

THE ELEMENTS OF A HUMEAN THEORY OF JUSTICE

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ABSTRACT

Ian Cruise: The Elements of a Humean Theory of Justice
(Under the direction of Geoffrey Sayre-McCord)

Hume's theory of justice is wonderfully rich and insightful. His appreciation of the distinction between the natural and artificial virtues, his account of the circumstances of justice, and his theory of conventions and their significance have been and remain important contributions to our thinking about justice. But not many moral and political philosophers are Humeans about justice anymore. There are two related reasons for this. First, his theory of justice has been widely misunderstood. Second, because his theory of justice has been widely misunderstood, it has been dismissed as either 1) open to some insurmountable objections or 2) simply an early and underdeveloped version of a standard view such as utilitarianism or contractarianism. My dissertation defends a novel interpretation of Hume's theory of justice that makes his theory both more plausible than his critics typically think and importantly distinct from the more standard utilitarian and contractarian readings.

According to my reading, Hume's theory of justice is what I call Humean Functionalism. According to Humean Functionalism, justice is the product of social conventions that work to solve important shared problems in a way that would be approved from that Hume calls the General Point of View. This reading allows us to see, despite what critics have claimed, that 1) Hume's account of the scope of justice applies much more broadly than simply to the regulation of property; 2) Hume does not think that the value of justice consists in its role in helping us promote our own self-interest; 3) Hume's account of the circumstances of justice is much more plausible

than the so-called Standard Account, which is typically attributed to him; and 4) Hume can make sense of a concern not only with the stability of goods and opportunities, but also with their distribution.

To Saint David, the Great Scot

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LIST OF ABBREVIATIONS

Co	“Of Commerce”
EPM	<i>Enquiry Concerning the Principles of Morals</i>
OC	“Of the Original Contract”
SBN	Selby-Bigge, Nidditch
T	<i>A Treatise of Human Nature</i>

CHAPTER 1: HUME'S ACCOUNT OF THE SCOPE OF JUSTICE

Abstract: One longstanding objection to Hume's theory of justice is that it renders the scope of justice implausibly narrow, applying almost exclusively to respect for property rights. Such a view would indeed be highly objectionable because it would leave out of the scope of justice requirements to keep our promises, obey the law, and refrain from threats and violence (among many others). I argue that Hume's theory of justice, properly understood, avoids this objection. Once we understand how Hume can avoid this objection, we overcome a significant hurdle on the way to seeing his theory of justice as a genuine competitor with the other major theories of justice in the philosophical literature.

Many philosophers reject Hume's theory of justice out-of-hand on the grounds that it treats justice as being concerned almost exclusively with the maintenance of property rights. Such a theory would indeed be highly objectionable. It could not make sense of why, for example, justice also demands that we keep our promises, obey the law, and refrain from threats and violence (among others). Fortunately for Hume, his commentators are making two serious mistakes. First, they misunderstand Hume's account of the scope of justice, which renders justice's scope much wider than his commentators typically think. Second, they correspondingly fail to appreciate how plausible his actual theory is. My primary goal in this paper is to explain this first mistake. I will bring out Hume's account of the scope of justice and highlight its versatility in offering explanations of why a number of diverse phenomena fall within the scope of justice.¹ Along the

¹ I am not the first to argue that Hume thinks of the scope of justice as wider than his commentators typically think that he does. Annette Baier (2010) also defends this conclusion, though her defense depends largely on his application of the term "justice" to things besides property in his *History of England*. My view is that Hume has a philosophical account of the scope of justice, and my central goal in this paper is bring out that account. This account helps to explain his broader use of the term in the *History*.

way, I develop Hume's important and underappreciated accounts of the obligations of justice and the conditions in which these obligations arise.

Obviously, showing that, for Hume, the scope of justice extends beyond property alone and includes many domains that we typically think fall within it is not sufficient to justify his theory *tout court*. The view faces other serious challenges. Brian Barry (1989) and Martha Nussbaum (2006), for instance, worry that Hume's view can't account for what's wrong with oppression. My view is that they underestimate the resources available to a Humean to explain precisely the problem with oppression. But a complete defense of Hume's view is a piecemeal project, and the goal of this paper is to address only the scope worry. Still, once we answer this major concern, we overcome a significant hurdle on the way to seeing Hume's theory of justice (or a suitably modified version thereof) as a serious competitor with the other prominent theories of justice in the philosophical literature.

Here's the plan. In Section I, I outline the challenge in more detail and provide some textual evidence to push back against it. In Section II, I explain my reading of the basic framework of Hume's theory of justice, focusing on the relationship between obligations of justice and the conventions that give rise to them. This framework is the key to understanding Hume's account of the scope of justice. The scope of justice, for Hume, consists of everything that fits within the framework. In Section III, I show how Hume explains not just the obligation to respect property, but also the obligation to keep our promises and the obligation to obey the law using his framework. In Section IV, I illustrate the versatility of the framework by deploying it to explain (one source of) the obligation to refrain from threats and violence.

Section I: The Challenge

To get a flavor of the worry for Hume's theory, consider Barry Stroud's (1977) disappointed remark: "Even after giving 'the vulgar definition of justice,' according to which justice is '*a constant and perpetual will of giving every one his due*'...[Hume] goes on to discuss nothing but property and one's right to it as that which is secured by the institution of justice" (p. 266). Don Garrett (2007) similarly complains that though Hume sometimes applies the term "justice" to promises (in addition to property), "this usage is only sporadic," and his "very narrow" focus on property is "uncharacteristic even for the period" (p. 282). If these commentators are correct about Hume's view of the scope of justice, then his account is utterly indefensible because, as Gerald Postema (2006) reminds us, "Ordering property relations...is a part of justice, but it is only a part, and not obviously the most important part" (p. 372).²

Of course, if we could reduce all of the other demands of justice to property, the worry might evaporate. For instance, if we embraced a conception of self-ownership, we could make sense of why restrictions against threats and violence fall within the scope of justice because, on such a view, threats and violence would be property rights violations. Similarly, we might try to reduce promising to property by conceiving of a promise as a way of transferring to another person a property right in what is promised, whether that be some good, our time, our labor, or something else. On this view, violating a promissory obligation would be nothing more than violating a property right.

² Other commentators who raise this worry include Antony Flew (1976, p. 10), A.D. Woozley (who bemoans Hume's "obsessive preoccupation with property") (1978, p. 89), and Jonathan Harrison (1980, p. 42).

Yet, there are a number of reasons to resist this attempted response and, in particular, not to attribute it to Hume. First, we might have serious worries about the attempted reductions and the commitments that we have to assume in making them. For example, we would have to adopt the idea that we have property rights in ourselves, which is itself highly controversial.³ But second, and more importantly, Hume is clear that he thinks that our property rights apply only to “external goods” (*T* 3.2.2.9; SBN 489),⁴ which are those easily transferable goods that are external to ourselves (things like tables and chairs). So the view that self-ownership explains why restrictions against threats and violence fall within the scope of justice is simply not open to Hume.

As a result, we shouldn’t attribute this more capacious conception of property rights to him, and so, for the purposes of understanding his view, we shouldn’t try to reduce everything within the scope of justice to property. But once we deny this response to Hume, he appears open to the objection. If he has the ordinary and narrow conception of property rights and that’s the only thing, on his view, to which justice applies, his view is extremely implausible.

³ For arguments against the claim that we own ourselves, see Cohen (1995) (especially Chapter 10), Sobel (2012), and Sobel (2013). For defenses of self-ownership, see Mack (2002), Taylor (2004), Brennan and van der Vossen (2018), and Cudd (2018) (though Cudd proposes some modifications to the concept to make it more attractive).

⁴ Here and throughout this paper, I adopt the citation practice common within Hume studies to cite Hume’s *A Treatise of Human Nature* as “*T*” and his *Enquiry Concerning the Principles of Morals* as “*EPM*.” The numbers within citations to the *Treatise* refer to book, part, section, and paragraph number, respectively, and come from the Clarendon Edition of the *Treatise* edited by David Fate Norton and Mary J. Norton. “SBN #” refers to the page number within the L.A. Selby-Bigge edition of the *Treatise*, revised by P.H. Nidditch. Citations of the *Enquiry Concerning the Principles of Morals* follow a similar pattern. The numbers refer to the section and paragraph number within the Clarendon Edition of the *Enquiry* edited by Tom L. Beauchamp. “SBN #” refers to the page number within the L.A. Selby-Bigge edition of the *Enquiries*, revised by P.H. Nidditch.

So, why, then, do Hume's commentators believe that his theory of justice applies only to property? Some passages encourage this reading. For example, in the *Enquiry Concerning the Principle of Morals*, he writes:

It seems evident, that, in [a condition of extreme abundance of goods], every other social virtue would flourish, and receive tenfold encrease; but the cautious, jealous virtue of justice would never once have been dreamed of. For what purpose make a partition of goods, where every one has already more than enough? (*EPM* 3.3; SBN 183-184)

Here Hume explicitly links justice with “a partition of goods,” that is, a scheme of property rights.

In addition, Hume traces the origin of justice to the origin of property conventions designed (in a loose sense of “designed”) to stabilize possession. He writes:

After this convention, concerning abstinence from the possessions of others, is enter'd into, and every one has acquir'd a stability in his possessions, there immediately arise the ideas of justice and injustice; as also those of *property*, *right*, and *obligation*. (*T* 3.2.2.11; SBN 490-491).

At the very least, Hume must think that property takes pride of place in his theory of justice.

Garrett (2015), I believe, offers the most straightforward reason for thinking that Hume understands the scope of justice so narrowly. He writes, “Hume most commonly uses the term ‘justice’ in a limited way that designates only respect for property. Although he sometimes adds the keeping of promises—which are also a person’s “due”—to the scope of ‘justice’, he more commonly distinguishes promise keeping under the distinct term ‘fidelity’” (p. 262). If Hume applies the term “justice” almost exclusively to respect for property, then the simplest explanation is that he takes the term to apply almost exclusively to respect for property. Moreover, if he applies the term “justice” to property and uses distinct terms (like “fidelity”) for other domains, then he must think that justice applies to property and not to these other domains.

Admittedly, in the section of the *Treatise* in which Hume lays out his account of promising (3.2.5), he uses the term “justice” only once (3.2.5.6; SBN 518) and does not clearly intend, in that

context, to apply it to promise-keeping. However, later in 3.2, he is unambiguous that he conceives of promise-keeping as one of the “fundamental rules of justice” (*T* 3.2.11.2; SBN 567). Moreover, he refers to the “breach of promises” as a form of “private injustice” (*T* 3.2.8.7; SBN 545-546) and claims that the “execution of justice” involves the “performance of promises” (*T* 3.2.8.7; SBN 546). Hume’s inclusion of promise-keeping within the scope of justice, at least in the *Treatise*, is not as “sporadic” as Garrett claims.

In addition, Garrett’s suggestion that Hume wants to distinguish “justice” and “fidelity” doesn’t fit well with the relation that Hume sees between justice and property. As Garrett himself notes, Hume is clear that we find justice in the *respect* for property, not in property itself. Property is the relevant convention, and respect is what it demands. When the convention meets certain normative standards (to be discussed in detail later), its demands are reified as demands of justice. What we have here is a schema with three variables: 1) The type of convention, 2) What the convention demands, and 3) The moral status of the demands of the convention. In this case, property is the type of convention and respect for property is what it demands. When its demands meet certain normative standards, the demands of the convention secure the status of demands of justice.

With this in mind, is Garrett correct that Hume wants to contrast “justice” and “fidelity”? The answer must be no. Were he trying to contrast “justice” and “fidelity,” here’s how he would fill in the schema. Promising is the relevant convention, and some form of behavior is what it demands. When the convention meets certain normative standards, its demands secure the status of demands of fidelity. But that’s a mistake. Fidelity is the form of behavior that the convention demands, not what the demands of the convention become once they meet certain normative standards. The more plausible reading, I think, would have Hume claiming that promising is the

relevant convention, and fidelity is what the convention demands. Then, when the convention meets certain normative standards, its demands secure the status of demands of justice. “Fidelity” occupies the same place in this schema as “respect,” so if we allow (as we should) that Hume finds justice in the respect for property, we should, for that reason, allow that Hume finds justice in fidelity to promises.⁵

Garrett’s reading is on stronger ground when we turn from the *Treatise* to some of Hume’s essays. In “Of the Original Contract,” Hume writes, “It is thus justice or a regard to the property of others, fidelity or the observance of promises, become obligatory, and acquire an authority over mankind” (*OC* 34; Mil 480). Here Hume suggests that the proper way to fill in the schema is as follows. Promising is the relevant convention, *observance* is what it demands, and when the convention meets the relevant normative standards, its demands secure the status of demands of fidelity.

