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Commercial Society according
to Jean-Jacques Rousseau and
Adam Smith

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On the Possibility of Justice in Commercial Society according to Jean-Jacques Rousseau and Adam Smith

Jimena Hurtado[♦]

Abstract:

Jean-Jacques Rousseau and Adam Smith stand on opposite sides regarding their appraisal of commercial society. The citizen of Geneva is known as one of its most harsh critiques, whereas the Scottish philosopher is considered as one of its main advocates. However, both authors coincide on one aspect: justice is the main pillar of any society. In this text, I explore this point in order to advance our understanding about the contrast between these two major figures.

Keywords: Adam Smith, Jean-Jacques Rousseau, justice, commercial society, self-love.

Códigos JEL: B12, B31

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¿Es posible la justicia en la sociedad de mercado? Las respuestas de Jean-Jacques Rousseau y Adam Smith

Jimena Hurtado[♦]

Resumen:

Jean-Jacques Rousseau y Adam Smith tienen apreciaciones contrarias sobre la sociedad comercial. El primero es conocido como uno de sus más acérrimos críticos, mientras el escocés se asocia con una de las más influyentes defensas de la misma. Sin embargo, coinciden en un punto: la justicia es el pilar fundamental de cualquier sociedad. En este documento exploro cómo este punto puede agregar a nuestra comprensión sobre la oposición entre los dos autores.

Palabras clave: Adam Smith, Jean-Jacques Rousseau, justicia, sociedad de mercado, amor propio.

Códigos JEL: B12, B31

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On the Possibility of Justice in Commercial Society according to Jean-Jacques Rousseau and Adam Smith*

1. Introduction

In the last section of the *Theory of Moral Sentiments* (TMS VII.iv: 327-342), Adam Smith classifies writers on rules of morality in two groups. The first group of writers, or ancient moralists, develops the science of ethics which “does not admit of the most accurate precision”. This science deals with behavior in regard to virtue and vice, and has tried to determine the feelings underlying such behavior in spite of the shortcomings of language (TMS VII.iv.3: 328). But even if this study should be regarded as one of the useful parts of moral philosophy (TMS VII.iv.36: 340), it is the other part that is of the utmost importance for social order.

The second set of moralists, [...] have treated of what is called natural jurisprudence, [...] they] endeavour to lay down exact and precise rules for the direction of every circumstance of our behaviour. As justice is the only virtue with regard to which such exact rules can properly be given; it is this virtue, that has chiefly fallen under the consideration of those two different sets of writers.” (TMS VII.iv.7: 329-30).

With the advertisement to the sixth edition of the TMS, published on the year of his death, Smith made clear he intended to produce a system of natural jurisprudence, a project that he would never accomplish but that would classify him in the second group of writers. A major element in this project was determining the origin, meaning and rules of justice because justice makes society possible. Without justice the “fabric of human society [...] must in a moment crumble into atoms”, because “a man would enter an assembly of men as he enters a den of lions”. (TMS II.ii.3.4: 86).

Jean-Jacques Rousseau also left unfinished his own project of writing a complete text on jurisprudence. He shared with Smith the foundational role justice should play in human society. They both believed that justice is necessary for a stable and prosperous social order allowing its members to flourish. This stand marks a strong and profound agreement between these authors who on most accounts appear on opposite sides when evaluating commercial

* This document has benefited from discussions with and suggestions from commentators and participants at the 17th Annual Meeting of the ESHET, the Joint Meeting on Themes from Smith and Rousseau, and the 5th Latin American Conference of the History of Economic Thought – ESHET Chile. I thank them all, and especially Ragip Ege and Herrade Igersheim who set me on the track of retracing justice in Rousseau and Smith.

society; whereas Smith underlined the merits of this social organization, which he believed brought about interdependence and better living conditions for all its members, Rousseau denounced it for enslaving them and exacerbating artificial inequalities¹.

Their opposite assessments seem to come together under the idea of justice; as if it were possible to advance that their disagreement stems from whether commercial society provides or not the appropriate conditions for justice. This is the point I would like to explore showing that Smith considers that justice is possible in this society, and, on the contrary, Rousseau stresses its impossibility. At first glance, this interpretation would indicate that justice means the same for both, that is the regulation of social interactions guaranteeing individual rights. However, even if it is possible to find this meaning in both of them, the justice they believe necessary for society, and that which they see in commercial society differ. I intend to explore this assertion not only by asking what justice is or how it emerges in each of them, but especially who or what does justice describe. The first question leads to defining justice as a positive commitment for Rousseau and a negative virtue for Smith. The second shows the difference between pity and sympathy as recognition mechanisms, and hence between the construction of social values in both authors. The third question brings to light a point the other two seem to overlook, an aspect I believe can shed further light onto the difference between these authors' theoretical and social projects. What I would like to examine here is what it is that justice describes, or in other words, of what is justice an attribute of. I advance that, in spite of their coincidences, Rousseau and Smith ascribe justice to different entities so to speak. In Rousseau justice is an institutional feature, in Smith it describes the individual. Whereas in Rousseau justice is a normative ideal that must be attained through the transformation of individual and society, in Smith it emerges from the sympathetic process between individuals.

Viewing justice in this way allows reconsidering exactly what justice as regulation means. I advance that for both thinkers justice is the result of human interactions, and allows regulating those same interactions in order to guarantee individual rights. This definition of

¹ An increasing body of literature on Rousseau and Smith deals with the possible agreements and disagreement between both authors on commercial society. For the purposes of this text Hanley (2008), Rasmussen (2008), and Hont (2015), showing how Rousseau and Smith addressed the same problems in commercial society, namely related with the effect of luxury and interdependence on virtue and citizenship, are particularly insightful. Here I focus on justice as the condition of existence of society rather than on the whole of virtue as a human achievement. Rasmussen (2008), and the editors' introduction to Hont (2015) present a brief summary of this literature.

justice leads to the questions I explore in this document, and which point at the conditions of justice in commercial society, and therefore to its impossibility for Rousseau or its possibility for Smith. By analyzing why social interactions need regulation, who regulates them and guarantees individual rights, and how does this regulation come about, two opposing conceptions of the possibility and emergence of justice can be seen.

Even if for both, justice is the result of interactions, these interactions are characterized differently. For Rousseau, justice is associated with the general will. The social contract expresses the will of each individual as a citizen, and establishes equality between them recognizing their equal dignity and freedom. Justice then is a positive act from the general will expressing how each one gives herself to all and receives all in herself. But commercial society is not the society of the social contract. It is the result of an unjust pact that creates and maintains artificial inequality based on wealth, making it inherently unjust. For Smith, the rules of justice are the consequence of a bottom-up process where private individuals enter into a sympathetic communication that leads them to disapprove, and thus to punish breach of life, property and contract. Justice is prior to civil government, and originates from our natural tendency to sympathize and to go along with the resentment the victim of a positive harm to her life, property or contract feels. The generalization of such sympathy leads to rules of justice that become the back bone of civil society. Justice then is, so to speak, the natural result of human tendencies and interactions, just as commercial society.

Following Smith, a moral and a virtuous individual can be just by refraining from harmful actions against someone else. Society cannot do without it, but justice does not necessarily describe active interactions. Justice in Smith determines which actions are not allowed so that society can hold together, and guarantees a private space where individuals might pursue their own life projects free from obstacles others might pose. But it does not imply a common search, or that social interactions have to advance respect for human freedom and dignity. No doubt, justice has to do with proportionality and correction, and, above all, the rule of law. Justice then guarantees freedom and security in increasingly complex dealings between individuals.

For Rousseau, on the other hand, society without justice is possible even if undesirable. The society of the pact, the one in which he lives, is utterly unjust because it is dominated by undeserved privileges and artificial inequalities. Justice characterizes social interactions based

on reciprocity, mutual respect and equal treatment. In this sense, justice describes society itself, and not only its members. Justice as equal treatment, for Rousseau, means the abolition of privileges, and equal dignity. For both authors the law incarnates justice, for Rousseau, the institution that equalizes individuals in their freedom and dignity; for Smith rules guaranteeing life, property and enforcement of contract, that is, what he calls perfect rights.

In order to present this interpretation the paper is divided in four sections besides this introduction. Each section presents the development of the questions raised in this introduction. The first tackles the question of why do social interactions need to be regulated exploring how we should understand justice as an ideal possibility Rousseau, and a fundamental social fact for Smith. This difference can be assessed exploring how each of them understands the origin of justice, that is, how justice comes about. Even if they both present fellow-feeling as the spring for justice, pity and sympathy not only have different extents and ranges of influence, but they also differ in their active or potential effect. pity requires the development of reason, and the substitution of self-love (*amour propre*) for the love of one-self (*amour de soi*) to be awakened; sympathy, on the other hand, is instantaneous, and needs only seeing another to act. This distinction has a further implication I explore in section 3.: who regulates and guarantees justice, and thus individual rights. Finally, I present some general concluding remarks on the conditions of justice, and its possibility in commercial society.

