

Adam Smith's Account of Justice

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ABSTRACT

Caleb Harrison: Adam Smith's Account of Justice
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The literature regarding Smith on justice seems to be split into roughly two camps. In the first camp, there are people who maintain that Smith provides a rights-based account of justice that is distinct from morality – one that is not grounded in natural sentiments, but rather in (something like) rights generated by positive law. In the second camp, there are people who maintain that Smith attempts to offer an account of justice grounded in sentiment, but that the account offered is an incoherent one. I disagree with both camps. By explicating the account of moral judgment and the account of justice that Smith offers in *The Theory of Moral Sentiments*, and demonstrating the clear link between them, I offer an alternative reading of Smith's account of justice as a sentimentalist account, one that is both coherent and fundamentally connected to morality.

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LIST OF ABBREVIATIONS

IS	Impartial Spectator
LJ	<i>Lectures on Jurisprudence</i>
TMS	<i>The Theory of Moral Sentiments</i>
WN	<i>An Inquiry into the Nature and Causes of the Wealth of Nation</i>

Introduction

The literature on Adam Smith has seen both a resurgence and a shift in focus over the past few decades. Philosophers, interested in recovering an image of Smith as a moral and political philosopher rather than solely as an economist, have worked diligently to analyze and clarify the theories of mind, art, language, education, and science that run through Smith's main works: *An Inquiry into the Nature and Causes of the Wealth of Nations* (WN), *The Theory of Moral Sentiments* (TMS), *Lectures on Jurisprudence* (LJ), and an assortment of papers and lecture notes made available after his death. Compared to the immense quantity of work regarding, for instance, the moral philosophy and theory of mind, relatively little work has gone into attempting to make clear a possible account of justice, or the connection between such an account and the account of moral judgment that Smith offers in TMS. The reasons for this are many: some philosophers believe that Smith never intended that the accounts be unified,¹ while others believe that Smith intended that the accounts be unified, but was incapable of unifying them due to internal tensions resulting from his commitments in either account.²

When we turn to the text, however, there is reason to believe that such concerns are misplaced. In LJ, which is comprised of two partial sets of lecture notes from one of Smith's

¹ See Vivienne Brown, *Adam Smith's Discourse: Canonicity, Commerce, and Conscience* (New York: Psychology Press, 1994).

² See Samuel Fleischacker, *On Adam Smith's "Wealth of Nations": A Philosophical Companion* (Princeton: Princeton University Press, 2009); also Charles L. Griswold, *Adam Smith and the Virtues of Enlightenment*, (New York: Cambridge University Press, 1999).

students that are often taken to be integral to the account of “natural jurisprudence” that Smith foreshadowed, but never completed, Smith frequently cites instances where the impartial spectator — his standard-bearer for moral judgment — serves as a check on laws in virtue of the impartial spectator’s connection to moral judgment. Likewise, in TMS, Smith frequently uses terms typically reserved for his discussion of moral judgment when discussing justice. In light of these occurrences, it seems plausible to think that Smith *did* intend to offer an account of justice that is fundamentally tied to his account of moral judgment. In this paper, I argue both that this is the case, and that Smith succeeds in doing so. The paper will proceed in three parts. First, I will explain Smith’s account of moral judgment, making clear how the sentimental process of sympathy combines with the desire for approval to form Smith’s standard of moral judgment: the impartial spectator. Second, I will show how the sentiments of the impartial spectator are crucial in understanding the connection between moral judgment and Smith’s conception of justice, as both a virtue and a state of affairs. Finally, I address several prominent, alternative views in the literature. If the interpretation that I offer in the first two sections succeeds, then it should be clear in the final section that the alternative views will not work, and that my interpretation shows why, while avoiding some of the problems that arise for the alternatives.

1 Sympathy & Sentiment

In TMS, Smith offers an explanation of both the standards of, and the process that is crucial to the formation of, our moral judgments, ultimately claiming that our moral judgments depend on sentiments.³ Smith’s account is quite rich, and we can make good sense of it if we see

³ Upon whose sentiments our moral judgments depend, and in what way they depend on them, will be explained below.

him as attempting to explain three things: the general process by which we make moral judgments, the standard that we ultimately use in making moral judgments, and the motivation that we have for making moral judgments in this fashion and with this standard. I will begin by explaining the general process by which we make moral judgments, or what Smith refers to as “sympathy.”

1.1 *The General Process*

Smith begins by examining our practice of considering the behavior and sentiments of others.⁴ He notes that we often find ourselves feeling certain sentiments in the course of these considerations. We feel miserable, for instance, when we either witness another’s misery or are made to conceive of it in vivid fashion. Commiserating with another in light of their misery is a particular instance of a general process that Smith refers to as sympathy. Like when we commiserate, sympathy involves our feeling a certain sentiment upon witnessing, or vividly imagining ourselves to be in, the circumstances of another. Unlike commiseration, however, sympathy is a process involving any sentiment — sympathy simply denotes our sharing in any sentiment with another when we imagine ourselves in their circumstances. When Smith claims that we “share in” the sentiment of another when imagining ourselves to be in their circumstances, he is clear that we *actually* feel a sentiment; we do not simply imagine that we *would* feel a certain sentiment in their place.⁵

⁴ Smith frequently uses ‘feeling,’ ‘emotion,’ and ‘sentiment’ as interchangeable nouns. I will stick with ‘sentiment’ for the most part, changing to ‘feeling’ or ‘emotion’ primarily to avoid awkward writing; I mean to imply nothing distinct by using one in place of another.

⁵ Smith mentions two cases—of the dead, and the severely mentally ill—that seem to count against the idea that the sentiments that we actually feel are the sentiments that we take to be the sentiments felt by the person with whom we sympathize (TMS, I.i.1.10-13). In each of the cases, there seems to be a failure of some kind in that we actually feel an unpleasant sentiment that the other person clearly does not also feel: a dread in response to the condition of the

We are now working with sentiments with distinct etiologies: the sentiments that arise upon experiencing something non-imaginatively, and the sentiments that arise upon imagining oneself in another's position. I will refer to the first kind of sentiments as (simply) *sentiments*, and the second kind as *sympathetic sentiments*. When we recognize that our sympathetic sentiment is the same as the sentiment of the person in whose position we are imagining ourselves to be, we feel a pleasing sentiment in addition to our sympathetic sentiment.⁶ This additional sentiment is the sentiment of approbation, according to Smith, and it indicates our approval of the sentiments of another. Conversely, when we recognize that our sympathetic sentiment is not the same as the sentiment of the person in whose position we are imagining ourselves to be, we feel an unpleasant sentiment in addition to our sympathetic sentiment; this additional sentiment is the sentiment of disapprobation, and it indicates our disapproval of the sentiments of another. In other words, we feel a pleasant sense (of approval) towards another's sentiments when we recognize that their sentiments concord with our sympathetic sentiments, and we feel an unpleasant sense (of disapproval) towards another's sentiments when we

severely mentally ill, of which they are by no means aware; and terror in response to the condition of the dead, who can themselves feel no sentiment whatsoever. We could look at these as instances of our actually feeling sentiments that we know not to be the sentiments of the other person, in which case the failure is explained by our inaccurately imagining the circumstances of the mentally ill person or the cadaver. Alternatively, we could look at these as instances of our actually feeling sentiments that we know to be the sentiments of another person, in which case the failure is explained by our conflating the (imagined, or non-existent) person with whom we sympathize with the mentally ill person or the cadaver. The former description requires an explanation of what it is about imagining cadavers or the severely mentally ill that makes it so difficult (if not impossible) for us to accurately imagine their circumstances in such a way as to cause us to feel something like blissful content or nothing at all. The latter description is explained by the fact that the sympathetic process operates on an imagined person that we recognize as being different from the actual person in question.

⁶ Notably, we may feel this additional, pleasing sentiment when we recognize that our non-sympathetic sentiment is the same as the sentiment of some other person. For example, we often are pleased when another person feels ecstatic joy or utter dread in response to the same thing that causes us to feel these sentiments.

recognize that their sentiments are discordant with our sympathetic sentiments. Propriety and impropriety, for Smith, are concerned with our feelings of approval and disapproval.

Smith was aware, too, that we often approve or disapprove of the sentiments of other people without feeling any particular sentiments of our own, and he gives nice examples that should be familiar to most people (in general, if not in detail). We may approve of a joke as humorous, despite its inability to elicit the slightest bit of amusement from us. Sometimes, too, we approve of the grief of a stranger who (say) just received word of their father's death, despite feeling no grief ourselves whatsoever. In either case, Smith argues, the approval that we nonetheless find ourselves feeling is grounded in our belief that the case at hand shares general features in common with previous cases that we believe to have elicited sentiments of approval from us.⁷ Given that our present approval is grounded on our belief that feelings of approval were directed at similar cases in the past, Smith's contention that "it is scarce possible that we should make use of any other rule...but the correspondent affection in ourselves" seems highly plausible.⁸

⁷ "A stranger passes by us in the street with all the marks of the deepest affliction; and we are immediately told that he has just received the news of the death of his father. It is impossible that, in this case, we should not approve of his grief. Yet it may often happen, without any defect of humanity on our part, that, so far from entering into the violence of his sorrow, we should scarce conceive the first movements of concern upon his account... We have learned, however, from experience, that such a misfortune naturally excites such a degree of sorrow, and we know that if we took time to consider his situation, fully and in all its parts, we should, without doubt, most sincerely sympathize with him. It is upon the consciousness of this conditional sympathy, that our approbation of his sorrow is founded, even in those cases in which that sympathy does not actually take place; and the general rules derived from our preceding experience of what our sentiments would commonly correspond with, correct upon this, as upon many other occasions, the impropriety of our present emotions." TMS, I.i.3.3-4.

⁸ TMS, I.i.3.9.

In addition to approval and disapproval, our considerations of the behavior and sentiments of others may involve what Smith refers to as our sense of merit and demerit.⁹ While merit and demerit are similar to propriety and impropriety in being grounded in moral sentiments that are based on the imaginative consideration of another's sentiment, they arise in different circumstances. Smith notes that approval and disapproval exclusively involve what he calls "direct" sympathy with the sentiments of one who performs an act (call this person the 'Agent'), while our senses of merit and demerit also involve "indirect" sympathy with the sentiments of the person who is particularly concerned with the actions of the Agent (the person particularly concerned, or 'PPC').¹⁰ The difference between "direct" and "indirect" sympathy can be made more explicit by explaining how Smith understands our sense of merit to be a "compounded" sentiment.¹¹

Returning briefly to approval and disapproval, we can see that their being felt depends on whether or not the sentiments of the Agent accord with our sympathetic sentiments.¹² In this respect, approval and disapproval can be understood to be "simple" sentiments, in that they

⁹ Merit and demerit, for Smith, are the qualities of deserving reward and punishment, respectively. TMS, II.i.introduction.

¹⁰ "Person particularly concerned" is perhaps a strange locution, but the essence of the idea is easily understood: the PPC is just any person who is directly affected by the actions of the Agent. As the Agent's actions will have an impact on this person, they are particularly concerned with the actions of the Agent.

