

## Of Corruption and Clientelism in Montesquieu, Hume, and Adam Smith in the rule of Law.<sup>1</sup>

It's fair to say that David Hume and Adam Smith have been widely regarded, by friends and enemies alike, as champions of the rule of law and (perhaps this is the same side of the coin) critics of rent-seeking. So, for example, in *The Constitution of Liberty*, in a section titled, "The Origins of the Rule of Law," Hayek writes, "The most influential among them was David Hume, who in his works again and again stressed the crucial points and of whom it has justly been said that for him the real meaning of the history of England was the evolution from a 'government of will to a government of law'."<sup>2</sup> Subsequently, Hayek goes on to attribute the position to Adam Smith: "Later in the century these ideals are more often taken for granted than explicitly stated, and the modern reader has to infer them when he wants to understand what men like Adam Smith and his contemporaries meant by "liberty." Only occasionally, as in Blackstone's Commentaries, do we find endeavors to elaborate particular points, such as the significance of the independence of the judges and of the separation of powers, or to clarify the meaning of "law" by its definition as "a rule, not a transient sudden order from a superior or concerning a particular person; but something permanent, uniform and universal."<sup>3</sup>

In discussing this material F.H. Knight is rather critical of Hayek.<sup>4</sup> To be precise, Knight *agrees* with Hayek's characterization of the rule of law, but accuses him of minimizing the role of political democracy in it: "Hayek does not mention the crucial events that led to or constituted the Liberal Revolution, establishing free society, that is, democracy in the broad meaning, especially a political order minimizing compulsory law as well as exercise of arbitrary power, and restricting the latter to acts by lawful agents of the society, approved or accepted by public opinion. Surely the crux of political democracy was and is vesting of sovereign power in "the people," to be exercised through enforcing and making laws by representatives; these are chosen freely-as freely as possible-by majority vote (sometimes plurality) where public opinion (or will) is seriously divided. It is "rule of law" indeed, but where direct force of public attitudes does not suffice, by men authorized to interpret and enforce existing formal law and *moral tradition*, making legislation necessary."<sup>5</sup>

While Knight is surely right in his diagnosis that Hayek is not especially warm to this democratic feature of the rule law, he overlooks that Hayek himself recognizes the point in a crucial passage:

But the ultimate legislator can never limit his own powers by law, because he can always abrogate any law he has made. The rule of law is therefore not a rule of the law, but a rule concerning what the law ought to be, a meta-legal doctrine or a political ideal. It will be effective only in so far as the legislator feels bound by it. In a democracy this means that it will not prevail unless it forms part of the moral tradition of the community, a common ideal shared and unquestioningly accepted by the majority.<sup>6</sup>

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<sup>1</sup> Some of this material has appeared on my blog, digressionsnimpresions. I thank its readers for comments.

<sup>2</sup> F.A. Hayek (1968 [1960] *The Constitution of Liberty*, Chicago: The University of Chicago Press p. 172. The quote is from F. Meinecke, *Die Entstehung des Historismus* (Berlin, 1936), I, 234.

<sup>3</sup> Hayek, op. cit., p. 173.

<sup>4</sup> Knight, Frank H. "Laissez faire: pro and con." *Journal of Political Economy* 75.6 (1967): 788ff.

<sup>5</sup> Knight, op. cit. 789.

<sup>6</sup> Hayek, op. cit. p. 206. On the significance of this passage see Smith, Craig. *Adam Smith's political philosophy: the invisible hand and spontaneous order*. Routledge, 2006, p. 137. In context, Hayek is also engaging with Schmitt here.

