

## Impartial Spectators and Legislators: Adam Smith and Religion

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**Abstract:** The eighteenth century is often thought of as an important era for the secularization of British philosophy. One dimension of this secularization involves philosophers developing theories that, while not explicitly rejecting God, are less reliant on claims about God for their intelligibility and plausibility. A comparison of Adam Smith with his teacher, Francis Hutcheson, reveals an underappreciated facet of this process. Hutcheson portrayed God as an impartial legislator and used this metaphor to clarify contested moral rules in a way that would make little sense if God did not exist. In contrast, Smith's impartial spectator does not require belief in a God who is the author of the moral law in order to determine the correct interpretation of contested moral principles. By pursuing this alternative conception of impartiality, Smith developed a theory that was, in this respect, less reliant on religious premises than Hutcheson's had been.

Adam Smith's *The Theory of Moral Sentiments*<sup>1</sup> is an important work in the history of philosophy, in part because of disagreements about how it relates to claims concerning secularization in eighteenth-century British thought.<sup>2</sup>

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<sup>1</sup>Adam Smith, *The Theory of Moral Sentiments*, ed. D. D. Raphael and A. L. Macfie (Indianapolis, IN: Liberty Fund, 1981). References are given parenthetically as *TMS* followed by part, section, chapter, and page number.

<sup>2</sup>Michael B. Gill, *The British Moralists on Human Nature and the Birth of Secular Ethics* (Cambridge: Cambridge University Press, 2006) is a classic treatment of the secularization thesis as it relates to the eighteenth century, though Smith does not figure in his account. While Gill focuses on secularization in theories of human nature, our emphasis is on a different dimension of secularization.

Religion can figure in a theory in a variety of ways: it can provide additional motives for behavior, it can increase the sense that a given moral precept is authoritative, and it can influence the meaning and significance we attach to political arrangements. These are examples of religion performing a supportive role, but in others it may influence the content of moral rules, such that removing the theological component would alter what morality dictates. Which of these options best describes the function of religion in Smith's theory remains contested.

Smith's sentimental moral theory echoes a precept whereby individuals unconsciously advance general rules of morality through the exchange of moral judgments. The essential guiding feature of this process is the "impartial spectator," an imagined "impartial and well-informed" onlooker utilized as a measure of right action for individuals, both when one reflectively critiques one's own actions and when passing judgment on the actions of others. By consistently appealing to this "man within the breast," individuals increasingly come to view themselves as others see them, a perspective necessary for overcoming self-interested activity and fostering mutual sentiments (*TMS* 3.2.32, 130).

One might be tempted to view the impartial spectator as a placeholder for God in Smith's theory. This is not so. The impartial spectator does not offer divine guidance. Consisting of the reactions and judgments of individuals gone before, it equips one with a disinterested perspective to consult in their own assessments. This guiding feature for moral behavior is the product of individuals passing spontaneous judgments in their daily interactions, as noted by T. D. Campbell, James R. Otteson, and D. D. Raphael.<sup>3</sup> Furthering the view that Smith's moral theory does not rely on theological underpinnings, we draw attention to the fact that judgments are not made from the perspective of one who is legislating. Although they are contributing to the rule-making process, ordinary citizens do not imagine themselves to be engaged in legislative activity, and as such understand their influence to be limited to the case at hand. Noting this aspect of Smith's theory provides fresh insight for determining how reliant on religious premises it is.

Legislative impartiality is a distinct form of impartiality employed when one is asked to formulate a rule (as a legislator would) that will apply to a set of cases rather than a particular act. This creates a special demand, or justificatory burden. In cases where one is not actually in a position to legislate for others, one must justify why recourse to a legislative perspective is appropriate. In some early modern theories, religion played a crucial role here. Theories that incorporated a theological element helped to substantiate the

<sup>3</sup>T. D. Campbell, *Adam Smith's Science of Morals* (Totowa, NJ: Rowman and Littlefield, 1971); James R. Otteson, "How High Does the Impartial Spectator Go?," in *Adam Smith as Theologian*, ed. Paul Oslington (New York: Routledge), 92–97; D. D. Raphael, "The Impartial Spectator," in *Essays on Adam Smith*, ed. Andrew S. Skinner and Thomas Wilson (Oxford: Oxford University Press, 1975), 82–99.

belief that morality was law-like and that invoking a legislative form of impartiality is reasonable from God's perspective as legislator of the moral law. Alex Tuckness has provided a general treatment of the turn toward and away from a "legislative point of view" or "legislative perspective" during this period.<sup>4</sup>

This article moves beyond Tuckness's book by focusing on Smith, by adding argumentation and quotations to strengthen its claims about Hutcheson, and by introducing the concept of legislative impartiality. We argue that in formulating a theory of impartiality independent of this legislative approach, Smith created a theory that is, on this particular matter, less reliant on religion than Hutcheson's. The spectator metaphor is more like an impartial judge who looks at a particular case (an action, for example) and responds with approval or disapproval. This is in contrast with the legislative metaphor, as described above, that imagines an impartial legislator who sets down rules that will become the basis for judgments of approval or disapproval. While in some cases Smith imagines us as judges using established conventions in the way a judge might use the law, the impartial spectator is broader than this and often simply reports the sentiments an unbiased observer would have when making a judgment in relation to a specific instance.

