

# ADAM SMITH ON GOVERNANCE AND REGULATION. AN ACCOUNT OF HIS LECTURES ON JURISPRUDENCE

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## Abstract

The present study analyzes a little explored work of Adam Smith: his Lectures on Jurisprudence, understanding it as a "bridge" between his Moral Philosophy and his Political Economy. We show that Smith states in Theory of Moral Sentiments some tensions facing the sympathy once the bonds of affection between members of the same society began to reveal weak. This lead Smith into the study of Jurisprudence, the study of a society of strangers that need a common identification under a State that imposes rules of justice unveiled by science. In his Lectures on Jurisprudence, Smith finds that the division of labor was the result and the ultimate expression of opulence and freedom of humanity. These conduct him to answer why does the division of labor contribute to opulence and why does the division of labor brings about man's freedom and these two questions ended in the creation of The Wealth of Nations.

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## 1. INTRODUCTION

While Adam Smith is almost unanimously recognized as the founder of Political Economy, many authors have endeavored to show that Political Economy was not an isolated discipline for him. According to Griswold (1999, 32), *smithian* Political Economy was subordinate to Jurisprudence, which meant that the study of the nature and causes of the wealth of nations was a subset of a larger science that study government, law and natural justice. The Wealth of Nations should then be understood in terms of a larger project and ethical concept. For Klaver (2003, 6) and Wennerlind (2007, 46), Political Economy was for Smith part of the "science of Jurisprudence," and this meant the conception of an economic theory embedded in issues of morality and virtue, both contemplated by the author within the realm of the rational and scientific. Skinner (2012, 170) warned that Political Economy for Smith should be understood in the old sense of the term, as a branch of science of the ruler or the legislature, because for the Scottish author it was the duty of the philosophers "the development of active public attitudes legislator"(taken from Winch (1983, 503)). Winch (1992) and Haakonssen (1989) stated that the strategy of persuasion that lay under The Wealth of Nations provided the basis for the purpose of conducting *smithian* science to deal with the behavior of legislators. That purpose could not be achieved unilaterally adhering to economic reasoning in the conventional sense of the term.

Sakamoto y Tanaka (2005, 134) placed Political Economy as a way for the realization of the scientific

purpose of cultivating the wisdom of the legislators on the stage of eighteenth-century illustration (of that purpose is born, indeed, the word Jurisprudence: Latin word *jurisprudential*; *Juris*: law and *prudentia*: wisdom, foresight). According to the author, both Smith and Hume, Home and Kames used their scientific activity as a mean of building a free and civilized society that would increase the wealth of nations from trade expansion and the formation of free independent subjects (one of the results of that purpose were objections to the mercantilist doctrines, which were the defense of one of the premodern remnants of the colonial era concerning the period known as commercial capitalism). That wise character of *smithian* Political Economy, derived from the wisdom conceived as thorough knowledge embodied in a prudent and sensible behavior was progressively being neglected by economists and historians of economic thought since the late nineteenth century. Sakamoto y Tanaka (2005, 1) tested an explanation to understand this progressive neglect. According to the authors, due to the high degree of specialization and overall demand for analytical accuracy, it became an increasingly difficult task for historians of economic thought professionals, especially in the West, to explore the infancy of this science. While many studies have emerged from the 1990s on James Steuart, David Hume and Adam Smith, they believe that few of them have been interested in the birth and progress of Political Economy, especially during the Scottish Enlightenment. The alleged autonomy of "economy" has prevented these authors forming in more general ethical or political aspects of great relevance for illustration present in that

country. Roncaglia (2006, 118), meanwhile, considers a mistake to ignore the other writings of Smith and concentrate solely on *The Wealth of Nations*, but that, according to his interpretation, is what generations of historians of economic thought have done. The truth is that, even if he had angered Smith knowing that *The Wealth of Nations* is understood as a separate discipline, it is indeed what has happened in most of the writings of historians of economic thought about his work (Dow et al (1997, 3) and Alvey (1999, 69)).

In this context, the present work aims to analyze a little explored text of Adam Smith: his *Lectures on Jurisprudence*. Our intention is to show how this text can be interpreted as a "bridge" between his *Moral Philosophy* (exposed in *The Theory of Moral Sentiments*) and his *Political Economy* (exposed in *The Wealth of Nations*).

Towards achieving this goal, we will structure the work into three parts. In the first part we will present what conclusions developed in *Theory of Moral Sentiments* lead Smith to pursue a theory of *Jurisprudence*. In the second part, we will summarize the main aspects of his *Lectures on Jurisprudence* and we will show how these lessons lead Smith to write *The Wealth of Nations*. In the third and final part, we will summarize the main conclusions.

