

Pufendorf, Hume and Adam Smith: A Question of Influence



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Abstract In what way did Pufendorf's natural jurisprudence influence David Hume and Adam Smith? He had no direct influence on their work, but he provided them with a clear statement of conventional wisdom in politics and morality as represented by natural jurisprudence. Hume and Smith took natural jurisprudence as conventional wisdom and as the starting point of their innovations in economics.

Keywords Natural law and jurisprudence · Direct and contextual influence · The character of Hume's and Smith's innovations

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1 The Obituary of Istvan Hont

Often I have asked myself what we mean by saying that A influenced B; the assumption of influence is made too easily, that is clear. When two authors launch the same idea, it does not necessarily mean that A influenced B, because he came earlier. I once dealt with the assertion in the case of Spinoza and Hume (Holthoorn, 2011, XII). Both argued that passions, not reason, determine our behaviour. Hume writes a notorious sentence about this issue: 'Reason is and ought only to be the slave of the passions' (Hume, 1978, II, 3, iii, 415). This quotation has a Classical origin and Hume adds 'ought' to it which gives the notion of the dominance of the passions a different meaning from the way Spinoza used it.

There are two forms of influence to distinguish. Those who assume that Spinoza influenced Hume are thinking of a direct influence. The other form of influence is contextual. It exists when a number of authors are discussing the same subject using

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the same presuppositions. The following essay confirms my impression that contextual influence often is a more challenging subject than direct influence.

Five years ago, John Robertson sent me his obituary of Istvan Hont. Robertson, professor in Cambridge,¹ is the director of the famous seminar on the history of political thought at the University of Cambridge, and he wrote his appreciation in honour of the scholar who started the seminar.

Robertson writes about Hont: Hont conceived of the natural law tradition as the key not only to explaining *The Wealth of Nations*, it would also provide the historical connection with the political economy of Marx (Robertson, 2013, 20–21).

Then and now, it seems problematic to me that the tradition of natural jurisprudence is the key to explaining *The Wealth of Nations* (WN), let alone helping us to understand Marx' *Kapital*, and the conference on Pufendorf in Heilbronn was a welcome opportunity to explore the question how Pufendorf's version of natural jurisprudence could have influenced Smith in writing *The Wealth of Nations*. Let me quote the conclusion of each section in this essay to highlight my scenario for dealing with a rather complicated issue.

- (i) On the continent, natural jurisprudence was used in two ways: first to accommodate positive law systems and reform them and secondly to emphasize the merits of a harmonious civic order. In Great Britain, natural jurisprudence was seen as a self-evident expression of conventional wisdom. So both in Britain and on the continent, natural jurisprudence was seen as a repository of conventional wisdom, but on the continent this wisdom was an expression of the will of God, while in Great Britain moral philosophers tended to be traced to human nature long before Adam Smith (and David Hume) made this a central priority in their moral philosophy.

It is hard for us, living in an age of relativism, to appreciate the rock bottom quality of seventeenth- and eighteenth-century conventional wisdom. Pufendorf and Smith shared their belief in the rulings of natural jurisprudence as self-evident truths. That the father is head of the family was a self-evident rule. Only the madman would disagree that this should be so.

- (ii) Pufendorf did not have a direct influence on Smith and Hume, but as a gatekeeper of the Enlightenment he may have made Smith and Hume attentive readers of his works. The fact that Pufendorf only had an indirect influence on Smith (and Hume) is consequential for the way we interpret his influence. Schumpeter remarked that Pufendorf added no new ideas to economic theory (Schumpeter, 1954, 117).² So Pufendorf had no influence on Hume's and Smith's innovations in economic theory. Furthermore, Pufendorf did not invent natural jurisprudence, but put the often age-old theories in a new form. It was

¹In 2020, he will retire from his post.

²Schumpeter writes: 'he ... does not seem to me to have added much to the stock of knowledge and to the analytic apparatus of the late scholastics'. I owe this quotation to Karl Heinz Schmidt who mentions Schumpeter's remark in his contribution to this volume.

his way of presenting natural jurisprudence that made him the gatekeeper of the Enlightenment (Saether, 2020).

- (iii) Hume and Smith were supporters of ‘established government’. They accepted the need for reform, but were adverse to revolution.
- (iv) Hume called *sympathy* – that ‘powerful principle in human nature’ (Hume, 1978, III, 3, i, 577–578) – and *sympathy* became key to Smith’s moral philosophy. Hume discarded sympathy as that powerful principle in his *Enquiry Concerning Human Understanding* and made *utility* take its place while Smith developed the introspective qualities of sympathy as a concept.
- (v) Adam Smith used two models to make his moral philosophy operative. Model 1 is the *impartial spectator* who guarantees that each economic actor knows what is proper and fair. Model 2 is the *invisible hand*; it gives the economic actor the opportunity to make business transactions into a win–win situation for those involved in a transaction.
- (vi) What does contextual influence mean in the case of Pufendorf, Hume and Smith? Natural jurisprudence in its practical application maintains a ‘safe, respectable and happy condition of our fellow citizens’. Both Pufendorf on the one side and Hume and Smith on the other believed in a society of orders where each order had its special place. Until we understand the practical implications of their views, we cannot understand their moral philosophy.