2. The Consequences of Self-love

Hont (2015) analyzes the relationship between Smith and Rousseau in a stimulating way underlining their similarities, especially as regards their parallel conjectural histories of commercial society as the development of self-love. According to Hont (2015), Rousseau and Smith build their accounts on a shared moral theory but produce two different versions of republicanism because they “worked on rescuing moral discourse from the selfish system without abandoning its basic insights” (Chapter 2 loc. 866). Hence, both authors produce models of mitigated or sophisticated self-love, acknowledging that commercial society emerges as much from physical needs as from a need for recognition (Hont 2015)².

² Hanley (2008) also stresses this point about the emergence of commercial society, which is crucial in understanding the effects Rousseau and Smith ascribe to interdependence on the development of identity and virtue.

The point then for both authors has to do with the possibility of assessing the “mechanisms underlying the rise of the sociable self” (Hont 2015, Chapter 2 loc. 935), understood as the moral character of commercial society. Rousseau and Smith explore how social interactions dominated by self-love may or not be regulated to guarantee social order and human flourishing. Self-love is perceived as a disruptive force that has to be transformed or controlled if society is to persist. Justice is needed precisely because self-love threatens social life.

Rousseau and Smith have different accounts of self-love. Their conjectural histories show that this passion can be a product of social interactions or part of human nature. In his first discourse, Rousseau establishes a clear difference between the love of one-self and self-love. While the former refers to a sort of survival instinct, which only keeps beings from harm making them rather solitary and keeping to themselves, self-love is a comparative feeling that requires constant interaction with others to grow and seek satisfaction. Hence, self-love is the product of a specific denaturalization that has led human beings to form commercial societies, where each one searches for external signs of their worth and live in the eyes of others. In such a society, our norms, values and habits are the product of public opinion (*Lettre à M. D’Alambert* OC V, 61-2).

When self-love takes the place of the love of one-self, each individual wants everyone else to share her self-love, and thus to become the object of everyone’s love and attention. Social interactions in commercial society seek to satisfy its members’ need for recognition. Each one will try to attain this goal, gathering as many external signs of their superiority as possible. The production of wealth and its exchange on the market goes beyond satisfying physical needs with an ever-growing quantity of goods of better quality and lower price, it has to do with this never ending search for the admiration of others (*Émile* OC IV, p.524). The race for wealth and distinction is actually a race for the love and admiration of others, which leads each one to perceive others as obstacles to be disposed of, and constitutes the true foundation of commercial society (*Émile* OC IV, p.524). The race becomes a pursuit of unhappiness (Rasmussen 2008), and makes individuals dependent upon each other for their self-esteem, as well as rivals for what appears to be a scarce good.

Smith would agree on this rivalry in that

to the selfish and original passions of human nature, the loss or gain of a very small interest of our own, appears to be of vastly more importance, excites a much more passionate joy or sorrow, a much more ardent desire or aversion, than the greatest concern of another with whom we have no particular connexion. (TMS III.3.3: 135).

But Smith also shows there is more to commercial society than this blind race. On the one hand, even if spectators can sympathize with competitors making every effort to win “the race for wealth, and honours, and preferments”, they cannot go along with “a violation of fair play” resulting from an unjustified self-love that leads individuals to hurt each other (TMS II.2.1, p.83). On the other hand, as Rasmussen (2008) has shown, Smith believes it has positive effect: a greater degree of liberty and security, less personal dependence, the development of the rule of law, and a more effective administration of justice; all leading to enhanced happiness for all. This is possible thanks to certain human characteristics, and to the recognition mechanism leading to the emergence of the rules of justice, Rousseau seems to forget or not see in all its range.

2.1 Sympathy and the Unsocial Passions

Smith describes human beings as inherently social individuals. This is the main consequence of sympathy, our fellow-feeling and our interest in others just because they are fellow-beings. He opens his TMS with this fact, individuals might be selfish or rather mainly interested in their own well-being but they have another natural tendency that guides them towards others in an unselfish and disinterested manner. Sympathy allows identification, and an affective communication that has no jealousy or envy involved.

However,

Men, though naturally sympathetic, feel so little for another, with whom they have no particular connexion, in comparison of what they feel for themselves; the misery of one, who is merely their fellow-creature, is of so little importance to them in comparison even of a small conveniency of their own; they have it so much in their power to hurt him, and may have so many temptations to do so, that if this principle did not stand up within them in his defence, and overawe them into a respect for his innocence, they would, like wild beasts, be at all times ready to fly upon him; and a man would enter an assembly of men as he enters a den of lions. (TMS II.ii.3.4, p.86).

The possibility of people harming each other represents the greatest threat to society, especially when such harm seems uncalled, so there is a principle that counters it. Violence is a real possibility, so this principle explains why those who hurt others with no valid reason other than their own self-interest are rightfully the object of resentment and punishment, and their actions considered unjust. Injustice qualifies an uncalled harmful action against an innocent victim, which can eventually threaten the whole of society if it becomes generalized .

The principle Smith refers to is justice, product of the recognition mechanism. Through the sympathetic process we come to go along with the victim's resentment, and claim for punishment. We put ourselves in her place, and feel her pain as if we had been the victims ourselves. It is not that we become the victim, we can never be other than ourselves, but we can imagine what we would feel in like circumstances. We find it appropriate for the victim to feel hurt, and find no reason for the perpetrator to have acted in such a way. But this is only possible when we are neither the victim nor the perpetrator. When the influence and the voice of our self-love is quiet. That is, when we observe from a distance as impartial spectators.

Rousseau agrees with this possibility (*Lettre à M. D'Alambert* OC V, p.22), and so in any confrontation where we are not directly involved, we will always take the side of justice because any evil act will produce instant indignation. But this happens, Rousseau continues, when we derive no advantage from the situation (*Lettre à M. D'Alambert* OC V, p.22): "when our interest is at stake, our feelings soon corrupt, and only then do we prefer the evil that is useful to us to the good that nature makes us love" (*Lettre à M. D'Alambert* OC V, p.22, my translation). As self-interest is the driving force behind most any action in commercial society there is almost no occasion when its members take the side of justice.

Smith's identification process leads to a different result precisely because it can go beyond self-love. Anyone, according to Smith, feels that acting unjustly towards someone else "is more contrary to nature, than death, than poverty, than pain, than all the misfortunes which can affect him, either in his body, or in his external circumstances." (TMS III.3.6: 138). This is true even for the perpetrator, who, once his selfish passions have quieted will see the injustice of his behavior, and suffers when he realizes that his actions have cut him from any affective communication, and therefore from others' recognition (TMS II.ii.2.3: 84).

When, from the perspective of the impartial spectator, we find the victim's reaction appropriate, and agree with her demand for punishing the perpetrator, rules of justice emerge.

All situations in which this happens can be generalized, and so we can establish which behaviors we consider as unjust hence punishable. So emerges the principle that, according to Smith, allows us to live in society without constant fear of being at the mercy of a den of lions. Everyone approves punishment of unjust actions, and the use of force to prevent such actions because what is at stake, life, property and upholding contracts, are of such importance that we feel “a stricter obligation to act according to justice” than to any other virtue (TMS II.ii.1.5, pp.80). This explains why the first rules of justice protect life, property and personal rights, natural or acquired by contract (TMS II.ii.2.2: 84), ensuring individual protection from possible damages (LJ(B) 6: 339).

Smith's description of justice shows it characterizes actions, or rather refraining from actions. In this sense, justice as a virtue describes those who act or rather refrain from acting. Justice characterizes an individual. Justice, as a result of the game of mirrors between agents and spectators, reflects the objective consensus reached through the affective communication of sympathetic interactions.

Contrary to Rousseau's vision, self-love, which can lead to unjust actions, provokes hatred and resentment (TMS II.ii.1.5: 79-80). These passions, even if unsocial, are useful “to the individual, by rendering it dangerous to insult or injure him” (TMS I.ii.3.4: 35; TMS II.ii.1.4: 79), and to society “as the guardians of justice, and of the equality of its administration” (TMS I.ii.3.4, p.35). Any impartial spectator approves such unsocial passions when real harm is done, threatening our lives, property or the fulfillment of a contract because any she can, through her imagination, feel the significance of our loss. Therefore, any spectator can go beyond her self-love, go along with the victim's anger and resentment, and approve using force to punish the perpetrator (TMS VI.ii.intro.1: 218).

In particular, the dread of death, says Smith, “one of the most important principles of human nature”, arises from this identification. And this principle becomes “the great restraint upon the injustice of mankind [that] guards and protects the society” (TMS I.i.1.13: 13). This happens because the natural tendency to sympathize, and the dread of death lead individuals to “have a very strong sense of the injuries that are done to another” (TMS I.ii.3.2: 34)³, and to

³ Even without the identification process, Nature has “stamped upon the human heart, in the strongest and most indelible characters, an immediate and instinctive approbation of the sacred and necessary law of retaliation” (TMS II.i.2.2: 71) in the case of murder.

approve immediately and instinctively the punishment of “unmerited and unprovoked malice” upon which depends “the very existence of society” (TMS II.i.5.10: 77).