The contrast between Smith and his teacher, Francis Hutcheson, illustrates the distinction between legislative impartiality and the impartial spectator, allowing us to contribute to the literature on the role of religion in *The Theory of Moral Sentiments*. Explications of the impartial spectator feature in previous analyses of Smith's theory, but our novel insight is the absence of a demand for legislative impartiality. While Smith and Hutcheson develop sentimentalist moral theories, Hutcheson's legislative impartiality requires additional reasoning, and perhaps appeal to a divine legislator of the moral law, in a way that Smith's impartial spectator does not. In making this argument we rely on Hutcheson's later works, primarily *A System of Moral Philosophy* (1755), where his emphasis on rule-based thinking features more prominently. We refrain from commentary on Hutcheson's and Smith's personal religious convictions and instead attend to the ideas they put forth.<sup>5</sup> It is also beyond the scope of this article to argue that all rule-based accounts of morality are religious in nature. Rather, we hope to bring attention to one oft-overlooked manner in which religion might feature within a theory. Hutcheson and Smith are a particularly compelling case study for this, not

<sup>4</sup>Alex Tuckness, *Morality as Legislation: Rules and Consequences* (Cambridge: Cambridge University Press, 2021).

<sup>5</sup>Gavin Kennedy, "Adam Smith on Religion," in *The Oxford Handbook of Adam Smith*, ed. Christopher J. Berry, Maria Pia Paganelli, and Craig Smith (Oxford: Oxford University Press, 2013), 464–84, provides a biographical account of Smith's interaction with the religion of his time and how it featured in his written works.

only because of their teacher-pupil relationship, but because in other respects their sentimentalist approaches bear striking similarities.<sup>6</sup>

In section 1 we provide a brief overview of the secondary literature on Smith and religion. Section 2 explores Hutcheson's legislative impartiality to set up the contrast with Smith's theory. In section 3 we give a detailed account of Smith's impartial spectator as an alternative to Hutcheson's impartial legislator. Section 4 assesses the role of religion in Smith's thought and explains why his theory is less reliant on theistic claims than those that use legislative impartiality. Smith's theory is more robust than Hutcheson's, in this respect, if a theological element is not presumed.

## 1. Smith and Religion in Context

Since Jacob Viner's influential 1927 article<sup>7</sup> that attributed the natural development of moral sentiments to "the design and intervention of a benevolent God,"<sup>8</sup> many scholars have doubted the sincerity of Smith's allusions to God. Some have instead interpreted such references as deferential to the religious climate of eighteenth-century Scotland, but insincere, while others claim that these are mere trappings to the theoretical substance. T. D. Campbell finds it significant that Smith removed passages referring to the Christian doctrine of atonement from later editions of *Theory of Moral Sentiments*, which indicates that he views "a respect for the rules of duty" as chiefly owed to conscience's prodding rather than to fear of future punishment.<sup>9</sup> Knud Haakonssen characterizes Smith's attitude toward the belief in "a goal-directed order in the universe" as speculative, concluding that "nothing [in his theory] hinges on teleological explanations and thus on a guarantor of a teleological order."<sup>10</sup> Colin Heydt provides an *ex negativo* account by contrasting Smith's manuscripts with those of his contemporaries to find that his lack features to be expected from theories of an explicitly religious tenor.<sup>11</sup> Charles

<sup>6</sup>On Hutcheson's significant influence on Smith, see Enzo Pesciarelli, "Aspects of the Influence of Francis Hutcheson on Adam Smith," *History of Political Economy* 31 (1999): 524–44. V. M. Hope looks at Hutcheson, Hume, and Smith in *Virtue by Consensus* (Oxford: Oxford University Press, 1989).

<sup>7</sup>Paul Oslington, "Jacob Viner on Adam Smith: Development and Reception of a Theological Reading," *European Journal of the History of Economic Thought* 19 (2012): 287–301, offers an overview of Viner's position and argues that he remained committed to a theistic reading of Smith.

<sup>8</sup>Jacob Viner, "Adam Smith and Laissez Faire," *Journal of Political Economy* 35 (1927): 202.

<sup>9</sup>Campbell, *Adam Smith's Science*, 225.

<sup>10</sup>Knud Haakonssen, *The Science of a Legislator* (Cambridge: Cambridge University Press, 1981), 77.

<sup>11</sup>Colin Heydt, "The Problem of Natural Religion in Smith's Moral Thought," *Journal of the History of Ideas* 78 (2017): 73–94.

L. Griswold interprets Smith as providing a “psychological anthropology of religion,”<sup>12</sup> so that only after rules are adopted do individuals come to recognize them as God’s commands. Lauren Kopajtic and Paul Sagar follow suit by arguing that moral sentiments precede the process of assigning the source of these to a divine being.<sup>13</sup>

Some have defended a theological interpretation by synthesizing Smith’s economic and moral theories. Seeking to revive Viner’s view, Lisa Hill focuses on the “invisible hand” which features in *The Wealth of Nations* to argue that Smith’s theory is indefensible without appealing to the existence of a God. Her rejoinder to the secular interpretation is that there is “Providential infrastructure” inherent to Smith’s overarching “theory of social order,” which encompasses his discussion of how we come to adopt rules of morality to govern society.<sup>14</sup> Andy Denis likewise defends a theological reading, believing it to be the simplest way to understand Smith’s writings, and burdens those with an alternate reading to prove otherwise.<sup>15</sup> He echoes Hill’s analysis of the critical role of providence within Smith’s works, but diverges from her commendatory characterization of “a creative demiurge.”<sup>16</sup> The God in Smith’s writings is not beneficent as a reconciling force, righting the frailties of fallible individuals as Hill suggests. Rather, Denis’s account evokes the plague-dispatching God of the Old Testament, smiting individuals with “illusions and deceptions, and other weaknesses and indignities, and in general treating them like puppets” for the purpose of maximizing happiness.<sup>17</sup> Despite this less than endearing image of a manipulative machine-tinkering God, Denis, like Hill, traces a teleological element across Smith’s greater system, declaring it crucial for Smith’s “confidence in a harmonious universe.”<sup>18</sup> Similarly, Otteson asserts that a natural proclivity for adjusting one’s sentiments to accord with others’ is understood by Smith as God-given, but the content of general moral rules need not be understood as divine legislation.<sup>19</sup> God’s role might be considered one step removed in Smith’s theory, so that the rules that come to govern society are

<sup>12</sup>Charles L. Griswold Jr., *Adam Smith and the Virtues of Enlightenment* (Cambridge: Cambridge University Press, 1999), 194.