¹¹ TMS, II.i.5.2.

¹² As noted above, we need not feel the sentiments every time that we feel a sense of approbation or disapprobation; it is enough that we find the relevant features of the case to be sufficiently similar to past cases that we believe did elicit approval or disapproval.

depend on only a single process of sympathy.¹³ Our sense of merit and demerit, on the other hand, are “compounded” in that they depend on two processes of sympathy: our sympathizing with the Agent, and our sympathizing with the PPC. If we feel that an Agent’s actions are meritorious, then we will have both approved of those sentiments of the Agent that prompted her to act, and will have felt sympathetic gratitude towards the Agent in sympathizing with the PPC.¹⁴ If we feel that an Agent’s actions are demeritorious, then we will have disapproved of those sentiments of the Agent that prompted her to act, and will have felt sympathetic resentment towards the Agent in sympathizing with the PPC.¹⁵

Our sense of demerit is of particular significance, both to Smith’s theory of moral judgment and to the aims of this paper, because of its intimate tie to our sense of justice by way of resentment. In the next section, I will focus on the connection between resentment and our sense of justice. First, however, I will explain why it is that Smith ties demerit to the sentiment that he calls resentment — and not love, hate, or some other opposing sentiment.

It should be noted that Smith is not attempting to tell us what resentment or gratitude is, or to fit some pre-theoretical concept of either into his theory. Rather, Smith is attempting to identify well-known sentiments, which he refers to as resentment and gratitude, and to describe

¹³ Smith himself does not introduce the term “simple,” and I don’t intend the term to be anything other than a contrast term to “compounded” — a term that Smith does make use of.

¹⁴ Smith is clear, here, that the actual sentiments of the PPC are irrelevant to our judgments of merit. The PPC might very well resent the Agent’s actions, but so long as we find ourselves feeling gratitude towards the Agent when we imagine ourselves in the PPC’s circumstances, our sense of merit regarding the Agent’s actions remains. (Vice versa for demerit.)

¹⁵ There is also the possibility that we will not feel a sense of merit or a sense of demerit. I will address this possibility below.

their features in such a way as to make clear how they are connected to our sense of justice and (in the case of gratitude) beneficence. We need first to look at the sentimental features that Smith claims are salient to our sense of merit and demerit. Smith identifies a sentiment that “most immediately and directly prompts us to reward,” and calls this sentiment *gratitude*. He also identifies a sentiment that “most immediately and directly prompts us to punish,” and calls this sentiment *resentment*.¹⁶ There are two important aspects shared by these two sentiments. First, the sentiments provide us with a strong motivation to *do something* with regards to some other agent, namely to reward or to punish them. Second, the sentiments provide a strong motivation for *us* to be instrumental in its being done — that is, for us to be instrumental in the reward or punishment of that other agent. That we have sentiments with these features, and that these sentiments are distinct from other sentiments *because* of these features, should be familiar to experience.

When we spend time with people of whom we habitually and consistently approve — our close friends and family, for instance — there might be a number of strong, affectionate sentiments that we feel towards them. Among these sentiments we might feel are love and gratitude, and part of what it may be to feel love and gratitude is to desire that our loved ones’ lives go well. What distinguishes the sentiment of love from the sentiment of gratitude is the fact that with love (but not with gratitude), our desire that their lives go well is often fully satisfied even if we had nothing at all to do with their lives going well. For instance, our desire that a friend’s life goes well might be completely satisfied when he receives a job that he desperately wanted, or when he finds a partner that makes him happy, despite the fact that we may have had

¹⁶ TMS, II.i.1.2.

nothing to do with either case of his life being improved. Love, as Smith understands it, does not cause us to feel as if *we ourselves* must be the ones to deliver happiness to our loved ones' lives (though, of course, we might very much enjoy doing so!).

Gratitude, however, does make us feel as if we ourselves must be instrumental in improving the lives of those to whom we feel gratitude. Perhaps you have a friend who always clears the snow off your car's windshield in the morning before she leaves. Certainly, you might find yourself feeling a strong and affectionate sentiment towards her, and part of what it is to feel this sentiment may be to desire that her life go well. However, unlike with love, it is likely that the desire that her life go well will not be fully satisfied if you or your actions have nothing to do with her life going well. For instance, it is unlikely that you would be satisfied if a mutual friend bought her a book from her favorite author, or a gift card to her favorite coffee shop, on account of her having cleared off your window. Only if you yourself are involved in her life going well—for instance, by playing some crucial role in her getting the book or gift card—will the desire be potentially satisfied. And it is this feature — the desire to be instrumental in her life going well — that distinguishes gratitude from love.¹⁷

The relationship between hatred and resentment runs similarly. Sometimes, the sentiment that we feel towards a certain person causes us to wish them all kinds of harm, regardless of who or what delivers the harm. We may hate the violent criminal that we see on the news, and wish that they would be caught and punished for their crimes. It is likely, however, that we would feel no particular need to be involved in the deliverance of said punishment; punishment, however

¹⁷ See TMS, II.i.1.5-7 for a nice discussion of the distinction between gratitude/resentment and love/hate.

delivered, might satisfy our hatred.¹⁸ Other times, though, we feel a sentiment towards a certain person that, while affectively similar to hatred, is not satisfied without our immediate involvement in the deliverance of the punishment. If the criminal had harmed a loved one, for instance, we may resent the criminal for their having harmed our loved one, specifically. It is likely that in this case, we would feel a particular need to be involved in the deliverance of said punishment. Resentment and gratitude both are sentiments that immediately prompt *us*, directly, to punish or reward the Agent responsible for the action that prompted these sentiments, and it is in virtue of their having these features that they, rather than any other, are the sentiments that Smith connects to our sense of merit and demerit. As will be explained in the next section, it is this feature specifically — the fact that resentment immediately prompts *us* to punish the Agent responsible for the action prompting our resentment — that is particularly relevant to justice.¹⁹

Of course, there is no guarantee that we will feel gratitude or resentment in response to some Agent's actions. We might instead, given the circumstances, find neither merit nor demerit in the actions of the Agent. Though the PPC resents the Agent wholly, if we approve of those sentiments of the Agent that prompted her to act, Smith thinks we will have “no sort of sympathy” with the resentment of the PPC.²⁰ For instance, suppose that the Agent shoved the

¹⁸ Smith does not specify what is necessary for a person to be involved in the punishment. He sometimes talks about our feeling a need to deliver, in some immediate sense, the punishment. Other times, he indicates that we might even be inclined to forego the punishment, if the object of our resentment was made to (genuinely) repent for what they did to us, specifically. In both cases, it is clear that Smith believes that the satisfaction of resentment requires that whatever may happen, happens in response to our having been involved in some injurious event.

¹⁹ Smith (reasonably) argues that there would not be society, where people were constantly seeking to satisfy resentment. See TMS II.ii.3.3-4, and II.ii.3.8-10.

²⁰ “...wherever the conduct of the agent appears to have been entirely directed by motives and affections which we thoroughly enter into and approve of, we can have no sort of sympathy with the resentment of the sufferer, how great soever the mischief which may have been done to him.” TMS, II.i.3.3.

PPC to the ground, but did so only in a mad scramble to avoid being hit herself by a runaway vehicle. It seems clear that the fear that prompted her to lurch to the side was entirely appropriate, and we would have a hard time feeling resentful towards her for trying to save her own life.

Conversely, our disapproval of those sentiments of the Agent that prompted her to act might cause us to fail to feel any sympathetic gratitude towards the Agent, in sympathizing with the PPC. When a cruel Lord spitefully bequeaths a small strip of land to his youngest son, not out of affection or respect for the boy, but out of a refusal to breach social norms, we feel no amount of gratitude towards the Lord, regardless of what the son might feel.²¹ Given that our ability to feel resentment or gratitude on behalf of the PPC requires first that we evaluate the sentiments prompting the Agent to act, we can see how the compounded sentiments of merit and demerit depend on direct and indirect sympathies.²² In that our approval or disapproval of the Agent's sentiments that prompt the Agent to act depend solely on the evaluation of these very sentiments, approval and disapproval are direct; in that our ability to feel sympathetic resentment or gratitude towards the Agent on behalf of the PPC depends first on whether or not we approve of the sentiments prompting the Agent to act, merit and demerit are indirect.

²¹ I take this example from George R.R. Martin's *Game of Thrones* series, in which the delightfully awful Tywin Lannister grants a small bit of land to his son Tyrion, not because Tywin bears him any affection, but because he refuses to damage the reputation of the family name by not following the social norm of passing on at least some land to one's male heirs.

²² By "first," neither I (nor Smith, for that matter) mean it in the temporal sense. Rather, by "first," I mean that our approval or disapproval of the sentiments prompting the Agent to act is a precondition for our feeling sympathetic resentment or gratitude on behalf of the PPC.

This is a fair approximation of the general process by which we consider the sentiments of others on moral grounds. Our considerations are aimed at the sentiments of others, and rely on sentiments that we ourselves feel — specifically on those sentiments that we actually feel when sympathizing with others. Our considerations come in the form of a sense of propriety or impropriety, depending on whether or not we approve of the sentiments of another, and of a sense of merit or demerit, depending on whether or not we find the sentiments of another (and the acts that these sentiments prompt them to perform) to be worthy of reward or punishment. Thus far, as I have been concerned primarily with outlining the process that we employ in general, I have acted as if approval and disapproval used as their standards the very sentiments that we feel in imagining *ourselves* to be in another's place. Of course, were this to be the actual standard that Smith suggests we both use, and should use, then he would owe us much more of an explanation than what I have thus far outlined. Fortunately, it is not *our* sentiments that serve as the ultimate standard for our moral considerations. Only when we consider the sentiments of others in light of a different standard do our considerations take the form of moral judgments. We turn now to the standard that Smith claims is both the standard that we *actually* use, and the standard that we *ought* to use: that of the impartial spectator.

1.2 *The Impartial Spectator*

Smith does not take particular care to make clear the distinction between *sentiments* and *judgments* of approbation. For instance, consider the following claim: “The all-wise Author of Nature has, in this manner, taught man to respect the sentiments and judgments of his brethren; to be more or less pleased when they approve of his conduct, and to be more or less hurt when

they disapprove of it. He has made man, if I may say so, the immediate judge of mankind.”²³

Here, it seems, the two might be interchangeable; we are all judges of each other, and our judgments (Smith could be interpreted to say) simply take the form of our recognizing that we feel approval or disapproval towards one another. Consider, though, the following: “The agreement or disagreement both of the sentiments and judgments of other people with our own, is, in all cases, it must be observed, of more or less importance to us, exactly in proportion as we ourselves are more or less uncertain about the propriety of our own sentiments, about the accuracy of our own judgments.” Here, the two are clearly distinct. Sentiments can be proper (or not), and the gravity of disagreement rises in proportion to our uncertainty regarding the propriety of the sentiments in question. Judgments can be accurate (or not), rather than proper, and the gravity of disagreement rises in proportion to our uncertainty regarding the accuracy of the judgments in question. That the two are to be distinguished, as in the second quote, can be seen by considering the earlier discussion on the general process of sympathy. The sentiments that result from the process of sympathy are not the kinds of things that could be accurate or inaccurate, because they are not the kinds of things that have a standard against which they can be measured. We simply find ourselves feeling a certain way when we imagine ourselves in another’s situation. Judgments, however, are the kinds of things that could be accurate or inaccurate. The question that must be answered is how we are to understand the relation between sentiments and judgments, such that Smith could be understood to be offering an account of moral *judgment*, rather than simply an account of moral feelings.

