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


Themes of the volume include:

- Translating Smith’s Theory of Moral Sentiments
- Smith and China
- Adam Smith in Kirkcaldy

Fonna Forman is Associate Professor of Political Science and Founding Co-Director of the Center on Global Justice and the Blum Cross-Border Initiative at the University of California, San Diego, USA. She is Editor of The Adam Smith Review on behalf of the Adam Smith Society.
The Adam Smith Review
Published in association with the International Adam Smith Society
Editor
Fonna Forman
Department of Political Science, University of California, San Diego

Book Review Editor
Craig Smith
Department of Moral Philosophy, University of St Andrews

Editorial Assistant
Aaron Cotkin
Department of Political Science, University of California, San Diego

Editorial Board:

Christopher J. Berry (University of Glasgow, UK)
Vivienne Brown (Open University, UK)
Neil De Marchi (Duke University, USA)
Stephen Darwall (University of Michigan, USA)
Douglas Den Uyl (Liberty Fund, USA)
Laurence W. Dickey (University of Wisconsin, USA)
Samuel Fleischacker (University of Illinois, Chicago, USA)
Charles L. Griswold (Boston University, USA)
Knud Haakonssen (University of Sussex, UK)
Iain McLean (Nuffield College, Oxford, UK)
Hiroshi Mizuta (Japan Academy, Japan)
John Mullan (University College London, UK)
Takashi Negishi (Japan Academy, Japan)
Martha C. Nussbaum (University of Chicago, USA)
James Otteson (Wake Forest University, USA)
Nicholas Phillipson (University of Edinburgh, UK)
D.D. Raphael (Imperial College, London, UK)
Emma Rothschild (Harvard University, USA and King’s College, Cambridge, UK)
Ian Simpson Ross (British Columbia, Canada)
Amartya Sen (Harvard University, USA and Trinity College, Cambridge, UK)
Richard B. Sher (New Jersey Institute of Technology, USA)
Shannon C. Stimson (University of California, Berkeley, USA)
Kathryn Sutherland (St Anne’s College, Oxford, UK)
Keith Tribe (King’s School, Worcester, UK)
Gloria Vivenza (University of Verona, Italy)
Donald Winch (University of Sussex, UK)

The Adam Smith Review is a multidisciplinary annual review sponsored by the International Adam Smith Society. It aims to provide a unique forum for vigorous debate and the highest standards of scholarship on all aspects of Adam Smith’s works, his place in history and the significance of his writings for the modern world. The Adam Smith Review aims to facilitate interchange between scholars working within different disciplinary and theoretical perspectives and, to this end, it is open to all areas of research relating to Adam Smith. The Review also hopes to broaden the field of English-language debate on Smith by occasionally including translations of scholarly works at present available only in languages other than English.

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

The website of The Adam Smith Review is: www.adamsmithreview.org/

For details of membership of the International Adam Smith Society and reduced rates for purchasing the Review, please contact the Membership Secretary, Chris Martin (internationaladamsmithsociety@gmail.com).

Books available in this series

The Adam Smith Review (Volume 1)
Edited By Vivienne Brown
Published in 2004. Please note: available in paperback

The Adam Smith Review (Volume 2)
Edited By Vivienne Brown
Published in 2006. Please note: available in paperback

The Adam Smith Review (Volume 3)
Edited By Vivienne Brown
Published in 2007. Please note: available in paperback

The Adam Smith Review (Volume 4)
Edited By Vivienne Brown
Published in 2008. Please note: available in paperback

The Philosophy of Adam Smith
The Adam Smith Review, Volume 5: Essays commemorating the 250th Anniversary of The Theory of Moral Sentiments
Edited By Vivienne Brown and Samuel Fleischacker
Published in 2010. Please note: available in paperback

The Adam Smith Review (Volume 6)
Edited by Fonna Forman-Barzilai
Published in 2011
The Adam Smith Review
Volume 8

Edited by
Fonna Forman
Contents

List of contributors
From the editor

Symposium: Translating Smith’s Theory of Moral Sentiments

Guest editor: RYAN PATRICK HANLEY

Moral sentiments in translation: introduction
RYAN PATRICK HANLEY

On the reception of Adam Smith’s Moral Theory in modern Greece and the Greek edition of Theory of Moral Sentiments: facing the roots of misunderstanding moral sentiments
DIONYSIOS DROSOS

Some reflections on translating Adam Smith
MATTI NORRI

The first Italian edition of Adam Smith’s Theory of Moral Sentiments

The Italian philosophical milieu
ADELINO ZANINI

Some remarks concerning the Italian translation
CESARE COZZO

The translation into Spanish of the Theory of Moral Sentiments by Adam Smith
ESTRELLA TRINCADO

French translations and re-translations of Smith’s Theory of Moral Sentiments: the unbearable lightness of (re)translating
MICHAËL BIZIOU
Symposium: Smith and China

A ‘third culture’ in economics? An essay on Smith, Confucius and the rise of China
CARSTEN HERRMANN-PILLATH

Emotion and sympathy in Confucius and Adam Smith
HEINRIQUE SCHNIEDER

Symposium: Adam Smith in Kirkcaldy

Introduction
THE RIGHT HONOURABLE GORDON BROWN

Adam Smith from Kirkcaldy, via Glasgow University to Panmure House, Edinburgh
GAVIN KENNEDY

Adam Smith, James Wilson and the US Constitution
IAIN MCLEAN

Humanomics of Adam Smith
VERNON L. SMITH

Articles

Adam Smith and the rights of the dead
ALAN LOPEZ

Adam Smith and the social contract
JOHN THRASHER

Classical antiquity and reading Adam Smith’s Theory of Moral Sentiments: is the sunbathing beggar an allusion to Diogenes the Cynic and Alexander the Great?
THOMAS R. MARTIN

Perception by sympathy: connecting Smith’s External Senses to his Sentiments
BRIAN GLENNEY

A known world: an analysis of defenses in Adam Smith’s The Theory of Moral Sentiments
ŞULE ÖZLER AND PAUL A. GABRINETTI

Adam Smith’s views on consumption and happiness
PAUL D. MUELLER

Book reviews

Guest editor: CRAIG SMITH

Michael L. Frazier, The enlightenment of sympathy: Justice and the moral sentiments in the eighteenth century and today
REVIEWED BY MICHELLE A. SCHWARZE

Andrew Hamilton, Trade and empire in the eighteenth century atlantic world
REVIEWED BY EDWIN VAN DE HAAR

Daniel B. Klein, Knowledge and coordination: A liberal interpretation
REVIEWED BY GAVIN KENNEDY
RESPONSE BY DANIEL B. KLEIN

Steven G. Medema, The hesitant hand: Taming self-interest in the history of economic ideas
REVIEWED BY FARHAD RASSEKH

James R. Otteson, Adam Smith
REVIEWED BY LAUREN BRUBAKER
RESPONSE BY JAMES R. OTTESON

Nicholas Phillipson, Adam Smith: An enlightened life
REVIEWED BY GORDON GRAHAM

Jeffrey T. Young (editor), Elgar companion to Adam Smith
REVIEWED BY ERIC SCHRJESSER
RESPONSE BY SALIM RASHID

Notes for contributors
Contributors


Gordon Brown served as Prime Minister of the United Kingdom and Leader of the Labour Party from 2007 to 2010. His tenure as Prime Minister coincided with the start of the global financial crisis. He was one of the first to initiate calls for global financial action, while introducing a range of rescue measures in the UK.

Previously, Brown served as Chancellor of the Exchequer from 1997 to 2007, making him the longest-serving Chancellor in modern history. His time as Chancellor was marked by major reform of Britain’s monetary and fiscal policy and sustained investment in health, education and overseas aid.

His time in government shaped his views on the importance of education as a fundamental right of every child in the world, and an engine of future global economic growth. In July 2012, he was made UN Special Envoy for Global Education and he is a passionate advocate for global action to ensure education for all. He has advised the World Economic Forum and chairs their Global Strategic Infrastructure Initiative. He also serves as New York University’s inaugural Distinguished Global Leader in Residence.

Brown, who has been a Member of Parliament since 1983, is the author of several books and the founder, with his wife, of Their World, a charity which engages young people, business leaders, health and education professionals and civil society to create a brighter future for every child. He is married to Sarah Brown, a charity campaigner, and the couple have two young sons.

Lauren Brubaker has taught at the University of Notre Dame (political science), the United States Air Force Academy (philosophy) and St. John’s College Santa Fe. His articles on Smith have appeared in several edited volumes, including *New Voices on Adam Smith* (edited by L. Montes and E. Schliesser) and *Enlightening Revolutions* (edited by S. Minkov).

Cesare Cozzo studied at Rome, Florence and Stockholm. He is Associate Professor of Logic at the Department of Philosophy of the University of Rome ‘La Sapienza’. His main research has been in theory of meaning and philosophy of logic. He is author of three books: *Teoria del Significato e Filosofia della Logica* (1994), *Meaning and Argument* (1994), *Introduzione a Dummett* (2008) and of several articles. A significant part of his work has been focused on the idea that the sense of a linguistic expression is given by some rules for its use in arguments: he has developed a fallibilist and non-holistic version of this idea.