Since, it has been conventional wisdom to associate the rule of law with Hume and Adam Smith either separately or jointly.<sup>7</sup> I have focused on Hayek here because that Hume and Smith are central to the origin and articulation of the rule of law strikes me as a view that originates with Hayek or at least given wider currency by him.<sup>8</sup> For example, we do not find the close association between the rule of law and Hume or Smith in, for example, Dicey's *Lectures Introductory to the Study of the Law of the Constitution*,<sup>9</sup> which is the locus classicus for the modern interest in rule of law.<sup>10</sup> This is especially notable because in it Dicey does treat Hume as rather important theorist for the role of opinion in securing any enduring rule.<sup>11</sup>

I have no interest in undermining the idea that Hume and Smith were friends of the rule of law and not the rule of men, and I will take that for granted as background commitment. But in this chapter, I show that they diagnosed an important political exception to it in practice which turns out to be a form of corruption. They saw that in the British Parliamentary system, the Crown or executive had to rely on patronage or clientelism to promote its interests in Parliament. This was basically a system of securing votes from MPs by way of jobs for their friends and family.

In this paper, I use 'a system of patronage' or 'clientelism' interchangeably to capture the notion of corruption. If one reads the biographies and correspondence of Hume and Smith with modest attention, one will realize that the system of patronage in Parliament was part of much wider practices of patronage in which Hume and Smith participated, but that will not be my concern in what follows. While one can find language that Hume and Smith may have thought patronage in Parliament normatively undesirable ('corruption' is not a term of praise) – it is a paradigmatic case of rule by men and not law – they do embrace it as a kind of necessary feature of getting things done in a Parliamentary system.

In what follows, I first introduce Hume's ideas on the utility of patronage in his essay, "Of the Independency of Parliament." I argue that in Hume clientelism just is a feature of Parliamentary business. It seems ineliminable. I then contextualize Hume's account by comparing it to Montesquieu's account of this system of patronage in Book XIX, chapter 27 of *The Spirit of the Laws*. I then turn to Smith, and I show that he echoes Hume's analysis of corruption in an easily ignored passage in *The Wealth of Nations*. I then show that for Smith one argument in favor of a kind of federal Parliamentary union between Great Britain and her American colonies lies in its ability to facilitate and make more efficient the system of patronage by the Crown. While Smith's account of these matters is quite Humean, one can discern in Smith a cost-benefit argument for the acceptance of the necessity of a system of patronage in the *service* of the peaceful expansion and entrenchment of the rule of law in his proposal for Parliamentary union.

## 1. Hume on Corruption.

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<sup>7</sup> Some of the most important studies are, McArthur, Neil. "David Hume's legal theory: the significance of general laws." *History of European ideas* 30.2 (2004): 149-166; Sagar, Paul. "On the Liberty of the English: Adam Smith's Reply to Montesquieu and Hume." *Political Theory* 50.3 (2022): 381-404.

<sup>8</sup> It is worth noting that while *Road to Serfdom* also includes a robust defense of the rule of law, it is not associated with Hume and Smith there.

<sup>9</sup> See Dicey, Albert Venn. *Lectures Introductory to the Study of the Law of the Constitution*. London: Macmillan, 1885.

<sup>10</sup> Cosgrove, Richard A. *The Rule of Law: Albert Venn Dicey, Victorian Jurist*. UNC Press Books, 2017.

<sup>11</sup> Dicey, op. cit., p. 71-2 and also lecture 1 of Dicey, Albert Venn. *Lectures on the relation between law and public opinion in England during the nineteenth century*. Routledge, 2017 [1905].

In his truly excellent book, *Parliamentarism: from Burke to Weber*, William Selinger notes correctly that Hume defended Walpole's use of patronage to secure the government's majority in the House of Commons.<sup>12</sup> In particular, Selinger quotes from the following passage from Hume's (1741) essay, "Of the Independency of Parliament:"

The crown has so many offices at its disposal, that, when assisted by the honest and disinterested part of the house, it will always command the resolutions of the whole so far, at least, as to preserve the antient constitution from danger. We may, therefore, give to this influence what name we please; we may call it by the invidious appellations of corruption and dependence; but some degree and some kind of it are inseparable from the very nature of the constitution, and necessary to the preservation of our mixed government. [para 6. Emphasis in original]

Here Hume treats a system of patronage as a *necessary* feature of the British political life. In fact, his actual claim is quite expansive: Hume treats the system of patronage as a necessary feature of securing the survival of the actual constitution. Lurking in Hume's position is the further thought that *excessive* use of patronage may undermine the constitution, but that its moderate and selective use ("some degree and some kind of it") is essential to its good functioning.