2 Natural Law and Natural Jurisprudence: Two Perspectives

According to Robertson’s obituary, Hont claimed that Pufendorf had a direct influence on Smith. Hont writes: This same model of sociability and its concomitant anthropology played a key part in Adam Smith’s theory of commercial society and in his conception of the ‘Age of Commerce’ and the decisive fourth stage of human history (Hont, 2005, 159–160).³

This quotation is incorrect for two reasons. First, Pufendorf, as I have argued, was not primarily interested in commercial affairs let alone in the fourth stage of the commercial society.⁴ And second, in *The Wealth of Nations* to which Hont referred with his theory of commercial society, Smith does not mention commercial society as the fourth stage.⁵

³The fourth stage is the age of commercial society.

⁴Hume and Smith took their concept of sociability from Hutcheson. Hutcheson wrote: ‘God gave us a sense of the fitting and the beautiful; associated with this sense, as moderator of all the grosser pleasures is shame; he also gave the keen spur of praise. The effect of all these is to make life social and kindly, and to make all the duties which are honourable and beneficial to others most advantageous and at the same time most pleasant for the agent himself, and to make even the innate self-love of our nature in no way contrary to our common and benevolent affections’ (F. Hutcheson 2006, ‘On the Natural Sociability of Mankind’).

⁵We may assume that he had the commercial society as the fourth stage in mind, when he developed his economic theory.

Before I deal with this quotation, let us have a look at the history of natural jurisprudence as it came to function in continental Europe and on the British isles.

Work on the codification of the laws of the Roman Empire began in 529 at the court of Emperor Justin. Tribonius and his commission of lawyers concentrated their work on the interpretation of texts, and they showed, so it seems, no interest in natural law as a theoretical standard, even though Cicero had used it as such in his *De Legibus*.⁶

The *Corpus Juris Civilis* had an immense influence on later generations. As ‘Roman law’, it came to function as a model for legislation. In Chap. 44 of his *Decline and Fall of the Roman Empire*, Edward Gibbon presented a brilliant account of the evolution of Roman jurisprudence. He gives an impressive *laudatio* to the work of Justinian’s lawyers (Gibbon 1995, vol. 2, 844):

Under his reign and by his care, the civil jurisprudence was digested in the immortal works of the CODE, the PANDECTS, and the INSTITUTES: the public reason of the Romans has been silently or studiously transfused into the domestic institutions of Europe, and the laws of Justinian still command the respect or obedience of independent nations. (Gibbon, 1995, vol. 2, 778)

In this way, Gibbon gave a graphic description of the accommodation process and its influence on Western civilization, when natural jurisprudence in the guise of Roman law started to fashion domestic law systems.

In the Middle Ages, the fusion between philosophy and jurisprudence took place and natural law became the theoretical standard of interpretation. The fusion became an important tool for the Roman Church and made it possible to graft the moral code of the Church on Roman law. Gratianus and others in service of the *Curia* made natural jurisprudence into a system of rulings which we call canon law. Harold Berman considers the law reforms, which were started during the reign of Gregory VII in the eleventh century, a revolution on a par with the French Revolution, because his lawyers built a system of law which dominated medieval and early modern Europe (Berman, 1985, 18–19). The achievement of the lawyers of canon law was that they introduced the rule of law, meaning that law prevails over power.

Divine and natural law gave authority to a new system of law which was called natural jurisprudence. The pretension of the system was clear. Natural law as expressed in natural jurisprudence represented God’s will and so transcended positive law wherever that was to be found in the (Western) Christian world. Because natural law was the expression of God’s will, princes and laymen had to obey the canon law and the moral teaching that was attached to it.⁷ To oppose the pretensions

⁶Expressing doubts at the same time about the practical use of such a standard.

⁷By incorporating the Christian moral code in Canon law, the Church acquired a formidable tool for social control. Jack Goody describes how the Church forbade marriage within the extended family as well along consanguine as affine lines of in-laws. So Canon law prohibited the remarriage of a man with the sister of his deceased wife. These prohibitions – drawn out to absurd proportions – also had a political purpose. The Church wanted to break the power of feudal families. Goody writes: ‘Indeed the introduction of the prohibitions was partly directed against the solidarity of such [kin], against the reinforcing of blood with marriage, and it is difficult to see that their

of the Church, princes of the Empire and later of the emerging nation states ordered their lawyers to create an alternative system taking the same source as the lawyers of the Pope used: Justinian's law book. So a secular system of natural jurisprudence came into existence.

The Protestant Reformers adapted the secular system to their needs. Their natural jurisprudence was also seen as an expression of God's will, and the Protestant lawyers were as careful as the medieval princes to subject their churches to the sovereign power of the State. Pufendorf was a late example of these lawyers. His definition of natural law reads in Barbeyrac's translation as follows:

[E]lle signifie seulement que la droite raison conseilloit d'établir telle ou telle chose, pour l'avantage de la Société Humaine ... en général; car ce qui a été introduit pour le bien particulier d'un Etat, est purement de Droit Civil ou Positif. (Pufendorf, 1718, vol. 2, 510)

So Pufendorf tells us that natural law does not prescribe but directs the mind of those in search of justice. Natural law is a principle not a system, but it has inspired the system of natural jurisprudence. For Pufendorf and many jurists in the seventeenth century, natural law and the jurisprudence, which emerged from it, were the expression of God's will, but in the Enlightenment of the eighteenth century, natural jurisprudence becomes the conventional wisdom of politics and morality which no longer is ordained by God.⁸

If we subsequently come to the functioning of natural jurisprudence in Germany and England, we notice a marked difference between the two countries. Natural jurisprudence in the Habsburg Empire was a method of accommodating between positive law systems, and it functioned as an instrument of legal reform at the same time. Hence, natural jurisprudence was sometimes called *ius commune* in German-speaking countries, or common law. Common law in England was different, because it was a version of the *ius gentium*. After the Norman Conquest, law became an untidy assembly of Saxon and Roman elements. According to Hume, the discovery of the *Pandects* in Amalfi had a salutary influence on the functioning of common law in England. He writes:

The ecclesiastics, who had leisure, and some inclination of study, immediately adopted with zeal this excellent system of jurisprudence, and spread the knowledge of it through every part of Europe. Besides the intrinsic merit of the performance, it was recommended to them by its original connexion with the imperial city of Rome, which being the seat of their religion, seemed to acquire a new lustrum and authority, by the diffusion of its laws over the western world. (Hume, 1983, vol. 2, 520)

extension in the eleventh century did anything to counter this pressure'. J. Goody, *The Development of the Family and Marriage in Europe* (Cambridge 1980: Cambridge University Press), 145.