Dionysios Drosos is Professor of Moral Philosophy, Department of Philosophy, University of Ioannina and Tutor of European Philosophy at the Hellenic Open University. He is author of *Market and State in Adam Smith. A Critique of the Foundations of Neoliberalism* (1994); *Virtues and Interests. The British Moral Philosophy Debate on the Threshold of Modernity* (2008); *The Gentle Commerce of Sympathy. Civilized Society and Moral Community in the Scottish Enlightenment* (Forthcoming); and Adam Smith, *Theory of Moral Sentiments* (1st critical edition of TMS in Greek, 2011). Since 2011, he has run, with the help of an intermediterranean group of colleagues, the *Mediterranean Society for the Study of Scottish Enlightenment*, organizing a workshop every summer.

Paul A. Gabrinetti, Ph.D. completed his doctoral work at the University of Southern California. He is a psychologist and a Jungian psychoanalyst. Paul is a member of and teaches at the C. G. Jung Institute in Los Angeles, and also teaches at Pacifica Graduate Institute in Carpinteria, California. In addition, he maintains a private practice in the Los Angeles area.

Brian Glenney is an Assistant Professor of Philosophy at Gordon College. He received his Ph.D. from the University of Southern California. In addition to his work on Adam Smith, he has published a diversity of articles on perception: from ancient descriptions of blindness in journals, such as the *Journal for the Study of the New Testament*, to contemporary empirical research in journals such as *Biology and Philosophy*.
Gordon Graham is Henry Luce III Professor of Philosophy and the Arts at Princeton Theological Seminary, where he also directs the Center for the Study of Scottish Philosophy. He is editor of the *Journal of Scottish Philosophy*.


Carsten Herrmann-Pillath is Professor of Business Economics at the Frankfurt School of Finance and Management and founder and Academic Director of the East-West Center for Business Studies and Cultural Science at the Frankfurt School. His research interests include evolutionary economics, Chinese studies, international trade and the philosophy of science. He has published in numerous journals and, recently, has published *Hegel, Institutions and Economics: Preforming the Social* (Rutledge, 2013), with Ivan Boldyrev, and *Foundations of Economic Evolution: A Treatise on the Natural Philosophy of Economics* (Edward Elgar, 2013).

Gavin Kennedy is Professor Emeritus, Edinburgh Business School, Heriot-Watt University. He is the author of *Adam Smith: A Moral Philosopher and his Political Economy* (2nd ed., Palgrave, 2010) and *Adam Smith's Lost Legacy* (Palgrave, 2005) and has contributed the chapter ‘Adam Smith on Religion’ to the *Oxford Handbook of Adam Smith* (Oxford University Press, 2013). He Blogs at: www.adamsmithlostlegacy.blogspot.co.uk and is presently active in Edinburgh Business School’s efforts to restore Adam Smith’s Panmure House, his home from 1778 90, as an international education centre for Adam Smith studies and general economics education for 2015.

Daniel B. Klein is Professor of Economics and JIN Chair at the Mercatus Center at George Mason University, where he leads a program in Adam Smith. He is the author of *Knowledge and Coordination: A Liberal Interpretation* (OUP, 2012) and chief editor of *Econ Journal Watch*.

Alan Lopez works in early modern literature and drama, with specialization in Shakespeare. He is presently at work on a book project, *Shakespeare’s Jurisprudence*.


Iain McLean is Professor of Politics, Oxford University and a fellow of Nuffield College. He was recently a visiting fellow at the International Center for Jefferson Studies, Monticello, VA. Relevant publications include *Adam Smith: Radical and Egalitarian* (Edinburgh University Press, 2006) and I. McLean and S. M. Peterson, ‘Adam Smith at the Constitutional Convention’ in the *Loyola Law Review* 2010. He is a vice-president of the British Academy and a Fellow of the Royal Society of Edinburgh.

Paul D. Mueller is a Ph.D. candidate in economics at George Mason University and intends to finish the degree in May of 2015. He received his M.A. in economics from GMU in 2013 and his B.Sc. in economics and political philosophy from Hillsdale College in 2009. His academic interests include monetary policy, financial markets, Austrian economics, business cycle theory and economic history (particularly regarding the works of Adam Smith).

Matti Norri is lawyer based in Helsinki, Finland, whose research interests include the nature of law, contracts and ownership. He is the author of *Summa Ius* and numerous legal handbooks. Additionally, he has translated works into Finnish and including the Gospel of John from the original Greek and Adam Smith’s *Theory of Moral Sentiments* from English.

James R. Otteson is Executive Director of the BB&T Center for the Study of Capitalism, and Teaching Professor of Political Economy, at Wake Forest University in North Carolina, USA. He has taught previously at Yeshiva University, New York University, Georgetown University, and the University of Alabama. His most recent book, *The End of Socialism*, was published by Cambridge University Press in 2014.

Süle Özlé has received her Ph.D. in economics from Stanford University and her Psy.D. from the New Center for Psychoanalysis. Professor Özlé currently works at the Economics Department of UCLA and has also taught at the Kennedy School, Harvard University and Stanford University, as well as winning national awards, such as the Hoover Institute National Fellowship and a fellowship at the National Bureau of Economics. Prior to obtaining her doctorate in psychoanalysis, Professor Özlé published a wide range of articles on international trade, finance and women in economics, in major journals. She has written a psychoanalytically oriented paper on John Stuart Mill’s life and his essay *The Subjection of Women*. In addition, she is currently working on a book that psychoanalytically analyses the works of Adam Smith and a psychoanalytical analysis of alienation in Marx. Dr Özlé has a psychoanalytical/psychotherapy practice in Santa Monica.
Salim Rashid is Professor Emeritus at the University of Illinois and Visiting Professor at the University of the South Pacific. He is the author of *The Myth of Adam Smith*. His main interest is in economic development.

Farhad Rassekh is Professor of Economics at the University of Hartford. He has published numerous articles in several areas in economics including on the relevance of Adam Smith to modern field of business ethics. He has also published on the historical and intellectual affinity between Smith’s concept of the invisible hand and the emerging science of complexity.

Eric Schliesser is BOF Research Professor, Philosophy and Moral Sciences, Ghent University; he has published widely on early modern philosophy and the sciences and also in philosophy of economics.

Henrique Schneider is Professor of the Philosophy of Economics at the University of Graz, Austria. His other areas of research include Chinese philosophy (especially legalism), globalization and theory of actions.

Michelle A. Schwarze is the Benjamin Franklin Initiative postdoctoral fellow in the Political Science department at the University of Wisconsin, Madison. Her research centres on moral motivation in Scottish Enlightenment political thought and its subsequent practical and theoretical impact. She is currently working on a manuscript addressing how violent passions become beneficial motives in the moral and political thought of Smith and Hume, as well as the rich account of incentive given by Kant.

Vernon L. Smith is George L. Argyros Chair in Finance and Economics, Chapman University, and President, International Foundation for Research in Experimental economics. He was awarded the Nobel Prize in Economics, 2002, ‘for having established laboratory experiments as a tool in empirical economic analysis, especially in the study of alternative market mechanisms’. He has held appointments at Purdue University, Stanford University, Brown University, University of Massachusetts, USC, California Institute of Technology, University of Arizona, University of Alaska-Anchorage, George Mason University and Chapman University. Professor Smith received his bachelor’s degree in electrical engineering from California Institute of Technology (1949), his Masters in economics from the University of Kansas (1951) and his Ph.D. in economics from Harvard (1955). He has authored or co-authored over 290 articles and books on capital theory, finance, natural resource economics, experimental economics and the housing origins of economic instability, 1920–2014. Professor Smith is a Fellow of the Econometric Society and the American Association for the Advancement of Science. Purdue University awarded him an Honorary Doctor of Management degree in 1989. Dr Smith was elected a member of the National Academy of Science in 1995. In 1996, he received Cal Tech’s Distinguished Alumni Award. He became Kansan of the year (Topeka Gazette) in 2002, received a Distinguished Alumni award from the University of Kansas in 2011 and, in 2014, an Honorary Doctor of Science degree. He has served on numerous editorial and editorial advisory boards and as president of several national economic associations. He has served as a consultant on the liberalization of electric power in Australia and New Zealand and has participated in numerous private and public discussions of energy privatization and liberalization in the United States and around the world. In 1997, he served as a Blue Ribbon Panel Member, North American Electric Reliability Council.

John Thrasher is a lecturer in philosophy at Monash University. He specializes in political philosophy and normative ethics. His research focuses on the relation of individual practical rationality to social rules. His work has been published in *Philosophical Studies*, *The Journal of Moral Philosophy, Ethical Theory and Moral Practice*, *The European Journal of Philosophy, Rationality, Morals, and Markets* and in several edited volumes.

