volume 4

THE ADAM SMITH REVIEW

Edited by Vivienne Brown

The Adam Smith Review

Volume 4

Adam Smith's contribution to economics is well-recognized but in recent years scholars have been exploring anew the multidisciplinary nature of his works. *The Adam Smith Review* is a refereed annual review that provides a unique forum for interdisciplinary debate on all aspects of Adam Smith's works, his place in history, and the significance of his writings for the modern world. It is aimed at facilitating debate between scholars working across the humanities and social sciences, thus emulating the transdisciplinary reach of the Enlightenment world which Smith helped to shape.

The fourth volume of the series contains contributions from a multi-disciplinary range of specialists, including, Henry C. Clark, Douglas J. Den Uyl, Ryan Patrick Hanley, Neven B. Leddy, David M. Levy and Sandra J. Peart, Robert Mankin, Leonidas Montes, James R. Otteson, Andrew S. Skinner, and Gloria Vivenza, who discuss:

• the sources and influences of Smith's work in the classics, the Scottish Enlightenment and eighteenth-century France
• the Glasgow Edition of Smith's Works and the *Wealth of Nations*.

Vivienne Brown is Professor of Intellectual History at The Open University, UK. She is the author of *Adam Smith's Discourse: Canonicity, Commerce and Conscience* (1994, Routledge) and numerous articles in a range of disciplinary and interdisciplinary journals. She is the founder/editor of *The Adam Smith Review* on behalf of the International Adam Smith Society.

The Adam Smith Review

Published in association with the International Adam Smith Society

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Book Reviews

Edited by Fonna Forman-Barzilai

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Editorial Board

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The Adam Smith Review

Volume 4

Edited by
Vivienne Brown

Editorial

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.

    The Adam Smith Review is intended as a resource for Adam Smith scholarship in the widest sense. The Editor welcomes comments and suggestions, including proposals for symposia or themed sections in the *Review*. The *Review* is also open to comments and debate relating to papers previously published in it.

For details of membership of the International Adam Smith Society and purchase of the *Review* on preferential terms for personal members of the Society, please contact the Membership Secretary, Remy A. Debes (rdebes@ memphis.edu) or visit the *Review*'s website (www.adamsmithreview.org).

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Symposium: Adam Smith and his sources

Guest editor: Douglas J. Den Uyl

Introduction

Adam Smith's sources

Guest editor: Douglas J. Den Uyl

When one thinks of the sources which were instrumental in developing Adam Smith's own ideas, the name of David Hume probably comes to mind first. Then, perhaps, other contemporary thinkers of the era, such as Francis Hutcheson or Henry Home, would follow closely behind. These thinkers were important contributors to a milieu in which Smith was intellectually nurtured and in which he reflected upon the central issues of his day. At the same time, one would likely recall that Smith spent two years in France and begin thinking of Turgot or the French Physiocrats as sources of his economic thought. In this connection too, one might remember some laudatory comments on Smith's part about Voltaire. In general, a list such as this seems to be the standard accounting of the sources of Adam Smith's thought.

It is interesting that in an open call for papers on the sources of Smith's thought, none of these traditional sources were submitted. Instead of Hume we get Shaftesbury and Swift. Instead of Turgot and Voltaire, we get Montesquieu and other somewhat lesser-known French writers and intellectuals. Instead of other Scottish Enlightenment figures, we have the Stoics. In addition, the vast majority of the submissions were in areas outside economics. I mention all this not as a roundabout way of suggesting that the traditional list of sources is in any way defective or unimportant. Rather I mention it as a way of indicating that the traditional list is far too narrow. Of course, it could be that our contributors were simply looking for the roads less-taken in submitting their papers. But even so, the fact remains that there are these roads less-taken to explore.

Perhaps because Smith's economics has been historically so much the focus, we have tended to look for the sources of his thought that may have had an impact there. The scholarly rejection of 'das Adam Smith problem', however, has opened the door to seeing Smith's writings as an integrated whole. If nothing else, that rejection puts *The Theory of Moral Sentiments* (TMS) on at least equal footing with the *Wealth of Nations* (WN). Since TMS has numerous allusions to thinkers and topics in fields outside economics as diverse as philosophy and the arts, a whole range of possible avenues of influence opens up to us. Add to that the fact that other works of Smith's, of widely differing subject areas (for example, jurisprudence,

science and music), are readily available, the list of potential sources multiplies exponentially. The chance to explore whether these other subject areas further confirm the notion that Smith is an integrated thinker with a general systematic philosophy, rather than simply a social theorist, is thereby irresistible.

But even if Smith is not completely systematic, these other areas of his intellectual life are bound to shed light upon those facets of his thought ordinarily considered. Consequently, the question inevitably arises whether, and the degree to which, sources from other areas of interest to Smith may also have impacted his thought in the traditionally more influential and well-studied areas. Saying all that is not yet to say anything about the possible influences upon Smith's thought from alternative periods of history, such as the classical world. Smith, like other well-educated men of his generation, was certainly steeped in the classical sources, especially the Stoics, and at least three of our contributors to this volume have been inspired to look there for sources of influence.