⁸There is consensus on the rulings of conventional wisdom, among these are the following: (1) Civil society cannot exist without the authority of the State. (2) A citizen of the State has to obey the political and social conventions. (3) Ideally, that citizen has no say in the administration and defence of the nation. (4) Civil society consists of monogamous families in which the husband is head of the family. (5) Relations between the members of civil society are determined by property and status. (6) Contracts further determine these relations. (7) Justice depends on the proper administration of laws and rulings. These laws and rulings also determine the margin of freedom individuals have for acting and expressing themselves.

A famous law book of the eighteenth century is William Blackstone's *Commentaries on the Laws of England*. On the first page, he refers to natural law as an expression of the will of God (Blackstone, 1890, 1).⁹ That was a reference to natural jurisprudence, but nothing more follows, because on the next page he starts to discuss 'municipal law' as 'a rule of civil conduct prescribed by the supreme power in the state' (Blackstone 1890, 2). The express purpose of Blackstone was to streamline common law, and as a cautious modernizer he adapted it to his time. One does not get the impression that natural jurisprudence influenced him in his efforts (Skol 2010, 91).¹⁰ There were numerous treatises on natural law in England and Scotland, and Blackstone had undoubtedly read Richard Cumberland's *Treatise of the Law of Nature*.¹¹ However, if so, natural jurisprudence worked only indirectly on Blackstone and that seems the general practice particularly among English (in contrast with Scottish) lawyers.

By his practical attitude to reform, Blackstone left ample room for philosophers such as Adam Smith to develop a moral philosophy, not for the purpose of ordering laws but for designing a code of conduct for society which was witnessing rapid and momentous changes.

It is time to introduce Hume in the discussion about the influence of natural jurisprudence on both Scots. Haakonssen writes about Hume's version of jurisprudence:

Hume was undoubtedly very much influenced by modern natural law theories in Grotius, Pufendorf and others. But his real genius was to combine the strands of his inheritance in a completely new sort of natural law theory – for, indeed he is quite willing to use that label, provided we let him fill in the contents himself. (Haakonssen, 12)¹²

Indeed, his 'natural law theory' had a different foundation from that of Grotius and Pufendorf and I wonder whether it is wise to call it a version of natural jurisprudence at all. Hume appealed to the study of human nature, to the 'science of Man' as he called it in the *Introduction* to his *Treatise* (Hume 1978, XV). Not God, but man was the starting point of Hume's enquiry and it ended with a vista of a society which was held together by conventions and laws, or in Hume's parlance of the *Treatise*, 'artificial virtues'.

Neither Hume nor Smith used God's will to justify their system of moral philosophy. In the *Enquiry Concerning the Principles of Morals* (EPM), Hume urged his readers to rely on their own judgement to decide moral issues. How persons reach judgement was closely linked to conventional wisdom. That conventional wisdom had a self-evident character. Since Pufendorf, Hume, Smith, and their

⁹The fact that Blackstone's *Commentaries* were still used as a textbook in 1890 is an indication of its enormous influence.

¹⁰Blackstone hated anything *Gothic*. He called his labour as that of 'a Gothic castle fitted up for modern inhabitants'.

¹¹Latin edition 1684, first English translation 1727.

¹²Haakonssen (1978, p. 484); but Hume talks about the laws of nature, not about natural law.

contemporaries were unaware that they lived on the threshold of a century of tremendous changes that would eventually transform the entire world.

The push towards modernity started in the Middle Ages, and the Dutch Republic in the seventeenth century was an important stage towards the Industrial Revolution, which happened in the England of the eighteenth century. Perhaps Smith and Hume had an inkling of things to come, but if so they shut their eyes for the changes. They believed in established government whether in Britain or in France. The irony is that if we maintain that Hume and Smith slavishly adopted the natural jurisprudence of Pufendorf and particularly its foundation in natural law as the will of God, we miss the important point that in *both* cases natural jurisprudence meant the conventional wisdom in jurisprudence and morality and that there was a remarkable consensus about what this conventional wisdom was.

3 Pufendorf's Influence

If Pufendorf did not dictate the terms of natural jurisprudence to Hume and Smith, what is it that made him special among his colleagues? I think it is his style of writing and thinking. Karl-Heinz Schmidt quotes a number of modern critics who are charmed by Pufendorf's insistence that a rational discourse in public life will lead to social harmony and sensible measures taken by the State (Schmidt 2020). So Pufendorf even influenced modern economists, but I am slightly puzzled by the insistence on social harmony, because reading Pufendorf that way sounds slightly anachronistic.

