

Capitalism, Environmentalism, and Mediating Structures: From Adam Smith to Stakeholder Panels

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How can an environmental ethic be developed that encompasses the concerns of both free market proponents and environmentalists? In this article we approach the environment-market debate using Adam Smith's writings in *The Theory of Moral Sentiments*, *The Wealth of Nations*, and *Lectures on Jurisprudence*. Smith's guiding principle for solving prominent conflicts of self-interest is that government intervention is required when the economic activities of some cause harm to others. The solution that follows from Smith's analysis is a government-funded independent, democratically controlled, and democratically accountable mediating structure that derives impartial decisions and is authorized to impose its just and fair decisions on affected parties. In practical terms, this analysis provides the ethical foundation for the wide-ranging development of stakeholder panels composed of public interest group representatives and business representatives and empowered to develop solutions to public conflicts arising out of environmental problems.

FREE MARKET IDEOLOGY AND ENVIRONMENTALISM

Since the advent of the Industrial Revolution, the natural environment has suffered significant degradation, giving rise to a global environmental movement and widespread support among U.S. citizens for government intervention on behalf of environmental protection.¹ At the same time, the world has witnessed a worldwide trend toward free-market development that has even enveloped the former socialist bloc. These two trends—increased concern for environmental protection and free-market development—are in conflict. Although advocates of environmentalism and advocates of the free market can agree that the current generation has obligations to current and future citizens of the world, they disagree sharply on what those obligations are and how to fulfill them. Disagreements are especially heated over whether the market is the solution or the greatest threat to global ecological health.

Free-market advocates have moved a considerable distance from Ayn Rand's celebration of belching smokestacks and her general condemnation of the environmental movement,² but they still rely on such stratagems as rephrasing environmental problems as economic opportunities (recycling), emphasizing the need to clarify property rights, encouraging voluntary improvements in personal and corporate behavior, and tinkering with economic incentive systems (such as trading pollution credits).³ On the other hand, many environmentalists perceive the capitalist system as the primary contributor to environmental degradation and global suicide. They often propose solutions to environmental problems requiring intervention in the market, such as the recent ban on the production of chlorofluorocarbons. They believe that at a minimum government should restrain capitalists from exploiting and degrading the environment and that at the maximum environmental protection should require abandoning capitalist economic relations altogether⁴ and revising the constitutional right to liberty.⁵ Are these positions implacably opposed or is it possible to find a middle ground that sanctions economic liberty and growth as well as vigorous public action to preserve the environment?

In this article we approach the environment-market debate from the standpoint of environmental ethics. We argue that the misappropriation and misapplication of classical liberal thought by free market advocates, coupled with the failure of environmentalist critics to appreciate the potential in classical liberalism for a strong environmental ethic, blinds these opposing sides to feasible, rational approaches to the problems facing the environment. We assume the following: (1) that the global environment is under significant stress; (2) that capitalist theory has generated few practical solutions to redress this situation; (3) that the record of communist and socialist countries demonstrates that, in practice, these theoretical perspectives are even less equipped to meet the environmental challenge; (4) that the prominent ethical theories of deontology, utilitarianism, Rawlsian justice, and stewardship tend to favor the conclusions of environmentalists on many environmental issues; (5) that most practical solutions from environmentalists entail government edicts or some other form of political control over economic activity; (6) that most policy

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¹ Walter A. Rosenbäum, *Environmental Politics and Policy* (Washington, D.C.: Congressional Quarterly, 1991), pp. 25–28.

² Ayn Rand, *Capitalism: The Unknown Ideal* (New York: New American Library, 1967); Ayn Rand, *The New Left: The Anti-Industrial Revolution* (New York: Penguin, 1970).

³ C. Boyden Gray and David Rivkin, "A No Regrets Environmental Policy," *Foreign Policy* 83 (1991): 47–65; Terry L. Anderson and Donald R. Leal, *Free Market Environmentalism* (San Francisco: Westview Press, 1991).

⁴ Lester R. Brown, Christopher Lavin, and Sandra Postel, *Saving the Planet: How to Shape an Environmentally Sustainable Global Economy* (New York: W. W. Norton & Company, 1991); Robert Goodland and Herman Daly, "Why Northern Income Growth is Not the Solution to Southern Poverty," *Ecological Economics* 8 (1993): 85–101; Paul R. Ehrlich and Anne H. Ehrlich, *Healing the Planet: Strategies for Resolving the Environmental Crisis* (New York: Addison-Wesley Publishing Company, 1991).

⁵ Garrett Hardin, *Living Within Limits: Ecology, Economics, and Population Taboos* (New York: Oxford University Press, 1993).

makers do not respond to the ethical conclusions favoring government action to protect the environment; and (7) that capitalism needs to be reformed, rather than discarded, in line with a better understanding of the implications of capitalism's ideological roots in classical liberal thought.

We develop an answer to the question of the appropriate role of government in mediating the relationship between the market and the environment by reviewing the ethics of a market-based economy as systematized by Adam Smith. We posit that policy makers respond to capitalist ideals and that the language and analysis provided by Adam Smith's work offer a compelling ethical framework for policy action that is sympathetic to environmentalism. Based on Smith's writings in *The Theory of Moral Sentiments*, *The Wealth of Nations*, and *Lectures on Jurisprudence*,⁶ we derive a general principle, two qualifying principles, and a qualifying principle solution that appear to be at the heart of capitalist ethics. These principles provide a warrant for collective, noncommercial intervention to redress environmental degradation, preferably through the agency of an independent, democratically controlled, and democratically accountable mediating structure, funded by government, but independent of executive power, and empowered to impose impartial, fair decisions on affected parties.