## 2. THE THEORY OF MORAL SENTIMENTS. THE BIRTH OF SMITH'S JURISPRUDENCE PROJECT

### 2.1 Problems of living in harmony in a society of strangers

In *The Theory of Moral Sentiments* Smith asserts that the lack of interest of an individual to sympathize with another is a significant problem for coexistence between them. This is made explicit in the early chapters:

"if you have either no fellow-feeling for the misfortunes I have met with, or none that bears any proportion to the grief which distracts me; or if you have either no indignation at the injuries I have suffered, or none that bears any proportion to the resentment which transports me, we can no longer converse upon these subjects. We become intolerable to one another. I can neither support your company, nor you mine. You are confounded at my violence and passion, and I am enraged at your cold insensibility and want of feeling" (Smith, 2002, 26).

Smith warns that sympathy appears more vividly in social circles in which members share certain relationship and affection. It refers for example to small societies, due to the existing bonds of affection. Sympathy necessarily operates. Affection, Smith notes, "...is in reality nothing but habitual sympathy" (Smith, 2002, 258). The author, in order to characterize these small societies, refers to pastoral societies of the past and families in modern societies. In both sympathy manifests similarly

"In pastoral societies all the different branches of the same family commonly chuse to live in the neighbourhood of one another. Their association is frequently necessary for their common defence. They are all, from the highest to the lowest, of more

or less importance to one another" (Smith, 2002, 261).

Relatives of an ordinary man in modern society, meanwhile, are naturally and usually the persons upon whose happiness or misery his conduct must have the greatest influence. "He is more habituated to sympathize with them. He knows better how every thing is likely to affect them, and his sympathy with them is more precise and determinate, than it can be with the greater part of other people. It approaches nearer, in short, to what he feels for himself." (Smith, 2002, 257).

But what about sympathy as the members of a same society become strangers? Smith understands and states in his work some tensions facing the sympathy once the bonds of affection between members of the same society began to reveal weak. There, every man is aware that other man probably will not sympathize with his actions, because he himself do not sympathize with him "We expect less sympathy from a common acquaintance than from a friend: we cannot open to the former all those little circumstances which we can unfold to the latter... We expect still less sympathy from an assembly of strangers" (Smith, 2002, 28).

In an expanding society men identify with the rules of conduct established in the particular field in which they and their near unfold, rules may be different from those of other members of society to whom do not share regular treatment. Thus, in a society of strangers man acts without warning "the deformities of his own conduct" regarding the one he should adopt in order to live in society. This is for Smith "the source of half the disorders of human life" (Smith, 2002, 184). Here emerge men who act guided by the judgments of the small group of his relatives and friends and away from the judgment of the "impartial spectator", the judgment of the whole society. So partial are the views of mankind with regard to the propriety of their own conduct, both at the time of action and after it; and so difficult is it for them to view it in the light in which any indifferent spectator would consider it." (Smith, 2002, 184).

As society grow, the common identification is no longer the norm, because due to the absence of a bond of affection, the desire to be interested in the fate of the other is lost, because the ways of acting and feeling begin to diverge among men of the same society.

This is the problem that will lead Smith into the study of *Jurisprudence*, the study of a society of strangers that need a common identification under a State that imposes rules of justice unveiled by science, rules that must necessarily be accepted by all its members. If those rules are not imposed, society could be lead to its absolute ruin.

### 2.2 "Agreed evaluation" and common identification in a world of strangers

After the analysis carried out in *The Theory of Moral Sentiments*, Smith warned the inescapable need of the state, and the imposition of the rules of justice (unveiled by *Jurisprudence*) to prevent its dissolution. These new "sub-societies" (nation states) should maintain cordial dealings with his fellow citizens, but above all respect for the laws of the State, being them favorable or not.

Smith believed that men could live harmoniously in society even where bonds of affection do not exist between its members. To do this, it was necessary to forge a common identification respected by every man. It was necessary to reach a consensus, and respect, so men could act and moderate their passions in order to respect it. "All the members of human society stand in need of each others assistance, and are likewise exposed to mutual injuries. Where the necessary assistance is reciprocally afforded from love, from gratitude, from friendship, and esteem, the society flourishes and is happy. All the different members of it are bound together by the agreeable bands of love and affection, and are, as it were, drawn to one common centre of mutual good offices.

But though the necessary assistance should not be afforded from such generous and disinterested motives, though among the different members of the society there should be no mutual love and affection, the society, though less happy and agreeable, will not necessarily be dissolved.

Society may subsist among different men, as among different merchants, from a sense of its utility, without any mutual love or affection; and though no man in it should owe any obligation, or be bound in gratitude to any other, it may still be upheld by a mercenary exchange of good offices according to an agreed valuation." (Smith, 2002, 100).

But how can a consensus be forged? Moral philosophy was to expand its object to handle this task. To do this, on the one hand, it was necessary to develop a theory about virtue, elucidate those rules of conduct that should be promoted and inculcated to enable better coexistence of men in society.

