

Part III

Impartial Jurists

Introduction

After *Moral Sentiments*, Smith remained Professor of Moral Philosophy at Glasgow University for five years. For many years he claimed he was writing ‘two other great works’, a ‘Philosophical History of all the different branches of Literature, of Philosophy, Poetry, and Eloquence; the other is a sort of theory and History of Law and Government’. In 1785 he claimed that ‘the materials of both are in good measure collected, and some Part of both is put into tolerable good order.’ His explanation for their non-completion at that time was ‘the indolence of old age, tho’ I struggle violently against it, I feel coming fast upon me, and whether I shall ever be able to finish either is extremely uncertain’.¹ He also hinted at plans to write a treatise on the Greek and Roman Republics.²

In the first, and the sixth last edition of TMS that he edited, he announced his intention ‘in another discourse’ to ‘endeavour to give an account of the general principles of law and government, and of the different revolutions which they had undergone in the different ages and periods of society; not only in what concerns police, revenue, and arms, and whatever else is the object of law.’³ He stated in the 6th edition that he had ‘partly executed this promise’ in *Wealth of Nations* but what remains, the theory of jurisprudence, which I have long projected, I have hitherto be hindered from executing, by the same occupations which had till now prevented me from revising the present work’. Again he gives the reason as his ‘advanced age’, which does not explain why he did not complete the work in the thirty one years since his announcement of it in the first edition. He had not ‘altogether abandoned the design’ and at the time ‘entertained no doubt of being able to execute every thing as announced’.⁴

An alternative explanation for the non-appearance of the general principles of law and government is discussed in Part III. I shall refer to the proposed book below as *Jurisprudence*. His ideas on jurisprudence had been given as lectures in Glasgow from 1751 to 1764, and for a century they were believed to have been lost.

However, two sets of student notes for the 1762–3 and 1763–4 academic sessions were discovered, one in 1895 and another in 1958, and from these we get a sense of his theories of justice.⁵ His lectures dealt with the general principles of law, illustrated with general points to contemporary practice and discourses on ‘the different revolutions which they had undergone in the different ages and periods of society’. We can safely take the notes of his lectures as representative of the contents of his unpublished *Jurisprudence*. While second-hand lecture notes are a barely adequate substitute for his considered prose, they contain surprisingly strong sets of ideas, recognisably smithian in scope, and they are thoroughly consistent with *Moral Sentiments* and *Wealth of Nations*.

Since my purpose is to show Smith’s distinctive approach to the history of human society and the evolution of its laws (his Legacy), I extract brutally from the lectures, leaving out most of his detailed arguments. I establish Smith’s democratic credentials and his support for the rule of law not men. Government and justice to be trusted to work fairly and not arbitrarily when directed by men required checks and balances, which became an implied though dominant principle of his moral sentiments and, later, his Age of Commerce.

Smith’s views on jurisprudence and government, because they are less well known, have not attracted the kind of misinterpretation common to his other books. By presenting them relatively unadorned, we hear the authentic voice, if not the prose, of Smith, a moral democrat and lover of liberty and justice.