

# The impartial spectator and the strictness of rules

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[T]he crucial question is whether sympathy can explain our acceptance of *general rules* by which to judge conduct.

(Mackie 1980, 132, emphasis added)

## Introduction

I do not believe that the rules of justice can be explained by Adam Smith's sentiments theory of morality. Although it is true that sympathy with the emotional reactions of victims of injustice in many cases can generate a moral judgment that certain individuals deserve punishment, the sympathetic process Smith envisions cannot generate the strictness, precision, and accuracy of general rules. Specifically, I do not think that the sentiments theory is successful in showing why the *strictness* of justice should be extended (beyond protection of the person and his reputation) to property and contract rights.<sup>1</sup> Something more is needed. This paper is an attempt to explain, or at least explore, that something more.

## Hume on justice

We begin with David Hume. As is well known, he divides virtues into two categories: natural and artificial. Natural virtues like benevolence tend to produce good and gain approval in every case. They do not depend on what others may or may not do. A parent rushes to the aid of a child or a man gives some money to a beggar – neither cares whether anyone else in the world would do the same. The positive psychological feedback from these actions is immediate and direct. Artificial virtues like justice are different. A single act of justice may not result in a good outcome and it may not gain approval. In fact, we may wish that the laws of justice were repealed in this specific case.

For Hume there must be a pre-moral good underlying any virtuous act (T 3.2.1.7; Hume 2000). Any positive or negative affective response to an action is ultimately caused by that pre-moral good. It can be the usefulness or intrinsic agreeability to oneself or to society (2E, 9.1.1; Hume 1998). Importantly, the

connection between the affective response and the pre-moral good need not be a conscious one. But it is there nonetheless.

The natural virtues have a pre-moral motive that is independent of any social convention or artifice. As we just pointed out (following Hume), the parent flies to the rescue of the child even if other parents would not. Such an act of beneficence would be based solely on the particular facts of the situation. In that sense, beneficence is based on a partial view of things. It benefits the patient and is intrinsically agreeable to the agent. This is its pre-moral good.

An artificial virtue, such as justice, has grounds for our approval originally in self-interest but now in our 'sympathy with public interest' (T 3.2.2.24) or social utility.<sup>2</sup> Originally, we may surmise, people came to the (implicit) recognition that their broader self-interest required the limitation of purely self-interested acts in their dealings with individuals just beyond their kin group. But as the advantages of trade became more pronounced there arose – in a not fully described way – a 'convention' such that the expectation became established that if I am just in my dealings with others they will be just with me. This coordination of expectations is the foundation of the social utility of justice.

Once established on the basis of its extensive pre-moral good, people develop certain sentiments in response to violation of justice. For example, a man's money is stolen. When we, as spectators, imagine ourselves in a similar situation, we share in the resentment (Smith's term) of the man and feel that punishment of the agent is warranted. However, in contrast to cases of natural virtue, our approbation of justice in this instance does not necessarily extend to other cases. The approval of justice does not occur in every case of its application. That would not be a 'natural' reaction.

Specifically,

What if he [the victim] be a miser, and can make no use of what I wou'd deprive him of? What if he be a profligate debauchee, and wou'd rather receive harm than benefit from large possessions? What if I be in necessity, and have urgent motives to acquire something to my family? In all these cases, the original motive to justice wou'd fail, and consequently the justice itself, along with it all property, right, and obligation.

(T 3.2.1.13)

More generally,

A single act of justice is frequently contrary to *public interest*; and were it to stand alone, without being follow'd by other acts, may, in itself, be very prejudicial to society. When a man of merit, of a beneficent disposition, restores a great fortune to a miser, or a seditious bigot, he has acted justly and laudably, but the public is a real sufferer. Nor is every single act of justice, consider'd apart, more conducive to private interest, than to

public; and 'tis easily conceiv'd how a man may impoverish himself by a signal instance of integrity, and have reason to wish, that with regard to that single act, the laws of justice were for a moment suspended in the universe.