<sup>13</sup>Lauren Kopajtic, “The Vicegerent of God? Adam Smith on the Authority of the Impartial Spectator,” *Journal of Scottish Philosophy* 17 (2019): 61–78; Paul Sagar, “Adam Smith’s Genealogy of Religion,” *History of European Ideas* 47 (2021): 1061–78.

<sup>14</sup>Lisa Hill, “The Hidden Theology of Adam Smith,” *European Journal of the History of Economic Thought* 8 (2001): 3, 1.

<sup>15</sup>Andy Denis, “The Invisible Hand of God in Adam Smith,” *Research in the History of Economic Thought and Methodology*, no. 23-A (2005): 17.

<sup>16</sup>Hill, “Hidden Theology,” 3.

<sup>17</sup>Denis, “Invisible Hand of God,” 13.

<sup>18</sup>*Ibid.*, 29.

<sup>19</sup>James R. Otteson, *Adam Smith’s Marketplace of Life* (Cambridge: Cambridge University Press, 2002).

understood as entirely the work of fallible individuals “exchanging” judgments within their communities, composing a “marketplace of morals.”<sup>20</sup>

Putting aside the question of consistency across Smith’s works and overarching themes, we limit our focus to the process through which moral rules develop. We follow others who have devoted attention to untangling the religious implications of the impartial spectator in particular. Campbell contrasts Smith’s impartial spectator with an “ideal observer,” stressing the position’s ordinariness.<sup>21</sup> Raphael resolutely defends Smith’s empiricism, in opposition to those who interpret descriptions of the impartial spectator as hinging on a theistic account.<sup>22</sup> Otteson underscores the impartial spectator’s fallibility as a product of “human biases and prejudices.”<sup>23</sup> Our argument delves a level deeper than these analyses, focusing on the deliberative framework one adopts when passing judgments that give shape to the impartial spectator.

Although we agree with Otteson’s account of the development of moral rules, our insight furthers the claim that the providential framework in Smith is unnecessary for the integrity of his theory. While Otteson describes the process whereby individuals exchange judgments more generally, we concentrate on the perspectival framework utilized by the individual when making said judgments. Attending to the metaphor of impartiality that Smith’s impartial spectator embodies serves to bolster the view that rules of morality would remain unchanged if God’s existence were denied. It may be that Smith himself relied on a natural theism to explain why individuals long to share the sentiments of others, but that is a separate claim from whether the subsequent rules would differ in God’s absence. That individuals do not think of themselves as legislating a rule for others to follow when passing judgment lends credence to a secular interpretation of Smith’s moral theory. This renders a transition to an entirely evolutionary account of morality, without divine orchestration, a simpler and more credible endeavor.

## 2. Hutcheson’s Legislative Impartiality

We expand on Tuckness’s argument that Hutcheson, particularly in his later work *A System of Moral Philosophy*, developed an account of morality that relied on the premise of God as legislator.<sup>24</sup> Hutcheson was an important influence on Smith and a brief account of legislative impartiality present in his theory will clarify the contrast with Smith’s conception of an impartial

<sup>20</sup>Ibid., 220.

<sup>21</sup>Campbell, *Adam Smith’s Science*, 135.

<sup>22</sup>Raphael, “Impartial Spectator,” 89.

<sup>23</sup>Otteson, “How High?,” 96.

<sup>24</sup>Tuckness, *Morality as Legislation*, 65–72.

spectator.<sup>25</sup> Hutcheson emphasized impartial benevolence as the central aspect of a morally praiseworthy character. Our moral sense approves of those actions that are conducive to the public good. Benevolence strikes us as beautiful, so we respond positively when we see people aiming to promote the public good. The moral sense, Hutcheson's term for this appreciation, approves those intentions that promote the public interest. In this regard, the realization that beneficent actions elicit moral approval is an inductive process and a product of our moral sense.<sup>26</sup> The theological turn in Hutcheson is where he refracts the ideal of benevolence through the lens of what a benevolent deity would legislate. The content of morality would thus change if God were not present in his theory. Combining the assumption that such a legislator exists with the assumption that such a legislator's rules are wise and benevolent, we discover the rules God has enacted by thinking about what rules would promote the good if God enacted them. This conception includes our appreciation for the benefits to humanity that result from these impartial laws.<sup>27</sup>

One might press against this approach by arguing that as the virtue of benevolence is arrived at inductively through our moral sense, one does not require the existence of a divine being to determine the content of morality correctly. If through induction alone we recognize benevolence as virtue and if we can see how rules contribute to our goal of acting benevolently, is that sufficient for adopting a legislative perspective without needing to posit the existence of a divine legislator? Benevolence alone can justify abiding by an existing rule rather than our own particularistic judgment in cases where we think the rule is more likely to be right. Similarly, if we think the harm caused by undermining a valuable practice outweighs short-term benefits of breaking a rule, benevolence arrived at inductively can explain following that rule.

