
Instilling Duties above Instilling Rights

Two Features of Adam Smith's Talk of Justice and Liberty

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I suggest that two features of Adam Smith's talk of justice and liberty reflect a priority on instilling duties, as opposed to instilling rights. The first feature has to do with his manner of talking "justice"; I distinguish between calling loudly and proffering coolly. The second feature is Smith's refraining in his two great works from using "liberty" in expansive senses of the term. I treat each feature in turn.

Calling Loudly

In *Theory of Moral Sentiments* (TMS), Adam Smith writes of "loud" calls and objections (TMS 71.5, 73.2, 74.4, 84.2, 105.2, and 131.33).¹ Loudness constitutes a disturbance, a demand on other people's attention. In the opening pages, he writes: "If we hear a person loudly lamenting his misfortunes, which, however, upon bringing the case home to ourselves, we feel, can produce no such violent effect upon us,

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1. The citation 71.5 means page 71, paragraph 5, of the cited text. When I provide such citations without citing a text, the text is TMS.

The Independent Review, v. 27, n. 4, Spring 2023, ISSN 1086-1653, Copyright © 2023, pp. 595-604.

we are shocked at his grief; and, because we cannot enter into it, call it pusillanimity and weakness” (TMS 16.6). Already in the second chapter he insinuates pusillanimity and weakness for those who neglect duties.

But Smith clearly sees a place for loudness. In the “most sacred laws” passage about justice among equals, he says violations of person, property, and promises-due “call loudest for vengeance and punishment” (TMS 84.2).

In policy matters, Smith sometimes calls loudly, or somewhat loudly, as when he writes of:

- “an evident violation of natural liberty and justice” (*Wealth of Nations* (WN) 157.59), “an act of such violent injustice” (WN 326.100),
- “evident violations of natural liberty, and therefore unjust” (WN 530.16),
- “contrary to all the ordinary principles of justice” (WN 826.6),
- “In both regulations the sacred rights of private property are sacrificed to the supposed interests of public revenue” (WN 188.27),
- “a plain violation of this most sacred property” (WN 138.12),
- “the most sacred rights of mankind” (WN 582.44),
- the rebuke of the slave trade in TMS (206-207.9).

These cases speak of violations of person, property, or promises-due. There are other moments where Smith’s sentiment is warm, if not loud, such as the famous “equity, besides” passage (WN 96.36). That passage says that all people, including those “who feed, cloath, and lodge the whole body of the people,” are to be accorded equal dignity, equal rights, and equal moral worth in an accounting of the common good. As Christopher Martin (2015, 2021) shows, Smith’s policy orientation toward the poor was quite consistently² along the lines of the liberal plan of allowing every man to pursue his own interest his own way (WN 664.3).

Proffering Coolly

Fonna Forman-Barzilai writes: “[I]mpartiality requires a sort of cool distance.” In TMS, Smith abundantly used “cool” to signify calm or composed, as when he speaks of “the sentiments of the cool and impartial spectator” or of “the cool hours” (2010, 159).³

I beg pardon for mixing metaphors: The “loud” decibels metaphor would suggest an opposite in *quiet*, while the “cool” temperature metaphor of would suggest an opposite in *warm*, *fervent*, or *ardent*. However, to echo Smith’s verbalisms, I propose: *calling loudly* versus *proffering coolly*. *Proffer* means to propose something,

2. One possible exception is Smith’s endorsement of a law to require (enforce?) payment in cash, as opposed to payment in-kind (WN 158.61).

3. The “cool and impartial spectator” is at 38.8; “cool hours” is at 88.7, 161.12, 163.2, 237.1, and 268.5; for other “cool” moments, see 84.3, 105.2, 118.9, 147.26, 156.44, 157.4, 167.9, 215.12, 217.16, 241.11, 242.12, 251.28, 252.30, 263.3, 311.10, and 316.2.

and connotes calmness and quietness, as opposed to the verb *to call*, which connotes loudness. The proffering we mean is proposing an idea or an estimation of an object, such as a position on an issue of government policy.

