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Another Advantage of the Division of Labor

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It is almost unseemly still to be searching out further advantages which Adam Smith attributed to the division of labor. Surely the 200 years which have now elapsed since the publication of the *Wealth of Nations* has been ample time for even the dullest-witted assortment of scholars to ferret out all interesting bits of Adam Smith's discussion of that subject. Nevertheless the purpose of this paper will be to call attention to yet another significant advantage beyond the three which Adam Smith identified in the celebrated first chapter of the *Wealth of Nations*.[1]

The discussion with which I will be concerned did not appear in the *Wealth of Nations* but in a set of lectures on rhetoric and belles lettres which Adam Smith delivered at the University of Glasgow in 1762–63 (Smith 1971). (Smith scholars who might experience some self-mortification at their failure to perceive the significance of this treatment may therefore be reassured that the lectures have been in the public domain for only a few years.) I intend to show that this discussion is not only neatly consistent with and supplementary to the time-honored treatment in the *Wealth of Nations*, but that it also enlarges our understanding of Smith's views in some important respects.

The material with which I am concerned was presented in a lecture on February 7, 1763.[2] In earlier lectures Smith had been concerned with

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[1] "This great increase of the quantity of work, which, in consequence of the division of labour, the same number of people are capable of performing, is owing to three different circumstances; first, to the increase of dexterity in every particular workman; secondly, to the saving of the time which is commonly lost in passing from one species of work to another; and lastly, to the invention of a great number of machines which facilitate and abridge labour, and enable one man to do the work of many" (Smith 1937, p. 7). For a further discussion of Smith's views on the division of labor, see Rosenberg (1965).

[2] Interestingly enough, these lectures were delivered at about the same time as his *Lectures on Justice, Police, Revenue and Arms* (Smith 1956). On the exact dating of those student lecture notes Cannan concluded: "It is . . . probable that the actual lectures from which the notes were taken were delivered either in the portion of the academical session of 1763–4 which preceded Adam Smith's departure, or in the session of 1762–3, almost certain that they were not delivered before 1761–2, and absolutely certain that they were not delivered before 1760–1" (Smith 1956, p. xx).

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demonstrative and deliberative eloquence and in this lecture turned his attention to judicial eloquence. Legal arguments, he asserts, take essentially two forms, either to demonstrate by "abstract reasoning" that something "follows from some statute," or by showing "how it has been supported as law by former practice and similar adjudged causes or precedents" (1971, p. 168). At this juncture Smith points out that neither the Greek nor Roman lawyers had made any use of the second category, which is so widely exploited by modern lawyers, and he undertakes in a digression to explain this failure. His explanation turns upon a more extensive division of labor in modern as compared with ancient times.

A central feature of earlier periods, Smith points out, is that the duties of judge, general, and legislator were commonly performed by the same persons—"at least the two former are very commonly conjoined" (1971, p. 168). In barbarous societies, when men formed the habit of submitting themselves to control by some superior person, they did not generally distinguish between different realms—military, legislative, or judicial. As a result,

> The same persons therefore who judged them in peace, led them also to battle. In this two-fold capacity of judge and general, the first kings and consuls of Rome, and other magistrates, would reckon the judicial part of their office a burthen, rather than that by which they were to obtain honour and glory; that was only to be got by military exploits. They therefore were very bold in passing sentence. They would pay very little regard to the conduct of their predecessors, as this was the least important part of their office. This part was therefore for their ease separated from the other and given to another sort of magistrates. These, as the Judicial was their only office, would be at much greater pains to gain honour and reputation by it. [Smith 1971, p. 168; cf. Smith 1937, pp. 680–81][3]

In this passage Smith thus argues in favor of a more extensive division

[3] Of course Smith also recognized that the exercise of the judicial power on the part of the sovereign was likely to lead to many grave abuses, especially when the administration of justice was made "subservient to the purposes of revenue." See Smith (1937), bk. 5, chap. 1, pt. 2, "Of the Expense of Justice," where he observes: "In all barbarous governments, accordingly, in all those ancient governments of Europe in particular, which were founded upon the ruins of the Roman empire, the administration of justice appears for a long time to have been extremely corrupt; far from being quite equal and impartial even under the best monarchs, and altogether profligate under the worst" (p. 676). More generally: "When the judicial is united to the executive power, it is scarcely possible that justice should not frequently be sacrificed to, what is vulgarly called, politics. . . . In order to make every individual feel himself perfectly secure in the possession of every right which belongs to him, it is not only necessary that the judicial should be separated from the executive power, but that it should be rendered as much as possible independent of that power" (p. 681).