The best response to this objection is located in the concept of legislative impartiality that we develop. Building on Tuckness's argument, we note that Hutcheson develops a particular conception of impartiality which we call legislative impartiality. He writes in the *Inquiry* that "we call the Laws

<sup>25</sup>William Frankena, "Hutcheson's Moral Sense Theory," *Journal of the History of Ideas* 16 (1955): 356–75, explores divergences between Hutcheson's earlier and later works in relation to the role of cognitive faculties for the moral sense, and in the course of his argument deems *System* "not historically influential" (367). James Harris, "Religion in Hutcheson's Moral Philosophy," *Journal of the History of Philosophy* 46 (2008): 205–22, traces the role of religion throughout Hutcheson's works but does not comment on the use of a legislative point of view in the *System*. Although he concludes that there is little to distinguish Hutcheson's earlier and later works in this matter, "the need of religion is at times more sharply expressed in the *System* than in earlier writings" (219). He attributes this to Hutcheson's concern for the fragility of political society in this later work.

<sup>26</sup>Tuckness, *Morality as Legislation*, 66–67.

<sup>27</sup>*Ibid.*, 68–69.

of the Deity good, when we imagine that they are contrive'd to promote the publick Good in the most effectual and impartial manner."<sup>28</sup> We appreciate that God's laws are actually "effectual" in impartially promoting the public good. When discussing the beauty of God's benevolence, Hutcheson emphasizes God as an impartial legislator. "The Justice of the Deity is only a Conception of his universal impartial Benevolence, as it shall influence him, if he gives any Laws, to attemper them to the universal Good, and enforce them with the most effectual Sanctions of Rewards and Punishments."<sup>29</sup> This requires imagining how the laws look from the perspective of a benevolent God.

Hutcheson develops the concept of benevolence arrived at inductively by incorporating a divine viewpoint in his theory. This allows Hutcheson to think that the moral sense can react not just to individual actions, but also to rules and systems. These are initially constructed inductively as, after reflecting on various individual actions, we notice the general tendency of actions to either promote or undermine the general good. Induction of this sort is compatible with imagining what laws a benevolent deity would choose. Yet, he is not simply saying that once a system of rules is in place and we happen to behold it, we approve of a rule's tendency to promote the good because we value benevolence. That would require benevolence only from the situated perspective of the individual. Rather, he uses the heuristic of a divine impartial legislator to clarify contested rules and conventions. Where these are challenged rather than settled, one cannot merely observe the rule because what is in question is which specification of the rule is correct. In such cases, one is called to adopt the perspective of a legislator and imagine the possible consequences of each iteration. Hutcheson argues that exceptions to rules become a part of the rules that others may follow in like cases.<sup>30</sup> Exceptions do not suspend the application of a rule, they make the rule more complex.<sup>31</sup> This involves counterfactual reasoning in the sense that one must account for the consequences that would follow from a legislator enacting such a law even though one is not actually a legislator with that power.<sup>32</sup> Hutcheson's view is that in order to break the rule blamelessly it is not enough to show benefits in the particular case if a generally known exception would be harmful. The plea of necessity is legitimate only if acting differently from the instructions of the normal rule is beneficial

<sup>28</sup>Francis Hutcheson, *An Inquiry into the Original of Our Ideas of Beauty and Virtue*, rev. ed., ed. Wolfgang Leidhold (Indianapolis, IN: Liberty Fund, 2004 [1725]), 2.7.5, 182.

<sup>29</sup>*Ibid.*, 2.7.10, 196.

<sup>30</sup>Francis Hutcheson, *A System of Moral Philosophy, in Three Books* (Glasgow: Foulis, 1755), 2.17.2 (120).

<sup>31</sup>Hope, *Virtue by Consensus*, explores how, according to Hutcheson, we approve of moral rights that that are subsequently enacted into law rather than merely agreeing with already enacted moral rights.

<sup>32</sup>Tuckness, *Morality as Legislation*, 69–72.



in other cases, not just in the proximate case. This requires anticipating and accounting for possible mistakes that others might make if they allowed themselves the same liberty derived from necessity. Legislative impartiality prompts one to consider all cases equally, including those that are merely possible.

Even if belief in God is downstream from our approval of benevolence, the content of morality changes when it is refracted through the metaphor of a divine impartial legislator. In addition to evaluating instances where a rule exists, Hutcheson also writes about an individual's process of moral decision-making devoid of an existing rule. If God is absent from a theory, benevolent individuals have no reason to ask what rule a benevolent legislator would have chosen, since in most cases benevolent individuals are not in a position to bring about the adoption of a new rule with the expectation for all to follow. Any such conjecture is counterfactual in nature. Secular benevolence from the perspective of a situated individual yields different conclusions than an approach that defines morality in terms of the dictates of a benevolent divine legislator. What would be rational in this case is simply what produces the most happiness. But this would differ if I were acting as an individual rather than considering the effects of all acting this way. The religious legislative point of view allows one to account for the likelihood that beneficence, pursued at the individual level, may lead to a suboptimal outcome for all if everyone were to act as benevolently as possible as individuals. The jarring nature of this realization cannot be overstated. To apprehend that what morality dictates for one diverges from its application for all is a disconcerting puzzle for the moral apologist who finds she would do better to not win converts. When faced with this dilemma, she ought to abandon her individual commitment to beneficence and instead follow a rule adopted by a benevolent and impartial legislator.