Estrella Trincado is Lecturer in History of Economic Thought at the Complutense University of Madrid. She is a specialist in utilitarianism and anti-utilitarianism. She has a degree in economics and a degree in philosophy and obtained a Ph.D. in economics in 2003. Her doctoral dissertation dealt with David Hume, Adam Smith and Jeremy Bentham’s theories. Visiting post-doctoral Fellow at the Department of Economics in Harvard University, she was awarded the History of Economic Analysis Award in 2005 by the ESHET and the ESHET Young Scholar of the Year Prize for 2011. She can be reached at: estrinaz@ceee.ucm.es.


Adelino Zanini teaches political philosophy and history of economic thought at the Department of Economic and Social Sciences of the Università Politecnica delle Marche, Ancona. His main interests are in the philosophy of economics, with particular regard to authors such as A. Smith, K. Marx, J. A. Schumpeter and J. M. Keynes. He is the author of several books and articles, including *Joseph A. Schumpeter* (2000), *Economic Philosophy: Economic Foundations and Political Categories* (2008) and *Adam Smith: Morale, Jurisprudence, Economía Política* (2014).
From the editor

Symposium

Translating Smith’s Theory of Moral Sentiments

Guest editor: Ryan Patrick Hanley

I would like to thank the Editorial Board, our editorial team at Routledge and especially my Editorial Assistant, Aaron Cotkin, for their help bringing Volume 8 into print. My thanks as well to the International Adam Smith Society and to its outgoing President, Ryan Hanley, for many years of friendship and collegiality, and for his great service to the Society.

Finally, a note of gratitude to Gordon Brown for his contribution to this volume. I would like to acknowledge not only his support of the journal and for his participation in the Kirkcaldy symposium that produced the fine collection of papers that he introduces here but mostly for inspiring generations of global actors and scholars with his uniquely Smithian vantage on the world – for demonstrating through his work: 1) that ethics and economics need not be at odds – that indeed the ethical path very often coincides with the path economically most efficient and advantageous for all; and 2) that our ethical duties must expand beyond our own narrow spaces and particular interests in an age of information, capacity and interdependence. This way of thinking is exemplified by Gordon’s most recent initiatives to advance the Millennium Development Goal of universal primary education. Not only is this the right thing for us to do as a global community – to educate the world's poorest children, 57 million of whom are presently not in school, likely thus to become victim to child labour, child marriage, trafficking, disease and early death – but it is also estimated that universal primary education will stimulate per capita growth in the world’s poorest countries by as much as two per cent per year.

With much gratitude, I would like to dedicate this volume to the memory of our colleague, teacher and friend, István Hont (1947–2013).

Fonna Forman
Editor
Adam Smith and the rights of the dead

Alan Lopez

‘I have so much to do—
And yet—Existence—some way back—
Stopped—struck—my ticking—through—’

Emily Dickinson

I

Immanuel Kant tells us in his ‘Third Definitive Article for a Perpetual Peace’ [1795] that the Earth is property shared by all human beings (Kant 1983: para. 358). This argument follows Kant’s plea for what he calls a ‘cosmopolitan right…of universal hospitality’ (ibid., emphasis in original).1 It is the idea that we have a ‘right to visit, to associate’, indeed, to ‘belong’, based on ‘our common ownership of the earth’s surface’ (ibid.). What is notable about Kant’s argument for hospitality is that, although originally genetic, in the sense that this right to hospitality is derived from the fact that ‘originally no one had a greater right to any region of the earth than anyone else’, it becomes clear that Kant’s reasons are not simply structural, but ethical (ibid.).2 Owing to the fact that we share this ‘earth’ which ‘is a globe, [we] cannot scatter ourselves infinitely’, must, finally, ‘tolerate living in close proximity’ (ibid.).3 It is this idea of toleration to which John Locke appeals in his earlier Letter Concerning Toleration [1689], which is not that we should tolerate the conditions in which we live, against which in some instances Locke argues, but that we should tolerate and indeed respect others’ rights to be.4 Locke’s is a noble aim, but one that becomes troubled once we recall that we all share this globe. Kant strengthens Locke’s claim by arguing that the argument for hospitality should rest not upon moral whim,4 which in Locke allows refusal of toleration to certain groups, but upon this shared right to the earth, what Kant in his Metaphysics of Morals, only two years after ‘Perpetual Peace’, will call ‘[t]his rational idea of a peaceful [1797], even if not friendly, thoroughgoing community of all nations on the earth…a principle having to do with rights’ (Kant 1998: 6: 352; emphasis in original).

But while it is one thing to say we share the earth with one other, what does it mean to say we share the earth with the dead?5 This is the question that Adam
Smith asks in his *Lectures on Jurisprudence*. How 'sacred' should we consider the will of the dead, let alone the 'Will of a dead Friend'? (Corr. Letter 156 from Hume, 3 May 1776). In determining 'how far the right of the dead might extend,' if indeed 'they have any at all', hence in asking '[w]hat obligation [a]...community [is] under to observe the directions he made concerning his goods' (LJ(A) i.150), Smith anticipates Kant's hospitality, (Smith 1982: LJ(B), para. 169) since in Smith's view this question of obligation can be answered only by answering the even more fundamental question of who counts, as in who counts as 'subjects of a state' (LJ(B), para. 86). One drawback of Kant's right of hospitality is that, despite the wide reach he reserves for equality and the sharing of the earth, the right itself is quite narrow, consisting only of 'the right of a alien not to be treated as an enemy upon his arrival in another's country' (Kant 1983: para. 358). This is notable in its contradistinction to Kant's earlier insistence, in 'Theory and Practice' [1793], that all individuals possess these rights, those of 'equality' and 'freedom' and 'independence', 'a priori', simply by virtue of our being 'a human being' (Kant 1983: para. 290; emphasis in original), as in 'a being who is in general capable of having rights' (para. 291). Although Kant says that we possess these rights owing to our shared humanity, he also says they are enforceable only to the extent that we are 'a member of the commonwealth' (para. 291). It is only in civil society where these rights are secured and their exercise guaranteed, since it is only in civil society where observation of them can be enforced through what Kant calls 'coercion' (para. 290), thus 'public law' (para. 292). So, for Kant, determining the reach of these inalienable rights, let alone a right of hospitality, similarly becomes a question of who counts as a citizen of the state. Are the dead citizens of the state? If Kant's is our criterion, the dead would seem to have three strikes against them. As Patrick R. Frierson observes, '[t]he dead are not human, not sentient, and not even living' (Frierson 2006: 453). Where, then, does this leave the dead?

Smith insists that the dead have rights, just not of the rational sort identified by Kant; the dead possess what Smith more modestly calls a right to 'piety', known in the ecclesial vernacular as 'a reverence for the will of the dead', the sense 'that the will of the deceased with respect to his goods or heirs should be observed' (LJ(A) i.161). Smith soon enough moves away from this ecclesiastical foundation in his account of the rights of the dead, loosening the impersonal language of 'should' to the somewhat more convivial and inviting 'regard we all naturally have to the will of a dying person' (LJ(A) i.150), the 'pleasure' '[w]e naturally find...in remembering the last words of a friend and in executing his last injunctions' (LJ(B) para. 165). But the point is the same, and it turns on Smith's language of 'last words' and 'last injunctions'. We 'regard' this last request (para. 165), according to Smith, what he earlier calls 'the right we conceive men to have to dispose of their goods after their death' (LJ(A) i.149), not so much because this is 'a piece of piety not to be dispensed with' (i.161), which, while true in some respects, suggests a kind of relenting in favor of avoiding punishment to ourselves, but rather owing to the 'impious and indeed 'injury' we 'conceive [would] be done to the dead person' were we 'not to comply with [their] desire' (LJ(B) para. 165), in this instance that slight acknowledgment, itself the basis of testamentary succession at all, that 'the heir of blood is not always thought the preferable one' (LJ(B) para. 156). The novelty of Smith's account of succession, meaning most simply his 'found[ing] it 'on piety and affection to the dead' (para. 89), lies in the very creative way this wrests the right from any jurisprudential foundation. And which is where this right of the dead becomes interesting, hence a matter of jurisprudence, which is when its extension infringes upon the rights of those who are properly subjects of the state — those of the living. And since we are dealing with 'animinised bodies' (Smith 1982 TMS: I.1.13), when we refer to any acts of infringment, from dead to living, we naturally mean those rights possessed when the deceased was alive, what Jean Barbevray, in his commentary on Samuel Pufendorf's *Of the Law of Nature and Nations* [1705], calls our appeal to that right that we might have the 'liberty' to 'dispose of [our] Goods at [our] Death', the liberty to 'leave them to such Persons as [we] love' (Pufendorf 1749: 420 n. 2). These are thus the rights of testamentary succession, or those rights, entailing, belonging to what Smith calls '[t]he greatest of all extensions of property' (LJ(B), para. 166). To the extent that we do wish to observe the rights of the dead, what Pufendorf ginerally interprets as the 'Management of what belong'd to the dead', our 'Care of [those]...who are no longer Members of human society' (1749: 420), how far may we extend these rights, the rights of those 'reckon'd as no body in civil Consideration' (418), without infringing upon the rights of those who are, or those of the living? Which is the question: what are the demands the dead may make upon the living?