of labor by asserting that it is better to have two important social functions divided up among separate individuals rather than having them combined in a single individual. The reasoning underlying the argument will be familiar to all readers of the *Wealth of Nations*. If an individual's attainment of recognition and success is linked to only one of the two activities which he regularly performs, he will have no particular motivation to perform the other activity well. A man who is simultaneously general and judge should not be expected to devote any extensive effort to the latter function if his place in society is determined entirely by his qualities as a military leader. It hardly requires any marginalist calculations to predict that, if the returns to activity A remain very high while those for activity B are effectively set at zero, the latter activity will be either performed in a most perfunctory way or totally neglected. One can almost hear the Adam Smith of the *Wealth of Nations* intoning at this point: "In every profession, the exertion of the greater part of those who exercise it, is always in proportion to the necessity they are under of making that exertion" (1937, p. 717). If there is no necessity or no gain to be derived from the performance of the judicial function, it cannot reasonably be expected that it will be performed well.[4]

From this point of view, therefore, a new division of labor involving the separation of military and judicial functions makes great sense since those who now perform only the judicial function have a powerful incentive to perform it well. Under the old division of labor, by contrast, judicial responsibilities were in the hands of people who lacked the motivation to perform them well. Indeed, this new division of labor is freighted with the greatest of all social consequences. The establishment of a separate judiciary not only creates new and powerful motives for the efficient performance of judicial functions. It also institutionalizes forces which lead to a highly desirable pattern of cumulative social change. For a full-time judiciary

> . . . would be at pains to strengthen their conduct by the authority of their predecessors. When, therefore, there were a few judges appointed, these would be at great pains to vindicate and

[4] As Smith states elsewhere about a university teacher who derives his entire income from endowments and is therefore totally independent of any form of remuneration from his pupils: "His interest is, in this case, set as directly in opposition to his duty as it is possible to set it. It is the interest of every man to live as much at his ease as he can; and if his emoluments are to be precisely the same, whether he does, or does not perform some very laborious duty, it is certainly his interest, at least as interest is vulgarly understood, either to neglect it altogether, or, if he is subject to some authority which will not suffer him to do this, to perform it in as careless and slovenly a manner as that authority will permit. If he is naturally active and a lover of labour, it is his interest to employ that activity in any way, from which he can derive some advantage, rather than in the performance of his duty, from which he can derive none" (1937, p. 718).

> support their conduct by all possible means. Whatever, therefore, had been practised by other judges would obtain authority with them, and be received in time as law. This is the case in England. The sentences of former cases are greatly regarded, and form what is called the Common Law, which is found to be much more equitable than that which is founded on Statute only, for the same reason as what is founded on practice and experience must be better adapted to particular cases than that which is derived from theory only. [Smith 1971, pp. 168–69]

Once the division of labor has led to the establishment of an independent judiciary, other dynamic forces are set into motion. For, as Smith emphasizes in the *Wealth of Nations*, the pursuit of private self-interest on the part of judges now generates a competitive process the outcome of which is a judicial system far more responsive to individual needs:

> The fees of court seem originally to have been the principal support of the different courts of justice in England. Each court endeavoured to draw to itself as much business as it could, and was, upon that account, willing to take cognizance of many suits which were not originally intended to fall under its jurisdiction . . . each court endeavoured, by superior dispatch and impartiality, to draw to itself as many causes as it could. The present admirable constitution of the courts of justice in England was, perhaps, originally in a great measure, formed by this emulation, which anciently took place between their respective judges; each judge endeavoring to give, in his own court, the speediest and most effectual remedy, which the law would admit, for every sort of injustice. [1937, p. 679; see also 1956, p. 49]

Note that, in this particular case at least, the competitive process (the endeavor of individuals to widen their jurisdiction) works *against* greater specialization. But justice is, in fact, a very peculiar kind of service, and its dispensation cannot be safely left to the marketplace. The freedom of individuals to "purchase" justice may lead to the destruction of justice itself, especially in the all-too-likely circumstances where the sovereign (or judge) treated judicial service as a source of revenue.[5]

[5] "This scheme of making the administration of justice subservient to the purposes of revenue, could scarce fail to be productive of several very gross abuses. The person, who applied for justice with a large present in his hand, was likely to get something more than justice; while he, who applied for it with a small one, was likely to get something less. Justice too might frequently be delayed, in order that this present might be repeated. The amercement, besides, of the person complained of, might frequently suggest a very strong reason for finding him in the wrong, even when he had not really been so. That such abuses were far from being uncommon, the ancient history of every country in Europe bears witness" (Smith 1937, p. 675).

