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REDISCOVERING ADAM SMITH:
AN INQUIRY IN THE RULE OF LAW, COMPETITION, AND
THE FUTURE OF THE FEDERAL TRADE COMMISSION

I. Introduction

It is my privilege to be here to celebrate the 40th anniversary of CEI, along with the 300th birthday of Adam Smith. CEI has been at the vanguard of free-market advocacy and it is wonderful to combine CEI's anniversary with a celebration of Adam Smith. I will start with a standard

II. Smith's *Theory of Moral Sentiments*: The Epiphenomenal Nature of Morality

Smith's central goal in *Moral Sentiments* was to describe the process by which we form moral judgments.⁹ What Smith found was that individual sentiments emerge through the daily, decentralized exchange of ideas—a spontaneous or unintended order.¹⁰

A simple example is illustrative. Just recently, a new family moved into my neighborhood. My neighbors across the street gave them a welcome package. According to Smith, I would first sympathize with the motives of my neighbors across the street: “they are thoughtful.”¹¹ *Second*, I would think about the gratitude the new neighbor feels toward not just my neighbors across the street but perhaps the new community generally.¹² And *third*, whether I praise the conduct of my neighbors depends on whether their actions are aligned with established rules or norms—clearly in this instance they are.¹³ (Of course, I felt terrible because it took me way too long to deliver our family's welcome cookies—delayed in part by preparing for this speech.)

These sources of moral approval are *micro* in nature. Little by little, we learn from these interactions and develop as we instinctively seek this “mutual sympathy” of sentiments, as Smith describes.¹⁴ Even though we are routinely considered selfish creatures, contrary to some opinion,

First, in refining his notion of moral sentiments, Smith compares two types of men. He describes the “man of public spirit” who respects the choices and decisions of his fellow citizens, even when he himself may find the decisions or consequences problematic.¹⁸ When the man of public spirit is unable to use reason and persuasion to convince someone of their wrong or poorly reasoned decision or choice, he will not attempt to change their mind using force.¹⁹

The “man of the system,” by contrast, is “often so enamored with the supposed beauty of his own ideal plan of government, that he cannot suffer the smallest deviation from any part of it. . . . He seems to imagine that he can arrange the different members of a great society with as much ease

are unrelated to commutative justice—the regulation has the effect of stopping the evolutionary process that is critical to human nature.

III. *Wealth of Nations: The Moral Authorization for Pursuit of Honest Profit*

How government should regulate a market economy is the question taken up by Smith’s second, and more famous book, *The Wealth of Nations*.²⁹ To many readers of Adam Smith, his two greatest books are in tension with one another. But as Professor James Otteson concludes, “such investigations [into human nature] would ultimately be empty and pointless unless they were connected to recommendations that would enable people to lead better lives.”³⁰

And that is what Smith set out to do. Smith understood that for nearly all of recorded history, ordinary humans were, as Smith put it, “miserably poor.” As he described it:

Such nations, however, are so miserably poor, that, from mere want, they are frequently reduced, or, at least, think themselves reduced, to the necessity sometimes of directly destroying, and sometimes of abandoning their infants, their old people, and those afflicted with lingering diseases, to perish with hunger, or to be devoured by wild beasts.³¹

It is easy to take for granted the unprecedented wealth we enjoy today—and more importantly, it is easy to take for granted *why* we enjoy the unprecedented wealth we have today.³² Smith set out to understand *why* some countries were wealthier than others, in his aptly titled *An Inquiry into the Nature and Causes of the Wealth of Nations*. He understood that examining and understanding the institutions, rules, and laws that facilitated the creation of wealth was not just an academic exercise—it was an issue of life and death.

²⁹ Adam Smith, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 10 (1776) (hereinafter *WN*).

³⁰ Otteson, *supra* note 10 at 9 (“So Smith thought the political economist needed to know, first, what the human and other material was with which he had to work, and what the possibilities and limitations of that material were; but, second, the political economist should then use what he learns to recommend behaviors and policies that could enable creatures constructed as we are in conditions like those we face to lead lives worth living. For Smith, this meant he should study human nature the way an empirical moral psychologist today might, but then would draw conclusions about public policy based on his findings. Smith believed that human happiness was a great good, indeed the *summum bonum*, and it required both empirical inquiry and moral philosophy to understand what genuine happiness for human beings is. But Smith also assumed that attempting to achieve it, as well as helping others to achieve it, was a moral imperative”); see also Vernon Smith, *The Two Faces of Adam Smith* S. ECON. 65 J. 1, 3 (1998) (“Thus, Smith had but one behavioral axiom, ‘the propensity to truck, barter, and exchange one thing for another,’ where the objects of trade I will interpret to include not only goods, but also gifts, assistance, and favors out of sympathy, that is, ‘generosity, humanity, kindness, compassion, mutual friendship and esteem.’”).

³¹ *WN* at 10.

³² See James Pethokoukis, *How the West Got Rich?* AEIdeas (May 23, 2016) (comparing average world income two centuries ago of \$3 versus \$33 today and noting that in advanced economics, average income is four times higher than that in advanced economies). Deirdre McCloskey, channeling Adam Smith, explains precisely why we got rich:

The answer, in a word, is “liberty.” Liberated people, it turns out, are ingenious. Slaves, serfs, subordinated women, people frozen in a hierarchy of lords or bureaucrats are not.... To use another big concept, what came—slowly, imperfectly—was equality. It was not an equality of outcome, which might be labeled “French” in honor of Jean-Jacques Rousseau and Thomas Piketty. It was, so to speak, “Scottish,” in honor of David Hume and Adam Smith: equality before the law and equality of social dignity. It made people bold to pursue betterments on their own account. It was, as Smith put it, “allowing every man to pursue his own interest his own way, upon the liberal plan of equality, liberty and justice.”

Bourgeois Equality: A Discussion with Deirdre McCloskey on How ideas Enriched the World (May 3, 2016).

Let me highlight just a few of Smith's insights in the *Wealth of Nations* that relate directly to my broader inquiry into the goals of the FTC.

First, contrary to critics of markets who cite *perfect* competition—or the lack thereof—as a basis for policy, Smith's definition of competition focused on the importance of rivalry between competing individuals seeking to satisfy consumer (vi)--2 (o s)-29-1 (s)9 (e)-2 (e)4 (r)3 ((t)-6)pn-5 (i)cg

or that harms consumers. Understanding the Federal Trade Commission's proper role, relative to other administrative agencies and most importantly Congress, is critical.⁴⁹

To sustain that charter, the Federal Trade Commission must promote the competitive process over competitors.

4. We Should Skate to Where the Puck is Going.

My son plays on a pee-wee hockey team. When we go to his games everything moves a bit slower, like watching the NHL under water. But it's also interesting to see that as the kids get older, they

The effect of denying access to financial services or deplatforming can have the effect of reducing those consumers to second class citizens. I believe it is critical to do more to understand the role that platforms play in controlling access to the digital commons. In a time when cancel culture is rampant—including in corporate America—such concerns are real. To the extent we can wield existing enforcement authorities to combat some of these problems, we should do so aggressively.⁶⁷ I also believe it is critical to do more to understand the role that platforms play in controlling access to the digital commons. To that end, the Commission should use its 6(b) authority to better understand how platforms enforce their terms of agreement or service—and how the enforcement of those terms impacts consumers. The study should also, in part, evaluate