²³ TMS, III.2.31. Underlining mine.

The answer that Smith offers sets sentiments as the *standard* for moral judgments. In other words, whether or not a moral judgment is accurate depends on whether or not the judgment accords with the sentiments (of approval, disapproval, merit, or demerit) that set the standard. Ultimately, the sentiments that set the standard will not be our own sentiments.²⁴ To explain why our sentiments will not be the sentiments that set the standard, Smith needs to answer two questions. First, if our sentiments are not the standard, but someone's sentiments are, then whose? Second, what could motivate us to judge the sentiments of others on any other grounds than that their sentiments concord with our own? Smith offers answers to both these questions, giving an account both of our motivation for seeking out sentiments other than those we might immediately feel in sympathizing with another, as well as an account of what are the actual sentiments that we use as standards in our moral judgments. It is difficult to discuss the standard of moral judgment that Smith claims we use (and that we ought to use) separately from what motivates us to use this standard, so I will work to describe them together, isolating the details as needed.

As noted above, Smith thinks that we begin our process of making moral judgments by considering the behavior and sentiments of others. In considering others, we come to a number of realizations. One, we realize that just as we are considering them, they are considering us. We realize, too, that just as we find ourselves approving and disapproving of others in the course of our considerations, other people are approving and disapproving of us (including of our

²⁴ In one sense, sympathetic sentiments are feelings that we feel as a result of our sympathetic process, no matter who we are imagining to be in some particular context, and so the sentiments are ours. In another sense, sympathetic sentiments are feelings that we feel as a result of a sympathetic process generated by our imagining somebody other than ourselves to be in some particular context, and so the sentiments are not ours. This section is concerned with explaining the latter sense, in which the sentiments are not ours.

sentiments of approbation and disapprobation) in the course of their own considerations. This can easily lead to patterns of approval and disapproval that are at odds with each other.

Suppose that Anna, Barak, and Charlotta are playing soccer. Charlotta skillfully steals the ball from Barak, and in his frustration, Barak trips her. Anna may sympathize with Barak, and approve of his sentiments (perhaps she is jealous of Charlotta's skills); Charlotta may disapprove of Barak, and also disapprove of Anna's approbation; and Barak may actually approve of Charlotta's disapproval of Anna (while he might not have considered whether he approves of his tripping of Charlotta, he might have an aversion to petty jealousies). Barak can see that Charlotta disapproves, and Anna approves, of him. Returning to the quote at the beginning of this section, as the degree of disagreement rises, so too does both our uncertainty about, and the importance to us of, the propriety of our sentiments. Given the disagreement here, Barak's uncertainty regarding the propriety of his sentiments will drive him to find some standard according to which he can judge their propriety.

In determining whose sentiments we use as our standard of moral judgment, Smith takes care to distinguish between our gaining approval and our being approvable (or being worthy of approval). If Barak set as his standard, whatever sentiment would be in concordance with (say) Anna's approval, then his approval would be discordant with Charlotta's disapproval; the converse would likewise be true, were he to set as his standard whatever sentiment would be in concordance with Charlotta's disapproval. Barak's desire to be approved of by everyone is likely to be frustrated in experience, and so Barak will not seek to be approved of by some particular person (Anna or Charlotta, for instance).²⁵

²⁵ Of course, Barak is serving as our model of virtue, and so is concerned with being approvable. It is perfectly conceivable — and perhaps too often the case — that people may elect to set as the standard of approvability the

Rather than seek approval, Barak seeks approvability — he seeks to be found to be the proper object of approval. Generalizing from Barak’s case, we seek to be approved of by an “impartial and well-informed spectator.”²⁶ At one point, Smith describes the impartial spectator (IS) as:

a person quite candid and equitable...who has no particular relation either to ourselves, or to those whose interests are affected by our conduct, who is neither father, nor brother, nor friend either to them or to us, but is merely a [person] in general, an impartial spectator who considers our conduct with the same indifference with which we regard that of other people.²⁷

Whether or not someone, on account of their sentiments, is the proper object of approval will depend on whether or not the IS would approve of that person’s sentiments. In Barak’s case, whether or not his sentiments were worthy of approval will depend on whether a disinterested spectator, who knew the rules and aims of soccer, and (perhaps) had sufficient grasp of the general norms of society, would approve of the sentiments prompting Barak to trip Charlotta. If not, then Barak would judge (and not merely feel) that his sentiments were improper. His judging his own sentiments to be improper amounts to his believing that the IS would disapprove of the sentiments prompting Barak to trip Charlotta. The same process responsible for generating his own approval is also responsible for generating the IS’ approval — namely, sympathy.

Where *our* sense of approbation is generated by our imagining ourselves to be in another’s shoes, *the IS’s* sense of approbation is generated by our imagining *the IS* to be in

approval of an easy to please person, or a person whom they admire (for better or worse). Smith of course acknowledges that people can sometimes fall short of the standards of morality.

²⁶ TMS, III.2.32.

²⁷ TMS, p. 129.

another's shoes. When we imagine the IS to be in another's shoes, we *actually* feel some sentiment, the same way that we *actually* feel some sentiment when imagining ourselves to be in another's shoes. It is the sentiment that we feel, when imagining the IS to be in another person's shoes, that sets the standard for our moral judgment, and it is our desire to be found the proper object of approval (according to this very standard) that motivates us to imagine the IS, and not ourselves, to be in another's shoes in the first place.

That we form judgments in this way is not, Smith thinks, unique to the moral domain. Smith thinks that we form perceptual judgments, for instance, in a similar way.²⁸ We may look outside our window and see a mountain that appears to cover no more than a small portion of our relatively small window. Were we to rely solely on our occurrent perception in making judgments of size, we would have to judge that the mountain range was smaller than our window. Fortunately, we can form a reasonable comparison between the mountain and the smaller objects around us by imagining the view of each, from the halfway point between the mountain and the window. Our doing so comes so naturally to us by habit and experience, that it effectively takes training in the philosophy of vision to convince us that distant mountains would appear to be as small as they look in vision, without the imagination's intervention.²⁹ So, too, with our moral judgments. As long as the (potentially opposing) interests of another are viewed

²⁸ The following example is taken from TMS, III.3.2.

²⁹ "I can form a just comparison between those great objects and the little objects around me, in no other way, than by transporting myself, at least in fancy, to a different station, from whence I can survey both at nearly equal distances, and thereby form some judgment of their real proportions. Habit and experience have taught me to do this so easily and so readily, that I am scarce sensible that I do it; and a man must be, in some measure, acquainted with the philosophy of vision, before he can be thoroughly convinced, how little those distant objects would appear to the eye, if the imagination, from a knowledge of their real magnitudes, did not swell and dilate them." TMS, III.3.2.

strictly from our own position, with no imaginative intervention by sympathy or the IS, their interests can never be properly compared with our own.³⁰ Only when our natural motivation to be found approvable drives us to imagine how a proper judge would feel in another's shoes, do we come to form a moral judgment.

Now that we have an idea of the sentiments that set the standard for moral judgments (the IS's) as well as the motivation that we have to use these sentiments as our standard (our natural desire to be worthy of approval), we can return to our discussion at the end of the previous section to see how the general process of our making moral judgments (sympathy) takes into account our actual standard (the sentiments of the IS) and our motivation to use this standard (a desire to be worthy of approval).

1.3 Full Account: Sympathy & the Impartial Spectator

Taking into account the process by which we make moral judgments of propriety and merit, the standard that we set for our moral judgments, and the motivation we have to judge according to this process and using this standard, we can understand Smith's account to be the following. When we make moral judgments, either of ourselves or of others, we imagine the circumstances prompting the sentimental response (of ourselves or others), and we imagine the sentimental response that the IS would have in such circumstances. In cases of judgments of propriety, if we recognize that the sympathetic sentiments of the IS accord with the sentiments of the person judged (and so are approved of by the IS), then we judge the sentiments of the person

³⁰ "His interests, as long as they are surveyed from this station, can never be put into the balance with our own, can never restrain us from doing whatever may tend to promote our own, how ruinous soever to him. Before we can make any proper comparison of those opposite interests, we must change our position. We must view them...from the place and with the eyes of a third person, who has no particular connexion with either, and who judges with impartiality between us." TMS, III.3.3.

being judged to be the proper objects of approval. If we find that the sentiments are discordant in sympathy, then we judge the sentiments of the person being judged to be the proper objects of disapproval, and we disapprove of them.

In cases of judgments of merit, we engage in the same process, with the same standard in our evaluations of both the Agent and the PPC. If we find that the IS would sympathize with the sentiments prompting the Agent to act, when imagining the IS to be in the Agent's circumstances, *and* if we find that the IS would feel gratitude towards the Agent, when imagining the IS to be in the PPC's circumstances, then we judge the Agent and her action to be meritorious, and deserving of reward. If we find that the IS would *not* sympathize with the sentiments prompting the Agent to act, when imagining the IS to be in the Agent's circumstances, and if we find that the IS would feel resentment towards the Agent, when imagining the IS to be in the PPC's circumstances, then we judge the Agent and her actions to be demeritorious, and deserving of punishment. It is this judgment — the judgment of demerit, and its recommendation of punishment for the demeritorious — that is of particular relevance to the sentimentalist account of justice that Smith hints at throughout *TMS*.

In the introduction to this paper, I noted my intent to do three things: (1) to explain Smith's sentimental account of moral judgment, (2) to explain the connection between moral judgment and justice, and (3) to show how my interpretation of Smith's account of justice improves upon alternative accounts in the literature. Having finished with the first task, I move on to the second task in the following section, and offer an explanation of the connection between moral judgment and Smith's conception of justice.

2 Resentment and Justice

In the first section of this paper, we saw how Smith envisioned the connection between our sentiments and our moral judgments. In this section, we will see how Smith envisioned the connection between our moral judgments and our sense of justice.³¹ In its roughest form, a just person is one who does not elicit appropriate resentment; a just action is an action that does not elicit appropriate resentment. To understand Smith's account of justice, we must understand what it takes to be the proper object of resentment, what the connection is between resentment and justice, and how to understand justice as a virtue, and as (say) a state of affairs. By getting clear on these various components of Smith's account, we will be in position to see in full the account of justice with which Smith provides us in *TMS*. First, I begin with resentment and its proper objects.