GOVERNMENT, POLLUTING ORGANIZATIONS, AND ETHICAL THEORIES

There is a relatively strong convergence of opinion among proponents of such prominent ethical theories as deontology, utilitarianism, Rawlsian justice theory, and stewardship that economic actors should be forced to comply with strict environmental standards. In most situations, a deontologist, relying on such rules of action as the categorical imperative, would condemn a polluter who imposes undue burdens on others. Utilitarians, concerned about obtaining the greatest good for the greatest number of individuals, would employ calculations that point toward very stringent environmental rules. Rawlsians, operating from behind the veil of ignorance, would argue that rational individuals would adopt institutional arrangements and principles of behavior that minimize the effects of environmental degradation on the health and well-being of the least well-off and future generations, again implying strong support for environmentalism.⁷ Lastly, adherents of stewardship, arguing that we should leave "as much and as good" to the next generation, would find unacceptable the notion of degrading the beauty of creation in order to serve short-term economic interests.

Nonetheless, policy makers allow pollution, deforestation, species loss, resource depletion, and even activities that change the world's climate to continue. They respond to the noncompliance and strategic game playing of polluters by adjusting standards, trivializing fines, delaying implementation, ignoring violations of existing laws, or relegating environmental considerations to an appendix.⁸ Only recently has prosecution of environmental offenses begun at the federal level. The same neglect is evident at local, state, and international levels.⁹

This failure to heed ethical advice (and supportive public opinion) in favor of environmental protection can arise from a number of factors. First, prominent and highly self-interested groups may capture greater attention from policy makers, drowning out the ethical chorus. Second, ethical theories founded on the pursuit of self-interest may count for more than those founded on utilitarianism, deontology, justice, and stewardship. Third, the four ethical voices can be reinterpreted in distorted ways, giving greater weight to the rights of, and consequences to, the potential losers (businesses) than the existing victims of environmental degradation. Fourth, policy makers may simply favor free-market development for ideological reasons, revenue considerations, and the like. Lastly, in line with well-known collective action problems, policy makers might resist requiring their own communities to bear the ethical burden of redressing environmental degradation when the effect on the larger problem might be small.

What should be done? If, as we posit, policy makers' ideological commitments, definitions of justice, and perceptions of interest respond to the historical development of ideas, then alternative understandings of what constitutes appropriate public policy are needed. Based on Adam Smith's ideas regarding ethics in *The Theory of Moral Sentiments*, economics in *The Wealth of Nations*, and law in *Lectures on Jurisprudence*, we argue for the reformulation of the capitalist liberal ethic to encompass an expanded environmental concern on the part of policy makers. We do not argue that Smith's ethical theory is rationally superior to the alternative ethical theories. Rather, it is a reasonable ethical theory with strong elements of deontology and utilitarianism that policy makers respond to because it is the moral foundation of capitalism.

Smith's writings on government intervention were a reaction to the excesses of mercantilism. He never addressed environmental issues. Nonetheless, there are five major parallels between the public issues he did address and environ-

⁶ Adam Smith, *The Theory of Moral Sentiments* (Indianapolis, Indiana: Liberty Press, 1976);

Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (New York: Random House, 1976); Adam Smith, *Lectures on Jurisprudence* (Oxford: Clarendon Press, 1978).

⁷ James Penn, "Towards an Ecologically-Based Society: A Rawlsian Perspective," *Ecological Economics* 2 (1990): 225-42.

⁸ Brian Shaffer, "Regulation, Competition, and Strategy: The Case of Automobile Fuel Economy Standards, 1974-1991," *Research in Corporate Social Performance and Policy* 13 (1992): 191-218.

⁹ Mark A. Cohen, "Environmental Crime and Punishment: Legal/Economic Theory and Empirical Evidence on Enforcement of Federal Environmental Statutes," *Journal of Criminal Law and Criminology* 82 (1992): 1056-1108.

mental degradation. First, contrary to common misperceptions, Smith's major social concern was alleviating poverty, not providing a warrant for the piling up of goods by the wealthy at the expense of the rest of society. Second, Smith attacked the wealthy elites in the nobility and merchant classes who, he believed, were responsible for the poverty afflicting workers and peasants. Third, he expected government policy makers, not the business elite, to change this state of affairs by changing the rules of the game. Fourth, Smith argued that the answer to the social problems of the day was grounded in extending liberty to a wider class of citizens, not in simply enhancing the economic freedom of the propertied classes. Fifth, empirical evidence existed to indicate that Smith's radical solution to social ills would work.

Likewise, with regard to environmental degradation, (1) those who suffer the most are also those who are least advantaged in society, as recent work on environmental racism indicates, (2) business interests are largely responsible, (3) government must act, and (4) there is evidence that public policy can be effective. Yet, to amend the foregoing, the answer lies not so much in extending economic liberty as in extending *political* liberty to a wider part of society, which requires institutional reform.

