

REFRAMING WELFARE IN LIGHT OF ADAM SMITH'S VIEW OF IRREGULAR SENTIMENTS

CHANDLER NAHIGIAN

Such is the effect of the good or bad consequences of actions upon the sentiments both of the person who performs them, and of others; and thus, Fortune, which governs the world, has some influence where we should be least willing to allow her any, and directs in some measure the sentiments of mankind, with regard to the character and conduct both of themselves and others.

– Adam Smith¹

I. INTRODUCTION

This paper provides an in-depth description of Adam Smith's view of moral luck as set forth in a section from *The Theory of Moral Sentiments* titled "Of the Influence of Fortune upon the Sentiments of Mankind, with regard to the Merit or Demerit of Actions." After establishing that Smith acknowledges that the reality of our world is one in which unfortunate persons are approbated undeserved moral blame, this paper reminds readers that Smith was not a doctrinaire advocate for laissez faire policy. It does so by showing the critical role Smith envisioned governments should play in promoting societal happiness where free markets fall short. Then, by integrating Smith's ideas, I argue that Smith would disapprove of our current approach to welfare, which emphasizes the deservedness or responsibility of welfare recipients. Rather, in light of our irregular sentiments and the government's purpose, our welfare programs should be predominantly driven by societies' values and motives, independent from moral evaluations of recipients.

II. ADAM SMITH AND MORAL LUCK

This section provides an explication of Smith's account of the influence of luck on our moral judgements and what makes his view distinct from other moral luck philosophers. Before discussing Smith's particular views, it is useful to start with an understanding of what moral luck is and why other philosophers have come to view it as problematic.

¹ Adam Smith, *The Theory of Moral Sentiments* 104 (D.D. Raphael & A. L. Macfie eds., Liberty Fund, Inc. 1982) (1790) [hereinafter TMS].

A. THE PROBLEM OF MORAL LUCK

Generally speaking, the problem of moral luck stems from our commitment to the “control principle” (“CP”), which states “people cannot be morally assessed for what is not their fault, or for what is due to factors beyond their control.”² A corollary of the CP is that the moral assessment of two individuals should be equal if the only differences between them are due to factors beyond their control.³ In reality, however, our moral assessments of others are typically influenced by factors that are beyond their control. Thus, moral luck exists “[w]here a significant aspect of what someone does depends on factors beyond his control, yet we continue to treat him in that respect as an object of moral judgement.”⁴ This incongruity is problematic to Thomas Nagel, one of the most prominent moral luck philosophers, because, if one strictly adheres to the CP, it can lead to an unsettling conclusion that it is impossible to morally assess anyone for anything.⁵

To illustrate, Nagel provides an example of a truck driver who has failed to properly maintain his truck, which results in brake failure and him being unable to stop the vehicle when a child runs in front of him. As a result of the driver’s negligence in performing truck maintenance, the child is killed, and the driver is subject to blame. The driver is morally unlucky to the extent that he had no control over the child darting in front of his vehicle. This moral bad luck leads us to blame him to a greater degree than if no situation arose which required him to attempt to brake suddenly to avoid hitting the child. Thus, our moral judgements differ due to circumstances beyond his control, despite the driver having the same degree of negligence in both cases.⁶ Another example Nagel points to is that of a driver who has had too much to drink and who swerves off the road. If he is morally unlucky and there are pedestrians in his path, he would be blamed for their deaths. However, if he is morally lucky and no pedestrians happen to be in his path, he is guilty of a far less serious offense and will be reproached by himself and others much less severely, despite being equally reckless in choosing to drive while intoxicated.⁷

To Nagel, the incongruity between the moral judgements we actually make and the judgements, upon consideration of the CP, that we ought to make is problematic. As Keith Hankins wrote, the problem for Nagel “is not just that our judgements conflict with the principles we endorse but that there also seems to be no way of resolving the conflict.”⁸ Nagel himself wrote:

If one cannot be responsible for consequences of one’s acts due to factors beyond one’s control, or for antecedents of one’s acts that are properties of temperament not subject to one’s will, or for the

² Thomas Nagel, *Mortal Questions* 25 (1979).

³ Dana K. Nelkin, *Moral Luck*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <https://plato.stanford.edu/entries/moral-luck/> (last updated Apr. 19, 2019).

⁴ NAGEL, *supra* note 2, at 26.

⁵ Nelkin, *supra* note 3.

⁶ B. A. O. Williams & Thomas Nagel, *Moral Luck*, 50 *Proceedings of the Aristotelian Society*, Supplementary Volumes 115, 141 (1976).

⁷ *Id.*

⁸ Keith Hankins, *Adam Smith’s Intriguing Solution to the Problem of Moral Luck*, 126 *ETHICS* 711, 715 (2016).

circumstances that pose one's moral choices, then how can one be responsible even for the stripped-down acts of the will itself, if *they* are the product of antecedent circumstances outside of the will's control? The area of genuine agency, and therefore of legitimate moral judgement, seems to shrink under this scrutiny to an extensionless point. Everything seems to result from the combined influence of factors, antecedent and posterior to action, that are not within the agent's control.⁹

Thus, according to Nagel, the problem of moral luck "jeopardizes the very possibility of making evaluative moral judgements."¹⁰

It should be noted that Nagel and subsequent scholars have identified four different ways moral luck affects assessments of our actions and our character.¹¹ The first form is "constitutive luck," which reflects the fact that the kind of person one is ("inclinations, capacities, and temperament") is not a matter of one's own choosing.¹² The second is "circumstantial luck," which stands for the fact that the circumstances one finds himself or herself in are not up to them.¹³ The third is "causal luck," which is similar to circumstantial luck, and reflects the fact that circumstances often force "one's hands, so that what one does is determined by the circumstances one finds oneself in."¹⁴ Lastly, there is "consequential luck," which reflects the fact that outcomes from our actions depends on factors that are beyond our control.¹⁵ The previous examples of the truck driver whose brakes fail or the intoxicated driver who veers off the road are examples of consequential luck.

B. THE "EQUITABLE MAXIM" AND OUR "IRREGULAR SENTIMENTS"

Having understood the problem of moral luck as set forth by Nagel, we can now turn to the question of whether it presents the same problem to Smith. At first glance, Smith seems to also recognize the problem of moral luck, as evidenced in part by his statement that "[f]ortune . . . has some influence where we should be least willing to allow her any."¹⁶ However, while it is clear that Smith sees a tension between the judgements we do make and the judgements we ought to make, he settles on a more nuanced stance in which the problem of moral luck is not as severe as others have supposed. In this section, I will introduce Smith's view of the tension surrounding consequential luck. In the following sections, I will take a closer look at Smith's account of moral luck, including the social utility of our irregular sentiments, and highlight some of the important differences between his account and Nagel's.

⁹ NAGEL, *supra* note 2, at 35.

¹⁰ Darren Domsky, *There Is No Door: Finally Solving the Problem of Moral Luck*, 101 J. PHIL. 445, 445 (2004).

¹¹ Yascha Mounk, *The Age of Responsibility* 112 (2017).

¹² Hankins, *supra* note 8, at 714.

¹³ *Id.*

¹⁴ MOUNK, *supra* note 11, at 116; Hankins, *supra* note 8, at 714.

¹⁵ Hankins, *supra* note 8, at 714.

¹⁶ TMS, *supra* note 1, at 104.

Before delving into Smith's discussion of moral luck it is helpful to understand his view of sentiment and the role of the impartial spectator in orienting our moral compasses. According to Smith, we begin to develop our sentiments or moral feelings by sympathizing with others and imagining what we ourselves would feel if we were in their shoes.¹⁷ Through sympathizing, we learn that we approve of others' behavior when the behavior coincides with the emotions that we imagine we would feel if we were in the same position. We then come to realize that others judge us in the same manner, so we adjust our behaviors to align with our circumstances in hopes of gaining the moral approval of others. After judging others as spectators and realizing that each of us finds spectators judging us, we then "come to judge our own conduct by imagining whether an impartial spectator would approve or disapprove of it."¹⁸ The imaginary impartial spectator we internally sympathize with is not an interested party to our actions and embodies a universal point of view in "being representative of any observer with normal human feelings."¹⁹ Once we have developed our own impartial spectator, Smith believes that we shape our actions to gain approval from our impartial spectator. It is only after we have developed our sympathies for an impartial spectator that we orient our moral compass "to equip us to become fully functioning members of society."²⁰

Smith's account of moral luck builds on our formation of sentiments and begins with a description of the foundation for all praise or blame:

Whatever praise or blame can be due to any action, must belong either, first, to the intention or affection of the heart, from which it proceeds; or, secondly to the external action or movement of the body, which this affection gives occasion to; or, lastly, to the good or bad consequences, which actually, and in fact, proceed from it.²¹

In other words, affections of the heart (our intentions), actions taken, or consequences of actions taken must be the foundation for any praise or blame with respect to an action. However, Smith then goes on to say that "it is abundantly evident" that neither actions nor consequences can be the "foundation of any praise or blame."²² For example, the external action of shooting a bird (which is deemed innocent) and the actions of shooting a man (which is deemed blamable) are identical external actions (pulling a trigger) and should not carry different levels of praise or blame. Further, the consequences should not carry different degrees of blame or praise. Since consequences depend upon fortune, and not upon the agent, they "cannot be the proper foundation for any sentiment, of which [an agent's] character . . . [is] the object[]." ²³ This concept is what Smith calls the equitable maxim ("EM"):

¹⁷ Edward D. Kleinbard, *We Are Better Than This: How Government Should Spend Our Money* 32 (2015); D.D. Raphael, *The Impartial Spectator: Adam Smith's Moral Philosophy* 13 (2007).