2.1 *Resentment and its Proper Objects*

As we saw in the previous section, resentment is a sentiment that we feel in response to the (seemingly) demeritorious actions of another, and is a sentiment that immediately and directly prompts us to punish.³² There are two aspects of resentment that are relevant to Smith's account of justice. First, resentment is a sentiment that arises in response to some object. This will be important in explaining how to tie together moral judgment (rather than mere sentiment), resentment, and justice. Second, resentment is a sentiment that immediately and directly prompts

³¹ I may, at times, seem to vacillate between discussing 'justice' and our 'sense of justice.' If so, no important distinction is implied; given the connection between justice and the sentiment of resentment, a 'sense of justice' is roughly understood to be our sense that resentment is inappropriate in the context under consideration. How best to understand the appropriateness (or inappropriateness) of resentment, and the tie between either and justice, will be clarified in this section.

³² *TMS*, II.i.1.2.

us to punish. This will be important in explaining how to tie together resentment, justice, and the laws of justice. We will look first to the tie between resentment, moral judgment, and justice.

There are two sections in *TMS* that equip us with most of the tools that Smith relies on for his account of justice. Smith begins Section II (“Of justice and Beneficence”) of Part II (“Of MERIT and DEMERIT; or, of the Objects of REWARD and PUNISHMENT Consisting of Three Sections”) by contrasting justice with beneficence. Regarding justice, Smith claims that:

((2)) Actions of a hurtful tendency, which proceed from improper motives, seem alone to deserve punishment; because such alone are the approved objects of resentment, or excite the sympathetic resentment of the spectator.³³

This paragraph contains several points relevant to our discussion; I will enumerate them below, and attend to each in turn.

- (1) “Actions of a hurtful tendency, which proceed from improper motives...”
- (2) “...seem alone to deserve punishment...”
- (3) “...because such alone are the approved objects of resentment...”
- (4) “...excite the sympathetic resentment of the spectator.”

We see here, that with which Smith is concerned: not resentment in general, but the sympathetic resentment of “the spectator” (4); that there are appropriate (and inappropriate) objects of resentment, as according to some standard (3); that the approved objects of resentment are “actions of a hurtful tendency, which proceed from improper motives” (1); and (2) that punishment seems to be appropriate in virtue of the facts contained in (1), (3), and (4).

³³ *TMS*, II.ii.1.2.

Two questions that we can immediately address involve the nature of the spectator mentioned in (4), and the standard according to which potential objects of resentment are found to be worthy of approval or disapproval (3). As regards the nature of the spectator, we can assume that Smith is referring here to the IS, rather than to some particular (or actual) spectator. In the chapter from which the above quote is drawn, Smith contrasts justice with beneficence. His description of beneficence parallels the description quoted above, substituting *beneficent* for *hurtful*, *proper* for *improper*, *reward* for *punishment*, and *gratitude* for *resentment*.³⁴ Following his description of beneficence, Smith goes on to note that, with respect to cases of beneficent, properly motivated actions, the “impartial spectator rejects all fellow-feeling with” the motives of the person who does not respond with gratitude.³⁵ So it is safe to think that much as the gratitude that is excited in response to beneficent, properly motivated actions is the gratitude of the IS, the resentment that is excited in response to hurtful, improperly motivated actions is also that of the IS.

Given that the resentment in question is the resentment of the IS, we can also surmise that the standard according to which objects are judged to be appropriate or inappropriate as objects of resentment is the standard set by the IS.³⁶ Note that as we are concerned with the IS, here, we

³⁴ “Actions of a beneficent tendency, which proceed from proper motives, seem alone to require reward; because such alone are the approved objects of gratitude, or excite the sympathetic gratitude of the spectator.” TMS, II.ii.1.1.

³⁵ “The man who does not recompense his benefactor, when he has it in his power, and when his benefactor needs his assistance, is, no doubt, guilty of the blackest ingratitude. The heart of every impartial spectator rejects all fellow-feeling with the selfishness of his motives, and he is the proper object of the highest disapprobation.” TMS, II.ii.1.3. Underlining mine.

³⁶ Ultimately, Smith’s account holds that agents are the proper objects of resentment. However, it is not in virtue of their being agents, that agents are the proper objects of resentment; rather, it is in virtue of the fact that agents have features I-III that they are the proper objects of resentment. In the paragraphs that follow, it can be assumed that the “objects” in question are merely agents.

are concerned with moral judgments (and not merely moral sentiments). An appropriate, or approved, object of resentment, then, will be an object of which we judge resentment to be appropriate — which is to say, an object to which the IS would respond with resentment. By linking the approval of objects of resentment to the sentiments of the IS, Smith is able to suggest three features required of an object for it to be an appropriate, or proper, object of resentment:

- I. The object must be the cause of pain;
- II. The object must be capable of feeling pain; and
- III. The object must be the cause of pain *by design*.

I will examine these in order, but first, a clarification is called for. In discussing the features required of proper objects of resentment, Smith uses the language of ‘pain,’ where in other similar discussions (as we will see) he uses the language of ‘harm’ or ‘injury.’ It is worth pausing to consider whether this was an instance of loose talk on Smith’s part, or a distinction of significance; there seems to be good reason to think we should believe the former. For instance, we might think there are cases where resentment might be appropriate even in the absence of any *actual* sensation of pain. For example, it seems appropriate to feel resentment towards somebody who harms us by needlessly harvesting our vital organs or limbs, even if they anesthetize us beforehand to keep us from feeling any pain along the way. If it *is* appropriate to resent someone who does this, despite the lack of pain involved, then we can perhaps replace ‘pain’ in I-III above with language that Smith uses elsewhere, such as “real and positive hurt.”³⁷

That such a substitution is compatible with his account can be seen by comparing the substitution to both what Smith says in the quote above — “Actions of a hurtful tendency...alone

³⁷ To avoid redundancy, I will proceed by using ‘hurt,’ ‘harm,’ or ‘injury’ in place of “real and positive hurt.”

are the approved objects of resentment” — and what Smith says several paragraphs after the quote above — “the violation of justice is injury: it does real and positive hurt to some particular persons.”³⁸ For justice to be violated, it is not enough that one *thinks* that they are hurt, or *feels* like they were hurt; it must be the case that the person is *actually* hurt.³⁹ Furthermore, the hurt must be “positive” in that the person is made worse off (as a result of their actually being harmed) than they would have been had the action not occurred. By making the distinction between positive and (presumably) negative harm, we can distinguish between cases where a person suffers injury relative to their status prior to the action’s taking place, from cases where a person suffers injury relative to what their status would have been had the action not taken place. In other words, it is a violation of justice if I steal the apples that you have stockpiled for the winter, because I have made you worse off than you would have been had I not stolen from you. However, suppose that you had done me a favor, and it was a general expectation in our society that I return your favor by giving you X apples. It is not a violation of justice if I return your favor by giving you fewer than X apples, because I have only made you worse off than you would have been had I given you X apples. I may be the appropriate object of hate, but not of resentment. I have not made you worse off than you would have been had I not only refused to give you apples, but *took* apples from you, which is what would be required for my lack of

³⁸ TMS, II.ii.1.5.

³⁹ Harm need not be limited directly to physical harm, but can also accommodate reputational or psychological harm if the harm is such that it does “real and positive hurt.” For instance, if somebody maligns one’s reputation to the extent that one can no longer find gainful employment, and thereby feed oneself or one’s family, then it is safe to say that one has been really and positively hurt. A similar story could apply for psychological harm.

manners to be considered a violation of justice.⁴⁰ The approved objects of resentment must be the cause of injury, and the only approved objects of resentment are objects that cause real and positive hurt to some particular persons. Returning to the first requirement, then, that a proper object of resentment must be the cause of injury is the case simply because resentment is what Smith is calling that sentiment that is only activated upon being injured.

According to the second requirement, the object of resentment must be capable itself of feeling hurt. The reason for this is two-fold, involving both the causes of resentment and the means of satisfying resentment. First, Smith accurately observes that we tend to resent all kinds of inanimate objects: the rock on which one stubs their toe, the unseen pothole that ruins one's axle, and the mudslide that destroys one's house all might initially cause us to feel resentment. It seems to be right that we both find ourselves resenting inanimate objects, and that we find it in some sense inappropriate to do so. The reason for the former is clear: the objects cause us harm. The reason for the latter involves what is required for resentment to be satisfied.

Smith notes that the natural consequence of resentment is vengeance and punishment.⁴¹ The aim of the vengeance and punishment is not necessarily retributive, however — it is not to simply return the pain or harm caused by the Agent back to the Agent. Rather, the purpose is:

...to make him conscious that he feels [the pain of punishment] upon account of his past conduct, to make him repent of that conduct, and to make him sensible, that the person whom he injured did not deserve to be treated in that manner. What chiefly enrages us against the man who injures or insults us, is the little account which he seems to make of us... To bring him back to a more just sense of what is due to other people, to make him sensible of what he owes us, and of the wrong that he has done to us, is frequently the

⁴⁰ "To be deprived of that which we are possessed of, is a greater evil than to be disappointed of what we have only the expectation." TMS, II.ii.2.2.

⁴¹ TMS, II.ii.2.2-5.

principal end proposed in our revenge, which is always imperfect when it cannot accomplish this.⁴²

Returning to the second requirement of a proper object of resentment, we see why the object of resentment must be capable itself of feeling pain or harm: it must be the case that our resentment can be satisfied; satisfying our resentment requires causing sufficient harm to the Agent to bring the Agent back into proper regard of others (namely herself); and making the Agent conscious of her previously inappropriate behavior is only possible if she is capable of being hurt.

To see why the Agent must be capable of feeling hurt, consider an Agent who cannot be hurt. Suppose the Agent seriously injured the PPC — perhaps the Agent pushed the PPC out of her way, knocking the PPC down a flight of stairs. Bearing in mind Smith’s account of moral judgment, we can assume that the Agent felt no sentiments (sympathetic or otherwise) of anguish or fear when considering whether pushing aside the PPC was an appropriate way to remove the PPC from her path. If the Agent initially felt no sentiment that would motivate her to refrain from pushing the PPC, and is furthermore *incapable* of feeling any kind of pain, or is incapable of being harmed, then it is unclear what could be done to the agent to make it the case that she would be motivated to refrain from pushing the PPC in future evaluations, or be made to sense what she might owe us or what wrong she might have done us. Nothing can be done, then, to bring the Agent into proper regard of others (including ourselves).

⁴² TMS, II.iii.1.5; ‘it’ was elided and replaced with its referent, “the pain of punishment.” Additionally, by “just,” here, Smith is referring to what he argues is justice in the sense that Plato was concerned with — justice as (something like) “exact and perfect propriety of conduct and behaviour.” (See TMS, VII.ii.1.10.) This is to be distinguished from the justice with which Smith, and therefore this paper, is concerned.

The third requirement of a proper object of resentment is that the object be the cause of the harm by design; that is, in order for the object to properly be an object of resentment, the object must have intended to cause the harm that excited the resentment. That this is plausible can be seen by simply looking to one's own experience. We might resent a person for stepping on our toes, for instance, but the sentiment tends to dissipate when we discover that they only did so by accident, while trying to avoid a speeding bike messenger. In the presence of such circumstances, our resentment tends to dissipate; absent any such circumstances, our resentment remains. When an object meets these three requirements, it is a proper object of resentment. And, to the extent that the object also excites the sympathetic resentment of the IS (and objects meeting conditions I-III *will* do so), the object is an approved object of resentment.