Then on the way back home from the conference, my wife showed me a report in a newspaper on Habermas who had just celebrated his birthday at a ripe old age. That is it, I thought! Habermas is the true descendant of Pufendorf. Habermas' plea for a rational discourse as a necessary element in a sane public opinion resembles Pufendorf's message, if in a modern version. Habermas writes in his *Strukturwandel der Öffentlichkeit*:

Demgegenüber [dealing with the problem of the fusion of informal and formal public opinion] kann sich unter Bedingungen sozialstaatlicher Massendemokratie der Kommunikationszusammenhang eines *Publikums* nur in der Weise herstellen, dass der förmlich kurzgeschlossene Kreislauf der ‚quasi-öffentlichen‘ Meinung mit dem informellen Bereich der bisher nicht-öffentlichen Meinungen durch eine in organisationsinternen Öffentlichkeiten entfachte kritische Publizität vermittelt wird. (Habermas, 1990, 359)¹³

And the interface in the case of formal and informal public opinion is a rational discourse.

Now Pufendorf did not write under the conditions of mass democracy, but the notion of a rational discourse has an enduring quality which transcends time. Pufendorf had the luck that Jean Barbeyrac translated the two works which concern

¹³At least in this book, Habermas seems to be innocent of Pufendorf's existence.

us from Latin into French, the lingua franca of the moment, namely his *De Jure Naturae et Gentium Libri Octo* (1673) and *De Officio Hominis et Civis juxta Legem Naturalem Libri Duo*.¹⁴ Barbeyrac's text of *De Officio* was a direct hit and stayed on the reading list of the educated public till the end of the eighteenth century.

Pufendorf's *Le Droit de la Nature* was popular for another reason. Horst Denzel gives an apt description of the character of Pufendorf's works. He writes:

Wenn deshalb Pufendorf die Frage untersucht, was dem Menschen natürlich ist und was nicht, dann setzt er erwachsene und sich der Vernunft wohl bedienende Menschen voraus. Die menschliche Natur erschöpft sich nicht in der blossen Selbsterhaltung, sondern es geht ihr auch um Selbstachtung, um das Bewusstsein der Würde des Menschen.

And:

Menschliche Natur in ihrer breiten Entfaltungsskala von der Armseligkeit des gerade geborenen Menschen bis zur Würde des in der Gemeinschaft sittlich Handelnden umfasst eine anfängliche Kulturlosigkeit und eine natürliche Entwicklung zur Kultur. (Denzel 1972, 98)

Pufendorf's broadmindedness, politically and religiously, made his text a tract for generations to come; for Hume and Smith who started to write 70 years later, it was an ideal introduction to the problem of the enlightenment of man. Usually, John Locke is considered to be the gatekeeper of the Enlightenment. Pufendorf keeps him company. He preaches religious toleration and his advice to governments is to be mild but strict.

Hobbes' *Leviathan*, published for the first time in 1651, acted as a bombshell in the British republic of letters. Hobbes' message was that individuals compete with each other, and that without a strong government and strict rules of law they are incapable of maintaining the public peace. A famous sentence reads:

To this warre of every man against every man, this also is consequent; that nothing can be Unjust. The notions of Right and Wrong, Justice and Injustice haved there no place. Where there is no common Power, there is no Law: where no Law, no Injustice. Force and Fraud, are in warre the two Cardinall vertues. (Hobbes, 1965, 66)¹⁵

So there cannot be natural law as the expression of God's will.

Hutcheson reacted to Hobbes by giving man a unique moral sense which enables him to find the first direction in moral rulings. Hume and Smith took Hutcheson's thought as a lead for their own moral theories. Hutcheson accused Pufendorf of being a Hobbist (Hutcheson, 2006, 202), because the German started his enquiry with the 'amour propre' of individuals. It was the instinct of self-preservation and self-assertion which was the beginning of the development of civil society and the state.

¹⁴I used Barbeyrac's translation of *De Jure Naturae* and Michael Silverthorne's English translation: Pufendorf (1991) *On the Duty of Man and Citizen*.

¹⁵It is still debatable whether Hobbes meant to say that human beings are too selfish to want to reach an agreement with their fellows or that the competitive situation in which they live makes them incapable to keep the peace without the help of the State.

Yet Pufendorf was not a Hobbiist. According to Hobbes, human groups had the sense to accept a higher authority, because their stateless situation was unsafe. Pufendorf argued that natural law as the expression of God's will taught mankind how to make equitable laws in this way promoting the development of civilization. The gifts of reason made man realize that he needed laws to protect his property, his family and to keep the peace in general.

Pufendorf was not at all alarmed by Hobbes' vision on man. He took him as an authority with whom he agreed and disagreed. More important to him was Grotius who in *On the Law of War and Peace* quoted an impressive array of authorities to describe, in his case, the evolution of international law. Pufendorf was a lawyer who took the *Juristenrecht* as his lead. This meant that jurists were the prime movers in the evolution of society's rules. What may have made Pufendorf's *De Jure Naturae* attractive to Smith and Hume was that Pufendorf not only addressed authorities but also made an appeal to the reason of ordinary citizens to obey the laws of the country on a voluntary basis.

Pufendorf could not provide the foundation for Hume and Smith's economic theories, but he made the political order, in which these theories should function palatable.

4 Hume and Smith's Politics

Hume planned a treatise in five books – the last two being on the arts and on politics – and executed only three leaving out politics and the arts. Adam Smith also declared that he would publish a book on politics, but he destroyed what he had already written when he stopped writing. The absence of these books raises the speculation that not being able to combine their economic analysis with their political outlook they refrained from writing on politics. The solution of this problem, I think, is much simpler: both were quite satisfied with the political order they met in life, and as I have argued elsewhere, as philosophers they were not the revolutionaries nineteenth-century commentators assumed they were (Holthoorn, 2017). Donald Winch pointed out in a beautiful essay that if we try to turn Adam Smith into a nineteenth-century liberal, we miss the point of his political message (Winch, 1978, 70). There is no straight line running from Locke via Smith to Ricardo and Stuart Mill.