¹⁸ RAPHAEL, *supra* note 17, at 35.

¹⁹ RAPHAEL, *supra* note 17, at 34.

²⁰ KLEINBARD, *supra* note 17 at 32.

²¹ TMS, *supra* note 1, at 92.

²² TMS, *supra* note 1, at 92.

²³ TMS, *supra* note 1, at 93.

The only consequences for which [an agent] can be answerable, or by which he can deserve either approbation or disapprobation of any kind, are those which were somehow or other intended, or those which, at least, show some agreeable or disagreeable quality in the intention of the heart, from which he acted. To the intention or affection of the heart, therefore, to the propriety or impropriety, to the beneficence or hurtfulness of the design, all praise or blame, all approbation or disapprobation, of any kind, which can justly be bestowed upon any action ultimately belong.²⁴

In its abstract, theoretical terms, Smith believes that this is a universal principal upon which everyone would agree and there is “no dissenting voice among all mankind.”²⁵ Moreover, Smith believed that before anything “can be the complete and proper object, either of gratitude or resentment, it must possess three different qualifications.”²⁶ First, it must be the cause of pleasure or pain. Second, it must be capable of feeling pleasure or pain. Third, it must have produced the pleasure or pain intentionally and in a manner that we approve or disapprove of.²⁷

As Smith goes on to say, however, our sentiments rarely align with these principles. Moving beyond the abstract toward the particular, “the actual consequences . . . from any action, have a very great effect upon our sentiments concerning its merit or demerit, and almost always either enhance or diminish our sense of both.”²⁸ Rarely will our sentiments be regulated by the EM, which we universally acknowledge ought to regulate them. It is this tendency that Smith identifies as “our irregularity of sentiment.”²⁹ Moreover, Smith adds that the consequences of our actions are “altogether under the empire of Fortune, hence arises [Fortune’s] influence upon the sentiments of mankind with regard to merit and demerit.”³⁰ Smith’s primary concern is to describe the irregularity of our sentiment and to illustrate the extent of fortune’s influence. Smith explained that the irregularity of our sentiment as influenced by luck is manifest in two different ways.

The first case of the influence of fortune is that which occurs when we attempt but fail to produce an intended effect. In these instances, the benefit or injury required to produce gratitude or resentment is missing, resulting in our sense of merit or demerit being diminished. In other words, less gratitude or resentment is felt than would have been if the intended result had been achieved. Thus, no matter how much we approve of good intentions or disapprove of bad intentions, without the corresponding good or bad effects, the sense of merit or demerit is weakened. Simply put, due to the irregularity

²⁴ TMS, *supra* note 1, at 93.

²⁵ TMS, *supra* note 1, at 93.

²⁶ TMS, *supra* note 1, at 96.

²⁷ TMS, *supra* note 1, at 93; Paul Russell, *Smith on Moral Sentiment and Moral Luck*, 16 HISTORY OF PHILOSOPHY QUARTERLY 37, 39 (1999).

²⁸ TMS, *supra* note 1, at 93.

²⁹ TMS, *supra* note 1, at 93.

³⁰ TMS, *supra* note 1, at 97.

of our sentiments, we rely on actual benefit or injury, not simply an intention in order to assign gratitude or resentment towards others.³¹

The second effect of the influence of fortune is that “good or bad consequences accidentally or inadvertently produced by an agent, without any relevant design or intention, may” increase our sense of merit or demerit.³² The agreeable or disagreeable effects of the action “throw a shadow of merit or demerit upon the agent,” even though there was nothing in the agent’s intention that deserved the degree of praise or blame received.³³ In other words, when one accidentally or inadvertently brings a good or bad consequence, the sense of merit or demerit is increased beyond what it should be according to the EM. As an example, Smith describes a man who is unable to manage a horse that is accidentally spooked and runs down his neighbor’s slave. As outsiders, we are prone to thinking that he should not have ridden such an easily spooked horse and to “regard his attempting it as an unpardonable levity.”³⁴ Yet, if the accident had not happened, we would not have made such a reflection. Further still, if we had observed him exercising abundant caution in choosing not to ride a horse, we would “regard his refusing it as the effect of timid weakness, and an anxiety about merely possible events, which it is to no purpose to be aware of.”³⁵ Smith adds that to the person himself, the effect of accidentally hurting someone, combined with sympathizing with the impartial spectator, leads the actor to have a real sense of his own ill-desert. This sense of ill-desert is then coupled by a desire to express concern for what has happened to the injured individual, to compensate the damage, and to do everything he can to appease the resentment that is “apt to arise in the [heart] of the injured.”³⁶

To Smith, the implications of our irregular sentiments are significant. He goes so far as to argue that these irregularities “can render the same character the object, either of general love and admiration, or of universal hatred and contempt.” Nevertheless, and unlike Nagel and other moral luck philosophers, Smith believes that this “great disorder” is not without utility. Smith believes that God, even in the “weakness and folly of man,” has situated these irregularities in “the human breast” in a way that ultimately works to the advantage of our species.³⁷

C. THE UTILITY OF OUR IRREGULAR SENTIMENTS

Regardless of whether one gives weight to the language of the divine or “Author of nature” to which Smith attributes the utility of our irregular sentiments, it is clear that Smith views the irregular sentiments as providing important utility.³⁸ Various scholars have tallied up these justifications in different ways; for the purposes of this discussion, I will separate Smith’s

³¹ TMS, *supra* note 1, at 97-101; Russell, *supra* note 27, at 39.

³² Russell, *supra* note 27, at 40.

³³ TMS, *supra* note 1, at 101.

³⁴ TMS, *supra* note 1, at 104.

³⁵ TMS, *supra* note 1, at 104.

³⁶ TMS, *supra* note 1, at 104.

³⁷ TMS, *supra* note 1, at 105, 252-53.

³⁸ TMS, *supra* note 1, at 105, 253.

view of the utility of our irregular sentiments into four distinct justifications.³⁹

Smith's first justification for the utility of irregular sentiments is that by focusing our attention on consequences, these sentiments insulate our thoughts and intentions from being the object of punishment. Without this insulation, "every bad wish, view, or design would be as severely dealt with as would their attempted or effected execution and whenever imagined, would be liable to criminal prosecution."⁴⁰ To punish on the "affections of the heart only," according to Smith, "is the most insolent and barbarous tyranny."⁴¹ Were intentions alone sufficient to give rise to resentment and retribution, no individual would be free or safe from the moral suspicion of others and innocence would never be secure.⁴² It is for these reasons that Smith believes our sentiments, designs, and affections – from which, within the EM, human actions derive their whole merit or demerit from – are placed by "the great Judge of hearts beyond the limits of every human jurisdiction."⁴³ Thus, the irregular sentiments provide utility in saving us from the possibility of being punished for evil intentions alone by restricting demerit to actions "which either produce actual evil, or attempt to produce it."⁴⁴

Similarly, the second and third social justifications are related to the emphasis that our irregular sentiments place on outcomes. First, it is our emphasis on outcomes that encourages us to act and not be satisfied simply by possessing good will. For man "was made for action" and "must not be satisfied with indolent benevolence, nor fancy himself the friend of mankind, because in his heart he wishes well to the prosperity of the world."⁴⁵ It is through action that we can exert our faculties to change our circumstances and others to be most favorable to the happiness of all.⁴⁶ Relatedly, and as the third justification for the utility of our irregular sentiments, Smith believes that by attaching blame and punishment to the outcomes of our actions it teaches "man . . . to [revere] the happiness of his brethren, to tremble lest he should . . . do anything that can hurt them."⁴⁷ As Hankins points out, Smith is noticing that even though our emphasis on consequences can lead to the undeserved blame of agents who bring about accidental harm, this blame, despite being undeserved, encourages us to take precautions so as to avoid harming others.⁴⁸ Together then, these justifications demonstrate that our irregular sentiments "lead us to exert ourselves mightily to change the external circumstances of ourselves and our fellows, that is, to master fortune insofar as possible."⁴⁹ We intrinsically desire to accomplish things worthy of

³⁹ Hankins, *supra* note 8, at 726; *see generally* Russell, *supra* note 27.