SELF-INTEREST, JUSTICE, PUBLIC GOODS, AND GOVERNMENT INTERVENTION

Environmentalists commonly assume that Smith was an ardent defender of a narrow conception of egoism.¹⁰ This misrepresentation of Smith, typically advocated by neoclassical economists who ignore his views in *The Theory of Moral Sentiments* and *Lectures on Jurisprudence*, is uncritically accepted by critics of neoclassical theory.¹¹ Yet, although Smith is often cited for the "invisible hand" metaphor, his analysis was empirically grounded in moral psychology and ethical theory as applied to human motives and social consequences.¹² Contrary to the view that he advocated unrestrained greed, Smith actually argued that the pursuit of self-interest in economic matters, appropriately conditioned by moral principles, would result in general welfare benefits, albeit unintentional. Accordingly, because the moral worth of a given action is

judged primarily in terms of its consequences, and only in part because of the motives behind it, the good done for society when individuals act out of self-interest,¹³ not selfishness, justifies the behavior of producers and sellers in a free market.

Although few have written more scathingly than Smith about the propensity of the wealthy to conspire against the public good, he did, nevertheless, advocate increased economic liberty. Still, it is incorrect to conclude, as some scholars have, that Smith changed his mind on moral issues between the writing of *The Theory of Moral Sentiments* and *The Wealth of Nations*.¹⁴ Rather, *The Theory of Moral Sentiments* and *Lectures on Jurisprudence* reconcile his advocacy of economic freedom with his condemnation of the abusers of that freedom. In short, economic liberty is not an unlimited right, but is allowable in a properly ordered society to the extent that it rests on one of the lesser virtues (self-interest) and avoids vice (selfishness), and to the extent that it results in benefits for society as a whole. With this understanding of Smith's corpus in mind, we derive the following propositions:

General Principle: Government should permit citizens the liberty to pursue their economic self-interest.

Individual Harm Qualifying Principle: Government intervention is justified if people incur property harms by other citizens pursuing their economic self-interest.

General Welfare Qualifying Principle: Government intervention is justified if the pursuit of economic self-interest does not produce specific essential general welfare improvements (i.e., public goods).

Qualifying Principle Solution: Government intervention should take a form that involves the establishment of mediating structures that are (a) funded by government, (b) independent of government, (c) democratically controlled, (d) accountable, (e) impartial, and (f) authorized to impose just and fair decisions on affected parties.

THE GENERAL PRINCIPLE

In *The Wealth of Nations*, Smith postulates the ideal relationship between the economic and political systems as one in which "every man, as long as he does not violate the laws of justice, is perfectly free to pursue his own interest in his own way, and to bring both his industry and capital into competition with those

¹⁰ Garrett Hardin and John Baden, eds., *Managing the Commons* (San Francisco: W. H. Freeman, 1977); Carolyn Merchant, "Environmental Ethics and Political Conflict: A View from California," *Environmental Ethics* 12 (1990): 45-69.

¹¹ Economists recognizing these linkages include Federico Aguilera-Klink, "Some Notes on the Misuse of Classic Writings in Economics and the Subject of Common Property," *Ecological Economics* 9 (1994): 221-28; Amartya Sen, *On Ethics and Economics* (New York: Basic Books, 1987). Philosophers recognizing these linkages include Thomas D. Campbell, *Adam Smith's Science of Morals* (London: George Allen and Unwin, 1971); Patricia Werhane, *Adam Smith and His Legacy for Modern Capitalism* (New York: Oxford University Press, 1991).

¹² Campbell, *Adam Smith's Science of Morals*; Gilbert Harman, "Moral Agent and Impartial Spectator," Lenley Lecture, University of Kansas, 1986.

¹³ Sen, *On Ethics and Economics*, pp. 22-28, chastises George Stigler by correctly noting that Smith tended to prefer the term *prudence* to *self-interest*. But this is nitpicking. Smith also uses these terms interchangeably. Because the common language of policy makers is of utmost importance to our argument, the term *self-interest* will be used throughout this article without the modifier *prudent*.

¹⁴ For one of the most recent examples, see Kenneth Lux, *Adam Smith's Mistake* (Boston: Shambhala, 1990).

of any other man, or order of men."¹⁵ Smith develops this general principle with the following logic:

- (A) Liberty is a natural right.
- (B) Self-interest differs from selfishness.
- (C) The study of moral approbation reveals that the pursuit of one's self-interest is a common virtue.
- (D) Self-interest usually wins out over selfishness because of the operation of the "impartial spectator" in the individual.
- (E) Consequences of acts generally carry greater moral weight than motives, especially if those acts produce general welfare benefits.
- (F) The study of approbation shows that benevolence is an uncommon, but highly regarded, virtue.
- (G) To rely on benevolence to produce general welfare benefits requires in turn unjustifiable and unremitting coercion of an entire population.
- (H) Empirical evidence shows that self-interest produces welfare benefits.
- (I) Individuals possess better particular situational knowledge than the state.
- (J) The state must be impartial between citizens if a system of natural liberty is to function properly.
- (K) Therefore, government should permit citizens the liberty to pursue their economic self-interest.