Rousseau and Smith agree that self-love makes us partial, and may lead to violence and social disorder. Moreover, Rousseau, as Smith, considers each individual naturally prefers herself over any other being. This preference produces even a duty towards ourselves, to preserve our life and well-being, which explains our first feeling of justice as something that is owed to us rather than something we owe others (*Émile* OC IV, p.329). Therefore, this first feeling of justice comes, not from our identification with an innocent victim, but from our self-preference. But as noted above, the sympathetic process that makes us naturally capable of affective communication, checks this first feeling, and makes us aware of the fact that what is owed to us is justice; others must refrain from hurting us, as we refrain from hurting others, making this a reciprocal relation. This process, the mere fact that individuals interact and belong to a community, makes them part of a spontaneous moral education where each one learns that

[w]e must view them, neither from our own place nor yet from his, neither with our own eyes nor yet with his, but from the place and with the eyes of a third person, who has no particular connexion with either, and who judges with impartiality between us. (TMS III.3.3: 135).

Through our constant interaction we acquire the habit of doing so, not even noticing this affective communication. Therefore, we have to pause and think, as Rousseau did, to realize

how little interest we should take in the greatest concerns of our neighbour, how little we should be affected by whatever relates to him, if the sense of propriety and justice did not correct the otherwise natural inequality of our sentiments. (TMS III.3.3: 135-6).

The result of this spontaneous education ensures the subsistence of society, and corresponds to the enhancement and development of natural human tendencies, which make sure that each individual, who can only subsist in society is “fitted by nature to that situation for which he was made. All the members of human society stand in need of each others assistance, and are likewise exposed to mutual injuries”. (TMS II.ii.3.1, p.85).

The last part of this quote clearly shows Smith does not expect commercial society to be completely harmonious and conflict free. There are certainly times when self-love prevails, and human beings only listen to the voice of the partial spectator. But there is nothing to support the belief that this possibility would predominate, making commercial society a violent social order. If this were to be so, social order simply would not subsist, as Rousseau would have it.

On Smith's account, the spectator can never go along with hurting someone else except in the case of retribution for evil or vengeance. Even if our first concern is ourselves, and it is right that it should be, we should never hurt our neighbor even if it is to prevent our own ruin. Our permanent contact with others, the affective communication between us, and the moral education entailed, leads us to see ourselves according to the light "in which we may naturally appear to others" because to them each individual is but an insignificant part of the world. Thus, each person will "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" (TMS II.ii.2.1, p.83). How others view us will check our preference for ourselves and, most of the time, avoid violent or evil actions between members of society. As Smith says, it might be true that we prefer ourselves to the rest of human beings, just as Rousseau advances, but no one will ever present herself as giving away to this self preference simply because we realize that it would alienate others from us, producing the exact contrary effect to what we are looking for, the love of others (TMS II.ii.2.1: 82-3).

Individuals will observe the rules of justice because they know, for one, that this is the best way to avoid the resentment of their fellow-beings, and, for the other, these rules protect them from possible injury. The observance of the duties of justice is the cornerstone of the existence of human society, says Smith, "which would crumble into nothing if mankind were not generally impressed with a reverence for those important rules of conduct." (TMS III.5.2, p.163). The fact that society still exists seems proof enough of this assertion.

Rousseau does not believe such affective communication is possible in commercial society precisely because people are blinded by their own superiority. It is impossible for them to realize that others don't owe them recognition. They cannot see themselves as others' see them, they see themselves as they wish others saw them; not as "one of the multitude in no respect better than any other in it" (TMS II.ii.2.1, pp.82-3).

However, when Rousseau advances that self-love becomes a blinding guide leading to a permanent confrontation between individuals, he does not acknowledge that this confrontation also stems from our perception of the injustice that is being committed against us precisely because of this unreasonable self-preference, this absurd self-love “by which he seems to imagine, that other people may be sacrificed at any time, to his conveniency or his humour.” This alone is reason enough for our anger needless of any real harm he might have caused us.

Even vengeance and punishment is not completely self-centered. If our sense of justice stems from that first duty to protect ourselves, it also has to do with re-establishing proper relations among fellow-beings:

To bring him back to a more just sense of what is due to other people, to make him sensible of what he owes us, and of the wrong that he has done to us, is frequently the principal end proposed in our revenge, which is always imperfect when it cannot accomplish this. (TMS II.iii.1.5, p. 95-96).

It is then as if the people Rousseau describes as members of commercial society are actually out of their mind, and the punishment they will receive will bring them back to their senses. After having realized the injustice of his action, the perpetrator will be filled with remorse, a mix of shame, grief, pity and the dread and terror of punishment. (TMS II.ii.2.3, p.84-5).

Most individuals, for Smith, will develop their inner impartial spectator, their conscience in their interactions with others. They will learn how to behave around others so as to gain their love, and avoid injury. Conscience or “the inhabitant of the breast [...] is a stronger power [...] counteracting the strongest impulses of self-love” (TMS III.3.4, p.137). Conscience will not necessarily make individuals altruistic, this is not really needed for society to subsist; it will show them “the love of what is honourable and noble, of the grandeur, and dignity, and superiority of our own characters” which is “a stronger love, a more powerful affection” (TMS III.3.4, p.137)⁴. This is not self-love as a selfish and disruptive passion but still has to do with a love for ourselves. It is self-love well understood, product of socialization and thus of the

⁴ Hanley (2008) discusses this point showing that when Smith describes how Nature has made human beings fit for society, it incorporates certain passions to ensure that this desire for recognition and the love of others is associated with a higher love, making a strong difference between vanity and praise-worthiness.

education of our passions; in other words, self-love under the rule of conscience, which Smith assimilates to “reason and principle” (TMS III.3.4, p.137). Following our conscience we will “practice truth, justice and humanity” obtaining “[t]he confidence, the esteem, and love of those we live with”, which is, after all, our greatest goal: being beloved (TMS III.5.8, pp.166-7).

This is how human behavior stabilizes and becomes more predictable so that individuals can interact without permanent mistrust and fear. It is also the way that individuals learn prudence as the best way to advance their own happiness avoiding injury and practicing beneficence as the way to contribute to that of others. Prudence, justice and beneficence are the proper actions of those who follow “the sentiments of the supposed impartial spectator, of the great inmate of the breast, the great judge and arbiter of conduct.” (TMS VI.concl.1, p.262).

2.2 Pity and the loss of self.

Rousseau’s depiction of commercial society would give little credit to this account because conscience cannot really check self-love in this society. Following Rousseau’s reasoning, there is no place for conscience precisely because he thinks individuals in commercial society are unable of forming such a conscience. Their socialization process leads individuals to lose their love of one-self (*amour de soi*), and therefore become unable to identify with others or experience fellow-feeling.

This happens because the love of one-self is a passion composed by two principles: “namely, the intelligent being and the sensitive being, whose well-being is not the same. Appetite of the senses tends towards that of the body, and the love of order to that of the soul” (Lettre à C. de Beaumont OC IV, p.936, my translation). The second principle, continues Rousseau, corresponds to our conscience, and its development requires education. But the education Rousseau refers to is not spontaneous, and permanent social interaction is not enough, even if it is necessary. With his conjectural history, Rousseau shows that people start looking at each other, seeing their relationships with others and with their environment, and start forming ideas of “conveniencie, justice and order; moral beauty begins to become sensible to them and conscience acts .” (Lettre à C. de Beaumont OC IV, p.936, my translation). Conscience then is related to moral beauty, which evaluates convenience, justice and order. When individuals start appreciating this moral beauty, they will behave accordingly thus acting with justice and order.

However, contrary to Smith's education of passions, Rousseau's education process is far more demanding, as he describes in *Émile*. The quote above comes precisely from the letter he writes in defense of this project of negative education after M. de Beaumont censored it. As this is not the education people receive in commercial society, it is doubtful that their conscience will guide their actions because their socialization does not lead to the construction of an inner world. This result is only possible through negative education, which shows us how to live with others as equals, without losing ourselves in the infinite reflections of a world of mirrors where we see ourselves as others see us. In commercial society, the society of appearances, the individual has no inner world:

the man of the world is completely in his mask. Almost never being within himself, he is always a stranger and uncomfortable, when he is forced to enter. What he is is nothing, what he appears is everything for him. (*Émile* OC IV, p.515, my translation).

Commercial society is inhabited by hollow masks. Those who are most representative of its members, whom Rousseau calls men of the world, who interact constantly with others, are unable to build an inner world, hence, to have a conscience or an impartial spectator⁵. Without an inner world, there is nowhere to bring back the situation of others through imagination, and imagine what we would feel in their place. The sympathetic process is blocked from the start because, contrary to Smith's view, there is a fusion of individuals where self-love leads to the loss of self, of the love of one-self. Thus, commercial society hinders the identification process, and weakens the feelings that allow us to put ourselves in another's place.

Compassion, says Rousseau, is stronger when the spectator is able to identify more intimately with the one who suffers but self-love makes people think only about themselves, isolating them from others (SD OC III, p.156). This double feature, society of appearances and each one thinking only about her own relative fortune, hampers any compassion for others; identification through pity is not possible.

