Adam Smith and the social contract

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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.[1] Most political philosophers continue to hold this view.[2] 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.[3] 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.[4]

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.[5] 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

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would be neither necessary nor sufficient for creating political obligation. It is not necessary because every government is founded chiefly on opinion, not right. It is not sufficient because a contract of one generation would not be able to bind any other. According to Hume, the social contract is a myth of questionable value. Adam Smith makes much the same point in his *Lectures on Jurisprudence* of 1766 where he is reported to have said: [6]

> Ask a day porter or day-labourer why he obeys the civil magistrate, he will tell you that it is right to do so, that he sees other do it, that he would be punished if he reused to do it, or perhaps that it is a sin against God not to do it. But you will never hear him mention a contract as the foundation of his obedience.
> (LJB 12–18, 401–3, Smith 1978)

Smith here is attacking two important claims made by advocates of contract theory in his time. First, he is attacking the factual claim that contract was the foundation of political obligation and the psychological claim that political subjects actually take themselves to be bound to the political authority on the basis of the contract. Second, he is attacking the claim that something like a contract is necessary to establish the political obligation.

In substance, Smith's criticism of the idea of the social contract is largely the same as Hume's. Both Smith and Hume are attacking the idea that political obligation did or could have arisen from an original contract. They are attacking a consent-based, historical version of the social contract that we might call, following Gauthier (1979: 12), *original contractarianism*. This is the idea that the original social contract explains political obligation and authority by reference to an original compact in the state of nature. The normative authority of political institutions derives from the free consent of persons to obey those institutions. This version of the social contract is an explanatory as well as justificatory device. It explains and, in so doing, justifies political obligations, duties and the structure of current political authority. Contractual explanations, along original contractarian lines, are alien to Hume's more conventionalist approach. This is especially true when we look at his account of the development of the rules of property, where he argues that there is little difference between superstition and justice except for the fact that justice is useful and that 'all regards to right and property seem entirely without foundation' (EPM 3.38: 94–5).[7] For Hume, political authority rests on opinion, not on contract. Smith follows Hume on this general point.

There is no question that both reject original contractarianism. There is, however, a species of contractarianism, the primary purpose of which is not to explain the origins of government and obligation but, rather, to justify or evaluate current systems of justice. This is the social contract as a justificatory device: the *justificatory contract.* Here the contract metaphor is used as a justificatory device to evaluate current or possible systems of interpersonal constraints. As Samuel Freeman points out, the idea of the social contract in ethics is not a substantive view but rather 'a framework for justification in ethics'(Freeman 1990: 122). In the context of Smith's theory, Smith describes justice as the virtue that arises out of the

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attitude of resentment, to the extent that other persons can *go along with it*, a phrase Smith uses repeatedly in *The Theory of Moral Sentiments* (*TMS*).[8] He writes:

> 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. It is, therefore, the proper object of resentment, and of punishment, which is the natural consequence of resentment. As mankind *go along with*, and approve of the violence employed to avenge the hurt which is done by injustice, so they much more go along with, and approve of, that which is employed to prevent and beat off the injury, and to restrain the offender from hurting his neighbours.
>
> (*TMS* II.ii.I.5; emphasis added)

So, although justice arises from resentment, for justice and especially the punishment of injustice to be something that others can endorse, they must be able to *go along with it*. This is the basic idea of justice as a kind of agreement that is embodied more fully in the idea of the justificatory social contract.

Justificatory contracts can take a constructivist or non-constructivist form. The constructivist justificatory contract, in this context, is an attempt to specify what would count as an account of justice regardless of historical circumstances and contingencies.[9] This idea is similar to what Amartya Sen has called 'transcendental' accounts of justice. Transcendental and constructivist theorists focus on developing accounts of what ideal political and moral institutions would look like without much concern for what relevant comparisons would be possible in our current world (Sen 2009: 6). For the constructivist, the contractual procedure provides all the relevant justificatory standards, it does not matter, as James Buchanan once put it, that we start from where we are. Wherever we start from, the constructivist contract shows us what is right (Buchanan 1975/2000: 101).

In contrast, the non-constructivist version is a comparative, *testing conception* of the social contract.[10] Here, the social contract is a device for testing whether individuals should reflectively endorse or go along with certain rules of justice. The social contract is a model or an heuristic device for evaluating the reasons that one may or may not have to continue to endorse a set of rules.[11] In any normal society, persons will come together and discuss with one another whether they have legitimate complaints against their institutions and whether some alternative might be preferable (Rawls 1958: 171). They will come together and discuss what they can go along with in their society. These people do not think they are setting up the rules as their society anew, nor are they applying timeless standards against their society as a whole. Instead, they are looking for shared grounds of interpersonal justification. Shared grounds of what would count as a reason to want to continue to endorse or change some institution that concerns them. The contract, in this sense, is a model for what such interpersonal agreement would look like.

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The contract then, on the non-constructivist testing conception is consistent with a historical, conventionalist approach in a way that the original contract and the constructivist contract are not. History gives us the institutions we have, but the idea of the contract can serve as an interpersonal standard of justification for helping us determine whether we should reflectively endorse the result of the historical process. The standard of acceptability, the standard of justification, will vary depending on how the deliberative model is set up. Certain requirements, however, will be stable over different models. For instance, only rules that lead to mutual advantage will be acceptable to all parties. Therefore, only rules that meet a mutual advantage test will be something all can go along with. Of course, mutual advantage is a necessary though it may not be a sufficient condition of an acceptable system of rules.[12] Other criteria such as reciprocity between parties or a standard of impartiality or any other number of standards might also be employed.

2 Justice as a negative virtue

Adam Smith sees justice as conformity with a set of rules where the fundamental normative concept is duty. The particular substance of those rules, on a more narrow conception, determines, at least, the rules of justice; typically, prohibitions against acts that tend to excite resentment. The aretaic, positive view of justice, sees justice as a virtue that should be encouraged. Justice, on this view, is a negative ideal. The point is not to achieve justice so much as to root out and avoid injustice.