This substantiates Garrett’s suggestion that Hume isn’t entirely consistent in his usage. After all, as I’ve mentioned, Hume explicitly includes promise-keeping within the scope of justice

⁵ Hume appears less careful about this point in the *Enquiry Concerning the Principles of Morals* and in some of his essays than he is in the *Treatise*. In the *Enquiry*, he does seem to distinguish “justice” and “fidelity,” writing, “The case is not the same with the social virtues of justice and fidelity. They are highly useful, or indeed absolutely necessary to the well-being of mankind: But the benefit, resulting from them, is not the consequence of every individual single act; but arises from the whole scheme or system, concurred in by the whole, or the greater part of the society” (*EPM* App. 3.3; SBN 304). Here he distinguishes the virtues of justice and fidelity, despite then going on to outline the ways in which they are similar. However, later on in this Appendix, Hume distinguishes, “justice, order, fidelity, property, society” (*EPM* App. 3.9; *EPM* 307). No one doubts that property falls within the scope of justice (though, if he were being a little more careful, he should have said “*respect* for property”), so it seems reasonable to conclude that Hume intends for fidelity to fall within the scope of justice as well. The right way to interpret the initial passage, then, seems to be that we can distinguish justice and fidelity. They are clearly not one and the same. But fidelity is a distinct mode of justice. It is a way in which one can exhibit the virtue of justice or it is one thing that justice can demand. That’s consistent (and, indeed, harmonizes) with my reading of Hume’s account of the scope of justice.

in the *Treatise*. How, then, should we interpret Hume's account? More generally, how should we interpret a view that is inconsistent? My view is that we should attribute to a philosopher the view that best coheres with the text and when there is an inconsistency, we should resolve the inconsistency by adopting the interpretation that lands the philosopher with the more plausible view.⁶ If that's right, then we should attribute to Hume the view that promise-keeping falls within the scope of justice. For one thing, it's a bit odd to think that the observance of promises and fidelity to promises are distinct, at least so long as observing a promise is supposed to be consistent with fidelity. So Hume might simply have failed to be as careful as he should have been in the essay. Moreover, claiming that violating a promise is an injustice is much more plausible than claiming that it is not (though it is wrong for some other reason). Hume explicitly claims in some places that violating a promise is an injustice, and so we ought to adopt this interpretation of his view.

So the best interpretation of Hume's view is that "justice" applies to fidelity to promises as well as to respect for property. That would leave the scope of justice still quite narrow and, indeed, implausible. But in other places, he suggests that the scope of justice is wider still. One initial point to make here is that Hume calls the whole of 3.2 of the *Treatise* "Of Justice and Injustice," which suggests that he intends all of the artificial virtues⁷ (or, at least, all of the artificial virtues

⁶ I say a bit more in favor of this method of interpretation in Chapter 2.

⁷ How precisely to understand the distinction between natural and artificial virtues in Hume is a matter of some controversy. But the rough idea is that the natural virtues, on Hume's view, are those virtues constituted by a disposition to act from a motive that we both naturally have and that is approved of independently of its relation to any convention. The artificial virtues, on the other hand, are those virtues constituted by a disposition to act from a motive that we do not naturally have and that is approved of only because of its relation to conventions.

he discusses in 3.2) to fall within the scope of justice.⁸ If we accept this point, then allegiance to domestic law, respect for international law, and the duty of chastity all fall within the scope of justice as well.⁹

Additionally, Hume identifies the “laws of justice” with the “laws of society” (*T* 3.2.2.11; SBN 491), which indicates that he thinks of the rules of justice as at least the most basic rules that govern social interaction. Assuming, plausibly, that the rules of property and the rules of promise-keeping are not the only rules we need to enable peaceful and productive social interaction, then Hume must think that the scope of justice is wider than property and promising alone.

This consideration, however, has no force unless we can find an explanation from within Hume’s theory of justice for why the “laws of society” cover more than just the rules of property and promising. I take up that task in Section III. But before getting there, in Section II, I make the case that Hume understands the scope of justice in a broad and at least initially attractive way by offering an interpretation of the structure of his theory of justice. Once we have a firm grip on the structure of his theory, we will be able to see how he applies it to domains other than property and how it naturally extends beyond even those topics that Hume explicitly discusses.

Section II: The Framework of Hume’s Theory of Justice

On Hume’s view, justice arises when conventions successfully solve collective action problems in a certain way. When conventions do this, they give rise to a distinctive species of our moral obligations, obligations of justice. The task of this section is to explain this basic framework.

⁸ Geoffrey Sayre-McCord (2016) notes this point as well in passing.

⁹ Hume’s discussion of chastity is complicated, and his inclusion of it within the scope of justice might look initially implausible (making it too *broad* rather than too narrow). I discuss it in more detail in Chapter 3.

What is distinctive about obligations of justice for Hume? They are obligations to abide by the rules or procedures of the relevant conventions (e.g., property conventions, promising conventions, etc.). But on Hume's view, these obligations take a particular shape. Specifically, they are obligations to do what the rules or procedures of the relevant conventions require when and only when enough of the other participants in the convention constituted by these rules and procedures also abide by them.¹⁰

When conventions generate obligations of justice to abide by them, the obligations have this reciprocal shape. This follows from Hume's conception of what conventions are. According to Hume, a convention:

is only a general sense of common interest; which sense all the members of the society express to one another, and which induces them to regulate their conduct by certain rules. I observe, that it will be for my interest to leave another in the possession of his goods, *provided* he will act in the same manner with regard to me. He is sensible of a like interest in the regulation of his conduct. When this common sense of interest is mutually express'd, and is known to both, it produces a suitable resolution and behavior" (*T* 3.2.2.10; SBN 490).¹¹

Conventions arise from mutual conditional motives to behave in a certain way. We each regulate our behavior in accordance with the convention *provided* that other people do as well. Because conventions depend for their stability (and so for their effectiveness) on the mutual compliance of their participants, when conventions generate obligations, they are reciprocal. That is, our

¹⁰ How many participants is enough is determined by how many participants it takes, in a particular context, to sustain the convention.

¹¹ One might reasonably think that Hume has made a category mistake here. The *convention* is not constituted by the sense of common interest. Rather, the convention is constituted by the rule-governed arrangement that we establish on the basis of our sense of common interest. I think that's right, and the rest of the passage suggests that Hume would agree. We have not established a convention until we establish "a suitable resolution and behavior." Hume is guilty of poor phrasing here, but not a category mistake.

obligations to abide by the rules and procedures depend on others fulfilling their obligations to do the same.

This conditional character of obligations of justice distinguishes them from other sorts of moral obligations. I am, for example, morally obligated to wade into a shallow pond to save a drowning child. But this obligation is not (or, at least, need not be) dependent upon a convention. It is a convention-independent obligation. Obligations of justice, by contrast, are, on Hume's view, convention-dependent obligations.¹² It is because the success of the convention (and so its value) depends on the mutual restraint and participation of each that we have obligations of justice.

What kinds of rules and procedures generate obligations of justice? The answer is those rules and procedures that constitute conventions that arise for the purpose of solving collective action problems that stand in the way of fruitful social interaction. A collective action problem is a problem that arises from the need to coordinate individual behavior in order to secure a socially desirable outcome. Sometimes these problems result from a disconnect between what it is rational for individuals to do and what individuals ought to do to bring about the best result for the group (as in prisoner's dilemma cases). In other cases, the rational thing for an individual to do is the best option for group, but only if everyone in the group takes that option (as in assurance game cases). In either case, in order to solve these problems, we establish conventions.

Do any rules and procedures that constitute a convention that solves a relevant collective action problem generate obligations of this kind? No. Hobbes's Leviathan solves some of the

¹² This distinction between convention-independent and convention-dependent obligations roughly corresponds to Hume's famous distinction between the natural and the artificial virtues. I say "roughly corresponds" because virtues are obviously different from obligations, and it is not the case, on Hume's view, that we are obligated to possess all of the virtues.

relevant collective action problems, but not in a way that generates obligations.¹³ As Hume points out:

‘Tis certain, therefore, that in all our notions of morals we never entertain such an absurdity as that of passive obedience, but make allowances for resistance in the more flagrant instances of tyranny and oppression. The general opinion of mankind has some authority in all cases; but in this of morals ‘tis perfectly infallible. Nor is it less infallible, because men cannot distinctly explain the principles, on which it is founded. Few persons can carry on this train of reasoning: “Government is a mere human invention for the interest of society. Where the tyranny of the governor removes this interest, it also removes the natural obligation to obedience. The moral obligation is founded on the natural, and therefore must cease where *that* ceases; especially where the subject is such as makes us foresee very many occasions wherein the natural obligation may cease, and causes us to form a kind of general rule for the regulation of our conduct in such occurrences” (*T* 3.2.9.4; SBN 552-553).

Hume endorses this train of reasoning, and so he must think that not just any convention that solves a collective action problem can generate obligations of justice. This is not to say that Hume’s view has no affinities with Hobbes’s. Both Hume and Hobbes think that obligations of obedience to the law spring from problem-solving conventions sustained by the compliance of many people. Hume, however, rejects the Hobbesian view that oppressive and tyrannical conventions can generate obligations of justice. For this reason, it is not enough that a convention solve the relevant problem. It must solve the problem in a certain way, namely, in a way that would secure approval from a certain neutral perspective that Hume calls the General Point of View.

On Hume’s view, approval and disapproval from the General Point of View sets the standard of morality.¹⁴ I obviously can’t defend a standard of morality here. I can, however, give

¹³ The Leviathan might generate obligations of the relevant kind if the Leviathan were the only genuine alternative to the Hobbesian state of nature. And Hobbes himself thinks that it is indeed the only alternative. But that’s clearly false, as history has demonstrated. Not only are reasonably democratic, non-authoritarian states quite stable, non-democratic, authoritarian states tend to be quite unstable.

¹⁴ I am taking on an interpretive commitment here, which I shall not defend. In particular, I am assuming that when one takes up the General Point of View, one can evaluate things like

a flavor of Hume's reasons for endorsing it. Hume is a sentimentalist. That is, he thinks that, at the most fundamental level, we make sense of morality by appeal to our sentiments (rather than, for example, by appeal to the faculty of reason). A standard problem for sentimentalist accounts of morality is that they appear to collapse into a pretty crude and objectionable form of relativism. The reason is simply that our sentiments vary quite a bit. They tend to bias us in favor of those close to us. They are also sensitive to seemingly morally irrelevant features of other people and situations. In short, our sentiments don't look like a good candidate for the more neutral perspective that we would expect of the moral point of view.

Hume fully agrees with these criticisms of such crude versions of sentimentalism (*T* 3.3.1.15; SBN 581). He thinks, however, that the proper response to these criticisms isn't to reject sentimentalism, but rather to focus on the sentiments we would have were we to evaluate things while taking up a neutral perspective, which he calls the General Point of View. The precise character of the General Point of View is up for debate (and, indeed, has been debated).¹⁵ But whatever account we ultimately give, it has certain advantages as the perspective approval and disapproval from which sets the standard of morality.

First, as a sentimentalist standard, it gets many of the traditional advantages of sentimentalism. For example, we get a plausible account of the strong connection that many philosophers take to obtain between moral judgment and motivation.¹⁶ We can also make sense

conventions and the rules and procedures that constitute them. Some commentators think that when one takes up the General Point of View, one can only evaluate traits of character. I see no definitive textual evidence for this interpretation, and more importantly I see no philosophical reason for this restriction. See footnote 21 for more discussion.

¹⁵ See, for example, Sayre-McCord (1994), Cohon (1997), and Abramson (1999).