Smith and Rousseau's identification processes differ in the feelings they involve. Sympathy implies fellow-feeling whereas pity entails identification with suffering. In the first pages of the TMS Smith makes this difference very clear, noting how until then identification

⁵ Or their impartial spectator utterly fails as is the case for Sophie and Émile, when, after the death of their daughter, go to live in Paris, where they both lose themselves to the ways of the world.

was thought to involve only painful feelings but, as sympathy shows, it can also apply to agreeable feelings. The difference, Smith explains further in the TMS, is the asymmetry of the process. We take more notice of our sympathy with grief or suffering because it requires more effort than sympathy with happiness.

But this is an extension Rousseau does not contemplate, and which he doesn't even consider desirable. Identification with happiness might lead individuals to want to become the other, and their inner world is not strong enough so the process may lead to jealousy and envy. This is why Émile will socialize more with simple people who show him their dignity and permanent effort rather than with the rich and powerful.

Rousseau limits the identification process to pity, origin of all social virtues and capable of preventing any evil actions towards another (SD, OC III, p.155; 156). Pity, according to the Genevan, inspires the principle of natural goodness according to which we should search our own good with the least evil for others; principle that takes the place of that of reasoned justice: "Do onto others as you wish it was done onto you" (SD, OC III, p.156), which following Smith is the great principle of Nature but which the Scot translates as "love oneself as we believe our neighbor is capable of loving us". The formulation each author offers of the first and basic principle of justice also shows the difference in the identification processes they propose. While Rousseau stresses avoiding harm, Smith emphasizes our capacity to consider ourselves as others do; the former keeps the individual within herself whereas the latter invites affective communication.

Rousseau agrees there is a primitive repulsion at the sight of another's suffering, which corresponds to pity, source of all social virtues, a universal and natural characteristic of all sensible animals, and that, much like sympathy, does not require reason (SD, OC III, p.154). However, this primitive repulsion does not immediately lead to resentment, and even less to justice. Justice, at least, needs language (SD, OC III, p.146-51), and affective communication is insufficient.

This primitive form of fellow-feeling does not go beyond commiseration for the sufferer but is enough to prevent harmful actions against others (SD, OC III, p.156). Pity inspires the principle of sublime natural benevolence (SD, OC III, p.156), recalling Smith's association of justice with avoiding harming others. There is then a coincidence between Smith's contention of us having a strong sense of the injuries committed against others, and Rousseau's natural

feeling as “ the cause of the repugnance that any man experiences in doing evil” (SD, OC III, p.156, my translation).

2.2.1 Enlightened Pity

Nevertheless, there is still a distance between this natural feeling and justice. Pity, in an original and immediate way, contains contradictory features: it is natural and cultural, emotional and rational, animal and human. Without reason it cannot lead to justice. Rousseau states that this natural feeling, common to all sensible beings, and hence to human beings in the hypothetical state of nature is not yet related to an idea of justice, which would require the notion of injury and vengeance (SD OC III, p.157). At this point there are no continuous interactions between human beings that could lead to these notions. Therefore, even if pity is natural to human beings, justice is not. Rousseau introduces a gap between both that is not present in Smith, showing a form of identification that, contrary to what Smith’s theory implies, changes over time, and becomes more imperfect with the rise of reason and self-love.

This natural feeling has to be educated before it becomes a proper form of identification. Pity develops into a relative feeling when a child learns that there are other beings who suffer as she does, and transports herself through her imagination identifying herself with the suffering being (Émile OC IV, p.505-6). Identification is limited to distress; we cannot put ourselves in the place of those who are happier than ourselves, and we can only identify with pains we believe we can experience ourselves (Émile OC IV, p.507-8). This process will help the child to build her inner world realizing how fortunate she is not to be suffering; she shares the miseries of her fellow-beings, and at the same time enjoys being free of them (Émile OC IV, p.514).

Therefore, pity requires reason and imagination to become active, and a true source of social feelings. It is not instantaneous as sympathy. The development of reason allows human beings to project themselves beyond their present selves, understanding the dimension of time, and conceiving a continuity in their own selves through past, present and future. It also allows forming a conceptual framework where the notions of similarity and difference mean something that can go beyond physical appearance, and hence of recognizing and understanding others as sensitive beings with their own identities and will. The categories of time and space are needed in order to look at others as equals, and not only as obstacles or instruments in the battle for survival, self-preservation and recognition. Moreover, they are

needed to extend pity from single individuals to humanity, requisite to generate the sense of justice, which of all virtues is the one that most contributes to the common good of humankind (*Émile* OC IV, p.548).

The path leading from natural pity to justice implies a transformation of human beings that does not seem to occur according to Smith⁶. The dichotomy Rousseau presents between self-love and love of one-self points to the dynamic and changing character of human nature. Let us not forget Rousseau does not recognize any humanity in those beings he sets in the hypothetical state of nature. There is little in common between these natural beings and social individuals. Human beings are defined by their relations with others, they are the product of the society they live in. Human nature then is not a fixed set of tendencies and desires; it is a possibility Rousseau calls perfectibility. More precisely, it is a possibility of attaining moral freedom, beyond natural and civil liberty, and only possible within the civil state (DCS OC III, 364-5). Moral freedom “makes man truly master of himself; because the impulse of mere appetite is slavery, and the obedience to the law one gives oneself is freedom” (DCS OCIII, 364-365, my translation); it constitutes a human being’s true calling because it develops the only permanent feature Rousseau recognizes in humans: contributing to the operations that advance their ends as free agents (SD OC III, p.141). This human specificity, and the type of education needed to form true humans, marks a difference between both authors. Even if there are natural tendencies, as pity, they are not enough to allow an identification process leading to rules of justice, and a sustainable society.

2.3 Identification Processes

Smith considers natural tendencies are present in any human being regardless of time and place, even if those tendencies have more or less influence, and field of action depending on the structure of incentives prevailing in each society. We have a tendency to sympathize as we have a tendency to exchange, to communicate, a desire to better our condition, to be loved and be worthy of praise, and to domineer. Our interactions are made possible and specific to

⁶ Hanley (2008) advances, relying especially on Rousseau’s *Reveries of the Solitary Walker*, that Rousseau’s solution to the corruption brought associated with commercial society, and the impossibility of building an inner world, is solitude. Justice, in particular, and virtue, in general, would be possible for isolated individuals. However, it is possible to see another way, which is the one I explore: a new denaturalization of human beings, transforming them into citizens of the general will. Hanley (2008) has a point in the emphasis Rousseau makes on this solitary life in his latter works, but an explanation could be that, as *Émile et Sophie, ou les Solitaires* also shows, the transformation of single individuals is not enough to overcome the injustice of commercial society.

humans due to these tendencies and desires. Sympathy, this fellow-feeling, is a natural tendency in human nature. It is instantaneous, and needs only visibility to operate. As long as we see each other, that is, as long as the physical and psychological distance between us does not make us invisible to each other, affective communication can take place; it may be more or less accurate according to the information we have about one another (TMS VII.ii.1.49), but it is part of our common humanity.

An important consequence of this distinction between pity and sympathy, and their conditions, is that the notion of an extended self takes different ranges in each author. In Rousseau, through pity, there is a contained extended self but with a wider reach, while in Smith, through sympathy, the limits of the extended self are not always clear. Furthermore, the extended self in Rousseau is a product of a process in which human beings come to be as reasonable individuals. A process that is not necessary in Smith because sympathy is a natural tendency, and is always active as long as individuals see each other.

Pity is the source of all feelings of sociability, it is the ground of common humanity, and in conjunction with reason, it can lead to identification without fusion or confusion between individuals. Identification through pity implies recognizing others as sensitive beings capable of suffering. Identification then takes place through this capacity to feel pain, and as fellow-feeling in pain is, as Smith also recognizes, harder, it keeps each one in their place; no one wants to become someone else, and there is no place for envy. Each one would rather stay in her place, than become the other in suffering; one can accompany the other in this suffering, but each one is reassured of staying in their own self because it is not their suffering, so each individual prefers her own self, reinforcing her love for herself and her own identity. Fellowship in pain, in Smithian terms, requires traveling a greater distance, which, for Rousseau, is a guarantee for each one to value herself, and to reach out to those in distress.

As noted above, Smith, himself sees sympathy as a more encompassing feeling than pity or compassion. Sympathy allows individuals to identify through any feeling, and not only with pain or suffering. The imaginary change of places at play in Smithian sympathy, means the spectator puts herself in the place of the agent and imagines not the other's feelings but what she would feel in the other's situation. Sympathy requires assuming, at least, the other's circumstances including personal characteristics, with the risk, for Rousseau, of wanting to become the other, and taking her place at least for an instant.

Besides, the affective communication process is mediated by distance, which makes it more or less accurate and effective. This means we build our identities, and form our communities or social groups with those we sympathize with, that is, with those who are visible to us, those we consider have something in common with us, and those with whom we primarily experience the pleasure of mutual sympathy. The asymmetry of sympathy, represented in the larger distance and effort Smith recognizes in identifying with suffering than with happiness, might lead us to overlook the possibility of exclusion or of rendering others invisible (Álvarez & Hurtado 2015), and hence of achieving objectivity in moral judgements and local justice. So, even if sympathy seems to give place to a more extended self with fuzzier boundaries than pity, it requires an effort to include those who suffer, those who are primary in the identification through pity.