Obviously, one's judgment about what counts as excessive will be, in part, a matter of subjective opinion. It's fair to say that this use of patronage is the kind of thing that in later generations Bentham, Mill, and all 'clean government' types would rail against as the power of 'sinister' or 'vested' interests.<sup>13</sup>

Walpole's patronage was rather absolute over potentially lucrative "fiscal and revenue offices."<sup>14</sup> The number of people involved was not small either.<sup>15</sup> There is a reason why Hume is willing to call this 'corruption.' It turns the machinery of government into a buddy/networking system for jobs. Anyone that has read eighteenth century correspondences will see that most everyone tried to be on the inside of this system. However, in a note, Hume carefully distinguishes this system of patronage from what he calls 'private bribery,' that is, the buying of votes by way of direct transfer of money from executive branch to MP. "As to private bribery, it may be considered in the same light as the practice of employing spies, which is scarcely justifiable in a good minister, and is infamous in a bad one."

One may well wonder, why Hume thinks a system of patronage is necessary to the proper functioning let alone survival of the mixed form of government. The danger that clientelism combats is the risk that the growing power of the legislative branch goes unchecked and entirely swallows up the executive branch. As Hume puts in the sentence before the one just quoted: "the interest of the body is here restrained by that of the individuals, and that the house of commons stretches not its power, because such an usurpation would be contrary to the interest of the majority of its members." And clearly Hume thinks that sufficient individual members can be reminded of their interest in preserving the status quo by seeing their friends and family rewarded by the Crown.

Hume, thus, supports a system of patronage as a carrot to be controlled by the executive to secure loyalty to the general interest from MPs. Selinger, not implausibly, goes further than this and he sees Hume as endorsing that patronage, "ensured that large swaths of the public were financially

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<sup>12</sup> Selinger, William. *Parliamentarism, From Burke to Weber*. Cambridge: Cambridge University Press, 2019, p. 51.

<sup>13</sup> Gunn, J. A. W. "Jeremy Bentham and the public interest." *Canadian Journal of Political Science/Revue canadienne de science politique* 1.4 (1968): 398-413.

<sup>14</sup> Selinger op. cit, p. 50, note 173.

<sup>15</sup> Kemp, Betty. "Crewe's Act, 1782." *The English Historical Review*, vol. 68, no. 267, 1953, pp. 258-63.

dependent upon the Crown and would side with the monarch should an open confrontation with Parliament occur.”<sup>16</sup> While this strikes me as going beyond Hume’s argument, I agree with Selinger that it is entailed by it.

As an aside, one may well wonder why Parliament wouldn’t be incentivized, hereby, to pursue a fuller usurpation to control the network of clientelism itself. Hume’s implied answer seems to be that individual MPs would fear never to be included in the system of patronage if it were controlled by a particular majority but might hope to be rewarded occasionally and selectively by the Crown. (It probably helps to remember that during the eighteenth century, party discipline was less strict than in subsequent ages.)

Be that as it may, it follows that Hume, thus, explicitly denies that given human nature the British political system is stable without corruption.<sup>17</sup> And this means that how we think about his meta-legal conception of the rule of law must be treated with some nuance. To put the point succinctly: *the actual process of legislation cannot and even should not conform to the rule of law* according to Hume. The *machinery of rulemaking* will be impure, and will require an art of government to ensure that the general interest is secured. Once legislation has been secured, then legislators must abide by it in accord with the spirit of the rule of law.

Of course, there is a further question how much of the system of patronage is truly necessary to be functional in the sense that Hume has diagnosed. And how one might know whether Hume’s diagnosis is itself correct.