Thus, God plays an important role in determining the content of morality in Hutcheson's later work, particularly *System*. Still, it would be a mistake to approach the categorization of theories dichotomously, identifying each as either inherently religious or secular, rather than as existing along a spectrum. By bringing attention to legislative impartiality as a facet of Hutcheson's theory we are not making a holistic claim that his thought did not contribute to the secularization of ethics. His argument repeatedly shows that one cannot just read the Bible and know what to do but must use reason. Nonetheless, the type of reasoning he encourages relies on theological assumptions. Laws of nature are not codified in writing. People make claims about what they do or do not contain; they are not simply evaluating existing practices from the standpoint of benevolence, but engaging in the refinement of such rules. Hutcheson allows for the assessment of counterfactual systems of rules in the way a divine legislator would and a benevolent individual would not. Our emphasis, therefore, is not on the motivational component that religion offers to a theory, although Hutcheson also makes note of rewards and punishments as one of many incentives for rule

compliance. Rather, the existence of a divine legislator gives one reason to adopt the legislative perspective, which in turn allows one to engage in revising and determining the content of moral rules.

### 3. Smith's Impartial Spectator as an Alternative to the Impartial Legislator

Smith's account features a spectator who is judicial rather than legislative and particularistic judgments take priority over counterfactual legislative judgments. Smith, like Hutcheson, views morality as most fundamentally a matter of sentiment. "The compassion of the spectator must arise altogether from the consideration of what he himself would feel if he was reduced to the same unhappy situation, and what perhaps is impossible, was at the same time able to regard it with his present reason and judgment" (*TMS* 1.1.1.11, 12). This capacity for sympathy and compassion is the ultimate source of moral judgments and, as with Hutcheson, we can look for confirmation of moral approval in the reactions of spectators. Smith's version emphasizes impartiality, as Hutcheson's had, but in a different way.

As we have seen, Hutcheson had emphasized a legislative impartiality: the legislator enacts rules that value all rational beings fairly. Smith's impartial spectator, by contrast, is able to sympathize with those who are affected by an act, both the agent and the recipient. The knowledge that others are observing and making judgments about us is crucial to moral development because we gradually learn that our natural partiality toward ourselves is not shared by spectators and hence that we must alter our moral judgments to align them with the view of an impartial spectator.

Though it may be true, therefore that every individual, in his own breast, naturally prefers himself to all mankind, yet he dares not look mankind in the face, and avow that he acts according to this principle. . . . If he would act so as that the impartial spectator may enter into the principles of his conduct, which is what of all things he has the greatest desire to do, he must, upon this, as upon all other occasions, humble the arrogance of his self-love, and bring it down to something which other men can go along with. (*TMS* 2.2.2.2, 83)

One might think that "principle" here carries the same meaning for Smith as "rule" for Hutcheson, but that is not the case. Smith is not saying, "I dare not announce the specific rule of conduct to the world." Rather, a principle is a source of action such as sympathy, self-love, or fear. The very first sentence of *TMS* describes pity as an example of a "principle" (*TMS* 1.1.1.1, 9). Later in the same chapter Smith describes fear of death as a principle (*TMS* 1.1.1.13, 12–13). His point is that since we regulate moral judgments from the standpoint of an impartial spectator, we realize that we cannot expect the spectator to affirm action that is motivated merely by self-love.

Contra Hutcheson, Smith's version of the argument does not ask us to think counterfactually as if we were legislators. "Though man, therefore, be naturally endowed with a desire of the welfare and preservation of society, yet the Author of nature has not entrusted it to his reason to find out that a certain application of punishments is the proper means of attaining this end; but he has endowed him with an immediate and instinctive approbation of that very application which is most proper to attain it" (*TMS* 2.1.5.10, 77). For present purposes what is important is Smith's claim that we are not supposed to use our reason to figure out what punishments a rational legislator would lay down for a class of cases. Where rules are not yet entrenched and individuals pass judgment without recourse to conventions, Smith suggests that we have an immediate response to punishments as either appropriate or not based simply on how an impartial spectator would respond. The spectators act as judges who react to the specific punishment rather than as legislators reasoning about what the rule should be.

That does not mean that rules play no role in our moral judgments, but only that Smith has no use for counterfactual rules. He thinks that we develop rules of conduct inductively. General rules of morality

are ultimately founded upon experience of what, in particular instances, our moral faculties, our natural sense of merit and propriety, approve, or disapprove of. We do not originally approve or condemn particular actions; because upon examination, they appear to be agreeable or inconsistent with a certain general rule. The general rule, on the contrary, 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* 3.4.8, 159)

As we move from specific instances of approval and disapproval to rules, those sentiments eventually achieve the status of rules and become the standard by which we judge actions. It is when general rules have become "universally acknowledged and established, by the concurring sentiments of mankind" that the impartial spectator would act more like a judge. Following a rule's adoption, we act as judges by applying the rule in instances to determine "the degree of praise or blame that is due" (*TMS* 3.4.11, 160). The key phrase is "when they are universally acknowledged and established." These are not counterfactual rules that we imagine a legislator would have had reason to adopt; instead, these are actual rules that have come to be accepted as such in our society. In Smith's theory we do not act as legislators when making moral deliberations. Rather, the impartial spectator helps us fairly exercise judicial impartiality by applying rules to particular cases.

These actual rules are crucial to the functioning of society. This is true for both subtle norms such as politeness and core principles of justice. Neglect for seemingly inconsequential norms may lead one to disregard the more demanding "duties of justice, of truth, of chastity, of fidelity, which it is often so difficult to observe, and which there may be so many strong

motives to violate" (*TMS* 3.5.2, 163). This perspective allows Smith to explain why the impartial spectator disapproves of some actions even though one might deduce that the net benefit is positive.