⁴⁰ Charles L. Griswold, Jr., Adam Smith and the Virtues of Enlightenment 242 (1999).

⁴¹ TMS, *supra* note 1, at 106.

⁴² Russell, *supra* note 27, at 41.

⁴³ TMS, *supra* note 1, at 105.

⁴⁴ TMS, *supra* note 1, at 105.

⁴⁵ TMS, *supra* note 1, at 105.

⁴⁶ TMS, *supra* note 1, at 106.

⁴⁷ TMS, *supra* note 1, at 106.

⁴⁸ Hankins, *supra* note 8, at 727.

⁴⁹ GRISWOLD, *supra* note 40, at 242-43.

esteem “but also to be careful and to take account of the risks and costs that we impose on others when we do act.”⁵⁰

The fourth social utility Smith points out in our irregular sentiments is that our reverence for the happiness of others provides us with the drive to better understand how to deal with the multitude of externalities associated with our actions, such as the costs imposed on victims of accidents.⁵¹ Smith writes, “[n]othing, we think, can be more just than that one man should not suffer by the carelessness of another; and that the damage occasioned by the blamable negligence, should be made up by the person who was guilty of it.”⁵² Hankins posits that our irregular sentiments, combined with the impartial spectator, are the catalyst for bringing about this principle. Specifically, it is our concern for consequences that allows us to be sensitive to the needs of victims, and it is our sentiments, however irregular they may be, that encourage us take responsibility for the harm we cause.⁵³ This response can be seen in Smith’s example of the horseback rider who involuntarily hurt another, but who nonetheless “naturally runs up to the sufferer to express his concern for what has happened.”⁵⁴

On balance then, let us reflect on how these utilities further shape Smith’s view of moral luck. Smith views the EM as the canon by which our praise and blame of others should be assessed. On one hand, allowing actual consequences of action to shape our merit and demerit subjects us to the influence of fortune and this “tends to ‘discourage virtue’ and leaves it, on occasion, poorly rewarded.”⁵⁵ On the other hand, Smith also indicates that these shortcomings are compensated, at least in part, by the utility that comes with the irregularity of our sentiments. For without these irregular sentiments, our thoughts alone would be subject to punishment, we would be unfit for acting with care, and we would be ill-prepared to meet the social needs of our victims by taking responsibility for harms caused, whether intended or not. The Author of Nature, thus, orchestrates these irregular sentiments in such a way to provide considerable social utility that in part balances out the shortcomings of our irregular sentiments.

D. SMITH’S VIEW OF THE PROBLEM OF MORAL LUCK IS DISTINCT

The account of Smith’s view of our irregular sentiments that I have provided thus far is a relatively conservative reading of his writings, and one which I believe scholars would be largely in agreement on.⁵⁶ As I will discuss in this section, of the few scholars who have commented on Smith’s account of our irregular sentiments, there is no unanimity as to whether Smith’s view of the utility of our irregular sentiments is coherent with his other writings, and further there is no unanimity as to whether Smith intended the EM to be embraced full stop in *particular circumstances* or if it should be embraced only in the *abstract*.⁵⁷ Regardless of these varying interpretations, this section

⁵⁰ Hankins, *supra* note 8, at 727.

⁵¹ Hankins, *supra* note 8, at 727.

⁵² TMS, *supra* note 1, at 103.

⁵³ Hankins, *supra* note 8, at 728-29.

⁵⁴ TMS, *supra* note 1, at 104.

⁵⁵ Russell, *supra* note 27, at 41.

⁵⁶ See generally Russell, *supra* note 27; Hankins, *supra* note 8.

⁵⁷ See Russell, *supra* note 27; Hankins, *supra* note 8.

aims to show that Smith's discussion provides a distinct, illuminating interpretation of the problem of moral luck and its import remains of contemporary interest.

First, as previously discussed, Smith's view is distinct from Nagel's account of the problem of moral luck in that Smith's view does not lead to an impasse, as he proposes a solution to the problem. The solution, for Smith, is found in the social utility that is indirectly served by the irregularity of our sentiments.⁵⁸ In recognizing these hidden benefits, Smith indicates "we will find it easier to reconcile ourselves to the gap between moral feeling and our sense of justice."⁵⁹ However, Paul Russell finds this solution unsatisfactory because he is skeptical of the two key claims that lie at the heart of Smith's position: first, Russell argues that it is not readily evident that the irregularities in our assigned merit and demerit are as useful for securing important social ends as Smith claims they are, and second, Russell does not believe these irregularities are in fact a universal feature of human nature as Smith claims them to be.⁶⁰ While Russell may criticize the soundness of Smith's claims, these criticisms do not change Smith's claim that our irregular sentiments, at least to a certain extent, serve a social utility. Thus, at a minimum, Smith's discussion is distinct from Nagel's because Smith sees utility where Nagel sees only a paralyzing paradox.

Smith's distinct contributions to our understanding of moral luck contrast with Nagel's interpretations in another significant way, made visible when the relationship between EM and CP are examined. By way of reminder, Nagel interprets the problem of consequential luck in terms of the CP while Smith frames it in terms of the EM. The EM requires that people be morally assessed solely on the quality of their intentions. In contrast, the CP requires that people be morally assessed only to the extent that their intentions are under their control.⁶¹ The CP's demand "suggests that agents can be legitimately held accountable for their willings and intentions in action only if they are the *ultimate source* of these willings and intentions."⁶² Since the EM stops short of this, the pervasiveness of fortune in our world does not immediately create a threat to the legitimacy of all moral assessments under Smith's EM as it does under Nagel's CP. For example, under the EM, an agent can be held accountable for her intentions in action even though her conduct arises from "circumstances she had no control over, and her choices are themselves determined by a character that is (largely) the product of external influences."⁶³ The CP would not permit holding an agent accountable in similar circumstances because she lacks complete control. This difference gives rise to Nagel's various iterations of moral luck described earlier – constitutive, circumstantial, causal, and consequential – and subsequently to a general moral skepticism. In contrast, the EM, as adopted by Smith, does not give rise to other modes of moral luck besides consequential luck, which, as Smith makes clear, is partially balanced out by

⁵⁸ TMS, *supra* note 1, at 105-06.

⁵⁹ Russell, *supra* note 27, at 51.

⁶⁰ Russell, *supra* note 27, at 53.

⁶¹ Russell, *supra* note 27, at 49.

⁶² Russell, *supra* note 27, at 49.

⁶³ Russell, *supra* note 27, at 50.

the utility of our irregular sentiments. Thus, when examined, we can see that, unlike the CP, the EM does not raise the same concerns about the “erosion of moral judgement.”⁶⁴

Furthermore, according to Hankins, Smith’s account is distinct in yet another significant way. By combining Smith’s arguments for utility of our irregular sentiments with the impartial spectator’s endorsement of those irregular sentiments, Hankins suggests that Smith not only sees some utility in the irregular sentiments but also believes some of the judgments stemming from these irregular sentiments are appropriate.⁶⁵ Central to this interpretation is Hankins’s view that the EM governs some, but not all forms of merit or demerit, and thus “certain attributions of praise or blame can be appropriate even though they don’t conform to the EM.”⁶⁶ In adopting a stance that Smith has a more qualified view of the EM, Hankins argues that Smith embraces a concept of morality that is “concerned with more than just the quality of an agent’s will,” and, therefore, “the existence of moral luck need not threaten the coherence of our [moral] concept.”⁶⁷ Hankins claims that an implication of this is that, to Smith, unlike Nagel, the irregular sentiments play an important part in our morality because they provide a way to deal with the fact that our lives are shaped by luck and that our intentions are not always transparent to others.⁶⁸

Last, and of great importance for the remainder of this Note, even though Smith’s account does not lead to the same erosion of morality that Nagel’s does, neither Smith nor commentators on his work purport that our irregular sentiments will always lead us to proper judgements or that luck’s influence on our moral assessments is never a problem. In fact, it seems likely that our irregular sentiments will lead to improper judgements. As best said by Hankins, “[w]hat Smith shows us, though, is that the problem of moral luck, lies not in luck’s influence on our moral judgements but *rather in our imperfect ability to distinguish between the ways in which it influences our assessments of ourselves and others.*”⁶⁹

III. ADAM SMITH’S VISION FOR GOVERNMENT

Having discussed Smith’s approach to the problem of moral luck, the utility he saw in our irregular sentiments, and his recognition of luck’s pervasive influence on our lives, I now briefly turn to Smith’s view of the role of government as it pertains to fostering societal happiness. Gaining a basic understanding of how Smith viewed the role of government is essential for understanding the next section of this Note, which will discuss how Smith’s views can help us reframe our approach to welfare programs today.