Adam Smith identifies the positive approach with the virtue of beneficence and the negative approach with justice proper. For Smith:

> Mere justice is, upon most occasions, but a negative virtue, and only hinders us from hurting our neighbour. The man who barely abstains from violating either the person, or the estate, or the reputation of his neighbours, has surely very little positive merit. He fulfils, however, all the rules of what is peculiarly called justice, and does every thing which his equals can with propriety force him to do, or which they can punish him for not doing. *We may often fulfill all the rules of justice by sitting still and doing nothing*.
>
> (*TMS* II.ii.I.9; emphasis added)

There are many things to note in this passage. First, Smith refers to justice as 'mere' justice. However important justice may be, it is clearly not the only virtue or value that matters. Second, according to Smith, the person who has refrained from acting unjustly may have very little positive merit. For instance, there is no reason to praise Jack for not murdering Jill. Imagine the absurdity of a man walking down the street thanking everyone he passed for not robbing and killing him. Justice, on this negative view is a kind of baseline. Deviations from justice are blameworthy but acting justly is merely avoiding wrong and, therefore, not intrinsically praiseworthy. Third, the negative ideal of justice is clearest in the emphasized portion of the excerpt. Jill can fulfil her duty to justice by sitting in a room and doing nothing. She in not obliged to fulfil any positive duties.

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Smith contrasts justice with another virtue that is important but distinct, namely beneficence. In the section directly before the last excerpt Smith writes:

> Though the mere want of beneficence seems to merit no punishment from equals, the greater exertions of that virtue appear to deserve the highest reward. By being productive of the greatest good, they are the natural and approved objects of the liveliest gratitude. Though the breach of justice, on the contrary, exposes to punishment, the observance of the rules of that virtue seems scarce to deserve any reward. There is, no doubt, a propriety in the practice of justice, and it merits, upon that account, all the approbation which is due to propriety. But as it does no real positive good, it is entitled to very little gratitude.
> (*TMS* II.ii.I.9)

Beneficence, being 'productive of the highest good' deserves 'the highest reward' but lack of beneficence is not grounds for punishment. Conversely, the observance of the rules of justice deserves no reward but failing to act justly opens one up to the possibility of punishment. Beneficence, unlike justice, is 'free, it cannot be extorted by force, the mere want of it exposes to no punishment; because the mere want of beneficence tends to do no real positive evil' (*TMS* II.ii.I.3). When someone shows lack of gratitude or charity, they become 'the object of hatred' rather than resentment (*TMS* II.ii.I.4). Resentment, according to Smith, was given to us by nature for 'defense, and for defense only' (*TMS* II.ii.I.4). A terrible emotion, it impels us to retaliate against injustice already committed and to defend against future injustice. While compliance with the rules of justice is necessary for the maintenance of social order, there is no reward for mere compliance.

Nevertheless, justice is of the utmost importance. Smith alludes to this point when he is discussing the 'man of public spirit' who, 'when he cannot establish the right, he will not disdain to ameliorate the wrong; but like Solon, when he cannot establish the best system of laws, he will endeavour to establish the best that the people can bear' (*TMS* VI.ii.2.16). Rooting out injustice, 'ameliorating the wrong,' even on the margins, is better than using the force of the state to establish the right in cases where a society can not go along with the heights of virtue. Better to establish the negative ideal of justice than to try to foist a positive standard of beneficence in a way that persons cannot go along with.

Smith's claim that acts of injustice are not only blameworthy but also punishable is striking given what he argues in a later part of the same chapter. According to Smith, individuals do not have the authority to enforce acts of kindness or charity among equals. They do have the authority and the right, however, to enforce justice even 'antecedent to the institution of civil government' (*TMS* II.ii.I.7). In all normal circumstances, Smith seems to be saying, that to use force against another person is unacceptable. It is, at least in principle, acceptable to use force to prevent and remedy injustice. Violations of injustice then are special in that they override the normal prohibition against violence. Furthermore, justice is prior to the formation of the state. Smith is claiming that justice does not have its authority because of the state; rather the state has its authority because of justice. There is an external

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standard by which we can judge our social institutions, namely the standard of justice that everyone can go along with, a contractual standard of justice.

Justice is so important because it stabilizes the conditions of cooperation. Again, we see the contractarian standard of mutual advantage. Insofar as humans want to live together, they tend to want to live on terms that allow for mutual gain. Without social stability, however, cooperation is impossible. As Smith puts it, 'society, however, cannot subsist among those who are at all times ready to hurt and injure one another' (*TMS* II.ii.3.3). The most basic bonds of social concord and cooperation require the establishment and enforcement of justice. Even a society of murderers and robbers requires some form of justice according to Smith (*TMS* II.iii.3). Underneath the shifting institutional framework of particular rules, there is system of 'natural justice' that is generated out of the regularities of sympathy and resentment (*TMS* VII.iv.37). Natural justice is relatively invariant because of certain regularities in the constitution of our moral psychology. The circumstances of justice are built into us in the form of moral emotions. In this way, the institutions of justice are 'natural' in the sense that they are the product of our natural sentiments. They are also 'artificial' in just the way that Hume also suggests because in each particular society, the natural moral emotion of resentment will lead to justice. The particular substance of justice will vary from time to time and place to place. Each bird will build its nest in its own way, though all will build nests (EPM 3.2.44: 97). Similarly, the natural attraction of the opposite sex will lead men and women to come together, but the specific institutional structure of marriage will vary widely between different cultures and different times (LJA iii.4–49, 141–158). Smith's account of justice separates the negative, social virtue of justice from the positive, personal virtues of beneficence, prudence, and self-command. Justice is the province of resentment and punishment.

We have seen then that Smith sees justice as a system of prohibitions that are backed with sanctions. The origin of these prohibitions is ultimately in the constitution of our moral psychology, specifically our conceptions of resentment and merit. The purpose of our institutions of justice and the role of our moral emotions is to preserve and ensure the requirements of mutual advantage. So far, this is entirely consistent with understanding Smith as a contractarian. To make the case more complete, however, we need to understand more about the substance of Smith's account of justice. Smith thinks of a system of justice as a system of rules rather than a system of principles that one applies to acts (as the utilitarian might) or a collection of stable dispositions to act one way rather than another (as the virtue theorist might). Because of this is it worth looking more closely at the role that rules play in Smith's account of justice.