II

While nowadays testamentary succession is an accepted practice with little fanfare, although gifts bequeathed to universities can be of note, and one has usually heard a story of an individual leaving their estate to beloved family pets, this normalcy was not the case for Adam Smith (Friedman 2009: 75–76). Smith saw as a real challenge the possibility of testamentary succession at all, let alone the question of how far it may reasonably extend, putting it plainly: 'There is no point more difficult to account for than the right we conceive men to have to dispose of their goods after their death. For at what time is it that this right takes place?' (LJ(A) i.149). To be fair, the question mark is mine; Smith is not asking a question, to which he already knows the answer, so much as expressing incredulity at the point when this right is understood to take place, which, as he tells us, is '[j]ust at the very time that the person ceases (to have?) the power of disposing of them' (ibid.). This is where Smith's real questions begin. On the one hand, it makes sense why testamentary succession, what Smith calls 'the testamentary heir[s]...claim or right to any of the testators goods', takes place when it does, which, as Smith explains, is not 'until the moment that he is dead; for till that time he can not even have any reasonable expectation of his possessing them, as the testator may alter his inclination' (ibid.). But then what interests Smith is not the heir's right to the property, but that moment in which the testator transfers possession of this right, which happens to be the same time the testator 'ceases to have the power of disposing of [property]'.
As living and breathing persons, we all possess what Smith calls a natural right 'to dispose of our property while [we] live' (LJ(B), para. 164). But this 'power of disposing of our goods' (LJ(A) i.149), what Samuel Pufendorf (1749: 418) calls the 'transferring of Right from one to another Person', does 'suppose the existence of the two Parties at the time of its Date; so that henceforward the thing may be said to be estrang’d from him who thus transferr’d it' (418). This is what Pufendorf means by 'alienation' (418), Smith by disposal of our property, both of which become, in the vernacular of 'transfer[ence] of things by Testament', and here Pufendorf appeals to Hugo Grotius' Rights of War and Peace [1625], 'the Alienation of a whole Estate in the case of Death' (418; emphasis in original). It is here where for Smith this right of property is undone, which is when it attempts to explain those matters, 'On account of Death', where 'things are convey’d from one Person to another' (418). '[S]o long as he draws Breath', Pufendorf tells us, the dying, the 'testator', retains a full and absolute Right to all his Goods, without the least Diminution' (418). This right is what we appeal to 'in every Act of Alienation', as in those acts, qua alienation, consisting of 'two Parties in join[ed] Consent[s], the one from whom, and the other to whom the thing is transfer’d' (418). Yet 'these Consent[s]', which that 'unit[es]' us 'by [our] conspiring, as it were, together at the same time,' additionally suppose that a transfer can, indeed, 'be made at that time' (418), what Barbevray calls the right's 'depend[ence]…upon the mutual Consent of Parties' (418 n. 1). This is complicated somewhat if the time in this instance refers to 'that time, when in respect of the Party who should alienate, nothing can be call’d his own or another’s' (418). Yet it is just this time to which testamentary succession refers, what Pufendorf calls our 'Moment of…Death', or that moment we 'loseth immediately all the Right [we] held whilst alive' (418), and so what Smith himself refers to when he asks, in his jurisprudence lectures, 'how is it that a man comes to have a power of disposing as he pleases of his goods after his death' (LJ(A) i.149–150). This, for Smith, is the stumbling block to testamentary succession, and the difference between it and 'legal succession' (LJ(B), para. 155). The testator cannot be said to transfer his right, for the heir has no right in consequence of the testament till after the testator himself have 'died' (para. 164). By what means, then, does such a thing take place, where one of the parties, dead, does what, 'properly speaking', one should have no right to do? (ibid.)

The idea behind testamentary succession, as in it takes place when we 'have nothing to do with the things of this World', 'only when we are not in a condition to make it of Force [ourselves]', is the assumption of what Jean Barbevray calls the 'reasonable' '[m]an' (Pufendorf 1749: 420 n. 2). Pufendorf reminds us that '[a]lienation begins with the acceptance as sincere the Declarations of a[nother’s] Intentions' (419), as in a promise to alienate property, to borrow Hugo Grotius' language, becomes 'mutual[y] Oblig[ing]' once 'it is…accepted', or 'Acceptance…be signified to the Promisor' (Grotius 2005: 720). Alienation is thus not quite the idea that by simply declaring my intention to transfer I thereby do transfer my property into another's possession, as if without the chance to 'recall' my intentions (Pufendorf 1749: 419). I certainly can recall my intentions, as Grotius for instance tells us, so long as the revoking is done before such acceptance is signified, hence 'before it...obtain[s] its full Effect' (Grotius: 720). But for all intents and purposes, this declared intent to alienate creates what Smith will later call 'a reasonable ground of expectation' in the promissary (LJ(A) ii.56). On account of my acceptance of another's declared intention to alienate, as in my saying or signifying, 'This Engagement shall stand good, if it be accepted;... This shall stand good, if I understand that it is accepted' (Grotius: 720; emphasis in original), I thereby 'transfer such a Right on the Person towards whom it is directed, that it shall not be disannull’d at the bare Pleasure of the Alienator [myself]' (Pufendorf 1749: 419). This is how alienation works amongst the living: the acceptance as 'valid' (Grotius: 720) one's expressed 'Intent thereby to transfer a proper Right to another' (708), an intent which, once accepted, puts on the promisor an 'Obligation' to deliver, and, on the promise, a 'Right' to demand that delivery (Pufendorf 1749: 419). It becomes clear what would happen if accepted intent did not, in fact, transfer a right to another: the loss of any 'contracted' 'Obligation' to transfer, nor 'acquir[ition] of any Right' to demand transfer (419). Yet this is the situation in which testator and heir find themselves, a Carrollean 'Promise' understood as, 'You shall have, one time or another, somewhat which I now possess, provided you don’t displeased me in the mean while; but then you shall have no Right to hinder me from being displeas’d at any time when I think fit, or without any manner of Reason' (419; emphasis in original). It is the dying's will, or what Barbevray calls that 'great Difference between an Alienation by Will, and a bare verbal Declaration of a present Design to give something one time or another, to a certain Person' (418 n. 1). Because the heir's right to the testator's property does not 'commenceth' until 'at the Testator's Death', the heir 'has not, before that Moment, any Right which can be said to depend on the Death of the Party as on a Condition' (419). Since this is our last will and testament, or what 'is mutable and revocable at our Pleasure', it is a document which only becomes a 'full and perfect Right against' us and our words when we similarly cease to have any possession of either (419; emphasis in original). This is why we can declare an intent to transfer without therefore transferring any right against ourselves, since so long as we do live we never lose this right as testator, as in '[that] most absolute Right of possessing and enjoying our Property' while we live (419), which most simply is this right to say, until we can say no more, that 'perhaps the first Opinion was the better' (Grotius: 703). As this is our will, we 'may', if we so choose, 'alienate our Goods' to another, 'or [even] strike out those who at present stand Heirs' (Pufendorf 1749: 419), and this, this literal retraction of our declared intent, our 'revok[ing] of the Will' (418 n. 1), 'without any Possibility of Redress' (419), hence 'without the least Diminution' of possession of our goods (419). This is Barbevray's 'reasonable man'; it is the assumption that 'no Man Should tie his own Hands', as in do in life what 'Death alone should [do]' (423 n. 3), what Barbevray calls this transfer of the 'Power of disposing of our Goods in case of Death' (420 n. 2). For bind our hands is what we would do if we ourselves did transfer this right, which is give to the heir that 'full and irrevocable Right' (418 n. 1) to what we ourselves, 'whilst we live' (419), 'have Power to enjoy' (418 n. 1), hence to 'revo[ke] at our Pleasure' (419; emphasis in original).
Smith’s answer, as we saw earlier, lies not in the dead’s transference of a right, properly speaking, but in the more simple observance of this ‘period’ itself, the moment of our last words, what Smith calls ‘[t]hat period...of so momentous a nature that every thing that is connected with it seems to be so also’ (LJ(A) i.150). Smith pauses for some time before this moment, explaining his rest by insisting that is when “[t]he advice, the commands, and even the very fooleries of the dying have more effect on us than things of the same nature would have had at any other period’ (ibid). In gathering up within ourselves the advice, the commands, and even the fooleries of the dying person, dramatized by Smith as ‘a man on his death bed call[ing] his friends together and entreat[ing], beseech[ing], and conjure[ing] them to dispose of his goods in such or such a manner’, we find ourselves, ‘as it were, forced by our piety to the deceased person to dispose of his goods as he desired; [we] imagine what he would think were we to see [us] disposing of them in a manner contrary to what they were so solemnly intreated’, as ‘if’, for instance, ‘he should look up from the grave and see things going contrary to what he had enjoined’, and that it is out of these imaginative considerations, our supposing what our friend, ‘if he was then alive’, would feel if he saw things going differently than so intreated, that we aim, as far as we can, to ‘dispose of his goods as he desired’ (LJ(A) i.151). Although the act is ‘illus[ory], an instance of ‘fancy’, yet this way we, seemingly quite ‘naturally’ (TMS i.i.1.13), ‘chang[e] places in fancy with the sufferer’ (i.i.1.3), assume as ours their ‘distress...regret...love, and...lamentations’ (i.i.2.1), is why, Smith insists, we sympathize, and so why, finally, ‘We sympathize even with the dead’ (TMS i.i.1.13).

