CHAPTER TEN

Distributive Justice

Man is by Nature directed to correct, in some measure, that distribution of things which [Nature] herself would otherwise have made.

(TMS 168)

50. Two Meanings for “Distributive Justice”

“Distributive justice” in its modern sense calls on the state to guarantee that property is distributed throughout society so that everyone is supplied with a certain level of material means. In its Aristotelian sense, “distributive justice” referred to the principles ensuring that deserving people are rewarded in accordance with their merits. So the ancient principle had to do with distribution according to merits, while the modern principle demands a distribution independent of merit. Everyone is supposed to deserve certain goods regardless of merit, on the modern view; merit-making is not supposed to begin until everyone has such goods as housing, health care, and a decent education. We can be quite sure that this is not what Aristotle had in mind, when he wrote about people being rewarded in accordance with their virtues, or participating in political life in accordance with their social status.

How can we get from the Aristotelian to the modern meaning of the phrase? “Justice,” unlike “wisdom” and “charity,” historically has been understood as a secular and a rational virtue, whose demands can be explained and justified without appeal to any religious faith; to be a virtue that governments can and should enforce, and that indeed ought to be the prime norm guiding political activity; and to be a virtue that, if only because politicians need to organize their plans around it, ought to take as its object practicable, readily achievable goals. Thus ensuring belief in Christ has never been held to be a project for justice since the goodness of this project, if it is good, cannot be explained in purely secular and rational terms. Thus securing warmth in friendship is not considered an object of justice since it depends on the uncoerced feelings of individuals. And thus guaranteeing to everyone freedom from illness has never been included among the objects of justice because, so far at least, it is impossible. Finally, justice, in general, has long been seen as a matter of “giving to everyone their due,” and distributive justice in particular was originally defined by Aristotle as a matter of dividing up rights, offices, and goods in accordance with
people's merits. So to arrive at the modern notion of distributive justice, from that "justice" generally means, one needs to hold:

1. that a certain number of material goods, is everyone's "due," that everyone deserves such a thing,
2. that the fact that they deserve it can be justified rationally, in purely secular terms,
3. that this distribution of goods is practicable: that attempting consciously to achieve it is neither a fool's project nor, like the attempt to enforce friendship, something that would undermine the very goal one seeks to achieve, and
4. that the state, and not merely private individuals or organizations, ought to be guaranteeing the distribution.

These four premises are closely linked, but it is particularly important, and particularly difficult, to get from Aristotle's distributive justice to our premise To look to people's "merits" ordinarily means looking to their distinctive abilities or to what they have done, while to say that everyone deserves something implies that they deserve it independently of what is distinctive about them or what they have done. From the point of view of the Aristotelian tradition, this makes no sense. Moreover, for most moral and political thinkers in premodern world, the poor appeared to be a particularly vicious class of people, a class of people who lacked merits. Even those who believed strongly in doing the poor regarded such help as undeserved: It was to be bestowed as a matter of grace, an expression of the benevolence of the giver.

use the word "grace" advisedly. Most premodern proponents of charity, or of communal sharing of wealth, did so on religious grounds that violate premise (2). Nor were our other premises widely held. Premise (3) is still much debated, and its contradictory was taken for granted in almost every society at the late eighteenth century. And premise (4) is something one really does hear at all until "Gracchus" Babeuf's conspiracy at the end of the French revolution. Premise (4) really depends on all the others: only if people deserve the set of material goods, if they do so for reasons that can be explained not appeal to religion, and if it is a practical and not a far-fetched goal to get them what they deserve in this respect, can it be reasonable to expect the— an entity that dispenses what is owed to people and not what it would ideally be nice for them to have, that, at least in the modern world, is supposed what religious justifications for its actions, and that aims at feasible goals— take upon itself the distribution of these goods.

Smith's optimism about the productive possibilities of a free market helped to make (3) begin to look plausible. Despite his posthumous reputation for "laissez-faire" absolutism, he also made some recommendations that implied an acceptance of (4). But his most important contribution to the modern notion of distributive justice was to provide grounds for (1) and (2), clearing away a lot of superstition and prejudice according to which the poor, far from having a right increased material means and social opportunities, deserve precisely the same.

51. Smith's Contribution to the Politics of Poverty

That Smith does not have any principled opposition to using the state to redistribute wealth should be clear from the fact that he makes recommendations to do just that. Wealth can be redistributed either by a direct transfer of property from the rich to the poor, or by taxing the rich at a higher rate than the poor, or by using tax revenues, gathered from rich and poor equally, to provide public resources that will mostly benefit the poor. Smith makes proposals that fall under both the second and the third heading.

The most important of these is the advocacy of public schooling. In both LJ and WN, Smith cites the mind-numbing nature of certain kinds of labor as one of the greatest dangers of an advanced economy, and says that the state should take steps to ensure that the laboring poor have an education fostering in them the capacity for moral and political judgment (WN 782–9), and giving them "ideas with which [they] can amuse [themselves]" (LJ 540). Building on institutions that already existed in Scotland, he recommends that all states underwrite local schools that teach reading, writing, and "the elementary parts of geometry and mechanics" (WN 785).

In addition to this proposal, Smith suggests that luxury vehicles pay a higher road toll than freight vehicles, so that "the indolence and vanity of the rich [can be] made to contribute in a very easy manner to the relief of the poor" (WN 725). He also advocates a tax on house-rents, in part because it will fall heaviest on the rich: "It is not very unreasonable that the rich should contribute to the publick expence, not only in proportion to their revenue, but something more than in that proportion" (WN 842). And, as Gertrude Himmelfarb has pointed out, although Smith harshly criticizes the laws of settlement, he "conspicuously did not . . . challenge" the English Poor Law—the most significant government program to help the poor in his day, and one that came under criticism, then and later, as too expensive and as sapping the incentives of the poor to labor.

This is about all one can find in Smith in the way of positive programs to help the poor. He advocates the lifting of apprenticeship statutes, residence requirements for poor laborers, and sumptuary laws, but these are all negative proposals, aimed just to remove obstacles to people's freedom. If his positive programs seem a bit meager to us, we should remember, first, that Smith seems to have believed that an unrestricted economy could achieve a 100 percent employment rate (WN 470–71), and second, that he was writing at a time when common wisdom held that the poor needed to be kept poor, else they would not work, that only necessity prevented the poor from wasting their time in drink and debauchery. Most writers also held that poor people needed to be restrained from luxury spending, and taught habits of deference so that they remained in...
their proper social place and did not ape their superiors. In this context, to propose any government programs that would allow wages to rise, and poor people to aspire to the goods and learning of the middle and upper classes, was to swim mightily upstream.