In WN, whenever Smith's justice talk does not involve his objecting to a violation of "mere" justice (TMS 82.9), he proffers coolly (e.g., WN 815.4-5, 827.7, 834.20, 944.88, 946.92). Smith seems to suggest that when we talk about what is "just" in government policy and we are not protesting violations of "mere" justice, we should proffer coolly. It is a duty not to call loudly. That duty is elevated over the assertion of supposed rights that supposedly call for redress. That is the first of the two features of Smith's talk. Now we turn toward the second.

An Asymmetry

A group of scholars has elaborated a tri-layered understanding of justice in Smith: commutative, distributive, and estimative.⁴ Commutative (or "mere") justice is not messing with other people's stuff, namely, their person, property, and the promises due to them as by consent and contract. Distributive justice "consists in proper beneficence, in the becoming use of what is our own" (270.10). Estimative justice is estimating objects properly, including pursuing them and treating them with corresponding ardor. Smith explained that the rules of commutative justice are like grammar, in that they are "precise and accurate," whereas the rules of distributive and estimative justice are "loose, vague, and indeterminate," like the rules of criticism or aesthetics (175-176.11, 327.1-2).

Smith talks justice beyond commutative justice (Klein 2021). In the governor-governed relationship, commutative justice has a flipside, called liberty. Now we come to the second feature of Smith's talk. It is natural to ask: If Smith practices beyond-grammar-like justice talk, does he also practice beyond-grammar-like liberty talk?

The question makes sense insofar as, beyond commutative justice, we consider distributive justice. Justice concerns duties. In the cases of commutative justice and distributive justice, duties involve obligations—bearing on our man Jim, say—on particular sets of people. A duty on Jim's side implies a kind of right on their side, however loose or vague that right might be. In the *Lectures on Jurisprudence* (9), Smith opens by acknowledging how the correlative notions of duty and right can, in "a metaphoricall sense," be loosely construed in matters of distributive justice.

And rights can be fashioned, however vaguely, into a kind of liberty. As Richard Tuck puts it: "[I]f active rights are paradigmatic, then to attribute rights to someone *is* to attribute some kind of liberty to them" (1979, 7). If one's rights are violated, one experiences a sort of unfreedom, a reduction in liberty.

4. For research elaborating Smith's tri-layered justice, see Klein 2021; Hall and Shera 2020; Diesel 2021; Diesel and Klein 2021; Klein and Matson 2020; Klein 2022a.

Try to imagine a super-knowledgeable God-like beholder of all the rules of all the virtues, for whom the rules of even our becoming virtues were precise and accurate. Try to imagine that that beholder was able to extend the grammar of commutative justice into all social matters, and that *for her* there would be, as Francis Bacon put it, “a true coincidence between commutative and distributive justice” ([1605] 2002, 190).⁵ *For her*, the distinction between commutative and distributive would dissolve. However, to maintain a living societal meaning of these notions of justice and of the correlative duties and rights, Bacon’s “true coincidence between commutative and distributive justice” must be, not only *for her*, but also for all the members of society. We are trying to imagine a *complete circuitry* of the correlative individual duties and individual rights as we mere mortals understand such duties and rights on the ground. Thus, we must take the fantasy yet much further. To do that, our God-like beholder must also *communicate* the duties and rights to us mere humans on the ground. Furthermore, the communication must be intelligible, credible, and compelling: We must heed them and take them to heart. The God-like beholder must be a quarterback of Team Society, making the duties and rights something like common knowledge in the technical sense (everyone knows them; everyone knows that everyone knows them; etc.). Thus, we might try to imagine how a complex society might, in a fantastic allegory, have a complete circuitry of correlative duties and rights. The only way to join social complexity and complete circuitry is to dream up a God-like quarterback of Team Society.

But there is no God-like quarterback of Team Society. Even if one believes in God and books of revelation, one should agree that there is no God-like quarterback issuing play-by-play communications that make for common knowledge of a complete circuitry of precise and accurate duties and rights. Scripture may speak to our daily lives, but the counsels it offers for moment-by-moment action are wide open to interpretation (“loose, vague, and indeterminate,” not “precise and accurate”) and far from being common knowledge.