But as the primary and inescapable part of the study of the fundamentals of the feasibility of men in society, Smith would focus on thinking those essential rules that must necessarily respect all members of society to prevent its dissolution: the rules of justice

### 2.3 Looking for individuals who identify with others

If, as already mentioned, the expansion of society brings about the gradual breakdown of the ties of closeness or affection between men, and the loss of a common identification of men. How would be possible to instill a common moral sense? Smith believes that these causes become increasingly urgent an educated individual who respects the general rules of conduct. "The coarse clay of which the bulk of mankind are formed, cannot be wrought up to such perfection. There is scarce any man, however, who by discipline, education, and example, may not be so impressed with a regard to general rules, as to act upon almost every occasion with tolerable decency, and through the whole of his life to avoid any considerable degree of blame" (Smith, 2002, 189). Education will be the prelude of the formation of virtuous individuals that respect, in most cases, the judgments of society and state laws, even if they feel particular affection for the people who judge or not.

Smith is dedicated to collect all his studies under one of the seven parts of the last edition of his Theory of Moral Sentiments. There he rescues behaviors of men who would always be approved by the company of strangers, he highlights the cautious

individuals who sympathize with strangers and respect the State, i.e. individuals who follow the virtues of prudence, justice and charity. And above all, he gushes towards individuals who practice the virtue of continence, those who control their passions in order to obey the rules of conduct that allow men to live in harmony in society.

Smith considers virtue has a role of vital importance for a better living in this new society of strangers in which every man is interested more by himself and his close. As Griswold points out, "The skillful and subtle rhetoric of The Theory of Moral Sentiments is geared in part toward reinforcing the ability of the imagination to carry us into the situation of others and makes sympathy seem a natural feature of human life. This is a protreptically rhetorical book and an effort in moral education..." (Griswold, 1998, 104.). "The pronoun is "protreptic" in that it is intended to persuade us to view things in a certain light, to refine the ways in which we judge and feel, and perhaps to encourage us to act in a certain manner"... "The "theory" of moral sentiments must rest on an ethical practice, and, indeed, as protreptic, it is a form of ethical practice" (Griswold, 1998, 51).

The study of virtuous behavior and how educate virtuous men can be a remedy for society of strangers to live in harmony. But is it enough? Smith knows that it isn't. Although he pregones that moral education makes better men, he understood that this condition alone can not guarantee the harmonious coexistence of society. By contrast, Smith is well aware of the tendencies towards dissolution of the common identification and therefore of sympathy as a mechanism of social articulation in a society of strangers and the need to bring justice to ensure reproduction of the society.

Still, the effort of moral education will not be for Smith mere whim. On the contrary, it will be his first approach to the idea of a society where individuals not only respect the laws established although these favor them or not, but respect their fellow citizens and identify with the state<sup>13</sup>.

Justice: the inescapable virtue.

Justice does not appear in The Theory of Moral Sentiments just as a common virtue. Justice appears as a necessary virtue, unavoidable, inescapable, a sine qua non condition for society to not fall apart. A condition to be imposed in any society when one of its members cause evil.

The judgements of society should guide individuals in judgment and action. But if man disobeys the judgments of society, no one could punish him for it. This is because the individual is a free moral subject so the decision to act is ultimately decision of himself. You can try to change his behavior, but no one can achieve it coercively. That's why Smith, getting rid of the proposals of his

<sup>13</sup> According to Griswold, the virtue theory is presented as a key aspect to start his theory of the state and in particular to think of a modern state where men could live in harmony. "The virtue theory is the moral foundation of Smith's political economy, political theory, and "natural jurisprudence" (Griswold, 1998, 181). "upon the tolerable observance of these duties, depends the very existence of human society, which would crumble into nothing if mankind were not generally impressed with a reverence for those important rules of conduct..." (Smith, 2002, 190).

teacher Francis Hutcheson and Christian precepts, says that lack of charity, "tends to do not real positive evil" (Smith, 2002, 91). Good and bad are not categories that are imposed ab ovo, by divine or authoritarian decrees; they depend on circumstances that this society of free individuals face<sup>14</sup>.

But does Smith implies that abstract free will prevails? Definitely not, because a society can not survive without justice. "There is, however, another virtue, of which the observance is not left to the freedom of our own wills, which may be extorted by force, and of which the violation exposes to resentment, and consequently to punishment. This virtue is justice: the violation of justice is injury: it does real and positive hurt to some particular persons, from motives which are naturally disapproved of." (Smith, 2002, 93).

Injustice threatens the preservation of society. "Society may subsist, though not in the most comfortable state, without beneficence; but the prevalence of injustice must utterly destroy it..." Justice, on the contrary, is the main pillar that upholds the whole edifice. If it is removed, the great, the immense fabric of human society, that fabric which to raise and support seems in this world, if I may say so, to have been the peculiar and darling care of Nature, must in a moment crumble into atoms" (Smith, 2002,101).