But by far the most important contribution Smith made to the history of state welfare programs was to change the attitudes toward the poor that underwrote the restrictive, disdainful policies by which the poor were kept poor. “More important than this or that policy [in Smith],” Himmelfarb rightly says, “was the image of the poor implicit in those policies.” And she sums up a consensus among scholars when she writes, “if the Wealth of Nations was less than novel in its theories of money, trade, or value, it was genuinely revolutionary in its view of poverty and its attitude towards the poor.”

Smith’s picture of the poor may be one we take for granted now, but that is in good part the effect of his work. Smith has indeed changed our notion of what the poverty problem is; his predecessors regarded it as the problem, primarily, of how to cope with the vice and criminality of the lower classes. On the whole, they did not think the world should, much less could, do without a class of poor people. Until the late eighteenth century, most people in Christian countries believed that God had ordained a hierarchical organization for society, with the truly virtuous people occupying positions of wealth, or power, at the top, and “the poor and inferior sort” at the bottom. Of course, the people at the top were supposed to help those at the bottom—but not enough to raise them above their proper place. Alms-giving was understood as a means to redemption, in Christianity as in many other religions, and the existence of the poor was seen as an integral part of God’s plan for human life: “God could have made all men rich, but He wanted there to be poor people in this world, that the rich might be able to redeem their sins.” This teaching was virtually unquestioned in medieval times, but even in 1728 the common wisdom about the social order was expressed in these words of Isaac Watts, a renowned advocate for the poor: “Great God has wisely ordained that among Mankind there should be some Rich, and some Poor: and the same Providence hath allotted to the Poor the meaner Services.” As Daniel Baugh sums up the situation:

In . . . 1750 . . . there were two widely held attitudes toward the poor existing side by side. . . . The dominant one supposed that the poor should never have misery lifted from them, nor their children be encouraged to look beyond the plough or loom. It reflected traditional notions of social hierarchy and was reinforced by economic theories about labor and motivation. The other attitude was derived chiefly from Christian ethics. It held that the duty of the rich was to treat the poor with kindness and compassion, and to aid them in times of distress. This benevolent attitude did not provide a suitable basis for policy-making; rather it was a reminder of conscience, of the fact that the ill-clad, filthy laboring masses habitually viewed with contempt by their betters, were equally God’s creatures, whom a Christian community could neither exclude nor ignore.

And the major breakthrough in getting beyond both of these attitudes, says Baugh, “came in 1776, when a philosopher of great learning, penetration, and literary persuasiveness published his Inquiry into the Nature and Causes of the Wealth of Nations.” Smith combated both the explicit condescension of the first view and the implicit condescension of the second one. He was a virulent opponent of the notion that the poor are inferior in any way to the well-off. Over and over again, Smith pricks the balloon of vanity upholding a contemptuous picture of the virtues and skills of the poor. He presents the poor as people with the same native abilities as everyone else: “The difference in natural talents in different men is, in reality, much less than we are aware of.” Habit and education make for most of the supposedly great gap between the philosopher and the common street porter, even though “the vanity of the philosopher is willing to acknowledge scarce any resemblance” between the two (WN 29). To those who complain that the poor are naturally indolent, Smith declares that, on the contrary, they are “very apt to over-work themselves” (WN 100). To those—and these were legion, even among advocates of the poor—who saw indulgence in drink as a vice characteristic of poor people, Smith replied that “Man is an anxious animal and must have his care swept off by something that can exhilarate the spirits” (LJ 497). To those who complained that the poor were affecting the manners of their “betters,” and should be prevented from buying luxury goods both in the name of natural social hierarchy and in the name of their own financial health, Smith says that it is “but equity” for the lower ranks of society to have a good share in the food, clothes, and housing they themselves produce (WN 96), and that it is “the highest impertinence and presumption, . . . in kings and ministers, to pretend to watch over the economy of private people.” He adds, about these kings and ministers: “They are themselves, always, and without any exception, the greatest spendthrifts in the society” (WN 346). The poor, he believes, tend to be frugal rather than prodigal: practically everyone, including practically every poor person, saves in order to rise in social standing (WN 341–2; see §20 above).

This is not the end of the list. Smith defends the religious choices of poor people against the contempt and fear of his Enlightenment colleagues, pointing out that the religious sects that poor people tend to join, while sometimes “disagreeably rigorous and unsocial,” provide laborers in a vast and anonymous urban setting with community and moral guidance (WN 794–6). He repeatedly demonstrates that it is better for poor workers to be independent rather than dependent on their “superiors” (139, 335–6, 378–9, 412–20). He even tries to excuse, if not quite to justify, the mob violence characteristic of struggles between workers and their masters (84).

In the context of the eighteenth century, then, Smith presents a remarkably dignified picture of the poor, a picture in which they make choices every bit as respectable as those of their social superiors—a picture, therefore, in which there really are no “inferiors” and “superiors” at all. Individual people may be good or bad, of course, but Smith urges his readers to see the average poor person as much like themselves: equal in intelligence, virtue, ambition, and interests with every other human being, hence equal in rights and desert, in dignity. It is this picture of the poor as equal in dignity to everyone else, and as
52. A Brief History of Distributive Justice

What is supposed to block any argument from Smith for distributive justice is the view that the tasks of that virtue belong to individuals, not to the state. Smith does identify the phrase “distributive justice” with beneficence (TMS 269–70), and he issues a warning that enforcing beneficent offices is a delicate task—pursuing it too far will destroy “liberty, security and justice,” while neglecting it altogether “exposes the commonwealth to many gross disorders and shocking enormities” (81; see above, 836). But, in the first place, the fact that a task is a delicate one does not mean it should not be pursued. Many commentators emphasize just the first horn of the dilemma that makes the task delicate, and so impute to Smith the view that beneficence and other virtues should be enforced only very rarely and reluctantly. But there are two horns to Smith’s dilemma, and he no more considers it permissible for a government to stand idly by “gross disorders and shocking enormities” than for it to violate liberty, security, and justice.

In the second place, Smith is not talking about what today we call “distributive justice.” The confusion that arises from the two different meanings of this phrase can be cleared up by a bit of history. I would like to get at that history by way of a response to Istvan Hont’s and Michael Ignatieff’s deep and influential article, “Needs and Justice in the Wealth of Nations.” Hont and Ignatieff say that Smith’s conception of distributive justice represents a sharp break with the jurisprudential tradition he inherited, that he conceived of property rights in a much more absolutist way than his predecessors had, and that he therefore did not allow for the poor to be conceived of as a state duty, a matter of justice. The natural-law tradition coming out of Aquinas, they maintain, had regarded aid to the poor as a matter of justice, requiring it both under the heading of a “right of necessity” and as a condition on property rights. This interpretation of intellectual history is, I think, exactly inverted. In the remainder of this chapter I will try to show, first, that Smith does not break with the earlier jurisprudential tradition on distributive justice, except in small ways that bring it closer to its modern meaning; that the right of necessity that Aquinas had established for the poor does not amount to anything like modern distributive justice, and that in any case Smith accepted that right; and finally, that Smith also follows Aquinas and his followers on the relationship between property rights and distributive justice—one again breaking from them, if at all, only in ways that helped to ground, not to undermine, modern redistributivism.