(T 3.2.2.22)

So why should people conform to the rules of justice in *every case*? The answer is ultimately in artificial self-interest from the 'general point of view'. Natural self-interest, that is, before the convention of justice, would impel people toward the opposite of what we now call justice – simply taking of the property of another. But after the convention, our long-run self-interest is channeled through social cooperation.<sup>3</sup> Nevertheless, there are clearly still incentives to depart from justice in a particular case. The first is from the narrowness of self-interest whereby we may think that we can benefit while all others still cooperate. The second is from the misalignment of our passions whereby we focus on the 'worthiness' of a particular *beneficiary* of injustice (the needy poor man who steals from the miser). Neither of these, however, succeeds in being *moral responses* because they are not impartial; they do not take up the general viewpoint. The general viewpoint is extensive. It goes beyond the immediate case to its broader consequences.<sup>4</sup>

Can *sentimental approbation* arising out of sympathy and impartiality be the source of justice and the motivating force to conform to it? Or must reason play an important part?

### Opposing tendencies of sympathy

As we have seen, Hume argues that originally the source and motive for justice is self-interest (including confined generosity toward family and close friends). In this early state, simple rules of justice encompass small numbers of people. They are practiced before they are conceptualized; they are tacitly adhered to before any explicit agreement to follow them can be made (Baillie 2000: 170–172). The obviousness with which violations of justice negatively affect self-interest, not only of the victim but also of the agent, is quite high in a small society. People know victims; reputations of unjust agents spread rapidly and clearly (Baillie 2000: 174). In this society, the sentiments of approbation and disapprobation arising out sympathy with the victims are strong. And even relatively unreflective agents understand and feel that they have ruined their own reputations and opportunities by such acts of injustice.

In a large society, however, focus on individual cases of injustice can lead us astray unless we have a picture of the extended consequences of injustice. As we have seen, Hume is quite aware of the complexities of our sentimental responses to a 'single act of justice' or injustice in a world where the connection between specific actions and consequences is not easy to trace. For example, in the modern world theft from a large corporate store may seem to have no victim, in particular. Ironically, this kind of case tends to occur just under those conditions where justice is more critical to the public well-being than



ever before. The three inconveniences for which justice is a remedy are in more urgent need of solution. The 'conjunction of forces ... the partition of employments ...[a]nd ... mutual succor' (T 3.2.2.3) are not only convenient but absolutely necessary to sustain a large and complex society.

Therefore, commercial society is faced with a potential partial breakdown in the sentimental support for justice and a concomitant greater need for some kind of support. It is not enough to summon inductive reason and the generalizations about justice arising from primitive individual cases. Jurisprudence must move beyond inductive rules of thumb to inflexible, general rules. As Hume says,

But however single acts of justice may be contrary, either to public or private interest, 'tis certain, that the whole plan or scheme is highly conducive, or indeed absolutely requisite, both to the support of society, and the well-being of every individual. 'Tis impossible to separate the good from the ill. Property must be stable, and must be fix'd by general rules

(T 3.2.2.22).

It is true, and important, that once this realization occurs, there will be strong social and psychological pressures toward the alignment of our sentiments with the *rules* of justice. Even when a victim cannot easily be identified or with whom sympathetic agreement is not easy, the rules still carry sentimental weight in a large society. This sentimental weight is essentially the sense of morality.<sup>5</sup> And the law is there to reinforce that. Nevertheless, the temptations to deviate remain.

## Smith on the rules of justice

Adam Smith agrees with David Hume about certain aspects of the rules of justice that are important for our purposes.<sup>6</sup> These revolve around their 'strictness'. Hume says that the rules of justice are to be fixed by 'general and inflexible principles' (T 3.2.6.9). Moreover, he warns us that we should not take into consideration that character and (personal) circumstances of the persons involved when deciding issues of justice.<sup>7</sup> The rules should be steadily prosecuted regardless of disagreeable consequences in the individual case.

Smith argues that we feel ourselves 'to be under a stricter obligation to act according to justice, than agreeably to friendship, charity or generosity ...' (TMS II.ii.i.5). Smith echoes the modern natural law distinction between duties of perfect obligation such as justice and duties of imperfect obligation such as generosity or beneficence.<sup>8</sup> With regard to justice, the time, place and extent of our obligation is precise or relatively so (TMS III.6.10). While beneficence is 'left to some measure to our own choice' (TMS II.ii.i.5), its contours, occasion and so forth depend on highly particular circumstances and the character of the persons involved.

Furthermore, the laws of justice are 'precise, accurate ...' and, by comparison to the looser rules of the other virtues, *determinate* (TMS III.6.11). However, this precision is not to be mistaken for absolutism. In one sense the rules of justice 'admit of no exceptions modifications' except 'for such as many be ascertained



as accurately as the rules themselves, and which generally, indeed, flow from the very same principles with them' (TMS III.6.10).