The contributions to this volume clearly reflect the widening consideration of sources for Smith's thought. One cannot help feeling after reading them all, however, that we are only beginning to scratch the surface of what sources might be considered when thinking of potential influences upon Adam Smith. No doubt this feeling in large part stems from the fact that the face of Adam Smith has been changing significantly over the last few decades. Within living memory of many of us, Smith was thought to be little more than an advocate for free-market economics. Now a significant number of scholars are so-called 'left Smithians' who see Smith as the forerunner of egalitarian and social justice perspectives that tend to characterize those on the left side of the political spectrum. Even without any divisions in political perspectives, the increasing prominence of TMS in Smith scholarship, as we just noted, has also altered how we must think of Adam Smith. We can no longer say that WN is somehow the 'essential' Smith. Indeed, TMS is increasingly filling that role. In this connection too we cannot forget that scholars are beginning to pay attention to what Smith has to say in science, the arts, psychology and jurisprudence. In short, as the scholarly range of interest in Smith's thought expands and differing interpretations emerge, the range of sources expands as well. In a way, then, the contributors to this volume are pioneers in a field of scholarship that can only burgeon.

In themselves, the contributions to this volume certainly reflect the trend towards ever widening sources. Four of the contributions go back to antiquity in their quest to better understand Smith's thought. Gloria Vivenza has two of these contributions – one, 'A note on Adam Smith's first invisible hand', is a short note on the possible connection between Jupiter's hand and the more familiar 'invisible hand' imagery so much associated with Smith's thought. In her other longer contribution, 'Justice for the criminal: classical themes at the origin of Smithian ideas', Vivenza discusses both classical and seventeenth- and eighteenth-century discussions of the concept of justice

and their impact on Smith, specifically with respect to Smith's manuscript on justice reprinted in 'The passage on atonement, and a manuscript fragment on justice' (TMS Appendix II). Though the manuscript was a youthful work, the sources from which it draws may be relevant to his more mature reflections. In the classical vein also is the contribution by Leonidas Montes, 'Adam Smith as an *eclectic* Stoic', considering Smith's connection to the Stoics. On this topic there is already considerable scholarship, including contributions by Montes himself. Montes reviews the connection with the purpose of arguing that the Stoic concept of *oikeiosis* as the basis for Smithian sympathy has been underestimated, and the influence of the Stoics on Smith's concept of self-command has been overestimated. As Montes' paper suggests, Smith selects from Stoic doctrines views that accord best with his own framework of analysis. Finally, David M. Levy and Sandra J. Peart, in 'Adam Smith and his sources: the evil of independence', also turn to the Stoics to help explain Smith's egalitarianism as well as his theory of socialization. It turns out that Stoic cosmopolitanism is a force towards impartiality and other-orientedness, both of which are critical to socialization as Smith understands it. In this connection too, Levy and Peart explore in the classical roots of sympathy the extent to which the place of sympathy in socialization compromises the assumption of independence in some modern social science approaches.

If we turn our attention to times closer to Smith's own and look to Anglophone authors, we have contributions by both Ryan Patrick Hanley and James R. Otteson. Hanley looks at the connection between Swift and Smith in 'Style and sentiment: Smith and Swift', while Otteson looks to that of Shaftesbury and Smith in 'Shaftesbury's evolutionary morality and its influence on Adam Smith'. Smith's love, not to mention extensive knowledge, of literature coupled with some rather positive statements about Swift would be sufficient reason to explore the connection between them. Hanley, however, has deeper issues in mind, arguing that Smith admired Swift's notions of moral sentiments especially with respect to pride, vanity, indignation and justice – critical terms in Smith's substantive moral theorizing. Smith's own balanced moral temperament is found to a large extent in Swift. Otteson looks at another important figure in the eighteenth century, though one perhaps less well-known today than Swift. Still, Otteson's purpose is similar to Hanley's in seeking to uncover an important source of Smith's moral theory. Shaftesbury was a highly influential thinker in the eighteenth century, and it is typical to see the connection to Smith through Hutcheson. Otteson, however, is interested in exploring more directly the influences of Shaftesbury upon Smith in their rejection of Hobbesian models of human nature and sociality. Moreover, Otteson holds that central elements of the evolving character of Smith's moral philosophy are to be found in Shaftesbury.

If we turn our attention now to French sources, we find three rather diverse contributions presented here. The first source, and the most obvious

one outside the realm of economics, is Montesquieu. Like Shaftesbury, Montesquieu had a large influence on thinkers in the eighteenth century, including members of the Scottish Enlightenment. Unlike Shaftesbury, Montesquieu also has associated with him a large body of contemporary scholarship, including reflections on the connection between Smith and Montesquieu. Henry C. Clark, in 'Montesquieu in Smith's method of "theory and history"', surveys the relevant literature on the connection and then offers his own reflections on the similarities and differences exhibited in these two thinkers, especially with respect to the connection between theory and history.

Our other two contributors who focus upon the French connection work with sources less well-known than Montesquieu's *Spirit of the Laws*. Neven B. Leddy, for example, in 'Adam Smith's moral philosophy in the context of eighteenth-century French fiction', considers the fictional writings of Pierre Marivaux, Crébillon and Marie-Jeanne Riccoboni. Leddy seeks to examine how French fictional writers like these may have been a source for Smith's reflections upon moral philosophy and moral psychology. Smith speaks favourably of these authors in precisely this context, so Leddy's purpose is to examine how certain components of their fiction, namely sympathetic love as opposed to *amour-propre*, are similar to what we find in Smith. Part of Leddy's purpose also includes opening our horizons on just what kinds of sources we should be considering when thinking about Smith in these matters. In a way, Robert Mankin wishes to do something very similar. The approach to ideas in the eighteenth century was often, to say the least, encyclopaedic. In 'Pins and needles: Adam Smith and the sources of the *Encyclopédie*', Mankin wishes to explore this milieu by looking directly at the connections between Smith and some of the contributors to the French *Encyclopédie*. Not only will such an examination help establish Smith's interest and intentions towards a synthetic intellectual vision, but also some direct connections between the *Encyclopédie* and some early pieces by Smith will help give us insights into the nature of that synthesis. That in turn could have important implications for how we see some of the relationships between Smith's extant writings.

