

## **Towards a Practical Justice: Lessons from Adam Smith**

Marcus Shera, 1/11/2019

The Douglas B. Rogers Conditions of a Free Society Essay Competition

Every idea comes to a final judgment when it is made into a tool of practical use. An idea eventually faces its adult life and the responsibilities that come along with it. The pragmatic test is clear for the technological products of science, but I suggest the same test can be laid on more abstract principles. If abstract rules and beliefs assist the follower in their quest for virtue, beauty, and truth and such beliefs stand the test of time, we can say that such rules are good to believe; they are for all intents and purposes, true. A map is only good if it gets you somewhere, and abstract concepts function the same way. If a map cannot help you find where you are, or in which direction you should go, it might as well not be a map at all. No one would buy it.

A large part of Hayek's career was dedicated to putting the elusive concept of social justice to the pragmatic test.

To discover the meaning of what is called 'social justice' has been one of my chief preoccupations...I have failed in this endeavour - or, rather, have reached the conclusion that, with reference to a society of free men, the phrase has no meaning whatever...I have come to regard 'social justice' as nothing more than an empty formula, conventionally used to assert that a particular claim is justified without giving any reason. (Hayek 1967, 57)

Social Justice has "no meaning whatever" not because it is impossible to come up with a definition. Principles of Justice will only survive the pragmatic test, if they are able to recommend real guides to those who can follow them. In a free society, when the outcomes are the result of human action but

not of human design, justice cannot be determined by distribution outcomes as no one is responsible for designing the total array of who gets what.

Appeals to social justice typically take the following form: “Our society is unjust because Group X is in such a position relative to Group Y. Society must take Action Z (usually some government policy) immediately to rectify the situation.” There is no such actor Society that can satisfy these demands. “...the demand for ‘social justice’ is addressed not to the individual but society—yet society, in the strict sense which it must be distinguished from the apparatus of government is incapable of acting for a specific purpose” (Hayek 1982, 228).

### **The Rules of Just Conduct**

Hayek wants us to return to a form of justice that is applicable at the individual level, a form that he calls “the rules of just conduct”. Here justice is determined by clear, distinct, and followable rules such as property, contract, and consent. These rules are unique in that they are end-independent, impersonal, and universally applicable to all (Hayek 1982, 197). Their universality doesn’t prevent them from being adapted to any particular circumstance. The rules of just conduct directly apply to individuals and are designed to be followed. Each rule is not set in stone, but the criteria that Hayek suggests of end-independency, impersonality, and universality are needed to make each rule followable. Equality of opportunity is granted meaning because, at least respect to these rules, everyone must be treated equally for us to say that justice is done. Justice to Hayek must always be a negative case that no rule has been violated, and never a positive one that some outcome has been achieved.

Milton Friedman’s claimed that “A society that puts equality—in the sense of equality of outcome—ahead of freedom will end up with neither equality nor freedom” (Friedman 1980, 148). He strikes at the same problem. Equality of outcome is another name for social justice in that it lays

its claim against the outcome of the decentralized acts of a free society, and not the conduct of any living member. Friedman, however, continues, “Freedom means diversity, but also mobility. It preserves the opportunity for today’s disadvantaged to become tomorrow's privileged and, in the process , enables almost everyone, from top to bottom, to enjoy a fuller and richer life” (Friedman 1980, 149). Hayek is right that individually followable rules are necessary to apply the idea of justice to individual behavior, but the rules are not the ultimate end. We respect each other’s liberty in order to maximize the possibilities for individuals. The respect of life, liberty and property are crucial, but they don’t satisfy all of our moral demands.

Hayek leaves many unsatisfied. He tends to leave an impression on the reader that justice should only be conceived as negative rules. There are reasons that social justice activists demand something greater than the basic rules of just conduct. Equality of outcome is something that people really do care about, and failing to address these concerns is failing to address real moral claims. These higher demands may also properly be called justice. One of my childhood neighbors was the only man on our street to own a snowplow. When the winter blizzards came, he would plow not only the sidewalk in front of his house, but those up and down half of the street. Most would find nothing wrong with calling what he did just, even though it was not strictly required of him. Nor can we find a particular rule of just conduct that he has fulfilled. If Hayek’s standard of justice does not satisfy the moral demands of people, then a wider sense of justice must be adopted to stand the pragmatic test.

### **Adam Smith’s Moral Psychology**

We have to turn no farther than the grandfather of modern economics for a richer understanding of justice and morality that I believe does stand the pragmatic test. In Adam Smith’s first book, *The Theory of Moral Sentiments* (TMS), he uses the word justice with multiple

interconnected meanings. When brought together these create a moral guide that fulfills both the demand that justice be a practical guide to individual conduct and the higher senses of justice that “social justice” usually tries to satisfy. To talk about justice in Smith, we need first to understand his moral psychology.