According to Smith, liberty is a natural right. He writes "that a person has a right to have his body free from injury, and his liberty free from infringement, unless there be proper cause, no body doubts."¹⁶ Yet, Smith is very sensitive to the argument that institutionalizing and rewarding self-interested motives in economic affairs could result in the blossoming of greed and selfishness throughout society. He responds by deeming this viewpoint as strictly a theoretical possibility that is contrary to human experience. To the contrary, in the opening sentence of *The Theory of Moral Sentiments*, Smith asserts that "how selfish soever a man may be supposed, there are evidently some principles in his nature, which interest him in the future of others, and render their happiness necessary to him, though he derives nothing from it except the pleasure of seeing it."¹⁷

Smith consistently maintains that although most people are dominated by self-interest, they are not therefore selfish. Pursuing self-interest entails developing a rational plan that allows one to pursue his or her desires in a way that also allows others to pursue theirs. Selfishness, on the other hand, is the

pursuit of one's interests without concern for the interests of others. According to Smith, the study of moral approbation in society reveals a general principle that places limits on the pursuit of one's own ends: "one individual must never prefer himself so much even to any other individual, as to hurt or injure that other, in order to benefit himself, though the benefit to the one should be much greater than the hurt or injury to the other."¹⁸ This principle, Smith implies, moderates individual behavior. Smith discerns this principle's influence in the day-to-day workings of society based on the moral approval and disapproval given to specific acts. Consequently, because it is possible to rely on this sort of ordinary morality in society, unleashing economic actors to pursue their self-interest need not result in a society overtaken by greed and selfishness. Indeed, Smith argues extensively in *The Theory of Moral Sentiments* that self-interest is a basic virtue, thus sanctioning the activities of buyers and sellers described in *The Wealth of Nations*. Accordingly, *The Theory of Moral Sentiments* links up to *The Wealth of Nations* in arguing against a widely held opinion that self-interest is not virtuous and deserves moral condemnation. To make this point, Smith evaluates self-interest in regard to the praise or blame it elicits from others. Self-interest rarely brings praise because experience teaches us to expect it from others. Nonetheless, the absence of self-interest draws blame, and this shows its character as one of the virtues. According to Smith:

We are not ready to suspect any person of being defective in selfishness. This is by no means the weak side of human nature, or the falling of which we are apt to be suspicious. If we could really believe, however, of any man, that, was it not from a regard to his family and friends, he would not take that proper care of his health, his life, or his fortune, to which self-preservation alone ought to be sufficient to prompt him, it would undoubtedly be a failing, though one of those amiable failings, which render a person rather the object of pity than contempt or hatred. . . . Carelessness and want of economy are universally disapproved of, not, however, as proceeding from a want of benevolence, but from a want of the proper attention to the objects of self-interest.¹⁹

What prevents most people from sliding down the slippery slope from self-interest to selfishness? The answer rests in the manner in which people formulate moral judgments regarding their own behavior. To some degree, people see themselves as others do by entering into the position of an impartial spectator and posing deontological rules such as the golden rule. According to Smith, it is not the "soft power of humanity" that counteracts the power of self-love, but "reason, principle, conscience, the inhabitant of the breast, the man within, the great judge and arbitrator of our conduct." This voice within tells us that we are "but one of the multitude" no better than any other and that "when

¹⁵ Smith, *Wealth of Nations*, vol. 2, p. 208.

¹⁶ Smith, *Lectures on Jurisprudence*, p. 401.

¹⁷ Smith, *Theory of Moral Sentiments*, p. 9.

¹⁸ *Ibid.*, p. 138.

¹⁹ *Ibid.*, p. 304 (emphasis added).

we prefer ourselves so shamefully and so blindly to others, we become the proper objects of resentment, abhorrence, and execration." The impartial spectator "shows us the propriety of generosity and the deformity of injustice," including the injustice of doing even the smallest harm to another to obtain the greatest benefit to oneself.²⁰

Smith accounts for at least four types of impartial spectators: conscience, an imagined moral agent or group of moral agents observing one's actions, God, and communal law. Each impartial spectator continually praises or blames our actions. Moral ambiguity occurs when the impartial spectators are not in agreement regarding the morality of a particular action; at this point, communal law protects society.

Smith also provides five reasons why people behave in accordance with the moral judgments of these impartial spectators: an innate desire to please others, an intrinsic desire to be worthy of (not simply to receive) praise, a desire for peace of mind, habituation from childhood, and recognition of the central role of justice in society. Because, in some combination, individuals do respond to the various promptings of the impartial spectator, Smith argues that society will not disintegrate into a Hobbesian war of all against all if government allows individuals to pursue economic self-interest.

In responding to the other-regarding concerns raised by impartial spectators, people still strongly maintain their self-interested tendencies. Thus, when evaluating actions, people often place moral evaluation on the *consequences* of actions (did the agent's actions improve or damage the general welfare?) rather than on the motives that gave rise to the action (did the agent intend to improve or damage the general welfare?).²¹ Government policy makers should do the same. According to Smith, the command-and-control social planner

... seems to imagine that he can arrange the different members of a great society with as much ease as the hand arranges the different pieces upon a chess-board. He does not consider that the pieces upon the chess-board have no other principle of motion besides that which the hand impresses upon them; but that, in the great chess-board of human society, every single piece has a principle of motion of its own, altogether different from that which the legislature might choose to impress upon it.²²