3 Rules of justice

As we saw in the last section, justice plays an important social role for Smith. It is responsible for defence and forsecuring the background conditions of peace and cooperation. It sets off the boundaries between persons that allow safe and stable social intercourse. To play this role, though, the rules of justice need a specific,

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determinate form. Even if justice were as important to society as Smith thought, if the rules of justice are vague or indeterminate, enforcement would be difficult. Indeterminacy would lead to disputes that would undermine the social union that justice ensures. Smith argues that although the rules of the other virtues may be indeterminate, justice is different. This distinction between the positive virtues and justice set apart his account of justice from his account of the other virtues. The positive virtues, because of their indeterminacy do not provide effective guidance for action (*TMS* III.6.9).

Even gratitude, Smith's example of a more specific virtue, allows too many exceptions to be a strict rule. The fact that there are many exceptions to gratitude is not, in itself, a problem. It would be a problem, however, if the enforcement of gratitude made use of the police powers of the state (*TMS* VII.iv.37). Beneficence is similar in this regard. Smith admits that the magistrate may 'command mutual good offices to a certain degree' but only to a certain degree (*TMS* II.ii.I.8). The magistrate has some power and duty to establish norms of beneficence but these must be done delicately and rarely, for attempting to institute positive virtues through the law when not appropriate 'is destructive of all liberty, security, and justice' (*TMS* II.ii.I.8). Justice, unlike beneficence, is different in that it admits of precise formulation (*TMS* III.6.9).

The connection between justice and the other virtues is analogous the relationship between grammar and literary style as Smith suggests in a passage that gives the clearest explanation of the importance of justice in Smith's overall system:[13]

> The rules of justice may be compared to the rules of grammar; the rules of the other virtues, to the rules which critics lay down for the attainment of what is sublime and elegant in composition. The one, are precise, accurate, and indispensable. The other, are loose, vague, and indeterminate, and present us rather with a general idea of the perfection we ought to aim at, than afford us any certain and infallible directions for acquiring it.
>
> (*TMS* III.6.9)

Virtue, like style, gives determinacy and character to an individual life. Justice has a pride of place in Smith's system of virtues because of its unique importance for society and because of its precision. It is important to remember, though, that social life is not primarily about justice. Justice is necessary, although not sufficient for the smooth functioning of a society. For that, cultivation of the other virtues is necessary as both a means of making social interaction more fruitful and an antidote to many of the problems that come with modern capitalist society.[14]

Determinacy and precision in a common standard of justice is delivered via general rules of justice. We need general, social rules of justice because we tend to apply our resentment in uneven and partial ways. When we are the judges in our own case, things have a tendency to get out of hand. In those cases, the appropriateness conditions for justified resentment remain unclear and unspecified. To regularize resentment and to generate a common standard, we need to generate

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specific and generally applicable rules of justice out of attitudes of resentment. We generate these rules first by observing others and noticing their conduct. We then form rules to guide our own behaviour (*TMS* III.4.7). This process generalizes to form the rules of justice as a whole. Smith argues that, 'the general rule…is formed, by finding from experience, that all actions of a certain kind, or circumstanced in a certain manner, are approved or disapproved of' (*TMS* III.4.8). Rules of justice, then, are formed from experience. They arise out of regularities in real and stable attitudes (*TMS* III.4.11).

Justice, although arising out of the natural feeling of resentment, is regularized into a set of general rules. One of the great insights of Smith is that general, interpersonal rules can be generated out of subjective moral attitudes.[15] As Knud Haakonssen puts it, 'Smith's real feat is to show *how* men do have a common moral world with common standards'(Haakonssen 1981: 54; emphasis added). We can look around and see that there is some commonality between codes of justice. Smith's theory of justice is a secular, sentimentalist account of how human beings living together can come to have common standards of justice. This process is at the heart of Smith's entire account of how the impartial spectator works to transform the essentially first-personal point of view of our moral attitudes and transform then into a second-personal standards of appropriate treatment and eventually into third personal general rules of justice and morality (Haakonssen 1981: 56).

Some modern commentators find Smith's method of generating stable common standards of morality out of subjective attitudes unconvincing (Fleischacker 2004: 147; Griswold 1999: 257). These critics seek mind-independent, external standards of right and wrong. Instead, Smith offers common, stable standards of interpersonal assessment. Smith offers a standard of justice that we can all go along with, not necessarily a standard of justice that is true in some mind-independent, fact-insensitive way. The standard of morality that arises from this Smithian process is common, but varied across time and place.[16] There will be regularities in both the moral psychology and the environmental circumstances of humans across societies and time that will generate regularities in standards of justice and morality, but each society will develop sets of generalized rules in different ways.

It is worth noting that modern moral psychology seems to agree with Smith's account of how we generalize and objectify moral principles into rules. The type of developmental process that Smith describes does seem to occur in children. Children are able to distinguish between conventional rules, which typically only apply in a particular institutional context, and moral rules, which apply generally and are not easily overridden by context, between the ages of three and four (Smetana and Braeges 1990). Moral transgressions, typically involving harm or theft, are viewed as more serious than conventional transgressions. Shaun Nichols argues that this development occurs as children begin to organize their emotional responses in terms of general rules, what Nichols calls 'sentimental rules' and is in many ways similar to Smith (Nichols 2007: 16–29).

Once these rules are established as the basis of rules of justice, individuals will generally have a tendency to be motivated to follow the rules. Smith argues that without a 'sacred regard to the general rules, there is no man whose conduct can

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much be depended upon' (*TMS* III.5.2). We are motivated to follow these rules, to have a sacred regard for a very simple reason: by nature, humans have with an innate desire to please others and to be accepted into society (*TMS* III.2.6). Our natural desire for sympathy with our fellows leads us to seek their approval and hence to be motivated to follow the rules. This desire is not enough, however, because, according to Smith, we desire not only to be loved but also to be lovely (*TMS* III.2.1). That is, we desire to be worthy of the approbation of others as well as self-approbation. This leads us to internalize the rules and to make them the basis of our own self-conception of worth. Once internalized, violations are punished by 'reason, principle, conscience, the inhabitant of the breast, the man within, the great judge and arbiter of our conduct' (*TMS* III.3.4). This 'man within the breast,' the impartial spectator, regulates our conduct by generating remorse and guilt after transgressions, resentment and blame at the transgressions of others.