¹⁶ How strong this connection is (or needs to be) is a matter of some controversy. Motivational internalists think that there is a necessary connection between moral judgment and motivation,

of the fact that moral sentiments, as a matter of fact, seem to play an important role in moral judgment.¹⁷ Second, and crucially, we get the benefits of a sentimentalist account while avoiding the relativism objection. Third, Hume explicitly claims that the General Point of View plays the role of *regulating* our judgments, thereby rendering communication about matters of value possible (*T* 3.3.1.15; SBN 581). Being able to communicate our value judgments to one another intelligibly is crucial, Hume thinks, to our ultimately settling on a shared way of life.

Let's return to the role of the General Point of View in the specific case of justice. What must a convention be like in order to secure approval from the General Point of View? It must meet a number of constraints. First, a convention must actually work to solve the relevant problem. Obligations of justice do not emerge from consistently ineffective conventions for the reason that such conventions lack value, and only valuable conventions establish justice (*EPM* 3.1; SBN 183).

Second, a convention must generate overall expected benefits for *each person*, and not just the aggregate. I say "*overall* expected benefits" because these conventions can demand sacrifice. Hume writes, "But however single acts of justice may be contrary, either to public or private interest, 'tis certain, that the whole plan or scheme is highly conducive, or indeed absolutely requisite, both to the support of society, and the well-being of every individual" (*T* 3.2.2.22; SBN 497). Particular demands of justice might be bad for the person required to satisfy them or even bad for the community as a whole. In fact, it might be burdensome for people to fulfill *each and every* demand of justice to which they are subject. But the "whole plan or scheme" (that is, the

although some of them think that the necessary condition holds only when certain background conditions also hold. Motivational externalists deny that the connection is necessary. I see no reason to interpret Hume as holding so strong a view as that the connection between moral judgment and motivation is necessary. See Sayre-McCord (2008) for a defense of the claim that Hume is not a motivational internalist.

¹⁷ For a survey of some of the relevant empirical evidence, see Prinz (2007), pp. 21-29.

convention) can be expected to be good overall for both the community and each person. When the community members generally abide by the rules of the convention, that generates benefits for *each person* in the community.¹⁸

I say “overall *expected* benefits” because a convention, for a variety of reasons, might not actually provide benefits to particular people. For example, a national defense convention requiring military service might very well not benefit a particular soldier (for example, one who is killed in the line of duty very early on in his or her service). But such a convention nonetheless offers expected benefits to each person, including the soldiers, as long as the state isn’t too quick to go to war and doesn’t send its soldiers on suicide missions (and, in fact, this is a nice explanation for *why* states ought not to be too quick to send their soldiers to war or to send them out on suicide missions).

Hume’s claim that the conventions must produce overall expected benefits for both the community and each person is sometimes glossed as the claim that the conventions must be mutually beneficial. This phrase—“mutually beneficial”—is misleading for two reasons. First, the claim that a convention must be mutually beneficial is at best silent on whether any particular demand that the convention makes must benefit each person. Second, the claim doesn’t capture the fact that the benefits need only be expected. Nonetheless, the label “mutually beneficial” is convenient, so I will use it going forward to describe a convention that provides overall expected benefits to the whole community and to each person.

¹⁸ One might wonder at this point if my obligation to do as justice demands is grounded in the fact that participation in the convention overall benefits *me* (a kind of rule egoism) or if it is grounded instead in the fact that the convention generates benefits for *each*. In Chapter 2, I defend the latter interpretation.

There are two reasons that these conventions must be mutually beneficial. First, conventions depend for their stability on *compliance*. If people didn't comply with them, they would fall apart. In order to secure compliance, they must offer overall expected benefits for each. If they fail in that regard, then those who see no prospect of benefitting would be unlikely to comply, which would destabilize the conventions.

Second, only conventions that are mutually advantageous would secure approval from the General Point of View. When we take up the General Point of View, we occupy a perspective from which we sympathize with each of the convention's participants.¹⁹ We couldn't occupy this perspective and yet approve of a convention that failed to provide the prospect for benefit to even one of its participants, as long as there is a possible convention that would provide the prospect for benefit to each.²⁰ By meeting these two conditions, the conventions, our acts of abiding by the

¹⁹ Why do we sympathize with each rather than with the aggregate or with an average? In Hume's discussion of the General Point of View in 3.3, his account is genuinely ambiguous among these options. The primary textual evidence that, at least in the case of justice, we sympathize with each rather than with the whole of society comes in 3.2 in the passage already quoted above: "But however single acts of justice may be contrary, either to public or private interest, 'tis certain, that the whole plan or scheme is highly conducive, or indeed absolutely requisite, both to the support of society, *and the well-being of every individual*" (my emphasis) (*T* 3.2.2.22; SBN 497). Here Hume claims that the relevant conventions provide overall expected benefits not only to society as a whole, but also to each individual. The only plausible explanation is that when we take up the General Point of View, we sympathize with each individual rather than with the whole society.

²⁰ This raises a crucial question about the *distribution* of these benefits. My view is that if a convention works to solve a problem in a way that would be approved from the General Point of View, then it would have to meet certain distributive standards (which might vary depending on the convention and the problem being solved), but I don't have space to defend that claim here. I discuss this issue in depth in Chapter 4. For now, let me just say that I don't think that Hume is defending a distributive principle as weak as a Pareto optimality standard. A distribution could be Pareto optimal and yet leave people very badly off. So it's not just that a convention must provide the prospect for benefit to each. As I understand Hume's view, a convention must provide at least some minimal threshold of benefits to each.

conventions, and the motive to do one's part in the maintenance of the conventions secure approval from the General Point of View.²¹

This discussion of mutual benefit raises an important question about the relationship between justice and self-interest. One might easily misunderstand Hume's view here as suggesting that the demands of justice are ultimately the product of some form of enlightened self-interest. After all, a crucial feature of any convention that would secure approval from the General Point of View is that it provides overall expected benefits for the community *and each individual*. As a result, one might be tempted to think that our moral obligations to do as justice demands are simply a result of the fact that self-interest demands that we abide by the conventions in order to put ourselves in the best position to secure their benefits for ourselves.²²

This is a mistaken impression. While Hume does believe that it is self-interest that plays the most significant role in the *establishment* of the conventions, he does not believe that self-interest is ultimately what guides the *approval* of the conventions from the General Point of View. Self-interest has only the following limited role in guiding our approval: It is important in the establishment and maintenance of the conventions that each person can expect to benefit overall from them.²³ So it is in each person's interest to participate in the conventions (in comparison

²¹ I mention three different things that could be approved from the General Point of View because it is not entirely clear what Hume takes to be the object of approval. In one place, he argues that we don't approve of actions except to the extent that they are signs of virtuous motives (*T* 3.2.1.2; SBN 477). But in another place, already cited, Hume claims that actions can be the object of approval without restriction (*T* 3.2.5.4; SBN 517). And there seems to be no particular barrier to our approving or disapproving of conventions themselves. However, resolving this issue would require textual analysis that is beyond the scope of this chapter.

²² David Gauthier attributes a view of this sort to Hume in his (1979) and (1992). I respond to his interpretation in more detail in Chapter 2.

²³ This, I take it, is what Hume means when he writes, "The moral obligation is founded on the natural, and therefore must cease where *that* ceases" (*T* 3.2.9.4; SBN 552-553). Whether we are

with non-participation), and because it is in each person's interest to participate, each person is more likely to comply with the conventions. Compliance is crucial for effectiveness, and effectiveness is important for securing approval from the General Point of View.

But when I take up the General Point of View, I do not approve of the conventions because I expect them to benefit *me*. Rather, I approve of the conventions from the General Point of View because I expect them to benefit *each*. As Hume writes, “*self-interest is the original motive to the establishment of justice: but a sympathy with public interest is the source of the moral approbation, which attends that virtue*” (T 3.2.2.24; SBN 499-500).

In this passage, Hume is concerned with the virtue of justice rather than the conventions. But his account of the virtue of justice is derivative of his account of the value of the conventions. As I argue in more detail elsewhere, the virtue of justice, for Hume, is the disposition to act from a concern to do one's part in conventions that realize both instrumental and what I call *functional* value.²⁴ This is the kind of value that a convention has when it is well-suited to solve a collective action problem in a way that generates overall expected benefits for the community and for each person (whether it always succeeds or not). Thus, the motive upon which the person with the virtue of justice acts depends on the presence of conventions that realize this kind of value. And approval of that motive is dependent upon its relation to the maintenance of conventions of value.

As a result, we should interpret Hume's appeal to “a sympathy with the public interest” as an appeal, ultimately, to the value of the conventions. Because of our sympathy with the public interest, we approve of those conventions that realize functional value. In other words, we approve

morally obligated to abide by the conventions is dependent upon their serving our self-interest. But we are not morally obligated to abide by them *because* they serve our self-interest.

²⁴ I defend this claim in my “Hume's Justice and the Problem of the Missing Motive” (ms.).

of those conventions that solve collective action problems in a way that secures overall expected benefits both to the community as a whole and to each person.

Why would our *obligations* depend on the value of the conventions? Hume's account of moral obligation (which I develop in greater detail in Chapter 2) explains why. For Hume, we lie under moral obligation to do something just in case we would disapprove of failing to do it from the General Point of View (T 3.2.5.4; SBN 517). In the case of justice, we would disapprove, from the General Point of View, of failing to abide by the conventions just when the conventions themselves secure approval from the General Point of View. Our obligations of justice are grounded in our approval of the conventions, but our disapproval of failing to do as the conventions demand bridges the gap between our approval of the conventions and their generating obligations of justice.

Let's call the view I've been sketching in this section *Humean Functionalism* about justice because for Hume, justice emerges from conventions that occupy a certain social functional role, namely, the role of solving collective action problems in ways that would secure approval from the General Point of View. This is the basic framework of Hume's account of justice. Thus, in determining Hume's account of the *scope* of justice, we simply need to examine all of the places in which this basic framework applies. First, we need to identify a collective action problem and the way it arises. Second, we need to see how a convention solves the problem. Finally, in evaluating the convention, we need to determine whether it would secure approval from the General Point of View. If it does, then it establishes obligations of justice. The goal of the next section is to show how Hume applies this basic framework to several of the conventions he discusses in 3.2 ("Of Justice and Injustice").

Section III: Widening the Scope

In 3.2, Hume discusses five problems, their geneses, and their solutions. The three on which he spends the most time and which he seems to regard as most important are the problems solved by the conventions of property, promising, and domestic law. The other two concern the conventions of international relations and chastity. I'll focus my discussion in this section on property, promising, and law and leave the application of the framework to international relations and chastity as an exercise for the reader.²⁵

III.a. Property

The Problem

On Hume's view, in the absence of property conventions, we face a problem, one that we must overcome if we are to be able to interact with one another securely and productively. The problem is the product of two conditions. The first condition is our limited benevolence. That is, we care more for ourselves, our families, and our friends ("those close to us" for short) than we do more distant others. And because of our limited benevolence, we work to advance the interests of those close to us more ardently than the interests of more distant others.

²⁵ A quick note about chastity. One reason I am leaving aside an extended discussion of Hume's account of chastity is that it is a challenge to interpret. Hume does clearly identify a problem in need of a solution (*T* 3.2.12.3-4; SBN 570-571), but he also notices a number of ways in which standards of chastity, and in particular the ways that standards of chastity apply to a greater degree to women than men, make no sense (*T* 3.2.12.7; SBN 572-573). So it is not clear, in the end, where Hume comes down on the status of chastity as a virtue and so on its relation to justice, which is a virtue. My hunch is that, particularly with the advent of paternity testing (which, of course, didn't exist in Hume's time), Hume would regard the supposed problem to which chastity is the solution as no longer a problem. The remaining justification for chastity (to hold together committed marital relationships, which in turn are beneficial to society) applies equally to men and women, though, of course, there is plenty of room to doubt whether there is any problem here for it to solve. Fidelity to one's partner (or to the arrangement that one agrees to with one's partner), whether within marriage or not, on the other hand, does help to solve a problem worth solving. I discuss this in more detail in Chapter 3.