Smith maintains that it is preferable to rely on the natural inclinations of the "pieces on the chess-board" to move according to their own principles than to expect a "man of system" to comprehend the complexity of society and impress an effective plan upon it. It is illuminating that, in this regard, the invisible hand metaphor makes only two appearances in Smith's work, once each in *The Theory of Moral Sentiments* and *The Wealth of Nations*. In *The Theory of Moral*

Sentiments, Smith relies on the invisible hand to show that self-interest will lead even selfish landlords to provide for the future and for others in society (the landlord needs a healthy and reliable work force).²³ Although, as we highlight in the next section, the invisible hand is surrounded by a conception of justice, Smith's strong preference for individuals responding to their own contextual situations remains at the center of his argument.²⁴

Yet, Smith recognized that the ideal society, in which actors respond to the impartial spectator and with prudent regard for their own interests, is not likely to occur in the real world due to human imperfection and fallibility. Government, then, remains necessary and must therefore be impartial, for "to hurt in any degree the interest of any one order of citizens, for no other purpose but to promote that of some other, is evidently contrary to that justice and equality of treatment which the sovereign owes to all the different orders of his subjects."²⁵ The mercantilist system, Smith believed, was a most egregious example of the violation of this charge, favoring the interests of merchants and manufacturers while sacrificing those of consumers and other producers.²⁶ Consequently, the institutions that are supposed to enforce the principles of impartial justice must be to some degree independent of government.

To sum up, with regard to Smith's general principle concerning the system of natural liberty, he posited a right to pursue one's economic self-interest and he even asserted that failure to do so was unvirtuous, however amiable the failing. Yet, Smith based his argument for extending the degree of economic liberty in society on an a priori understanding of the regulatory principles operating in society by way of common morality. Giving credence to economic impulses, in Smith's view, does not remove the promptings of the impartial spectator, which condemn selfishness and disregard for the interests of others. Rather, because the consequences of self-interested economic actions are often beneficial to society, such actions deserve moral approval, not blame. Thus, Smith's faith in the moral underpinnings of society, even when a virtue as limited as self-interest is involved, precedes his advocacy of greater economic liberty. He also preserves a role for government in protecting individuals and society from property harms, to which we now turn.

THE INDIVIDUAL HARM QUALIFYING PRINCIPLE

As noted earlier, Smith recognizes that not all people form—or obey—moral judgments from the perspective of an impartial spectator. Thus, liberalizing the economic system entails government action when injustices do arise. Smith

²⁰ *Ibid.*, pp. 184–85.

²⁴ Knud Haakonssen, *The Science of A Legislator* (New York: Cambridge University Press, 1981).

²⁵ Smith, *Wealth of Nations*, vol. 2, p. 171.

²⁶ *Ibid.*, pp. 180–81.

²⁰ *Ibid.*, p. 137.

²¹ *Ibid.*, p. 101

²² *Ibid.*, p. 234

strongly advocates government intervention when economic activity harms a person's property, which includes bodily harms.²⁷ We call the deontological justifications that Smith provides for this proposition the "individual harm qualifying principle." It flows from the following line of reasoning:

- (A) Study of moral approbation shows that justice is an essential virtue.
- (B) Justice is the first and chief duty of government.
- (C) Injury or harm is a violation of justice and liberty.
- (D) Harms to property include those incurred as a person (body, reputation, estate), as a member of a family (spouse, son or daughter, servant), or as a member of a state (subjection to oppression).
- (E) Unjust harms demand intervention.
- (F) Therefore, government intervention is justified if people incur property harms by other citizens pursuing their economic self-interest.

According to Smith, the study of approbation shows that justice, unlike self-interest or benevolence, is an essential virtue in that just actions earn praise and unjust actions earn blame. For instance, when comparing benevolence and justice, Smith maintains that "society may subsist though not in the most comfortable state, without beneficence; but the prevalence of injustice must utterly destroy it."²⁸ In a comparison to houses, Smith argues that

[Benevolence] 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.²⁹

Consequently, "the first and chief design of every system of government is to maintain justice, to prevent the members of a society from encroaching on another's property, or seizing what is not their own."³⁰ Yet, systems of justice are often imperfect. Imperfections in the system of justice are themselves a cause of disorder and must be corrected to provide justice as impartially as possible. Otherwise, without justice, society collapses into a Hobbesian war of all against all. Smith concludes his discussion of justice in *The Theory of Moral Sentiments* by writing that

Every system of positive law may be regarded as a more or less imperfect attempt towards a system of natural jurisprudence, or towards an enumeration of the particular rules of justice. As the violation of justice is what men will never submit to from one another, the public magistrate is under a necessity of employing the power of the commonwealth to enforce the practice of this virtue. Without this precaution, civil society would become a scene of bloodshed and disorder, every man revenging himself at his own hand whenever he fancied he was injured. To prevent the confusion which would attend upon every man's doing justice to himself, the magistrate, in all governments that have acquired any considerable authority, undertakes to do justice to all, and promises to hear and to redress every complaint of injury.³¹

Smith writes that imperfections in the justice system are sometimes caused by the "interest of particular orders of men who tyrannize the government" and other times are due to the "rudeless and barbarism of the people."³² He places the greatest blame on the nobles who selfishly favor their liberty to that of everyone else. In discussing the evolution of democratic political liberty, Smith notes that, even more than an absolute monarch, "the nobility are the greatest opposers and oppressors of liberty that we can imagine."³³ According to Smith,