While Hume arrives at the *strict* rules of justice by reference to our recognition of public well-being or utility, Smith tries to arrive at it through the approval of the impartial spectator. I do not think this is or can be successful. We must now take a closer look at the impartial spectator.

### **The impartial spectator: intrinsic distortion**

The impartial spectator is an odd concept. It is not necessarily a real spectator, nor is it just anyone's conscience, nor 'the man within the breast' (Den Uyl 2016: 264–72). It is not the voice of a perfect being because it has certain human knowledge limitations and it is allowed a certain measure of self-love (Paganelli 2016: 319–322; Griswold 1999: 139–143). It does not view action or character from 'nowhere' but from a human, but disinterested, vantage point.<sup>9</sup> And out of all this qualification and subtlety, determinate results for the strict rules justice are said to follow.

I think it is best to consider the impartial spectator as an idealized 'moral stance'.<sup>10</sup> The requirements or principles of this stance were laid out by Haakonssen (1989: 206). They are impartiality, consistency and coherence. Supplementary to these major principles are the moral primacy of the negative (harms) over the positive (happiness) and the moral primacy of the individual over the collective.

None of the actions that the impartial spectator might be called upon to render a judgment are labeled *ex ante* as cases of 'justice', 'beneficence', 'honesty' and so forth. The task of the impartial spectator is to render a moral judgment of a specific act in accordance with the above principles. Beginning with a disinterested imagining of an agent's action toward a patient and paying attention to the concrete circumstances in which it occurs as well as its intended consequences, the impartial spectator has an affective reaction. If this reaction is one of sympathy with, say, the patient who has been 'harmed', then the impartial spectator has disapproved of the agent's behavior. His feeling of disapproval, in Smith's view, will take the form, to a less intense degree, of the patient's own resentment and will demand some type of satisfaction.

However, the impartial spectator is at once disinterested and exclusively focused on the individuals in the specific case at hand. What makes this a case of justice *in which strict rules are applied*? To see the problem here, it makes sense to examine the issue of what constitutes 'harm'. For Hume injustice and thus harm is based on violations of the laws of property and is thus civil in nature. For Smith, on the other hand, examples of injustice are predominately of a criminal nature like injuries to the person (Raphael 1972: 93). Each emphasizes the cases that are most convenient to their respective approaches. But clearly Smith means to aggregate the cases and to extend the natural resentment consequent on harms to the person toward harms to property. In neither case, according to Smith, the impartial spectator 'demands punishment of the wrong

done to ... [a single man], not so much from a concern for the general interest of society, as from concern for that very individual who has been injured' (TMS II.ii.3.3.86).<sup>11</sup> This is less problematic when even an 'odious' (TMS II.ii.3.10.90) person is physically injured than when money is stolen from a miser (T 3.2.2.22). Hume is concerned in the latter case that misplaced beneficence might lead us to feel little moral disapprobation for this form of injustice – precisely because the victim's situation seems so minor relative to the benefit that might be obtained by a poor man who took the money. To overcome this, impartiality is not enough. Beneficence may be impartial. Overcoming this tendency requires us to move away from the partial view of the particular agent and patient to more abstract issues like the precedential value of the judgment, and thus ultimately to consider the public welfare. Otherwise, there is no reason not to consider this a case where 'technical' injustice is to be tempered by the application of beneficence. And then the precision, generality and determinateness of the rules of justice would collapse.

We can look at this from another perspective as well. As mentioned above, concrete cases do not come already labeled as belonging to certain categories like justice or beneficence. The subtlety of the problem has been alluded to by Griswold (1999: 146): 'The impartial spectator may work up several different standards of evaluation and then judge that one or the other is appropriate in the context'. But what tools does the spectator have to do this? Which of the principles that the spectator stance requires will generate in a coherent and consistent way an appropriate *categorization*? Griswold's answer is not reassuring: 'His [impartial spectator's] determination and use of these standards is definitive; there is in principle no higher court of appeal beyond the impartial spectator'. If this is true, then I ask again: Where do the *strict rules* of justice come from? What is there in the impartial stance that will generate them? We cannot *simply* say that the impartial spectator is the final word unless we can show that the *constitutive elements* (Haakonssen's principles or rules) of impartial spectating yield the putatively correct result – the rules of justice.