Injustice, is not necessarily recognized naturally by man. So the rules of justice necessary for coexistence of men in society must result from a study of the conditions in which society operates. And to be imposed, they can not constitute itself as vague and indeterminate rules like the rules of morality but must be, for Smith, as the rules of grammar, "precise, accurate, and indispensable"

"The rules of justice are accurate in the degree, and admit of no exceptions or modifications, but such as may be ascertained as accurately as the rules themselves, and which generally, indeed, flow from the very same principles with them. If I owe a man ten pounds, justice requires that I should precisely pay him ten pounds, either at the time agreed upon, or when he demands it. What I ought to perform, how much I ought to perform, when and where I ought to perform it, the whole nature and circumstances of the action prescribed, are all of them precisely fix and determined.. Though it may be awkward and pedantic, therefore, to affect too strict an adherence to the common rules of prudence or generosity, there is no pedantry in sticking fast by the rules of justice. On the contrary,

the most sacred regard is due to them; and the actions which this virtue requires are never so properly performed, as when the chief motive for performing them is a reverential and religious regard to those general rules which require them" (Smith, 2004, 203-204)

Where do these rules born? How can it be defined what is right and wrong in this society of stranger with no common identification? Smith believes this is the task of a particular science. "Proper resentment for injustice attempted, or whos committed, is the only motive which, in the eyes of the impartial spectator, can justify our hurting or disturbing in any respect the happiness of our neighbor. To do so from any other motive is itself a violation of the laws of justice, which ought to be employed force to restrain or to either punish. The wisdom of every state or commonwealth endeavors, as well as it can, to employ the force of the society to restrain those who are subject to its authority, from hurting or disturbing the happiness of one another.

"The rules which it establishes for this purpose, constitute the civil and criminal law of each particular state or country. The principles upon which those rules either are, or ought to be founded, are the subject of a particular science, of all sciences by far the most important, but hitherto, perhaps, the least cultivated, that of natural jurisprudence" (Smith, 2002,255-256).

The Natural Jurisprudence must formulate "a theory of the overall principles which ought to run through and be the foundation of the laws of all nations" (Smith, 2002, 404) through a recognition of "general the principles of law and government, and of the different revolutions they have undergone in the different ages and periods of society " (Smith, 2002, 404). Smith is intended to find, in the study of justice throughout history, principles that can guide justice in the present. If humanity has remained throughout history thanks to justice, the same should happen in the present. So to find what principles are right or wrong beyond any historical context and figuring out how justice should be molded in this new historical stage was necessary to study the appearance of justice and its necessity throughout history.

This science should allow the civil magistrate know the rules of justice, the principles on which these are based, if he want to fulfill tax duties. The only one who can give the answers to the sovereign to influence the destiny of the nation is the Natural Jurisprudence; it is, after all, science. With those principles known, the judge may avoid any act of injustice, prevent men respect them, and do not go instead to defend themselves whenever they feel aggrieved, because it could turn civil society into a "scene of bloodshed and disorder" <sup>15</sup>.

In fact, Smith argues that civil magistrate had begun to impose justice in the times in which he lived. But he based on systems of positive law, which are imperfect, sometimes moved by "the interest of individual orders of men who tyrannize the

<sup>14</sup> "This is a theory about the processes by which sentiments can become moral" (Griswold, 1998, 46) "Smith's account of morality in terms of the emotions is subjectivist, in the sense that the meaning of moral terms is determined by what pleases or displeases the impartial spectator and not by some altogether external standard or state of affairs. It is clear that for Smith, not only do we know no answers to questions about what "really" is good or bad independent of the considered responses of "our" emotions, but also that moral qualities are "rendered" such by the reflective of moral sentiments. To overstate the point for the sake of clarity, morality is not a mirror of the world but a result of our responses to the world"...ultimately, morality must be understood or arising "from us", not as established by nature or the divine"(Griswold, 1998, 161).

<sup>15</sup> "Smith said...that a statesman should guide pragmatism with a "systematical idea of perfection of policy and law"; meaning that political pragmatism was to take its point of reference from scientific theories of economics and jurisprudence" (Fitzgibbons, 2003, 40).

government", or sometimes mediated by "rudeness and barbarism" of certain nations (Smith, 2002, 403). This is where Smith warns a "scientific bump", which involves the need for science to answer this unresolved problem; to think "an inquiry into what were the rules of justice naturally independent of all positive institution"; (Smith, 2002, 403). A "bump" which in turn was an urgent need for such a historical context of incipient industrial capitalism-

(Equal) Citizens respectful of the rules of justice.