The poor man must neither defraud nor steal from the rich, though the acquisition might be much more beneficial to the one than the loss could be hurtful to the other. The man within immediately calls to him, in this case too, that he is no better than his neighbour, and that by this unjust preference he renders himself the proper object of the contempt and indignation of mankind; as well as of the punishment which that contempt and indignation must naturally dispose them to inflict, for having thus violated one of those sacred rules, upon the tolerable observation of which depend the whole security and peace of human society. (*TMS* 3.3.6, 138)

In saying that Smith's understanding of morality is judicial rather than legislative we do not claim that he thought individuals, acting as judges, would be unconcerned with laws or rules. To the contrary, Smith recognizes the necessity of rules and asserts the responsibility of individuals to utilize them when acting as impartial judges.

Smith makes it clear that this is the key distinctive feature of justice when compared to other virtues. In general, the virtues are judged in a particularistic way and need not conform to rules. We ask whether an impartial spectator would approve of an action given the specific circumstances in which it was performed. "There is, however, one virtue of which the general rules determine with the greatest exactness every external action which it requires. This virtue is justice." We must still observe the rules of justice in cases where breaking such rules would seem to produce no harm and appear consistent with the intended purpose of "hinder[ing] us from hurting our neighbor" (*TMS* 3.6.10, 175). While Smith differs from Hutcheson in that he does not ask us to play the role of legislator when deciding whether a rule should have an exception, he does not deny that we are capable, as judges, of affirming the utility of a rule. We are capable of looking at an actual rule, seeing that strict adherence to the rule is beneficial to society and placing great weight on the rule in our moral judgments.

Smith also allows that we can think legislatively when we are actually legislating or trying to influence legislators. He contrasts jurisprudence which seeks to put in place actual laws with casuistry which endeavors to impose rules on behavior that are not laws.

It is the end of jurisprudence to prescribe rules for the decisions of judges and arbiters. It is the end of casuistry to prescribe rules for the conduct of a good man. By observing all the rules of jurisprudence, supposing them ever so perfect, we should deserve nothing but to be free from external punishment. By observing those of casuistry, supposing them such as they ought to be, we should be entitled to considerable praise by the exact and scrupulous delicacy of our behavior. (*TMS* 7.4.8, 330)

Smith thinks highly of jurisprudence but little of casuistry. “Books of casuistry, therefore, are generally as useless as they are commonly tiresome” (*TMS* 7.4.33, 339). The casuists’ mistake is to fail to see that justice is distinct from the other virtues. The other virtues are generally defined and therefore are not amenable to rule-based decision making. When we try to implement rule-based decision making outside the realm of justice we end up making claims that will not be sustained by the impartial spectator who sees clearly the instances where we would not insist on scrupulous rule-following given the full set of factors in play. “If we place ourselves completely in [the impartial spectator’s] situation, if we really view ourselves with his eyes, and as he views us, and listen with diligent and reverential attention to what he suggests to us, his voice will never deceive us. We shall stand in need of no casuistic rules to direct our conduct” (*TMS* 6.2.1.22, 227).

This account of Smith that gives priority to the judicial perspective fits with what Smith says about laws in the *Lectures on Jurisprudence*. There he argues that as societies develop and advance through different economic stages, judicial power comes first. People need more impartial judges of their disputes than the parties themselves. Initially these judges are unconstrained. Over time, laws are developed to restrain the power of judges so that there will be greater predictability.<sup>33</sup> This is Smith’s empirical account of how rules of justice emerge and get official sanction and recognition in political society. *The Theory of Moral Sentiments* explains how, once enacted, they become crucial to how the impartial spectator will judge actions that violate those rules of justice.

#### 4. Secularization and Smith’s Rejection of Legislative Impartiality

If Hutcheson’s theistic natural law theory based on legislative impartiality decreased the role of special revelation in ethics, Smith’s impartial spectator went further still in becoming more resilient if the religious premises of the argument are removed. We have contributed to the ongoing debate within the literature between those who believe his theory requires a theological reading and those who do not. In Smith’s theory, individuals, though engaged in the rule-making process, do not adopt a legislative perspective when making moral judgments. Rather, they express approval or disapproval without speculating upon the potential consequences of its codification.

When engaging in the kind of counterfactual rule-making characteristic of legislative impartiality, considering how an imagined rule may have an effect beyond one’s own decision-making act, one must provide justification for extending the scope beyond the particular case at hand. If I am not in a position to pass legislation that will guide the actions of others, what reason do I

<sup>33</sup>Adam Smith, *Lectures on Jurisprudence*, ed. R. L. Meek, D. D. Raphael, and P. G. Stein (Indianapolis, IN: Liberty Fund, 1982), 5.108–114, 313–15.

have to adopt the perspective of one who does? To direct my own actions as if I were legislating that others act similarly in like instances is to make moral determinations on the basis of what is, in fact, not true. That I conceive of and act according to a rule which will have no bearing beyond my own particular situation requires an explanation of why my rule-based judgment is of moral significance. Can my action in this instance be regarded as “right” given the counterfactual methods employed? If it does not follow that others will be subjected to my imagined rule, do I have a compelling reason to act according to this rule? It would be more plausible to act in a way that I see fit in the situation at hand, without speculating on the consequences of others possibly acting similarly when faced with the same dilemma. As I am not a legislator, no rule will arise directly as a consequence of my action, and I am left with no justification for following a rule arrived at in this feigned manner.