⁶⁴ Russell, *supra* note 27, at 49.

⁶⁵ Hankins, *supra* note 8, at 728.

⁶⁶ Hankins, *supra* note 8, at 735.

⁶⁷ Hankins, *supra* note 8, at 745.

⁶⁸ Hankins, *supra* note 8, at 746.

⁶⁹ Hankins, *supra* note 8, at 745 (emphasis added).

A. SMITH WAS NOT A DOCTRINAIRE ADVOCATE OF LAISSEZ FAIRE

Although Smith first published *The Theory of Moral Sentiments* in 1759, he is better known for his authorship of *The Wealth of Nations*, which was published in 1776. Importantly, Smith published a revised and expanded version of *The Theory of Moral Sentiments* in 1790, just before his death.⁷⁰ While these two books largely focus on different topics, the timing of Smith's revised version of *The Theory of Moral Sentiments* indicates that he was no less committed to the ideas of moral philosophy he set forth after having written *The Wealth of Nations*. In fact, Smith is said to have considered *The Theory of Moral Sentiments* superior to *The Wealth of Nations*.⁷¹ Nevertheless, we now turn to *The Wealth of Nations*.

The Wealth of Nations pioneered a systematic guide to the manner in which a natural price mechanism driven by individuals' self-interest could allocate resources in a free market economy.⁷² In it he provided an elaborate and detailed application to the economic world of the concept of a "natural order, operating according to natural law, and if left to its own course producing results beneficial to mankind."⁷³ Part of what has made the United States' commercial sphere unique is that we have, by and large, embraced Smith's proposition that private markets can allocate the resources we use in our daily lives.⁷⁴ In a world where there is perfectly transparent pricing systems, new entrants can come to the market, and absent both externalities or distorted price signals from capricious buyers and sellers, this free market operates efficiently.⁷⁵ No matter how well intentioned it is, government intervention cannot improve the allocation of goods and services in such an efficient economy.⁷⁶

Smith originally published this argument for a free market as a "specific attack on certain types of government activity which Smith was convinced . . . operated against national prosperity, namely, bounties, duties, and prohibitions in foreign trade; apprenticeship and settlement laws; legal monopolies; [and] laws of succession hindering free trade in land."⁷⁷ His primary objective was to bring these government activities to an end and his wider generalizations about the free market were to support an attack on these specific institutions.⁷⁸ With this being his primary motive, it makes sense that the secondary literature on Smith has devoted so much attention to the ways a free market system can promote economic efficiency.⁷⁹

What seems less familiar, however, is the fact that throughout *The Wealth of Nations*, Smith made many exceptions to his general argument for laissez-faire.⁸⁰ As these exceptions were not the main focus of his argument, he did

⁷⁰ RAPHAEL, *supra* note 17, at 1.

⁷¹ RAPHAEL, *supra* note 17, at 1.

⁷² Nathan Rosenberg, *Some Institutional Aspects of the Wealth of Nations*, 68 J. POL. ECON. 557, 570 (1960).

⁷³ Jacob Viner, *Adam Smith and Laissez Faire*, 35 J. POL. ECON. 198, 199-200 (1927).

⁷⁴ KLEINBARD, *supra* note 17 at 29.

⁷⁵ KLEINBARD, *supra* note 17 at 29.

⁷⁶ KLEINBARD, *supra* note 17 at 29.

⁷⁷ Viner, *supra* note 73, at 218.

⁷⁸ Viner, *supra* note 73, at 218.

⁷⁹ Rosenberg, *supra* note 72, at 560.

⁸⁰ Viner, *supra* note 73, at 218.

not gather together a list or detailed explanation of the exceptions he would make to the general restrictions on government activity.⁸¹ Yet, when the exceptions Smith provides are considered in the greater context of his writings, it is evident that Smith himself “undermined what is ordinarily regarded as his principal argument for laissez faire, by demonstrating that natural order, when left to take its own course, in many respects works against, instead of for, the general welfare.”⁸²

That is to say, Smith recognized that despite his theoretical framework for a perfectly efficient economy, we, in fact, live in a world of “important market failures, incomplete markets (areas where markets just do not reach), and unlucky persons, where poverty, bad luck, and other factors demonstrably impede individuals from fully participating in that competitive environment, and who therefore cannot maximize their utility entirely on their own.”⁸³ For example, Smith points to a custom at the time to pay attorneys and clerks according to the number of pages they wrote.⁸⁴ In an effort to increase their pay out of self-interest (what Smith simultaneously claims ought to drive the free market), these attorneys and clerks had “contrived to multiply words beyond all necessity, to the corruption of the law of language.”⁸⁵ In addition, Smith notes other pitfalls of a free market system, including that private initiative is not sufficient to ensure proper care and maintenance of roads.⁸⁶ Thus, even though it was not the emphasis of his writings, Smith understood the limits of a free market system. In fact, as will be further discussed below, in Smith’s exploration of the proper conditions for a market system to operate most effectively, he specifically saw a need for an “optimal institutional structure” in the areas where free markets fall short.⁸⁷

As we move on to consider the specific government roles that Smith suggested, we must bear in mind that Smith’s extensive criticism of government involvement in areas that should be left to the free market have little to do with the questions of moral philosophy that he cared so much about in his *The Theory of Moral Sentiments*.⁸⁸ As set out in *The Theory of Moral Sentiments*, the ultimate goal of a good life is personal happiness and the happiness of society.⁸⁹ Happiness to Smith consists of a balanced life of tranquility and enjoyment, with tranquility bearing slightly more weight.⁹⁰ A long term state of tranquility can be obtained through “moral education, habitation in moral rules, and a reasonable arrangement of social institutes and life”⁹¹ that would lead to a “general prevalence of wisdom and virtue in society.”⁹²

⁸¹ Viner, *supra* note 73, at 218.

⁸² Viner, *supra* note 73, at 218.

⁸³ KLEINBARD, *supra* note 17 at 29.

⁸⁴ ADAM SMITH, *THE WEALTH OF NATIONS BOOKS IV-V* 309 (Andrew Skinner, ed., Penguin Group 1999) (1776) [hereinafter WN IV-V].

⁸⁵ *Id.*

⁸⁶ *Id.* at 313-14.

⁸⁷ Rosenberg, *supra* note 72, at 560, 570.

⁸⁸ KLEINBARD, *supra* note 17 at 36.

⁸⁹ KLEINBARD, *supra* note 17 at 33.

⁹⁰ Samuel Fleischacker, *On Adam Smith’s Wealth of Nations: A Philosophical Companion* 68 (2004).

⁹¹ GRISWOLD, *supra* note 40, at 225.

⁹² TMS, *supra* note 1, at 187.

External goods play only a secondary role in achieving happiness. Smith raised the rhetorical question, “What can be added to the happiness of the man who is in health, who is out of debt, and has a clear conscience?”⁹³ To someone who has the fundamental material goods of food, clothing, shelter, and those other goods needed to remain “in health [and] out of debt, all accessions of fortune may properly be said to be superfluous.”⁹⁴

Even though Smith does not intertwine his vision of moral philosophy and a life lived in a state of tranquility throughout *The Wealth of Nations*, it is no less clear that he placed tremendous value on maximizing personal and societal happiness. The few areas of *The Wealth of Nations* in which Smith contemplates the advancement of societal happiness are entirely consistent with his *The Theory of Moral Sentiments*.⁹⁵ To Smith, “[a]ll constitutions of government” are “valued only in proportion as they tend to promote the happiness of those who live under them. That is their sole use and end.”⁹⁶ In one of the few instances where Smith discusses the promotion of societal happiness in *The Wealth of Nations*, he writes:

[W]hat improves the circumstances of the greater part can never be regarded as an inconveniency to the whole. No society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable. It is but equity, besides, that they who food, clothe, and lodge the whole body of the people, should have such a share of the produce of their own labour as to be themselves tolerably well fed, clothed, and lodged.⁹⁷

To Smith then, government, albeit “imperfect,” is natural and beneficial where it promotes the general happiness of society.⁹⁸

B. THE DUTIES OF GOVERNMENT ACCORDING TO SMITH

Now that we have seen how Smith believed sovereign institutions should aid in correcting free market inefficiencies and serve as an instrument for promoting general societal happiness, we can turn to the three categorical “duties of great importance” that governments must attend to.⁹⁹ Smith wrote:

[T]he sovereign has only three duties to attend to: first, the duty of protecting the society from the violence and invasion of other independent societies; secondly, . . . the duty of establishing an exact administration of justice; and, thirdly, the duty of erecting and maintaining certain public works and certain public institutions.¹⁰⁰

For our purposes, we will focus only on the second and third duties.