The possibility a peaceful society would fall within the scope of a national state "The state or sovereignty in which we have been born and educated, and under the protection of which we continue to live, is, in ordinary cases, the greatest society upon whose happiness or misery, our good or bad conduct can have much influence" (Smith, 2002, 268).. Own citizens, educated to respect the rules of virtuous conduct of society, should begin to respect each other, and to respect, necessarily and above all things, laws issued by the State<sup>16</sup>. "The love of our country seems, in ordinary cases, to involve in it two different principles; first, a certain respect and reverence for that constitution or form of government which is actually established; and secondly, an earnest desire to render the condition of our fellow citizens as safe, respectable, and happy as we can. He is not a citizen who is not disposed to respect the laws and to obey the civil magistrate; and he is certainly not a good citizen who does not wish to promote, by every means in his power, the welfare of the whole society of his fellow-citizens." (Smith, 2002, 272).

Should it be instituted a relationship of affection between fellow citizens? Is it that possible? Is it that necessary to ensure the viability of men in a society of strangers? Not necessarily. If national law is respected by the citizens themselves, if they respect the punishment of an unjust action even though they have not been a victim, if they consider the others as a citizen with the same rights as himself the problem is solved. "The concern which we take in the fortune and happiness of individuals does not, in common cases, arise from that which we take in the fortune and happiness of society". In neither case does our regard for the individuals arise from our regard for the multitude: but in both cases

our regard for the multitude is compounded and made up of the particular regards which we feel for the different individuals of which it is composed."..." when a single man is injured, or destroyed, we demand the punishment of the wrong that has been done to him, not so much from a concern for the general interest of society, as from a concern for that very individual who has been injured... It is to be observed, however, that this concern does not necessarily include in certain degree of those exquisite sentiments which are commonly called love, esteem, and affection, and by which we distinguish our particular friends and acquaintance. The concern which is requisite for this, is no more than the general fellow-feeling which we have with every man merely because he is our fellow-creature."(Smith, 2002, 105-106).

The rule of justice would gradually resolved the problems that brought with it the existence of a society of strangers and forge that consensus assessment for persons without any love or mutual affection, which would exchange mutual good offices and cohabit in harmony.

But this solution does not come from nowhere. There must be a consensus about who is in charge of evaluation of "mercenary exchange of good offices", which will be the civil magistrate, the one who leads the state. The civil magistrate must strive for an environment of respect for the rules of virtuous conduct among citizens and compliance with laws "The civil magistrate is entrusted with the power not only of preserving the public peace by restraining injustice, but of promoting the prosperity of the commonwealth, by establishing good discipline, and by discouraging every sort of vice and impropriety; he may prescribe rules, therefore, which not only prohibit mutual injuries among fellow-citizens, but command mutual good offices to a certain degree" (Smith, 2002, 95). When society take such orders, such rules of justice not only will be fair but also moral or morally accepted. As Fitzgibbons noted in the introduction to his book, "... Smith set out to be a legislator in the ancient sense by the moral and political Establishing constitution of a great state" (Fitzgibbons, 2003).

The sovereign must recognize the judgments and the most appropriate action for the social whole. And from this recognition, interceding when is necessary to "direct the conduct of his subjects" (Smith, 2002, 192)<sup>17</sup>. "When the sovereign commands what is merely indifferent, and what, antecedent to his orders, might have been omitted without any blame, it becomes not only blamable but punishable to disobey him. When he commands, therefore,

<sup>16</sup> "When a young officer exposes his life to acquire some inconsiderable addition to the dominions of his sovereign, it is not because the acquisition of the new territory is, to himself, an object more desirable than the preservation of his own life. To him his own life is of infinitely more value than the conquest of a whole kingdom for the state which he serves. But when he compares those two objects with one another, he does not view them in the light in which they naturally appear to himself, but in that in which they appear to the nation he fights for."..." When the first Brutus led forth his own sons to a capital punishment, because they had conspired against the rising liberty of Rome, he sacrificed what, if he had consulted his own breast only, would appear to be the stronger to the weaker affection. Brutus ought naturally to have felt much more for the death of his own sons, than for all that probably Rome could have suffered from the want of so great an example. But he viewed them, not with the eyes of a father, but with those of a Roman citizen" (Smith, 2002, 224-225).