Counterfactual legislative schemes often rely on a theological element to substantiate the methods employed and explain why the arrived-at conclusions should be deemed authoritative. While undergoing secularization, moral theories often retained rule-based thinking despite increasingly extracting the existence of God from moral considerations. Tuckness finds that these theological foundations not only provided motivation to comply with moral law, but also served as the basis for why one could conceive of morality as law. One may reasonably adopt the position of a legislator when making moral deliberations, for example, if one believes that there is, in fact, a divine legislator who has promulgated laws that it is the duty of finite individuals to discover. This reconfigures the counterfactual element. Even if I am not in a position to legislate, I may understand myself to be entrusted with the project of deriving general moral rules that have already been decreed while deliberating about how to act. As opposed to conceiving of rules that will not come to fruition because I am not in a position to legislate, I am engaged in the process of deducing what constitutes morality. Furthermore, by utilizing this practice to determine how one should act, one would not only be deciding right action in a particular case but also professing a rule that others ought to follow in similar situations. Aside from its significance for the content of moral rules, the legislative point of view renders universal the rules arrived at through its adoption. General rules of morality derived by this process require no further justification for adherence. Obligation to comply with such divine legislation is inherent to the source of the rules themselves.

Following those who deem Smith’s theory compatible with a secular reading, our approach explains an additional way in which Smith’s theory is less dependent on theological assumptions than Hutcheson’s. Another way of describing the significance of Smith’s judicial impartiality is by distinguishing between genealogical and justificatory roles for God in a moral theory. In a genealogical account, one might appeal to God to explain why we have the moral feelings, impulses, or judgments that we do.

God created us that way. In a justificatory account, God is invoked as part of the justification for why a particular moral claim is correct. When God's role is genealogical, the teleological argument for theological implications is diminished, and the transition to a secular account will be easier. Since we do in fact experience the moral feelings, impulses, or judgments in question, a shift to a more naturalistic explanation of why we have those feelings does not necessarily raise a new question about the validity of our moral experience. On the other hand, if a theological assumption is what justifies viewing moral questions in rule-based terms rather than on a case-by-case basis, removing God substantially weakens our confidence that our moral feeling, experience, or judgment is actually correct.

Smith's account is genealogical. His theory of moral rules does not involve individuals counterfactually deliberating about an action by asking what rule would be best for others to follow. Instead, individuals pass judgment by way of imagining themselves in the position of the actor and the acted upon, while not adopting a legislative perspective. Yiftah Elazar describes how impartiality naturally approves of "effective beneficence." Like us, he understands the role of God in Smith to be genealogical, where providentially we find that the strength of our attachments is calibrated such that acting on our beneficent impulses in a corresponding way will be most useful. Rather than condoning the stronger sentiment towards compatriots for its being innate, Smith's impartial spectator affirms this tendency for its "beneficial consequences."<sup>34</sup> Addressing a separate question, our argument resembles Elazar's in that the impartiality necessary for moral judgment delineated in Smith's theory is a natural proclivity, not consisting of deliberations as to what rule ought to be adopted or considerations of possible consequences if others acted similarly. Rather, individuals are impartial judges merely tasked with expressing their approbation or condemnation of particular acts, and by doing so, unbeknownst to them, take part in the development of moral rules and habituate the perspective of an impartial spectator. There is no need for a justificatory argument to explain why we should reason as if we were legislators when we are not.

Opponents might argue that there are many places where Smith links his moral theory to God. For example, when by natural principles we are led to advance those ends which a refined and "enlightened reason would recommend to us," Smith affirms that this "in reality is the wisdom of God" (*TMS* 2.3.5, 96). In a foregoing passage he writes that "by acting according to the dictates of our moral faculties, we necessarily pursue the most effectual means for promoting the happiness of mankind, and may therefore be said, in some sense, to co-operate with the Deity, and to advance as far as in our power the plan of Providence" (*TMS* 3.5.7, 166). Smith later provides a narrative whereby the general rules of morality are recognized as divine legislation

<sup>34</sup>Elazar Yiftah, "Adam Smith on Impartial Patriotism," *Review of Politics* 83 (2021): 342.

by those “who, by constant reflection, have rendered it familiar to them” (*TMS* 3.5.12, 170).

Crucially, though, Smith never claims in any of these cases that we actually try to imagine what God as legislator would have decreed. If Smith’s was a legislative impartiality dependent upon a theological component one would expect to see reflections of this sort. Put another way, ascribing the natural principles by which individuals act to “the wisdom of God” does not alter the ends that are chosen. Theological deliberations play no active role in this scheme. Smith merely imbues the way things are with a providential quality, but without providing an account of individuals approximating an ideal through the adoption of a legislative perspective.

When the general rules which determine the merit and demerit of actions, come thus to be regarded as the laws of an All-powerful Being, who watches over our conduct, and who, in a life to come, will reward the observance, and punish the breach of them; they necessarily acquire a new sacredness from this consideration. That our regard to the will of the Deity ought to be the supreme rule of our conduct, can be doubted of by nobody who believes his existence. (3.5.12, 170)

That general rules come to “acquire a *new* sacredness” suggests that they precede such “considerations.” Smith provides a qualification in the last sentence so as not to be making a claim regarding the truth of belief in a deity, but noting the supplementary motivation or “additional tie” that those who do believe in his existence have for adhering to general rules (*TMS* 3.5.13, 170). Smith’s theory is genealogical, not merely because religious imputations are downstream from the adoption of rules as noted by Sagar and Kopajtic, but because the process of generating moral rules is particularistic. Whereas rules arrived at by legislative impartiality may include a religious basis for the deliberation process, with Smith’s impartial spectator, the theological element appears simply as an appendage to a general rule that has already emerged.