⁹³ TMS, *supra* note 1, at 45.

⁹⁴ TMS, *supra* note 1, at 45; FLEISCHACKER, *supra* note 90, at 68.

⁹⁵ KLEINBARD, *supra* note 17 at 36.

⁹⁶ TMS, *supra* note 1, at 185.

⁹⁷ ADAM SMITH, *THE WEALTH OF NATIONS BOOKS I-III* 181 (Andrew Skinner, ed., Penguin Group 1970) (1776) [hereinafter WN I-III].

⁹⁸ TMS, *supra* note 1, at 187; Viner, *supra* note 73, at 220.

⁹⁹ WN IV-V, *supra* note 84, at 274.

¹⁰⁰ WN IV-V, *supra* note 84, at 274.

Smith's second duty for government is to "establish an exact administration of justice." Unfortunately, Smith never accomplished his plan to write a treatise on jurisprudence, and his other writings are insufficient for us to gather a complete idea of what the concept of "justice" would include.¹⁰¹ The closest idea we have is the broad definition Smith provides in *The Wealth of Nations*, which is "the duty of protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it."¹⁰² This, while slightly more informative than "exact administration of justice," can be interpreted broadly or narrowly. Similarly, as it pertains to the government's third duty of "erecting and maintaining certain public works and certain public institutions," Smith does not provide a complete list of public works proper to the government, but he does mention highways, bridges, canals, and harbors.¹⁰³ Thus, Smith does not systematically explain what the carrying out of each of these duties would look like; instead, we are left with scattered, yet specific, examples of the ways in which Smith saw the government erecting and maintaining public works or institutions.¹⁰⁴ It is from these examples, as well as his view of our moral sentiments, that we can begin to understand how Smith might approach welfare policies today, which will be discussed in the following sections. For now, I will highlight a few of the specific examples of government involvement that Smith provided in *The Wealth of Nations*.

One prominent example is Smith's support of government participation in the general education of society. Smith posits this will help to better prepare society for industry, will make individuals of a society better citizens and soldiers, and "happier healthier men in mind and body."¹⁰⁵ Furthermore, "[p]ublic education is made necessary to check as far as may be the evil effects on the standards, mentality, and character of the working classes of the division of labor and the inequality in the distribution of wealth."¹⁰⁶ Smith wrote that "gross ignorance and stupidity" frequently seems to "benumb the understandings of all the inferior ranks of people" in a civilized society.¹⁰⁷ Adding to this, Smith believes that an uneducated individual, one "without the proper use of the intellectual faculties of a man," seems to be "mutilated and deformed in . . . part of the character of human nature."¹⁰⁸ He not only thinks that education deserves government support, but he also makes clear that an "instructed and intelligent people . . . are always more decent and orderly than an ignorant and stupid one."¹⁰⁹ This demonstrates that the government will benefit greatly from the positive externalities that will come from an educated society. In arguing for the government to support education, Smith incidentally specifies his belief that governments have a duty to provide a certain degree of healthcare. Smith specifically wrote that "it would deserve [the government's] most serious attention to prevent a leprosy or any other loathsome and offensive disease, though neither mortal

¹⁰¹ Viner, *supra* note 73, at 218.

¹⁰² WN IV-V, *supra* note 84, at 297.

¹⁰³ Viner, *supra* note 73, at 226.

¹⁰⁴ Viner, *supra* note 73, at 218.

¹⁰⁵ Viner, *supra* note 73, at 227. See generally WN IV-V, *supra* note 84, at 348-404.

¹⁰⁶ Viner, *supra* note 73, at 218.

¹⁰⁷ WN IV-V, *supra* note 84, at 374.

¹⁰⁸ WN IV-V, *supra* note 84, at 374.

¹⁰⁹ WN IV-V, *supra* note 84, at 37-5.

nor dangerous, from spreading itself among [society].”¹¹⁰ Thus, from these examples we see that Smith saw a real need for the government to be directly involved in providing universal education and promoting public hygiene.

In addition to these examples, Smith proposes the government should promote a degree of equity through the principle of progressive taxation. He wrote, “[i]t is not very unreasonable that the rich should contribute to the public expenses, not only in proportion to their revenue, but something more than in that proportion.”¹¹¹ To Smith, flat or regressive taxes that impose a heavier burden on the poor than they impose on the rich are an “inequality of the worst kind.”¹¹² An example of the type of progressive tax Smith supports can be seen in his proposition that luxury vehicles should bear increased taxes, so that the “indolence and vanity of the rich is made to contribute in a very easy manner to the relief of the poor.”¹¹³ At the same time, Smith by no means endorses an unfettered system of redistributive justice. In his contemplation of whether the government should redistribute corn in the case of a famine by ordering corn dealers to sell their produce at what the government deems to be a reasonable price, Smith strongly objects on the grounds of efficiency and justice.¹¹⁴ In such an instance, Smith believes the “unlimited, unrestrained freedom of the corn trade” is the best prevention against future famines, so that farmers should be permitted to charge more during shortages to recoup other lost profits.¹¹⁵ This indicates that Smith undoubtedly believes governments should play an instrumental role in fostering societal happiness, yet he simultaneously acknowledges that the devising and implementation of government programs that effectively marry the pursuit of self-interest, and all of its shortcomings, with the pursuit of societal happiness is a delicate process.

C. GOVERNMENT DUTIES VIS A VIS MORAL LUCK

Before turning to the ways in which Smith’s views can and should shed light on our approach to today’s welfare programs, it is important to briefly reflect on how the preceding sections have shaped our understanding of Smith’s views. Specifically, there are three standpoints which ought to be kept in mind. First, from Smith’s distinct approach to the problem of moral luck and the suggested utility of our irregular sentiments, we can conclude that Smith recognized the pervasiveness of fortune. Included within this recognition are the harmful implications happenstance has on moral evaluations and our inability to identify its influence. Nonetheless, Smith both believed individuals can be responsible for some outcomes and acknowledged the social utility of individuals accepting responsibility for outcomes. This position is distinct from Nagel’s view of the problem of moral luck. For Nagel, the pervasiveness of luck, combined with the CP’s mandate that individuals cannot be assessed for outcomes due to factors

¹¹⁰ WN IV-V, *supra* note 84, at 374.

¹¹¹ WN IV-V, *supra* note 84, at 434.

¹¹² GRISWOLD, *supra* note 40, at 254; WN IV-V, *supra* note 84, at 439.

¹¹³ WN IV-V, *supra* note 84, at 312.

¹¹⁴ GRISWOLD, *supra* note 254.

¹¹⁵ GRISWOLD, *supra* note 40, at 254; WN IV-V, *supra* note 84, at 106.

beyond their control, paradoxically jeopardizes the concept of responsibility altogether.