By now, it should be clear that the standard of impartiality of the rules of justice is not the same as the utilitarian or Kantian notions of impartiality. Instead, impartiality is what anyone would have reason 'to go along with'. This is, then, not a utilitarian theory at all.[17] Utility is neither the motive nor the ultimate aim of rule following in Smith (*TMS* III.iii.4). This is important because it shows that both genealogically and motivationally the right indeed precedes the good.[18] The reason to follow rules is not based on utility in the ordinary sense.[19] Regard for the rules of justice is, instead, 'reverential and religious'.[20] He argues:

> It is not the love of our neighbors, it is not the love of mankind, which upon many occasions prompts us to the practice of those divine virtues. It is a stronger love, a more powerful affection, which generally takes place upon such occasions; the love of what is honorable and noble, of the grandeur, dignity, and the superiority of our own characters.
>
> (*TMS* III.iii.4)

Contrast Smith's account of the rules of justice with Smith's account of the other virtues, such as beneficence. Smith argues that with the other virtues, our conduct should ultimately be regulated teleologically. We should 'consider the end and foundation of the rule, more than the rule itself' (*TMS* III.vi.10). These rules are 'rules of thumb' similar to Rawls's *summary view* of rules (Rawls 1955: 19). Rules of justice, for Smith, are much closer to what Rawls has called the *practice view* of rules (Rawls 1955: 26). When following the rules of justice, one must maintain the most 'obstinate steadfastness to the general rules themselves' (*TMS* III.vi.10). This distinction between rules of justice and other rules makes it clear that, at least in terms of justice, Smith is a staunch deontologist. The right, in this case the general rules of justice, restricts the options of choice, regardless of how this restriction affects the pursuit of an individual's good.

For Smith, then, rules of justice have six important properties. They are: (i) The result of appropriate resentment; (ii) antecedent to the formation of civil society; (iii) precise and determinate; (iv) composed of general rules; (v) enforceable; and (vi) necessary.

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The fact that justice is necessary and precise makes it possible to enforce rules of justice. The fact that justice arises from the generalized resentment makes it appropriate for enforcement and punishment but also antecedent to the institutions of civil society. Smith's theory of justice, then, is both sentimentalist and deontological.

The question remains, however, that if the rules of justice are both motivationally and genealogically caused by the sentiments, what work could the social contract possibly play in Smith's account? This is the crux of Smithian contractarianism. Recall that resentment is a personal attitude, while the rules of justice are interpersonal and social. Individuals do not invent their own rules of justice; rather, they enter into a social system where the rules of justice are already established and stable. Their attitudes, being both similar to their fellows and influenced by the need for approbation, will tend to equilibrate to the existing set of social rules, within certain limits. It is not a question of creating the rules *de novo*; instead, it is a question of having reasons to endorse or change the rules that exist. That is the role of the idea of the contract. In the next section, we look in more detail at what properties an agreeable set of rules would have.

4 Modelling agreement

The social contract, in the sense I am using here, represents a system of rules that all have reason to 'go along with'. The justificatory standard is mutual advantage – do members of society see its rules as being a good deal. Mutual advantage, however, does not mean equal advantage. Some may do much better than others given certain rules. Mutual advantage can be modelled as a Pareto condition; that is, if everyone prefers a world with rule X to a world with rule Y, rule Y should not be selected or endorsed as the social rule.[21] Another way to describe the criteria is that a social rule is acceptable if at least one person finds the rule acceptable and no one finds the rule unacceptable. This test is a threshold test of whether everyone can go along with the rule.

This contractual situation can be modelled as a kind of exchange represented by an Edgeworth box. Parties to the contract can be imagined as individuals 'exchanging' rules and sets of rules in a 'market.' For a simplistic example of this model, two agents i and j and two sets of rules, x and y (each set of rules has a continuous interval of particular rules). There is a matrix $M \times N$ of all possible allocations of rules between i and j with the ordered pair $<(x_n,i),(y_n,j)>$ representing one possible allocation. Every feasible allocation is contained within matrix as in an Edgeworth box. For each agent, every point on a higher indifference curve is preferred to every point below that indifference curve. The contract curve represents Pareto optimal allocations and, therefore, points where mutually beneficial and efficient exchange could take place.

If we were using this model to represent the social contract, we would say that any point on the contract curve represent one possible social contract based on the Pareto condition, where social contract means some particular set of rules of justice. These are known as the 'core' solutions and they represent what persons can go along with.[22] We can think of the status quo as the initial endowment of goods

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or rules, is tested against all possible set of rules. If the status quo does not lie along the contract curve then some person would prefer to move to a social contract on the contract curve. The status quo would not meet the test of mutual advantage – not everyone could go along with it. In this understanding of the social contract, the status quo serves the same function the state of nature serves in original and constructivist contractarian approaches. We always evaluate changes in sets of rules against the baseline of the status quo. The status quo is also, therefore, the 'no agreement' point of the social contract conceived as a bargaining problem.

It is important to note that mutual advantage is importantly different from any version of utilitarianism for two main reasons: 1) it is non-aggregative; and 2) it does not rely on interpersonal comparisons. Smith, together with Hume, is typically identified as utilitarian, so it is worth distinguishing the two ideas here.[23] In traditional utilitarianism, the basic idea is that the utility of each person is summed across the relevant social unit and then an average or other measure of utility is used as the goal of social institutions. Social utility as a total sum or an average (or any number of other standards) is the standard by which institutions are measured. The contractarian idea of mutual advantage differs from the utilitarian standard because it is fundamentally non-aggregative. Each person in the society needs to go along with the rule. A rule is not justified because it advances the sum or product of utility of society as a whole. Because of this, mutual advantage does not require interpersonal comparisons of utility. No sums or products need to be tallied so no interpersonal comparisons are necessary. Given the difficulty with interpersonal comparisons of utility, this is an advantage of the contractarian approach.[24]

The chief disadvantage of any contract theory is indeterminacy. While there may be a set of possible social contracts that meet the mutual advantage criterion, no particular point may be preferred to all others. We may be left with what Amartya Sen calls a *maximal* set of possible allocations, without one particular optimal element.[25] Within that maximal set of contracts, no particular contract is preferred but all are preferred to member outside the set. In these cases, reason does not tell us which option to take. We can call this the *indeterminacy problem*. Furthermore, though mutual advantage may be necessary for the stability and hence the dynamic feasibility of a social contract, it may not be sufficient. After all, we are often concerned with whether a contract is fair, not only whether it is beneficial. Some other criterion besides mutual advantage and the Pareto criterion will be needed to specify what counts as an acceptable social contract. We can call the idea that mutual advantage is insufficient for a complete contractual theory the *insufficiency problem.* I argue, in the next section, that Adam Smith understood as a non-constructivist contractarian has interesting and compelling ways to solve the *indeterminacy problem* as well as the *insufficiency problem*. To see how the Smithian approach to justice can solve these problems we first need to look at his account of justice.