The second condition is the moderate scarcity of external goods. According to this condition, goods must be in such a supply that we can expect to gain from the social productive process. Hume's view is that were these goods in superabundance or in dramatic scarcity, we could expect no gain from the productive process (*T* 3.2.2.17; SBN 495, *EPM* 3.2-3; SBN 183-184, *EPM* 3.8; SBN 186-187). This seems clearly true in the case of massive scarcity. If there were simply not enough goods to be improved and distributed, then the productive process would have nothing to work on, as it were.

When combined, these two conditions—limited benevolence and moderate scarcity (which constitute the normal conditions in which human beings find themselves)—cause a problem: the problem of the instability of possession.²⁶ Here's how the problem arises. Because we have limited benevolence, we are more concerned to ensure that those close to us are provided for and benefitted than we are to ensure that others are provided for and benefitted. Hume writes, "This avidity alone, of acquiring goods and possessions for ourselves and our nearest friends is insatiable, perpetual, universal, and directly destructive of society" (*T* 3.2.2.12; SBN 491-492).²⁷ When this condition is combined with the fact of moderate scarcity, what we get is competition for goods. If I possess something that you could use to benefit those close to you and the only way that you can get it is by taking it from me, you will do so, on the assumption that you can anticipate no greater benefits from leaving me in possession of it. Once you take it from me, however, I will try to take it back. The sad and predictable result is that possession becomes insecure and each of

²⁶ These conditions partially constitute the standard account of "the circumstances of justice," a term coined by Rawls (1999). In Chapter 3, I discuss Hume's account of the circumstances of justice in more detail.

²⁷ Hume might be employing a bit of hyperbole here. I'm not so sure that this drive is actually "insatiable" and "perpetual." But some level of it is clearly present in most people, and the problem to which it contributes would still result.

us is worse off than we would be if we would only leave each other in secure possession of needed goods. This, Hume thinks, is the fundamental problem standing in the way of secure and productive social interaction. Until we secure possession, we can't interact with each other with sufficient trust.

The Solution

According to Hume, the solution to this problem is property conventions. We have a mutual interest in solving the problem of the instability of possession. This problem can be solved only if we refrain from taking each other's possessions. As a result, we need conventions that establish who rightfully gets to possess what and when. We express our interest in resolving this problem to one another, perhaps by simply refraining from taking each other's possessions (conditional upon their not taking ours). The benefits of our not seizing one another's possessions generate a motive to refrain. The rules that define this convention constitute the rules of property.²⁸

In his discussion of property, Hume seems pretty clearly to have private property rights in mind. In addition, he has views about how these property conventions should be structured. He thinks, for example, that property rights ought to pass via inheritance within families, and he makes no obvious effort to propose any restrictions on such passage. He also privileges present and long-standing possession in determinations of property rights (see *T* 3.2.3 for his full account). It is important to note, however, that Hume's official position must be that any set of conventions that adequately solves the problem of the instability of possession (in a way that would be approved from the General Point of View) is justifiable.

²⁸ I should note that, at least in his account of the *emergence* of property conventions, Hume is clear that it could take quite a while for property conventions to be established. He doesn't expect us all immediately to see the benefits of such conventions and then modify our behavior in light of this recognition. Property conventions develop over time (*T* 3.2.2.10; SBN 490).

There might be other conventions, besides those of private property rights, that do as good a job or even a better job of solving the problem of the instability of possession. Perhaps public ownership of goods with designated times of possession would solve the problem.²⁹ Perhaps conventions allowing for property in the sense of private holding and exclusive use of goods but with restrictions on the terms of use and requirements concerning what a person must do with excess goods would solve the problem. Which conventions would adequately solve the problem within the relevant constraints seems to me ultimately an empirical question. But the point is that Hume conceives of private property as a solution to a particular problem. If conventions besides those of private property would solve the problem adequately, then those conventions would be justified and could generate obligations of justice by Hume's own lights.

It is also worth noting that stabilizing possession is not the only benefit of property conventions, and so the problem of the instability of possession is not the only problem that we face in the absence of property conventions. In addition to stabilizing possession, property conventions also enable productive exchanges and thereby stimulate social wealth creation. Thus, property conventions not only protect us from the threats of others, but also foster cooperation and social and economic opportunity, which is why Hume's discussion of property naturally leads into his discussion of promises and contracts.

²⁹ The standard worry for this kind of approach to solving the problem is Hayek's "local knowledge problem" (Hayek, 1945). The idea is that centralized control of the distribution of property would be inefficient because it wouldn't be possible for a centralized institution to possess enough knowledge of local demand to allocate goods efficiently. Firms operating within free markets, on the other hand, are better able to acquire this knowledge, or so the argument typically goes. I take no stand on the strength of this concern.

Summary

Social interaction brings a number of benefits that would be otherwise impossible to realize. But the possibility of social interaction is (partially) dependent on our solving a particular problem, the problem of the instability of possession. We solve this problem, according to Hume, through a set of property conventions. Self-interest motivates us to establish these conventions. But when these conventions solve the problem of the instability of possession in a way that generates overall expected benefits for the community and for each person, they secure approval from the General Point of View. And conventions of this kind create obligations of justice to abide by their demands.

III.b. Promising

The Problem

As with the conventions of property, the conventions of promising, on Hume's view, arise as the solution to a problem that is itself the product of certain conditions. One of these conditions is, again, limited benevolence (*T* 3.2.5.8; SBN 519). The other is uncertainty about the future behavior of others (*Ibid*). To illustrate, consider Hume's case of two farmers, A and B (*T* 3.2.5.8; SBN 520). A's crops will be ready for harvest tomorrow and B's crops will be ready to harvest next week. A will be better off if she can get B to help harvest tomorrow. B will be better off if she can get A to help harvest next week.

In this case, A and B have an opportunity for mutual gain. But the benefits to A are available tomorrow whereas the benefits to B aren't available until next week. As a result, B must decide whether or not to help A before securing her hoped-for benefits. The problem is that both A and B have limited benevolence. B wonders whether she should help A to harvest her crops tomorrow, hoping for A's help next week. She cannot be sure what A will do even once B helps.

She does know that once A has secured these benefits, then A anticipates no further benefits from the transaction. Maybe A will help and maybe not. But regardless, B would be relying on A's gratitude, which, as Hume points out, is "slender security" (Ibid). Anticipating this sad result, B does not help out A and both are worse off. B can't fully anticipate A's future behavior, but she does know that A has limited benevolence, so she can't *trust* that A will help next week.

The Solution

The solution to this problem, Hume argues, is a convention that assigns a distinctive moral significance to a "*certain form of words*" (T 3.2.5.10; SBN 522), words like "I promise" and others that implicate a promise. This convention solves the problem by putting each of us in a position to trust what others say that they will do.

The explanation and justification of the conventions of promising have precisely the same structure as the explanation and justification of the conventions of property. We face a problem that is the product of certain conditions (in this case, limited benevolence and our uncertainty about the future behavior of others). The solution to this problem is a convention established in hopes of securing the benefits associated with solving it. And once again, these conventions establish an aspect of justice, in particular the obligation to keep promises.

A reasonable worry about this account is that the institution of promising seems to have a greater function than Hume's example of the farmers appears to allow. In particular, promises are not just useful (and certainly don't just obligate) either when they are mutual (I promise to ϕ on the condition that you promise to ψ) or when the benefits are realized at different times by the parties to the promise, as in the case of the farmers. So if we are to make sense of the institution of promising as a solution to a problem, we either need a more general statement of the problem

or we need to provide a patchwork of problems that, together, could account for the range of promises.

On my reading, the particular condition (mutual reliance with time asymmetric benefits) that Hume uses to account for the emergence of promising is just a specific, and particularly stark, illustration of a general point. The general point is that lack of trust in what each of us says that we will do compromises opportunities for benefit. In fact, Hume concludes his story about the farmers as follows: “Both of [the farmers] lose [their] harvests *for want of mutual confidence and security*” (my emphasis) (*T* 3.2.5.8; SBN 521).

What generates this lack of trust? Our limited benevolence is, of course, part of the explanation. We are not typically motivated to help others out without the expectation of benefits in return. But what’s really important, as I’ve suggested, is that we can’t be fully confident in how people will behave in the future. We need to cooperate in order to produce the benefits of society. In order to foster this cooperation, we need to be able to rely on others to do what they say they are going to do. However, we cannot read others’ intentions off their words or actions, at least not until a convention helps us to become more confident in others’ words. This is the function of conventions of promising, to help to foster the cooperation necessary to the production of the benefits of society by making each of us more confident that others will do what they say they will do. Thus, the function isn’t just to address the limited range of cases that Hume discusses, though those cases are certainly central to commerce. His account has the resources to explain the range of cases in which promises obligate.

Summary

Fruitful social interaction is dependent upon our being able to rely on others to do what they say they will do. In order to foster trust in what we say we will do, we establish promising

conventions. Self-interest incentivizes us to establish and participate in the conventions, and the fact that these conventions solve the trust problem in a way that generates expected overall benefits for the community and for each person secures their approval from the General Point of View. Conventions of this kind generate obligations of justice to abide by their demands.

III.c. Law

The Problem

According to Hume, as societies grow, the interest that each of us has in strictly regulating our conduct by the conventions of property and promising appears to us less pressing. We are tempted to think that breaching the convention's rules when we can secure a gain is worth it because we don't think that our behavior will cause any serious "disorder and confusion" (*T* 3.2.2.24; SBN 499). Part of the explanation is that we have a hard time seeing the benefits of the conventions when those with whom we interact and those on whom we depend for the maintenance of the conventions are both more physically and socially distant from us. This threatens our motivation to abide by the conventions.

The other part of the explanation is that we suffer from a general psychological distortion, namely, that we sacrifice long-term advantages for smaller, present advantages (*T* 3.2.7.3; SBN 535).³⁰ Hume is not pointing only to cases in which we recognize that the long-term advantages are superior to the short-term advantages, the short-term advantages come at the cost of the long-term advantages, and yet we go for the short-term advantages anyway. This is a form of practical irrationality.³¹ Rather, Hume is, in addition, drawing our attention to the fact that we

³⁰ Hume makes the same point in his essay "Of the Origin of Government." See *Essays: Moral, Political, and Literary*, p. 38.

³¹ Though see Morton (2017) (and the "ecological rationality" tradition heralded by Gigerenzer [2008] more generally) for an argument that this norm doesn't apply in all contexts.

systematically undervalue long-term advantages. These mistakes cause a problem. The problem, of course, is that if everyone thinks and acts this way, we will indeed experience long-term disadvantages. The conventions will crumble, and secure and productive social interaction will become impossible.

The Solution

The remedy, according to Hume, is government under law. Legal conventions, particularly those that establish sanctions for violations of the law, significantly increase the costs of violations of the conventions that they are designed to protect. Because of these increased costs, even if we systematically undervalue long-term advantages, we aren't (at least typically) tempted to think that violating the rules of the conventions is worth it. Seeing our self-interest tied up in our mutual restraint is important for the establishment of legal conventions. And moreover, just as in the cases of property and promising, once we see that the conventions generate overall expected benefits for both the community and for each person, we approve, when we take up the General Point of View, of those who obey the law and disapprove of those who break the law.

Summary

Hume's account of law has precisely the same structure as his account of property and promising. He identifies a problem (in this case generated by our tendency to undervalue long-term benefits). He then shows how the relevant legal conventions solve the problem he identifies. When these conventions solve the problem in a way that creates overall expected benefits for the community and for each person, they secure approval from the General Point of View. And the conventions of these sorts generate obligations of justice to abide by their demands.

This view clearly does not have the implication that the demands of a legal system always generate an obligation to obey them because the legal system must meet important normative

standards in order to generate obligations of justice. But this view might seem to imply that the legal system itself cannot be unjust. It can obligate or fail to obligate, but it cannot be unjust. And we can say the same thing more generally about conventions for Hume. They can obligate or fail to obligate, but they can't themselves be unjust. And one might think that this result is unpalatable.