Second, we know that Smith was not, in fact, a doctrinaire advocate of laissez faire; rather, he recognized the deficiencies of a free market and set forth specific governmental duties intended to offset the negative externalities of a free market to increase society's aggregate happiness. It then bears repeating that "[n]o society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable."¹¹⁶ Undoubtedly, he was committed to the view that all members of society ought to have a decent standard of living and the "sole use and end" of governments is to "promote the happiness of those who live under them."¹¹⁷ In this way, Smith's defense of justice and his commitment to a political economy that will benefit the poor in *The Wealth of Nations* is congruent with his moral outlook found in *The Theory of Moral Sentiments*.¹¹⁸ Yet, we must also bear in mind that Smith recognized the difficulty of devising and implementing government programs that effectively dovetail the pursuit of self-interest with the pursuit of societal happiness. He does not advocate for an unfettered, ongoing "scheme for state redistribution of goods."¹¹⁹

This then leads us to the third, and perhaps most important, takeaway: Smith insists that governments carry out an "exact administration of justice," yet also indicates that there is generally no means of determining "precisely what we are responsible for and what not."¹²⁰ To avoid the very mercantilist meddling and abuses of sovereign authority that Smith is primarily concerned with in *The Wealth of Nations*, the rules of administering justice must be "specifiable, explicable, and precise."¹²¹ This insistence pairs with the fact that "[d]etermining equity hinges in part on specifying who is to take responsibility (and to what degree) for the situation to be redressed."¹²² This creates tension because, given the role of fortune in our lives, there is no "specifiable, explicable, and precise" way to sort out the influence of fortune, individual responsibility, and social responsibilities that shape an individual's circumstances.¹²³

In brief, Smith implies that governments ought to administer justice through specifiable, explicable, and precise rules, rendering assessments of who the deserving are and what they are due beyond the scope of government duty. That is not to say, however, that governments cannot still administer justice independent of subjective determinations of deservedness. Government actions, such as educating the general public or increasing taxes on luxury vehicles, serve a legitimate utility in increasing aggregate happiness – so long as the means chosen are carefully thought through so as to mitigate the evils that can accompany state-enforced standards.

¹¹⁶ WN I-III, *supra* note 97 at 181.

¹¹⁷ GRISWOLD, *supra* note 40, at 250; TMS, *supra* note 1, at 185.

¹¹⁸ GRISWOLD, *supra* note 40, at 250.

¹¹⁹ GRISWOLD, *supra* note 40, at 250.

¹²⁰ GRISWOLD, *supra* note 40, at 251.

¹²¹ GRISWOLD, *supra* note 40, at 251.

¹²² GRISWOLD, *supra* note 40, at 251.

¹²³ GRISWOLD, *supra* note 40, at 251.

IV. PUTTING IT TOGETHER: RETHINKING TODAY'S APPROACH TO WELFARE IN LIGHT OF SMITH

While many of Smith's views continue to play important roles in shaping the United States' political and economic policies today, overlooked is how he suggested governments should promote societal happiness through direct participation. In fact, the "welfare" Smith envisioned above bears little resemblance to "welfare" the United States knows today. This divergence has become particularly evident in the last three decades.

A. TODAY'S RESPONSIBILITY-BASED WELFARE

At the heart of all welfare programs there are a few fundamental questions, each rooted in the fact that finite resources force the state and private charities to give need to some and deny it to others.¹²⁴ These questions include: On what principles should assistance be based? Who does and who does not merit assistance? How can we provide help without risk of moral hazard? To what degree should a welfare program provide help? Answering questions along these lines requires society to sort individuals by categories and to make arbitrary distinctions that discriminate among people. Drawing these lines is no easy task, leading policy makers to create artificial categories within the continuum of poverty.¹²⁵ Where individuals fall on this continuum dictates how much societal support they receive. Ideally, these lines should be drawn in a manner that is consistent with a coherent fiscal policy, which identifies national values that are widely shared and that can be expressed through proper financing and spending.¹²⁶

In the past, welfare programs have been intended to act as a "safety net" or social insurance that meets individuals' needs for basic goods and services, irrespective of recipients' ability to procure them in the free market. If citizens were unable to gain employment or pay for medical care, "the welfare states of many countries were supposed to make sure that they are able to eat or to see a doctor."¹²⁷ Over the last few decades, the United States' welfare programs have become increasingly focused on responsibility. The welfare programs that were once understood as a "safety net" that could catch both the "unlucky and the frivolous, both the responsible and the irresponsible" have now "turned into a much more selective tool."¹²⁸ Generally speaking under today's welfare programs, if we believe an individual is responsible for being in need, that individual is thought of as undeserving; and, if an individual does not bear responsibility for being in need, that individual is thought to be deserving. In effect, the programs conditionally reward individuals who have *supposedly* acted responsibly and punish individuals who have *supposedly* acted irresponsibly.¹²⁹

¹²⁴ Michael B. Katz, *The Undeserving Poor: America's Enduring Confrontation with Poverty* 1 (2nd ed. 2013).

¹²⁵ *Id.*

¹²⁶ KLEINBARD, *supra* note 17 at 412.

¹²⁷ MOUNK, *supra* note 11, at 77.

¹²⁸ MOUNK, *supra* note 11, at 69.

¹²⁹ MOUNK, *supra* note 11, at 178.

Evidence of this dramatic shift is best seen in the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which received bi-partisan support and was the culmination of a decade-long effort to restructure the United States' welfare system.¹³⁰ Since the 1996 reform, some of the most important welfare programs have become administered at a state or county level, resulting in little uniformity at a national level and giving rise to a "dizzying variety of conditions for each program and each geographic unit."¹³¹ Most states "now require recipients to sign some form of personal responsibility plan that emphasizes the welfare receipt as a contract: benefits are provided in return for the recipient's pledge to carry out certain activities."¹³² Not only are the benefits conditional, but there are often mechanisms for penalizing welfare recipients who have failed to be "responsible."¹³³ As Celeste Watkins-Hayes wrote, "[w]ork requirements, mandated participation in child support enforcement, and sanctions for noncompliance with rules are now standard fare in most welfare offices."¹³⁴ One example of such requirements is the strict limitation on the length of time for which individuals can receive federal benefits. Adult recipients in the Temporary Assistance for Needy Families (TANF) program, which was PRWORA's flagship program and replaced the Aid to Families with Dependent Children (AFDC) program, can receive in-kind resources, contingent on being employed, for at most five years over their lifetime.¹³⁵ In addition, numerous states have imposed even more stringent temporal restrictions.¹³⁶

Beyond these restrictions, many of the welfare programs that were part of PRWORA or that have been implemented since its enactment in 1996, are also contingent upon behavioral requirements. As a result, "[a]lmost all states have moved to *work-first* models for their welfare programs, requiring recipients to move quickly into available jobs."¹³⁷ This means securing and maintaining a job is often necessary for gaining basic welfare assistance, without regard to outcome determinant factors beyond the recipient's control. For example, the Earned Income Tax Credit (EITC), which is separate from PRWORA, uses the federal tax code to reward low-income taxpayers for success in obtaining employment. Since the EITC is only available to people with wages, it offers significant incentives for Americans to enter the labor market.

The EITC, introduced in 1994, offers refundable tax credits to individuals based on the number of children they have and their annual income.¹³⁸ For the 2020 tax year, the amount of the refundable credit phases-in as earnings increase and phases-out as annual adjusted gross income

¹³⁰ Celeste Watkins-Hayes, *The New Welfare Bureaucrats: Entanglements of Race, Class, and Policy Reform* 6 (2009).

¹³¹ MOUNK, *supra* note 11, at 83.

¹³² Pamela Loprest et al., *Welfare Reform under PRWORA: Aid to Children with Working Families?*, 14 *TAX POL'Y & ECON.* 157, 189 (2000).

¹³³ MOUNK, *supra* note 11, at 83.

¹³⁴ WATKINS-HAYES, *supra* note 130, at 6.

¹³⁵ MOUNK, *supra* note 11, at 83; WATKINS-HAYES, *supra* note 130, at 32.

¹³⁶ MOUNK, *supra* note 11, at 84.

¹³⁷ Loprest et al., *supra* note 132, at 167.

¹³⁸ MOUNK, *supra* note 11, at 84.

exceeds \$19,330.¹³⁹ For example, a head-of-household filer with three children could receive a refundable credit in the amount of \$6,660 if the taxpayer earned an income of \$15,820; however, once the taxpayer's annual adjusted gross income (or, if greater, earned income) exceeded \$19,300, the refundable tax credit phases-out at a rate of 21.06 percent for every additional dollar, such that they receive no EITC when their adjusted gross income equals or exceeds \$50,954.¹⁴⁰ The EITC is "refundable," which means that it not only offsets tax liability, but it also results in a payment directly to the taxpayer if the EITC exceeds the taxpayer's tax liabilities. On the whole, the EITC has been "extremely successful" in helping individuals to escape poverty; however, its reach, by definition, is limited to people who are employed.¹⁴¹ For example, "[c]onsider two individuals, A and B, each of whom are looking for a job. A finds employment, but B does not. The benefits of the EITC go to A, even though B is the needier of the two."¹⁴² In a sense, B is penalized for his failed attempt, even if it was entirely attributable to factors beyond his control.