The richness of these contributions to the sources of Smith's thought should be evident even from these extremely brief remarks about what one will find herein. But as I suggested at the outset, it is equally true that one has no trouble now imagining many other sources one might consider when thinking of Adam Smith. That is why I suggested that the contributors to this volume are, in a way, pioneers in opening some doors through which many of us should want to follow. *The Adam Smith Review* is certainly doing this branch of Smith scholarship a significant service by devoting an issue to Smith's sources.

Of course, no issue can be put together without help and encouragement. In this regard, the general editor, Vivienne Brown, is to be thanked especially. Besides the general call for papers and the selection of the most

promising submissions, the papers to follow were all read critically by me and commentary provided to the authors. Each was also submitted to a blind review by at least one other author. In some cases, one author now in this volume was blindly reviewed by another, because I believed that person to be the best available for that task. Among those outside this volume who deserve special thanks for their part in the review process are Lauren Brubaker, Jack Weinstein and Michael Zuckert. In addition, Elizabeth Hiestand helped me immensely in proofreading these papers. Such is the basic process that brought these papers forward. It is certainly a great pleasure to have had a part in bringing this collection to you.

Justice for the criminal

Classical themes at the origin of Smithian ideas

Gloria Vivenza

I have deliberately avoided the word 'sources' in the title of this article, because what I will discuss are not sources in a technical sense, so much as ideas of classical origin, elaborated on considerably by seventeenth- and eighteenth-century scholarship. I have already devoted a great deal of work to the classical sources of Adam Smith: up to now this has consisted of researching, as reliably as possible, what Smith could have derived from his outstanding knowledge of the classical authors. In this article it is my intention to postulate a possible, but unverified, influence of classical origin on Adam Smith. Perhaps it would be more accurate to call it modern, since it goes back to the seventeeth-century treatment of classical subjects. I will offer an account – hypothetical but, I hope, well grounded – of the origin of an expression used by Adam Smith, found not in his principal works but in what we might call a 'minor' text: an original manuscript fragment on justice, unearthed in 1831 and published by Raphael and Macfie in 'The passage on atonement, and a manuscript fragment on justice' (TMS Appendix II: 383–401). The editors date the manuscript fragment to the period when Smith was teaching in Glasgow, between 1751–2 and 1764.

   On this particular aspect of justice Smith was never to dwell again; and, as he never fulfilled his project of writing a treatise on natural jurisprudence, where perhaps he could have dealt with a theory of punishment, we may conclude that this juvenile note is the witness of a lifelong reflexion on problems of justice.

   I will begin by briefly summarizing a part of the treatment of justice found in *The Theory of Moral Sentiments*. At TMS VII.ii.1.10, Smith affirms that the term 'justice' has different meanings, both in Greek and the other languages. In fact, Smith sets about distinguishing between at least two types of justice: simply abstaining from doing harm, and correct behaviours or actions in relations with others. Justice which compels us not to harm, and punishes anyone who does, has already been treated by Smith at TMS II.ii.1.5, within the context of legal justice, which can be imposed by force and the violation of which is an injury, that is, *iniuria*. Similarly, we read at TMS VII.ii.1.10 that: 'In one sense we are said to do justice to our neighbour when we abstain from doing him any positive harm, and do not directly hurt him, either in his person, or in his estate, or in his reputation'.

But there is a second aspect of justice which Smith describes immediately after: 'In another sense we are said *not* to do justice to our neighbour' (TMS VII.ii.1.10; my italics) when we do not treat him with the respect and consideration warranted by his position. It is no longer sufficient 'to abstain from hurting him'; we must 'exert ourselves to serve him and to place him in that situation in which the impartial spectator would be pleased to see him' (TMS VII.ii.1.10).

Smith has thus discerned two different meanings for the concept which in both cases goes by the name of justice: 'in one sense' it is sufficient to abstain from *iniuria*; 'in another sense' it is necessary to render honours and services: the fact that we abstain from *iniuria* is somehow taken for granted, and, above all, is insufficient. The justice to which Smith alludes here consists of honouring and serving certain people when their status so obliges us, in a society which has recently been defined as 'strategically unequal' (Levi 2003: 195) due to a question of institutional differences. In the medieval and modern worlds, the feudal system recognized rights to individuals according to their status: what was right for a commoner differed from what was right for a gentleman. The ancient world may seem less complex in this respect; it is true that there were two categories with different rights, free men and slaves. But there was slavery even in the modern world in Smith's day; what is more, there also was the feudal hierarchy of the *ancien régime*, unknown to the ancient world.

Smith's passage goes on to clarify how the first form of justice is what Aristotle and the Schoolmen called commutative justice, and Grotius *justitia expletrix*; it consists of refraining from the property of others, and of spontaneously complying with what the law commands. The second form of justice, described as distributive justice by some, is what Grotius calls *justitia attributrix*, and consists of 'proper beneficence, in the becoming use of what is our own, and in the applying it to those purposes either of charity or generosity, to which it is most suitable, in our situation, that it should be applied' (TMS VII.ii.1.10). At this point, a note added by Smith to 'distributive justice' explains that 'the distributive justice of Aristotle is somewhat different. It consists in the proper distribution of rewards from the public stock of a community. See Aristotle Ethic. Nic. l.5.c.2'.