Smith is drawing upon imagery in a passage of his in Theory of Moral Sentiments, three years before delivery of these 1762–63 lectures on jurisprudence. Smith returns to the passage, in Moral Sentiments, in his even later 1766 jurisprudence lectures. Although Smith composes the first edition of Moral Sentiments seven years before his 1766 jurisprudence lectures, his is a fondness for Moral Sentiments’ imagery of death, since we see this imagery in his later lectures on jurisprudence. Although we know we are reading of our piety for the dead, in Smith’s lectures, yet we find ourselves drawn back to Moral Sentiments, the difference between our present piety for the dead and our earlier sympathy for the dead just so small: that we ‘enter as it were into his dead body, and conceive what our living souls would feel if they were joined with his body, and how much we would be distressed to see our last injunctions not performed’ (LJ(B), para. 165).

And, indeed, the two definitions are close. In Moral Sentiments Smith touches death with a light, and most general hand; what we sympathize with, in our sympathy with the dead, is the ‘dread of death’ (TMS i.i.1.13): to be no more thought of in this world, but to be obliterated, in a little time, from the affections, and almost from the memory, of...dearest friends and relations’ (i.i.1.13). In his lectures on jurisprudence, though, Smith’s touch is all the more acute. What in earlier Moral Sentiments is an impersonal ‘dread of death’, and impersonal because it is not loss as such we dread as its certitude, becomes in the lectures the loss that can only come from ‘dearest friends and relations’; that in our last attempt to stave off death, we would be thwarted, and not by death, but by these same friends. We read, for instance, of the ‘distress’ we should feel in seeing ‘our last injunctions not performed’, yet also the ‘impiety’ and ‘injury’ (LJ(B), para. 165), and this because these ‘last injunctions’ happen to be our last will and testament. Although Smith draws no further connection to the paragraph in Moral Sentiments, beyond this borrowing of imagery, it is the paragraph we nevertheless find ourselves before as we read its counterpart in his 1766 lectures on jurisprudence. While perhaps unintended by Smith, his arrangement of these passages, in Moral Sentiments, 1766 jurisprudence lectures, reveals a larger argument on what for Smith we ‘dread’ in our ‘dread of death’, which is not our loss from the world, but loss of our place in the ‘affections’ and ‘memory’ of loved ones still in the world. When Smith writes of the ‘injury’ we should imagine in seeing our goods ‘dispos[ed]...in a manner contrary to what they were so solemnly intreated’; hence, when he writes of ‘how much we would be distressed to see our last injunctions not performed’, we return to that passage in Moral Sentiments, and this because the injury Smith refers to is that imagined absence of affection found in Moral Sentiments, the idea that if we find ‘our last injunctions not performed’, it is owing, indeed, to that ‘so dreadful a calamity’ (TMS i.i.1.13), our having been ‘forgotten by everybody’ (I.i.1.13). When present, these are the memories by which a friend assumes as theirs our ‘distress...regRET...and...lamentations’, and so carries on, as if their own, our last injunctions. Hence, they are the memories, when absent, which find us before the contrary, the realization, as we look from our grave, that what we had ‘intended’, as ‘our last Appointment’, ‘should be intended in vain’ (Pufendorf 1749: 424). Yet, we do extend our hands, and so, in turn, extend the hands of another, even those whom ‘Death [has] remove[d]...from all Concerns’ (420), since this imagined ‘misery’ (TMS i.i.1.1), this ‘awful futurity’ (I.i.1.13), however much ‘but a Fiction of the mind’ (Hobbes, 2003: 16), is ourselves ‘shut out from life and conversation’ (TMS i.i.1.13). But if ‘piety is why ‘we [allow] prefer[ence] for] the person made heir in the testament to the heir at law if he has one’ (LJ(A) i.150), why we are ‘enclined...to extend property a little farther than a man’s lifetime’ (LJ(B), para. 165), what do we make of that ‘extension of property’ (para. 168) belonging to entails, that ‘extension of...power’ which asks our piety ‘to the end of the world’? (para. 166)?

III

What Smith refers to as ‘entails’ is an ecclesial tradition, after testamentary succession, that enables the dying to restrict the manner in which their property is succeeded and divided by will (LJ(B), para. 167). Smith refers to entails in a few places in his works, though is arguably most clear in Wealth of Nations, published a decade after delivery of his 1766 lectures on jurisprudence (1776), where he describes entails as the natural consequences of the laws of primogeniture. They were first introduced to preserve a certain lineal succession, of which the law of primogeniture first gave the idea, and to hinder any part of the original estate
from being carried out of the proposed line either by gift, or devise, or alienation; either by folly, or by the misfortune of any of its successive owners. (Smith 1981: i. 3, ch. 2: 384)

Smith’s foreboding language gives us some idea why he reserves for entails the designation of ‘greatest of all extensions of property’. On the one hand, entails are similar to normal, testamentary succession; they allow us to place limits on the succession of our goods and property, limits referring to specific heirs.26 On its face this is innocent enough, and indeed Smith has no qualms in reserving the dying a right to choose their heirs. What troubles Smith, and so where in his mind entails move beyond testamentary succession, is in the incredible reach they allow the dying to restrict this manner of succession, as in this right to insist ‘that all gifts of the testator should be valid in the very manner he appointed, and that no one of the heirs [can] alienate what was entailed to his heirs’ (LJ(A) i.163). It is the idea that, to comply with our dying wishes, for instance that our property continue indefinitely and continue exclusively through several generations of sons or daughters, so must we retain this right to forbid any heirs, even the children themselves, from alienating our property.27 Such a move would violate the intent of our original will to include only lineal sons or daughters, assuming their presence, hence break the stipulated chain of succession.28 The real purpose for entailing a will becomes clear: to ensure indefinite possession of one’s property. Smith, to his credit, observes that ‘there can be nothing more absurd than this custom of entails’ (LJ(A) i.164). Now, it is again no infringement on our ‘reason’ or ‘piety’ to insist ‘[t]hat a man should have the power of determining what shall be done with his goods after his death’ (ibid.). This, after all, as Smith explains, is the ‘foundation of testamentary succession’, the idea that ‘property [should] extend a little farther than a man’s lifetime’ (LJ(B), para. 165). Where for Smith problems emerge, and why in the end he calls entails, together with the right of primogeniture, an ‘unnatural right’ (LJ(A) i.1), is in this notion that the dying ‘should have the power of determining how they shall dispose of it, and so on in infinitum’, which, as Smith insists, ‘has no foundation in this piety and is the most absurd thing in the world’ ((LJ(A) i.164).30

What troubles Smith about entails is how they undermine the simplest of all our maxims, which is ‘that the earth is the property of each generation’ (LJ(A) i.164). Common sense tells us that each generation has the same rights to property as those before or after it, as in the notion that no ‘preceding [generation] can have [a] right to bind it up [the earth] from posterity’ (LJ(B), para. 168).31 With the introduction of entails, we find ourselves confronted with a new world view. Now we may reserve for ourselves the right to ‘restrict’ any generation’s subsequent ‘use’ of our property (LJ(A) i.164). The problems this opens up are many, but one interests us in particular: the erasure of this distinction between past, present, and future possession of property. Once one entails a will, it is no longer possible to distinguish between what is ‘altogether’ the property of our ‘predecessors’ and what is the property of ‘our[s]’, since there is no longer a distinction between the two (ibid.). Such distinctions require not only acknowledgment of the passage of property from one set of hands to another, but a temporal marking of each successive generation’s ownership of that property. Entails work by removing these limitations of finitude. But in so doing, entails remove what constitutes our shared humanity as human beings, which is our shared mortality. By ‘mortality’, I mean not that we do not go on forever, which is more of a structural argument, but rather the responsibility that follows therefrom: that as finite beings on a finite surface we share an obligation to respect the property and rights of others, as in the responsibility to acknowledge our finitude, but also the consequent finitude of any claims of ours to possession of property.2 This is obviously incompatible with the logic of entails. It is this ‘absurd[ity]’ Smith refers to when he describes the power of entails as akin to saying ‘that our ancestors who lived 500 years ago should have had the power of disposing of all lands at this time’, where what we have before us, as Jacques Derrida explains, is a ‘conjunction of singularities that partake of, and in the future will continue to partake of, the same date’ (Derrida 2005: 32; emphasis in original). Entails threaten humanity by indefinitely preserving it.33

Owing to this fatal sense of loss, which is the loss of the right to declare ourselves autonomous persons, the question inevitably presents itself: ‘to find at what period we are to put an end to the power we have granted a dying person of disposing of his goods’ (LJ(A) i.165). But nor is there an easy solution. While we might agree that entails allow the dying too much control in posterity, this does not address the more fundamental problem presented by entails, which is identifying an ‘evidence time at which this should cease’ (ibid.). Smith, however, does arrive at a solution, which returns us to our shared mortality. ‘The best rule seems to be’, Smith explains, ‘that we should permit the dying person to dispose of his goods as far as he sees, that is, to settle how it shall be divided amongst those who are alive at the same time with him’ (ibid.). In answering the question of where to draw the line in extending succession, Smith returns us to our mortality, to the fact that we cannot indefinitely extend our hand. But in asking us to consider our finitude, so does Smith return us to our piety. It is our piety to which Smith appeals when he explains why the dying person’s property ought to be divided in this way, between those with whom he lived, since it is with these people that ‘he may have contracted some affection’ (ibid.). This shared affection is what for Smith we appeal to when we say that a dying person has the right to ‘settle the succession amongst them’ (ibid.). But it is also what for Smith we appeal to when we say that there should be a limit to entails. As it makes sense to limit the powers of entails to those with whom we have shared affection, so is it similarly owing to this logic of mortality that Smith finds it troubling to extend them beyond this point of fellow-feeling, such as to persons ‘who are not born’ (ibid.). For the question naturally arises: how do we share ‘affection’ with those from whom there is ‘no affection’ to share? (LJ(A) i.165).