<sup>17</sup> According to Smith, with rules of justice happen something similar to the learning process of moral rules by individuals when entering society. Men are born in a given society already governed by certain laws and learn to function in this. For this reason Smith in his Lectures on Jurisprudence criticizes Locke, arguing that it is false that men sign a contract to enter society "...Such is the case with every subject of the state. They came into the world without having the place of their birth of their own choosing, so that we may say they came asleep into the country; nor is it in the power of the greater part to leave the country without the greatest inconveniencies. So that there is here no tacit consent of the subjects. They have no idea of it, so that it can not be the foundation of their obedience" (Smith, 1978, 317).

what, antecedent to any such order, could not have been omitted without the greatest blame, it surely becomes much more punishable to be wanting in obedience. Of all the duties of a law-giver, however, this, perhaps, is that which it requires the greatest delicacy and reserve to execute with propriety and judgment. To neglect it altogether exposes the commonwealth to many gross disorders and shocking enormities, and to push it too far is destructive of all liberty, security, and justice" (Smith, 2002, 95). But how and when to intercede? Jurisprudence must be able to answer this question. That will be the task in which Smith will embark after *The Theory of Moral Sentiments*.

### 3. JUSTICE. FIRST GOAL OF JURISPRUDENCE

Under what principles then every sovereign should "guide the conduct of his subjects"? What were the new principles this society have in relation to other historical instances? What exact rules of justice would be imposed as a consequence of these principles in such a society? These are, broadly speaking, the objectives of Smith in his lessons Jurisprudence.

Smith, based on the study of the works of the most famous jurists until then, began his lessons distinguishing the four main objectives of Jurisprudence: justice, police, revenue and Arms. The first (Justice) is the set of laws that ensure internal peace, those that prevent damage among members within it. As it prevents damages between members of the same society, it is the basis on which any civil government should start. Once the government gets this goal, it is possible to devote to the second objective (Police): to promote the wealth of the nation through the study of those regulations regarding trade, agriculture and manufacturing. Then the state should get down to the third objective, get the funds necessary for maintenance and to implement the necessary policies (Revenue). Those revenues should also serve for the fourth objective, protect against foreign nations (Weapons).

Smith starts to inquire about the first goal. How is the internal peace of a nation assured? How is it possible to avoid damage among fellow citizens? How is it possible to achieve coexistence among strange men within the state? Smith, to answer these questions, appeals to unravel under what forms can be damaged man and mentions three: as a man, as family member and as a member of the State. As a man, it can be damaged on their person, in their status and reputation. Damage to the person of man included for Smith not only death but threatening freedom. The second considers defamation damages against the individual. The third is violating their material possessions or contracts. These are natural rights for Smith.

The first thing Smith intends to study is the reason for existence of such rights. "The first thing that comes to be considered in treating of rights is | the original or foundation from whence they arise" (Smith, 1978, 13).

While for the author it is obvious and unnecessary to explain that men can not be injured in his person or in his condition, it is not so obvious to think the existence of the right to property: "Now we may observe that the original of the greatest part of what are called natural rights need not be explained...The only case where the origin of

natural rights is not altogether plain, is in that of property. It does not at first appear evident that, e.g. any thing which may suit another as well or perhaps better than it does me, should belong to me exclusively of all others barely because I have got it into my power; as for instance, that an apple, which no doubt may be as agreeable and as usefull to an other as it is to me, should be altogether appropriated to me and all others excluded from it merely because I had pulled it of the tree" (Smith, 1978,13).

Smith search the origin of the right to property in the development of human history, divided for analytical purposes into four stages: the hunters, the shepherds, the agriculture and trade, and analyze with concrete historical examples: Americans and Arabs Indian hunters, the Tartars shepherds, the Germanic peoples farmers, commercial cities of Athens and Rome, among many others. Examples, according to Smith, cover most of the societies known until then and serve not only to study the emergence and transformation of the laws of justice in general and property laws in particular but also the beginning of the various political forms, their promotions, their failures, their income and their armies.

How does Smith explain the development of human history? "...If we should suppose 10 or 12 persons of different sexes settled in an uninhabited island, the first method they would fall upon for their sustenance would be to support themselves by the wild fruits and wild animals which the country afforded..." (Smith, 1978, 14), he asserts to start the explanation. There in his study an idea of human progress motivated by their own subsistence and the increasing ownership of the means. These characteristics of man urged him not to strive to hunt and fish ad infinitum. Men, when multiplied, could no longer continue living based on the mere hunting and gathering. They proceeded to domesticate animals hunted previously. When domestication did not allow the survival of the population (especially by the growth of the population) land cultivation began. The gradual improvement of the cultivation of land, Smith argues, led to a situation in which every person begins to specialize in some of all the "arts" previously performed and finished exchanging irremediably excess of what he produces. From the start of exchange would flow commercial society. This analysis of the advent of trade in the history of man will be taken up and analyzed once analyze *The Wealth of Nations*.