In the manuscript fragment on justice, we find a slightly different version, which the editors analyse by careful comparison with TMS and *Lectures on Jurisprudence* (LJ). They highlight the most substantial difference: in the fragment, a parallel is drawn between 'improper punishment' and 'improper benevolence', the conclusion of which is not cited in full in TMS, just the part which treats 'improper benevolence'. In the manuscript, and only in the manuscript, we find the phrase 'Improper punishment, punishment which is either not due at all or which exceeds the demerit of the Crime, is an injury to the Criminal' (TMS Appendix II: 394). The editors very rightly ask themselves why Smith did not include this passage in his criticism of the utilitarian account of justice; they conclude that, if it is just, for reasons of

general utility, to inflict a punishment which may seem excessively severe (the well-known example of the sentinel falling asleep and endangering the whole army, TMS II.ii.3.11), it is impossible to define excessive punishment as 'an injury to the Criminal' because injury is a breach of justice (TMS Appendix II: 394; Norrie 1989: 228). The editors conclude their analysis by comparing the passage from TMS with the two passages from LJ in which Smith once again gives the example of the sentinel (LJA ii.92; LJB 182), underlining how the punishment should be considered 'just', but not in the same way as the punishment of a thief or assassin.

Within this context, the editors comment on Adam Smith's note on Aristotle and conjecture that 'In preparing his earlier thought for publication, Smith would have checked many of his statements, and in this instance he would have found, by reference to Aristotle, that some qualification was needed to the bare statement in the lecture that 'in the Schools' the name of distributive justice was used for the proper allocation of beneficence' (TMS Appendix II: 396–7).

In reality, Smith did specify something in the manuscript on justice, but it was not enough. In TMS, he bases his ideas constantly on Grotius for both types of justice; for commutative justice he quotes Aristotle and the Schoolmen, while for distributive justice he merely refers to 'some' (TMS VII.ii.1.10).[1] The manuscript is equally vague: Smith speaks of 'most writers' or 'those writers' (TMS Appendix II: 390), without mentioning names. However, he writes that: 'The Rules of punishment have been by most Writers referred to distributive Justice as well as the Rules of Beneficence, and they seem to have imagined that improper vengeance was an impropriety of the same kind with improper Benevolence'. Later he explains that the 'rules' of punishment and beneficence have something in common and something which distinguishes them. They are similar in that both are difficult to establish, and vary with circumstances; they differ on one essential point, which 'those Writers have not, perhaps, sufficiently attended to' (TMS Appendix II: 390), namely that excessive punishment is an 'injury to the Criminal' and as such should in turn be punished, while 'improper Beneficence' requires no punishment. Thus Smith distinguishes between Aristotle's distributive justice and that of the unknown writers, which, if anything, corresponds to Grotius's *justitia attributrix* more than to Aristotle.

The fundamentals of the Aristotelian passage cited, which refers to 'sharing of honours, riches and anything else that can be divided among the members of the political community' (Aristotle 1994, NE 1130 b: 31–32), are substantially respected in Smith's reference, although summarized to the extreme. What Smith does not detect, perhaps because not essential to his argument, is that this distribution may be performed by several individuals or by a *super partes* judge. This is by no means irrelevant to the subsequent evolution of the concept; many years ago I happened to notice that in the Middle Ages there came to be only one distributor: St. Thomas's *gubernator* or *dispensator*. However, Aristotle very probably considered that the distribution of

all that can be divided among the members of a community depended on the political regime of the community: a sole distributor will be typical of a monarchy, and will be suited only to a monarchy. Aristocracies, oligarchies and democracies will behave differently (Vivenza 1996: 31; Theocarakis 2006: 13–14). Such pluralism would have been hard to maintain in an age of absolute monarchies like the Modern Age, in which the power of the monarchy had, since the Middle Ages, come to be likened to the power of God, which was, by definition, unique (Lambertini 1985).

Adam Smith was thus aware that although the core meaning of commutative justice had to some extent been maintained from Aristotle to the Schoolmen and as far as Grotius, distributive justice had taken on a meaning somewhere between Aristotle's concept and that of the 'some' who were closer to Grotius than to Aristotle.

In effect, the passage from Aristotle in which he distinguishes between the two types of justice (NE 1130 b 30–1132 b 20) provided plenty of work for the Schoolmen and even their successors. The following is a brief summary of their principal arguments. The most significant argument is that both types of justice are grounded on the principle of equality, except that in the case of distributive justice, it is an equality of proportions (De Molina 1615: 10). In my opinion, this was a way to ensure that an unequal distribution was accepted as 'just': nearly all scholars refer to a division of the goods of the community on the basis of how much single members have contributed, or deserved, or according to their status. It is important to emphasize that this distribution is performed by authority: distributive justice is the prerogative of power, and cannot be exercised privately by individuals (De Molina 1615: 10).

Now from the times of Buridan to the German jurist Cocceius (who was well-known to Smith),[2] many people maintained that there was no reason to distinguish between the two types of justice: they were the same. Why? Because if an amount of something is 'distributed' to someone in an 'unjust' quantity for that person, a wrong is done, an *iniuria* – very like a theft. To right this wrong, it is necessary to resort to commutative justice: it is like incurring a debt with that person (De Molina 1615: 11).[3] Here, the two types of justice are connected at least: *distributiva in sua functione includit commutativam* (Lessius 1612: 18).