Smith's politics was Hume's politics. John Ramsay McCulloch tells the story that at Balliol, Smith's superiors 'entered his apartment without his being aware, and unluckily found him engaged in reading Hume's *Treatise of Human Nature*. The objectionable work was, of course, seized; the young philosopher being at the same time severely reprimanded' (Ross 1995, 77). They did not stop Smith reading Hume. Raphael and MacFie write in their *Introduction to Smith's Theory of Moral Sentiments* (TMS):

Hume had the greatest influence on the formation of Smith's ethical theory. Smith rejects or transforms Hume's ideas far more often than he follows them, but his own views would have been markedly different if he had not been stimulated to disagreement with Hume. (Smith 1976a, 10)

And indeed, it is through reading Hume's *Treatise* that Smith came to develop his own moral theory. Moral theories became important for developing their economic analyses. I will deal with the problem how their moral theories shaped their economics in the next section. As to their politics proper we have Hume's essays first of all on the subject. Apparently, these move in two opposite directions, but I will try to show that these two strains can be reconciled within a view that takes the reality of the Glorious Revolution as a – rather regrettable – fact of life, because it led to an unstable political state of affairs. Hume's essays are an attempt to suggest ways for minimizing the risks. The first direction represents the essays Hume wrote on parliamentary politics. About the constitutional settlement since 1688, he was in two minds. On the one hand, it had established 'if not the best system of government, at least the most entire system of liberty that ever was known amongst mankind' (Hume 1983, vol. 6, 531); on the other hand, the settlement was inherently unstable. And in the opening essay '*That Politics May Be Reduced to a Science*' (1741), he urged all parties concerned to be moderate in their aims and agitation (Hume 1987, 7).

The spirit of faction was always a spoiler in politics, but there was also a more structural element which made the system unbalanced. If power is based on property, the House of Commons, representing the largest sum of property in the country, by interfering in the affairs of the executive could always force it to follow its directives. If it would do so, monarchy would inevitably become a full-scale republic. And this would not be the end of the affair. For the spirit of faction would create chaos and turn the republic into an absolute monarchy. 'Absolute monarchy, therefore, is the easiest death, the true *Euthanasia* of the British constitution' (Hume 1987, 7). So next to the lesson of moderation, Hume's counsel to the House of Commons was not to interfere with the business of government. Hume more than Montesquieu was the advocate of the separation of powers, and Hume wanted that separation of powers to defend the *status quo*. His goal was a *euthanasia* of the spirit of faction in parliament.¹⁶

His second direction is demonstrated by his essay '*Idea of a Perfect Commonwealth*' (1752). Using Harrington's *Oceana* as a model, he sketches the conditions for a stable republic (Holthoorn 2013, 141ff.). Many critics of Hume have been asking themselves what Hume meant by this piece. The key to it, I think, may be found in one of the essays I have already discussed. In '*Of the Independence of Parliament*' (1741), he writes that the stability of government can be assured:

¹⁶Montesquieu did not invent the *trias politica*. He distinguished two sources of authority: the legislative shared by the people and the nobility and the executive which was the prerogative of the monarch. In *De la Constitution d'Angleterre*, book 11, chap. 6 of *De l'Esprit des Lois*, he remarked that those two powers could block any decision or 'elles seront forcées d'aller de concert' (Montesquieu 1964, p. 589).

In pure republics, where the authority is distributed among several assemblies or senates, the checks and controuls are more regular in their operation; because the members of such numerous assemblies may be presumed to be always nearly equal in capacity and virtue; and it is only their number, riches or authority, which enter into consideration. (Hume 1987, 46)

And so in *'Idea of a Perfect Commonwealth'*, he uses Harrington's utopian scheme to suggest a rigorous dispersion of the power of the House of Commons by relegating its legislative authority to councils of the counties.

Hume knew of course that such a utopian scheme was not feasible in the British case, but it shows how concerned he was about the power of the House of Commons as a source of instability and it also illustrates how charmed he was by the constitutional arrangement in the Dutch Republic.¹⁷ So while developing a different strain of thought in *'Idea of a Perfect Commonwealth'*, it also expresses his concern with the instability of the settlement of 1688. A decentralized legislative would never be able to make the claim to power as the House of Commons could.

Before we congratulate Hume for his liberal attitude towards the American colonists, we should note that his reaction was part of his critical attitude towards the emerging British Empire. That emergence created according to him unnecessary political and financial complications. Hume was an early example of what at the end of the nineteenth century was called 'a little islander'.

Was Hume becoming a Tory at the end of his life? His letters to William Strahan in the sixties and seventies, in which he scolded the government for lack of firmness in relation to the Wilkes' riots, may suggest this. I do not think this label makes sense. Hume's worries were part of his science of politics, not the reaction of a partisan.

Adam Smith joined Hume in being a little islander. His reaction was that if the Americans did not want to contribute to the defence of the Empire, they should indeed leave and his reaction to the French revolution in 1790, the year he died, was as adverse as that of Edmund Burke, if more moderately expressed.¹⁸ Smith spoke for both Hume and himself when he counselled caution in revolutionary times.