For the free operation of market forces may make it possible for affluent litigants to buy favorable decisions from supposedly impartial judges. The problem is that the enforcement of justice requires that its dispensation be linked institutionally to the power of the state,[6] whereas such linkage inevitably creates numerous opportunities and inducements for the corruption of the service itself. It is an extremely delicate matter to organize the administration of justice in such a way that outcomes are not influenced by the desire for increased revenue on the part of either the judge or the sovereign.[7]

There is another aspect of the administration of justice to which Smith also calls attention. Even when the military and judicial functions have been effectively separated, it is further essential that the judicial function not be placed in the hands of large social units. For it is unlikely that an activity will be performed well if individual motivations are not strongly engaged to perform it well. And when individuals share responsibilities within a sufficiently large collectivity, individual incentives are inevitably diffused or even totally dissipated.[8] In judicial proceedings, as elsewhere, it is in society's interests to maintain the closest possible linkage between individual effort and individual reward. To do this properly therefore requires that the actions of single individuals be highly visible:

> These judges, when few in number, will be much more anxious to proceed according to equity than where there is a great number. The blame then is not so easily laid upon any particular person; they are in very little fear of censure; and are out of danger of suffering much by wrong proceedings. Besides that a great number of judges naturally confirm each other, prejudice and inflame each other's passions. We see accordingly that the sentences of the judges in England are greatly more equitable than those of the Parliament of Paris or other Courts which are severed from censure by their number. The House of Commons, when they acted in a Judicial capacity, have not always proceeded with the greatest wisdom, although their proceedings are kept upon record as well as those of the other Courts, and without doubt in imitation of them. [Smith 1971, p. 169][9]

[6] Although there is a form of competition, just described, among existing courts, there is no free entry into the justice trade, which is monopolized by the state.

[7] It is this problem which accounts for Smith's central concern in "Of the Expense of Justice" (n. 3 above).

[8] Is this an eighteenth-century anticipation of the "free rider" problem?

[9] Similar difficulties had plagued the ancient world. "The case was the same with regard to the Areopagus and the Council of Five Hundred at Athens. Their number was too great to restrict them from arbitrary and summary proceedings. They would here pay as little regard to the proceedings of former judges as those did who at the same time possessed the office of general along with that of judge. The praetor at Rome, indeed, often borrowed from the decrees; but then nothing could be quoted as law to him but what

In his judicial digression Smith therefore emphasizes two different kinds of advantages in connection with an increased division of labor. When responsibilities are divided up among different people so that no one possesses both military and judicial obligations, both obligations will be better performed. Judicial responsibilities are performed better because they now constitute someone's sole responsibility, and that person is being judged solely by how well he performs it. When an individual performs more than one function, but his success is based only upon his performance in one of them, he will neglect the one to which his social status is less attached. On the other hand, it is essential that important social functions not be reposed in large social aggregates. A division of labor involving fewness is essential because fewness is a precondition for establishing individual responsibility. Only when individual responsibility (or fault) can be established will individual effort be reliably engaged in ways which will promote society's larger interests.[10] Thus, whereas Adam Smith had described the advantages of the division of labor in the opening chapter of the *Wealth of Nations* in terms of an improvement in human skills and capacities, his treatment in his lectures on rhetoric and belles lettres calls attention to basic improvements in motivation as well.

When law becomes a highly specialized activity, then, subject to an extensive division of labor and administered by small decision-making units, individual motivations and capacities are more deeply and effectively involved in establishing justice and providing the inhabitants of a country with liberty and security. The point is not of secondary or trivial interest to Smith. Indeed, it is tempting to say that no point was *more* interesting to him, because justice is the essential and indispensable cement which binds a society together. Beneficence, as he was at great pains to establish elsewhere, is not enough. "Beneficence . . . is less essential to the existence of society than justice. Society may subsist, though not in the most comfortable state, without beneficence; but the prevalence of injustice must utterly destroy it" (1880, p. 79).