I think that there are two ways forward for Hume. The one that I believe Hume himself endorses is to bite the bullet, but to try to soften it up first by explaining why conventions that we might want to call unjust are bad or otherwise morally objectionable, even if not unjust. And he has the resources to do just that because he can always appeal to approval and disapproval from the General Point of View as a normative standard that anything, including conventions themselves, needs to meet. A convention that fails to meet that standard not only fails to obligate (and so is removed from the domain of justice and injustice altogether), it is downright morally objectionable. And once Hume gets the result that the convention is morally objectionable, the issue of whether we call it unjust or not seems less pressing.

The other way forward would require abandoning the letter, though not the spirit, of Hume's view. What causes the problem for Hume is that he indexes the demands of justice to the demands of certain conventions. Thus, strictly speaking, conventions themselves cannot be unjust (unless they somehow demand that we violate the terms of some other convention, but set that aside). A *Humean*, rather than Hume himself, might relax this view a bit and claim that, while conventions are important for fixing the demands of justice, we can call a convention unjust if it makes demands that could not be part of any convention that would secure approval from the General Point of View. As a result, in the legal case, we could call a legal system unjust if it makes demands (that is, includes laws) that no legal convention that secures approval from the General Point of View could make.

One might object to this second proposal as follows. If a legal system is unjust if it fails to secure approval from the General Point of View, why isn't anything that fails to secure approval from the General Point of View unjust? If nothing blocks this slide, then we lose any way of distinguishing justice from other parts of morality. One answer is that a legal system is a convention and justice is tied, on Hume's view, to conventions. So what blocks the extension of justice to anything that fails to secure approval from the General Point of View is that "anything" includes non-conventions. Moreover, the proposal explicitly maintains the connection between justice and conventions by holding that the injustice of a convention consists in its failing to generate obligations of justice in virtue of its failing to live up to the normative standards for conventions that Hume's view establishes. This is a departure from Hume's view, but, I believe, not one that abandons its spirit. It retains the important connection between justice and conventions.

There's a lingering concern here, though. If the proposal were to maintain that the obligation to change unjust conventions is itself an obligation of justice, then on its face, that would require us to abandon even the spirit of Hume's account. This obligation could be an obligation of justice, even for Hume, if we had a convention constituted by rules about how to address unjust conventions. But in the absence of such a convention, to retain the spirit of Hume's view, this proposal would need to maintain that the obligation to address unjust conventions is not an obligation of justice. It is a different kind of moral obligation.

Summary of the Section

Hume methodically applies the basic framework of his account of justice to each of the topics he discusses in 3.2. He begins by locating a problem and finding that the solution to this problem is a convention. When this convention successfully solves the problem in a way that

would be approved from the General Point of View, it generates obligations of justice to abide by it. Any domain that fits this schema falls within the scope of justice, as Hume conceives of it. Thus, we have no reason to think that Hume's account of the scope of justice ends where 3.2 ends. It extends to *any* domain that fits the schema.

Section IV: Threats and Violence

My goal in the previous section was to bring out that Hume's account of justice is best understood as a general framework for understanding a distinctive moral phenomenon, namely, the obligations that we have in light of our participation in mutually advantageous conventions. It is worthwhile to explore other domains in which this framework applies. How might Hume's account of justice be extended to make sense of other domains that many have thought fall within the scope of justice? Let's investigate the prospects of extending his account to one such domain: restrictions against threats and violence.

Some commentators have noted the oddity of Hume's not discussing these issues at any length. James Baillie (2000) writes, "[Hume's] emphasis on property, rather than equally obvious factors such as protection from personal assault, is because out of the three kinds of goods existing in the state of nature, only material possessions can be transferred to someone else" (p. 156). Francis Snare (1991) comments, "It seems odd that Hume does not mention murder, assault, defamation, etc., in his discussion of justice" (p. 210). I've already argued that Hume's account of justice is not limited only to the regulation of goods that can be easily transferred between people, and so only to property, but it is still worth investigating whether Hume can overcome this concern.

The closest we get in the text to an explanation for why Hume does not discuss violence in the context of justice is that he doesn't appear to regard it (or the threat of it) as a significant

problem standing in the way of the establishment of society. He claims that the “external advantages of our body...may be ravish’d from us, but can be of no advantage to him who deprives us of them” (*T* 3.2.2.7; SBN 487). The thought seems to be that people would have no motive to attack one another, except perhaps insofar as doing so is a way of getting another’s possessions, because merely doing physical injury to someone is not to our advantage.³² If that’s correct, then establishing property conventions should eliminate the only motive to violence that we have. Unfortunately, this view isn’t very plausible. Cutting off your arms would be a great way of ensuring that I win our fencing competition tomorrow. That’s a motive to violence that does not depend on my wanting to take your possessions.

Jonathan Harrison (1980, p. 60) provides an ultimately disappointing defense of Hume by arguing that restrictions against threats and violence should be understood under the natural virtues instead of the artificial virtues (under the latter of which Hume locates justice). If Harrison is correct, then Hume can make sense of restrictions against threats and violence, just not under the heading of justice. I have no objection to understanding restrictions against threats and violence under this heading. It would indeed be odd if we couldn’t make sense of such restrictions except in the context of conventions designed to solve a problem. But we should try to determine whether Hume can *also* make sense of such restrictions within his account of justice. If he can’t, it would be a disappointing result because a long tradition of thinking about justice places restrictions against threats and violence squarely within its scope.³³ To discount this tradition would be a

³² See Baier (1991) for further discussion, pp. 222-223.

³³ For example, see Cicero’s *De Officiis*, Epicurus’s *Key Doctrines*, Hobbes’s *Leviathan*, and Mill’s *Utilitarianism*

failure, as Rawls (1999) put it, to accord “with natural piety” (p. 15), that is, to respect the philosophical tradition of thinking about justice.

Let’s turn to the question of whether Hume has the resources to make sense of restrictions against threats and violence within his account of justice. Why not, as Harrison suggests, understand restrictions against threats and violence exclusively under the natural virtues? We are, after all, often motivated to refrain from this kind of behavior by certain natural motives such as the motive of benevolence. But the same is true of the motive to pay a debt or return borrowed property. One might be motivated to pay back a debt out of concern that the lender needs the money to provide for herself. One might similarly return borrowed property because one thinks the other person would be happy to have it back. But one might be motivated differently and yet still virtuously. In particular, one might be moved by the motive of justice, which, as I suggested earlier, is the motive to do one’s part in the maintenance of conventions that have instrumental and functional value. But why would one ever be motivated to refrain from threats and violence from the motive of justice? Shouldn’t benevolence be sufficient?

Hume’s argument that justice is an artificial virtue shows why benevolence is not always sufficient. In 3.2.1, Hume argues that justice must be an artificial virtue because there is no natural motive that could serve as the motive to just actions in all of the cases of justice’s demands. Justice, then, must be an artificial virtue. If we use the example of threats and violence in this argument, we will see that the motive of justice can serve as a stable motive for refraining from threats and violence.

The natural motives he considers in 3.2.1 are self-interest, public benevolence, and private benevolence.³⁴ Assuming that these are the only plausible candidates among the natural motives then what Hume needs to show is that each of these motives could, under the right conditions, either motivate one to perform an injustice or fail to motivate one to avoid an injustice. If we use the example of threats and violence, then it would show that none of these motives could be the consistent and reliable motive to avoid such acts, even if each could, under other conditions, have this effect. Let's take the three motives—self-interest, public benevolence, and private benevolence—in turn.

First, it should be fairly obvious that self-interest could lead a person to make a threat or perform an act of violence. One might make a threat or act violently in order to secure needed goods, to eliminate the competition, or to assert one's dominance. As a result, if one were nonetheless (virtuously) motivated to refrain from doing one of these things, self-interest couldn't be the motive that constitutes the relevant virtue.

Second, public benevolence could motivate one to make a threat or act violently if one thought that the public would be better off as a result of the act. For example, a politician might hire a hitman to threaten or take out another candidate because he foresees (let's even suppose correctly) that this other candidate would force through policies that would be bad for the public. Moreover, one might be motivated (virtuously) to avoid a threat or act of violence even when fully aware that the public interest is not at stake. If that's possible, then one's motive for avoiding the threat or act of violence could not, in that case, be public benevolence.

³⁴ Hume also considers the motive of duty, which seems to me an artificial motive, though Hume doesn't make that clear. His discussion of this motive raises special issues that I don't have space to discuss here, so I will set them aside. I'll just note that if Hume is right that the motive of duty can't be the motive that constitutes the virtue of justice, then the motive of duty can't be the motive that constitutes the virtue on display when we refrain from acts of interpersonal violence.

Third, and finally, one might not care about the welfare of one's enemies at all and yet still be motivated not to threaten them or act violently towards them. If that's possible, then private benevolence can't be one's motive to avoid threats or violence in this case because, by hypothesis, one has no benevolence for one's enemies. What this shows is that there are cases in which one is virtuously motivated to refrain from threats or violence and yet the motive in question is not self-interest, public benevolence, or private benevolence. If Hume is right that these are all of the plausible candidate natural motives, then the motive to refrain must be an artificial motive. And given that we are acting virtuously in refraining, the motive in question must constitute an artificial virtue.

When no natural motive can serve as a restraint to threats or violence, we face a collective action problem that stands in the way of social interaction. What conditions give rise to this problem? The answer is our limited benevolence in combination with our physical and psychological vulnerability. This combination of conditions generates incentives, in the right conditions, to threats and violence. The solution to this problem is a convention of refraining from acts of violence. Assuming that this convention solves this problem in a way that would be approved from the General Point of View, it generates obligations of justice to abide by its strictures. Thus, according to Hume's account of justice, restrictions against threats and violence fall within the scope of justice.

It is important to notice, here, what I'm *not* saying. I'm not saying that on this Humean view, if there were no such convention, there would be no moral reason not to threaten or harm other people. There are reasons of private benevolence not to threaten or harm other people. The Humean point, however, is that when this motive is not sufficient to move us, we face a problem.

And in establishing a convention to solve this problem, we get new reasons not to threaten or harm others. We get reasons of justice.

Thus, the scope of justice, on Hume's view, applies, at a minimum, to property, promising, law, and restrictions against threats and violence. These are many of the domains in which justice applies. In investigating others, we need only determine whether we can apply Hume's framework. In particular, we need only determine whether the domain is such that we can make sense of it as a conventional solution to a collective action problem. Given the success of this account in helping us understand justice in the domains of property, promising, law, and restrictions against threats and violence, I am optimistic, and as a result Hume's account of the scope of justice looks initially quite plausible.

Section V: Conclusion

The central contention of this chapter is that Hume's account of the scope of justice is less narrow than critics tend to think. In particular, it applies not only to property, but also to any conditions in which we could institute conventions to solve collective action problems in a way that secures approval from the General Point of View. The argument for this conclusion depends on appreciating the basic structure of Hume's theory of justice and the way he applies it (and could apply it) to other domains besides just property. Defusing this objection is a major stepping stone on the way to seeing Hume's theory of justice (or a suitably modified version thereof) as a plausible contender among the theories of justice in contemporary moral and political philosophy.

CHAPTER 2: HUMEAN FUNCTIONALISM AND THE VALUE OF JUSTICE

Abstract: One of the central traditions of philosophical thought about justice takes the value of justice to be merely instrumental, and in particular instrumental to the end of helping us to satisfy our self-interest. Many have thought that Hume's theory of justice falls within this tradition. In this chapter, I argue that Hume's account of the value of justice does not fit neatly into this tradition. Instead, his view is that justice has a distinctive form of value, which I call *functional value*, which is not merely instrumental.

What kind of value does justice have? This is one of the oldest questions in the Western philosophical tradition. The concern that justice is of merely instrumental value is what Glaucon pushes Socrates to address in the *Republic*. In order to focus the challenge, Glaucon offers a sketch of an account of justice according to which justice is of merely instrumental value and, worse still, merely instrumental to the end of helping us satisfy our self-interest. Glaucon's hope is that Socrates can show why the account is mistaken. The account works as follows (*Republic* 358e-359c).

The best life for a person is to dominate others and suffer no ill effects. The worst life for a person is to be dominated by others and not be able to exact retribution. But all of us are more-or-less equal when it comes to physical power. Even if some of us are weaker than others, we can make up for those deficiencies by wielding weapons or joining forces. So none of us have much hope of securing the best life, and we want to avoid the worst life. For this reason, we come to an agreement with others to settle for the second-best situation in which we don't try to dominate others as long as they don't try to dominate us. This agreement establishes justice. Justice's value, on this view, consists in its securing for us the second-best outcome. But if we could achieve the best life (for example, if we acquired a ring that made us invisible and invincible), then we would.