## 2. Montesquieu.

In his book, Selinger contrasts Hume’s and Montesquieu’s views as follows:

Montesquieu also came to believe that the Crown’s offices were “necessary to the preservation of mixed government.” But his argument was quite different. Whereas Hume defended patronage because a true constitutional balance was impossible, Montesquieu thought that the Crown’s offices helped to uphold constitutional balance. They ensured that large swaths of the public were financially dependent upon the Crown and would side with the monarch should an open confrontation with Parliament occur. Importantly, Montesquieu’s argument did not require the Crown to use its offices to influence elections or win over members of Parliament (which was exactly what Hume emphasized) and Montesquieu believed those practices constituted a dangerous form of corruption. While Montesquieu argued that the growing size of the English administrative state helped to maintain constitutional balance, he never defended Parliamentary patronage.<sup>18</sup>

This is substantially correct, but my presentation will differ on some key details. First, I don’t see Hume nor Montesquieu emphasize ‘balance’ in the salient passages. In Hume’s “Of the Independency of Parliament,” the idea of balancing is only mentioned in the second to last sentence, “a limited monarchy admits not of any such stability; nor is it possible to assign to the crown such a determinate degree of power, as will, in every hand, form a proper counterbalance to the other parts

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<sup>16</sup> Selinger, op. cit., pp. 52.

<sup>17</sup> Selinger, op. cit., pp. 51-2.

<sup>18</sup> Selinger, op. cit. pp. 51-2.

of the constitution.” The system of patronage is not a means to secure balance, it is a means to prevent usurpation.<sup>19</sup>

Second, in Book 19, chapter 27 of *The Spirit of the Laws* (“How the Laws contribute to form the Manners, Customs, and Character, of a Nation”), Montesquieu is focused on the nature of free government (as opposed to servile government)—again maintaining balance is not the point here. In such a government people have divided loyalty between the legislative and executive branches. Interestingly enough, Montesquieu treats the availability of posts in the executive branch as a means to secure the loyalty of citizens (not MPs) who can hope for gaining employment or lucrative posts from it: “And, as the executive power, which has all the posts at its disposal, could furnish great expectations but not fears, all those who would obtain something from it would be inclined to move to that side, and it could be attacked by all those who could expect nothing from it.”<sup>20</sup> Because this loyalty is rooted in expectation, but not fears, Montesquieu expects it to be fickle: “each individual, always independent, would largely follow his own caprices and his fantasies, he would often change parties.”<sup>21</sup>

However, third, these expectations are also a source of what we may call the *vivacity* of free societies. For Montesquieu goes on to claim “as all the passions are free there, hatred, envy, jealousy, and the ardor for enriching and distinguishing oneself would appear to their full extent, and if this were otherwise, the state would be like a man who, laid low by disease, has no passions because he has no strength.”<sup>22</sup> One of the ways by which one can enrich and distinguish oneself is in governmental service. (It’s worth recalling that tax-farming is rather lucrative in Montesquieu’s age.)

Montesquieu here domesticates Machiavelli’s insight (at the start of *Discourses on Livy*) that a society doesn’t need harmony but requires some kind of (what I like to call) ‘creative turbulence.’ (In Ancient Rome, this was the tumult that accompanied the durable class conflict between patricians and plebs.) During the eighteenth century, Mandeville is the most satirical and notorious defender of a version of this position. This vivacity is also felt through the polarization of enduring factions: “The hatred between the two parties would endure because it would always be powerless.”<sup>23</sup>

Fourth, I don’t mean to suggest that Montesquieu doesn’t expect the kind of corruption associated with Walpole’s use of spoils to secure votes. In fact, something like it is clearly presupposed in his argument for regular elections to renew Parliaments:

In addition, if the legislative body were continuously convened, it could happen that one would do nothing but replace the deputies who had died with new deputies; and in this case, if the legislative body were once corrupted, the ill would be without remedy. When various legislative bodies follow each other, the people, holding a poor opinion of the current legislative body, put their hopes, reasonably enough, in the one that will follow; but if the legislative body were always the same, the people, seeing it corrupted, would expect nothing further from its laws; they would become furious or would sink into indolence.<sup>24</sup>

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<sup>19</sup> Selinger is following the editors of the standard English translation De Montesquieu, Charles. *Montesquieu: The spirit of the laws*. Translated by Anna M. Cohler, Basia C. Miller, Harold S. Stone. Cambridge: Cambridge University Press, 1989, pp. xix-xix.