While there are many other examples, the foregoing discussion of PRWORA and the EITC illustrates the fact that conditionality is a pervasive feature of contemporary United States' welfare programs. On balance, "far from being a realm in which citizens are guaranteed a basic social minimum irrespective of their ability to succeed on the market, the welfare state has, in central respects, come to mirror the market's responsibility-tracking attributes."¹⁴³ In this responsibility-centered framework, the welfare administrators inquiry about a particular individual turns on perceived responsibility for their situation of need. As a result, discussions about welfare often focus on how deserving the poor are on an individual level and whether or not they have been responsible, rather than about what policies can be put in place to empower them to pursue happiness. For example, we are quick to ask what error an employee made at work that caused them to lose their job, not whether "processes like globalization or automation explain why there are so few jobs for low-skilled workers in the first place."¹⁴⁴

This responsibility-framework positions government administrators in places of power that Smith cautioned might lead to abuses of sovereign authority. Rather than administering justice through specific, explicable, and precise rules, the responsibility-centered framework requires "fine-grained distinctions between those who have supposedly acted 'responsibly' and those who have supposedly acted 'irresponsibly.'"¹⁴⁵ As a result, applicants hoping to receive welfare are forced to undergo a humiliating application process in which applicants disclose their supposed shortcomings, and welfare bureaucrats make determinations based off intangible assessments

¹³⁹ Briefing Book: What is the earned income tax credit?, TAX POLICY CENTER, <https://www.taxpolicycenter.org/briefing-book/what-earned-income-tax-credit> (last visited Mar. 13, 2021).

¹⁴⁰ *Id.*

¹⁴¹ Joseph Bankman et al., *Federal Income Taxation* 617-18 (18th ed. 2019).

¹⁴² *Id.* at 618.

¹⁴³ MOUNK, *supra* note 11, at 85.

¹⁴⁴ MOUNK, *supra* note 11, at 172.

¹⁴⁵ MOUNK, *supra* note 11, at 93.

of responsibility.¹⁴⁶ This, in turn, further stratifies the power dynamic between welfare claimants and administrators, all while instilling a sense of shame amongst recipients.¹⁴⁷ Problematically, the degrading steps that come with disclosing private problems to public officials as a prerequisite to welfare entitlement dissuade many eligible citizens from exercising their right to welfare at all.¹⁴⁸ Moreover, not only does the risk of being stigmatized and subjected to demeaning bureaucratic responses dissuade citizens from seeking welfare, but the increased complexity of qualifications precludes other potential recipients. For example, because of the EITC's complexity, approximately one out of every five taxpayers who qualify for the EITC does not claim it, and some claimants do not qualify.¹⁴⁹ In these ways, the responsibility-centered framework of providing welfare has resulted in policies that make it difficult to accomplish welfare's fundamental task of providing help to those who need it most.

In addition to the complexity and specificity requirements lending themselves to abuses of government administrators, Smith would most likely object to the United States' increased focus on responsibility-centered welfare programs because they fail to account for the pervasive role of fortune in our lives. There is no specifiable, explicable, and precise way to separate the role fortune plays in shaping circumstances from the role responsibility plays in shaping circumstances. For these reasons, Smith would likely look at the negative externalities of the EITC or other work-dependent welfare programs with disdain for their failure to administer exact justice. To illustrate, recall the earlier example of two individuals who are equally responsible in their endeavors to secure employment, yet due to circumstances beyond their control, only one of them gets the job. As conveyed in his discussion of our irregular sentiments, it is likely that the free market will view the employed individual as more merit-worthy than the unemployed individual. Yet, both are equally in need of procuring fundamental necessities of food, education, and general health. To Smith, the government's welfare provisions should not mirror the free market's determinations; rather, in aiming to increase society's aggregate happiness, welfare programs can and should address society's unmet needs resulting from market failure. Thus, it seems that Smith would believe the second individual's failure to get a job should have no bearing on whether the government extends welfare benefits to him.

B. THE DANGERS OF DENYING RESPONSIBILITY

While it is likely that Smith would object to the responsibility-centered framework embodied by our welfare programs today, he also would not advocate for welfare programs that completely ignore individuals' capacity and desire for responsibility. As will be discussed in the following section, welfare policies can foster responsibility and agency without making the satisfaction of basic human needs contingent on bureaucratic administrators'

¹⁴⁶ MOUNK, *supra* note 11, at 93-94.

¹⁴⁷ MOUNK, *supra* note 11, at 93-94.

¹⁴⁸ Yeheskel Hasenfeld et al., *The Welfare State, Citizenship, and Bureaucratic Encounters*, 13 ANN. REV. SOC. 387, 401 (1987).

¹⁴⁹ BANKMAN ET AL., *supra* note 141, at 618.

subjective evaluations of deservedness. With this in mind, this section will discuss the importance of preserving a positive conception of responsibility.

For welfare programs to adopt an approach that downplays, denies, or actively diminishes the degree of agency that underprivileged members of society have would be misguided and potentially dangerous. Casting the poor as helpless victims makes it difficult for others to see them as capable agents and social equals. Even rooted in good intentions, “[this mindset] ultimately serves to belittle and disempower the disadvantaged. Instead of helping them as equals, we end up granting them charity on the understanding that they will forevermore remain unable to better their condition.”¹⁵⁰ Furthermore, when we view the poor as incapable of being responsible altogether or as purely victimized by factors beyond their control, we vastly underestimate human potential.¹⁵¹ If we fail to see potential, we are unlikely to protest when marginalized members of society are given few opportunities to improve, such as receiving systematically inferior access to education or little to no healthcare.¹⁵² Thus, “[a]ny view that has the effect of deepening our impression that some people are much less capable of taking responsibility for their own lives than others—including even well-meaning, left-wing, lamentations for the blameless poor that are ostensibly designed to pave the way to a more equal society—only serve to deepen this radical inequality of status.”¹⁵³

Moreover, as Smith clearly pointed to in his discussion of the utilities of our irregularity of sentiments, there is great social value in thinking of others and ourselves as responsible. This is because it is impossible to have meaningful relationships with others – friends, mentors, lovers, or even political relationships – unless we think of other people as being responsible for what they do.¹⁵⁴ As humans, we are unable to “sustain relationships like friendship and love unless we are able to engage in reactive attitudes, like praise and blame; but [relationships are] exactly what [are] in danger when we cease thinking of others as responsible for their actions.”¹⁵⁵ This observation accords with Smith’s account of the utility provided by the irregular sentiments that led the individual whose horse spooked and injured a nearby pedestrian to nonetheless take responsibility for the harm caused. Even though it was through no fault of his own, the horseback rider took responsibility for the consequences. Doing so allowed for him to be sensitive to the needs of the victim by expressing concern for what happened to the injured individual. Without our irregular sentiments and without thinking of others as being capable of responsibility, there would be no praise or blame ascribed to our actions, let alone an expectation for recourse. Another strong reason to preserve responsibility, then, is that it serves a fundamentally important purpose of facilitating meaningful relationships.

In addition to influencing the ways in which we view each other, taking responsibility for ourselves also gives us confidence that we can shape our

¹⁵⁰ MOUNK, *supra* note 11, at 21

¹⁵¹ Jesse J. Prinz, *Beyond Human Nature: How Culture and Experience Shape the Human Mind* 4 (2012).

¹⁵² MOUNK, *supra* note 11, at 23.

¹⁵³ MOUNK, *supra* note 11, at 168.

¹⁵⁴ MOUNK, *supra* note 11, at 162.