The value of justice is thus merely instrumental to the end of helping us satisfy our self-interest. It is useful as a means of helping us avoid the worst life. But we would not obey the rules if we were sure that we could do better for ourselves. In that case, justice would have no value for us.

Hobbes develops a very similar view (*Leviathan*, Chapters 14, 15, and 17). He also conceives of justice as the result of an agreement (his term is “covenant”) that we all enter into with each other to avoid the horrors of the state of war. We would prefer to dominate others, but because people are more-or-less equal, we can’t. So we settle for the second best option of all of us submitting to an all-powerful sovereign who can enforce our agreement. Again, for Hobbes, the value of justice is merely instrumental to the end of satisfying our self-interest. It is useful for helping us avoid the state of war, but if we could dominate others without suffering the bad consequences, we would, and justice would have no value for us.

Hume’s theory of justice is different, at least in explicit emphasis, from these two in one important way. Hume famously thinks that what establishes justice can’t be an *agreement* because agreements themselves have the same source as justice, namely, *conventions* (and, in fact, agreements are the subject of justice, on my interpretation). Conventions don’t depend for their existence on an agreement. Consider, for example, two people who coordinate their behavior in order to row a boat back to shore (*T* 3.2.2.10; SBN 390). They need not make an agreement in order to coordinate their behavior. They simply have a common interest, which they signal to each other by matching their oar strokes. These two have established a kind of convention, which helps them to accomplish their shared goal.

This important difference aside, however, some philosophers think that Hume’s view is still ultimately to be located in this broad family. Though, for Hume, justice is the product of conventions, these conventions play precisely the same role in his account that agreements play in

the accounts of Hobbes and Glaucon. These conventions are simply second-best solutions to our recognition that we won't be able to dominate others successfully and yet we want to avoid the lack of trust and instability of resources inherent in the state of nature. On this view, Hume also thinks of the value of justice as merely instrumental to the end of satisfying our self-interest. It is a useful means of helping us secure the second-best life. Glaucon would be so disappointed.

I believe that Hume's inclusion in this class of views is mistaken. Hume has a distinct account of the value of justice. The instrumental element of Hume's account of justice does not make its value consist merely in its helping us to satisfy our self-interest. And Hume's view includes a non-instrumental element to the value of justice. I develop that view later on in the paper. But first I need to explain why some philosophers have thought that Hume's theory of justice falls within this class. My discussion will proceed through an analysis of the most sophisticated of Hume's commentators to interpret him this way, namely, David Gauthier.³⁵ Gauthier's (1979) claim that "Hume is in essence a Hobbit" (p. 19) is what I seek to undermine.³⁶

Section I: The Contractarian Reading

Gauthier interprets Hume as a hypothetical contractarian. On this view, the conventions instituting justice are justified if and only if they would be agreed to by rational individuals in a suitably defined choice situation. And these conventions would be agreed to if and only if they are in the self-interest of each person.

³⁵ Gauthier develops this interpretation in his (1979) and (1992). I will focus my discussion primarily on the 1979 paper. Another source for this interpretation can be found in Hampton (1997).

³⁶ Focusing on different issues, Postema (ms.) also seeks to reject the attempt to fit Hume directly into the Hobbesian tradition.

Because Hume eschews talk of agreement or contract in his account of the origin of justice, Gauthier's appeals to these concepts require some explanation. The key point for Gauthier is that Hume is a *hypothetical* contractarian. On this view, the relevant contract is, well, hypothetical. Hume's claim is that justice both was not and could not be established on the basis of a contract. But the hypothetical contractarian agrees. Justice is not a product of any actual or tacit contract. Rather, what we are interested in is what *would be* agreed to in a suitably defined choice situation. It doesn't matter whether such an agreement was ever made.

However, one might still be worried about Gauthier's appeal to agreement. Hume thinks that contract and agreement cannot be the foundation of justice because they are the subject of justice themselves.³⁷ On this view, to appeal to agreement in an effort to explain justice would be to reason in a circle. Gauthier isn't all that clear on this point, but as I read him, he is simply appealing to a more capacious conception of "agreement" than Hume does. Hume is fundamentally concerned to ensure that we don't make use of contracts or promises in explaining the origin of justice. But for Gauthier, if we simply coordinate our behavior in an effort to achieve a shared goal, we have reached an agreement in his sense. Thus, as Gauthier uses the term, an agreement can take the form of a convention. Hume is explicit that conventions are the foundation of justice, so perhaps the concern should vanish.³⁸

³⁷ Strictly speaking, Hume argues that justice is founded on conventions, and we can't appeal to contract and agreement to explain justice because contract and agreement are also founded on conventions (*T* 3.2.2.10; SBN 490). Stated this way, the argument doesn't sound particularly plausible. Why couldn't one convention explain another? In response to this kind of worry, I take it that Hume's deeper explanation for why we can't found justice on contract and agreement is that contract and agreement are founded on (some of) the very conventions from which justice emerges.

³⁸ Of course, if that's how Gauthier avoids Hume's contention that we can't appeal to agreement in giving an account of justice, then Gauthier need not interpret Hume as a hypothetical contractarian. If a convention counts as an agreement, then on Gauthier's reading, Hume might

Gauthier might very well be relying on an unjustified overextension of the conception of “agreement” for the purposes of a contractarian view, but set that aside. The more important part of Gauthier’s interpretation, for my purposes, is his claim that what justifies a convention instituting justice is its effectiveness at promoting the self-interest of each of those subject to it. If this is what justifies conventions instituting justice, then the value of justice must consist in its promoting the self-interest of each person. If this is what justice’s value consists in, then justice is merely instrumentally valuable. It is only good when and because it promotes each of our self-interest. And moreover, the less it promotes my self-interest, the less value it has for me.³⁹

Why does Gauthier think that what justifies a convention instituting justice is, for Hume, its effectiveness at promoting the self-interest of each of those subject to it? Gauthier correctly notes that self-interest plays a role in Hume’s account of the *establishment* of justice. In the *Treatise*, Hume argues that the unrestrained exercise of self-interest makes it impossible for us to live together peacefully and cooperatively. Because we are all more concerned to provide for ourselves and those closest to us than we are more distant others, we would, in a pre-social situation, try to take goods from others, and they would try to take goods from us. The result is unstable possession, which Hume thinks is the fundamental problem we must overcome in order to establish society. The solution to this problem, he thinks, is a scheme of property conventions.

very well count as an explicit contractarian since he thinks that actually existing conventions are necessary to generate obligations of justice.

³⁹ That’s not to say that the convention as a whole loses value just because it promotes my self-interest less. It would still have value in virtue of the fact that it promotes the self-interest of others. But as we shall see, on Gauthier’s interpretation, the fact that the convention as a whole continues to be valuable does not impact the strength of my obligation to abide by its demands. The only thing that affects the strength of my obligation is the degree to which the convention promotes my self-interest. I object to this view later in the chapter both as a philosophical position and as an interpretation of Hume.

We establish these conventions because we all recognize that it is in our interest to stabilize possession. So on Hume's view, what ultimately solves the problem generated by our self-interest is our own self-interest redirected by the demands of property conventions. He writes:

There is no passion, therefore, capable of controlling the interested affection, but the very affection it self, by an alteration of its direction. Now this alteration must necessarily take place upon the least reflection; since 'tis evident, that the passion is much better satisfy'd by its restraint, than by its liberty, and that by preserving society, we make much greater advances in the acquiring possessions, than by running into the solitary and forlorn condition, which must follow upon violence and an universal licence (*T* 3.2.2.13; SBN 492).

We should conclude from this passage that self-interest is indeed important in Hume's account of justice, but in what way is it important? First, we need to make an important distinction, a distinction found in Hume and one which Gauthier recognizes. We need to distinguish between *interested obligation* and *moral obligation*.⁴⁰ An interested obligation is basically a command of prudence. It is an obligation, of a sort, that we have in virtue of the fact that we have our own interest as an end. Because we have our own interest as an end, we are required to take the means to that end. A moral obligation, on the other hand, is a demand of morality. Crucially, for Hume, the moral obligation of justice is a product of the value of the relevant conventions. He writes, "public utility is the *sole* origin of justice" (*EPM* 3.1; SBN 183). So it will be important, for our purposes, to determine what kind of value justice has on Hume's view. Because Gauthier and I disagree on how to understand Hume's account of moral obligation and the account of the value of justice that it rests upon, I address the question of what Hume's account of moral obligation is in the course of the discussion below.

⁴⁰ "Interested obligation" is the term that Hume uses in the second *Enquiry* (*EPM* 9.14; SBN 278). In the *Treatise*, he uses the term "natural obligation" (*T* 3.2.2.23; SBN 498). I will assume that the change in terminology does not reflect any change in meaning.

Gauthier's view is that, at least in the case of justice, our moral obligation to do as justice demands is founded on our interested obligation. He squares this claim with Hume's claim that justice is founded solely on public utility by adopting a particular interpretation of "public utility." Gauthier writes, "I shall insist that public utility is to be understood as mutual expected utility, so that a rule or practice has public utility if and only if each person reasonably expects that rule or practice to be useful to himself" (p. 17). We have an interested obligation to do as justice demands insofar as it is in our interest to establish, promote, and maintain the conventions that establish justice.

However, as Gauthier notes, the interested obligation is often not sufficient to motivate us to act in particular cases, especially those in which we could get some benefit by an act of injustice when our act does nothing to threaten the benefits of the conventions. This is the reasoning that drives the sensible knave. The sensible knave recognizes that maintaining the conventions is beneficial to him, but he also sees that his violations of the rules of the conventions don't threaten his getting the benefits of the conventions (at least when he can get away with it). Does that mean that the sensible knave is not obligated to abide by the demands of justice? Not on Gauthier's view, though his view is complicated.

Here's how it works. Because of the benefits that the conventions generate (and not just for ourselves), we morally approve of them. Gauthier thinks that we represent our self-interest in maintaining the conventions in combination with our moral approbation of the conventions as a moral obligation to abide by them. And this representation (we hope) counteracts the strength of our interest in not doing as justice demands. As Gauthier (1979) puts it, our moral obligation to do as justice demands is a product of the "coincidence between" (p. 28) our approval of useful conventions and our interest in maintaining those conventions. He writes:

The force of this moral obligation is then proportionate, not to the degree of moral approbation, which depends only on the total utility of the convention, and not to the extent of his particular interest in performing the obligatory act, which may be negative, but to the extent of his interest in upholding the convention requiring the act, so that as this latter interest diminishes, the moral obligation diminishes correspondingly (Ibid).

In support of his claim about the variability of the strength of the moral obligation of justice, Gauthier cites Hume's claim that the strength of an obligation of inter-societal justice is weaker than an obligation of intra-societal justice: "The observance of justice, though useful among them, is not guarded by so strong a necessity as among individuals; and the *moral obligation* holds proportion with the *usefulness*" (EPM 4.3; SBN 206). Gauthier's interpretation depends on thinking that the reason inter-societal obligations of justice are weaker than intra-societal obligations of justice is that our self-interest is not as strongly tied up in inter-societal interaction as it is in intra-societal interaction. He must be reading "necessity" as referring to necessity for securing one's self-interest. I question this explanation in the final section.

This account is puzzling. Given that self-interest plays such an important role in the account, there seems to be no explanation for why the moral obligation depends on our interest in maintaining the conventions rather than our interest in abiding by the particular demands of the conventions in particular cases. Why not say that the moral obligation depends on the coincidence between our approbation of the conventions and our interest in abiding by their particular demands? And then why not say that the force of our obligation varies with our interest in abiding by the particular demands, especially if the force of the obligation is supposed to depend on self-interest?

The most plausible explanation for deploying self-interest in the account in the way that Gauthier does (appealing to our interest in the maintenance of the conventions rather than our interest in abiding by the particular demands) is not available. This explanation is that we focus

on our interest in maintaining the conventions (rather than our interest in abiding by the particular demands) because the maintenance of the conventions is what is on our long-term interest. Focusing on the costs of abiding by the particular demands is an objectionable form of short-termism. If we fail to abide by the particular demands, we will inevitably sacrifice our long-term interest.