Conversely, Cocceius, an authoritative commentator of Grotius, argued that there was absolutely no reason for the division into corrective and distributive justice, and that effectively it did not exist in any part of the law (Cocceius 1751, vol. I: 35, *ad* § VIII, and *Additio*). Cocceius also declared, in disagreement with Grotius, that if it really was necessary to apply this distinction to the punishment, it should be considered a part of corrective justice, and not distributive justice.[4]

Distributive justice, according to Cocceius, was an invention of Aristotle, for which we get the impression that there was no need: it belonged to the field of ethics and not to justice. Aristotle reasoned in terms of proportions,

and his justice was a proportion based on the golden mean between more and less (NE 1131 a 11–12). However, since Aristotle was familiar with two types of proportion – arithmetic and geometric – he seems to have created for this reason two types of justice: commutative *sive absoluta, ut in contractibus* ('absolute as in contracts') for its mathematical proportion, and distributive *sive comparata; ut in distributione praemiorum [. . .] omnibusque virtutibus quae aliis hominibus utilitatem afferunt* ('or relative, as in the distribution of rewards and in all the virtues which bring benefits to men', Cocceius 1751: 35 *ad* § VIII) for its geometrical proportion. Is it a coincidence that Smith considered justice to be the virtue distinguished by certain and 'grammatical' rules? He mentioned neither arithmetic nor geometry, the two subjects that Aristotle (and after him legions of interpreters, among them Grotius) always brought up when discussing the two types of justice. Yet Smith said the same thing: justice, unlike other virtues, must be grounded on fixed rules. Perhaps the fact that he renounces arithmetic/geometrical proportion and its implied dualism indicates agreement with Cocceius, according to whom justice was in reality unique, an 'exact' form. Distributive justice had already shifted, prior to Adam Smith, towards a meaning connected with 'dispensing' virtues (beneficence, magnanimity, liberality, charity), rather than with strict justice.

As regards terminology, it is important to emphasize that when Grotius alludes to the two Aristotelian forms of justice – distributive and commutative – he uses the correct term for the former (*dianemetike*) but not for the latter, which he calls *sunallaktike*, while Aristotle defines it *diorthotike*. Aristotle describes the latter as the justice assigned to voluntary/involuntary transactions, in Greek *sunallagmata*; however, the verb he uses for this type of justice is *diorthoo*, which means to straighten, to correct.[5] So it seems that Grotius focused his attention on the principle of the transaction itself (*sunallagma:* covenant, contract, dealings, transactions), rather than on the principle of straightening or correcting, which was what Aristotle meant. It has been observed that Aristotle's text, especially in *Nicomachean Ethics*, seems to point to a third type of justice, which concerns only economic transactions and hence differs from both distributive and corrective justice (NE 1132 b 21–1133 b 28).[6] However, this is a much-discussed passage: a part of the scholarship includes it in the category of 'commercial' justice, and another part in that of 'reciprocity', which has a special economic meaning relating mainly to anthropological studies. I will not dwell on these problems here, but only recall that medieval philosophy unified corrective and commutative justice, assigning even 'economic' justice to the field of the rectificatory version. Grotius and Pufendorf followed suit; indeed Grotius 'dropped the name "commutative" precisely because the major part of rectifying justice has nothing to do with the rights acquired from contractual exchange'(Raphael 2001: 58).

Gronovius paid great attention to Grotius's text, and although he based his discussion on the latter scholar's scheme, he did not hesitate to observe

– albeit in brackets – that the *vir doctissimus* could have added that in Aristotle's text *sunallagma* represented the object of justice in question, rather than its foundation;[7] Gronovius limited himself to concluding that he was not interested in bringing out exactly what the Stagirite meant, since Grotius did not follow the text closely – and here we cannot fail to agree. What follows is also significant: Aristotle's text 'is by now ignored by many'.[8]

In conclusion, Grotius believed that Aristotle had identified two types of justice; however, he translated them into Latin using words that differed from those used up to that time. R. Grosseteste's medieval Latin translation rendered the two Aristotelian forms of justice as *distributivum iustum*, and *aequale* (or *directivum*) *iustum* (Gauthier 1972, XXVI.3: 236).[9] Grotius, on the other hand, opted for *attributrix* (or sometimes *assignatrix*) and *expletrix*, respectively. The difference is evident: from the Aristotelian 'rectifying' or 'correcting' we arrive at a word (*ex-pleo*) whose meaning is closer to 'fulfilling, satisfying, or performing'.[10]

The second translation (*attributrix*) reveals another important departure from the Aristotelian meaning, as well as from the Latin translation. Both the Greek and the Latin terms are preceded by a prefix (*dia-*, *dis-*) which means 'in different directions', which in this case means precisely a distribution among different recipients. Grotius maintains the verb *tribuo*, but uses the opposite prefix: *dis-* becomes *ad-*: rather than spreading here and there, the movement is focused in one direction.[11]

What is the difference between distribute and attribute or assign? In the first case, the accent is on the plurality of recipients; in the second we are more concerned with the act of assigning in itself. It is obvious in the second case that there is nothing against numerous assignations, and hence numerous recipients, but the emphasis is more on the act of giving the goods in question than on their ultimate destination: an emphasis on the donor rather than on the receiver.