With the standard of approval being the standard set by the IS, in addition to understanding what makes an object of resentment an "approved" object (3) and understanding with which spectator's resentment we are concerned (4), we can understand what Smith means by a hurtful action's proceeding from "improper" motives (1) and by that action's "deserv[ing]" punishment (2). With respect to (1), we can see that Smith is concerned with actions that have two features: (a) the actions involve harm, and (b) the actions proceed from improper motives. ((2)) above describes the actions of concern to Smith as being those with a hurtful *tendency* — although the language of tendency brings to mind utilitarianism, it is important to note that this is not where Smith is heading.⁴³ As noted above, Smith gets much more explicit about violations of

⁴³ While Smith does acknowledge that we tend to recognize the utility of what he calls the "general rules of justice" to society, he is clear that the utility of the general rules of justice is not what justifies our following the rules. What justifies our following the rules is the fact that the rules (ought to) block resentment, as the absence of resentment is a precondition for the possibility of society.

justice, dropping the language of tendency altogether: “the violation of justice is injury: it does real and positive hurt to some particular persons.”⁴⁴ So, in ((2)), Smith is concerned with justice, and justice is concerned with actions, which proceed from improper motives and do real and positive hurt to specific people.

In addition to requiring that an action result in actual harm to a particular person, for the action to be a matter of justice, it must be the case that the action “proceed[s] from improper motives.” Given that our standard of approval (or propriety) here is the standard set by the IS, this means that the action must proceed from motivating sentiments that the IS would not feel when sympathizing with the Agent responsible for the action. Furthermore, (bearing in mind our previous discussion of merit and demerit) given that the action causes real, positive harm, and that the sentiments prompting the Agent to act are sentiments that the IS does not feel in sympathizing with the Agent, we have an action towards which the IS would feel resentment — which is to say, an action that we would judge to be demeritorious.

I should explicitly highlight one feature of resentment, before moving on to a discussion of justice itself. As we have seen, to be an approved object of resentment, the object must be one that excites the sympathetic resentment *of the IS*, not merely an object that may excite *our own* resentment (without exciting resentment in the IS). This distinction — between inappropriately and appropriately felt resentment — is an important one for Smith’s account. Without this distinction, resentment would be appropriate any time the object of resentment met the three requirements of approved objects of resentment — in other words, there would be no talk of resentment being appropriate at all. Without a standard according to which we can determine the

⁴⁴ TMS, II.ii.1.5.

appropriateness of one's feeling of resentment, whether or not justice (and therefore injustice) obtains would depend on whether or not the people involved in making determinations of justice felt resentment. For instance, without such a standard, there would just as surely be an injustice when someone resented their fall to the street after hallucinating that another person attacked them, as there would be when the survivor of a brutal and unprovoked assault resented their assailant. Appropriate resentment — which is to say, resentment that the IS feels in sympathizing with the PPC — is the key to linking our moral judgments to justice.

2.2 *Justice as Virtue, Justice as State of Affairs*

We have, now, all of the pieces in place to fully understand Smith's account of justice. A just action is an action to which resentment is not an appropriate response. In other words, the IS would not feel resentment in response to just action.⁴⁵ A violation of justice — or an *injustice* — occurs when resentment is appropriate. Or, in other words, injustices elicit the resentment of the IS. The remainder of this section will be dedicated to clarifying Smith's conception of justice, both as a virtue that one might possess, and as a state of affairs that might obtain in the world. In so doing, I hope to make clear that much of what is involved in Smith's account of justice — including the “rules” or “laws” of justice, and any rights we might have that concern justice — is grounded in our natural sentiments. The final portion of this paper will be devoted to showing

⁴⁵ Notably, the only resentment that matters with respect to justice is the resentment of the IS; the resentment of the PPC is not necessary for an action to be unjust. Smith notes that this is one important distinction between approbation and resentment — where approbation requires that we perceive the sympathetic harmony between ourselves and the person who we are considering, resentment only requires that we feel resentment ourselves when we place ourselves in another's shoes. In line with that, justice only requires that the IS would not feel resentment, when sympathizing with the PPC (regardless of whether or not the PPC feels resentment herself). See TMS, II.i.5.11 for Smith's take on this distinction.

how this grounding has been ignored, or at least obfuscated, in recent Smith literature. First, however, I turn to justice.

As a virtue, Smith notes that justice (on most occasions) is but a negative virtue, which “only hinders us from hurting our neighbour;” furthermore, what is required by justice may be fulfilled “by sitting still and doing nothing.”⁴⁶ Given our account thus far, we can see that the virtue of justice is the virtue of not causing appropriate resentment in others. It is tempting to think that this is an impoverished account of justice; surely Smith wouldn’t *really* think that one who lounged around on the couch all day, watching *Judge Joe Brown* was someone we would be right to call a just person? Surely, we think, it must be appropriate for his wife to resent his doing so, while she put in long hours at the office to pay for this just man’s cable, or for his children to resent his doing so, while they missed their soccer practice due to lack of transportation. That such a person is just, Smith would argue, is simply a matter of whether or not it *would* be appropriate to resent them — which is to say, whether or not the IS would resent him in sympathy. If it is appropriate to resent him, then the man is *not* just.⁴⁷ If it is not appropriate to resent him, then he is just.

Smith notes that justice as a virtue is distinct from what he calls “the other social virtues,” a class in which he includes beneficence, friendship, charity, and generosity.⁴⁸ As we saw in the

⁴⁶ TMS, II.ii.1.9.

⁴⁷ If his wife is unable to afford proper medical care on her salary alone, for instance, then his opting to watch daytime court dramas rather than work is certainly injurious, and may draw the ire of the IS.

⁴⁸ This division parallels Hume’s division of the virtues, where such natural virtues as benevolence are held to be distinct from the artificial virtue of justice. As will soon be seen, however, Smith’s reason for distinguishing justice from the other social virtues is different from Hume’s.

previous section, beneficence is in some sense the contrast of justice; it is a virtue exemplified by beneficial actions motivated by IS-approved sentiments, the proper response to which is gratitude (a sentiment that motivates reward, much as resentment motivates punishment). As with the other social virtues (but not with justice), the lack of beneficence does no real harm; we might disapprove of a person's sentiments, if the sentiments cannot move the person to perform acts that benefit others, and we might hate them for this lack, but what we feel will not be resentment if real and positive injury is lacking. Given the lack of resentment, the virtue of beneficence may not be enforced,⁴⁹ for the IS will not find enforcement of beneficence to be appropriate.⁵⁰

The virtue of justice, on the other hand, may be enforced. As the violation of justice elicits appropriate resentment, and the natural consequence of appropriate resentment is punishment, the employment of appropriate violence either to avenge the hurt caused by injustice, or to prevent future injustices, is approved of and naturally sought out by humankind.⁵¹

⁴⁹ The same is true — and to an even greater extent — for the virtues of friendship, charity, and generosity. See TMS, II.ii.1.3.

⁵⁰ “To oblige him by force to perform what in gratitude he ought to perform, and what every impartial spectator would approve of him for performing, would, if possible, be still more improper than his neglecting to perform it.” TMS, II.ii.1.3; emphasis mine. ‘Improper,’ here, can be read as ‘not IS-approved.’

⁵¹ See TMS, II.ii.1.5. Insightfully, Smith also notes that not just any extreme degree of violent punishment will be considered an appropriate response to injustice, or an appropriate attempt to prevent future injustices. Rather, “in all cases the measure of the punishment to be inflicted on the delinquent is the concurrence of the impartial spectator with the resentment of the injured” (LJ 90). If the punishment becomes wildly disproportionate to the crime, or if the criminal has clearly come to realize the impropriety of their disregard for their fellow humans, and to regret their actions, we often cannot help but enter into the criminal's fear and resentment: “The thought of what [the criminal] is about to suffer extinguishes their resentment for the sufferings of others to which he has given occasion. They are disposed to pardon and forgive him, and to save him from that punishment, which in all their cool hours they had considered as the retribution due to such crimes,” TMS, II.ii.3.7.

Smith argues that injustice, resentment, and punishment are so deeply and naturally connected that our awareness of this connection is frequently sufficient to prevent us from performing an injustice in the first place. When considering whether or not to perform some potentially unjust action, we cannot help but to enter into the resentment of the PPC in our imagination, and feel that it would be wholly appropriate for the PPC (and anybody who sympathizes with the PPC) to violently oppose our actions.⁵²

The strength with which we feel that violent opposition to the proper objects of resentment is appropriate plays a crucial role in making sense of how Smith views the connection between justice and the state of affairs obtaining in human society. Resentment is a sentiment given to us by nature “for defence, and for defence only;”⁵³ justice — or, the lack of actions eliciting appropriate resentment — “is the main pillar which upholds [human society];”⁵⁴ while “society may subsist...without beneficence...the prevalence of injustice [i.e. the prevalence of acts that elicit IS-approved resentment] must utterly destroy it;”⁵⁵ and without resentment, and the strength with which we feel it to be appropriate to punish the proper object of resentment, we would “like wild beasts, be at all times ready to fly upon [an innocent man]; he would enter an assembly of men as he enters a den of lions.”⁵⁶ Our approval of the punishment of the proper objects of resentment is so strong that there could be no society among people for

⁵² TMS, II.ii.1.3.

⁵³ TMS, II.ii.1.4.

⁵⁴ TMS, II.iii.3.4.

⁵⁵ TMS, II.iii.3.3.

⁵⁶ TMS, II.iii.3.6.

whom actions eliciting appropriate resentment was a persistent and pervasive feature of life.

Clearly, though, there is society, and so such a state of affairs must not hold (at all places and all times, at least).

The possibility of there being society is explained the fact that we can so clearly predict what will be both the proper objects of resentment, and the behavioral response to resentment, that we can come up with very specific rules that serve to prevent appropriately felt resentment, and thus secure a just state of affairs. In Chapter VI⁵⁷ of Part III⁵⁸, Smith observes the difficulty that exists in ascertaining the exact actions that might be required in regard to certain of the other social virtues. The rules of these virtues, on the one hand, are “loose, vague, and indeterminate,” much like the rules “which critics lay down for the attainment of what is sublime and elegant in composition.”⁵⁹ Justice, on the other hand, is exceptional; it is the one virtue “of which the general rules determine with the greatest exactness every external action which [the virtue] requires.”⁶⁰ The rules of justice are “precise, accurate, and indispensable,” and comparable to the rules of grammar in being “accurate in the highest degree, and [admitting] of no exceptions or modifications.”⁶¹ Smith himself does not spell these rules out in their entirety, but he does, rather famously, name a few obvious contenders: “The most sacred laws of justice...those whose

⁵⁷ Titled: “In what cases the Sense of Duty ought to be the sole principle of our conduct; and in what cases it ought to concur with other motives.”