This response is unavailable because Hume has constructed the character of the sensible knave to rule it out. The sensible knave is clever enough to take “advantage of all the exceptions” (*EPM* 9.22; *SBN* 283). As a result, we have to imagine the sensible knave as successfully securing his long-term interest even while not abiding by the particular demands (when he can get away with it). So the proposed explanation for focusing on our interest in the conventions rather than our interest in abiding by their particular demands fails.

But even if we grant Gauthier’s way of deploying self-interest in the account, Hume’s view doesn’t come out looking plausible. The view that Gauthier attributes to Hume has the following implication. Suppose a person currently lives in country A. The person benefits from living under country A’s property system, but s/he would benefit more overall from moving to country B than from remaining in country A. According to Gauthier’s Hume, this person would be under a stronger moral obligation to abide by the demands of country B’s property system once s/he moves there than she is to abide by country A’s property system now, and that’s true even if country A’s property system is better overall. That strikes me as implausible.

Of course, Gauthier is offering an interpretation of Hume, so my critique here is simply a critique of Gauthier’s Hume and not yet of Gauthier’s *interpretation* of Hume. It might turn out that Gauthier’s interpretation is correct, and Hume’s view is simply objectionable. If this interpretation is correct, then we can draw two conclusions. First, for Hume, the value of justice

is merely instrumental for precisely the same reason as it is merely instrumental in the view sketched by Glaucon and endorsed by Hobbes. It is valuable for an individual insofar as the relevant conventions are to his benefit. Second, Hume's view is utterly implausible. In the next section, I reject the contractarian interpretation. In Section III, I sketch a different interpretation that 1) strikes me as better supported by the textual evidence and 2) renders Hume's view much more plausible.

Section II: Against the Contractarian Reading

Gauthier is correct to insist that self-interest plays an important role in Hume's account of justice. But his account of the moral obligation of justice and its strength cannot plausibly be attributed to Hume. The moral obligation of justice does indeed stem from the usefulness (i.e., the value) of the relevant conventions, as Gauthier claims. However, he doesn't do enough to dig into what that means for Hume. Once we understand the sense in which the moral obligation of justice depends on the usefulness of the conventions, we can see why Gauthier is wrong to attribute to Hume the view that the strength of the moral obligation of justice varies with the usefulness to ourselves of the relevant conventions.

Before diving in with my interpretation, however, I should note up front one primary source of the disagreement that Gauthier and I have. Gauthier is explicit that his interpretation discounts the textual evidence of the *Treatise*, though he does claim that, on his view, "the *Treatise* is at once more profound and more contractarian" than the later works (p. 4). His reason for discounting the *Treatise* is Hume's professed view that the *Treatise* represents his immature attempt to spell out his view.⁴¹ The idea is that the later works represent Hume's mature view, and so we should rely on them to determine his *real* view.

⁴¹ See the Advertisement that precedes Hume's *Enquiries*, SBN 2.

I am skeptical of this method of interpretation. It is not clear to me that when interpreting the thought of a great philosopher, we should take the philosopher's own reflections on his or her work as decisive. As with great artists, great philosophers are not always the best judges of their best work, and their best work isn't always their latest work. Moreover, just as in the case of a novel, we shouldn't think that the best interpretation of a work is a function of the author's intent. I don't think that interpretation is a branch of psychology. Instead, I advocate the view that in offering an interpretation, we should strive to attribute to the author the most plausible view consistent with the text. Where the text itself is inconsistent, we should discount the sections of text that land the author with the less plausible view. According to this method of interpretation, we shouldn't discount any part of an author's corpus just because the author discounted it, especially if there is some explanation for why the author discounted the text that makes the author's discounting insensitive to quality.⁴² For this reason, I rely on the *Treatise* a great deal in the argument for my interpretation, in part because I agree with Gauthier that the *Treatise* is the most profound of Hume's works of philosophy.

I should also note that Gauthier might be trying to avoid an important interpretive question about Hume's moral philosophy. In particular, some have thought that the second *Enquiry* and some of the essays represent a change of view from the *Treatise*.⁴³ By discounting the *Treatise*,

⁴² Here's a psychological hypothesis about *why* Hume himself discounted the *Treatise*. He famously claims that the *Treatise* "fell dead-born from the press" ("My Own Life" 6). Hume might have been either embarrassed by the *Treatise*'s initial reception or at least disappointed that his carefully worked out views weren't getting sufficient uptake. As a result, and in order to distance himself from the work that was not well-received, he simply repackaged his old view in crisper, more accessible writing. If this is correct, then we have an explanation for why he would have discounted his earlier work without any significant change in view.

⁴³ Kate Abramson (2001) explains a number of the apparent substantive differences between the *Treatise* and the second *Enquiry*.

Gauthier is in a position to avoid tricky questions about whether Hume’s view is essentially the same throughout his career. I can’t get into this controversy in any depth here, but I’ll note that I think Hume’s view remains remarkably consistent across his works, though some of the shifts in language and emphasis require explanation. One of the most significant apparent shifts is the increased emphasis on utility in the second *Enquiry* relative to the *Treatise*. My view goes some way towards resolving this tension by offering an interpretation of what Hume means by “utility” that brings it in line with his *Treatise* account.

Returning now to the main thread, in the second *Enquiry*, as I’ve already mentioned, Hume famously claims that “public utility is the *sole* origin of justice, and that reflections on the beneficial consequences of this virtue are the *sole* foundation of its merit” (*EPM* 3.1; SBN 183). Many have taken from this passage that Hume is some sort of proto-utilitarian, at least with regard to justice.⁴⁴ There are, of course, many different varieties of utilitarianism, but most are inconsistent with one of Hume’s central claims about justice:

But however single acts of justice may be contrary, either to public or private interest, ‘tis certain, that the whole plan or scheme is highly conducive, or indeed absolutely requisite, both to the support of society, and the well-being of every individual (*T* 3.2.2.22; SBN 497).

A hallmark of utilitarianism is that it concerns itself, at least at some stage of evaluation, with aggregate utility. We aggregate the utility of each person and either stop there (and approve of that action, set of rules, etc. that maximizes aggregate utility) or we take the aggregate and divide by the number of people to arrive at the average utility (and approve of that action, set of

⁴⁴ Rawls, for one, argues that Hume falls in “the utilitarian tradition” (Lectures on the History of Political Philosophy, p. 159; see also *A Theory of Justice*, p. 20, fn. 9). C.D. Broad (2013), Frederick Rosen (2003), and Russell Hardin (2007) also seem to endorse this interpretation. For a much fuller discussion of the opposing view, see Sayre-McCord (1995).

rules, etc. that maximizes average utility). Hume's concern, however, is not only with the effect of "the whole plan or scheme" on aggregate utility or even average utility. Rather, he is concerned with the effect *on each person*. We can't simply lose sight of the well-being of individual people by throwing their interests into the utilitarian gumbo along with everyone else's. Hume's emphasis, here, prefigures Rawls's (1999) concern that utilitarianism fails to respect "the distinction between persons" (p. 24).

As a result, by "public utility," Hume does not appear to have in mind a utilitarian standard. He is concerned not only with the effects of the conventions on all, but also on each.⁴⁵ The value of justice, then, depends not only on what it does for the community as a whole, but also for each person. This much is consistent with Gauthier's view that self-interest is a key component of the value of justice. On this view, justice's value depends on its effects for each person because the relevant conventions must be in each person's self-interest.

But two other features of Hume's view conspire to undermine Gauthier's interpretation. They are his account of moral obligation and what I call his *functionalism*. His account of moral obligation undermines Gauthier's claim that the strength of an obligation varies with the effect a convention has on a person's interest. His functionalism undermines the remaining element of the contractarian reading of Hume's theory of justice, namely, that the justification of conventions of justice is a function of hypothetical agreement, though as I will highlight, something close to this is true.

According to Gauthier, for Hume, we lie under moral obligation to do as justice demands because of the combination of our interest in maintaining the conventions and our approval of

⁴⁵ I discussed the issue of how to understand Hume's emphasis on the effects of conventions on *each person* in greater detail in Chapter 1.

them. But this obligation can lose strength in proportion to the overall effect of the conventions on our self-interest. The first claim does not quite capture Hume's account of moral obligation, though approval of the relevant conventions plays a role. The second claim is false.

Hume's account of moral obligation does not take *approval* to be central to moral obligation but rather *disapproval*. In short, Hume's view is that we lie under moral obligation to do something if we would disapprove of failing to do it when we consider it from a certain neutral perspective that Hume calls the General Point of View. Admittedly, this is an interpretation of Hume's view. He does not directly link moral obligation and the General Point of View.

Here's my argument for this interpretation. Hume is very clear that moral obligation is linked to disapproval. He writes:

All morality depends upon our sentiments; and when any action, or quality of the mind, pleases us *after a certain manner*, we say it is virtuous; and when the neglect, or non-performance of it, displeases us *after a like manner*, we say that we lie under an obligation to perform it. A change of the obligation supposes a change of the sentiment; and a creation of a new obligation supposes some new sentiment to arise (*T* 3.2.5.4; SBN 517).

We call actions or qualities of mind virtuous when we approve of them "*after a certain manner*." And we lie under an obligation to perform some action when we disapprove of failing to do it "*after a like manner*." The key to my interpretation is the view that Hume's appeals to "*after a certain manner*" and "*after a like manner*" refer to the General Point of View. Why think this? It is standard to think that for Hume, what sets the standard of moral judgment is approval and disapproval from the General Point of View. As a result, in order for us accurately to judge some action or character trait *virtuous* (a moral evaluation), we would need to approve of it from the General Point of View. Thus, the only plausible reading of "*after a certain manner*" understands it as referring to the General Point of View. And since Hume is clear that "*after a like manner*" (my emphasis) has the same referent, Hume's account of moral obligation must be that we lie

under moral obligation to perform some action just in case we would disapprove of failing to perform the action were we to consider such failure from the General Point of View.

In the case of justice, we lie under an obligation to do as justice demands just in case we lie under an obligation to do as the relevant conventions demand. And we lie under an obligation to do as the relevant conventions demand just in case we would disapprove of failing to do as the conventions demand were we to consider not doing as they demand from the General Point of View. Here's where Gauthier's view is partially correct. We would, from the General Point of View, disapprove of failing to do as the conventions demand just in case we would approve of the conventions from the General Point of View. So Gauthier is right that our approval of the relevant conventions plays an important role in the account of our obligations of justice, but the story isn't that simple.

Gauthier's view that the strength of our obligation varies with the strength of our interest in maintaining the conventions falls apart when we consider the rest of the passage quoted above. Hume writes, "A change of the obligation supposes a change of the sentiment; and a creation of a new obligation supposes some new sentiment to arise" (*T* 3.2.5.4; SBN 517). To fix ideas, let's consider again the case in which a person is deciding to move to from country A to country B. Both countries have well-functioning property systems. But country B's property system is more in the person's interest than country A's. To be consistent with this claim, Gauthier would need to attribute to Hume the view that this agent's *moral* sentiments are different towards country B's property system than towards country A's. And in particular, he would have to claim that the person more strongly disapproves of violating the demands of country B's property system than violating the demands of country A's property system when we consider failure from the General Point of View.

This can't be true. Hume's central motivation for adopting the General Point of View as the moral standard is that it corrects for biases inherent in our sentiments (*T* 3.3.1.15; SBN 581-582). Most relevantly for the present point, it corrects for self-interested biases. If the General Point of View is meant to correct for self-interested biases, then our disapproval will not change just because an individual's interest in a convention changes, so long as the conventions still garner approval from the General Point of View. What this shows is that self-interest does not play the role in Hume's account of the moral obligation of justice that Gauthier assigns it. The value of conventions of justice, then, can't be simply a matter of their being in our interest. As I turn to my discussion of Hume's *functionalism*, I will illustrate the more limited role that self-interest plays in Hume's account and show that the value of justice, for Hume, is not merely instrumental.