Smith is aware of the multiplicity of standards. He illustrates this with a story of 'the first Brutus [who] led forth his own sons to a capital punishment, because they had conspired against the rising liberty of Rome'. Naturally a father would 'have felt much more for the death of his own sons, than for all that probably Rome could have suffered from the want of so great an example'. Smith praises him because '[h]e entered so thoroughly the sentiments' of a Roman citizen rather than those of a father (TMS IV.2.120). The 'impartial father' was suppressed in favor of the impartial or abstract 'Roman citizen'. I contend that the Roman citizen is here a stand-in for public utility and that is why sympathetic imagination is properly directed toward him. (Of course, this is not consistent with Smith's explanation.)

Smith sees another side of this problem in general terms when he states that real spectators 'could pretend, with some pretext of reason, that this [any given] violation [of justice] could do no hurt ... The thief *imagines* that he does no evil, when he steals from the rich, what he supposes they may easily want [i.e.



not have], and what possibly they may never even know has been stolen from them' (TMS III.6.10, emphasis added). But in what precisely does the hurt consist? We know that the patient – the rich man – resents the theft. Of course, that is not sufficient. We need endorsement of that resentment by the impartial spectator. Given the circumstances postulated, that resentment of the rich man may seem exaggerated; it may violate propriety. If that is the case, then applying strict rules could be seen as inappropriate. Perhaps in hardship cases the rules of justice should give way to the loose rules of beneficence. Obviously, Smith would reject this and presumably his impartial spectator would as well. Hume would submit that this is because of public utility. And that seems correct to me.

Consider that Smith adduces a 'slippery slope' argument to clinch his case: 'When once we begin to give way to such refinements, there is no enormity so gross of which we may not be capable' (TMS III.6.10). Slippery slope arguments are pre-eminently about precedential significance and thus they shift the focus from the particular case of *this* agent and *this* patient to those elsewhere in the present, or in the future, who are in similar circumstances.<sup>12</sup> However, this is not simple impartiality as it would be if the circumstances of the others were truly more or less the same. A slippery slope process expands – by gradations – the number and the scope of eligible exceptions to a rule. What is at stake is the integrity of the rule itself for society.

My point can be made in yet another – a third – way. If we analyze the process by which Smith argues that the general rules of morality arise we can see that precision, consistency and determinateness are not likely to arise naturally. This is acceptable for the virtues other than justice. Since our concern is with justice, Smith's theory of the development of moral rules will make our point and not his. Specifically, Smith claims that moral rules develop as the product of an inductive process.

'These first perceptions [of right and wrong] ... cannot be the object of reason, but of immediate sense and feeling. It is by finding in a vast variety of instances than one tenor of conduct *constantly* pleases in a certain manner, and that another as *constantly* displeases the mind, that we form the *general* rules of morality.

(TMS VII.iii.2.7, emphases added)

However, no inductive process can yield a strict rule-like connection between specific conduct and a moral response. In fact, it is only the discipline of rules that prevents the vagaries of 'immediate sentiment and feeling, which different states of health and humour are capable of altering so essentially' (TMS VII.iii.6). Due to these factors and, importantly, variations in the concrete circumstances of the agent and patient, *original affective responses* by spectators are not likely to exhibit unfailing constancy. Constancy is a consequence of rules and not vice versa. Strict rules are not derivable from Smith's process. The impartial spectator's insights regarding justice cannot rest on the vast number of specific cases.



In the *Lectures on Jurisprudence* Smith discusses the economic factors that in the course of history extended the idea of harm from injury to the body of person and his reputation to property. Forms of property develop *pari passu* with changes in what people consider valuable and conducive to their lives. In very primitive economic circumstances, a wild apple on a tree is no one's until a person picks it and has it in hand. Animals also belong to no one until they are caught or just about to be caught. In a shepherd society, herds do belong to the persons who take them out of the wild. But the grazing lands are not owned. In agricultural societies planted crops are owned as well as the land as long as it is cultivated. Sometimes this is common ownership but eventually becomes individual. In commercial societies there is the greatest extension of property rights to include incorporeal things like copyrights. Smith insists at the outset of this analysis that the ethical foundation of justice including property rights is to be found in the approbation of the impartial spectator.<sup>13</sup> And yet, as the analysis actually proceeds, the extension of property is explained by reference to social convenience and necessity. There is no necessary conflict between the two but there is a question of the relationship between the spectator's approbation and social utility.