... laws and government may be considered in this and indeed in every case as a combination of the rich to oppress the poor, and preserve to themselves the inequality of the goods which would otherwise be soon destroyed by the attacks of the poor, who if not hindered by the government would soon reduce the others to an equality with themselves by open violence.³⁴

The wealthy have selfishly supported obvious violations of justice and failed to listen to the advice of impartial spectators by fostering slavery,³⁵ below-poverty wages,³⁶ and extensive applications of division of labor.³⁷

As mentioned earlier in our discussion of the general principle, liberty is abused when it results in injury to another person. Harm to others is only allowed when it is done for retribution or for self-preservation.³⁸ Unlike modern neoclassical scholars, Smith provides a very broad conception of harms that calls for collective concern and action. It includes gaining redress for harms to both natural rights and acquired rights. The former includes harms to the body (homicide, assault, battery), reputation (affronts, verbal injuries,

²⁷ Smith, *Theory of Moral Sentiments*, p. 340.

²⁸ *Ibid.*, p. 341.

²⁹ Smith, *Lectures on Jurisprudence*, p. 264.

³⁰ *Ibid.*, pp. 208-09.

³¹ *Ibid.*, p. 186.

³² *Ibid.*, p. 192; Smith, *Wealth of Nations*, vol. 1, pp. 74-76.

³³ Smith, *Wealth of Nations*, vol. 2, pp. 302-03.

³⁴ Smith, *Theory of Moral Sentiments*, p. 82.

²⁷ This is position similar to the harm principle that remains at the foundation of modern liberal society. See Joel Feinberg, *Harm to Others*, vol. 1, *The Moral Limits of the Criminal Law* (New York: Oxford University Press, 1984).

²⁸ Smith, *Theory of Moral Sentiments*, p. 86.

²⁹ *Ibid.*, p. 86.

³⁰ Smith, *Lectures on Jurisprudence*, p. 5.

written injuries), and liberty (wrongful imprisonment, rape, forced marriage), while the latter includes harms to real estate (arson, forcible entry, theft, robbery) and personal estate (fraud, forgery).³⁹ Smith's very broad conception of harms and his call for collective action are particularly evident in his analysis of how an extensive use of division of labor results in the formation of citizens who are not intellectually equipped to appropriately participate in a democratic society. According to Smith,

... [the laborer] naturally loses, therefore, the habit of such exertion, and generally becomes as stupid and ignorant as it is possible for a human creature to become. The torpor of his mind renders him, not only incapable of relishing or bearing a part in any rational conversation, but of conceiving any general, noble, or tender sentiment, and consequently of forming any just judgment concerning many even of the ordinary duties of private life. Of the great and extensive interest of his country he is altogether incapable of judging; and unless very particular pains have been taken to render him otherwise, he is equally incapable of defending his country in war. . . . His dexterity at his own particular trade seems, in this manner, to be acquired at the expense of his intellectual, social, and martial virtues. But in every improved and civilized society this is that state into which the laboring poor, that is, the great body of the people, must necessarily fall, unless government takes some pains to prevent it.⁴⁰

With regard to environmental degradation, the individual harm qualifying principle asserts that government, however imperfect in practice, has a duty to intervene when pollution results in harms to property, which include harms to a person's health, freedom of action, and real estate. Polluting common spaces, causing the shortening of another's life or loss of value of another's property by polluting and degrading the land, and diminishing future generations' enjoyment of the Earth for the sake of immediate profits are all subject to the greatest moral condemnation in Smith's ethical system. Clearly, he provides a broad mandate for government intervention in economic activity. As Smith argues, we can expect that the existing practice of justice is skewed in favor of the advantaged in society when they cause harm. Nonetheless, the natural evolution of the system of justice points toward greater authority to prevent and mitigate harms arising from environmental damage.

THE GENERAL WELFARE QUALIFYING PRINCIPLE

Besides protecting individuals from harm, Smith argues that government's duties extend to providing such public goods as national defense, administra-

tion of justice, and public works.⁴¹ Importantly, libertarians are simply wrong when they claim that these examples are, for Smith, the only situations in which government action is justified to provide public goods. Rather, they are simply examples to highlight the general principle that, when private economic activity is not sufficient to produce general welfare benefits, government is empowered to act.⁴²

Likewise, the provision of such environmental public goods as sewage treatment and regulation of polluting industries is sanctioned in Smith's analysis. It is not likely that self-interested, individualistic action will lead to the establishment of sewage treatment plants. Because the rich and poor alike must use public utilities, a system of taxation is necessary to allocate the costs of their provision. In addition, environmental public goods such as sewage systems and national parks suffer from inherent free rider problems, which most often it is government's role to overcome. Contrary to those who see in Smith an advocate of complete *laissez-faire*, Smith's ethical, economic, legal, and political theories all point toward a vigorous government able to fulfill its public duties, including provision for environmental health and beauty.

QUALIFYING PRINCIPLE SOLUTION

In light of the arguments for government intervention to protect individuals from harm and to provide public goods, how should government intervene? Smith consistently argues that government should rely on mediating structures akin to the impartial spectator in that they are (1) funded by government rather than private sources, (2) independent of government, (3) democratically controlled, (4) accountable, (5) impartial, and (6) authorized to impose just and fair decisions on the affected parties. Smith's solutions for solving problems of injustice and public goods follow this pattern.