Aristotle draws a twofold distinction in the notion of justice, first between a sense, later called “universal justice,” in which the word can include all the virtues—the sense in which Plato had used the word in the Republic—and a more “particular justice” that pertains only to legal and political actions, and second, within the latter, between “distributive justice” and “corrective justice.” The former calls for honor or political office or money to be apportioned in
through the founding principles of many monastic orders to the language and practices of the Anabaptists in Münster, in 1535, and the British Diggers in 1649.) Other writers, including Aquinas, Pufendorf, and Hutcheson, attacked these schemes, and defended private property on much the same grounds that Aristotle had used against Plato. What no one said was that distributive justice requires the state to override or abolish private property rights, that the poor deserve any particular share of the society’s material goods. And since no one said this, no one bothered to deny it either.

Given the strong link Aristotle had made between distributive justice and merit, moreover, it is hard to imagine how any premodern figure could have argued that justice requires a redistribution of material goods to the poor. The poor were regarded in the Christian West as, at best, people of inferior virtue who gain by having better people placed above them—they then learn proper respect and have role models to guide their behavior—and at worst as people so vicious that they deserve, even need, for their own moral well-being, to remain poor. Even John Bellers, a Quaker who proposed the most thoroughgoing program to eliminate poverty before the late eighteenth century, hoped that his proposals might remove “the Profaneness of Swearing, Drunkenness, etc.” among the poor, noting that these “evil Qualities” should be taken as a reason for his proposals, not against them: “For the worse [the poor] are, the more need of endeavouring to mend them.” Bellers thus follows in a long tradition by which aid to the poor can be justified only by charity, not by justice. The poor, wretches that they are, deserve nothing; but the well-off Christian, who is himself unworthy of Christ’s redemption, has a bond with these undeserving people and should help them despite their lack of merit. But they certainly do lack merit. To suppose that the poor deserve help, that they merit even minimal charitable aid, let alone a permanent, substantial share of material goods, would have seemed preposterous.

Now after the time of Hugo Grotius talk did begin to be heard of duties of “distributive justice” toward the poor. It is crucial to this talk, however, that the phrase “distributive justice” began to be used as a synonym for charity. Grotius himself distinguished between “expulsive” and “attributive” justice, the former of which corresponded to Aristotle’s “corrective” justice while the latter was closer to Aristotle’s “universal” justice: it embraced all “those virtues which have as their purpose to do good to others, as generosity, compassion, and foresight in matters of government” (LWP I.viii.1; 37). The main distinction between the two, for Grotius, was that the former but not the latter can be enforced. Grotius’s “attributive justice” seems indeed connected to what he calls “the law of love”: it mandates acts that reflect our willingness to go beyond the letter of any law. As such, generosity to the poor is a prime example of attributive justice, although it is not the only one.

Grotius’s followers include Samuel Pufendorf, an important influence on Hutcheson and Smith, who formulated clearly an important distinction between “imperfect” and “perfect” rights to which Grotius had pointed. Attributive justice responds to imperfect rights, rights that cannot be enforced. Expletive jus-
vice enforces perfect rights. It now becomes possible to say that a poor person has some sort of right—an “imperfect” one—to material aid, but it is of the nature of this kind of right that it should not be enforced.

Thus when Smith remarks that distributive justice cannot be enforced, he is merely reporting the traditional view he had inherited. Indeed, he and his teacher Hutcheson help to push that tradition in the direction by which the modern notion of distributive justice could come to birth. Following Pufendorf, Hutcheson characterizes “imperfect” rights as the claims we make on “the charitable aids of others” (SI II.iv.v). Perfect rights include our right to life, bodily integrity, chastity, liberty, property, and reputation; imperfect rights consist in the claims we make to positions and honors we have earned by our merits, and to the help of our friends, neighbors, and relatives (SI II.iv.vii–vi). Hutcheson says that the obligations corresponding to imperfect rights “are of such a nature that greater evils would ensue in society from making them matters of compulsion, than from leaving them free to each one’s honour and conscience to comply with them or not” (SI II.i.ii.i). Imperfect rights come in “a sort of scale or gradual ascent through . . . insensible steps,” however, gaining in strength in accordance with the merits and needs of the person claiming help, and the closeness of the bond between that person and the one from whom she asks for help, until at last we reach some imperfect rights “so strong that they can scarce be distinguished from the perfect” (loc.cit.). The notion of imperfect rights rising, at some point, to the level of perfect ones seems to be new with Hutcheson, a suggestion that distributive or attributive justice may not be purely a matter of “love” in some cases.

On each of these points, including the last one, Smith is Hutcheson’s faithful student. Quoting Hutcheson and Pufendorf, Smith distinguishes between perfect and imperfect rights, connecting the first to commutative justice and the second to distributive justice (IJ 9), and including in the first rights to life, bodily integrity, chastity, liberty, property, and reputation. Distributive justice comprises not just duties to the poor but duties of parents to children, of beneficiaries to benefactors, of friends and neighbors to one another, and of everyone to people “of merit”; all these kinds of relationships therefore also give rise to imperfect rights. Perfect rights may be enforced; imperfect ones generally should not be, and to try to do so can be “destructive of liberty, security, and justice” (TMS 81). But duties of beneficence vary in their strength in accordance with the claimant’s “character, . . . situation, and . . . connexion with ourselves” (TMS 269), and at their strongest, some of them “approach . . . what is called a perfect and complete obligation” (TMS 79). Once civil government has been established, the strongest of these may be underwritten with force; “all civilized nations” rightly enforce the obligations on parents and children to take care of each other and “many other duties of beneficence” (TMS 80–81). More explicitly than Hutcheson, Smith avows the legitimacy of using state power to “impose upon men . . . duties of beneficence.” So Smith moves the jurisprudential tradition closer to, not farther away from, a recognition that people in certain circumstances may have a strict, properly enforceable right to beneficence.

When he associates “distributive justice” with beneficence, or says that the “right” of a beggar to our charity is so-called “not in a proper but in a metaphorical sense” (IJ 9), he is merely reporting the common sense of his moral and legal tradition. When he says that governments do and should enforce certain duties of beneficence, he steps a little beyond that tradition—if only a little, and with warnings that to enforce such duties can endanger government’s proper task.