And how the property appears in this analysis? What are the consequences of its emergency? Property appears in the stage of domestication, where only some people began to appropriate animals. "Those animals which are most adapted for the use of man, as oxen, sheep, horses, camels, etc. which are also the most numerous, are no longer common but are the property of certain individuals" (Smith, 1978, 202). The emergence of the property itself involves many transformations in the history of man. "The distinctions of rich and poor then arise. Those who have not any possessions in flocks and herds can find no way of maintaining themselves but by procuring it from the rich. The rich | therefore, as they maintain and support those of the poorer sort out of the large possessions which they have in herds and flocks, require their service

and dependance. And in this manner every wealthy man comes to have a considerable number of the poorer sort depending and attending upon him. And in this period of society the inequality of fortune makes a greater odds in the power and influence of the rich over the poor than in any other” (Smith, 1978, 202).

The property domination was covered progressively by the state and laws, which varied according to the successive historical scenarios<sup>18</sup>. State appeared in history when it became necessary to protect the right to property “When once it has been agreed that a cow or a sheep shall belong to a certain person not only when actually in his possession but where ever it may have strayed, it is absolutely necessary that the hand of government should be continually held up and the community assert their power to preserve the property of the individuals. But here when in the manner above mentioned some have great wealth and others nothing, it is necessary that the arm of authority should be continually stretched forth, and permanent laws or regulations made which may ascertain the property of the rich from the inroads of the poor, who would otherwise continually make incroachments upon it, and settle in what the infringement of this property consists and in what cases they will be liable to punishment. Laws and government may be considered in this | and indeed in every case as a combination of the rich to oppress the poor, and preserve to themselves the inequality of the goods which would otherwise be soon destroyed by the attacks of the poor, who if not hindered by the government would soon reduce the others to an equality with themselves by open violence. The government and laws hinder the poor from ever acquiring the wealth by violence which they would otherwise exert on the rich; they tell them they must either continue poor or acquire wealth in the same manner as they have done. Settled laws therefore, or agreements concerning property, will soon be made after the commencement of the age of shepherds” (Smith, 1978, 208-209). But what happened in the historical present of Smith. Could the Modern State gestate an environment of mutual respect if, as observed throughout history, its function was to maintain this domination? According Smith, the development of history would finally convert the state into an area of harmonious coexistence of men. Because as already shown in those territories suitable for development of agriculture and thus to increase production of a surplus, the exchange of goods gradually eroded all bonds of social domination and all forms of raw and oppressive government. Commodity exchange gave way to the emancipation of man, since his livelihood was not dependent on a particular person, but countless people to which he exchanged their goods on the market. Men were gradually getting the long-awaited freedom; those in power of domination began to lose their power in the political sphere. The State, once aristocratic or absolutist monarchical (depending on the particular

historical case) turn into a republic, as happened on several occasions in Athens and the Roman Empire, or a parliamentary monarchy, as happened in England<sup>19</sup>. That power, with the emergence of free men, began to split. Free men engaged in commerce to pursue their personal wealth, and did not waste their time meddling in political affairs. The state and those working for it take care of that affairs.

With these hints, Smith gradually began to recognize in history what he related in *The Theory of Moral Sentiments* features. The emergence of trade carried with it the freedom of individuals to act and the gradual formation of a society of strangers with increasing prevalence by self-love. Smith could begin to recognize that society to which he was referring in *The Theory of Moral Sentiments* was indeed the commercial society.

Smith asserted that the rise of the republic or advance parliament amended the principle of authority until then and gave way to the principle of utility. “The principle of authority is that which chiefly prevails in a monarchy. Respect and deference to the monarchy, the idea they have that there is a sort of sinfulness or impiety in disobedience, and the duty they owe to him, are what chiefly influence them. No doubt but the expediency of such obedience may also have its effect on some persons.—In a republican government, particularly in a democraticall one, utility is that which chiefly, nay almost entirely, occasions the obedience of the subject. He feels and is taught from his childhood to feel the excellency of the government he lives under; how much more desirable it is to have the affairs of the state under the direction of the whole than that it should be confined to one person; that in the one case it can hardly ever be abused and in the other it can hardly miss of being so. This recommends the government to the people, who are all bred to understand it” (Smith, 1978, 319).

Men began to respect this new form of government. It was the advance of trade what made State not being a pure expression of social domination.

The study of the first of the objectives of the law raised by Smith (justice) was devoted itself primarily to analyze the history of man until the beginning of commercial society. Smith warned state laws varied in different historical circumstances. Secondly, he began to recognize the commercial society in the context of the long history of man.

<sup>18</sup> “The more improved any society is and the greater length the severall means of supporting the inhabitants are carried, the greater will be the number of their laws and regulations necessary to maintain justice, and prevent infringements of the right of property” (Smith, 1978, 16).