The support of the established government seems evidently the best expedient for maintaining the safe, respectable and happy condition of our fellow citizens; when we see that this government actually maintains them in that situation ... [But when discontent and disorder makes it unable to maintain order] In such cases, however, it often requires, perhaps, the highest effort of political wisdom to determine when a real patriot ought to support and endeavour to re-establish the authority of the old system, and when he ought to give way to the more daring, but often dangerous spirit of innovation (Smith 1976a, 231–232).

Sometimes, Hume and Smith had an intimation of the momentous change which the next century would bring, and though they were realistic enough to accept reforms under duress, they did not like what they saw.

¹⁷This was already in 1752 the wrong example. The Dutch Republic at that time was already anything but stable and its government almost collapsed on the eve of the French Revolution.

¹⁸In *Theory of Moral Sentiments*, he criticized 'the spirit of system', TMS, VI, ii, 2, 13, 232.

5 Hume and the Development of His Moral Philosophy

How did Hume and Smith travel the road from moral philosophy to economics? A couple of sentences from Hume's essay 'Of the Refinement in the Arts' may serve as a motto to Hume's voyage. Hume writes:

The more these refined arts advance, the more sociable men become: nor is it possible, that, when enriched with science, and possessed of a fund of conversation, they should be contented to remain in solitude, or live with their fellow-citizens in that distant manner, which is peculiar to ignorant and barbarous nations.

And

Thus *industry*, *knowledge*, and *humanity*, are linked together by an indissoluble chain, and are found, from experience as well as reason, to be peculiar to the more polished, and, what are commonly denominated, the more luxurious ages. (Hume 1987, 271)

The original title of the essay was 'Of Luxury', and in it Hume criticizes the notion that luxury always is a source of corruption. On the contrary, the activity to make nice and useful things is a source of civilization and it is an expression of the joy of working and communicating with others. Hume resolutely takes his stand against the doctrine that labour is a form of divine punishment, because Adam and Eve disobeyed God in the Garden of Eden. That work is fun is the motto which links Hume's moral philosophy to his view on the economic activities of human beings.

The *Treatise* is the chronicle of Hume's effort to develop his moral philosophy. Hume's first step is to argue that there are no fixed metaphysical principles we can rely on to find truth. Truth must come from experience and what we find in the name of truth can only be a probable and not a fixed proposition. In book two, Hume then presents a theory of passions which makes it possible to develop a moral economy by which we create a win-win situation. Central at this stage in Hume's moral philosophy is that 'very powerful principle' of sympathy that 'produces our sentiment of morals in all the artificial virtues' (Hume 1978, III, 3, I, 577–578).¹⁹ Sympathy is an associative principle and Hume borrowed the metaphor of the mirror from Locke to indicate that when we look in a mirror we can learn from our own reaction how others would react. We experience what actions of others please us and we recognize what of our actions pleases them. So by the association of passions, we are able to build a moral economy which suits both parties (Hume 1978, II, 2, v, 365).

Yet in EPM, sympathy loses its status as a powerful associative principle. Hume replaces it with Horace's principle of *utile/dulce*: what pleases us is useful and what is useful pleases us (Holthoon, 2007, 139ff.). At first sight, the change from sympathy to utility is merely cosmetic. Hume uses utility as an agreeable quality already in his *Treatise*, and we might argue that the revision was part of Hume's effort to simplify his argument, and though this was certainly one of his objectives in rewriting the *Treatise*, for two reasons the changeover from sympathy to utility is not

¹⁹Artificial virtues are those we acquire by convention.

merely cosmetic (Hume 1978, III, 3, I, 591).²⁰ Hume's statement on moral philosophy in the *Treatise* was personal and introspective. His was a soliloquy in which he looked into his own soul and reported what he saw. In EPM he preached directly to his public. The second important shift in his moral philosophy was that he no longer had a monitoring mechanism asking what is useful and agreeable. He left that question for the market of moral economy to decide.

EPM is important for another reason. Hume now stated that the burning problem of self-love is irrelevant, because the moral economy makes it possible to transcend self- and other-regarding motives. The fact that he solved the problem of self-love in morality was a great achievement. His definition of sympathy as an associative principle and his solution of the problem of self-love were an important legacy for Adam Smith.

6 Adam Smith and His Two Models

Hume in the final version of his moral philosophy eliminated introspection as a constituent in reaching moral judgements and relied on social intercourse to reach viable and satisfactory results in human transactions. Adam Smith's trajectory of his moral philosophy pointed in the opposite direction. It is fascinating to read Smith's theory of the impartial spectator and see that he closely followed the associational patterns which Hume developed in his *Treatise*.²¹ In contrast with Hume, Smith paid great weight to the impartiality of the spectator. Looking at the actions of his fellow beings, the spectator tries to establish what is fair in their transactions and what is not. In the sixth edition of TMS (1790), he goes a step further. He now writes:

The jurisdiction of the man without, is founded altogether in the desire of actual praise, and in the aversion to actual blame. The jurisdiction of the man within, is founded altogether in the desire of praise-worthiness, and in the aversion to blame worthiness; in the desire of possessing those qualities, and performing those actions, which we love and admire in other people; and in the dread of possessing those qualities, and performing those actions, which we hate and despise in other people. (Smith 1976a, II, 2, 32, 130–131)

Impartiality was internalized. To reach impartiality, we have to consult our conscience and apply our standards first of all to ourselves, before we do so to others.

The introspective character of Smith's moral judgement is remarkable. In a note attached to the second edition of TMS (1761), he responded to Hume's criticism in a letter of 28 July 1759. Hume had written:

I wish you had more particularly and fully prov'd, that all kinds of Sympathy are necessarily Agreeable. This is the hinge of your system ... Now it would appear that there is a disagreeable Sympathy as well as an agreeable.