MacCormick (1980: 251) argues that the economic changes do not *cause* the developments in property rights. Instead they are *constitutive* of or integral to the existence of the various stages of economic development. To put it another way, they are what is required to coordinate the reality of how people make a living with the background rules. For example, in a society of shepherds' animals which have been tamed remain the property of the person who tamed them even if (or when) those animals move out of the actual possession of the shepherd for a time.<sup>14</sup> Similarly, with the development of agriculture, individual (in contrast to collective) ownership of land became convenient as people moved into 'cities'. It made sense for each to own the land contiguous to him.<sup>15</sup> This is probably true, but it does not address the question of how it happens that the attitudes of the impartial spectator evolve in harmony with these developments. How does it get into the head of the impartial spectator to approve of these and other developments of property *without taking the broader view of social utility*? A possible hint of Humean social convention can be found in Smith's explanation of why in a shepherd society there was property in houses even when an individual was not in immediate possession. It was introduced 'by the common consent of the severall members of some tribe or society' (LJ i. 48).

It will not do to say that the social utility Smith observes is the unintended consequence of the individually based sympathy with the resentment of those individuals whose 'natural' or moral rights being violated.<sup>16</sup> This is because what we are trying to explain is the *extension* of moral rights and the consequent notion of injury or harm. This extended approbation (or disapprobation) of the impartial spectator is supposed to be the foundation of the extension of legal rights. Without the spectator's concurrence, the framework does not get established and the unintended consequences do not occur.

## The relatively absolute absolute

I argued that the strictness of the rules of justice, especially as regarding property and contract, is difficult to reconcile with the theory that it can be derived from the sentiments of the impartial spectator. Perhaps strictness of justice is really the product of what Smith calls 'natural jurisprudence'. In *The Theory of Moral Sentiments* Smith admits that he does not get into this field in any detail (TMS VI.ii. intro.I). Nevertheless, at the end of his book he states the briefest outline of what he has in mind: '... 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 ...' (TMS VII.iv.37).

Smith famously adopts a stadial theory of legal evolution in which he traces the development of the institution of property. In the earliest hunter-gatherer stage, there was no need for property law except perhaps for the protection of caught and possessed animals or fruit picked in the wild. But as the form of human economic endeavor changed, property evolved and become ever more complex. To the extent that justice involves the protection of property the specific nature of justice had to change over time. Smith believed that the study of legal history revealed certain principles that would underlie or should underlie positive law. This study is not an axiomatic abstract derivation but a contingent historical one. Thus the contrast between general principles and positive law is not the same as with Grotius and Pufendorf. As Vivenza (2001: 121) observes:

His philosophy of law thus retains something of the age-old contrast between positive and natural law, and the requirement that the former be constructed on the basis of the latter; the contrast, however, is no longer manifested by contingent rules on the one hand and abstract or ideal law on the other, but rather by specific legal systems born of specific historical events, and *leges legum* – laws of greater stability and wider application, almost universal but not quite because they too are subject to a form of change discernible only in the *longue durée*.

Thus the general principles, discovered inductively, from the study of history are not absolute. They are *relatively absolute* (Knight 1944: 144).<sup>17</sup> This means that the principles and their scope are relative to a particular stage in economic history. And yet during each stage they take on a very stable, almost absolute character. In this way the expectations of people are regularized. Smith argues that violation of warranted expectations engenders resentment on the part of actual and impartial spectators.

While it is claimed that the principles are stable at each stage in history, this claim is an inductive generalization. The principles do not have an abstract or axiomatic existence separate from their instantiation. In fact, they are not instantiated; they are inferred from the data. Their 'absoluteness' is a matter of perspective. What is considered the stable part and what is considered the

unstable or variable part depend on the length and detail characteristic of the relevant historical stage. Smith's stages are to a large extent conventional during his time. There is nothing immutable about them.

The relative absoluteness of the *basic principles* really has little to do with the precision, accuracy and determinateness of the rules as well as the strictness of obligation to adhere to them. The general principles, as Smith sketches them, are not as detailed as one would call 'rules'. Many of them go to the broad meaning of 'injury', 'harm' or 'hurt' or to the domain protected by the law. This is not the same as the strictness of the protection.

There is a suggestion (Vivenza 2001: 102) and textual evidence that Smith believed that the sentiments of the impartial spectator would develop consistently with the changes in the relatively absolute general principles. This is important in Smith's framework. As we said above, the narrative of the changes in legal principles (especially in regard to property) is in terms of their usefulness in making certain economic changes possible as, for example, in the development of shepherd to agricultural societies. While no explicit causal role is assigned to those changes in legal principles, they are clearly constitutive of the economic development.<sup>18</sup> However, the *non-utilitarian element* of Smith's analysis must rest on the coordinated approval by the impartial spectator of the new principles. How does it happen that there is an appropriate development of the psychology of the disinterested spectator?