It is our mortality to which we refer when we entail our will. Since we know that we will not live forever but because we wish to preserve in our posterity some semblance of ourselves, as realized, for instance, in our property, so do we place entails on our will; this allows us to retain possession of ourselves through successive generations. But it is also because of this shared mortality that entails
are problematic. In indefinitely securing our rights to our goods and property, we bind the hands of every successive generation to that property. We foreclose anyone else's right to it. This is untenable within this idea that subsequent individuals have the same rights to property and autonomy as the dying did while alive. Our shared mortality, the fact that we do die, addresses the need for a line of demarcation, some understanding that, while in death we acquire this right to extend possession of our property, it is not a right to extend that possession indefinitely, as in to the point that we infringe upon another's own right to own property. The question before Smith is thus one of how far, as in how far the dead may extend their possession of property. It is a question whose answer for Smith returns us to our piety, as in how far we may reasonably permit the dead, on account of our 'reverence' (LJ(A) i.161) for their will, imagined pain to ourselves, to extend their fellow-feeling towards others. And Smith's answer is only as far as those with whom the dead, indeed, has shared 'some' affection, hence shared the same time in life. Beyond this, Smith insists, hence beyond '[t]he utmost stretch of [their] own mortality, affection 'can not reasonably extend' (LJ(A) i.166). Although piety for the dead's wishes obliges us to extend their affections, hence possession of property, beyond their own lifetimes, it is sympathetic with the living's which asks that we limit the reach of that possession, a limit which in Smith's hands becomes no further than those with whom the dead could have shared time and affection, as in no further than ourselves, those who would yet possess a 'fresh' 'memory' of the dead in their 'mind' (LJ(B), para. 168).

Francis Hutcheson reminds us that a contract is a contract insofar as there is '[t]he consent of both parties, of the receiver as well as the giver' (Hutcheson 2007: 161), what Hugo Grotius describes as 'some sufficient Sign to testify to the Consent of the Will' (Grotius 2005: 717). Hutcheson insists that this consent, which 'may sometimes be done by a Nod, but generally by Word of Mouth or Writing' (Grotius: 717), 'is necessary in all translation either of property or any other rights' (Hutcheson: 161). It is what Smith himself calls 'voluntary transference' (LJ(A) ii.1). Though Smith distinguishes this from succession by inheritance, which he calls an 'exclusive privilege', and this owing to the fact that '[t]he heir, previous to any other person, has a privilege of demanding what belonged to the deceased', he does not say this is a strict demarcation (LJ(B), para. 174). Indeed, it is via Smith's language of 'privilege', rather than right, that he identifies a limit to the reach of the legal heir, whose privilege we will recall may be abrogated by the preference of the dying in testamentary succession (para. 149).

Smith's appeal to preference leaves room for alternative measures of property transference, as in voluntary transference. Where this affinity is most close in Smith's attempt to determine the reach of entail, and so property transference more generally, the 'possession' of which, Smith similarly concedes, 'is not so easy to determine' (para. 170). Smith appeals to at least one aspect of voluntary transference in his account of entail, in which Scotland is its 'use' of 'a symbolical delivery' (ibid.). Delightfully reminding us of the beauty of synecdoche, Smith observes: 'An ear or sheaf of corn signifies the whole field, a stone and turf the estate to the center of the earth, and the keys of the door, the house' (ibid.). These figures are similar to Smith's language of shared 'affection'; they stand in for the word, hence the preference, of the dying. Transference, in testamentary succession, is not reducible to the simple matter, as in legal succession, 'of excluding all others from the possession until he [heir] determine in whether he will enter heir or not' (LJ(A) ii.27); this presupposes that at stake in this transference is the blood line rather than what is more correctly the preference of the dying; while this preference, as Smith explains, may certainly include 'our ancestors', or the lineage heir, so may it include 'any other person' (LJ(B), para. 149). But as Smith notes, and so where he runs into trouble in following voluntary transference so closely, this is only delivery, and '[b]esides delivery, a charter or writing shewing on what terms the transference was made is also requisite for security' (para. 170). While one may hold in safe keeping, upon arrival of another, a key, and so in this sense, at least symbolically, indicate a 'design' to transfer this right of property to another, Smith reminds us that 'there is no right without possession', possession which in this case of property is 'shewn', hence 'distinctly signified' and 'secured', only in this shared act of writing, an act unfortunately requiring 'the will' of both, 'transferrer' and 'transferred'. It becomes clear where the entailed will becomes troubled; this condition of mutual consent, what Gershom Carmichael calls 'concurrent consent' (Carmichael 2002: 103), Pufendorf as what 'is usually made known by outward Signs' (Pufendorf 2003: 111; emphasis in original), could not be met if there is no one to reciprocate this consent. Yet this counter-sign is necessary so that there is a contract, a sign, to borrow D. L. Carey Miller's language, 'point[ing] to a mutual intention that ownership should pass' (Miller 1998: 53), and so a sign which would declare that transferrer and transferee indeed shared the same time and affection. It is on the impossibility of this counter-sign, this acceptance of contract, that Smith demarcates the space of the entail, his recognition of what is 'manifestly absurd' in this 'power to dispose of estates for ever', which is the power to do so without consent, the consent, for instance, found in our shared time and affection, and so that consent, figured as those 'principals of testamentary succession', which 'can by no means take place in perpetual entails' (LJ(B), para. 168).

In his reading of Paul Celan's 'Psalm', Jacques Derrida notes that '[t]o address no one is not exactly not to address any one' (Derrida 2005: 42). Although in our moment of death we 'speak to no one' (42), in the sense that those to whom we will speak, the scene, in which we will speak, is yet to arrive, to the extent that we do speak to no one, so do we assume for ourselves the burden, what Derrida calls the 'risk' (42; emphasis in original), of what it means to offer one's piety and blessings to another, this understanding that when it does come our time to bless, or be blessed, 'there might be no one to bless, no one who can bless' (42). Still, we take consolation in this, telling ourselves, perhaps, 'is this not the only chance for blessing', that blessing arrives as 'an act of faith?' (42). 'What would a blessing be,' we might say, 'that was sure of itself?' (42) Faith is for Derrida the possibility of blessing. Derrida appeals to faith, in a manner of speaking, in order to lift the gift, indeed the 'given[ness]' of blessing, above the constraints of '[l]ogic... certitude, [and] dogma' (42; emphasis in original), what Derrida calls those 'contes-
tation[s] in the name of ‘knowledge’, ‘proof’ (82; emphasis in original). Derrida does this that blessing may remain this interaction of ‘someone engag[ing] [oneself] with regard to someone else’, where the only ‘oath’ spoken, an oath, of course, ‘implicit’ (82; emphasis in original), is that this blessing is given as a blessing, as in ‘never assured’, guaranteed, but ‘given’ (42; emphasis in original). But in so doing, so does Derrida ensure that blessing, this ‘act of faith without possible proof’ (83), will always ‘belong to a foreign space’ (82), always this question whether ‘to believe it or not believe it’ (82; emphasis in original). It is the foreignness found in the blessings of the dying. Inasmuch as these blessings are always yet to arrive, in the sense that theirs is that time only after their own, so do they belong to that time which, though we may imaginatively share with another, could never be a time shared in time with another.40 Yet, this is also the only way such a blessing could be given, the ‘word’ (83) of the dead, which, like ‘a token, a symbol, a tressa, a trope, a table, or a code’, but at any rate a ‘word’, ‘circulates’ (40). While this is, on the one hand, the circulation which reveals the word of the dead to be like all other words, as in finite, the finitude, say, which does take the shape of ‘ellipsis, discontinuity, caesura, or discretion’ (40), so is it, on the other, that circulation which reveals the word of the dead to be unlike any other word.41 Although all words are given as an ‘opened…word’ (60), the openness by which they are put into motion as words, the word of the dead, by contrast, ‘is, above all, opened’ (60), the acknowledgment, ours, that our final words can only be a question.42

Acknowledgments

My sincerest thanks to Fonna Forman, for her generous editorial support and encouragement of this essay; anonymous reviewers, who helped make my argument clearer; Rachel Ablow, Branka Arsić, Costica Bradatan, Joseph R. Chaney, Ken Dauber, Susan Eilenberg, Graham Hammill, David E. Johnson, Salah el Moncef bin Khalifa, Ruth Mack, Heather Mezosi, Joel Reed, Ken Smith, and Henry Sussman, for helpful notes, comments, and readings during various stages of the writing process; Maureen Kennedy, Interlibrary Loan Supervisor at Franklin D. Schurz Library at Indiana University South Bend, for generously allowing my use of the library and its services for this project; I am most thankful.