²⁰ On utility and the agreeable.

²¹ See the diagrams in my introduction of part two in my translation *Traktaat over de Menselijke Natuur* (2007, 328–329).

Smith responded:

I answer, that in the sentiment of approbation there are two things to be taken notice of; first, the sympathetic passion of the spectator; and, secondly, the emotion which arises from his observing the perfect coincidence between this sympathetic passion in himself, and the original passion in the person principally concerned. This last emotion, in which the sentiment of approbation properly consists, is always agreeable and delightful. The other may be agreeable or disagreeable, according to the nature of the original passion, whose features it must always, in some measure, retain. (Smith 1976a, I, iii, 9, 46)²²

What does this answer mean? As I understand this convoluted text, the understanding of the passion of the other, even when it strikes us as being disagreeable in the first instance, is always agreeable, because we can understand the motives involved. Adam Smith's answer is that of a philosopher rather than a practical politician. He called Hume's use of *utile* as an explanatory principle an 'afterthought', but as WN shows, he needed utility as an afterthought to get practical results.

It is the great merit of Andrew Skinner's work on Adam Smith that according to him the Scot saw the importance of adopting a system of analysis – a model – that gave the most plausible explanation of how certain facts stick together, while at the same time emphasizing that it only functions *as if* it is the truth. Skinner discusses Smith's early essay on the history of astronomy in which Smith explores the psychological assumptions for adopting a model (Skinner, 1979, 17). An adequate explanation of reality satisfies the imagination. The model does not only explain, but – following Newton – it explains what it can explain. The ambition to provide the definitive explanation is a hopeless undertaking.

Smith in his explanation of social reality used two models: (1) the model of the impartial spectator and (2) the model of the invisible hand, and these two models together were Smith's explanation of how social reality works. The impartial spectator prepares the mind for a just appraisal of human conduct, and the invisible hand guarantees equilibrium as the outcome of human transactions to ensure the situation where impartial decisions can be reached. Charles Griswold in stressing the unity of TMS and WN writes:

By subordinating political economy to natural jurisprudence – and there are numerous references in *The Wealth of Nations* to justice – the schema also indicates that the study of the nature and causes of the wealth of nations is a subset of the larger enterprise of the study of government, law, and natural justice, not a replacement for that study. (Griswold 1999, 32)

So it seems that Hont's view that natural jurisprudence is the foundation of Smith's economic theory is vindicated, but as I indicated before we must be careful in our interpretation of this conclusion. Haakonsen has studied Smith's theory of justice in detail, and this is what he writes about the consequences Smith drew for the practice of politics. He quotes from WN:

²²The text of Hume's letter is given in note 2; Smith's answer appears in note b at the bottom of the page. Smith has a point in that you cannot reduce a moral judgement to a utilitarian calculus and the esteem of what is good is embedded in the soul, but I do not think that Hume would deny this; however, he would leave it to every individual in the course of his transactions to decide what is good and proper, while Smith appealed to a universal principle housed in all human beings.

To expect, indeed, that the freedom of trade should ever be entirely restored in Great Britain, is as absurd as to expect that an Oceana or Utopia should ever be established in it. (Smith 1976b vol.1, IV, ii, 43, 471)

And Haakonssen goes on:

Smith's attitude to utopian perfectionism is clearly reflected in his view of what ought to be the priorities of a sovereign: first, defence against foreign enemies; secondly, 'an exact administration of justice'; and thirdly, 'the duty of erecting and maintaining certain publick works and certain publick institutions, which it can never be for the interest of any individual, or small numbers of individuals to erect or maintain. (Haakonssen 1981, 93)²³

Smith accepted a social order, not very different from what Pufendorf had in mind, a view which Hume would heartily have endorsed. In short, as to politics and public administration, Smith and Hume accepted the practical application of natural jurisprudence to their society as Pufendorf had done so 70 years earlier. However, the point of *both* TMS and WN was to explore the economic world where these rules apply only indirectly and where economic activities engender no *new* rules. In retrospect, the way they looked on economic life is shocking, and at the same time it presents an important insight in the nature of economic transactions. Eighteenth-century Britain produced no rules to protect the safety of labourers, no laws to safeguard the environment, let alone social legislation to protect children at work. Children worked under dismal conditions in mines and cotton mills, and Robert Owen, who took care of his workers, was a rare exception. Both Hume and Smith accepted the conditions that the Industrial Revolution created, as a fact of life and one can only conclude that the impartial spectator was less than impartial in these cases. On the other hand, the invisible hand was and still is the best recipe for creating balance and growth in the economy. When today we start to protest against the working of the invisible hand, it is because it works so effectively, at least on the short run.

7 Natural Law and Human Rights

So Smith accepted natural jurisprudence as the canon of political philosophy and took it for granted when he started to develop his moral philosophy and his economic theory. Natural jurisprudence was the starting point for a new and exciting exploration. Smith and Hume designed a mechanism for the idea which we today call a win-win situation. If economic actors negotiate in the proper way under the proper circumstances, all parties benefit from the transactions undertaken.