5 Smithian contractarianism

We are now in a position to see why Smith can be profitably considered a contractarian thinker and what is distinctive about his form of contract theory. Smith's

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evolutionary approach is a move away from the constructivist, threshold contract theory to a developmental, continuous testing approach to the social contract. In traditional contract theories, once the contractual standard is set, all the justificatory work is done. From then on, the relevant political and moral question is about obligation or obedience to justice, not justification. This is not the case for Smith. Each stage of society is a kind of stable contract or equilibrium point that society must go along with.

Adam Smith should be understood as a non-constructivist contractarian that uses the contract idea to test the equilibria that are produced by historical, evolutionary processes. The historical element is essential to Smtih's approach. Smith argues that our institutions are the product of contingent historical processes but also that some institutions are more mutually beneficial than others are. In 1803, the editor of the *Edinburgh Review* wrote that Adam Smith attempted to:

> Trace back the history of society to the most simple and universal elements – to resolve almost all that had been ascribed to positive institutions into the spontaneous and irresistible development of certain obvious principles – and to show with how little contrivance or political wisdom the most complicated and apparently artificial schemes of policy might have been created.
>
> (Quoted in Hayek 1978: 267)

After all, 'it is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest' (WN I.ii.2). By individuals acting in accordance with their own perceived interests, as they are naturally inclined to do, society will benefit more than if individuals actually attempted to do good. Reforming our institutions so that they harness the individual pursuit of their perceived interests into mutually beneficial ways is the goal of Smith's project. It is no surprise then that much of the *Wealth of Nations* is practical advice on institutional reform.

This basic idea of attempting to use the contractual standard of mutual benefit to move to better and better sets of social rules can be modelled as a stag hunt. In the basic stag hunt, two players decide whether they will hunt stag or hare for the day. If they choose to hunt stag, they will do better than if both choose to hunt hare. If one player chooses to hunt hare and the other chooses to hunt stag, however, the stag hunter will get very little and the hare hunter will do slightly better. One version of this toy game is shown in Table 1.

There are two pure strategy Nash equilibria: {Stag, Stag} and {Hare, Hare}. The Stag strategy Pareto dominates the Hare strategy by being more mutually beneficial but the Hare strategy is less risky (Skyrms 2002: 410). Players in a stag hunt are trying to move from a suboptimal to a more optimal equilibrium. They are trying to make progress together, to cooperate as members of a society. Smith gives a similar story about the development of market societies and the development of justice. In the language of section 4, this is the process of moving, as a society, to more optimal points on the contract curve or core. That is, a point that will act as a stable social contract that all can go along with.

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Table 1 Stag hunt

	Stag	*Hare*
Stag	9, 9	0, 8
Hare	8, 0	7, 7

Smith's evolutionary account of the development of justice and social institutions takes the form of his conjectural, stadial theory of history. Smith describes this development in four stages. They are '1st, the Age of Hunters; secondly, the Age of Shepherds; thirdly, the Age of Agriculture; and fourthly, the Age of Commerce' (LJA i.27). Smith's conjectural history begins on an island inhabited by few people. It is sufficient for the inhabitants to find food and to hunt what game might be around. Very little social organization is necessary to collect food effectively for a small, hunter-gatherer society. Over time, the population grows and animal husbandry begins. This precipitates a change to the second stage of society, the shepherd phase. In this stage, the population grows and food is more readily available. Although still rudimentary, the institution of property begins developing. In the hunter stage, property exists only ephemerally. One picks a fruit only to eat it or, at most, to bring the fruit home to the family. As Dennis Rasmussen notes, animals begin to be regarded as private property in this stage and inequalities of wealth begin to accumulate (Rasmussen 2008: 96). Smith argues that as these inequalities begin to grow, government becomes necessary to protect property. J. G. A. Pocock highlights that the emphasis on the shepherd stage of society is a novel development in Smith's theory (Pocock 2001: 316–317). The shepherd, in Smith's history precedes the farmer and is the key moment in the development of justice because of the necessity for rules to protect mobile, private property.

One can already see, in this crude presentation of Smith's theory, how it differs from Hume's account of the development of justice. For Smith, justice, property and social institutions in general arise to fulfil a practical human need. As Nicholas Phillipson puts it, for Smith:

> [human] creativity is a function of indigence. He [mankind] learned to cook because he found raw flesh difficult to digest. He learned to make clothes and build huts because he was too frail to live like the beasts. …Smith's profound insights into the importance of security and good government in releasing that love of improvement on which the progress of civilization depended.
>
> (Phillipson 2010: 116)

Regular and effective law secures the gains of improvement. Once individuals can focus their energy on improving their situation without having to worry about the fruits of their improvements being stolen, those improvements will increase. It is not merely the mental process of association that generates the particular social rules and institutions for Smith. Social institutions are adaptations to local conditions.[26]

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The development of rules of private property as opposed to the rules of mere possession is the key moment in the development of justice. Following Gerald Gaus, we can compare Locke and Rousseau on the development of the institution of private property to see Smith's key insight. For Locke, property is guaranteed in the state of nature, while for Rousseau, only possession but not property is justified in the state of nature (Gaus 1990: 407–416). In Smith's stadial theory, the state of nature that corresponds most closely to both Locke and Rousseau's notions is the hunter-gatherer stage. Smith would agree, at least in part, with Rousseau that to develop real property we must move out of the hunter-gatherer stage and into the shepherd stage. In this sense, Smith agrees with Rousseau that the development of civil government of some sort is necessary to protect the inequalities of property that arise in the shepherd stage. In fact, Smith makes this point quite forcefully in the *Wealth of Nations* when he writes:

> The affluence of the rich excites the indignation of the poor, who are often both driven by want, and prompted by envy, to invade his possessions. It is only under the shelter of the civil magistrate that the owner of that valuable property, which is acquired by the labour of many years, or perhaps of many successive generations, can sleep a single night in security. He is at all times surrounded by unknown enemies, whom, though he never provoked, he can never appease, and from whose injustice he can be protected only by the powerful arm of the civil magistrate continually held up to chastise it. The acquisition of valuable and extensive property, therefore, necessarily requires the establishment of civil government. Where there is no property, or at least none that exceeds the value of two or three days labour, civil government is not so necessary.
>
> (WN V.i.b.2)

Where Rousseau and Smith differ, as Rasmussen makes clear, is that Smith believes this development is natural and beneficial, whereas Rousseau believes that it is unnatural and deleterious (Rasmussen 2008: 97).

Property is a solution to a particular type of problem that causes civil unrest and makes commerce impossible, namely the problem of what counts as legitimate or justified possession and use. Smith argues that this problem is solved conventionally, although similarly across different societies, by the development of stable rules of property and transfer. As Maynard Smith points out, this type of 'ownership' dynamic is quite common in nature, lending credence to the model (Maynard Smith 1982: 95–100). Herbert Gintis applies the model to the development of private property among humans in terms of the development of psychological heuristics like the 'endowment effect' and a basic tendency to territoriality and identification of property, even in young children (Gintis 2007). What this model shows, and what Smith intuited, is that once there is value in a fixed territory, for a bird or a shepherd, non-property conventions are unstable and there is good reason to believe that private ownership norms, property, will develop as a stable solution to the problem. This solution becomes even more regularized and advanced in the fourth, commercial stage.

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The development of property, like the development of all social institutions for Smith is the result of humans attempting to solve problems that arise because of social cooperation. The conventional process of the development of human social institutions occurs as individuals innovate and other people either copy or are taught the innovation. In this evolutionary system, ideas are the replicators and human minds or books are the containers of the replicators.[27] Sometimes evolution occurs because of a basic signaling systems and something as simple as an 'imitate-the-best' strategy (Skyrms 2004: 40–41). Smith suggests that something like this may have occurred. Either people in the society who are already considered elites move to the new 'stag' strategy or those that move to the new strategy become the new elites. Either way, if other members of the population begin to imitate the new 'stag' players, the 'stag' strategy will quickly take over the population. Once norms and enforcement mechanisms develop, the new equilibrium can be robustly enforced with minimal punishment of defectors.[28] Similarly, once the population becomes too large, people begin to notice that edible plants can be planted to yield a regular harvest and, hence, agriculture develops. Agricultural societies, being geographically static and relying on even more advanced private property norms, develop sophisticated systems of civil law and enforcement. As agriculture continues to develop, more and more surplus is created and that surplus combined with man's 'propensity to truck, barter, and exchange one thing for another' that the development of commerce slowly arises (WN I.ii.1, 26).

At any point in this process, once social institutions have developed, we may still want to ask whether the system of social rules that exists is an acceptable one. To do so, we will need to use the device of the social contract developed in sections 1 and 4 of this chapter to see how the idea of the social contract can be used to test existing social institutions. Before explaining the process of moving from one suboptimal social equilibrium to a more optimal one, it is worth looking at how this contractual test relates to the impartial spectator. There is substantial disagreement about the role the impartial spectator plays in the rules of justice (Fricke 2011: 47–50). It is not my intention to settle that debate here. Instead, I think my approach avoids that question by using a contractual standard as a *social* test meant to appeal to the interests and reason of each individual, it is an open question how that process will work depending on the particular rules of justice in question.

The model we have used of a social equilibrium of rules is a stag hunt. In that game, all of the reasons and interests of the individuals are contained in the payoffs. Now, consider again the example of the stag hunt; each equilibrium stage of social development is either a hare or stag equilibrium. When the possibility of moving from the hunter-gatherer to the shepherd stage is possible, it is the same as a move from suboptimal hare equilibrium to a more optimal stag equilibrium. Once the new equilibrium is achieved, it opens up the possibility to move to a potentially even more optimal equilibrium. Stag hunts are embedded in stag hunts. When choosing between equilibria we are moving to more and more Pareto optimal points on the contract curve – this is the essence of Smith's conventional contractarian theory of justice.

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The important point is that the contractarian procedure does not generate the substance of justice. We saw in sections 2 and 3 that the substance of justice arises out of attitudes of resentment regularized generalized into rules. It is the natural, emergent response of our moral psychology to the necessities and dangers of social interaction. The question we are left with is once these institutions have taken form, once we are at a social equilibria, how do we know if we are at a stag or a hare equilibrium?

Members of society need some way of generating reasons to move from one equilibrium to another. They need a device that can serve as an heuristic to show what reason they have to go along with one set of rules versus another. Society for Smith as for Rawls is a 'cooperative venture for mutual advantage' (Rawls 1999a: 4). The role of social institutions in Smith's 'system of natural liberty' is to secure peace by enforcing justice so that people can feel free to engage in beneficial exchange (WN IV.ix.51). The more closely the actual social institutions conform to the standards that allow the operation of the 'obvious and simple system of natural liberty' the more mutual advantage free persons in the society will be able to gain from interacting with one another. The social contract as a representational device can be used to determine whether there is reason to want to move to another social equilibrium. In this way, the social contract device can 'test' the current set of social institutions against other, feasible, sets of institutions. Not to generate a set of institutions *ex nihilo*, but as a way of getting leverage on the current set of institutions.

Rawls, of course, proposes that in the representational device of the social contract, individuals will choose his two principles of justice. The Smithian social contract would likely have a different output. To determine what the output would be, we would want to generate our representative persons, parties to the contract, out of the rich moral psychological material that Smith gives us in *The Theory of Moral Sentiments.* For instance, we know that parties to the contract would be motivated by self-interest as well as by a strong, though limited, fellow feeling. Smithian agents are neither egoists nor moral cosmopolitans. They care more about their close associates than those far away.[29] They are also motivated by a strong desire to please and an aversion to offend their fellows (*TMS* III.2.6).