⁵⁸ Titled: “Of the Foundation of our Judgments concerning our own Sentiments and Conduct, and of the Sense of Duty.”

⁵⁹ TMS, III.6.11.

⁶⁰ TMS, III.6.10.

⁶¹ Ibid.

violation seems to call loudest for vengeance and punishment, are the laws which guard the life and person of our neighbour;...those which guard [our] property and possessions; and...those which guard what are called [our] personal rights, what is due to [us] from the promises of others.”⁶² As might be expected, laws protecting life, property, and that which has been promised by others are laws that are sure to significantly reduce the possibility of pervasive, appropriately-felt resentment among the members of society — in other words, they are sure to significantly increase the possibility of a just society.⁶³

I will finish this section with a brief note of Smith’s view of the role of the state in a just society, but before I do I want to foreshadow my discussion in the final section of this paper by highlighting some features of the preceding paragraph that are vital to understanding Smith’s account of justice. It is tempting, when confronted with the language of “personal rights” in the context of a discussion of legal protections afforded to life and property in an account of justice, to think that Smith has in mind some sort of Hobbesian or Lockean conception of natural rights; that is, it is tempting to think that Smith’s account of justice is one where what makes killing or stealing unjust is the fact that killing or stealing violates a right we have in virtue of some feature of human nature — say, our autonomy or our rationality. As I will argue in the final section of this paper, this is *not* the account of justice that is found in Smith’s work. For Smith, what grounds the injustice of killing or stealing is the fact that killing or stealing elicits the appropriate

⁶² TMS, II.ii.2.2. Underlining mine.

⁶³ Strictly speaking, it is misleading to think of societies as things that can be “just” or “unjust,” given that Smith classifies justice as a virtue of persons. Still, we might be able to understand a society as “just” or “unjust” depending on whether or not the positive laws of the society are ones that reduce or increase the prevalence of resentment among particular members of society sufficiently to ensure the possibility of society in the first place.

sentiments — namely, the resentment of the impartial spectator. It is in virtue of this fact — that violations of justice elicit the resentment of the IS — that we have a right not to be killed, or a right to our property.

While our having certain rights is in virtue of the fact that certain actions will predictably elicit the resentment of the IS, rather than being solely in virtue of the fact that some institution or convention is in place to secure them, Smith thinks that a civil government still has a critical role to play in enforcing these rights. In the penultimate paragraph of *TMS*, Smith notes that a civil government is required to both enforce the practice of justice, and to attempt to determine appropriate instances of resentment from inappropriate instances:

As the violation of justice is what men will never submit to from one another, the public magistrate is under a necessity of employing the power of the commonwealth to enforce the practice of this virtue. Without this precaution, civil society would become a scene of bloodshed and disorder, every man revenging himself at his own hand whenever he fancied he was injured. To prevent the confusion which would attend upon every man's doing justice to himself, the magistrate, in all governments that have acquired any considerable authority, undertakes to do justice to all, and promises to hear and to redress every complaint of injury.⁶⁴

Civil governments are to enact systems of laws, which are “the records of the sentiments of [humankind] in different ages and nations,” each system of which “may be regarded as a more or less imperfect attempt towards a system of natural jurisprudence, or towards an enumeration of the particular rules of justice.”⁶⁵ The sole purpose of these “sacred laws” of justice is to

⁶⁴ TMS, VII.iv.37. Underlining mine.

⁶⁵ TMS, VII.iv.36.

preempt the appropriate resentment of injured parties, and the socially destructive violence that will consequently ensue.

2.3 *Justice in Full*

Taking into account the connection between moral judgments and resentment, the nature of the causes and consequences of resentment, and the connection between resentment and justice, we can understand Smith's account of justice to be the following. An Agent can be judged to be just when we judge that the IS would not feel resentment toward said Agent. We judge an Agent to be unjust, and resentment of the Agent to be appropriate, when we imagine that the IS would feel resentment toward that Agent. When resentment toward an Agent is appropriate — that is, when an Agent has violated the requirements of justice — it is appropriate to employ violence to either redress the injury that prompted the resentment, or to prevent future such injuries from occurring. When resentment toward an Agent is inappropriate — that is, when an Agent has violated no requirements of justice — it is inappropriate to employ violence.

Given that the objects of justice are so predictable, and the consequences of injustice so dire, societies can easily construct specific laws that serve to preserve and promote justice. In the next section, I will explore several recent efforts in the Smith literature to offer analyses of Smith's account of justice. I will show how these efforts rely on a misunderstanding of Smith's account, and how these misunderstandings lead the authors to problematic conclusions. In so doing, I hope to show how my interpretation of Smith's account of justice avoids these problems, while staying true to the text.

3 Alternative Accounts

Before I address some of the interpretations of Smith's account of justice that are prominent in the literature, I will try to preempt some potential objections that might arise. My aim throughout this paper has been to show that there is a clear account of justice that runs through TMS, and to make this account clear. While I have not done any work in this paper to show the following to be the case, as such an effort would be beyond this paper's scope, I believe that the account that I have brought out is an account that is compatible with Smith's comments on justice in both WN and LJ. Many of the authors that I will address in this section seem to come at Smith from the opposite direction, and attempt to make clear how the account of justice that they find in LJ and WN might be incompatible with or problematic for the account of justice that they find in TMS. It might be objected, then, that my criticizing their interpretations for having an undue focus on what Smith says in WN and LJ is simply to concede the point. In other words, the fact that the account of justice that one finds in Smith's major works will depend on which major work one starts from shows that either Smith had an incomplete or incoherent account of justice, or there are multiple accounts of justice throughout his work.

However, if the account of justice that I have offered above is correct, then there is good reason to give explanatory priority to TMS over WN and LJ; namely, because justice is grounded in our natural sentiments. WN and LJ seek to explain and justify the proper economic and legal structures of the State, respectively. In both cases, however, the State is presupposed. As can be seen in the account I give above, our natural sentiments and our sense of justice are both independent of, and explanatorily prior to, any formal State structure. Given this priority, it

makes sense to read Smith's discussions of justice in LJ and WN through the lens of the account of justice found in TMS.

The Smith literature is substantial, so I will focus my discussion here to a select number of accounts that represent prominent views in the literature. First, I will examine Vivienne Brown's interpretation of Smith's account of justice, in which she argues that we should think Smith's account of justice was independent of his account of moral judgment. Next, I will explore Samuel Fleischacker's and Charles Griswold Jr.'s interpretations, each of which provides a slightly different criticism of what they take to be an irreconcilable internal tension in Smith's attempt to tie his account of justice to moral judgment. Finally, I will analyze the similarities and differences between my interpretation and Knud Haakonssen's, which offers an alternative interpretation of the link between justice and moral judgments.

3.1 Brown

With respect to justice, Brown is mainly concerned to put pressure on the notion that LJ serves as a bridge, uniting Smith's two major published works around the idea of the 'science of a legislator.'⁶⁶ As my concern here is not with the underlying unity of Smith's works, I will not address this aspect of her claim. Rather, I want to focus on the account of justice she attributes to Smith. Brown suggests that Smith offers an account of justice that is divorced from moral judgment; this leads her to conclude (amongst other things) that the discourse of WN is amoral, and that the arguments in WN imply that agents of a state are merely bound by positive law, having no grounds on which they might make judgments regarding (say) the distribution of

⁶⁶ Brown, 102.

goods.⁶⁷ Her conclusions rest, however, on a misunderstanding of the connection between moral judgment and justice.

Brown begins by arranging the virtues with which Smith is concerned into a hierarchy: beneficence and self-command are considered the higher-order, “moral” virtues, while justice and prudence are considered to be lower virtues of an “amoral” order.⁶⁸ The virtues are arranged in this hierarchical fashion according to their stylistic presentation across Smith’s works. Brown characterizes TMS (following the literary theory of Mikhail Bakhtin) as a ‘dialogical’ discourse, wherein a plurality of voices are represented, most notably in the metaphorical representation of the IS as a series of voices which combine to form our conscience. WN and LJ, on the other hand, are characterized as being ‘monological’ discourses, wherein a single, authorial voice controls the domain of the text.⁶⁹ In parallel fashion, according to Brown, the virtues of beneficence and self-command are discussed dialogically, and justice and prudence monologically. Brown suggests, given these stylistic differences, that we interpret Smith as holding the nature of the two orders of virtue to be distinct, with the dialogical virtues separated from the monologic virtues. She quite explicitly claims that Smith’s account of justice is not connected to the moral sentiments: she states that “justice is rule-governed, not subject to individual sensibility;” that “justice and jurisprudence are concerned with the observance and generation of rules;” that Smith “separate[s] moral judgment from the virtue of justice;” that

⁶⁷ Ibid., 219.

⁶⁸ Ibid., 33.

⁶⁹ Ibid., 5.

jurisprudence “serves to underline the separation of natural justice from morality;” and that “justice as a virtue...is not dependent on moral judgment.”⁷⁰

Brown is certainly right in holding Smith to claim that justice is a negative virtue, that the positive laws of a State should be sufficient to guide the just behavior of its citizens, and that an agent need not consult the impartial spectator to behave in accordance with justice.⁷¹ However, it does not follow from these claims that justice is therefore separate from moral judgment. To see why, we can consult an example that Brown herself uses. In LJ, Smith discusses the difference between appropriate and inappropriate punishment.⁷² In considering an agent who has transgressed a law, Smith notes that “in all cases the measure of the punishment to be inflicted on the delinquent is the concurrence of the impartial spectator with the resentment of the injured...a punishment appears equitable in the eyes of the rest of mankind when it is such that the spectator would concur with the offended person in exacting it.”⁷³ Smith goes on to note that it is on account of the appropriateness (or not) of the punishment in the eyes of the IS that people refuse to support laws. In support, he references the reduction of punishment for wool exportation in 17th-century England, from a capital felony to a misdemeanor, a reduction which resulted from the refusal of the English citizenry to enforce the capital punishment. Brown analyzes the situation by noting that when the English citizens disregarded the law, it was the result of a moral judgment; however, their following the new law — their enforcing misdemeanor charges for

⁷⁰ Ibid., 100; 112-3; 208.

⁷¹ Ibid., 48.

⁷² LJ 89-91.

⁷³ Ibid., 90.

wool exportation — was not a result of moral judgment. She notes that the function of the IS in LJ is to certify the moral standing of codified laws, but not (in contrast to its function in TMS) to describe how a person comes to decide what behavior is just.⁷⁴ Essentially, moral judgments are not involved in deciding to follow the law, but they are involved in deciding to disregard a law.