I realize that these arguments may seem excessively painstaking; however, if – as I have argued elsewhere[12] – the relationship between justice and benevolence (which evolved into charity), of Ciceronian origin but expanded greatly in the Modern Age, has acquired such considerable importance and above all has prompted so much discussion and so many technical formulations from the Middle Ages onwards (Raphael 2001: 60–1), it is precisely because it represented a kind of dialectics between rights and benefits, within a social structure based on inequality. So even something as trifling as a shift from *distributrix* to *attributrix* demonstrates a rather shrewd use of language, which reveals a progression from a community-type idea of distribution – based on consensus – to an idea of distribution based on authority, which is not open to discussion.

In the fragment, Smith returns to Grotius's phrase to the effect that true justice is only commutative/corrective (*quae proprie aut stricte iustitiae nomen obtinet*, ['which strictly speaking is given the name of justice']

De iure I.1.viii: 1; cf. TMS, Appendix II: 390); perhaps he also derives from here the concept that the rules of justice are precise, unlike the 'loose, vague and indeterminate' (TMS III.6.11) rules of the other virtues: Grotius affirms that such rules are *laxius*. According to Cocceius's criticism (Cocceius 1751, I: 34 *ad* § VII) Grotius confused natural right with whatever concerns virtue or perfection. Distributive justice concerns things that are 'measured' by merit, so it is a problem of ethics.

Thus distributive justice changed in the Modern Age, into *comes earum virtutum, quae aliis hominibus utilitatem adferunt, ut liberalitatis, misericordiae, providentiae rectricis* ('a companion of those virtues which bring some advantage to others: like liberality, compassion, prudence in government' Grotius 1751 *De iure* I.1.viii.1), the last becoming what Smith defined as 'superior prudence' (TMS VI.i.15): in short, the discretionary virtues, namely those an individual is free to exercise or not. From here medieval and modern thought established a connection between distributive justice and liberality that is absent in Aristotle. In fact, modern distributive justice has a double character: on the one hand, it is connected with institutional hierarchies (it is 'just' that society be divided in different parts with different functions, different rights and different forms of justice); on the other hand, there is a connection with ethical issues relating to virtue and merit (you will receive more or less according to your merit or worth).

Coming back to our argument, Grotius's positions were criticized not only by Cocceius but also by other jurists (Tuck 1995: 75) who observed the discrepancies with Aristotle. In any case, it is impossible to treat the fierce discussions on this argument in this brief contribution.

Let us take the subject of punishment (Lat. *poena*). Smith claims that most writers have treated both punishment and beneficence as aspects of distributive justice. He goes on to observe that these authors seem to think that even improper vengeance is the same kind of impropriety. This brings the question of merit into play: one of the cornerstones of the various treatments of beneficence is that it must not be given to the undeserving – a typical example of improper beneficence. *Ex regulis iustitiae distributivae homo liberalis esse debet non nisi in merentes* ('according to the rules of distributive justice, man must not be liberal except with those who deserve it'), which means that giving to the undeserving should constitute a violation of distributive justice, which in reality is not the case: *An igitur, si in immerentes liberalis est, pecat [sic] contra regulas iustitiae? Omnino: quia imitari perfectiones divinas [. . .] pars cultus divini est* ('and therefore, if one is liberal towards him who does not deserve it, he sins against the rules of justice? Not at all: because a part of worship is to imitate divine perfection – and God gives his benefits even to undeserving men' [Cocceius 1751, 1: 37 *ad* § VIII]).[13] Besides, improper beneficence cannot be punished because it does not violate any *right*.

However, justice is exercised through sanctions (the problem of the *poena* was perceived strongly), which at times may be disproportionate to their

cause. According to Smith's more mature theory, resentment should arise at this point; but as the editors have noted, he had not yet fully elaborated his theory. The figure of the impartial spectator does not appear in the fragment on justice, while resentment is mentioned twice (TMS Appendix II: 389 and 390), seemingly to offer Smith an opportunity to explain that this sentiment tends to induce men to seek retribution, and that precisely to avoid this they resort to magistrates and justice. Smith affirms (p. 390) that while it is easy to establish exactly which right has been violated by the illegal act, it is more difficult to establish what degree of resentment is appropriate: it varies according to the circumstances. He raises a very singular issue: an excessive punishment appears to be an *iniuria*, an illicit act which in turn deserves punishment. However, Smith was mistaken in believing that an excess of punishment could be considered in juridical theory as a wrong inflicted to the criminal, because, in that case, the wrongdoer would have been the punisher. This could not be accepted because law and justice were represented by the punisher himself. So, in order to maintain that right and justice were always on the side of the punisher, it was necessary to claim that the punished had no right: and this is what Grotius and others said.

Perhaps this is why Smith removed the phrase 'improper punishment [. . .] is an injury to the Criminal' from published texts, because, according to the sharply focused commentary of the editors, 'injury is a breach of justice', namely the violation of a right.[14]

Once again, it is appropriate to start from a phrase of Grotius: *nocentibus iniuria non fieri si puniantur* ('to him who harms, no *iniuria* is done if punishment is inflicted', *De iure* II.20.iv.1). The problem had effectively been debated at length, in the sense that the punishment, although *due* to the criminal, was not his *right*. For example, Grotius speaks out against the customary expression (*vulgaris locutio qua dicitur poenam deberi ei, qui deliquit*) according to which punishment was *due* to the criminal. This 'due' should not be interpreted as a right of the criminal, as we might be led to believe, since '*cui proprie debetur aliquid, is in alterum ius habet*' ('the person to whom something is due, has a right over another' – namely, the person indebted to him [Grotius 1751, *De iure*, II.20.ii.2]).[15] Therefore the punishment was due for reasons of equity, because it was right for a wrongdoing to be punished, but it was not intended to confer rights to any criminal, not even the 'negative' right of receiving punishment – and hence not even the right to demand that the punishment be just. Pufendorf, who also maintained that 'punishment is properly owed, not to the wrongdoer, as something which cannot rightly be denied him [. . .] but to society', a little further states that 'wrong is not done to the delinquent, if he undergo the degree of punishment which he knew had been set for the degree of his misdeed [. . .] even if, perchance, the punishment, absolutely considered, may seem more severe than the wrong done' (Pufendorf 1931 [1712]: 178).[16]