Our genes are not so unlike those of our ancestors of 10,000 B.C. In a very small, simple, intimate society, like the primeval band of forty people, where interpretation is quite static and quite common and there was a strong and meaningful sense of Team Society, the notion of a complete circuitry between commutative and distributive justice may not be so far-fetched. Drop societal complexity and you can imagine something closer to complete circuitry. The primeval band enjoyed something closer to a complete circuitry of correlative duties and rights. But we aren’t in the band anymore.

The logic appropriate to band-like existence or a God-like quarterback is reflected in the idiom *I take the liberty*, an idiom that Smith often used in

5. On the ideal correlative relationship between the justices in the thought of Samuel von Cocceji (as well as his father Heinrich), and a comparison to Smith, see Haakonssen 1996, 143–48. For parallel thoughts in terms of “perfect” and “imperfect” rights, see Stewart 1854, 176–77.

correspondence (*Corr.* 21, 22, 72, 247, 250, 253, 260, 267, 289, 294, 306, 316, 324, 414). For example, Smith wrote to William Robertson a short letter of introduction, begging Robertson to receive three visitors from Spain: “You are, I imagine, by far the best modern linguist among us, and I therefore, have taken the liberty to give you this trouble; which I hope, you will forgive me” (*Corr.* 316). The logic of the idiom works as follows: Smith presumes that, were his correspondent to know as much about the situation as Smith knows, the correspondent would recognize his duty to serve the interest in question; and correlative to such duty are rights, or liberty, which Smith presumes to exercise.

But Smith’s use of the idiom is an exception that proves the rule against talking liberty in that extended sense.⁶ Indeed, when he speaks of *taking the liberty*, he strikes an apologetic note. The idiom is a sort of apology for presuming to know the “imperfect” rights so well. In his published works, Smith in fact did not much talk “liberty” in matters of distributive justice.

The third sense of justice is estimative justice, that is, estimating objects properly. Smith used the example of a poem or a picture. In that case, a question arises: One’s duty is *to whom*, or *to what*?

The duty would seem to be to the poem, the picture, or whatever is the object of estimation. But to speak of a poem or a picture having rights and an associated liberty would be awkward, indeed.

The duties of estimative justice, even in the matter of a poem or a picture, however, are not unattached to the common good. The attachment is abstract or general. So perhaps, even here, our super-knowledgeable God-like quarterback could see rights and liberty. The idea here would be to the effect that people’s liberty involves the right to live in a world *free from others’ bad estimations of objects*.

Smith refrains from such extended use of *liberty*. In his two great works, his “liberty” talk is chiefly the grammar-like liberty; the few exceptions are *not* the sort that would suggest any corresponding duty.⁷ Figure 1 expresses the asymmetry in Smith’s semantic practice: On the duties side, he talks justice beyond the grammar-like but he keeps it cool. Thus, figure 1 exhibits the first feature, discussed at the outset, by placing Smith in row 3 rather than row 4.

On the rights side, Smith does not talk liberty beyond the grammar-like, putting him in the B column. Istvan Hont and Michael Ignatieff say it clearly:

6. It is interesting that since Smith’s time usage of the “take the liberty” idiom has declined vastly, as one can see at Google’s Ngram Viewer.

7. With the help of Jacob Hall, I have collected all occurrences of “liberty” in TMS and WN into an Excel sheet that can be found on the online version of this article on the Independent Institute’s website. There are ninety occurrences of “liberty” in which the mere-liberty sense (others not messing with one’s stuff) is central. There are eleven other occurrences: The first one in WN is about a boy devising a string to open the valve automatically, “leav[ing] him at liberty to divert himself with his play-fellows” (WN 20.8). That “liberty” means unoccupied. That is not a “liberty” to which duties of others are correlative. The eleven occurrences that are not mere-liberty are as follows: TMS: 32.2, 51.1, 57.7 150.31, 151.3, 205.8, 280.25; WN: 9, 20.8, 50.7, 912.12.