Another aspect in this distinction between the identification processes triggered by pity and sympathy has to do with the figure of the other. Each process requires the presence of an other but this figure can have different representations. Reason and the comprehension of time and space, for Rousseau, need a physical presence in the world. It needs experiencing the material limits of our will. The other is then experienced as a physical, material, real other. This is not so clear in Smith. Once individuals form their impartial spectator, especially in the case of virtuous individuals, they no longer need the physical presence of others. The impartial spectator becomes the “man within”. No doubt, it is a complex reflection and integration of others in the individual, but it can be just that: a reflection. In the game of mirrors, each one integrates their own and others’ reflections. The other may become a mental construct that has been mediated by the individual’s own mind⁷. This shows another meaning of justice as a negative virtue; refraining from harmful action, sitting still without doing anything, abstaining from interacting with others is a just behavior. Justice, within the sympathetic framework, might not need the real presence of another; it does not imply interactions. Justice, within the framework of pity, has no sense without interactions between members of a community.

Therefore, the meaning of justice might differ. Justice in Smith determines forbidden actions, indicating what individuals cannot do if harm to others is to be avoided; justice in Rousseau regulates relations of respect and fairness among individuals. For Smith, justice is a necessary condition for the existence of any society, while for Rousseau it is an ideal to be

⁷ For a further discussion of this point, and how Smith could offer an answer to avoid this transformation of a real figure into an invention of our imagination see Hurtado (2013).

attained. Justice marks the limits between individuals in interactions with extended selves. A just individual will never harm another, she will respect the other's rights, life, property and honor. She will know she cannot pretend to become the other without hurting him. These boundaries are established through pity in Rousseau's thought. Equal treatment means taking each one as a self-contained whole, which must be treated in the same way as other self-contained wholes. Just institutions will not favor anyone, and will not bestow undeserved favors; they will not confound individuals but they won't distinguish between them without justification either.

Both Rousseau and Smith, relate justice to an aspect of human nature: sympathy and pity. But this common point leads them to characterize justice as an ideal possibility and an attribute of the society in Rousseau, and as a social fact and an attribute of individuals in Smith. As much as this may appear as a clear-cut distinction, the feedback between institutions and behavioral features in both authors can bring them closer together. Rousseau, when speaking about a just society, points to institutions that allow producing behavioral features such as recovering the love of one-self, and overcoming self-love. How these institutions come to be seems an unanswered question, but they are in line with the features of an ideal human nature. It is from this ideal of a whole, self-contained, unenvious, and autonomous individual that Rousseau builds just institutions.

3. Justice and Rights

The importance of justice explains why, according to Smith, individuals fear and are conscious of deserved punishment when it is violated. This conscience and fear underscore self-love and enforce affinity among individuals. Both are the only way to guarantee mutual respect because self-love is too strong, and sympathy too weak regarding individuals who have no direct relationship between them. They make injustice unbearable. In this intolerable aspect of injustice Smith and Rousseau coincide. Injustice describes a situation that awakens strong passions of rage and revolt. But what is considered unjust is not the same for both. Smith associates injustice with harm, and Rousseau with inequality.

The difference between both may be furthered assessed considering the place of rights in their definitions of justice. For Smith, "[j]ustice is violated whenever one is deprived of what he had a right to and could justly demand from others, or rather, when we do him any injury or hurt without a cause." (LJ(A) i.10: 7; c.f. LJ(B) 6-7: 399). In particular, injustice is the

violation of perfect rights “those which we have a title to demand and if refused to compel an other to perform” (LJ(A) i.15: 9). These rights, as we have seen above, guarantee our lives, property and contracts.

It is possible that Rousseau could agree with these rights but their origin, and the consequences for justice differ. Smith believes property rights come from the impartial spectator’s approval of a reasonable expectation of use of that which the agent considers hers (LJ (A) and (B)). Such a reasonable expectation would also explain the right to contract, and the right to life comes from our dread of death. Rousseau, following Locke, advances property comes from labor and, in particular, the property of land results from cultivating it, that is, from its mix with labor. This is also the origin of the first rules of justice (SD OC III, p.173), which become necessary because individuals start planning for the future, so they need to ensure that their livelihood will be respected, and because they fear vengeance (SD OC III, p.173). The first rules of justice, as for Smith, prevent real harm but because each one knows she could be the object of revenge, not because they sympathize with the victim’s resentment.

These rules are not enough when social interactions become denser, especially due to new needs that emerge with constant contact, including the desire for recognition. The way Rousseau describes this interdependence shows the insufficiency of rules that only punish violation of life, property and contract. Individuals become dependent upon others making them slaves even if they become masters (SD OC III, p174) because life in society requires convincing others to help accomplish one’s goals, making hypocrisy, flattery and even cruelty common behaviors. As in the case of Smith’s famous quote on the exchange between the butcher, the brewer and the baker (WN I.ii.2: 26-7) each individual helps the other because it is in her interest to do so. But contrary to Smith, this has a negative effect on people’s behavior, making them deceitful, false, imperious and insensitive, with no regard for others, trying to abuse or intimidate them each time they stand in need of each other (SD OC III, p.175). This is the beginning of ambition, of the pursuit of external signs of fortune to show each individual’s superiority, marking social interactions with jealousy, rivalry and competitiveness (SD OC III, p.175). Rather than leading to cooperation, ambition and the desire to increase their relative fortune, “less for a real need than to put themselves above others, inspires men a black inclination to hurt each other, a secret jealousy ever more dangerous than to advance securely it often puts on a mask” (SD OC III, p.175, my translation).

Mutual dependence is not a positive feature as in Smith; it is the beginning of servitude or a new form of slavery because individuals end up submitting to other's wills in order to obtain their help, trying to convince them that this collaboration, truly or not, might benefit both (SD OC III, p.174). Each individual cannot satisfy all her desires by herself (Émile OC IV, p.309), and the desire for recognition can only be satisfied through others. Interdependence means renouncing individual will:

The only one who does as he wills, is the one who does not need the arms of others' as an extension of his to do so; from what follows that the first of all goods is not authority but freedom. The truly free man only wants what he can and does what he pleases. Here is my fundamental maxim (Émile OC IV, p.309, my translation).

This outcome is not the only one possible. Certain external circumstances are necessary for this to happen. The love of one self is indifferent to good or evil, it "becomes good or evil by accident, and according to the circumstances in which it develops" (Lettre à C. de Beaumont OC IV, pp.935-6, my translation).

3.1 Beyond perfect rights: distributive justice.

In particular, the emergence of private property is what leads to this situation, where artificial inequality becomes the source of all conflict. The first rules of justice emerge not from sympathy with the resentment of an innocent victim but from the need to protect private property (SD OC III, p.174). A pact is established to neutralize permanent threat, turning individual forces that can be used against each other into a single force or a supreme power "that governs us according to wise laws, protects and defends all members of the association, repels common enemies, and keeps us in an eternal concord" (SD OC III, p.177, my translation). As similar as this might sound to Rousseau's proposed social contract, this pact is the undesired denaturalization he denounces in commercial society, and the one he proposes to overcome with negative education, the economics of abundance, and the society of the general will. This pact uses the force of society to protect individual possessions, which by their nature are exclusive, and determine the difference between the haves and the have-nots. It does not determine any other obligation for its members, and represents the association of individual wills only to protect private possessions.

Competition and rivalry become the defining features of this social organization (SD OC III, p.175), and given this situation that arms them all against each other, individuals realize the need to submit to rules of justice that should join their forces, go beyond preventing harm, and compensate the “caprices of fortune” (SD OC III, p.177). They also touch the distribution of honors and wealth, according to each citizen’s merit or to the real services they provide to the State (SD OC III, p.222-3). Compulsory rules of justice include distributive justice.

Smith associates this justice with imperfect rights, and states they do not belong to jurisprudence “but rather to a system of morals as they do not fall under the jurisdiction of the laws” (LJ(A), i.15: 9) because they do not entail any real obligation, and cannot be demanded so individuals cannot be punished if they do not comply with distributive justice. This would mean, this justice is not indispensable for human society, it only embellishes it, and brings those who practice it, closer to virtue. Negative virtue, commutative justice, is enough because it avoids conflict.

The man who is barely innocent, who only observes the laws of justice with regard to others, and merely abstains from hurting his neighbours, can merit only that his neighbours in their turn should respect his innocence, and that the same laws should be religiously observed with regard to him. (TMS II.ii.1.10: 82).

However, Rousseau considers the separation between jurisprudence, and a system of morals less clear. He distinguishes between universal and particular justice (Lettre à M. D’Alambert OC V, p.61), the former includes our duties as members of society, and refers to our morals, whereas the latter concerns our individual relationships with others as determined by the law. Both are needed for society to prosper, meaning our duties towards others go beyond refraining from harmful actions.