<sup>20</sup> Montesquieu op. cit. p. 325. See also Selinger, op. cit., p. 36.

<sup>21</sup> Montesquieu, op. cit., p. 326.

<sup>22</sup> Montesquieu, op. cit., p. 325.

<sup>23</sup> Montesquieu, op. cit., p. 325.

<sup>24</sup> Montesquieu, op. cit., p. 161-2.

This passage supports Selinger's contention that Montesquieu sees the Crown's use of its offices to influence elections or win over members of Parliament as a form of corruption. The reason I quote this in full is that Montesquieu clearly treats regular elections as a means to secure the good opinion in or authority of the legislative branch and the laws it frames. On this view, then, voting does more than secure representation and defense of private interests; it also secures hope that the rule of law will serve the wider public.

However, not unlike Hume, Montesquieu thinks some such corruption inevitable. And he predicts that a free state "will perish" as all things must, "when legislative power is more corrupt than executive power."<sup>25</sup>

### 3. Smith<sup>26</sup>

To the best of my knowledge, it has gone unnoticed that Smith also treats the subject of patronage in *The Wealth of Nations*. Smith does so in the context of his treatment of the future of Britain's relationship to the American colonies. Smith observes that part of the problem the British faced with relatively self-governing colonial assemblies is that the Westminster system of patronage breaks down at a distance. I will quote the relevant paragraph in full. The wider context is how to get the colonies to pay taxes that cover the expense of administering and defending them.

That the colony assemblies can ever be so managed as to levy upon their constituents a publick revenue sufficient, not only to maintain at all times their own civil and military establishment, but to pay their proper proportion of the expence of the general government of the British empire, seems not very probable. It was a long time before even the Parliament of England, though placed immediately under the eye of the sovereign, could be brought under such a system of management, or could be rendered sufficiently liberal in their grants for supporting the civil and military establishments even of their own country. It was only by distributing among the particular members of Parliament, a great part either of the offices, or of the disposal of the offices arising from this civil and military establishment, that such a system of management could be established even with regard to the Parliament of England. But the distance of the colony assemblies from the eye of the sovereign, their number, their dispersed situation, and their various constitutions, would render it very difficult to manage them in the same manner, even though the sovereign had the same means of doing it; and those means are wanting. It would be absolutely impossible to distribute among all the leading members of all the colony assemblies such a share, either of the offices or of the disposal of the offices arising from the general government of the British empire, as to dispose them to give up their popularity at home and to tax their constituents for the support of that general government, of which almost the whole emoluments were to be divided among people who were strangers to them. The unavoidable ignorance of administration, besides, concerning the relative importance of the different members of those different assemblies, the offences which must frequently be given, the blunders which must constantly be committed in attempting to manage them in this manner, seems to render such a system of management altogether impracticable with regard to them. (WN 4.7.C.69, 619)

Somewhat strikingly there is no evidence here that Smith rejects the clientelism at the heart of Walpole's management practices. In Smith's analysis the prime minister is the one managing the sovereign's interests and so functionally the eye of the sovereign. In fact, the system of patronage

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<sup>25</sup> Montesquieu, op. cit., p. 166

<sup>26</sup> This section draws on material first presented in Schliesser, Eric, "Federalism and The unity of Early Liberalism: Bentham and Kant's reception of Adam Smith's 'New Imperialism,'" *Social Philosophy and Policy* (forthcoming, 2025), <https://philarchive.org/rec/SCHFAT-43>

seems intrinsic to the proper art of government here. This echoes Hume's position. In fact, Smith deems clientelism necessary to get Parliament to agree to levy sufficient taxes for the defense of the realm. So, he treats clientelism as a solution to a problem of free riding or under-allocation of resources to the supply of public goods. Lurking, then, in Smith's account is a kind of cost-benefit analysis such that the costs of the system of patronage end up supporting the benefits that follow from having a strong executive, including, one may say, the rule of law.