To Smith, human life is made up of sentiments towards various people, actions, and objects. These sentiments are developed through experience. We are born with the natural instinct to care for our own pleasure and pain. Through life, we develop a concern for the well-being of those around us such as our family and neighbors, and further we may develop a love for mankind as a whole. Since these outward developments occur so regularly, Smith feels no hesitation to also call them natural sentiments. Our sentiments develop with someone more intimately the closer they are. There is a “sympathetic gradient” that develops with ourselves at the center and our attachments growing colder as the distance between us and another increases. Sentiments can be built for concrete objects and people or abstract patterns. Sentiments about human conduct we call moral sentiments.

But sentiments in the moment can deceive. Imagine someone sitting in front of you, perhaps a friend that you habitually end up in debates with. In the heat of the moment, when something that they say brings you past the boiling point, is it not natural to want to call them the first nasty name you can think of? Afterwards, remorse usually sets in, and any cool-headed bystander would disapprove of such behavior, no matter how reprehensible the opinion of the victim. Smith says, “This self-deceit, this fatal weakness of mankind, is the source of half the disorders of human life” (TMS 158). Our moral faculties have not left us unarmed against this weakness. “Our continual observations upon the conduct of others, insensibly leads us to form ourselves certain general rules concerning what is fit and proper either to be done or to be avoided” (TMS 159). To make sure our

sentiments don't lead us to disastrous decisions in the heat of the moment, we develop sentiments for general rules of conduct. These general rules help moderate our behavior and temper our partiality.

Smith's famous example of the Chinese earthquake explains best (TMS 136-37). If a man in Europe is informed of an earthquake that swallows up all of China he may express sympathy, but ultimately it will not affect his sleep that night. If he is informed that the next day he will lose his pinky, that night will be one of the longest of his life. The example demonstrates clearly the sympathetic gradient. China is much farther from me than the two fingers I have resting on "A" and ";" as I type this sentence. Even though that may be the case, if anyone was given the choice between keeping their pinky and saving one billion people, most would make the sacrifice. How can this be the case if they have already confessed a greater attachment to their finger? There is a third inner force at work. Their devotion to the general rule that they must sacrifice what is only a "paltry misfortune" to themselves for the good of an "immense multitude" makes the choice an easy one. The rule saved this poor soul from the blindness of his own partiality.

Another similar tale that Smith tells is of the policy maker. Economic policy is laid out for the well-being of the people, but the policy maker rarely has an intimate relationship with each member of the population their policy will affect, both in terms of personal affection and situational knowledge. "...if you would implant public virtue in the breast of him who seems heedless of the interest of his country, it will be to no purpose to tell him, what superior advantages the subjects of a well-governed state enjoy...You will be more likely to persuade, if you describe the great system of public police [policy] which procures these advantages," (TMS 186) Smith is appealing to economists. The love of political and economic systems can prompt even the most cold-hearted to work towards the betterment of others.

It is still important to remember that Smith believed that these rules and systems were “ultimately founded upon experience of what, in particular circumstances, our moral faculties...approve or disapprove of” (TMS 159). The general rules grow out of a deeper soil of natural sentiment. They can change over time as experiences accumulate and traditions evolve. They are still respected as rules in themselves, but their purpose remains to adjust people to pursue higher goals and protect them from self-deceit.

If the respect for rules or love of systems gets in the way of those higher goals, we run into the infamous man of system. The man of system may admit partiality in others, but out of “his own conceit” believes the system he has fallen in love with, or the rules that he has developed, trump all others. “He seems to imagine that he can arrange the different members of a great society with as much ease as the hand arranges the pieces upon a chessboard. He does not consider that the pieces upon the chessboard have no other principle of motion besides that which the hand impresses on them” (TMS 234). We have a level of intimacy with chess pieces that we do not have with the members of a great society. Systems that ignore other forces will lead to disorder. The intimacy that the man of system fails to have is not always one of affection, but also that of situational knowledge. No single system can contain all the “particulars of time and place” that Hayek speaks of in “The Use of Knowledge in Society” (Hayek 1945).

### **A Wider Sense of Justice**

From the background of Smith’s moral psychology, I can now demonstrate the meaning that Smith ascribes to term *justice*. Smith employs the term justice in three ways, described by Daniel Klein (forthcoming). The first is commutative justice or “abstaining from what is another’s”. The second is distributive justice or “making a becoming use of one’s own” (what my neighbor did when he cleared our sidewalk for free). The last is estimative justice (Klein’s term), which is the hardest to

define. It refers to treating things with due respect or estimating objects properly. I do a truly magnificent painting justice by giving it a prominent place on the wall in my house. Though Smith typically employs the term justice to mean commutative justice or the respect of property, Klein counts 30 times in TMS that he uses it to mean distributive justice and 36 times he refers to estimative justice (Klein forthcoming, 13 and 23).

In Part II of TMS, Smith uses the term *beneficence* to refer to distributive justice and uses the term *justice* to mean simply commutative justice. Beneficence can never be extorted from an individual. Taxation and redistribution do not make an individual generous or loving. Commutative justice, on the other hand, can be prompted by coercion. If someone takes your money by force, you have the right to take it back by force. Justice, in the form of general rules, prevents individual passion and partiality from corrupting a society. To the extent that simple respect for justice does not suffice, fear of law enforcement may be needed to fill in the gaps. Notice that this does not require a view of human nature that is fundamentally selfish, but only one that sees humans as partial and prone to make errors of passion. Justice and Beneficence play two distinct, but important roles to the functioning of a society.