This probably explains Smith's afterthought. If the criminal, in the legal theories of the time, effectively had no rights, not even to receive a just

punishment, it was evident that he could not receive *iniuria* either, so the problem of excessive punishment had no reason to exist. Grotius and other scholars maintained that the punishment of a crime did NOT come under the category of *iniuriae*; on this point Smith should have agreed that precisely for this reason, it should not cause resentment. Grotius in reality did not offer any depth of analysis of the problem of unjust punishment: he simply affirmed that the punishment was to be proportionate to the crime committed. Many authors spoke out against excessive punishment, but none said that it was an injustice to the criminal (Grotius 1751, *De iure*, II.20.ii.1).[17] Smith, on the other hand, had raised the question of an 'inappropriate' punishment (disproportionate in relation to the crime or not due), and in such instances must have considered resentment inevitable.

The problem is that at this point rights and sentiments enter a (difficult) relationship. In the case of sentiments (which include resentment) we know that there is always a question of 'degree' involved; this is not the case for rights, which in general are defined precisely. This is one of the traditional points of friction between justice and the other virtues, often highlighted in the recent upsurge of 'virtue ethics'. It was Grotius who observed that Aristotle was in difficulty with his theory of the golden mean when he came to treat justice (Schneewind 1990: 46), a virtue whose extremes are not easy to establish: one cannot give too much or too little justice.

Smith reasoned in terms of 'perfect propriety of conduct', describing behaviour which is neither excessive nor defective; and, like Aristotle, entrusted the definition of the 'point of propriety' to sensibility rather than reason.[18] It is not, however, a question of more or less perfect 'propriety' when we are dealing with civil or criminal justice: quite simply, there are rules. Hence, even punishment should be subject to these rules, and be 'automatically' determined by the degree of the crime, without the need to appeal to individual sensitivity.

Some commentators on Grotius – for example, Gronovius, but also Lessius – elucidated Grotius's claim that punishment should be proportionate to the crime, affirming that the two types of justice differed only in so far as one concerned people, the other things. Even contracts, argued Gronovius rather speciously, belonged to distributive justice: in this case we can reasonably suppose that Aristotle would have been rather surprised by such a claim. Gronovius asserted that both types of justice are concerned with unequal parts, with more or less: only that distributive justice assigns the more or less *aestimatis personis*, that is, by evaluating the persons, while corrective justice assigns *aestimatis inter se rebus, nullo personarum discrimine*: by having evaluated the things, without having made any difference between the persons.

Commutative justice effectively presupposed, as Aristotle clearly asserted in NE 1132 a 4–5, that people were considered equal. Gronovius therefore appeared to believe that, if people are not unequal, then things must be. This justifies his explanation that since precious goods yield more than other

goods, contracts belong to distributive justice because it is distributive justice which is concerned with more or less. Gronovius's position appears to be the mirror image of Cocceius's, which said that all justice was ultimately commutative. Here, on the other hand, it is all distributive, in so far as it originates from inequalities. The fact that numerous modern authors attempted in various ways to unify the two types of justice is probably due to the fact that modern society was structurally unequal: the medieval and modern world were more unequal than the ancient, which did not know aristocracy[19] and did not have different classes. Aristotle's justice based on equality (*to ison*, cf. NE 1131 a 13; *Pol.* 1282 b 18–20) was problematic to the moderns. Numerous solutions were put forward, and I do not claim to have examined them all; however, we have seen that it was possible to suggest that distributive justice was also egalitarian, thus becoming commutative; or that distributive justice, part of ethics, was not justice; or that one of the two concerned persons and the other things; or even that commutative justice (in a contractual sense) was part of distributive justice.

Cocceius in fact held that commutative justice did not contain all the *capita iuris* since it referred only to relations of a contractual nature, or which originate from a condition of equality, which, if altered, it was necessary to restore (Cocceius 1751, I: 36–37). So we are inclined to conclude that commutative justice concerns rights deriving from juridical consensus, while it excludes all rights deriving from *status*, which refers to distributive justice. Are we revolving around the great dichotomy of modern political thought: consensus or authority? Social contract or theory of divine rights? This is the difference between a society based on common consent and one based on authority. Obviously the Church sided with authority, and was suspicious of the autonomy that 'virtue ethics' presupposed: even in their personal behaviour, men could not be left to decide by themselves; they were to follow the Church's guidance. Justice is distinct from other virtues because it cannot be reduced to the golden mean, nor to the correlated notion of an individual urge to behave virtuously, motivated by the person's character and sensibility rather than 'external' rules to be obeyed: it is the person himself, the wise man (*phronimos*) who finds the right balance, corresponding to the golden mean. But for the Church, a virtuous man who wishes to be so independently of his faith in God is not a good Christian, to such a point that in Catholic orthodoxy his virtue is not even recognized as such.[20]

It has been recently claimed that Adam Smith was 'the last virtue ethicist'.[21] In fact, Smith considered morals based on a spontaneous choice of conduct more appropriate than the slavish respect of rules (which, however, he did allow, in the name of an acceptable morality: TMS III.5.1–2). Spontaneous choice of conduct implies autonomous command of one's own behaviour, independent of authority.