3.2 Prudence and Virtue

Such behavior could classify under Smith’s prudence, necessary for sustainable social relations as it helps counteract self-love and be just, but Smith distinguishes superior from inferior prudence. The first corresponds to “[w]ise and judicious conduct, [...] directed to greater and nobler purposes than the care of the health, the fortune, the rank and reputation of the individual (TMS VI.i.15: 216); it combines “many greater and more splendid virtues” and “necessarily supposes the utmost perfection of all the intellectual and of all the moral virtues”

joining “the best head” with “the best heart”, or “the most perfect wisdom” with “the most perfect virtue” (TMS VI.i.15: 216). Not everyone reaches this stage of perfection, and inferior prudence is enough, making individuals “barely innocent” refraining from hurting others but not interacting to avoid injustice as discrimination or ensuring everyone participates from the benefits of society according to their merit. In both cases, acting according to justice will grant the love and esteem of those we live with (TMS VII.ii.2.11: 297), but universal justice, as Rousseau calls it, implies a positive action that is not necessary in commutative justice, as Smith calls it. Therefore, superior prudence seems closer to Rousseau’s enlightened pity, which is, following Smith, desirable but rarely attainable or actually necessary for social order. Inferior prudence is enough to guarantee a just society, that is a society where its members do not harm each other, and if they do they will be punished.

Superior prudence is not necessary but as justice is of such importance for the upholding of society even those with less sensibility and less ability to participate in the sympathetic process, submit to its rules through their sense of duty (TMS II.ii.3.3; III.5.2). The rule of justice does not require a society of virtuous individuals, those capable of developing and always following the impartial spectator, and who are prudent, self-controlled, just and benevolent. The majority of human beings are not like this. Those “made of coarse clay” are susceptible to their partial spectator, to outbursts of passions, to less than effective affective communication. And, nonetheless, society holds and prospers because “There is scarce any man, however, who by discipline, education, and example, may not be so impressed with a regard to general rules, as to act upon almost every occasion with tolerable decency, and through the whole of his life to avoid any considerable degree of blame.” (TMS III.5.1: 163).

As in the case of the society based upon what Smith calls mercenary exchange, in a society where individuals only know their own interest, and do not purposefully seek the common good, they can be just because their sense of duty guides them. They know what others in their community expect from them, and are able to fulfill their roles, especially as regards abstaining from harming their fellow-beings. Anyone, “even the most stupid and unthinking, abhor fraud, perfidy, and injustice, and delight to see them punished” so there is no need for profound reflection about the need of justice (TMS II.ii.3.9: 89).

Following Brown (1994, p.208), Smith advances that society is possible even with complete failure of morality understood as virtue. Virtue describes an individual more than an

action, and morals describes the dimension of social life where individuals interact as spectators and agents, and make judgments that affect their behavior. Everyone is a moral subject but not all are virtuous because virtue, as Rousseau suggests, goes beyond justice to include benevolence: “The man who acts according to the rules of perfect prudence, of strict justice, and of proper benevolence, may be said to be perfectly virtuous.” (TMS VI.iii.1: 237).

3.3 The Meaning of Justice

Rousseau and Smith present several different but related meanings of justice; Smith’s primary concern is with commutative justice “which consists in abstaining from what is another’s, and in doing voluntarily whatever we can with propriety be forced to do” (TMS VII.ii.1.10: 269). Rousseau seems to privilege universal or distributive justice, which Smith describes thus “we are said not to do justice to our neighbour unless we conceive for him all that love, respect, and esteem, which his character, his situation, and his connexion with ourselves, render suitable and proper for us to feel, and unless we act accordingly.” (TMS VII.ii.1.10: 269).

Smith says this “consists in proper beneficence” (TMS VII.ii.1.10: 270), and “[i]n this sense justice comprehends all the social virtues”, “the perfection of every sort of virtue” (TMS VII.ii.1.10: 270). The distinction noted above between universal and particular justice, shows Rousseau is pointing precisely at this other sense of justice Smith describes, comprehending all social virtues or pointing at civic virtue. It is through the formation of citizens that this justice will come about, and it is a more encompassing, maybe even a more demanding justice than the one Smith concentrates on.

The reason Smith gives more consideration in his work to commutative justice is because it is paramount for social order whereas distributive justice, associated with beneficence, embellishes social interactions but does not act as their guardian. For Smith, justice is not like other virtues, and it is not left to human will. The rules of prudence, charity, generosity, gratitude and friendship are flexible, and have many modifications and exceptions (TMS III.6.11: 175-6); those of justice determine with the utmost precision every action (TMS III.6.10: 175), they are unequivocal, and do not admit of any exception, except for those that come from justice itself, and are as exact as its rules (TMS III.6.10: 175). The justice of an action, and thus of the individual, is not judged for its propriety; an individual is just not because of the refinement of her behavior or the beauty of her character but because she

follows the rules of justice (TMS III.6.10: 175). Thus strict observance of the rules of justice does not deserve a reward, but their violation is always punished (TMS II.ii.1.9: 81). Justice is a negative virtue that needs no particular action, and can be exercised by not doing anything (TMS II.ii.1.9: 82); it dictates the limits of actions, and establishes the inviolable boundaries of private individuals (TMS II.ii.1.9: 82); it does not require any contact or interaction between members of society or fellow-beings, “it does no positive good” (TMS II.ii.1.9: 82) but corresponds to that “thing which his equals can with propriety force him to do, or which they can punish him for not doing” (TMS II.ii.1.9: 82). Smith’s conclusion as to justice is straightforward: “The whole virtue of justice, therefore, the most important of all the virtues, is no more than discreet and prudent conduct with regard to our neighbours.” (TMS VII.ii.2.11, p.297).

3.4 Individuals and Institutions

This view could be considered insufficient following Rousseau. The Genevan states that justice and truth are the first duties of any individual (*Lettre à M. D’Alembert* OC V, p.3), and that justice corresponds to fulfilling one’s duties as subject to enjoy the rights of a citizen (DCS OC III, p.363). Justice then refers to a positive behavior that equally engages all the members of society as part of the general will; a behavior that reflects universal justice, meaning equal treatment, and the impossibility and interdiction of dealing with particular affairs. It is in this sense that justice in Rousseau goes beyond justice in Smith. Particular justice regulates interactions between individuals, and universal justice establishes a relationship between the political body and its members, expressed through the general will that determines the conventions under which they live, and therefore, the rights and duties of every citizen. This would mark a strict separation between public and private spheres, where in the former it is the sovereign, that is the people, who act, and in the latter each individual tends to her personal business including her dealings with others.

But given the demands of this universal justice, associated with superior prudence and virtue, it is unlikely individuals in commercial society might attain it. This is why Rousseau describes another denaturalization process, the one described in *Émile* and enforced through the social contract that implies human nature is profoundly modifiable, and history can be changed and transformed.

Both authors use conjectural history to explain their views on commercial society but their histories also serve another purpose. Rousseau shows how different accidents led to commercial society; this accidental character implies another path could have been possible, especially because nothing in human nature predetermines the outcomes. Smith's history does not allow such flexibility precisely because natural tendencies in human nature define a specific path leading to commercial society.

Social interactions, within a certain structure of incentives, explain the different stages of human history. In the LJ, Smith, according to his students' notes, explains these different stages as regards the evolution of government. In the WN he presents the evolution of the economic organization through four stages. He presents these accounts, as the rest of his work, as a matter of fact. They suggest it could not have been otherwise because when humans have tried to intervene the natural progress of opulence, the forces of history have prevailed.

There is no such necessity in Rousseau. History is open ended, and there is no certainty as to where it leads, if anywhere at all. Even if every society goes through different stages, and finally reaches its decline, multiple possibilities are open. This explains why, as regards his own social project, there is a discontinuity between the transformation of the individual through education (*Émile*), that of the economic organization through the economics of abundance (*La Nouvelle Héloïse*), and the implementation of the society of the general will (*Du Contrat Social*).

Smith holds dearly to harmony, in society as in the universe. There are secret, invisible forces at play, that defy and lie beyond the reach of human understanding; nevertheless, the work of Nature is silent and steady towards its own goals. The preservation of the human species appears amongst these goals; and it implies the flourishing of human beings. Thus, there is a historical necessity in each stage of development because it is part of a path towards a better, harmonious, future for all.

This difference is clearer if we consider Smith rejects even the hypothetical exercise of imagining a state of nature because he asserts from the start that human beings are sociable so there is no use in imagining them out of their natural state. Social relations become more complex but this does not mean that there was a time when they did not exist. Rousseau does not contest there is no compelling historical evidence for the existence of a state of nature but proposes this intellectual exercise in order to show how a certain form of social organization changes human beings and social interactions.

Rousseau calls it a process of denaturalization, and the one leading to commercial society produces all the evils he constantly denounces in his works. Individuals become dependent because of a multiplicity of new needs that make them search for their fellows' aid. Needs are unsatisfied desires, and individuals in commercial society experience ever-growing desires. This is the origin of their misery: their desires exceed their abilities (Émile OC IV, p.303-4). To overcome this misery in the society of the general will, its members put their forces to the service of the whole political body and thus to each other's service.

