, because they feel outrage or resentment and not because they calculate that doing so may make society better off in the long run by deterring other potential murderers. Yet, Shaver notes (195–6), Smith also frequently makes normative claims in TMS; in addition to describing the way people *do* in fact make moral judgments, Smith seems to suggest that people *ought* to act in such a way that an impartial spectator would approve of them. And Shaver suggests that this is where he runs into trouble.

First, Shaver asks (196–8), how does Smith justify his normative conclusion – that we ought to follow the dictates of the impartial spectator