It is therefore entirely untrue to say, as Hont and Ignatieff and many others do, that Smith rejected a conception of distributive justice held by his forebears, by which the state had a duty to direct or supervise the distribution of property. Rather, he accepts, as a matter of terminology, a historical distinction by which “commutative justice” means protection from injury and “distributive justice” is a catch-all term for all the virtues by which an individual does good to his or her fellow human beings. Distributive justice in this sense therefore has little or nothing to do with the distribution of property. The distribution of political office was a matter for distributive justice, according to Aristotle. Later, defenders of universal suffrage, like the Levellers, often framed their arguments in terms of justice. But basic patterns of property ownership in a society were not generally considered a matter for state constitutions to determine—and where they were, as in the writings of Plato, More, Campanella, or Rousseau, the argument for reorganizing property was not put in terms of justice. Not a single jurisprudential thinker before Smith—not Aristotle, not Aquinas, not Grotius, not Pufendorf, not Hutcheson, not Blackstone or Hume—put the justification of property rights under the heading of distributive justice. Claims to property, like violations of property, were matters for commutative justice; no one was given a right to property by distributive justice. As we shall see below, even the famous “right of necessity,” by which those in extreme need may make use of the goods of others without permission, falls under the heading of commutative justice, for Aquinas and his followers.

In addition, in its post-Grotian sense distributive justice was by definition a virtue of individuals rather than states. I display my civic pride, or generosity, or great honesty, when I act on distributive justice; the state has no such personal virtues to display. It makes no sense to accuse the state of violating distributive justice, in this context, and to have the state forcing individuals to comply with distributive justice would lead people to display the outward signs of a virtue whose essence is an unforced, inner feeling of goodwill. The state would succeed simply in making us hypocrites, not in instilling the virtue at which it aimed.

It was shortly after Smith’s death that the idea that states had a duty of justice to support the poor appeared on the scene. Smith died in 1790, shortly after the French Revolution began, and we have no explicit record of any comment by him about that revolution.25 This is unfortunate because it was among the French Revolution’s supporters that the modern notion of distributive justice seems to have first come into its own. Tom Paine introduced a ground-breaking poverty program for the state to undertake in his 1792 Rights of Man; a right to
socioeconomic equality was discerned by many in the French Constitution of 1793; and "Gracchus" Babeuf and his friends made such a right explicit in their 1796 conspiracy. Babeuf declared that nature had given everyone "an equal right to the enjoyment of all wealth"; the right to equal wealth here is clearly meant to stand next to the other natural "rights of man" that had been declared at the outset of the Revolution, is clearly meant to be what Pufendorf would have called a "perfect" right. Indeed, for Babeuf this right to material equality was the most important of all perfect rights. The right to equality in wealth is the first principle in the twelve-point summary that was published of Babeuf's views, and the second is that "The aim of society is to defend this equality, often attacked by the strong and the wicked in the state of nature, and to increase, by the co-operation of all, this enjoyment." Thus Locke's argument for the purpose, and source of legitimacy, of all states—that the state can enhance and better preserve the rights we have in the state of nature—is here applied to one right that Locke never considered such: the right to equal economic status. Given the Lockean view of legitimate government, it would follow that only communist states can be legitimate. One cannot find an argument like this anywhere in the earlier writings of the Western political tradition.

Of course later believers in distributive justice did not necessarily support quite such a strong notion of its importance, nor did they, generally, insist on strict equality. But Babeuf is not just the first major figure to promote communism as a practicable and secular goal; he is also the first to propose that justice requires any sort of material redistribution at all. There were many preachers of human equality before Babeuf, but there was hardly anyone who felt that that equality translated into a perfect, enforceable right to some number of material goods. Only from Babeuf's time onward does this translation of human equality into economic rights begin to seem, to some, a practicable goal, and one that follows from what people "deserve." After Babeuf, but not before, it makes sense to speak of a position about the nature of justice, well-known enough that political writers had to come to grips with it even if they rejected it, according to which justice, and not merely beneficence, guarantees to the poor a share in all wealth.

It follows that it is absurd either to condemn or to praise Smith because he did not insist that justice requires a redistribution of goods. Smith was never called upon to comment on the idea of helping the poor by a redistribution of property, much less a notion that justice demands such a redistribution. The many views, and proposals, of this kind with which we are acquainted arose after he died. We can extrapolate what he might have said about them, but we must recognize that what we are doing in that case is extrapolation, not a straight reading of history. Moreover, although there are grounds on which to say that Smith would have objected to the speed of change, the contempt for law, and the enthusiasm for centralized government of radicals like Babeuf, there are no grounds for saying that he would have dissented from the moral spirit, of sympathy for the poor and anger at oppression, that animated their proposals. Indeed, he is better seen as someone who shared that spirit, whose writings helped encourage the attitudes out of which modern distributive justice was born.

53. The Right of Necessity

What, now, of Hont and Ignatieff's claim that modern distributive justice is entailed by the long-standing "right of necessity," made famous by Aquinas?

In the question of the Summa concerned with property ownership and theft (II-II, Q 66), Aquinasdevotes one article (A7) to the claim that people may claim as their property anything they need if they are in imminent danger of dying without that thing. When an individual is in danger of starvation, she may pull fruit off a tree or drink from a well, regardless of who owns the tree or well, and the food and drink she needs belong to her, as long as she needs it, not to the person who ordinarily has title to it. Similarly, one may make use of medicine if one is about to die without it, or shelter, if one is caught in a terrible storm, or anything else one needs for immediate survival. Private property, says Aquinas, is permitted to human beings because it is ordinarily a good way by which everyone can both satisfy her own needs and help to succor the poor. But there are cases that fall outside this ordinary pattern, and when a need is "so manifest and urgent, that it is evident that [it] must be remedied by whatever means be at hand," then the fundamental purpose of property takes precedence over the ordinary rules of property, and it becomes "lawful for a man to succour his own need by means of another's property, by taking it either openly or secretly: nor is this properly speaking theft or robbery." It is worth noting that by giving people a property right in what they need to survive an emergency, Aquinas brings the right of necessity under the rubric of commutative justice, not distributive justice, and there it would remain, in its subsequent treatments by other natural law thinkers.