A consequence of Brown's interpretation of justice as being separate from moral judgment seems to be that decisions to follow the law will never be made on the grounds that the law is morally appropriate, but that some decisions to disregard the law will be. Such an interpretation would need to explain both why following the law is never grounded on the law's moral standing and why disregarding the law sometimes is. I cannot understand, however, how an agent could refuse to follow a law on moral grounds, without there being something about the law that enables it to be judged on moral grounds. If there is something that enables us to judge a law on moral grounds (and it seems that there must be, if Brown's contention that refusing to follow laws can be the result of a moral judgment), it will need to fit within Smith's account of moral judgment. Smith's account of moral judgment, however, depends on the sentiments of the IS — laws cannot be judged immoral on account of their features, but only on account of how their features serve to cause resentment in the IS. Agents can be just merely by conforming their behavior to laws, yes, but their behavior is only *just* if behaving in accordance with these laws does not elicit the resentment of the IS. Far from its being the case that an agent can be just, merely by conforming their behavior to (any) positive laws, an agent can be just by conforming their behavior to only the positive laws that themselves conform to the general principles of justice — which is simply to say, to laws that do not elicit the resentment of the IS. Understood

⁷⁴ Brown, 48.

in this way, it seems clear that moral judgments are not only connected to justice, but are the bedrock of justice.

For Brown to be correct in claiming that justice and moral judgment are separate, it would need to be the case that there is a break in the chain between the virtue of justice and the deliverances of moral judgment. Such a break, however, is not found in Smith's account. For Smith, an agent is just when they refrain from acting in ways that elicit the resentment of the IS. An agent is just, when acting in conformity to the positive laws of the State, only when it is the case that acting in conformity to the positive laws of the State would not elicit the resentment of the IS. Justice and moral judgment are inextricably linked.

3.2 *Fleischacker*

While Brown argues that Smith intended to separate justice from moral judgment, Fleischacker argues that Smith provides no adequate story for how justice might be connected to morality, despite his having intended to.⁷⁵ Worse still, in Fleischacker's mind, Smith's account provides no adequate story for how the general rules of justice might be simultaneously influenced by socio-historical forces, and also sufficiently universal to serve as a standard of justice for the positive laws of all nations. Fleischacker thinks that these two failures by Smith cause severe problems for his account of justice, resulting in the presence of inconsistent theses regarding the nature of justice, and unclear statements regarding the uniqueness of the precision and enforceability of the virtue of justice. However, Fleischacker's criticisms rest on a mistaken interpretation of Smith, and the problems that Fleischacker thinks arise from Smith's account of justice can be accommodated by my interpretation.

⁷⁵ Indicating agreement with Griswold, Fleischacker makes the following claim: "Smith nowhere shows us in TMS how his general, unchanging principles of justice might be derived from moral notions." Fleischacker, 147.

Fleischacker is primarily concerned with the connection that Smith draws between injustice and “real and positive hurt.” The problem with centering an account of justice on harm, Fleischacker argues, is that harm is an “essentially social construction,” one that depends “irremediably on social norms and practices.”⁷⁶ Harm, for instance, cannot amount simply to bodily pain, because some bodily pain is invited and desired; even the best boxers willingly get hurt. Nor can harm reduce to something like nonconsensual invasion of the body, else surgery on unconscious patients may be considered to be unjust harms. If a conception of harm is necessarily socially defined, then no “precisely delineable type of ‘real and positive hurt’ [can] serve as a basis for a clear and precise notion of justice across all societies.”⁷⁷ If we combine the fact that harm is socially determined, with Smith’s contention that justice is uniquely capable of generating precise rules, then we seem to find Smith in a bind. On the one hand, for the conception of harm to serve as a basis for a universally clear and precise notion of justice, it must be independent of any particular society’s conception of harm (or at least simultaneously compatible with incompatible conceptions of harm - a difficult task). On the other hand, there cannot *be* a conception of harm, unless it is understood according to the definition of a particular society. Such an apparent dilemma makes impossible the task of determining the content of the general rules of justice in advance, which is precisely what Smith claims to be the (possible) task of “natural jurisprudence.”⁷⁸

⁷⁶ Ibid., 156: “Harm is an essentially social category, not a physical one, even in the case of harm to one’s body...both invasion of the body and pain can be desired, accepted, or merited, such that they are permitted or even required by justice, and figuring out exactly what does and should count as the relevant kinds of desiring, accepting, and meriting depends irremediably on social norms and practices.”

⁷⁷ Ibid.

⁷⁸ TMS, VII.iv.35-37.

The force of this dilemma depends entirely on attributing to Smith a number of views that he did not hold, however. It is only by misconstruing Smith's understanding of the unique precision associated with justice, and his understanding of the nature of the general principles of justice that "ought to...be the foundation of the laws of all nations," that the dilemma appears. With respect to the precision associated with justice, Fleischacker seems to want 'precision' to function more like 'completeness.' In other words, he appears to think that a notion is precise only if the content of the notion, independent of context, settles in advance any possible questions involving the notion. Justice, therefore, is precise only if the content of justice (i.e. what it is for there to be injury sufficient to elicit the resentment of the IS) settles in advance, for all people in all societies, what is just and what is unjust. After Fleischacker introduces the apparent problem with the essentially social nature of harm, he introduces a number of examples purporting to demonstrate the irreconcilable tension between socially constructed conceptions of harm and a universal notion of justice based on harm.⁷⁹

In Example (a) a social reformer, who wishes to abolish her society's legally and socially accepted practice of concubinage, can neither move forward with abolishing concubinage, nor continue to permit concubinage, according to Fleischacker's understanding of Smith's account of justice, because both paths result in harm to one or another person(s). Interestingly, and confusingly, Fleischacker connects the conception of harm in this case to conceptions of harm involving the "violation of reasonable expectations" — a conception of harm that he claims Smith is strongly committed to. Fleischacker attributes this conception of harm to Smith on the basis of comments that Smith makes in LJ regarding the injury that results from the breach of

⁷⁹ Details of cases can be found in Fleischacker, 158-161.

contract in relation to property.⁸⁰ Notably, though, that there is injury here depends on there already being in place social conventions (and more specifically, laws) that make reasonable, expectations resulting from promises or contracts. As such, whether there is injury depends, not on the breach of reasonable expectations per se, but on the breach of reasonable expectations that are grounded by pre-existing legal conventions.⁸¹

The conception of injury that Smith is concerned with, however, depends in no way on the existence of laws; recall TMS II.ii.1.7, where Smith claims that “antecedent to the institution of civil government,” individuals are regarded as having the right to defend themselves from injuries. If Smith’s conception of injury does not require the institution of civil government, then while injury can certainly include the violation of reasonable expectations under certain conditions, it need not be limited to them. Returning to our reformer in (a), if what we are concerned with is whether or not her pushing for abolition of concubinage is unjust, then we should consider her actions under a broader scope of injury than that restricted by the violation of reasonable expectations. In doing so, we consult the IS. If the IS would resent the reformer’s abolition of concubinage, and disapprove of the sentiments motivating the reformer to abolish concubinage, then the reformer’s actions would be considered unjust. By assessing the justness of the actions of the reformer according to the standards of the IS, we do not generate a conflict of justice between possible injuries caused by the practice of concubinage and possible injuries

⁸⁰ LJ 87-93.

⁸¹ Smith notes that, absent the conditions required for contractual obligation (among which he mentions only the promisor’s intention for the promisee to form expectations around the promised obligation), the impartial spectator would not “go along with” the promisee in forming expectations. LJ 86.

caused by the abolition of concubinage; we simply get a single verdict of justness regarding the actions of the abolitionist reformer.

One potential problem that may at this point arise involves the problem of cultural relativism; that is, whether or not one believes that the IS would find concubinage unjust will depend on whether or not one believes that those involved in concubinage are proper objects of resentment, which will likely come down to whether or not one thinks that being involved in concubinage is (intentionally) harmful. Fleischacker tackles this problem directly in his Example (b), wherein we are expected to analyze the potential injustice occurring across three societies: X castrates its boys, that they may be better singers; Y attempts to direct girls' energies away from sex by performing clitoridectomies; and Z expects children to participate in such violent sports as boxing and rugby. In coming to decide whether either of the respective actions in each society is unjust, Fleischacker notes that we will have to clear away whatever "cultural debris" might make us fail to recognize the harm that may lurk in each practice. In other words, (b) purportedly shows us that Smith's conception of justice cannot be precise, because it cannot adjudicate between justice and injustice in every conceivable case without appeal to notions outside itself. I do not intend, here, to defend the standard set by the IS, so I will simply note that the fact that a standard can be misapplied, so long as the standard survives its own survey, is no knock against its precision.⁸² My response to (b) is similar to my response to (c), so I will withhold comments until after introducing (c).

⁸² For a great defense of the impartial spectator as a standard of moral judgment, see Geoffrey Sayre-McCord, "Sentiments and Spectators: Adam Smith's Theory of Moral Judgments," in *The Philosophy of Adam Smith: The Adam Smith Review, Volume 5: Essays Commemorating the 250th Anniversary of the Theory of Moral Sentiments* (New York: Routledge, 2010), 124-144.

In (c), Fleischacker notes that even if we ignore the potential for disagreement about the presence (or not) of injustice that Smith's account permits, we still must face the fact that nothing in Smith's account can make precise for all spectators the degree of harm done across all cases. For instance, in (c) we are again to imagine three societies. In X, infants are exposed (i.e. left for dead); in Y, parents stop supporting their children at age 6, and provide them with no education at all; and in Z, rich people do not provide resources to ensure that poor children have access to adequate housing, health care, or nutrition. Nothing about Smith's account of justice, Fleischacker argues, can precisely delineate the degrees of harm in the three cases. Some might find that particular children are harmed by particular others in X and Y, but not in Z, for instance. However, as with (b) above, (c) only is problematic for Smith if in claiming the notion of justice to be precise, Smith intended to claim that the content of the notion of justice, independent of social context, would settle in advance any disputes of justice. This, however, is not Smith's understanding of the precision of justice.

Consider Smith's discussion of the precision of the rules of justice, as compared to the looseness of the rules of other virtues:

The rules of justice may be compared to the rules of grammar; the rules of the other virtues, to the rules which critics lay down for the attainment of what is sublime and elegant in composition. The one, are precise, accurate, and indispensable. The other, are loose, vague, and indeterminate, and present us rather with a general idea of the perfection we ought to aim at, than afford us any certain and infallible directions for acquiring it. A man may learn to write grammatically by rule, with the most absolute infallibility; and so, perhaps, he may be taught to act justly. But there are no rules whose observance will infallibly lead us to the attainment of elegance or sublimity in writing; though there are some which may help us, in some measure, to correct and ascertain the vague ideas which we might otherwise have entertained of those perfections. And there are no rules by the knowledge of which we can infallibly be taught to act upon all occasions with prudence, with just magnanimity, or proper beneficence: though there are

some which may enable us to correct and ascertain, in several respects, the imperfect ideas which we might otherwise have entertained of those virtues.⁸³

The contrasts here are important: grammar is opposed to elegance in composition, and precision is opposed to indeterminacy. Grammar can be understood to refer to such things as subject-verb-object sentence structures in English, which are precise rules according to which simple declarative sentences are properly constructed. The rules of grammar are precise, not in that they determine in advance the content of sentences in a language, but in that they determine in advance what will be considered as a proper arrangement of types of words within a sentence, and what kinds of relations between particular types of words will be considered to be proper. The rules of elegance in composition are indeterminate, however, in that they do not seem to determine much of *anything* in advance. Any two people can arrange subjects, verbs, and objects, in the same particular order to infallibly construct grammatically proper, simple declarative sentences of the English language, but the same is not true of elegance with respect to structurally identical sentences. I might arrange words in exactly the same way that Shakespeare does, without ever approaching sublimity in composition. In other words, the precision of the rules of grammar is not to do with the content of the formal objects which the rules constrain — that is, to do with such things as ‘neighbor’ or ‘kick’ or ‘ball’ — but is rather to do with the how the formal objects of the rules — such things as subjects, verbs, and objects — are related.⁸⁴

Likewise, the precision of the rules of justice is not to do with the content of the formal objects

⁸³ TMS, III.6.8-11.