Beneficence...is less essential to the existence of society than justice. Society may subsist, though not in the most comfortable state, without beneficence; but the prevalence of injustice must utterly destroy it... [Beneficence] is the ornament which embellishes, not the foundation which supports the building, and which it was, therefore, sufficient to recommend, but by no means necessary to impose (TMS 86).

A society that wants to rely on only beneficence will surely collapse. Respect for Justice is needed because we cannot rely merely on an assumed love for all. We can, however, develop a serious love for the rules of just conduct. Justice can recommend us to behavior that makes

us unintentionally useful to our neighbors, while simultaneously preventing us from intentionally harming them. Furthermore, like the example of the generous neighbor, beneficence focuses on the actions of individuals and not on the distribution of outcomes. Beneficence satisfies the pragmatic test in a way that schema of social justice does not.

There are many ways in which commutative justice is unique. Unlike other general rules, commutative justice is precise and accurate. There is little room for varying interpretations in the court of law. The rules of property are negative; they are upheld by *not* doing something. There are usually no rewards for not trespassing, whereas there may be rewards for acts of public service (distributive justice). Also, Smith makes clear that commutative justice is only intended for disputes between equal citizens. It may be bypassed by certain social entities. It may be proper for the government to violate property rights to extract taxes in the same way that it is okay for a parent to take away their child's toy. This does not justify all government actions, in the same way that it does not justify all parental choices.

When the government does respect commutative justice, we call that liberty. In *The Wealth of Nations* (WN), Smith expounds on the "system of natural liberty", a society in which the economy is guided by the invisible hand and the government largely respects property rights. Natural liberty is the system that Smith wants policy-makers to fall in love with when considering the well-being of the people. There are times when Smith does recommend government intervention in the economy as a matter of distributive or estimative justice. These include taxation, restrictions on notes of small-denomination, and usury laws among others.



In Book I, Chapter 2 of the *Wealth of Nations*, Smith says: “It is not from the benevolence of the butcher, the brewer, or the baker that we *expect* our dinner, but from their regard to their own interest” (WN 27, emphasis added). I highlight the word *expect* because ignoring it has led many to believe that Smith recommends we all remain selfish. That interpretation misses a lot of context. First, the butcher, the brewer, and the baker are living in a society where commutative justice is respected. In a market society, few have the time to develop intimate relationships, but they can recognize a duty to one another by respecting rules of just conduct. Second, Smith clearly does desire beneficence to be added to a society over and above commutative justice and self-love, but we should not expect our bread to be provided by it.

A similar misreading is done of Friedman’s famous article, “The Social Responsibility of Business is to Increase its Profits”. He says that executives have a duty to meet the demands of stockholders, but many forget that he continues, “...while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom” (Friedman 2007, 173-4). Friedman wants executives to respect commutative justice, but also the general rules that are laid out for the conduct of distributive and estimative justice.

### **Conclusion**

Smith is able to straddle the demands of social justice while recommending a practical guide to personal conduct. Though the rules for distributive and estimative justice are less precise than those of commutative justice, they still pass the pragmatic test because they are tailored to individual conduct. The rule that makes the man sacrifice his pinky for the “immense multitude” is directed at the person making the decision, not the at distribution of

pinkies worldwide. I do not mean to imply that Hayek had no concern for issues of higher justice. Smith, however, does a better job at describing all the types of justice that we may want to address without sacrificing coherence. Some sentiments we are born with and some we develop over time. If we develop respect for property rights without love for our neighbor, we will have only an ugly foundation. Social justice, however, attempts to pursue love for our neighbor with disregard for commutative justice, a path that leads to the disorders of partiality and ignorance. Moving into the future, I recommend a multi-faceted justice to take advantage of the fruits that Adam Smith intended for the system of natural liberty.

#### **Bibliography:**

- Friedman, Milton, and Rose Friedman. (1980) *Free to Choose: A Personal Statement*. Harcourt.
- Friedman Milton (2007) *The Social Responsibility of Business Is to Increase Its Profits*. In: Zimmerli W.C., Holzinger M., Richter K. (eds) *Corporate Ethics and Corporate Governance*. Springer, Berlin, Heidelberg
- Hayek, Friedrich. (1945) "The use of knowledge in society." *The American economic review* 35, no. 4: 519-530.
- Hayek, Friedrich. (1967) "The Atavism of Social Justice." *New Studies in Philosophy, Politics, Economics and the History of Idea*.
- Hayek, Friedrich. (1982) *Law, Legislation, and Liberty*. Routledge. 2013 ed.
- Klein, Daniel B., *Commutative, Distributive, and Estimative Justice In Adam Smith* (March 10, 2017). *Adam Smith Review* (Vol. 12), Forthcoming; Working Paper in Economics No. 17-11.
- Smith, Adam (1759) *The Theory of Moral Sentiments*. Liberty Fund.
- Smith, Adam (1776). *An Inquiry into the Nature and Causes of the Wealth of Nations*, edited by RA Campbell and AS Skinner Indianapolis: Liberty Fund.