It is also worth noting how very limited this "right of distress" is, for Aquinas and for all who followed him on this. Aquinas places the seventh article of Q 66, which justifies taking property in need, right after two articles making clear that theft is always a mortal sin, even when one merely keeps a lost item one happens to find. Having now affirmed a strong view of the centrality of property rights to the general "order of justice" (A5, R3), article 7 enables him to make legal space for the desperately needy in cases that by definition lie far outside the way the normal order of social life proceeds: that by definition are "abnormal." And that space is circumscribed very tightly, as the first objection and its reply make clear. The first objection quotes the Decretals of Gregory IX: "If anyone, through stress of hunger or nakedness, steal food, clothing or beast, he shall do penance for three weeks." The reply declares that this line applies to "cases where there is no urgent need." So the "stress of hunger or nakedness" does not constitute "urgent need"! Only where a need is "so manifest and urgent" that there is no other way of satisfying it—only where "a person is in some imminent danger, and there is no other possible remedy"—does the right of distress
come into play. As Aquinas has conceived it, this right can hardly be enforced, much less institutionalized: in most cases, it will be very difficult to determine whether a person who takes food, say, was truly starving or merely "hungry" at the point when he took the food, and although a judge might commendably believe the poor person in all cases, it would also be understandable, and excusable, if the judge regularly took the prosecution's side. Aquinas provides no guidance for how a human court should distinguish between "urgent need" and mere "hunger or nakedness," and his placement of this article right after an article on the mortal sin of theft, and right before two articles on the degrees of sinfulness in different types of theft, suggests strongly that he is primarily concerned with the judgments of the heavenly court, not the earthly one. God knows when needs are urgent, and the person who takes property presumably knows whether her need was urgent. That person can be assured that if she really was in need, she has not committed a sin and does not owe a penance. What human law, and human courts, are to do about these cases doesn't seem to concern Aquinas much, and he certainly does not translate this marginal kind of case into a general call for human law to redistribute property.

Grotius, who was a jurist rather than a theologian, discusses the right of necessity with more of an eye toward its application in human legal systems, but otherwise he follows Aquinas closely. The right to use someone else's property in times of dire need is not a mere extension of the law of love, he says, but a true right, originating in the fundamental principles that ground the order of property itself (LWP II vi.1–4, 193). Once again, however, this right is severely constrained. "Every effort should be made to see whether the necessity can be avoided in any other way, as for example, by appealing to a magistrate, or even by trying through entreaties to obtain the use of the thing from the owner" (194). One is not allowed to make use of the right "if the owner himself is under an equal necessity," and one should, if possible, make restitution of whatever one uses after the necessity is over (194–5). The right of necessity "may not be carried beyond its proper limits" (194), and Grotius makes clear that these limits are narrow ones: "He who is rich will be guilty of heartlessness if, in order that he himself may exact the last penny, he deprives a needy debtor of all his small possessions; . . . Nevertheless so hard a creditor does nothing contrary to his right according to a strict interpretation" (759). The law of love asks that the rich not impoverish poor debtors, but the strict law, the law that enforces rights, does not. So the poor have no right not to be poor, no right even against rich people who would claim "all [their] small possessions"; they just have a right, in the direst of cases and when all other means of survival are closed off to them, to use what they need to stay alive.

Once we keep in mind that, for both Aquinas and Grotius, the right of necessity is distinct from the demands of benevolence, and that it is the unenforceable latter and not the enforceable former to which the poor normally appeal when they need help, it becomes clear that Hume merely maintains the natural law tradition intact on these matters, and does not alter it in favor of a more absolutist view of property rights. Alasdair MacIntyre has suggested otherwise:

[W]hat the rules of justice are taken to enforce [according to Hume] is a right to property unmodified by the necessities of human need. The rules of justice are to be enforced in every particular instance . . . , [even] in the face of that traditional figure, the person who can only succor his family . . . by doing what would otherwise be an act of theft. The tradition of moral thinking . . . shared . . . by Aquinas . . . saw in such an act no violation of justice, but Hume, asking the rhetorical question "What if I be in necessity, and have urgent motives to acquire something to my family?" sees such a person as one who may look [only] to the generosity of "a rich man."

But MacIntyre misrepresents Hume. For, despite the presence in it of the word "necessity," the passage he cites (from T 482) is not Hume's response to the possibility of a right of necessity. That comes in the second Enquiry, where what he says could easily have been said by Grotius:

Where the society is ready to perish from extreme necessity, no greater evil can be dreaded from violence and injustice; and every man may provide for himself by all the means which prudence can dictate, or humanity permit. The public, even in less urgent necessities, opens granaries, without the consent of the proprietors; as justly supposing, that the authority of magistracy may, consistent with equity, extend so far. (E 186)

It is important to note that for Hume the point is more that justice falls away altogether in the face of necessity, such that opening granaries is, strictly speaking, neither wrong nor right, than that a special kind of justice applies to cases of necessity, but he is clearly trying to accommodate what the earlier jurisprudential tradition had called "the right of necessity" within his own theory. Before and after this passage, he gives examples of other cases where necessity overrules the usual laws of justice—after a shipwreck, in a siege, in a famine—all of which closely resemble the examples that Grotius gave of the right of necessity (cf. LWP 193).

Like Aquinas and Grotius, moreover, Hume distinguishes the right of necessity from the normal course of justice, in which the poor may appeal only to the beneficence of the rich. The passage MacIntyre quotes comes from Hume's characterization of that normal course of justice. And what Hume says there fits in perfectly with the earlier natural law tradition. For Aquinas, poor people ordinarily need to appeal to the obligation upon rich people to "communicate [their] external goods to others in their need," and for Grotius, as we have seen, the law of love, but not law in the strict sense, imposes on the rich an obligation to refrain from taking all of a poor debtor's "small possessions." Hume is no less insistent than Aquinas and Grotius that morality demands that we help the needy: "A rich man lies under a moral obligation to communicate to those in necessity a share of his superfluities." But the rich man does not violate justice if he fails to live up to this obligation. Thus Hume, despite his famously original defense for justice and property rights, does not introduce any new notion of how strictly, vis-à-vis human needs, they are to be enforced. Rather, he holds the same two-sided view that we have seen in his predecessors. In ordinary
cases, the poor must rely on beneficence for their claims on the property of the rich, but they may justly take property without permission in cases of extraordinarily urgent need.

Where does Smith fit into this tradition? Hunt and Ignatieff, who rightly place Hume within the tradition, wrongly imply that Smith gave more limited scope to the right of necessity. Smith invokes the right of necessity three times in his *Lectures on Jurisprudence* (LJ 115, 197, 547), endorsing it as properly a part of justice implicitly in the first two cases and explicitly in the third: “necessity...indeed in this case is part of justice.” About the opening of granaries, he writes:

It is a rule generally observed that no one can be obliged to sell his goods when he is not willing. But in time of necessity the people will break through all laws. In a famine it often happens that they will break open granaries and force the owners to sell at what they think a reasonable price. (LJ 197)

Smith may be quoting Hume in this passage, as the editors of LJ suggest; at any rate, he seems to find the opening of granaries just as acceptable as Hume does. Hunt and Ignatieff overlook the passage entirely, and its resemblance to Hume, which leads them wrongly to contrast Hume and Smith on this matter (NJ 20–21). Stressing the words “most urgent,” in Smith’s remark that “the ordinary laws of justice” may be sacrificed to public utility “only in cases of the most urgent necessity” (WN 539), and the words “less urgent” in the passage from Hume quoted above, they maintain that Smith has a stricter notion of when human survival might trump laws of justice. But the remark of Smith’s on WN 539 occurs in a discussion that has nothing to do with opening granaries, and in any case it declares just what the tradition defining the right of necessity had always held. Everyone who upheld a right of necessity believed that it obtained only in urgent and extreme cases.