The remarkable thing is that both Pufendorf and the two Scots expected that the world socially and politically would not change dramatically, which in the case of Pufendorf is understandable, but with Hume and Smith is less so. Of all the writers of the Enlightenment, including Hume and Smith, one has the feeling that they did

²³The quotation from WN is at vol. 2, IV, ix, 51, 687–688.

not notice that they were resting on the slope of a volcano, unaware that it might erupt at any moment. These two were witnessing the beginnings of the Industrial Revolution, but they had no idea of the social impact it would cause. Only once Hume lost his good humour and lashed out at the capitalists:

These are men, who have no connexions with the state, who can enjoy their revenue in any part of the globe in which they chuse to reside, who will naturally bury themselves in the capital or in great cities, and who will sink into the lethargy of a stupid and pampered luxury, without spirit, ambition, or enjoyment. Adieu to all ideas of nobility, gentry, and family. (Hume 1987, 358)²⁴

Hume had a quick glimpse of the social impact capitalism would have on the society of orders which he cherished and then he closed the box of Pandora. Smith made a sombre assessment of the effects of the division of labour on the individual labourer (Smith 1976b, vol. 2, V, I, f, 50, 781–782). This turned the working man into a brute and automaton, but Smith did not pursue the subject.

Hume and Smith believed in the goal of achieving economic equilibrium, and they started the school of classical economics which pursued the same goal. Economic growth was seen as an accidental benefit of an optimal circulation of goods and services, and it is remarkable that this equilibrium analysis persisted long after it had become clear that economic growth had become the force for change. There was a moment in history, from 1950 onwards, that economic growth became a recipe for social politics. The recipe was that a touch of inflation would ensure full employment. Many politicians still advocate economic growth as a social policy, because the recipe is the easiest way to satisfy their voters, but those who look further have come to regard economic growth as a threat. It is exhausting the world's resources and causes climate change. We can blame the politicians for not wanting to see this threat, we cannot blame Hume and Smith of course, but we can only conclude that they were unaware that the Industrial Revolution would destroy the world they cherished and took for granted.

Pufendorf was not watching a booming world like in eighteenth-century Britain. His world was just on its way to recovery. His illusion was a different one from that of Hume and Smith. He was one who believed in *Juristenrecht*. In the course of Western history, lawyers knew what law was. However, in the future it would be rulers and citizens who would decide what rights and duties were and how laws could be framed to suit them. In the cauldron of medieval thought, there was according to Gierke room for the notion of personal right, but those rights were still part of a corporatist vision on life (Gierke 1958, 37ff.). The Reformation changed this vision radically, because according to Luther and Calvin only a personal belief in God would bring salvation. The emphasis on the individual person appeared in the Protestant interpretation of natural law. Grotius is reputed to be the first lawyer who made the connection between natural jurisprudence and personal rights and after Pufendorf Vettel and Burlamaqui, two prominent lawyers who wrote about natural

²⁴To be fair, Hume referred to stockholders, not entrepreneurs, but he was undoubtedly wise enough to see the connection between the two.

jurisprudence in the eighteenth century, made the same connection as Grotius. In fact, I think that Pufendorf was rather the exception in the protestant camp, because he stuck to a medieval conception that made natural jurisprudence the domain of lawyers.²⁵

The doctrine of popular sovereignty borrowed the notion of sovereignty from Jean Bodin. The sovereign or sovereign institution is above the law and makes the final decisions on any issue. In a democracy, this means in practice that issues are settled by a majority vote. In principle, every voter is his own sovereign and that shows in the powerful notion of human rights. Unfortunately human rights have become highlighted because governments and terrorist groups are committing acts that we, the silent community, consider unjust and atrocious, but human rights as a concept also operates in a different and more interesting way. The clarion call for individual rights came with the famous sentence which Jefferson wrote down in the American *Declaration of Independence*:

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life liberty, and the pursuit of happiness.

According to Jefferson, we are born with certain fundamental rights, and as ‘the pursuit of happiness’ demonstrates these rights can be quite extensively formulated. With the rise of the popularity of the notion of human rights, the authority of natural law as a concept went down. In the best case, human rights in the public domain depend on the ‘will of the people’ and not on the will of God.

The main conclusion which I draw from my exercise is that when we talk of influence, we should not only study a writer at work, but take the context in which he worked and communicated into consideration. If we do so in the case of Pufendorf, Hume and Adam Smith, we should conclude that they have more in common than we have with them. Their world and their assumptions have disappeared, and if we want to understand what they were talking about we must reconstruct their past.

²⁵Under the influence of the Idealist philosophy in nineteenth-century Germany, natural jurisprudence as a paradigm declined, but the decline was not a straightforward affair. Apart from those who stuck to the old paradigm, there were those, particularly jurists, who kept open a lifeline to natural jurisprudence. (In fact, until recently law students in the Netherlands had to take a course in Roman law during their first year.) Friedrich Carl von Savigny (1779–1867) is an interesting case in this context. His work is difficult to grasp. (Rückert 1984, 119). Known as an authority on Roman law, he published the Idealist manifest *Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft* (1814). In it he argued that rights and laws were not the product of an abstract doctrine, but spontaneously sprung from the *Volksgeist*. For a conservative as Savigny, this created a dilemma. Savigny was against the democracy of one man one vote. So how could he determine the proper right and the proper law? He found his answer in Roman law which according to his own admission was linked to natural law. He did not use it in the same way as Pufendorf, because he did not believe in the practical application of natural law as Pufendorf did. As a scholar, he contemplated the quality of Roman jurisprudence and derived from his study the measure of good and bad while judging modern legislation. So Savigny like Pufendorf believed in *Juristenrecht*. Jurists should be the judge of jurisprudence and legislation.

The conference at which I presented my essay was about Pufendorf, not on the two Scots. So it is only fair to conclude that in one respect Pufendorf's philosophy is still very much alive. His notion of a rational discourse transcends time and circumstance. Its functioning in a democracy is a guarantee for a healthy public life.

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