However, as Smith notes, clientelism doesn't work well when the leading people in the patronage networks are near strangers to each other and so can't make strategic judgments about people's relative importance; and when the patronage has to be divided over many people (which is very costly) given that the colonists have many assemblies. As Ronald Coase notes. Smith also observes that the American politicians wanted, "not liberty nor democracy, but position" (p. 323) or stature.<sup>27</sup> Smith returns to the difficulty of managing colonial assemblies at (WN 4.7.C.73, 621).

As an aside, lurking here are the beginning outlines of Schumpeter's argument for why in national development government, bureaucracy, and industry are centralized in the nation's capital.<sup>28</sup> It's just much easier to get things done with the right people if one can keep an eye on each other.

Smith is an advocate of an imperial, Parliamentary union.<sup>29</sup> That is, again to quote Coase, Smith "proposed to give the colonies representation in the British Parliament in proportion to their contributions to the public revenues."<sup>30</sup>

Now, one may think that while Smith did not condemn the patronage system in the passage quoted above, he need not have endorsed it. After all, one can read the passage as merely pointing out the limitations of the status quo. However, a natural implication of his argument for Parliamentary union is that the representatives of the colonists would be easier to manage in an imperial Parliament (which he calls an 'estates general'). And this point he makes explicitly, and he does so by echoing Hume's analysis of mixed government:

But if the number of American representatives was to be in proportion to the produce of American taxation, the number of people to be managed would increase exactly in proportion to the means of managing them; and the means of managing, to the number of people to be managed. The monarchical and democratical parts of the constitution would, after the union, stand exactly in the same degree of relative force with regard to one another as they had done before. (WN 4.7.C.738, 625)

Managing here means buying votes through handing out lucrative positions to members of Parliament and their families, dependents, and supporters. It's this system of organized corruption that Bentham and the radicals proposed to tackle in subsequent generations.

Now, I don't want to deny that in *The Wealth of Nations*, Smith offers an abundance of material on how to reduce corruption in administration, how to create efficient public works, and how to tackle principal-agent problems. I have written on how he is often looking for mechanisms of governance that allow for the operation of what is now known as incentive-compatibility. Here, however, Smith clearly assumes that the benefits of political integration far outweigh the costs of managing the system of patronage that is needed to secure management of empire.

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<sup>27</sup> Coase, R. H. (1977) "The wealth of nations," *Economic Inquiry*, 15(3): 323.

<sup>28</sup> Schumpeter, Joseph A. *Capitalism, socialism and democracy*. Routledge, 2013 [1942], especially chapter 12.

<sup>29</sup> Schliesser (2025), op. cit., for details.

<sup>30</sup> Coase, op. cit., p. 323.

As I have noted elsewhere, Smith recognizes a role for political leadership.<sup>31</sup> And the present argument for the significance of an art of government to Smith's liberalism converges with it.

In fact, lurking in the argument for Parliamentary union is the establishment of a giant free trade zone that would turn the North Atlantic into a provincial sea. Crucially, Parliament itself would have more of an interest to maintain such free trade. The benefits of such an arrangement are not just economic, but also political because it would secure more mutual integration (see, especially, WN 4.5.b.39, 538).

#### 4. Conclusion.

Hume and Smith have been lionized correctly as heroes of the rule of law. But despite this fact they both support the system of patronage or clientelism by the executive branch. In Hume, the argument for a system of patronage ultimately rests on hard to evaluate claims about the survival of the whole system of government – including the maintenance of the rule of law -- and presumably justified fears against legislative supremacy. In Smith the argument rests on an implied cost-benefit analysis in which the fruits of expansive rule of law far outweigh the costs of using a spoils system to generate and maintain law. Neither Hume nor Smith seems to have been attracted to Montesquieu's more Machiavellian arguments that see in a system of patronage a source of loyalty to the state and vivacity in mass society.

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<sup>31</sup> Schliesser, Eric (2021). "Adam Smith on Political Leadership." In R. J. W. Mills & Craig Smith (eds.), *The Scottish Enlightenment: Human Nature, Social Theory and Moral Philosophy: Essays in Honour of Christopher J. Berry*. Edinburgh University Press. pp. 132-163