Hunt and Ignatieff make a similar error when, quoting LJ to the effect that beggars have a “right” to our charity “not in a proper but in a metaphorical sense,” they see this as implying that Smith (here together with Hume) wants to replace the ancient right of necessity with an unenforceable duty of benevolence: “It was to this discretionary sentiment that [Hume and Smith] looked to the relief of the necessities of the poor in any emergency” (NJ 24). But Smith is once again simply following the traditional jurisprudential view. Every thinker who recognized a right of necessity before Smith and Hume, including Aquinas, took the “discretionary sentiment” of benevolence to be the proper source of aid to the poor in all but life-threatening cases. Smith would differ from the tradition he inherited only if he held, as he does not, that the poor must rely on the benevolence of the rich even in life-threatening cases.

What leads Hunt and Ignatieff astray is that they assimilate certain positions in the eighteenth-century debate over famine policy to the right of necessity. Not only the opening of granaries, but laws imposing a maximum price on grain, or against exporting or “engrossing” it (buying it up early in the season, so as to sell it at a higher price when supplies grow short), all derive, they suggest, from the logic behind the ancient right of necessity (NJ 18–20). This is something of a confusion. Even the opening of granaries, as Hume points out, is only dubiously justified by the right of necessity, and any set of laws cannot possibly fit under the exception to all law that Aquinas and Grotius carved out for cases of extreme and urgent need. The right of necessity is, by definition, an exception to the ordinary course of justice and not a part of that course. It is designed precisely for emergencies, for cases where one cannot “appeal to a magistrate” (LWP II.II.vii; 194), for circumstances where the ordinary legal and political framework fail. Law and policy are general tools, meant to cover the usual, more or less predictable run of affairs. To the extent that certain disastrous circumstances fall outside of that usual run of affairs, a right of necessity is proclaimed as a stopgap measure, preserving human life until the normal framework can take over again. It follows that no law or general policy could possibly be an extension of the right of necessity. If law and policy can handle a set of circumstances, that set of circumstances cannot be the sort of exception to which “necessity,” in this sense, applies. Thus the opening of granaries is quite far from the sort of situation that Aquinas and Grotius had in mind (a mob opening a granary has time to bake bread, and therefore time to appeal to a magistrate), and all laws, including those policing the grain market, are by definition not an exercise of the right of necessity. If a famine or dearth is predictable enough that laws can prevent or limit it, then it is something that can be dealt with by the ordinary course of justice, and not by an extralegal device.

And if we turn, now, to the course of ordinary law and policy that Smith recommended for the prevention of famine, we find that Hunt and Ignatieff make his views appear more counterintuitive than they were. Like his Physiocratic predecessors, Smith proposed that law and policy deal with famine by lifting all restrictions on the grain trade rather than by capping prices or preventing the exportation of corn. Hunt and Ignatieff are right that Smith thought such a policy would end the threat of famine forever, and they draw out the moral consequence of this view beautifully when they say that he thereby hoped to “explode the whole antinomy between needs and rights” that underlay the concept of a right of necessity, that he hoped the subsistence of the poor would thereby become “a matter neither of benevolence nor of the drastic justice of grave necessity” (NJ 24; see also 22, 25). They are also, of course, right that in proposing a fully free market in corn, Smith disagreed radically with the economic common sense of his time. He had a sophisticated argument to show that the common sense of his time was wrong on this, that it failed to understand the way markets in foodstuffs worked, and that it therefore maintained measures preventing the investment in agriculture that would end famines in the long run. Allowing the free export of corn, and allowing corn merchants to make a handsome profit by engrossing corn, would encourage investment in agriculture, which in turn would eventually make for good harvests every year; allowing the free importation of corn would alleviate dearths in the meantime; and removing price caps on corn would make people ‘feel the inconveniences
of a dearth somewhat earlier than they otherwise might do” and therefore prevent the dearth from turning into a famine (WN 533).

These proposals do include the notion that people can put up with a “dearth,” and that in many circumstances in which food is scarce governments should maintain free market policies anyway. What Smith never said was that these policies should be pursued in the face of starvation. Hunt and Ignatieff distort Smith’s views at this point, making it look as if Smith was blinded to immediate human suffering by the beauty of his long-term vision. Smith’s views on the corn trade, they say, earned him “the reputation, even in his own day, of being a dogmatic ‘projector’ for the application of long-term models of natural market processes” to issues of short-term policy.” They rightly attribute to Smith the belief that “if the market in food were freed of meddling interventions, in the long run . . . the labouring poor would never go hungry,” but then they wrongly imply that he somehow overlooked the fact that “human beings starve in the short term rather than in the long” (NJ 14), and insisted that governments may not meddle in food markets even where such meddling is necessary to prevent famine (18). They suggest that Smith differed with James Steuart and the Abbé Galiani over whether the price of food “should be regulated, in times of grave necessity, . . . by the government” (14; see also 15–18).

But Smith did not oppose the regulation of grain prices, or grain exports, “in times of grave necessity.” He explicitly allowed for regulating the price of bread in some cases: “[where there is an exclusive corporation of bakers], it may perhaps be proper to regulate the price of this first necessary of life” (WN 158). And he declared that a small country in conditions of dearth may legitimately forbid the exportation of corn:

The demand of some countries for corn may frequently become so great and so urgent, that a small state in their neighbourhood, which happened at the same time to be labouring under some degree of dearth, could not venture to supply them without exposing itself to the like dreadful calamity. The very bad policy of one country may thus render it in some measure dangerous and imprudent to establish what would otherwise be the best policy in another. . . . In a Swiss canton, in some of the little states of Italy, it may, perhaps, sometimes be necessary to restrain the exportation of corn. (WN 539)

Both of these passages contain the word “perhaps,” and both allow measures, in the face of bad policy, that Smith disapproves of in general. Nevertheless, they make clear that preventing immediate starvation was of paramount importance to Smith, just as it was for Galiani, that he was neither an absolutist about the property rights of farmers and corn merchants nor a theorist with so fixed a gaze on the long term that he could not recognize the need, in some cases, for short-term solutions that ran counter to his long-term goals. Smith’s endorsement of the right of necessity was as full as that of all his predecessors—and for him, as for them, it made very little difference to long-term law and policy.