⁸⁴ Neither I, nor Smith, are committed to the language of “formal objects” of the rules of grammar or justice. The rules of grammar dictate proper relations between certain categories of words, and the rules of justice dictate proper relations between certain other categories — namely, between the objects of resentment, resentment, and the consequences of resentment. The language of “formal objects” is intended only to capture the fact that in the rules of both grammar and justice, the propriety of the relationship between particular things is precisely determined.

which the rules of justice constrain — that is, to do with such things as ‘concubinage’ or ‘violent child sports’ or ‘welfare inequality’ — but is rather to do with how the formal objects of the rules — such things as proper objects of approval, resentment, and punishment — are related. What is precise about justice is the connection between IS-approved resentment and IS-approved punishment; punishment (IS-approved or otherwise) is the natural consequence of IS-approved resentment.

That this precision in the relations of the formal objects of the rules of justice is unique to justice can be seen by looking at the other virtues. Beneficence, being a virtue that is structurally identical to (though an inversion of) justice, is the likeliest candidate to share in the precision reserved for justice. For beneficence to have a similar degree of precision, we would need to find in it a similar precision in the connection between the (in this case) IS-approved gratitude and IS-approved reward; reward would need to be a necessary consequence of IS-approved gratitude. There is nothing, however, that secures or guarantees that the benefactor will be rewarded. It might well happen that the person who benefits from the benefactor’s actions is entirely ungrateful, and fails to reward the benefactor. We may disapprove of such behavior, and find it entirely inappropriate, but we can at worst come to hate the ingrate; we cannot (with the IS’ approval, at any rate) punish the ingrate on account of her ingratitude. As such, beneficial actions can result in gratitude, or hatred, though with no guarantee of either. While obligations of beneficence approach “nearest to what is called a perfect and complete obligation,” on account of the more restricted range of appropriate responses to ingratitude, obligations of friendship, charity, or generosity are even less precisely calibrated on account of the greater range of appropriate responses. The obligation arising from injustice, however, is precisely defined:

punishment of the object of IS-approved resentment. The withholding of gratitude may end in hatred, but the withholding of punishment can only end again in resentment, resulting in a feedback loop that can only be solved by satisfying resentment's call for punishment. Of course, this is not to say that punishment *will* take place; power differentials will make it the case that some persons will never satisfy their resentment. However, given the opportunity, the satisfaction of resentment by punishment will be considered appropriate by the standards of the IS. Precision in terms of the relation between formal objects of the rules of justice is not, however, what Fleischacker understands Smith to mean by precision. Fleischacker claims that Smith needs to — and fails to — “find some content that all such rules ought to share,” and that his failure to find such content results in an account of justice that is either “universally acceptable but imprecise, or precise but not universally acceptable.”⁸⁵

What is perhaps most peculiar about Fleischacker's critique, that Smith's notion of justice is void of content, is the relative absence of discussion about prohibitions against murder. Fleischacker mentions murder, briefly, as an “obvious” case of injury, but also notes that the fact that murder is obviously injurious does nothing to help Smith make precise the content of borderline cases of injustice or harm.⁸⁶ Fortunately, if my interpretation of Smith's account of justice is correct, the unclear continuum between ‘obvious’ and ‘blurry’ content of justice is irrelevant to the precision of justice. As I've just noted, justice's precision comes not from the content of the rules of justice, but from the relations of the formal objects of the rules of justice. One nice consequence of locating the precision of justice in the relations of the formal objects of

⁸⁵ Fleischacker, 164; 168.

⁸⁶ Ibid., 192; 157.

the rules of justice is that Smith *is* able to come up with some content. As we saw in Part II of this paper, Smith cites as the most sacred laws of justice, “the laws which guard the life and person of our neighbour;...those which guard [our] property and possessions; and...those which guard what are called [our] personal rights, what is due to [us] from the promises of others.”⁸⁷ These are laws of justice, not because of their content — in other words, not because they involve life, or some particular notion of property, or some particular notion of promises or contracts — but because the violation of life, property (however defined), or contractual obligation (however defined) are most certain to lead to IS-approved resentment, and consequently to the will to punish. The rules are at once precise and universal. They are precise, in that IS-approved resentment and the will to punish will follow from the violation of life, property, or contract (though what constitutes property or contract may differ from society to society). They are universal, in that prohibitions against the violation of life, property, or contractual obligations can be applied in all societies, and in the society of humans in general. Being both formally precise, and universal, Smith’s account of justice escapes the dilemma that Fleischacker tries to force it into. That it can do so is a direct result of the fact that justice and its rules are directly connected to both moral judgment and our natural sentiments.

3.3 *Griswold*

Griswold is concerned precisely with this move of connecting the general principles of justice to our natural moral sentiments. He notes “one might argue that the [general principles of justice] just amount to the moral psychology of *The Theory of Moral Sentiments*,” and that “any further account of the principles of natural jurisprudence will have to be extracted from a

⁸⁷ TMS, II.ii.2.2.

narrative about the ‘different revolutions they have undergone in the different ages and periods of society,’” but he argues that such an argument will fail for two reasons.⁸⁸ First, Griswold points out that Smith himself notes, in the sixth and final edition of TMS, that the work on natural jurisprudence remained to be written, and that as Smith also notes, nothing in TMS approaches an articulation of “general principles which are always the same.” Second, Griswold argues, it would be circular (if not outright impossible) to draw general principles that are always the same out of historical or experiential study. Griswold, like Fleischacker, concludes that Smith must have found himself in an inescapable *aporia*, driven there by both his desire to discover first principles accessible only from “a standpoint external to the human spectacle,” and his commitment to the claim that such a standpoint is unavailable to us. As with Fleischacker, however, Griswold’s problem with Smith’s account seems to confuse the nature of the precision that Smith claims is unique to justice.

There are two ways that one might think that the general principles of justice “just amount to the moral psychology” of TMS. First, one might think that the general principles of justice simply *are* the principles guiding sympathy and the formation of moral judgments by appeal to the sentiments of the IS. This seems to be the account that Griswold rejects as a possibility, in light of Smith’s comments regarding the incompleteness of his account of the principles of natural jurisprudence, stated at the end of TMS. Certainly, if what amounts to a direct reduction of the general principles of justice to the moral psychology of TMS is the only way to connect the two, then it would seem that such a connection was not Smith’s aim. Fortunately, this is not Smith’s only option.

⁸⁸ Griswold, 256-7.

We might also think that the general principles of justice are grounded in, but not reducible to, the principles guiding sympathy and the formation of moral judgments by appeal to the sentiments of the IS. In other words, we might think that the precise relationship between IS-approved resentment and punishment permits us to draw up general principles of justice, and that these general principles of justice can (and ought to) serve as the foundation for more specific rules or laws of justice in particular States. Griswold does not seem to think that such an option is open to Smith, and the explanation for his thinking so seems to be that he, like Fleischacker, believes that the precision that is unique to justice amounts to a precision in the *content* of the rules of justice. Griswold notes that Smith assumes “that principles of justice must be capable of precise specification” and therefore cannot resemble the rules specifying the duties of friendship (for instance), because the duties of friendship are far more “loose, vague, and indeterminate.”⁸⁹ On account of the indeterminacy of the rules specifying the duties of other virtues, we cannot say with precision what would amount to a violation of these rules. Even within particular societies, once we have a clearer idea of what is and is not generally approved of by members of that society as appropriate behavior among friends, it cannot be precisely determined which behaviors will violate the duties of friendship.⁹⁰ However, for the rules of justice to be precisely determined (by their content), they would need to be too particular to the peculiarities of a given society to be generally applicable to all societies, and for the rules to be generally applicable to all societies, they would have to be too general to be precisely determined for any given society. Smith, under Griswold’s interpretation of his account of justice, is trapped.

⁸⁹ Ibid., 250.

⁹⁰ For instance, even in a society where friends are generally obligated to tell each other the truth, it is not clear whether lying to a friend to protect them from harm would be considered a violation of the duties of friendship.

As stated above, however, such a trap depends on it being the case that the precision that is unique to justice is a precision of the content of the rules of justice, rather than a precision in the relation between the formal objects of the rules of justice. If, however, we take the precision that is unique to justice to be a precision in the relation between the formal objects of the rules of justice, then we avoid the trap entirely. The general principles of justice might be grounded in our natural sentiments, and therefore be eligible to serve as the foundation for the positive laws of all societies; whichever of those actions that elicit the resentment of the IS, are those actions that the positive laws of society must prohibit. As Smith suggests, a universally accepted principle of justice will be one that prohibits murder, as murder is certain to elicit the resentment of the IS. It might be, through historical and experiential study, that we discover other principles of justice that are as necessary to preempt IS-approved resentment as are prohibitions against murder, theft, and breach of contract. It might be, too, that we *think* we have discovered other principles of justice, only to find that the principles rely on what turn out to be concepts of (say) injury that are too particular to be shared by all societies.⁹¹ This, presumably, was the task that Smith had yet to satisfactorily complete before consigning his manuscript on natural jurisprudence to the heat and light. That he was unsatisfied with his attempts to discover general principles of justice that might serve as a basis for a theory of natural jurisprudence, however, seems to be no (good) argument for his account of justice being intrinsically flawed or inconsistent.

⁹¹ Fleischacker suggests this possibility as a critique that purports to force Smith into a dilemma (if principles of justice depend on concepts like harm, which are socially relative, then they cannot be general enough to be universal to all societies); as I noted above, however, the dilemma only presents itself if the precision is understood to be a precision of content.

Concluding Thoughts

The account of justice that Smith offers in TMS is far from straight forward. Still, that does not mean that it is not there. On the contrary, Smith offers a compelling account of justice that is tied directly to our natural sentiments. He does not argue, as Brown claims, that one is just if they simply follow the positive laws of their country. Nor, as Fleischacker and Griswold claim, did Smith believe that justice was uniquely precise in that the general principles of justice precisely delineated the content of the rules of justice for all particular societies. Rather, a person is just if they refrain from acting in ways that would elicit the resentment of the IS, and a state of affairs is just if people refrain from acting likewise. By offering us an account of justice that is tightly integrated with his account of our natural, moral sentiments, Smith believes that he has offered us an account that can explain how both individuals and societies can garner the only approval that truly matters: that of the impartial spectator.

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