<sup>19</sup> “Liberty thus established has been since confirmed by many Acts of Parliament and clauses of Acts. The system of government now supposes a system of liberty as a foundation. Every one would be shocked at any attempt to alter this system, and such a change would be attended with the greatest difficulties. The chief danger is from the Civill List and the standing army (as above). One security for liberty is that all judges hold their officers for life and are intirely independent of the king. Every one therefore is tried by a free and independent judge, who are also accountable for their conduct. Nothing therefore will influence them to act unfairly to the subject, and endanger the loss of a profitable office and their reputation also; nothing the king could bestow would be an equivalent. The judge and jury have no dependance on the crown”. (Smith, 1978, 271)

But does Smith elucidate, from this study, what general principles of justice should follow the State to ensure internal peace in his historical present? Did he notice what particular laws that should be promoted to ensure the viability of men in commercial society?

It would be the study of Police the key to understand the specific features of the period of splendor of the "arts and manufactures" and the nature of justice and State during that period.

### 3.1 The study of the police. What is abundance?

What is the police? It is the set of regulations that the State must decide in order to encourage wealth within the nation. And how is it possible to promote it? The first thing Smith says is that in commercial society, wealth is synonymous of the cheapness of goods "The third thing which is the object of police is the proper means of introducing plenty and abundance into the country, that is, the cheapness of goods of all sorts. For these terms plenty and cheapness are in a manner synonymous, as cheapness is a necessary consequence of plenty" (Smith, 1978, 333). To explain the causes of wealth was necessary to explain the causes of cheapness. The study of abundance, and therefore necessarily lead to Smith to embark on the study of the nature of trade and prices.

But Smith, before undertaking this task, tackles to unravel what is abundance, beyond the specific historical context. The abundance Smith intends to investigate is in relation to demands and natural needs of men. What are these natural needs? Smith believes that nature provides them man and animals of all the necessary things to survive. "Nature produces for every animal every thing that is sufficient to support it without having recourse to the improvement of the original production" (Smith, 2004, 493). But man, unlike the other animals, is not satisfied with what is provided by nature. Because man holds a capacity of progress, a need to improve the condition in which man lives. "Such is the delicacy of man alone, that no object is produced to his liking. He finds that in every thing there is need of improvement" (Smith, 1982, 493). That need made men in the early history to start cooking food, and prepare their own clothing and housing to withstand the cold. But not only that. Man, unlike animals, distinguish colors, shapes, varieties and oddities that give rise to distinctions and preferences and that drive to promote fashion in relation to the primal needs of food, clothing and housing. This led men to develop all kinds of arts and this increasingly explains the increasing division of labor. "The whole industry of human life is employed not in procuring the supply of our three humble necessities, food, cloaths, and lodging, but in procuring the conveniences of it according to the nicety and [and] delicacy of our taste. To improve and multiply the materials which are the principal objects of our necessities, gives occasion to all the variety of the arts" (Smith, 1978, 488).

"The variety of arts" or the division of labor appears to Smith at the same time as the result and the ultimate expression of opulence and the achieved freedom of humanity.

But these statements made by Smith forced him to ask a number of questions: Why does the division of labor contribute to opulence? Why does

the division of labor brings about man's freedom? What lies behind the division of labor?

Smith tried and began to answer these questions in Lessons of Jurisprudence. But the effort of a decade, embodied in his most famous work, is the one who can show more finished form Smith's progress in finding the answers to these questions. It was time to venture in The Wealth of Nations.

## 4. CONCLUSIONS

The present work aimed to analyze a little explored text of Adam Smith: his Lectures on Jurisprudence. Our intention was to show how this text can be interpreted as a "bridge" between his Moral Philosophy (exposed in The Theory of Moral Sentiments) and his Political Economy (exposed in The Wealth of Nations).

Towards achieving this goal, we have structured the work into two main parts. In the first part we have present what conclusions developed in Theory of Moral Sentiments lead Smith to pursue a theory of Jurisprudence. Particularly, we have shown that Smith understands and states in his work some tensions facing the sympathy once the bonds of affection between members of the same society began to reveal weak. There, every man is aware that other man probably will not sympathize with his actions, because he himself do not sympathize with him. Here emerge men who act guided by the judgments of the small group of his relatives and friends and away from the judgment of the "impartial spectator", the judgment of the whole society. This is the problem that will lead Smith into the study of Jurisprudence, the study of a society of strangers that need a common identification under a State that imposes rules of justice unveiled by science, rules that must necessarily be accepted by all its members. If those rules are not imposed, society could be lead to its absolute ruin.

In the second part, we have summarized the main aspects of his Lectures on Jurisprudence in order to show how these lessons lead Smith to write The Wealth of Nations. There we have shown that Smith found in the study of Police the key to understand the specific features of the period of splendor of the "arts and manufactures" and the nature of justice and State during that period. When he developed the study of Police he discovered that "the variety of arts" or the division of labor was at the same time as the result and the ultimate expression of opulence and the achieved freedom of humanity. These lead him to answer why does the division of labor contribute to opulence and why does the division of labor brings about man's freedom and these two questions ended in the creation of The Wealth of Nations.

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