54. Smith and Natural Law Views of Property

Finally, now, to Hunt and Ignatieff’s claim that the natural law tradition had always understood property rights as a response to the demands of distributive justice. When we see what is wrong with this claim, we can bring the issues about distributive justice we have discussed in this chapter together with the discussion of property rights in the previous chapter. We will also see how much Smith is a source for the notion that property rights ought to be justified in a context of distributive justice, rather than someone who tried to undo an earlier coupling of the two. Hunt and Ignatieff were among the first to show how much can be learned by placing Smith within the natural law tradition, and they thereby bring out a question of central importance to WN. But they read the natural law tradition in exactly the wrong direction, and this blinds them to the true significance of their own point about Smith. For in fact concern for those excluded from a system of private property becomes more, not less, prominent as the tradition proceeds, and none of the earlier thinkers they cite is nearly as concerned as Smith is with the question of how to reconcile property rights with the needs of the poor.

Hunt and Ignatieff see the problem of securing “justice as between haves and have-nots” as haunting the natural law tradition’s approach to the justification of property rights. They argue that Aquinas begins from the assumption that the world belongs properly to all human beings in common—that God originally gave the world “to the collective stewardship of the human species as a community of goods” (NJ 27)—and then allows for individual property rights under the strict condition that such rights be used to meet the needs of the poor. But this badly distorts Aquinas’s view. Aquinas does not suppose an original “collective stewardship of the human species” over material goods; he explicitly denies that natural law recommends collective ownership (II-II Q 66, A2, R1). Rather, he believes that before private property was instituted people participated in what is generally called a “negative common,” in which it is legitimate for anyone to use any good. This is a far cry from “collective stewardship,” which implies a communal organization of production and distribution like that of the apostolic community in the book of Acts, and which Aquinas actually considers to be a violation of the natural order: He says that individual ownership of goods, as opposed to common ownership, is not merely legitimate but “necessary for human life.”

Nor is the main problem about property rights, for Aquinas, the possibility that the poor might thereby be kept from the means for their subsistence. He does mention that possibility, but only in a digression from his main theme. His overarching concern is to refute a type of extreme religious asceticism, according to which individual ownership of material goods gets in the way of true communion with Christ. In particular, he wants to refute a pair of linked theological propositions: (1) that all material things belong to God alone, and (2)
that God licenses the use of His things, at most, to the species of human beings as a corporate body, not to individual people. Property rights get justified in articles one and two of Summa II-II, Question 66. The first of these argues, against a claim that people do not naturally own things since they cannot change anything’s nature, that God allows us a power to use things, if not to change their nature, and that that power is indeed a proper expression of the image of God residing in man. Drawing on both Biblical texts and arguments from Aristotle, Aquinas concludes that God grants us a “natural dominion over external things.” The second article condemns as heretics those in the early church who regarded individual ownership of things (along with marriage) as blocking salvation, and argues that people best express their “natural dominion over external things” by way of individual property rights. The early heretics who get thus condemned may well be standing in for more contemporary theological opponents. As Richard Tuck has pointed out, one of Aquinas’s purposes here is to challenge “the life of apostolic poverty as practised . . . by the great rivals of his Dominican order, the Franciscans.” But that is to say that the opponents with whom Aquinas is wrestling are people who feel that property rights constitute a religiously impermissible attachment to material things, not people concerned with the injustice of a distinction between rich and poor. That communal ownership of goods also maintained the poor was incidental to this religious vision. It was not uncommon, after all, for an entire community, constituted in this way, to be poor, and such poverty was a badge of honor, not something to regret or resolve. Aquinas rejects the radical other-worldliness of these communities. As he does throughout his theology, Aquinas integrates God more fully with His creation, and the worship of God more fully with a delight in that creation, than do his more mystical predecessors and peers. In any case, Aquinas is worried first and foremost about a theological question concerning the place of material goods in a Christian life, not, except incidentally, about the relationship between property ownership and the poor.

Grotius does not share these theological concerns, but his defense of property rights is similarly unprovoked by a worry about “justice as between have and have-nots.” Instead, he takes up property rights as a part of his investigation into the law of war and peace. He is concerned about such issues as how property rights can give rise to a just cause of war, and what kinds of property can legitimately be claimed, in the course of war, to secure provisions for an invading army. The origin of property rights comes up largely as a basis for considering the extent to which the sea, and other large waterways, properly belong in common to all human beings, and should not be controlled by one country to the prejudice of others. And the justification Grotius gives for property rights turns essentially on the fact that without such rights, people get into constant conflicts. So, again, the question of how the poor may get their needs met is very much an incidental one, yielding a side-constraint on a system of property rather than a structuring feature of that system.

When Locke, now (ST V.34), offers his famous justification of property rights as a way of increasing the “benefit and . . . conveniences of life” available to all human beings, as dependent, ultimately, on labor, and as resulting, when carried out most fully, in a world in which “a day-labourer in England” can live better than an AmerIndian king, he may be denying any claim of the needs of the poor as against property rights, but he at least makes the effectiveness of property rights in helping the poor more important to their function than do Aquinas and Grotius. But the issue still lurks a little behind his main concerns. The claim that property depends on labor served Locke’s political purposes as part of an argument that taxation requires the consent of the people. Kings had no right to collect taxes without the consent of Parliament, since taxes come out of people’s property, and property, however much it might be shifted around by systems of positive law, is rooted in a prepolitical right to own the fruits of one’s labor. In the course of defending this claim, Locke wants to show how very useful labor is for the multiplication of goods, and part of his demonstration of that point involves the remark, picked up by Smith, that an AmerIndian king, ruling over people who fail to improve their land by labor, “feeds, lodges, and is clad worse than a day-labourer in England” (ST V.41). So Locke makes this point to bring out the tremendous productive power of labor, not to show that property rights deal justice to the poor.

It is Hume who first does the latter, and Smith develops the argument more fully. Hume begins his discussions of justice and property, in both the Treatise and the second Enquiry, by stressing the way in which particular acts of justice may seem silly or cruel taken on their own. In the Treatise, this is what leads him to ask why I have no right to take a rich man’s property even “if I be in necessity, and have urgent motives to acquire something to my family?” In the Enquiry, he defends the inequalities of property after first conceding that nature is so liberal to mankind, that, were all her presents equally divided among the species, and improved by art and industry, every individual would enjoy all the necessaries, and even most of the comforts of life; nor would ever be liable to any ills, but such as might accidentally arise from the sickly frame and constitution of the body. It must also be confessed, that, wherever we depart from this equality, we rob the poor of more satisfaction than we add to the rich, and that the slight gratification of a frivolous vanity, in one individual, frequently costs more than bread to many families.

(E 193–4)

Having said this, Hume goes on to argue that any attempt to establish complete equality will (a) reduce the entire society to poverty, (b) require extreme restrictions on liberty, and (c) undermine the political structure that is supposed to ensure the equality itself. It follows that it is better for everyone, including the poor who suffer from inequality, to live under a system of private property than to try to replace it with an equal distribution of goods. Property, like the virtue of justice that protects it, has clearly bad effects in particular cases but provides, as an entire scheme, far more good than harm to everyone.