3.4.1 Systems of Jurisprudence

With this superior force comes a responsibility of a superior regulation so that the force of the general will, follows the will of its members and nobody abuses it. A similar idea can also be found in Smith when he asserts that

“The wisdom of every state or commonwealth endeavours, as well as it can, to employ the force of the society to restrain those who are subject to its authority, from hurting or disturbing the happiness of one another. The rules which it establishes for this purpose, constitute the civil and criminal law of each particular state or country.” (TMS VI.ii.intro.1: 218).

This written law is “a more or less imperfect attempt towards a system of natural jurisprudence” (TMS VII.iv.36: 340-1), which materializes justice in a system of positive laws that determines that which a person to whom something is owed has the right to demand by force (TMS VII.iv.8). Such a system allows each member of society to pursue her own interest knowing that her right to do so, as well as that of others, will be respected, and reflects that individuals do not tolerate injustice in their relations, and authorize the government to use force or “the power of the commonwealth to enforce the practice of this virtue” (TMS VII.iv.36: 340-1). This way, it is possible to avoid the possible abuses associated with people enforcing justice by their own hand, and to guarantee justice to all under rules that regulate even the decisions of judges, “and these rules are, in general, intended to coincide with those of natural justice” (TMS VII.iv.36: 341).

Rousseau would agree with this definition of a system of jurisprudence if natural jurisprudence is to be understood as pertaining to universal justice. He advances that the goal of any such system is to promote the greatest good for all, consisting in liberty and equality: “liberty because any particular dependence is as much force removed from the body of the

State; equality, because liberty cannot subsist without it” (DCS OC III, p.391, my translation). The freedom Rousseau is talking about is not natural or moral but civil. Natural freedom means using one’s force to obtain individual goals, force that we transfer to the general will once in the social contract. Moral freedom is a step beyond civil freedom, and is associated with giving ourselves the laws under which we live. Civil freedom has to do with our regulated freedom under the law of the general will, which makes us all equal in rights and dignity. So equality is not equality of fortune or power, but a certain level of power below overt violence, and only used according to rank and the law, and a certain level of wealth where “no citizen is rich enough to buy another or so poor as to have to sell herself” (DCS OC III, pp.391-2, my translation)⁸. Such equality or moderation of goods will check avarice and envy (DCS OC III, p.392).

The presence of the unsocial passions, leads both authors to advance that a perfect system of jurisprudence is impossible, and what should be strived at is rather the best system that suits each people. A positive system of law might not exactly coincide with what Smith calls natural justice or might not always guarantee the practice of Rousseau’s universal justice because of the interest of the government or of certain groups, or even because of the degree of civilization (TMS VII.iv.36: 340-1).

But even if they both agree on the imperfection of positive systems of jurisprudence, Rousseau remains skeptic about how effective such systems may be when individual will prevails. This is the case when the relationships between these individual wills are stronger than the relationship between each individual and the whole of the political body. Therefore, Rousseau recommends that each citizen “be in a perfect independence from all others, and in an excessive dependence from the State [...] because only the force of the State makes the freedom of its members” (DCS OC III, p.394, my translation).

3.4.2 Civil Government

To comply with universal justice, the State, according to Rousseau, must guarantee each individual has the opportunity to guarantee her own livelihood with her labor, and working is the only strict duty all citizens must fulfill for the prosperity of society. This way each one is

⁸ Smith agrees in the benefits of an ample middle class: “Men in the inferior and middling stations of life, besides, can never be great enough to be above the law, which must generally overawe them into some sort of respect for, at least, the more important rules of justice” (TMS I.iii.3.5: 63).

independent and won't sell themselves to others. Through their labor, citizens contribute to social prosperity, and are worthy of sharing in social abundance. Justice does not eliminate natural inequalities but it eliminates that which makes them artificial, namely arbitrariness and inequality before the law. Rousseau advocates "true citizenship not for the good of the community as a whole, but primarily for the sake of the individual citizens themselves" (Rasmussen 2008, p.42). But as citizens cannot guarantee justice themselves, and both authors have warned that individuals can be partial when their own interest is at stake, government is needed to enforce the rules of justice, which is its "first and chief design (LJ(A) i.10: 7).

Civil government can go further in its action and, as Rousseau would advice, prescribe rules which not only prohibit mutual injuries, but command mutual good offices to a certain degree, "[t]o neglect it altogether exposes the commonwealth to many gross disorders and shocking enormities, and to push it too far is destructive of all liberty, security, and justice." (TMS II.ii.1.8: 81). Smith also warns "[o]f all the duties of a law-giver, however, this, perhaps, is that which requires the greatest delicacy and reserve to execute with propriety and judgment." (TMS II.ii.1.8: 81).

The art of government proves difficult and fundamental for the preservation of society. Alongside with this art, social order depends upon the obedience of its citizens. For Rousseau such obedience is immediate with the social contract as each citizen obeys herself in obeying the general will. Smith advances that utility explains this obedience to civil institutions "the poorest may get redress of injuries from the wealthiest and most powerfull, and [...] we submit to them to avoid greater evils. It is the sense of public utility, more than of private, which influences men to obedience." (LJ(B) 13-14: 402).

Even if members of commercial society are not all virtuous or do not have profound analyses about justice, they realize it is necessary, and are sensible to its public utility. They do not need negative education to be denaturalized again, and make justice possible; there is no need for a new social contract to assure people's obedience to the law. According to Smith, there is no social contract behind government, social order or regard for the rules of justice (LJ(B), 15: 402-3). People do not choose where they are born, and have little choice in where they live so entering into a social contract, if it could even exist, is not a voluntary act of the will (LJ(B), 16: 403).

3.5 Justice as Social Construction

When Smith presents justice as emerging from the sympathetic process, as the stabilization and materialization of specific rules of conduct in a system of positive laws, it seems clear he is presenting justice as a social construction. Even if it is the main pillar of society, its contents and specific rules depend upon this social construction because each society must define what it (i.e. its members) understands by harm. The sympathetic process allows determining this social understanding, and thus, the limits to everyone's actions. It is the affective communication sympathy makes possible that gives substance to the rules of justice.

This introduces an important element of relativism through the possibility of different meanings of harm and systems of values, and thus of rules of conduct throughout communities. This element does not appear as a possibility in Rousseau's conception of justice. Equality, dignity and autonomy have an unequivocal sense, independent of any terms or circumstances in which affective communication or identification through pity might take place. Whereas the process is always the same in Smith, in Rousseau it is the content that is prior and fixed.

The association of individual wills that sustains commercial society is far from the general will Rousseau presents as source of justice. The will of an individual does not necessarily correspond to the general will, that is, her will as an individual might differ from her will as a citizen (DCS OC III, p.363). While self-interest guides the former, it is common interest that guides the latter; so it is possible that an individual might want to profit from the benefits of society without contributing or complying with her duties as a citizen (DCS OC III, p.363). This, affirms Rousseau, is an unjust behavior.

Rousseau's universal justice has to do with the mutual engagements citizens undertake as members of the general will, whose main characteristic is the fact of being general in its object and its essence, and would lose its rectitude when dealing with particular objects or issues (DCS OC III, p.373). Each one, as part of the social contract, is equal and has equal rights, meaning there is no distinction between individuals as members of the general will. In this sense, for Rousseau requires actions treating equally those who are naturally different in order to promote their dignity and freedom. Justice regulates interactions in a legitimate society, and its absence gives way to abuse and conflict among members of an illegitimate society. Injustice, then, is associated with arbitrariness, and with the bestowal of unmerited favors and privileges.

Pierre Leroux (1845) describes this justice as the expression of a new feeling human beings develop about themselves called equality; a feeling of belonging to something greater than each one of them taken individually. This feeling, continues Leroux, gives them a sense of belonging, and a sense of their equality in rights as human beings. This common humanity makes individuals recognize the same rights for others as members of humankind. Hence equality has two aspects: an individual sense of self value and individual rights, and the recognition of these same rights for others as equals. The law materializes this feeling because in its eyes all individuals are equal, that is, they are entitled to equal treatment. The law is just when it makes no difference between individual members of society; it recognizes in each one of them a free and worthy individual. Justice then is an explicit recognition of what can be called an ontological feature of human beings: their equality, that which defines them as humans and as members of humankind.

This equality in treatment explains another important aspect of a just society: there is no arbitrariness in the attribution of rewards and no unmerited privileges or favors. Therefore, individuals do not envy others, and they do not want to take their place (Hurtado, 2010). In *Émile's* words "I stay in my place and serve others" (*Émile et Sophie*, OC IV, p. 914, my translation).

A just society is thus envy free. Following Pignol (2012), envy refers to a feeling about what the individual is, rather than about what she has. Under the influence of envy, individuals want to become someone else, and they may even hate themselves for being who they are. They experience their identity as unrecognized, and develop a feeling of inferiority (Pignol 2012). In a just society, individuals do not experience this lack of recognition because they live within themselves as whole individuals.