Smith's mediating structure solution is most evident in his discussion of the justice system. On the one hand, the justice system must be independent of government to prevent unjust decisions partial to the interests of politicians, for, otherwise:

When the judicial is united to the executive power, it is scarce possible that justice should not frequently be sacrificed to, what is vulgarly called, politics. The persons entrusted with the great interests of the state may, even without any corrupt views, sometimes imagine it necessary to sacrifice to those interests the rights of a private man. But upon the *impartial administration* of justice depends the liberty of every individual, the sense which he has of his own security. In order to make every individual feel himself perfectly secure in the possession of every

³⁹ *Lectures on Jurisprudence*, p. 399. For a further elaboration of Smith's theory of rights, see also Haakonssen, *The Science of a Legislator*.

⁴⁰ Smith, *Wealth of Nations*, vol. 2, p. 303 (emphasis added).

⁴¹ *Ibid.*, p. 208.

⁴² Adam Myerson, "Adam Smith's Welfare State," *Policy Review* (Fall 1989) 66-67.

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.⁴³

On the other hand, the justice system must be funded by government. Otherwise, the justice system may foster unjust decisions that are partial to the interest of its wealthiest users. Smith, based on historical evidence, argues that

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. . . . That such abuses were far from being uncommon, the ancient history of every country in Europe bears witness.⁴⁴

Smith's distrust of command-and-control planning reflects his preference for democratic, decentralized forms of decision making.⁴⁵ He argues that the virtue of English juries resists in their being both impartial and democratic because there is nothing "more admirably contrived for preserving liberty and freedom than this form of English juries."⁴⁶ Smith's commitment to democracy is disputed by scholars. For instance, Reisman maintains that "Smith had an almost Shakespearean distrust of the masses, whom he felt to be incapable of comprehending [the social] interest, or of understanding its connexion with their own."⁴⁷ Likewise, Werhane observes, "Smith's greatest apprehension [of democracy] concerns the decision-making abilities of the common person."⁴⁸ Smith also saw the masses as driven by jealousy, envy, and lack of discipline. Yet, what Smith feared was *uneducated* democracy, which is why educating the mass of the citizenry was essential to him.

The same mediating structure criteria are apparent in his discussion of educating the masses. He calls for government action because education, particularly for democracies, is an essential public good that is threatened by work and poverty. In addition to his concern about the impact of the division of labor on the intellectual ability of laborers, he notes that for many children living in poverty, "their labor is both so constant and so severe, that it leaves them little leisure and less inclination to apply to, or even to think of anything

else."⁴⁹ Smith's specific means for carrying out a project of mass education entails publicly funded but privately operated mediating structures, such as parish schools. Smith opposed government operated schools, preferring that teachers be free to establish the curriculum independent of political pressure.

STAKEHOLDER PANELS AS IMPARTIAL SPECTATOR MECHANISMS

Although Smith did not write about environmental issues, the logic of the individual harm qualifying principle strongly suggests that government intervention is justified in those situations in which pollution or other forms of ecological harm affect a person's health or property. Likewise, the general welfare qualifying principle suggests equally strongly that government action is justified when private action is not likely to provide needed public goods. Taking due account of Smith's skepticism regarding the judicial system, and similarly wishing to avoid the vagaries of legislative politics, the requirements of an appropriate mediating structure noted above can be fulfilled by modern alternative dispute resolution processes, such as stakeholder panels, rather than judges, administrators, and legislators.

A practical next step is the formation of a collaborative citizen decision-making body, such as the 1977 National Coal Project.⁵⁰ A plenary oversight group and five task forces were established with roughly equal numbers of coal firm executives and environmentalists on each. After thirteen months 200 recommendations were approved. Although the two recommendations that were introduced in the U.S. House of Representatives died in committee, some of the other recommendations were adopted by government agencies and firms. More recently, the Environmental Protection Agency established a national rule-making stakeholder panel that controls for the level of volatile organic compounds in architectural and industrial maintenance coatings.⁵¹ The thirty-three member panel consists of six regulators, three environmentalists, thirteen major industry representatives, five regional industry representatives, and six major users of paint products. Importantly, many participants of these collaborative processes reframe their interests and acceptable outcomes, and develop more favorable attitudes toward their former antagonists.

A stakeholder panel ought to have the authority of an alternative dispute resolution committee that can forward its just and fair decisions to political

⁴³ Smith, *Wealth of Nations*, vol. 2, p. 244 (emphasis added).

⁴⁴ *Ibid.*, p. 237.

⁴⁵ This inclination is most apparent in Smith's analysis of political institutions in American colonies. See Smith, *Wealth of Nations*, vol. 2, p. 83.

⁴⁶ Smith, *Lectures on Jurisprudence*, pp. 284-86.

⁴⁷ David A. Reisman, *Adam Smith's Sociological Economics* (New York: Barnes and Noble Books, 1976), p. 206.

⁴⁸ Werhane, *Adam Smith and His Legacy*, p. 163.

⁴⁹ Smith, *Wealth of Nations*, vol. 2, p. 305.