Many elements of the distinctively Smithian agent are important. Each specification helps to determine the specific output of that contractual device. The exact specification of the agents and of contractual output itself is a project for another time. The thing to note here is that the general form of the contractual output would lean heavily on the idea of the mutual advantage of those that are party to the contract. We know this because of what Smith says about the justification of all constitutions. All constitutions, Smith argues, are 'valued only in proportion as they tend to promote the happiness of those who live under them. This is their sole use and end' (*TMS* IV.i.11). Furthermore, we have seen how important the idea of agreement, of what all can go along with, are to Smith. Whatever other important virtue constitutions or social contracts may have, their sole use and end, according to Smith, is to promote the mutual benefit of those who live under them.

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We are now able to see the general outline of what we can legitimately call 'Smithian contractarianism'. The evolutionary process of human interaction over long periods generates social institutions. At a certain stage, namely the stage where impersonal exchange through markets is possible, members of the market society will come together to wonder about the optimality of their social institutions. They will ask themselves, 'can we do better?'. To answer that question, they will need to determine what counts as an acceptable criticism or complaint against their current society. To do this in a way that all members of society can 'go along with' requires the use of a social contract as a device of representation. By using this device, members of society will create representative agents out of the material of Smithian practical rationality and moral psychology and then put those agents into a bargaining situation to determine the acceptable form of mutually beneficial social institutions. This differs importantly from utilitarianism in that it is not an aggregative process that requires interpersonal comparisons of utility.

The usual *indeterminacy problem* from section 4 will be solved by the fact of moral psychology and partly by the reduction of the possible solution set of equilibria to those that are feasible from the starting point of the status quo. Some set or core of possible, mutually beneficial equilibria of social institutions will be generated by this device and the facts of the particular culture and history of the agents will, in all likelihood make some equilibria seem more salient than others. This will also solve the *insufficiency problem*. As Rawls points out the agents in the contractual device are only 'artificial creatures inhabiting our device of representation' (Rawls 1996: 28). It is from the point of view of what Rawls calls 'you and me' or from our normal everyday selves living in civil society that we must evaluate the output of the social contract (Rawls 1996: 28). The social contract is a representation that is meant to show us the kind of society that is acceptable for us, the kind of society that we have reason to want to live in.

The direction of social evolution is never certain. Social and cultural institutions develop in an evolutionary fashion as adaptations to the particular problems of a given time and place are tried out and either passed on to the next generation or rejected. The forces of social evolution are like an ocean wave that we can either go along with or swim against. In either case, we cannot divert the path or blunt the force of the wave itself. The idea of the social contract, in this context, is like a surfboard. While we cannot control the wave itself, with a proper instrument, one can ride along the way choosing which direction to go and how. By using the device of the social contract, we are able as a society to help reflectively direct, to some extent, our path through history. Sometimes the forces of social change are little more than a ripple. In these cases, probably the case for most of human history before the development of agriculture, all we can do is keep paddling and wait. In some periods, like much of modern times, it feels like we are riding a tsunami. In either case, all we can do is direct along the ridges of the wave that the forces of social evolution have generated for us.

Adam Smith, as I have argued, does have a social theory that can make use of the idea of the social contract. His conceptions of resentment generating stable, interpersonal rules of justice and of social institutions justified by mutual advantage

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share many characteristics of modern contractarian approaches to social theory. Furthermore, his use of an evolutionary account of the process of social change helps to solve a problem within contractarian theory, namely how to generate stable, determinate sets of social institutions. While the exact details of the Smithian contract need to be more clearly worked out, it is clear that Smith can profitably be regarded as a kind of contract theorists in the contemporary sense.

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Notes

1 John Rawls, for instance, cites David Hume and Adam Smith (together with Thomas Hobbes) as precursors to the utilitarianism that is found in Jeremy Benthm and ultimately Henry Sidgwick in (1999a: 20 9ff; see also Rosen 2003).
2 Cf. David Gauthier (1979).
3 Amartya Sen discusses the connection between impartiality and objectivity throughout *The Idea of Justice*, often comparing his view to Smith's but also see Sen's discussion of Scanlon and impartiality in (Barry 1989: 4; Barry 1995: 2; Sen 2009: 197–200).
4 Cf. (Griswold, 1999: 244).
5 There is a question, which I do not really go into here, whether Smith could hold a version of utilitarianism as a guide to social policy, while generally being a contractarian. This is a complicated question, but I think some of *The Wealth of Nations* can be read this way. If this were Smith's view, though, his utilitarianism would be much closer to the approach that Russell Hardin describes as 'institutional utilitarianism' and attributes to David Hume. I think the case is stronger for Hume, but it may be that institutional utilitarianism is compatible on some level with contractarianism. (Hardin 2007: 165–71)
6 Also see: (LJA v.114–118, 315–16) for a similar view.
7 References to (Hume, 1998).
8 Smith uses the phrase 'go along with' at least 42 times in *The Theory of Moral Sentiments*, a fact that was pointed out to me by Vernon Smith in conversation.
9 Notice that the usage of 'constructivist' here is different from its usage in the moral context, especially in the work of John Rawls. Rawlsian constructivism may be either constructivist or non-constructivist in my usage depending on how we interpret Rawls.
10 I am following Gerald Gaus in calling this a 'testing conception' but I do not claim that this is Gaus's view. He uses the term in a different context, although I think there are some broad similarities between the two views. See Gaus (2011: 424).
11 Rawls described his original position as a 'device of representation'. The idea of the social contract presented here is very similar. See especially, Rawls's defense of the original position against Habermas's criticism in (Rawls 1996: 381).

