Adam Smith lectured in jurisprudence during his time as Professor of Moral Philosophy in the University of Glasgow (1752–1764). Jurisprudence covered private law and most of public law, and Smith cites generous amounts of Roman law, English law, and Scots law. The lectures are known to us mainly through two sets of students’ notes, based on lectures given in 1762–63 and (probably) 1763–64 respectively. These lectures were part of a larger course of lectures on moral philosophy, and presented the history of laws and institutions in the framework of a certain historical jurisprudence. This historical jurisprudence was not peculiar to Smith; it had been used by some of his contemporaries and predecessors. Montesquieu was probably the first to use it, and other writers, French and

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1. The two lectures are published together in the critical edition: Adam Smith, Lectures on Jurisprudence, ed. R.L. Meek, D.D. Raphael, and P.G. Stein, Oxford 1978, reprinted Indianapolis 1982. The editors have assigned the title ‘Report of 1762–63’ to the earlier, and ‘Report dated 1766’ to the later, of the notes; references to these reports are abbreviated below to LJ(A) and LJ(B), respectively. Interest in these lectures is high, because the notes to LJ(A) were discovered comparatively recently, in 1958. The notes to LJ(B) were discovered in 1895, and published in Adam Smith, Lectures on Justice, Police, Revenue and Arms, delivered in the University of Glasgow, ed. E. Cannan, Oxford 1896. In addition to these two sets of notes, we possess some extracts from a student’s notes to an earlier course of Smith’s lectures, perhaps given in the middle 1750s: R.L. Meek, New Light on Adam Smith’s Glasgow Lectures on Jurisprudence, History of Political Economy, 8 (1976), p. 466–77 [= R.L. Meek, Smith, Marx and After, London 1977, p. 81–91] (‘Anderson Notes’). There are also some brief remarks on the lectures related by Dugald Stewart, professor of moral philosophy at Edinburgh, from an account given to him by one of Smith’s pupils: Dugald Stewart, Account of the Life and Writings of Adam Smith, LL.D. [1793], in: Adam Smith: Essays on Philosophical Subjects, ed. W.P.D. Wightman, J.C. Bryce, and I.S. Ross, Oxford 1980, reprinted Indianapolis 1982, p. 273–76.

2. On the content, see Stewart, Account (supra, n. 1), p. 274–75 (account of John Millar). The moral philosophy lectures covered natural theology, ethics, and jurisprudence, the last of these subdivided into justice and ‘political regulations founded on the principle of expediency’ (= police, revenue, and arms). The distinction between ‘justice’ and ‘police, revenue, and arms’ in Smith’s thought is based on ideas developed in TMS (infra, n. 6), ideas which Smith presented in the lectures on ethics; ibid., p. 274.

Scottish, quickly took it up⁴. Smith was one of its principal contributors⁵, refining the ideas and combining them with the ethics he had developed in *The Theory of Moral Sentiments*⁶.

This essay discusses Smith’s treatment of Roman servitudes and the difficulties he met in bringing servitudes into his historical jurisprudence. These difficulties are not specific to servitudes, but part of a wider problem affecting Smith’s project. The problem very briefly is this. Smith was a highly learned man and entirely at home in the sources of antiquity⁷. But he had set himself the difficult task of explaining the ‘causes’ of laws and institutions, and Roman law gave him a surfeit of information. He sometimes found it difficult to accommodate the information to the theory. Writers in the earlier tradition had an easier task: they made a two-fold division, attributing certain rules to the existence of civil authority, reserving others to the state of nature. Smith aspired to something more difficult and could not be so general in his conclusions: a civilization existed in one or another distinct ‘age’, and the historical data had to be explained causally with respect to each age.

The success of Smith’s historical jurisprudence has always been uncertain. He hoped in his lifetime to complete a book on the general principles of law and government, and he probably intended to treat his jurisprudence more thoroughly there⁸. He was not able to complete the book, and he directed the drafts to be burned

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