The engagements each individual acquires in the social contract are enforceable only because they are mutual (DCS OC III, p.373). The reciprocal character of these engagements is what makes justice universal (DCS OC III, p.378-9), and leads to the law as a statute of the people over the people, establishing a general relation without division on a general matter (DCS OC III, p.379). Accordingly, the law corresponds to acts of the general will as general acts that always comply with justice because "no one is unjust to himself", and correspond to each member's will (DCS OC III, p.279).

The general will is a form of extended self. Our individual wills reflect our individual interests and passions that can clash with someone else's. But the passions we share with others are pleasant and peaceful. If we extend our self-love to others, it will become a virtue: "Less the object of our concerns is immediately related to ourselves, less the illusion of particular interest is to fear; the more this interest is generalized, the fairer it becomes; and the love for human kind is nothing more than the love of justice" (Émile OC IV, p.547, my translation).

When individuals establish a social contract following their general will they create a political body that is also a moral being with a will, its general will cares for the preservation of the whole and the well-being of each part, and as the source of the law determines what is just and unjust (DEP OC III, p.245). The law expresses the general will, and in so doing makes citizens agree with themselves, with their own wills, making them free and equal, and guaranteeing justice (DEP OC III, p.248).

This new body has the power and strength of all individual forces joined together. It becomes, following Vargas (2005) a humanized form of the union of their strength. As in the pact to protect private property, individuals unite their forces, in the social contract they also become a single power. Nevertheless, the unions differ in that in the first it is used to protect the private property of some, and in the second it is used to protect the equality of all.

Justice regulates interactions between the members of this society but we cannot know if it will ever come to be. Justice then remains a possibility, which can only be attained through a radical change in the way we interact and conceive ourselves. In the society of the pact, the unjust and illegitimate society, individuals are guided by their self-love. They must overcome this passion, and be able to recover themselves as whole individuals capable of living within themselves, and not through the eyes of others. They must recover their love of one-self, allowing them to relate to each other without envy. But there is no certainty that this change will take place. Pity must be activated by reason, but it will remain ineffective as a recognition mechanism if self-love prevails. Individuals are unable to identify with those who suffer when they experience this lack associated with envy, and this pervading self-preference dictated by self-love. The state of war that characterizes the society Rousseau denounces, product of individuals living together in a combination of self-love and natural freedom, might not be overcome, and harmony never reached.

All this leads to present justice from another perspective. Even if, for Smith, the rules of justice are the result of the sympathetic process, it retains a natural aspect in as much as it is the result of the interactions explained in a frame of natural sociability, possible due to the existence of natural tendencies in human nature. When Rousseau presents human nature as a social construct, sociability is not the result of natural tendencies but of the social awakening of pity. Human beings build their community and themselves through their interactions as beings-in-the-world. Therefore, justice is artificial in as much as it qualifies institutions that regulate interactions possible due to a particular denaturalization of human beings; that is, the construction and formation of a human nature dominated by reason, love of one-self and pity.

Believing that society, and therefore justice, can be designed or built, Rousseau makes what Smith considers a common mistake taking the efficient for the final cause:

When by natural principles we are led to advance those ends, which a refined and enlightened reason would recommend to us, we are very apt to impute to that reason, as to their efficient cause, the sentiments and actions by which we advance those ends, and to imagine that to be the wisdom of man, which in reality is the wisdom of God. (TMS II.ii.3.5: 87).

In fact, this mistake is what leads to think that we approve of punishment when justice is violated for a love of society because we know our "interest is connected with the prosperity of society", and happiness depends on its preservation (TMS II.ii.3.6: 88). Even if, "sometimes too we have occasion to defend the propriety of observing the general rules of justice by the consideration of their necessity to the support of society" (TMS II.ii.3.8: 89), this is not really so. Our concern and relation with the whole is "compounded and made up of the particular regards which we feel for the different individuals of which it is composed". (TMS II.ii.3.10: 89-90). The only concern needed for justice to prevail "is no more than the general fellow-feeling which we have with every man merely because he is our fellow-creature". (TMS II.ii.3.10, p.90) .

4. Concluding Remarks

Considering justice as the regulation of social interactions guaranteeing individual rights leads to different assessments of commercial society depending on whether we follow Rousseau's or Smith's evaluation of this social organization. In this particular society, social interactions must be regulated because self-love drives its members but, at the same time, these social interactions through enlightened pity or sympathy lead to establishing rules of justice

that transform or control self-love. Such rules guarantee individual rights, especially as regard freedom and security.

However, these rules require certain conditions to emerge associated with certain characteristics of citizens. Whereas Rousseau associates justice with civic virtue, Smith advances prudent individuals compose a just society. Civic virtue requires negative education and the government of the general will; prudence requires sympathetic communication in resentment and self-command.

Both have to do with institutional arrangements and behavioral considerations. While Rousseau underlines the institutional shortcomings of commercial society for the emergence of justice, Smith focuses on the behavioral transgressions that must be controlled for justice to order this society. The differences in their main messages have led Sen (2010) to associate Rousseau with transcendental institutionalism, and Smith with a comparative approach to justice. Sen (2010) favors the latter approach because it allows guiding practical reasoning in determining how injustice can be prevented or mitigated in a less demanding way than a “search for a consensus on what a perfectly just society would look like” (Sen 2010, p.20). Sen (2010, p.26) associates such practical reasoning with the possibility of public discussion through which agreements can be reached. But this seems to be precisely the point Rousseau would seem to doubt possible in commercial society. It is because Rousseau believes “justice cannot be indifferent to the lives that people can actually live” (Sen 2010, p.18) that it is possible to interpret his denunciation of commercial society as a way of showing the impossibility of a public discussion leading to rules of justice. That is, in commercial society, the choice of the lives people are able to live is drastically reduced to lives of appearance and deception; their choices are drastically reduced because of the institutional arrangement they live in.

Viewing justice as an attribute has led me to associate justice with individuals in Smith, and with institutions in Rousseau. Following Smith, justice is the cornerstone of any viable society, but for Rousseau it acts as such only in a society where individuals receive equal treatment. Such interpretation also means justice requires different actions, and has different spaces. In Smith, justice dictates forbidden individual actions, guaranteeing life, property and enforcement of contracts. In Rousseau, justice characterizes public life, and requires an active commitment of all members of the political organization.

In spite of this difference, Smith and Rousseau show justice is directly related to human nature, and to interactions between individuals endowed with a sense of justice through sympathy or pity. This common aspect of Smith's and Rousseau's accounts can open the possibility of exploring the content and meaning of the political sphere in their works. This essential feature of justice as a relationship through a process of affective communication suggests the possibility of developing a tendency to discuss and negotiate leading to an ethics of deliberation (Ege, Igersheim, Le Chapelain 2013, p.6). This development can be seen as a historical process paving the way from a moral to a political theory of justice as in Rawls (Ege, Igersheim, Le Chapelain 2013, p.8). Probably this is the step Rousseau is missing because he could not see how individuals dominated by self-love could overcome their tendencies, how individuals who are not free, in the sense of moral freedom, can engage in a contract founding a legitimate society, and be guided by their sense of justice, or even be reasonable. Rousseau cannot derive public reason from his denunciation of the illegitimate society. And maybe public reason is precisely the concept that allows understanding exactly what he meant by the general will: "in the context of constitutional democracies only individuals who have assimilated public reason and therefore acquired the qualities of citizens can ensure the coexistence of opposite conceptions of the good" (Ege, Igersheim, Le Chapelain, 2013, 8). This would explain why the general will is not the fusion of individuals; or why it does not correspond to the absorption and disappearance of the individual within the greater body of society.

There still remains, I believe, a distance between what should be understood by public reason or ethics of deliberation in Rousseau and Smith. Citizenship is not an ideal for Smith, it does not require a radical transformation of human beings. So this ideal possibility is present in the society he describes. In Rousseau, as in Rawls, individuals come to the political sphere with a conception of the good, or more precisely, these conceptions face each other within a framework priorly established by justice. There is then a difference in Rousseau between the private and the public sphere which is not so clear in Smith, where the field of politics is not truly separated from private life. A further question to be explored then is if the impartial spectator can be understood as a political figure, and if it makes the individual a citizen.

This reading is also in line with the authors' intentions for their work. Smith is describing the society he sees (TMS II.i.10.5); a society he praises for its accomplishments and for the

opportunities it offers to its members, in a frame of increasing wealth and interdependence. Here, justice is a fact, and its rules must always be followed explaining why Nature has provided human beings with certain tendencies and aversions so as to make it effective. In brief, we can apply what Larrère (1992, p.203, my translation) states about justice in Turgot and the physiocrats to Smith: “it does not distribute powers, but respects private possessions that individuals produce, buy or exchange”. Justice sets the stage for individuals to play their part without threat to their lives, property and engagements.

Instead, Rousseau’s denunciation leads him to a project of reform, hopefully leading through one of the possible paths in history towards a better, just and legitimate society. Rousseau’s intention is not to describe, so he does not contrast his account with facts. He pretends to tell the truth with no real certainty of having succeeded. The truth is then a normative ideal: “general and abstract truth is the most precious of all goods. Without it, human beings are blind ; it is the eye of reason” (OC I, p.1026). Justice is part of that ideal, and will replace self-love in the society of the general will.

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