¹⁵⁵ MOUNK, *supra* note 11, at 162.

future to some degree. According to Yascha Mounk, we naturally desire control in our lives; we value feeling that we are, in fact, taking responsibility for ourselves, and we have reason to want to be seen by others as taking responsibility for ourselves.¹⁵⁶ This harmonizes well with the social utility that Smith ascribed to our irregular sentiments in their leading us to “exert ourselves mightily to change the external circumstances of ourselves and our fellows, that is, to master fortune insofar as possible.”¹⁵⁷ In contrast, when people doubt they are capable of agency, it leads to a vicious cycle: “the more we (have reason to) worry about our ability to control our own fate, the worse we actually become at taking responsibility for our own lives.”¹⁵⁸ This implies first, that it is important for institutions to be designed in a way that empowers people to gain a sense of control over their own lives both in the present and in the foreseeable future. When people experience “acute stress or instability, their well-being, their mental, and even their physical health deteriorates.”¹⁵⁹ This points to a second implication, which is that the responsibility-centered framework we focus on today may actually be counterproductive to the extent that its conditional requirements (which aim to incentivize responsibility through rewards and punishment) become a paralyzing source of stress, in turn diminishing the cognitive capacities of those who need help the most.¹⁶⁰

C. SUPPORTING A POSITIVE VIEW OF RESPONSIBILITY IN LIGHT OF SMITH AND LUCK

With increasing emphasis being placed on individual choices and deservedness in determining welfare benefits, we have deviated far from the purpose of welfare institutions that Smith supported in both *The Wealth of Nations* and *The Theory of Moral Sentiments*. Rather than rooting our governments in promoting the happiness of those who live under them, which Smith described as government’s “sole use and end,” government welfare institutions have narrowed their focus to questions about an individual’s perceived merit.¹⁶¹ Is the individual responsible for their position? If so, then he or she is undeserving of welfare benefits. In this way, welfare programs in the United States are no longer operating to serve the government’s overarching purposes, but instead have come to reward the supposedly virtuous while punishing the supposedly undeserving without regard to the role of fortune in shaping their situations. The right response to this responsibility-centered welfare framework is to shift toward value-centered welfare programs – ones that appropriately promote individual agency to develop specifiable, explicable, and precise welfare guidelines that maximize the government’s role as a catalyst for personal and societal happiness where free markets fall short. In doing so, the government can protect citizens from suffering or blame based on society’s ascriptions of

¹⁵⁶ MOUNK, *supra* note 11, at 148.

¹⁵⁷ GRISWOLD, *supra* note 40, at 242-43.

¹⁵⁸ MOUNK, *supra* note 11, at 155.

¹⁵⁹ MOUNK, *supra* note 11, at 155.

¹⁶⁰ MOUNK, *supra* note 11, at 155-56.

¹⁶¹ TMS, *supra* note 1, at 185.

moral desert, tainted by the pervasiveness of fortune, and also avoid the pitfall of denying individual agency.

As suggested by Mounk in *The Age of Responsibility*, this shift would require qualifications for welfare benefits reject a responsibility framework. For example, even “the fact that some people who are destitute are themselves responsible for being in a state of need does not necessarily imply that we should deny them assistance.”¹⁶² Instead, a determination of the government’s collective duties toward individuals in need will depend on the substantive values our welfare programs serve to promote, like wanting to avoid the potential detriments to societal happiness that might result in refusal to provide welfare. The exact list of these values, and their relative weight, are to be determined through democratic debate, but Smith has provided us with important guideposts already. In serving to promote personal and societal happiness, we know that Smith called for specifiable, explicable, and precise government support that was not contingent on moral desert. Even though there are likely many other areas in today’s society where Smith would see a need for governments to actively provide a form of social insurance to promote societal happiness, his writings make clear that at a minimum there are three distinct areas. First, Smith saw that those who provide “food, clothe, and lodge the whole body of the people” should be themselves “tolerably well fed, clothed, and lodged.”¹⁶³ At a minimum Smith’s position would imply that our society’s caretakers, including the employed laborers and the non-employed caregivers of our society, ought to receive sufficient food, clothing, and housing – whether it be through non-conditional refundable credits or non-conditional in-kind benefits. Second, Smith believed that the government ought to participate in the general education of society to foster “happier healthier men in mind and body” and to serve as a check against the “evil effects on the standards, mentality, and character of the working classes . . . and the inequality in the distribution of wealth.”¹⁶⁴ Third, Smith indicates that governments ought to provide some degree of healthcare that promotes general public hygiene.¹⁶⁵ At a minimum, the United States should ensure all three of these basic necessities are provided without regard to bureaucratic administrators’ ascriptions of deservedness that fail to take into account the pervasive role of fortune in our lives. The full extent of these services must be dictated by balancing society’s values through democratic debate.

In addition to reshaping welfare institutions so that they better align with furthering the government’s primary purpose, a shift away from responsibility-tracking welfare programs would lead to three additional benefits. First, we know that making institutions less responsibility-tracking will result in positive externalities. For example, studies have shown that the provision of certain forms of health care to the poor is a “win-win.” Not only do they provide benefits to the direct beneficiaries, but it also protects public

¹⁶² MOUNK, *supra* note 11, at 182.

¹⁶³ WN I-III, *supra* note 97 at 181.

¹⁶⁴ Viner, *supra* note 73, at 218, 227. *See generally* WN IV-V, *supra* note 84, at 348-404.

¹⁶⁵ *See* WN IV-V, *supra* note 84, at 374.

health and boosts economic growth.¹⁶⁶ Second, as noted earlier, responsibility-tracking institutions carry a heavy mental burden on those who are subject to them. By separating receipt of welfare from ascriptions of moral desert, recipients and potential recipients will no longer be subjected to the degrading process of revealing the details of their private shortcomings in public and will no longer have to fear that they may suffer the ravages of poverty should they misstep or encounter bad luck.¹⁶⁷ Third, responsibility-tracking welfare programs risk stigmatizing and degrading supposedly “irresponsible” individuals, on the one hand, or depriving them of the capacity to be responsible as helpless victims, on the other. As such, this shift helps prevent those who make a poor decision or who are subject to bad luck from losing equal standing with their peers and becoming stuck in a cycle of destitution.¹⁶⁸

In rounding out this argument, it should be noted, that this paper does not propose nor suggest that Smith believed that the past decisions of individuals do not have implications about their ability to receive welfare or that people can refuse to be contributing members of society and always be assured the very same treatment as their peers. Rather, this paper argues that welfare administration, according to Smith, should be driven and shaped by the virtues and purposes that governments exist to serve rather than on subjective determinations of an individual’s moral desert. If, on the whole, a specific government program requires an element of conditionality so that its benefits outweigh both the moral hazards of it being unconditional and the suffering that would occur in its absence, then such conditionality may be appropriate. Furthermore, by moving away from responsibility-centered welfare, our institutions have an opportunity to empower individuals to take more responsibility in their private spheres as opposed to enabling slothfulness. As it turns out, “well-designed social insurance programs increase our appetite for economic risk, rather than depress it.”¹⁶⁹ The fear that citizens will succumb to moral hazards seems to be misplaced if the government provides citizens with education, material resources for people to take control of their lives, and a realistic prospect of gainful employment.¹⁷⁰ Given the fact that we intrinsically desire control over our lives and to take responsibility for ourselves, the thought that the government’s unconditional provision of fundamental material provisions to the impoverished will result in a parade of moral hazards is overstated and carries with it a contemptuous view of human character.

V. CONCLUSION

Smith’s account of our irregular sentiments as set forth in *The Theory of Moral Sentiments* serves as a distinct interpretation of what others have called moral luck. From Smith’s suggested utility of our irregular sentiments and their endorsement by the impartial spectator, we can conclude that Smith

¹⁶⁶ See Alok Bhargava et al., Modeling the effects of health on economic growth, 20 J. HEALTH ECON. 423 (2001).

¹⁶⁷ MOUNK, *supra* note 11, at 186.

¹⁶⁸ MOUNK, *supra* note 11, at 187.

¹⁶⁹ KLEINBARD, *supra* note 17 at 404.

¹⁷⁰ MOUNK, *supra* note 11, at 202.

acknowledged the pervasiveness of luck in our world, including some of the harmful implications it has on moral evaluations and our inability to identify its influence. Nonetheless, he was simultaneously committed to the idea that individuals can be responsible for some outcomes and saw great social utility in individuals accepting responsibility for those outcomes. This is distinct from Nagel's view of the problem of moral luck in which the pervasiveness of luck combined with the CP's mandate that individuals cannot be assessed for what is due to factors beyond their control paradoxically jeopardizes the concept of responsibility.

In addition, Smith's writings in *The Theory of Moral Sentiments* and *The Wealth of Nations* make clear that he was not a doctrinaire advocate for laissez faire. Instead, he recognizes the free market's deficiencies and sets forth specific governmental duties intended to offset the negative externalities of a free market and thereby increase society's aggregate happiness. Given the pervasiveness of fortune combined with Smith's requisites for government participation, Smith indicates that governments ought to administer justice through specifiable, explicable, and precise rules. Doing so would render subjective assessments of who the deserving are beyond the scope of government duty.

According to Smith then, the right response to the responsibility-centered welfare framework in the United States today is to shift toward value-centered government programs – ones that appropriately promote individual agency to come up with specifiable, explicable, and precise welfare guidelines that maximize the government's role as a catalyst for personal and societal happiness where free markets fall short. In doing so, the government can protect citizens from suffering or blame based on ascriptions of moral desert (which are unavoidably tainted by the pervasiveness of luck) and, simultaneously, avoid the pitfall of denying individual agency. For it is these ends, not evaluations of an individual's moral desert, that governments are supposed to serve.