One is left with the impression that the significance of religious belief in Smith’s thought is not so much that it guides the content of moral rules as that it discourages one from violating them. The latter is not unimportant, but our comparison with Hutcheson shows that it is not a trivial step in the secularization of moral theories for the content of what morality requires to remain unchanged if God did not exist. The discussion of rules and religion is not as one would expect if theological commitments were necessary to underpin his theory. Rather, we see a reversal of the relationship between the two. Religious belief is an additional buttress for moral rules, which exist prior to theological considerations and are of transcendent importance. “But upon the tolerable observance [of justice, of truth, of chastity, of fidelity] depends the very existence of human society, which would crumble into nothing if mankind were not generally impressed with a reverence for those important rules of conduct” (*TMS* 3.5.2, 163). The belief that moral



rules are endowed with sacred connotations ensures the preservation of humanity. This psychological inducement to behave morally could exist even if there was only an errant belief in God.

Smith not only argues that motivations ought to comply beyond religious commitments, but that the content of general rules of morality, itself, is not of distinctly divine origin. He emphasizes the gap between our knowledge and God's as an additional reason why we should simply use our situated moral reactions rather than try to imagine what we would legislate as if we were God. Even well-intentioned individuals will fall short of achieving the "welfare and preservation of society" and would do better to focus on passing immediate judgment rather than pursue lofty aspirations (*TMS* 2.1.5.10, 77). Smith observes that it is a matter of nature that one would likely miss the mark when attempting to operate outside his purview. When making this assertion he offers no allusion to a divine command not to do so. We are also limited in our knowledge of others' mental states (*TMS* 2.3.3.2, 105–6). Smith criticizes the "man of system" who promotes his own designs in the face of criticism, neglecting the complexity of a human society made up of individuals with their own ends. One such planner "erect[s] his own judgment into the supreme standard of right and wrong" (*TMS* 6.2.2.18, 234). Smith's admonitions against overestimating one's own foresight do not eliminate human participation in the process of rule making, but confine the perspective through which one passes judgment. An actual human legislator could certainly be helped by consulting the impartial spectator before legislating, but this is rather different from an ordinary person counterfactually imagining what an ideal legislator would have decreed.

Where in Hutcheson there is an account of approximating a rule that a benevolent God may have commanded, Smith's imaginative impartiality involves placing oneself in the terrestrial positions of the actor and the acted upon. "As we have no immediate experience of what other men feel, we can form no idea of the manner in which they are affected, but by conceiving what we ourselves should feel in the like situation. . . . It is by the imagination only that we can form any conception of what are his sensations" (*TMS* 1.1.1.2, 9). What reason does one have to enter into this impartial standpoint? Smith credits this natural inclination to an innate desire for mutual sympathy and the pleasure which arises from "observ[ing] in other men a fellow-feeling with all the emotions of our own breast" (*TMS* 1.1.2.1, 13). Rules for what is "respectable" or "horrid" do not precede our exposure to such actions and the sentiments which arise in response. Rather, Smith writes that "the general rules which determine what actions are, and what are not, the objects of each of those sentiments, can be formed no other way than by observing what actions actually and in fact excite them" (*TMS* 3.4.10, 160).

Judgments that have been passed in this fashion are then circulated within a community and replicated in like instances, and only then come to occupy rule status. When deeming an act deserving of merit or demerit one does not

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consider one's judgment to constitute a rule for others. Rather, an individual's part in this scheme is as "the immediate judge of mankind" (*TMS* 3.2.31, 130). People fulfill their role in this process by following "original and immediate instincts" whereby individuals fulfill natural inclinations "without any consideration of their tendency to those beneficent ends which the great Director of nature intended to produce by them" (*TMS* 2.1.5.10, 78). One need not provide justification for the adoption of a legislative point of view by appealing to the existence of a divine legislator, as one's duty is merely to pass judgment in particular cases and similarly respond to the judgments of others. Somewhat ironically, Smith's individual focused on the case at hand when making moral judgments actually wields greater influence than the would-be legislator in Hutcheson's counterfactual scheme.

### Conclusion

We have explored a particular dimension of secularization, namely whether the content of the moral law would change if one ceased to believe in a divine legislator. The legislative impartiality present in Hutcheson's theory requires a justificatory role for religion, whereas Smith gives a genealogical account of why the moral judgments specified by the impartial spectator are valid. A moral theory whose content would be unchanged even if God did not exist or took no interest in human affairs is a more secular theory in this dimension even though it could in principle be held by people who are strongly religious and whose theories are religious across other dimensions. Acknowledging this dimension of religion's importance within a theory is beneficial for thinking about the way in which eighteenth-century philosophers created theories where the content of morality could remain stable even if theological assumptions receded in importance.

Smith's impartial spectator can continue to function in more or less the same way even if God does not exist, provided that something in human nature tends toward the approval of impartiality. While Smith's theory resembles Hutcheson's in its sentimentalist features, we have highlighted a divergence from his teacher's theory in the conception of impartiality employed. Whereas Smith utilizes a judicial perspective that requires one to pass judgment in particular cases, Hutcheson permits reflection on and revision of rules through the adoption of an impartial perspective resembling that of a divine legislator. Our contribution has gone beyond the view that the general rules embodied in the position of the impartial spectator consist of judgments made by individuals. Not only do rules emerge from individual judgments, but such judgments are made from a particularistic framework that dismisses rule-based thinking. By drawing attention to the metaphor of impartiality Smith incorporates in his theory we have provided additional argumentation for how the content of moral rules can be maintained, even while disregarding the teleological element of his writing. Although Smith

himself may have ascribed our natural inclination toward sympathy, and as a result, an impartial standpoint, to a Designer, his decision to utilize a conception of impartiality that omitted counterfactual legislative thinking strengthened the case for a secular interpretation.