Figure 1
An Asymmetry in Talking Justice/Liberty beyond the Grammar-Like

		LIBERTY TALK			
		Avoid all justice talk	Allow yourself only the precise and accurate concept	Allow yourself only proffering coolly	Allow yourself calling loudly (and proffering coolly)
JUSTICE TALK <i>Beyond precise and accurate:</i>	Avoid all liberty talk	(A1)	(B1)	(C1)	(D1)
	Allow yourself only the precise and accurate concept	(A2)	(B2)	(C2)	(D2)
	Allow yourself only proffering coolly	(A3)	(B3) SMITH	(C3)	(D3)
	Allow yourself calling loudly (and proffering coolly)	(A4)	(B4)	(C4)	(D4)

Natural jurisprudence—particularly its distinction between ‘strict’ and ‘distributive’ justice—provided Smith with the language in which his theory of the functions of government in a market society took shape. In this tradition, liberty was defined primarily in the passive sense, as the perfect right to enjoy and improve one’s property free from the encroachments of others. (1983, 43)

If Smith’s practice were symmetric, he would be in a cell along the diagonal, but he is not. In TMS and WN, Smith’s “liberty” talk was confined to the precise and accurate, but his “justice” talk was not. He allowed himself to talk “justice” beyond the precise and accurate; when he did so he proffered coolly.

Why the asymmetry and why the unwillingness to call loudly when talking justice beyond commutative?

Smith's justice talk necessarily entails identification of the actor—whether the action concerns messing with other people's stuff (commutative justice), distributing one's social resources (distributive justice), or estimating some object (estimative justice). Justice talk then speaks of that actor's duties. Mindfulness of duty is something to be promoted.

On the other side of things, the *rights* side, we have someone claiming rights, which, according to the claim, are to be enjoyed unencumbered and uninvaded. But do the claimed rights clearly hook up to correlative duties? That is, is it clear who bears those duties, and what the duties are?

The right of property is a grammar-like claim not to be messed with. As for who bears the don't-mess duty, it is everyone and anyone—the claim is “against the world.” Though nonpersonal in that respect, the right of property works because it is grammar-like. We all can interact peaceably enough, even as strangers, by complying with the basic social grammar.

But if we proceed to talk rights⁸ and liberty beyond the grammar-like, the result is extensive assertions of entitlements but without clear responsibility in the correlative duties and on whom those duties bear.

Again, in a very small, simple society, such as a primeval band, we might be able to approach a more complete circuitry of correlative duties and rights. But in a complex, disjointed society, that is utterly impossible. People tend to overstate their rights and understate their duties, and everyone knows that. That is one reason for the asymmetry. Furthermore, there's more danger in asserting supposed rights than in assiduously minding one's duties. When the asserting of rights is unleashed, we will face a chaos of correlative duties, often imposed on others selfishly, opportunistically, and maliciously—in a word, *illiberally*. In the political arena, when liberal norms break down, we have a Hobbesian state of nature, a war of illiberal (and anti-liberal) factions against all. Smith himself indicated as much. Of becoming virtues, such as civility and hospitality, Smith writes: “[U]pon the tolerable observance of these duties depends the very existence of human society, which would crumble into nothing if mankind were not generally impressed with a reverence for those important rules of conduct” (163.2).

It is wise to refrain from talking liberty in political discourse when the grammar-like notion of liberty is not the essence of the matter (see Klein and Matson 2020). Liberal civilization strives to keep a lid on asserting rights and liberties. The result is something of an asymmetry, such that we think of ourselves bearing duties to which no distinct rights correlate. The feeling of duty arises not from a respecting

8. Figure 1 addresses Smith's “liberty” talk. The reader may wonder: What about Smith's “rights” talk? It is my impression that Smith does not much talk “rights” beyond jural matters (by which I mean, roughly, matters of commutative justice and “positive” or legal law), but I have not made a systematic study. One problem in trying to study “rights” in the fashion that “justice” and “liberty” are studied here is that no clear corresponding noun suggests itself, something like “righthood”—the whole of one's rights (perhaps the Latin would be something like *suum*). In Smith's time, the word *property* perhaps had something of such a meaning, among other meanings.

of certain distinct rights of other human beings, but from *right*. As Smith emphasized (e.g., 20.3-4, 137.4, 163.2, 166-7.8, 189.7, 209.13, 238.5, 253.31, 258.42, 335.22, 337.27, 338.30), we have, as it were, duties to truth, to importance, to wisdom, to beauty, to right, to the well-being of humankind, to good, to God.