In this vital way, then, is the history of the increasing division of labor

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was found in his edict, which was put up at the beginning of each year, and in which he declared in what manner he was to regulate his conduct. (This was the custom till the time of the Edictum Perpetuum.) He would have taken it as a great affront to his judgement to have been told that such an one before had done so-and-so. And no part of the former edicts could be quoted but what was transcribed into his, and in his name it was always to be quoted. There was therefore no room for precedents in any Judicial pleadings amongst the Greeks or Romans . . ." (Smith 1971, pp. 169–70).

[10] It is important to recognize here that Smith is dealing with two separate issues: the extent of the division of labor and the size of the appropriate decision-making unit. In his *Lectures on Rhetoric and Belles Lettres*, however, Smith joins these issues by insisting that fewness is necessary to derive the benefits which might be expected to flow from greater division of labor in judicial proceedings. Note that on p. 169 of those lectures (quoted above) he had stated that judges would be "anxious to proceed according to equity" when they were "few in number." This important qualification, as we will see below, is repeated in the next paragraph (1971, p. 170).

in the judicial process inseparably linked to the fulfillment of other goals which constitute the foundations of any truly civilized community. For beneficence, however desirable and meritorious, is never a sufficiently strong force:

> Though Nature... exhorts mankind to acts of beneficence, by the pleasing consciousness of deserved reward, she has not thought it necessary to guard and enforce the practice of it by the terrors of merited punishment in case it should be neglected. It is the ornament which embellishes, not the foundation which supports, the building, and which it was, therefore, sufficient to recommend, but by no means necessary to impose. 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 1880, p. 79]

Finally, by joining the hitherto separate threads of Smith's treatment of the division of labor and the administration of justice, we arrive at a deeper appreciation of what Smith had in mind when he observed in chapter 4 of book 3 of the *Wealth of Nations* that " . . . commerce and manufactures gradually introduced order and good government, and with them, the liberty and security of individuals, among the inhabitants of the country, who had before lived almost in a continual state of war with their neighbors, and of servile dependency upon their superiors. This, though it has been the least observed, is by far the most important of all their effects (1937, p. 385).[11] Although it is possible to infer some of Smith's meaning when the statement is placed in the larger context of the argument of the *Wealth of Nations* as a whole,[12] we can now make use

[11] In the next sentence Smith adds: "Mr. Hume is the only writer who, so far as I know, has hitherto taken notice of it." The relationship is, of course, a reciprocal one, in that commerce and manufactures can continue to flourish only in a society where justice continues to be properly administered. "Commerce and manufactures can seldom flourish long in any state which does not enjoy a regular administration of justice, in which the people do not feel themselves secure in the possession of their property, in which the faith of contracts is not supported by law, and in which the authority of the state is not supposed to be regularly employed in enforcing the payment of debts from all those who are able to pay" (1937, p. 862).

[12] The development of freedom and justice depended, historically, upon the destruction of the power and authority of the ancient barons of the Middle Ages and the end of the "servile dependency" of their retainers and tenants upon them. Smith spells out in the *Wealth of Nations* (bk. 3, chap. 4) how the rise of commerce destroyed the power of the ancient barons and thereby "gradually introduced order and good government." Along with this went the elimination of the arbitrary exercise of power. "The tenants having in this manner become independent, and the retainers being dismissed, the great proprietors were no longer capable of interrupting the regular execution of justice, or of disturbing the peace of the country" (1937, p. 390; see also 1956, p. 155): "Nothing tends so much to corrupt mankind as dependency, while independency still increases the honesty of the people. The establishment of commerce and manufactures, which brings about this independency, is the best police for preventing crimes" (see also Rosenberg 1968).

of the student's lecture notes to draw the highly significant conclusion to which Smith intended his argument to lead, that ". . . it may be looked upon as one of the most happy parts of the British Constitution, though introduced merely by chance and to ease the men in power, that the office of judging causes is committed into the hands *of a few persons* whose sole employment it is to determine them (1971, p. 170; my emphasis). For increasing wealth has led, in the British case, via an increasing division of labor, to improvements in the administration of justice of the greatest moment for society. It seems appropriate to leave the last word in this matter to Smith himself:

> The separation of the province of distributing justice between man and man from that of conducting affairs and leading armies, is the great advantage which modern times have over ancient, and the foundation of that greater security which we now enjoy, both with regard to liberty, property, and life. It was introduced only by chance to ease the supreme magistrate of the most laborious and the least glorious part of his power, and has never taken place until the increase of refinement and the growth of society have multiplied business immensely. [1971, p. 170; cf. 1937, pp. 680–81]

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