Smith sets up a view of the same general kind with an even greater emphasis on the ways in which systems of private property burden the poor. In both sets of lecture notes published in L.J, as Hont and Ignatieff rightly emphasize, Smith
begins his discussion of political economy with a vivid dramatization of the injustice that seems to be involved in the division between rich and poor:

Of 10,000 families which are supported by each other, 100 perhaps labour not at all and do nothing to the common support. The others have them to maintain beside themselves, and... have a far less share of ease, convenience, and abundance than those who work not at all. The rich and opulent merchant who does nothing but give a few directions, lives in far greater state and luxury and ease... than his clerks, who do all the business. They, too, excepting their confinement, are in a state of ease and plenty far superior to that of the artisan by whose labour these commodities were furnished. The labour of this man too is pretty tolerable; he works under cover protected from the inclemency in the weather, and has his livelihood in no uncomfortable way if we compare him with the poor labourer. He has all the inconveniences of the soil and the season to struggle with, is continually exposed to the inclemency of the weather and the most severe labour at the same time. Thus he who as it were supports the whole frame of society and furnishes the means of the convenience and ease of all the rest is himself possessed of a very small share and is buried in obscurity. He bears on his shoulders the whole of mankind, and unable to sustain the load is buried by the weight of it and thrust down into the lowest parts of the earth. (LJ 341)

The poor worker is Atlas, holding up the human universe: Smith calls up here a picture that might have served as a program for the heroic monuments to the worker that were put up under socialist regimes in the 1930s and 1940s. The passage is very Rousseauvian—except that there is no passage in Rousseau himself that brings out the unfairness of the division between rich and poor quite so clearly.

And the parallel passage in the early draft of WN tells us explicitly that that division is unfair. It begins:

Supposing... that the produce of the labour of the multitude was to be equally and fairly divided, each individual, we should expect, could be little better provided for than the single person who laboured alone. But with regard to the produce of the labour of a great society there is never any such thing as a fair and equal division. In a society of an hundred thousand families, there will perhaps be one hundred who don't labour at all, and who yet, either by violence or by the more orderly oppression of law, employ a greater part of the labour of the society than any other ten thousand in it.

(ED 4, my emphasis)

That the most wealthy gain their wealth “by violence or by the more orderly oppression of law” is a yet more stunningly Rousseauvian suggestion than anything in the LJ passage. Smith also tells us outright that it is an unfair division of goods that leads to what he is about to characterize, as in LJ, as the “burial” of the poor beneath the weight, which they uphold, of the rest of society. What he will go on to say, also as in LJ, is that this “unfair and unequal” division of goods still leaves the poorest workers much better off than even the richest people in more egalitarian societies. Here we get Locke's Amerindian king (LJ 439, 489, 563), who is materially worse off than the poorest day-laborer in England. Smith thus gives us essentially the same justification for inequalities that John Rawls would propose two centuries later: they are acceptable if and only if the worst off people are better off than they would be under a more equal distribution of goods.

Now in its published form, WN does not include the detailed breakdown of employment in society, rubbing our noses in the inverse relationship between hard work and comfort, that appears in LJ and ED. Nonetheless, the point about the poorest people in commercial societies being better off than the king of a more egalitarian tribe provides the famous, dramatic ending of the opening chapter—and the dramatic placement of the point here makes it more effective, rhetorically, than it was either in Locke or in LJ and ED—and Smith continues to note that systems of private property primarily protect the rich against the poor, and only indirectly benefit the poor themselves (WN 710, 715). Finally, the bitter irony about the place of the poor that so marks the passages in LJ and ED shows up in many of Smith's comments in WN on the way masters try to keep their workers poor.

It is worth noting the difference in tone between Hume and Smith on this issue. Smith takes over both the question Hume had raised about the justification for protecting property rights against the needs of the poor and the answer Hume had given to that question, but the issue has a great deal more prominence, and a very different emotional coloring, in Smith's thought than in Hume's. Hume sets up what we might call "the paradox of justice" (compare NJ 42)—the paradox that the very system that claims, by way of protecting everyone's rights, to respect all human beings equally in fact serves to sanctify unequal distributions of property—but that paradox is for him but one illustration of a philosophical point: that justice is an artificial virtue, whose foundation rests on utility rather than immediate approval. For Smith, the paradox is a matter of concrete moral and political import. The detail he lavishes on the disproportionate effort, and meager reward, of poor workers in commercial societies is astonishing, such that, even if in the end he praises commercial society for making those workers better off than people were in earlier stages of civilization, he seems not to want our endorsement of our own stage of society to be wholehearted.

So it is Hume and especially Smith who first present the system of private property as standing under a presumption of unfairness because of the way the poor suffer to provide luxury for the rich. Both Hume and Smith have an answer to that presumption, but they contribute something new to the discourse on property simply by making this presumption central to their accounts. It seems absurd, even immoral, to Smith and Hume, that misers and scoundrels should be able to claim large amounts of property while hard-working people make do with virtually nothing. Only once we understand that a system of strict property rights on the whole protects the liberty of everyone, and in the long run leads everyone to be better off than they would be under an egalitarian system, should we accept such rights as justified. Far from hiding or ignoring the paradox of justice, Hume and Smith frame their defense of property rights
by posing it as starkly as possible. In this mode of presentation, they differ from Aquinas and Grotius, for whom the tension between property rights and the needs of the poor at most lurks dimly behind concerns about God or war. Hume and Smith are the first to make the suffering of the poor the problem for the justification of property rights. What Hont and Ignatieff call the "antinomy" between needs and rights, between "need claims" and "property claims" (NJ 2, 42) thus only comes to the fore when the natural law tradition enters the modern world. After Hume and Smith, some radicals came to deny that property rights are justified at all, to maintain that justice requires the abolition of private property. But the radicals who made these moves were piggy-backing on Hume's and Smith's question: "how can property rights be justified if they protect the rich while making the poor miserable?" They answer that question differently, rejecting the story by which property rights, in the long run, actually help the poor. But it is Hume and Smith, more than anyone earlier in the natural law tradition, who taught them to ask this question in the first place.

I do not mean to imply that Smith would necessarily have defended the modern welfare state, let alone modern socialism, or that his latter-day followers are wrong to invoke him when they complain about welfare programs administered by large bureaucracies. Smith does prefer government to work through a small number of clear, general laws than through officials making ad hoc decisions; he worries about both the inefficiency and the danger to liberty of anything that involves interference in people's lives on a daily basis. But he does not say, nor would it be true, that all attempts to redistribute resources need involve bureaucratic power in this way, and he did not think that redirecting resources to help the poor was in principle beyond either the capability or the rightful province of the state. On the contrary, in his conception of the poor and of what the poor deserve, Smith helped bring about the peculiarly modern view of distributive justice: the view according to which it is a duty, and not an act of grace, for the state to alleviate or abolish poverty.