There are no distinct rights without correlative duties, but *there are duties without correlative distinct rights of other human beings*. This insight helps us see why “Big Gods” were vital in sustaining humankind beyond the band: New duties corresponded to rights of the Bigger Gods—duties that could not cogently correspond to rights of human beings. The bigger the social whole, the more needful is God. In Klein (2022b), I discuss gratefulness and resentfulness, again arguing for a virtuous asymmetry, namely, favor for generalized gratefulness but disfavor for generalized resentfulness, and again see God as smoothing the way for that needful asymmetry. But I do not mean to argue against theism; God’s existence is of course compatible with the evolutionary story suggested here. Indeed, the needfulness might have been a way to ensure that His creatures would find Him.

“a picture, or a poem, or a system of philosophy”

In the early pages of TMS Smith explains that our judging of Jim’s sentiments regarding some objects can be considered upon two different sorts of occasions: (1) “when the objects ... are considered without any particular relation, either to ourselves or to [Jim]”; and (2) “when they are considered as peculiarly affecting one or other of us” (TMS 19.1). In the latter case, “[I]t is at once more difficult to preserve this harmony and correspondence, and at the same time, vastly more important. ... We do not view them *from the same station, as we do a picture, or a poem, or a system of philosophy*, and are, therefore, apt to be very differently affected by them” (20-21.5, italics added).

Smith says that *a system of philosophy* is something that we view from the same station. Today, when it comes to political viewpoints, it hardly seems so!

On those early pages, Smith also makes remarks that, rather, seem to fit so much of the political discourse today:

But it is quite otherwise with regard to those objects *by which either you or I are particularly affected*. . . . [I]f you have either no fellow-feeling for the misfortunes I have met with, or none that bears any proportion to the grief which distracts me; or if you have either no indignation at the injuries I have suffered, or none that bears any proportion to the resentment which transports me, *we can no longer converse upon these subjects. We become intolerable to one another. I can neither support your company, nor you mine*. (TMS 21.5, italics added)

Smith also uses a picture and a poem as examples in the discussion of estimative justice in the major paragraph on the three senses of justice (269-270.10). It is

remarkable that he suggests (at 21.5) that “a system of philosophy” ought likewise to be a matter of such cool and distant sentiment. In fact, Smith brings these together twice, as he then soon says: “Though you despise that picture, or that poem, or even that system of philosophy, which I admire, there is little danger of our quarrelling upon that account” (21.5). The remarkable connection between the two moments (that is, 21.5 and 270.10) supports an estimative-justice interpretation of political discourse. After all, Smith’s science of a legislator is a system of philosophy, one that Smith presumably deems “just, and reasonable, and practicable” (TMS 187.11). The connection shows that Smith quietly suggests refraining from calling loudly in matters beyond commutative justice.

Interpretations of the good are expansive.

Interpretations of what serves it are expansive.

People disagree vastly.

They always will. A circuitry of duties and rights will never be closed and commonly beheld. Curb enthusiasm for complete circuitry (“integralism”?).

In espousing government intervention, it is but propriety to proffer coolly.

Besides instilling civility in our discoursing about politics, Smith’s treatment of estimative justice prompts us to ask: What governmental policies conduce to coolness—and, hence, harmony? To this question, answers are proffered by Paul Mueller (2021).

Finally, what of instilling in the individual a sense of *her* rights? Certainly, Smith did aim to instill his reader with an understanding of her rights, notably those associated with ownership and freedom of association. But the main reason for his doing that was to make her more willing and better able to do her *duty* of defending those rights. Once again, the instilling of duty seems to be foremost. Liberty is like a public good or even a common-pool resource ripe for depletion. The individual’s sense of her own duty checks her free-riding and free-loading on the common good.

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Acknowledgments: For valuable feedback I thank Jacob Hall, Erik Matson, Marcus Shera, and three anonymous referees.

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