The relatively absolute character of the principles common to a particular stage of development is not in itself sufficient to generalize the strictness of the rules of justice. In my view this requires attention to the extended social perspective on the function of justice. We must go beyond sympathy with resentment of the particular victim of injustice. Sympathy does constitute one important factor in the motivation to adhere to the rules of justice but it does not explain their strict, precise and determinate character.

## Notes

- 1 Smith divides rights into different categories. The ones with which we are primarily concerned are called 'estate'. They are 'acquired rights'. Within this category 'real rights' concern property while 'personal rights' concern contract. For a clear exposition of these distinctions see Simon (2013, 394–395).
- 2 '... the three fundamental rules of justice [are] the stability of possession, its transference by consent and the performance of promises...' (T 3.2.11.2). Notice that Hume stresses the property and property-related aspects of justice rather than those related to the physical integrity of the person.
- 3 'Instead of departing from our own interest, or from that of our nearest friends, by abstaining from the possessions of others, we cannot better consult both these interests than by such a convention: because it is by that means we maintain society, which is so necessary to their well-being and subsistence, as well as to our own' (T, 3.2.2.9).
- 4 For a detailed analysis of the tension between justice and beneficence in liberal thought see Rizzo (2016).



- 5 Justice has, two different foundations, *viz.* that of *self-interest*, when men observe, that 'tis impossible to live in society without restraining themselves by certain rules; and that of *morality*, when this interest is once observ'd to be common to all mankind, and men receive a pleasure from the view of such actions as tend to the peace of society, and an uneasiness from such as are contrary to it' (T 3.2.611).
- 6 'The most sacred laws of justice, therefore, those whose violation seems to call loudest for vengeance and punishment, are the laws which guard the life and person of our neighbour; the next are those which guard his property and possessions; and the last of all are those which guard what are called his personal rights, or what is due to him from the promises of others' (TMS II.ii.2.2). Thus Smith's notion of justice is corrective or what he calls 'commutative' and not distributive.
- 7 'Were men, therefore, to ... conduct themselves, on most occasions, by particular judgments, and wou'd take into considerations the characters and circumstances of the persons... But 'tis easy to observe, that this wou'd produce an infinite confusion in human society, and that the avidity and partiality of men wou'd quickly bring disorder into the world, if not restrained by some general and inflexible principles' (T 3.2.6.9).
- 8 He makes the distinction quite explicitly in Lectures on Jurisprudence (LJ i.14–15).
- 9 The view is 'neither from our own place not yet from his [the actual spectator], neither with our own eyes not yet with his, but from the place and eyes of a third person, who has no particular connexion with either, and judges with impartiality between us' (TMS III.3.3.). Impartiality seems defined more by what it is not than by what it is.
- 10 This is the term Baille (2000, 189) uses for Hume's spectator.
- 11 This illustrates the principle of the primacy of the individual over the collective mentioned above (Haakonssen 1989, 206).
- 12 For a theory of the slippery slope, see Rizzo and Whitman (2003).
- 13 'What is characteristic of justice is objectivity ("hurt") and the exactness which derives from the clear and incontrovertible reactions of the impartial spectator, sentiments felt in a stronger and more uniform way than others' (Simon 2013: 407).
- 14 'The proprietor could not have all of those animals about him which he had tamed; it was necessary for the very being of any property of this sort that it should continue somewhat farther' (LJ i. 45–46).
- 15 'The field they would cultivate when living together in this manner would be that which lies most contiguous to them. As their place of abode was now become fixt, it would readily appear in them the easiest method to make a division of the land once for all, rather (than) be put to the unnecessary trouble of dividing the product each year' (LJ i. 51).
- 16 This is clearly Smith's view as discussed in Simon (2013, 408–410).
- 17 The context in which this term is used by Frank H. Knight is important for our purposes. Knight is attacking the conception of natural law promoted by the Catholic philosopher Jacques Maritain. This concept, in sharp contrast to that of Adam Smith, is unhistorical. Maritain believed that certain fundamental principles can be derived from the nature of man as such discoverable by (abstract) reason. Knight believes that those principles cannot be truly absolute. See Knight (1944).
- 18 It would be dangerous in terms of his own framework for Smith to argue that the economic changes caused the change in sentiments. Then he would be giving a utilitarian foundation for the impartial spectator.

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