To conclude, we may recall that this subject cannot receive adequate treatment in a short article. We have evidence of a deep reflection on widely

debated topics, the subject of numerous treatises, many with similar or even identical titles: Lessius, De Molina, Suarez and De Soto wrote treatises with the title *de iustitia et iure.* This distinction, and at the same time, connection, between *iustitia*, of which God is the author, and *ius*, of which man is the author, dating back to the glossator Azo, the jurist from Bologna (twelfth–thirteenth century),[22] explains how attempts have been made to clarify the relationship between virtue in an abstract sense and the concrete practice of its application, which in the case of legal relationships is very complex.

As regards Smith, we can detect an attempt at personal reasoning which was perhaps ahead of the juridical thought of his time. Today nobody would dream of denying that an excessive punishment constitutes an 'injury to the criminal', but in Smith's day it was, to say the least, an unusual position, considering that the criminal could not suffer *iniuria*.

The most significant aspect of the entire discussion, echoes of which can be perceived in Smith's manuscript on justice, is the attempt to give distributive justice an acceptable 'statute'. I have already referred to the fact that Smith, like Grotius and others, considered true justice to be the commutative type. Now we are perhaps in a better position to understand why distributive justice was not adequate. Starting from equality, and from the fact that for Aristotle *iustum = aequale* – as nearly all the moderns repeat – it is clear that commutative justice, which puts all persons on the same level, appeared more neutral, impersonal and 'equal' than the other form.

Distributive justice had been elaborated in medieval and modern times so as to justify a power structure that had not existed in Aristotle's day,[23] but which nevertheless had found in the works of Aristotle (and Plato) very strong support. It was Plato, in effect, who had maintained that there were two kinds of *equality*: one 'determined by measure, weight and number' (Plato 1984, *Laws* 757B); and another, variously defined by the moderns as 'proportionate equality' or 'symmetrical inequality', consisting of an equality of ratios by which 'there should be unequal valuations, in order that offices and contributions may be assigned in accordance with the assessed valuation in each case, being framed not in proportion only to the moral excellence of a man's ancestors or of himself, nor to his bodily strength and comeliness, but in proportion also to his wealth or poverty' (*Laws* 744C). It was on this double concept of equality that Aristotle based his double justice, grounded on the one hand on 'the "arithmetical" equality, which merely counts heads and treats all alike', and, on the other, on 'that truer "proportional" equality which takes account of human inequality, and on which "distributive justice" (as Aristotle terms it) is based'.[24] But it would be unfair to Plato if his observation that the two kinds of equality 'though identical in name' are frequently 'almost opposite in their practical results' (*Laws* 757B) were to pass unnoticed. The same may be said of the two forms of Aristotle's justice, as I observed some time ago.[25] But Aristotle did not stress this contradiction, and the philosophers and political writers who followed him found various

ways, as I have tried to show in this paper, to represent the two justices as the sides of the same coin.

In fact Adam Smith realized that Aristotle's distributive justice was something different from the medieval and modern concept. In Smith's day, distribution decided by authority had long been presented as fair: the authorities ratified – and indeed themselves represented – the stratification of society, which, as we have said, resulted in different forms of justice for different social strata. Why there was so much insistence on justifying this is clear: attempts have always been made to cover up harsh realities, above all to ensure their acceptance by those who are sacrificed for the benefit of the privileged few; there is also a tendency to make the necessity and expediency of those disagreeable realities evident, for reasons of social (and political) order and stability.

Smith himself does the same, and this has been noted several times ('Nature has wisely judged that the distinction of ranks, the peace and order of society, would rest more securely upon the plain and palpable difference of birth and fortune, than upon the invisible and often uncertain difference of wisdom and virtue'; slightly above he also wrote 'The peace and order of society, is of more importance than even the relief of the miserable', TMS VI.ii.1.20).

We should also observe, and indeed underline, that Smith treats Aristotle's two kinds of justice within a Platonic framework. Just above the passage in TMS with which I opened this paper, Smith briefly summarized Plato's philosophy, describing it as that 'perfect propriety of conduct' we have when each of the three mental faculties performs their respective function, and reason governs passions (TMS VII.ii.1.9). After commenting on the way Grotius describes Aristotle's two justices, at TMS VII.ii.1.10, Smith alludes to a third type of justice, namely the ability to attribute the right value to things, including 'any particular object of self-interest'. Perhaps even this is reminiscent of Aristotle: at NE 1136 b 18–19 Aristotle says: 'if a man knowingly and voluntarily gives too much to another and too little to himself, he does injustice to himself'. Directly after, however, Smith returns to the Platonic scheme by asserting that men who possess 'this' justice also possess all the other virtues, and concludes by reaffirming that Plato considered the nature of the virtue to be the 'state of mind in which every faculty confines itself within its proper sphere without encroaching upon that of any other' (TMS VII.ii.1.11).

As usual, Smith's definition is precise. From his original absolute equality, Plato proceeds with a categorization into classes, or functions of the state, according to the different 'material' of which human beings are made. An individual could only very exceptionally leave the category in which he found himself.[26] Smith may have felt that the Platonic 'framework' could to some extent be adapted to feudal society: class differences were presented as the inevitable product of distributive *justice*, which had helped to resolve the issue of inequality. As a result, Smith inserted Aristotle's two justices