Notes

1 For a lucid account of Kant’s political philosophy, see Ripstein (2009).
2 See Seyla Benhabib’s disagreement with Jeremy Waldron on this point (Benhabib 2006: 41 n. 16).
3 Locke 1993: 127; Locke 2010: 57.
4 On consent in Locke, see Simmons 1993, especially: 147–192.
5 Locke denies toleration to atheists (Locke 2010: 52–53).
6 I gratefully acknowledge Niamh Reilly’s ‘Cosmopolitan Feminism and Human Rights’ for helping me to ground this discussion (Reilly 2007).
7 Ironically, Smith himself would not honor Hume’s last request (Corr. Letter 172 from Smith to William Strahan, 5 September 1776).
8 I am additionally drawing upon Jeremy Waldron’s observation ‘that the principle requiring hospitality more or less exhausts the content of cosmopolitan right’ (Benhabib 2006: 88).
9 In US law, three strikes, or three felonies, are grounds for indefinitely being put ‘behind bars’ (Kant 1983: ‘Perpetual Peace’, para. 376).
10 Although chronologically Smith’s position here, in his 1762–1763 lectures on jurisprudence, follows the one he gives a few paragraphs earlier, which does not contain the word ‘should’, and thus would seem the more definitive of the two, it is that previous position and not this one, which shapes my reading of his position on the rights of the dead, since it is that earlier position which is most consistent with his even later claim, in his 1766 lectures on jurisprudence, that what finally ‘found’ (LJ(B), para. 165) testamentary succession is simply our ‘piety and affection to the dead’ (LJ(B), para. 89).
11 My framing of this problem as one of infringement between dead and living draws from Locke’s division between church and state in his Letter Concerning Toleration (Locke 2010: 12, 23, 13, 23). On how Locke ‘violates’ his ‘attempt[ed]…line of demarcation between religion and civil society’ (1), see C. Davis and C. Crockett (2007).
12 Ian Simpson Ross and Charles Griswold, offer persuasive arguments on Smith’s inability to turn his jurisprudence lectures into a book, a struggle, they show us, unfolded by Smith through letters (Ross 2004; Griswold 2006).
13 Legal, in that for Smith testamentary succession ‘is directed [not] by the law…but by the testament or the will of the deceased’ (LJ(A) i.90).
14 Although this is Barbeyrac’s (translated) language, my reading of the ‘reasonable man’ is indebted, admittedly anachronistically, to Oliver Wendell Holmes Jr’s appeal to the term, as in ‘what a man of reasonable prudence would have foreseen’ (Holmes 1991: 54).
15 Pufendorf’s refusal to concede the ‘bare pleasure of the alienator’ as valid justification for breach of a promise is Francis Hutcheson’s later distinction between a lawful and unlawful promise. All things being equal, and thus notwithstanding what Grotius affectionately calls ‘the Promises of Madmen, Idiots, and Infants’ (Grotius 2005: 709), Hutcheson holds that the only sensible reason for which an ‘obligation…can[not] arise from any promise’ is if such a promise ‘violate[s] directly the reverence due to God, or the perfect rights of others…or [...is] what is not committed to our power’ (Hutcheson 2007: 166). Hutcheson’s understanding of ‘alienation’ in promises is helpful in making sense of the distinction between a lawful and unlawful contract. It is an understanding itself indebted to Barbeyrac’s appeal to the term in his commentary in Grotius’ The Rights of War and Peace, which Hutcheson reads. Barbeyrac understands by the term ‘promise’ not ‘purely and simply, that a Man should be obliged to stand to the Performance of all he has promised; but only on a Supposition that he has promised what he had a Power to promise’; or, that ‘we alienate what we have a power to alienate’ (Grotius: 706; 707 n. 7). Grotius refers to Barbeyrac’s definition of alienation in his quoting from Aristotle; it is arguably what Pufendorf and Smith have in mind in treating testamentary succession: that my right to promise my ‘Property’ to another, hence my right to ‘Alienat[e]’ myself from the property, turns on my first having ‘in [my]Self the Power of Alienation’, hence the power of in fact owning the property in the first place (Grotius: 566; emphasis in original).
16 One imagines this spoken by Humpty Dumpty in Lewis Carroll’s Through the Looking Glass [1871] (Lopez 2004).
17 Appealing to the subsequent reading of the will, after the testator’s death, Barbeyrac notes that this ‘imperfect’ right does not mean ‘that before that [death of testator] ‘tis
a vain Act, and of no Force’, since ‘no other Persons can claim the Goods of the Decessed, until he that is appointed the Heir refuses to inherit’ (Pufendorf 1749: 420 n. 2). Though imperfect until the testator’s death, ‘so long as the Testator has not revoked his Will’, hence ‘change[d] the Legacies he has made of his Goods’, perhaps ‘because he flatters himself that he shall have time enough when he comes to die’, this ‘Right of the Heir continues’ (420 n. 1). But since Barbevyrac is referring to that time after the testator’s death, the point is consistent with Pufendorf’s.

18 My language of ‘binding’ is gratefully indebted to Freda Beckman and Charlie Blake’s ‘Editorial Introduction: Shadows of Cruelty: Sadism, Masochism and the Philosophical Muse – part two’ (Beckman and Blake 2010).

19 Smith here distances himself from Grotius. For Grotius, there is a proper ‘Right of the Deceased’, which ‘is not extinct’ upon the testator’s death, but ‘is continued in the Person of the Heir to whom it devolves’ (Grotius 2005: 684 n. 1). Grotius is referring to linal succession, which he understands as that ‘undoubted Maxim’ ‘[t]hat the Person of the Heir is to be looked upon to be the same as the Person of the Deceased, in regard to the Continuance of Property, either publick or private’ (684). Grotius’ appeal to ‘Continuance’, as in his insistence that the testator’s right to property ‘is not extinct’ but merely ‘continued’, puts him at odds with Smith on succession. In Smith, succession, whether linal or testamentary, is not of ‘continuance’ but of ‘transference’ (LJ(A) ii.1), and this in order to recognize the natural rights possessed by the heir, consent specifically, and autonomy more broadly. It is consent Smith refers to, for instance, when he describes the heir as ‘another’ in relation to the testator, as in ‘another who has the same (? power) of doing with them as (he) pleased as the deceased had’ (LJ(A) i.154). Once we understand the heir as no different than the testator ‘in regard to the Continuance of Property’, as Grotius insists we do, Smith’s position, and succession itself, become impossible. In such a view, Grotius’, it makes no sense to speak of the heir as possessing a right ‘had’ by the deceased, since according to Grotius such a right ‘is not extinct’ at all but ‘continued in the Person of the Heir to whom it devolves’. However, for Smith, it is necessary to recognize an ‘extinct[ion]’ to the linal’s right to property, hence to recognize succession as a matter of transfer rather than continuance, and this because unlimited continuance, as allowed by Grotius’ position, infringes upon the right of successive heirs to choose, giving flight, for instance, to our problem of entails. While we may decide to maintain property in accordance with the wishes of the deceased, so may we not, at least not to the full extent of the dead’s wishes.

20 See, for instance, Ruth A. Miller’s reading of our tendency to ascribe to the deceased the ‘status [of a] dignified, rights-bearing political subject, at the moment that it is disinterred, moved, exposed, burned, or revealed to have decayed’ (Miller 2009: 110).

21 Smith here differs from Pufendorf. While Pufendorf also insists ‘that the Right of the Heir to the respective Goods shall not commence ‘till the Testator’s Decease’, the former of which he lauds as an improvement upon biblical succession wherein ‘the Right immediately pass’d from the Living Parents to the living Children; and the latter were admitted presently, ‘twere, into Possession of the Goods’, Pufendorf nevertheless chastises appeals to limit succession to a time when ‘Persons…seem to have…more than one Foot in the Grave’; this, Pufendorf explains, leaves no room ‘[f]or [that] sudden unforeseen Fate [which] frequently either hurries Men out of the world, or however removes them far from their Friends, so as they want Time or Opportunity to express by Mouth their last Resolution’ (Pufendorf 1749: 422). Although Barbevyrac insists that Pufendorf errs in his account of biblical succession, the idea ‘that the transferring of Property was made among the Living, and, as it were, from hand to hand’ (Pufendorf 2005: 421 n. 1), the same position Smith would develop, I take from Pufendorf his concern for how the dying person delivers those last words, as in what Pufendorf calls the difference between ‘dispos[al] of [one’s] Goods…while…in Ease and Quiet, and Master of a sound and clear Reason’, and disposal of the same ‘when…trembling at [the] last Hour, or when [the] Mind [is] shock’d and weakened by the force of one’s Distemper’ (422). It is the latter position Smith appeals to, as in what for Smith we ourselves appeal to in extending succession beyond the dead. This rests on Smith’s empiricist-based grounding of sympathy, found, for instance, in Smith’s restricting piety, hence succession, ‘to those who are alive at the person’s death’ (in other words, Smith’s assumption that in one’s last hour one would (have time to) gather together one’s closest friends) (LJ(B), para.169).