⁵⁰ Barbara Gray, *Collaborating: Finding Common Ground for a Multiparty Problem* (San Francisco: Jossey-Bass, 1989).

⁵¹ Ann E. Feyherth, "Changing and Converging Mindsets of Participants during Collaborative, Environmental Rule-Making: Two Negotiated Regulation Case Studies," in Denis Collins and Mark Starik, eds., *Sustaining the Natural Environment: Empirical Studies on the Interface between Nature and Organizations* (Greenwich, Conn.: JAI Press, 1995).

bodies for approval. Under these conditions, individuals first do that which comes naturally, which is to pursue their own agendas while being sensitive to the interests of others on the panel. Thus, the stakeholder panel, serving the function of an impartial spectator, institutionalizes the process of evoking the moral sentiments of others through debate and consensus on what should be done about a given problem. The panel should be held to reasonable deadlines and participants must be accountable for their decisions. For instance, environmentalists ought to have to account for the economic consequences of their policy preferences, while businesses ought to have to account for the environmental effects of theirs. If no agreement can be reached by a certain deadline, the problem should fall under the domain of the political process. Thus, in line with Smith's principles, command-and-control government regulation becomes the last resort, not the first. This suggested approach differs significantly from the current trend in which environmentalists and business leaders lobby politicians for favorable legislation or "stewardship groups" that exclude the voices of affected businesses.⁵²

Obviously, there are important questions to address with regard to this proposal. First, why is there likely to be greater consensus among the affected individuals using a stakeholder panel mechanism than under the current system of government lobbying? Second, who should sit on the panel? Third, will the panels simply become another arena of politics, thus replicating the current political problem of ignoring the ethical chorus in favor of environmental protection? Fourth, will the losers in this process refuse to abide by the decisions of the panels and appeal to politicians and judges for reversals? Fifth, do we have the luxury of time for these panels to resolve major outstanding environmental issues?

The first four issues can be taken together and assessed in terms of the growing body of literature on stakeholder panels. There have been successes and failures: the successes should be replicated and the failures should be learned from.⁵³ Solutions to these practical problems are already being proposed, debated, and tried.⁵⁴

The fifth issue, that of time, is more daunting. Grass-roots solutions to major

⁵² Sally Lerner, "Environmental Constituency-Building: Local Initiatives and Volunteer Stewardship," *Alternatives* 13 (1986): 55-60.

⁵³ Gray, *Collaborating*; Susan L. Carpenter and W. J. D. Kennedy, *Managing Public Disputes: A Practical Guide to Handling Conflict and Reaching Agreement* (San Francisco: Jossey Bass, 1988); Lawrence Suskind and Jeffrey Cruikshank, *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes* (New York: Basic Books, 1987); Deborah Richard, "Regulatory Negotiation: An Assessment of Its Application," *Environment Impact Assessment Review* 13 (1993): 189-98.

⁵⁴ See several empirical studies in Collins and Stark, *Sustaining the Natural Environment*; Thomas A. Heberlein, "Some Observations on Alternative Mechanisms for Public Involvement. The Hearing, Public Opinion Poll, the Workshop and the Quasi-Experiment," *Natural Resources Journal* 16 (1976): 197-212.

problems do take time. Without knowledge of how long it will take for such procedures to have an effect, and with only sketchy understanding of the global environmental changes underway, no definitive answer is possible. Some believe that it is already too late to solve the global ecological crisis, that the damage is done, that the trends are too far advanced, and even that the most vigorous action taken immediately will have only a slight chance of reversing the processes underway. Others believe that time is available. In either case, the formation of stakeholder panels is worth a try. If we have time, then they offer a viable, democratic, effective means of overcoming resistance to environmental protection. If not, nothing is lost in the attempt.

CONCLUSION

The ethical framework that we offer for reconciling the differences between free-market proponents and environmentalists regarding environmental issues starts with the free market, but only allows economic liberty to continue unabated if there is consensus among affected publics that environmental sustainability is being achieved. In accordance with this line of reasoning, stakeholder panels should propose public policy and issue authoritative decisions. If these panels fail, then environmental disputes necessarily enter the political or judicial realm.

In summary, Smith defends the pursuit of economic self-interest on largely utilitarian grounds, placing deontological limits on economic activity. He places his confidence on the capacity of individuals to arrive at more or less impartial moral judgments that prevent their self-interested behavior from becoming selfish. Although we are all partial to our own concerns, we have the inherent capacity to sympathize with the concerns of others. Thus, social institutions must be designed to reflect our natural propensity to concern ourselves with those near while also stretching our moral horizon to encompass those geographically and temporally distant. Government must provide as much room as possible for individual liberty while ending activities that harm others.

Although Western values and institutions are now sweeping the globe, critics remain. They argue that Western values and institutions are inherently destructive toward nature and future generations. These critics often point to Smith's doctrine of the invisible hand and his supposed advocacy of selfish behaviors when making their case that the Western tradition is environmentally unsound. While it is true that some who claim to follow Smith advance dangerously selfish ethical positions, they are not true to Smith's intent. Careful consideration of what Smith actually wrote in *The Theory of Moral Sentiments*, *The Wealth of Nations*, and *Lectures on Jurisprudence* indicates that he would advocate a strong, balanced environmental ethic and the judicious use of government power to ensure the viability of our way of life.