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12 There are two basic reasons why mutual advantage is a necessary criterion of a social contract: (1) mutual advantage is necessary to maintain the stability of the contract. Individuals cannot be expected to maintain a social contract or bargain where they would do better by unilaterally deviating to another point in the feasible set. Therefore, social contracts that are outside of the Pareto set or not mutually beneficial are not feasible in the sense that they will not be stable. (2) Giving reasons is not giving orders. The social contract is not meant to be a suicide pact, no person should be forced to maintain a social order where they are made worse off for the benefits of others if there is another social state where that person would be better off without making someone else worse off. That is, no person should have a state of affairs or a bargain unilaterally imposed on them by others. To allow this would assume that one party to the contract has natural authority over the other party. This idea does violence to the very notion of bargaining or contracting which must occur between persons who each have the ability to walk away from or veto the agreement.

13 Bernard Gert also compares morality, which in his understanding is similar to what Smith means by justice and grammar. See Gert (2005: 4–5) For a good discussion of Smith on this point, see Griswold (1999: 190, 229).

14 The best recent discussion of the role of the virtues besides justice in Adam Smith's moral theory is in Hanley (2009a). I differ from Hanley in not characterizing Smith's overall view as a form of virtue ethics mostly because of the role that justice plays in his system. Hanley is correct that Smith's view does share many of the features of modern virtue ethical approaches to ethics but one key difference is that Smith's positive virtue are constrained by the negative virtue of justice. After all, it is conformity with general rules, not merely the development of general dispositions to behave virtuously that is praiseworthy or blameworthy according to Smith. Contemporary virtue ethics has typically had problems incorporating justice into the virtues for similar reasons, for instance see (LeBar 2009). Whether or not Smith should be considered a virtue ethicist or a deontologist is, in some sense, unimportant. Hanley is right to highlight the important aspects of virtue ethics in Smith's approach and his work has certainly deepened our understanding of Smith's ethics.

15 Arguably, Epicurus and maybe Hobbes had a similar idea (Kavka 1995; Thrasher 2012).

16 For more recent defenses of similar views, see Gaus (2011), Harman (1975), Nichols (2007) and Rawls (1996, 1999b).

17 Rawls lumps together Hume, Smith, Bentham and Mill (and even Hobbes in his essay 'Justice as Fairness') as part of a great utilitarian tradition (Rawls 1999a: vii, 262). While Smith is clearly not a utilitarian in regards to moral theory, Rawls may be closer to the mark with Hume, at least in regards to justice. There is an issue of whether Smith can be considered an 'institutional utilitarian' in the sense that Smith argued, in *The Wealth of Nations*, that social policy should be justified by the effect it has on the average member of society. Still, using something like utilitarianism as the basis of social policy does not imply that Smith's general moral theory or theory of justice is reducible to claims about utility. My claim here is that Smith is best thought of as a social contract thinker rather than a utilitarian. As Rawls points out in *A Theory of Justice*, it is possible that a utility principle could be the output of a genuinely contractual process. Arguably, Harsanyi's version of utilitarianism is justified contractually in Harsanyi (1955). I think it is an open question whether Smith's contractual theory would lead to something like utilitarian principles.

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18 Ryan Hanley argues the opposite, namely that, for Smith, the good precedes the right. His argument, however, is about the methodology of Scottish enlightenment social science, not Smith's theory of justice in particular. He is right to point out that the Scots did not tend to pursue value-free social science in the contemporary style. He is also right to argue that values were a deep part of the Scottish enlightenment social science but this does not imply that the good is prior to the right in a deep sense. Within the range delimited by justice and propriety, the good should be pursued but the right antecedently limits the acceptable means of pursuing the good (see Hanley 2009b: 33). Insofar as Hanley is arguing that, for Smith, the idea of the good life guides our understanding of propriety, he is certainly correct. The difference is that unlike some contemporary virtue theorists and virtually all consequentialists, the good does not determine the content of the right, in this case the rules of justice. Those are determined by a different procedure.

19 Utility in the sense that Hume uses it when he argues 'public utility is the sole origin of justice' (EPM 3.3.1).

20 Here, my account seems to follow, at least the conclusion of Christel Fricke's recent discussion of the 'the most sacred rules of justice', at least on the natural authority of the rules of justice (2011: 64–65).

21 There is an important ambiguity in this formulation that there is not space to go into in detail about whether individuals in contract situation have preferences over rules themselves or only over rules insofar as they lead to favorable outcomes. Following Smith's general approach, I think it is reasonable to see Smith as thinking that individuals would have preferences over rules themselves and not merely over outcomes since their sentiments related to resentment are not, fundamentally, outcome based. This is one reason, as I will develop later, why Smith's theory is strongly deontological.

22 An allocation of goods x and y is in the core if for an allocation represented by the ordered pair (X_n, Y_n) the allocation is (1) in the Pareto set and (2) $u_x(X^i, Y^i) \geq u^x(X^j, Y^j)$ i εN and j εN $i \neq j$ – that is, each party would not do better by moving to a different allocation.

23 On this point see: Rosen (2003: ch. 4 and 6).

24 Many have argued that interpersonal comparisons of utility are, contra Lionel Robbins, possible; John Harsanyi, for instance, agues this point in many places (such as Harsanyi 1955). The problem, even if theorists like Harsanyi are right and interpersonal comparisons are possible, is that there are many possible ways of comparing utilities across persons. Utilitarianism, insofar as it requires interpersonal comparisons, must specify one particular and unique way of comparing utilities on a social level. No utilitarians have fully solved this serious problem. The problem also applies to contractarians who want to make specific claims about distributive justice such as Ken Binmore. See, especially, Binmore's discussion of the problem and his proposed 'social index' solution (Binmore 2005: 31–36).

25 See Sen (1997). Sen defines the maximal set as a set of elements in which all of the elements in the set dominate any element outside the set but where none of the elements in the set dominates any of the other elements in the set. More formally, M is a maximal subset of S when $(S) = [x|x \varepsilon S$ and for no $y \varepsilon S{:}yPx]$.

26 One way to compare the difference between Smith and Hume on this point is to think of Hume's account of the development of property in the *Treatise* as much more similar to accounts of evolutionary drift rather than adaptation, whereas, Smith is giving a pretty clearly adaptationist account of social institutions.

27 This account of the development of social practices is similar in general form, although not necessarily in the details to the account found in Sperber (1996).

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28 For a detailed explanation see Boyd and Richerson (2005).
29 For an in-depth examination of this aspect of Smith's thought, see Forman-Barzilai (2010).

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