22 I am gratefully indebted to Henry Sussman, for this language of ‘gathering’ (Sussman 2005: 259). Smith here also anticipates his own last moments (Smith 1980: 327–328).

23 My thinking here is gratefully indebted to Patrick R. Frierson’s insight that ‘Sympathy with the dead is always sympathy of the living’ (Frierson 2006: 454; emphasis in original).

24 My quoting of ‘we…prefer the person made heir’ are the verso notes in LJ(A). See Introduction, 37.


27 Compare with the Abolition of Feudal Tenure Act.

28 For an excellent discussion of entails and primogeniture in the Commonwealth state of Virginia, see Baird (n.d.).

29 This, indeed, was not always the case. Part of Smith’s founding testamentary succession on shared time and affection is the rather unfortunate implication (which I do not pursue here) that ‘this piety to the dead is a pitch of humanity, a refinement on it, which we are not to expect from a people who have not made considerable advances in civilized manners. Accordingly we find that it is pretty late ere it is introduced in most countries’ (LJ(A) i.151–152). In this respect, it is interesting to compare the dead to the eighteenth-century orphan, the latter of whom Cheryl L. Nixon reads as that figure who ‘critiques society’, but also ‘reconstruct[s] it, often representing the moral order that must be brought to society, the family, the self…[a] figure for[cing] the law to articulate its definition of the individual, creating a narrative space [through] which [we] can then interrogate that definition’ (Nixon 2011: 30, 31).

30 For an excellent account of fideicommisses and trusts in Roman law, see Johnston (1988).

31 Compare with Locke’s insistence that one ‘cannot by any compact whatsoever bind his children or posterity’. It is the idea, as A. John Simmons observes, ‘that rights can only be alienated by those who possess them; the consent that transfers rights must be personal consent. Our ancestors or parents cannot bind us by their promises and thus deprive us of our rights’ (Locke quoted in Simmons 1993: 153; emphasis in original).

32 My reading of this logic of finitude in Smith is gratefully indebted to Martin Hägglund’s development of the term in his Radical Atheism: Derrida and the Time of Life (2008).

33 For discussion on the dangers entails pose to humanity, see Walker (1866).

34 Although beyond the scope of this essay, Smith also raises commercial objections to entails and primogeniture; these objections appear prominently in Wealth of Nations, but are ‘hint[ed] at’ in Smith’s earlier 1762–63 lectures on jurisprudence: ‘This right is not only absurd in the highest degree but is also extremely prejudicial to the
community, as it excludes lands entirely from commerce. The interest of the state requires that lands should be as much in commerce as any other goods. Thus the power of making entails entirely excludes' (LJ(A) 1.166). Although Smith brackets an appeal to commercial circulation as independent from a sympathetic one, I have tried to cover both bases with this language of ‘autonomy’, my sense that when Smith declares entails ‘absurd’ for commercial reasons, he is in fact responding out of the same sympathetic ones: imagining the loss of commerce, definitely, but an imagining which is a loss since it is individuals’ loss of autonomy and freedom qua individuals, as individuals with the freedom to (or not to) engage in commerce. While the present essay additionally does not permit space for treatment of Smith’s account of justice in Theory of Moral Sentiments, it is interesting to consider the extent to which Smith does appeal to that philosophy of justice in grounding – and limiting – the reach of entails, Smith’s defining justice in Theory of Moral Sentiments as our ‘abstain[ing] from hurting [our] neighbors’ (TMS II ii.1.10), what Fonna Forman Barzilai describes as a ‘prohibition against inflicting cruelty’ (Barzilai 2010: 24).

This is again in keeping with Smith’s empiricism, his understanding, as Fonna Forman Barzilai explains, that ‘our moral horizon fades out at the edges of physical immediacy, affective “connexion” and historical familiarity’ (Barzilai 2010: 194).

Grotius’ appeal to ‘sufficiency’ is his returning us to his criteria of a valid contract, of which he additionally includes what he calls some sufficient ‘Signs of a deliberate Mind’ (Grotius 2005: 708). It is what he refers to, for instance, when he marks as ‘void’ ‘the Promises of Madmen, Ideots, and Infants’, this idea that a ‘Will[ed]’ ‘Consent’ transfers consent, and so is ‘obliging’, but only if there are ‘sufficient’ ‘Signs of a deliberate Mind’, as in signs that ‘the Promisor should have the Use of his Reason’ (717, 708, 709). Absenting signs of ‘Deliberation’, the deliberation, for example, by which one offers to another their time and affection, the promisor’s predicament in Grotius becomes nearly the testator’s in Smith, as in an offered consent which ‘has no Power of obliging at all’ (708).

A strict reading of Smith’s criterion of fellow-feeling could find us in the awkward position where ‘want of that Consent’ finds us ‘depriv[ed]... of that Right which We hath by Nature to dispose of [our] Goods’ (Pufendorf 1749: 420 n. 2). Smith would likely resolve this problem, roughly translated into what Pufendorf calls a ‘defective will’ (424), by appeal to inalien succession; in this scenario, to borrow Lawrence M. Friedman’s language, we would, barring a last-minute (literally) sharing of time and affection, die as ‘in intestate’ as regards disposal of our ‘estate’ (Friedman 2009: 76); such would go to a lineal heir or, if impossible, ‘fall to the crown’ (LJ(A) ii.164).

Compare, for instance, with Jacques Derrida’s: ‘Afraid of dying, yes, but that is nothing next to the other terror, I know no worse: to survive my love, to survive you, those whom I love and who know it, to be the last to preserve what I wanted to pass on to you, my love. Imagine the old man who remains with his will, which has just come back to him, in his hands... the old man who remains the last to read himself, late at night’ (199). See Derrida (1987). I am quoting from Derrida’s The Post Card: From Socrates to Freud and Beyond, the former of which, in part, I originally read in Martin Hägglund’s Dying for Time: Proust, Woolf, Nabokov (Hägglund: 2012: 167). This was, of course, notwithstanding Smith’s wish that his remaining papers be ‘committed to the flames’ (Smith 1980: 327), Smith’s predicament with Hume, Smith outlining his executor, literally, and finding himself, though he would later refuse, as mentioned above, Hume’s (Corr. Letter 137 from Smith, 16 April 1773).

Bibliography


Chicago, IL: University of Chicago Press.


Adam Smith and the social contract

John Thrasher

Adam Smith, with his friend David Hume, is one of the great critics of the social contract. In traditional histories of political and ethical philosophy, Hume and Smith are the beginning of a move away from contract theory and the early development of what would become the rival tradition of utilitarianism. Most political philosophers continue to hold this view. Despite the vintage of this historical narrative, I argue that it has led to a basic misunderstanding in Adam Smith’s account of justice. By using the techniques of contemporary contract theory, we can plausibly and profitably interpret Smith as a special kind of contractarian. In so doing, we can helpfully distinguish the notion of impartiality found in Smith from the impartiality of later utilitarians like Henry Sidgwick and contemporary theorists like Amartya Sen and Brian Barry. Indeed, Brian Barry’s distinction between justice as impartiality and justice as mutual advantage is central to the claim being made here. Ultimately, I argue that Smith is best understood as a mutual advantage theorist.

The argument for this conclusion proceeds in five parts. Section 1 distinguishes between several forms of contractarianism and argues that the traditional view of Smith as an opponent of the social contract only applies to original contractarianism and what, following F. A. Hayek’s usage, I call constructivist account of contractarianism. In sections 2 and 3, I present the key elements of Smith’s account of justice. What becomes clear is that justice neither arises from, nor is particularly sensitive to considerations of utility or impartiality. With the idea of the contract in place and an account of Smith’s understanding of justice, section 4 develops a more precise notion of Smith’s standard of mutual advantage or agreement. In section 5, I present a full account of why Smith should be considered a contractarian and what the substance of his version of contractarianism would look like. Ultimately, I argue that understanding Smith as a contractarian is more faithful to his social philosophy as a whole. Additionally, Smith’s unique version of contractarianism is superior, in many ways, to other forms of contract theory and, hence, can serve as a model for contemporary contract theorists.

1 Two kinds of contract

In ‘Of the Original Contract’, Hume argues that no government was founded contractually (Hume, 1784: 487). Furthermore, a contractual basis for government