Section III: Humean Functionalism

Hume does think that a good part of justice's value consists in the ends that it helps us realize. Secure and productive social life is, of course, valuable, and justice helps us to achieve those ends. So justice does have instrumental value. But no one is surprised by that. Glaucon and Socrates both accept that justice has instrumental value. The challenge is to show that its value is not *merely* instrumental. Hume, I argue, takes there to be a deeper value to justice as well. I call this value functional value.⁴⁶

Functional value is the value that something has just in virtue of its being *well-suited* to fulfill a function. A perfectly-tuned sports car that no one will ever drive is valuable because of what it is capable of, even if it never realizes its capability. Because no one will ever drive the car, it does not have instrumental value. It does not help us to achieve any valuable ends. But it is nonetheless *well-suited* for achieving these ends. This kind of value is not merely instrumental.

⁴⁶ Sayre-McCord (1995) also finds a functionalist core within Hume's moral philosophy.

One might initially worry that something could be functionally valuable and yet not valuable *simpliciter*. For example, a chemical weapon might be good *as an instance of its kind* (that is, as something well-suited to fulfill the function of a chemical weapon) and yet not be good *simpliciter*. If that's right, then showing that justice has functional value would not show that it is valuable *simpliciter*. I agree. But I think that something with functional value is valuable *simpliciter* if the function that it is well-suited to fulfill is itself good. A well-tuned sports car is good *simpliciter* in virtue of being well-suited to fulfill the function of helping us drive fast and look cool while we do it (let's just suppose that that's valuable for the moment). In the case of justice, the conventions are good *simpliciter* in virtue of being well-suited to fulfill the function of helping us solve important collective action problems, and this function is valuable.

Why think that Hume conceives of justice as having functional value, as I've defined it? In particular, why think that he thinks of justice's value as going beyond mere instrumental value? After all, as I've already mentioned, he claims in the second *Enquiry* that "public utility is the sole origin of justice, and that reflections on the beneficial consequences of this virtue are the sole foundation of its merit" (*EPM* 3.1; SBN 183). This does not seem to leave room for justice being valuable because of its being suited to fulfilling a function because Hume invokes the *consequences* of justice, and something can have functional value without producing good consequences.

On the other hand, Hume is clear that "virtue in rags is still virtue" (*T* 3.3.1.19; SBN 584). Moreover, "where any object, in all its parts, is fitted to attain any agreeable end, it naturally gives us pleasure, and is esteem'd beautiful, even tho' some external circumstances be wanting to render it altogether effectual" (*T* 3.3.1.20; SBN 584). Here Hume claims that our approval of things, and so their value, is tied at least in part to their being "*fitted* to attain any agreeable end" (my

emphasis), and not entirely to their actually attaining that end. Excluding conventions of justice from the scope of this general claim would be ad hoc. How can we reconcile these two passages?

One might initially think that what we have here is a change in doctrine from the *Treatise* to the *Enquiry*. Perhaps earlier in his life Hume accepted that merely being fit to fulfill a function is sufficient for value, but he changed his mind by the time he wrote the *Enquiry*. This explanation fails. Hume makes the *Treatise* point in the *Enquiry* as well. He writes, “the tendencies of actions and characters, not their real accidental consequences, are alone regarded in our moral determinations or general judgments” (EPM 5.41n24.1; SBN 228).⁴⁷ What matters for “our moral determinations or general judgments” is the tendency of something to fulfill its function, even if it does not or cannot fulfill its function in certain conditions.

So we can't explain the apparent inconsistency here by appeal to a change in doctrine. But Hume's use of the word “tendency” helps to point the way. When Hume refers to “public utility,” he is referring not (directly) to happiness or well-being, as is common in the utilitarian tradition, but rather to usefulness. Usefulness, Hume writes, “is only a tendency to a certain end” (EPM 5.17; SBN 219). Thus, when Hume writes that “public utility is the sole origin of justice,” he must mean that the tendency of justice to fulfill its function is the sole origin of justice. That much is consistent with thinking that justice has functional value.

What about Hume's claim that “reflections on the beneficial consequences of [justice] are the sole foundation of its merit”? To interpret this claim, we need to ask ourselves what we are doing when we are reflecting on the beneficial consequences of justice. Are we thinking only

⁴⁷ I'm not sure that Hume should have said that the tendencies of actions and character...are *alone* regarded in our moral determinations. In calling the ends that our actions and characters are fitted to attain *agreeable* (in the 3.3.1.20 passage), he seems to think that there's value both in the fitness or the actions and characters to achieve the ends and in the ends themselves.

about the consequences themselves, or are we thinking about the tendency of justice to produce these consequences? If the latter, then this claim is also consistent with my suggestion that Hume thinks of justice as having functional value. I would favor this reading for two reasons. First, it fits better with the other passages I've highlighted. Second, this passage is genuinely ambiguous between the two readings. If the passage is ambiguous and my reading fits better with other passages than the other reading, then we have reason to accept my reading.

Thus, Hume thinks that justice has functional value. Justice has this kind of value when and because the conventions that institute it work to solve the problems that they are meant to solve in a way that would secure approval from the General Point of View. I argued in Chapter 1 that for Hume, a convention secures approval from the General Point of View just when and because it works to solve a shared problem in a way that generates overall, expected benefits for each person. Our approval from the General Point of View is sensitive to the convention *working to solve the problem in a way that generates overall, expected benefits for each*. The italicized words in the last sentence home in on Hume's insistence that our approval is sensitive to tendencies. It is consistent with a convention's working to solve a problem that it sometimes fails. It is also consistent with a convention generating expected benefits for each that it sometimes fails to deliver on those expectations. But what's important is that it is designed in such a way that it has the *tendency* to solve the relevant problem in a way that *tends* to generate overall benefits for each.

It is at this point that we can understand the role that self-interest plays in Hume's account. In order for the relevant conventions to solve the relevant problems (and thereby garner approval), they need to be stable. In order to be stable, most people most of the time need to abide by them. So the conventions need to generate incentives to abide by them. The best way to generate these

incentives is to ensure that each person benefits from participation in the conventions.⁴⁸ In other words, we stabilize the conventions (and thereby help to secure their approval) by ensuring that it is in each person's self-interest to participate. This is the role of self-interest in Hume's theory of justice.

It is worth pointing out how this is different from Gauthier's view. On Gauthier's interpretation, my approval of a convention (and the resultant moral obligation to abide by it) is at least partially driven by the interest that I have in abiding by it. On my interpretation, the fact that a convention is in my self-interest does not drive my approval of it. Instead, what drives approval is that the convention has a tendency to fulfill a function in a way that tends to generate overall expected benefits not for me, but for *each*. It just turns out that as a matter of fact, the way to ensure that the convention successfully fulfills its function is to design it in such a way that it is in each person's interest to abide by it.

If this interpretation is correct and Hume takes the value of justice to be both instrumental *and* functional value, then his account of justice is importantly different from the contractarian tradition in which Gauthier tries to place him. Like the contractarian, Hume is concerned to see justice as a product of human beings coming together to solve important shared problems. Unlike the contractarian, Hume does not locate the value of justice in the fact that the conventions that we establish to solve these problems are in each person's self-interest. Moreover, the value of justice does not depend directly on any actual or hypothetical agreement but rather (in part) on a convention's fitness to attain valuable ends. Like the utilitarian, Hume thinks that the value of justice depends on the benefits that the conventions of justice generate for the people subject to them. However, unlike the utilitarian, Hume does not think that the value of justice consists in the

⁴⁸ I address the question of *how much* the conventions need to benefit each person in Chapter 4.

aggregate or average benefits that the relevant conventions in fact generate, but rather in the tendency of the relevant conventions to generate overall expected benefits *for each*. I call Hume's view *Humean Functionalism*.

Humean Functionalism carves an interesting and distinct lane between these two influential views. Moreover, in carving this lane, it has the resources to address some of the standard worries that each view faces. Contractarians are often accused of over-emphasizing self-interest in giving an account of what is supposed to be a moral concept, namely, justice. Humean Functionalism can address this concern because it does not suppose that what justifies the conventions of justice is that they are in the self-interest of each person. Rather, the benefits that the conventions generate for each person are what justifies the conventions. Utilitarians are often accused of leaving open the possibility of sacrificing the interests of some for greater gains for others. Humean Functionalism avoids this concern by, again, emphasizing the benefits *for each*, and not just for the aggregate.

Section IV: Objections

The goal of this section is to respond to two objections to my interpretation of Hume's account of the value of justice. First, Gauthier develops his view that the strength of our obligations of justice vary with the degree to which the conventions of justice are in our self-interest on the basis of an important passage, which I have already quoted. To repeat, concerning justice between nations, Hume writes, "The observance of justice, though useful among them, is not guarded by so strong a necessity as among individuals; and the *moral obligation* holds proportion with the *usefulness*" (*EPM* 4.3; SBN 206). Because this passage might appear to support Gauthier's reading above mine, I need to explain how my interpretation is consistent with it.

Second, I have written at length in this chapter about two important features of Hume's theory of justice and their connection. In particular, I've discussed Hume's accounts of the moral obligation of justice and the value of justice, and I've claimed that Hume grounds the former in the latter. Some philosophers worry about the move from the value of the conventions of justice to the obligation of justice. In fact, one of Hume's earliest critics, Thomas Reid, levels this criticism. Reid writes, "To perceive that justice tends to the good of mankind would lay no moral obligation upon us to be just, unless we be conscious of a moral obligation to do what tends to the good of mankind" (Reid, p. 360). Reid's worry is that we can't account for the moral obligation of justice by appealing to the value of justice alone.

Let's start with the first. Hume's claim that the moral obligation of justice holds in proportion to the usefulness might be thought to favor Gauthier's reading because it appears to validate his thought that the strength of our obligations of justice can vary. I should note first that this passage does not support Gauthier's insistence that the strength of the moral obligation of justice can vary *with self-interest*. The reason is that, as I've argued, self-interest does not play a driving role in Hume's account of "usefulness." Does this passage support the claim that the strength of obligations can vary at all? Yes, but in a fairly limited and plausible way.

It is worth remembering the context in which Hume makes this claim. He is trying to argue that duties of justice between political societies are not as strong as duties of justice between individuals within a single society. His argument appeals to the relative importance of intra-societal justice and inter-societal justice. His view is that intra-societal justice is absolutely crucial. Without it, commodious social living isn't possible. Inter-societal justice is less important in this regard. On Hume's view, the problems that can arise between nations are simply not the kinds of foundational problems that stand in the way of basic social interaction. As a result, the conventions

that solve inter-societal problems are not as valuable as the conventions that solve intra-societal problems.

Because the moral obligation of justice is founded on the value of the relevant conventions, the obligation is weaker in the inter-societal case. This harmonizes nicely with my interpretation of Hume as a functionalist. The function that inter-societal justice fulfills is not as important as the function that intra-societal justice fulfills. This is not to say that inter-societal obligations of justice are unimportant. In fact, they are very important, and they help to prevent destructive things like wars.

The textual evidence suggests that this is Hume's view. He writes:

All politicians will allow, and most philosophers, that REASONS of STATE may, in particular emergencies, dispense with the rules of justice, and invalidate any treaty or alliance, where the strict observance of it would be prejudicial, in a considerable degree, to either of the contracting parties. But nothing less than the most extreme necessity, it is confessed, can justify individuals in a breach of promise, or an invasion of the properties of others (Ibid).

Hume's view seems to be that the threshold for cancelling obligations of inter-societal justice is lower than the threshold for cancelling obligations of intra-societal justice. But that is consistent with thinking that the threshold for cancelling an obligation of inter-societal justice is still quite high.⁴⁹

One might also argue that Hume's view here supports a claim not just about the strength of the relevant obligations but also their extent. We simply owe less as a matter of justice to other societies than we do to members of our own society. This is a common and plausible view, and

⁴⁹ One might argue that the threats associated with violations of inter-societal justice are more substantial (perhaps even more substantial than violations of intra-societal justice) nowadays, especially as a result of the threats of nuclear war, global pandemics, and climate change. If that's right, then it's grist for the functionalist mill. As the instrumental and functional value of the conventions increase, so too do our obligations to abide by them. The functionalist can then explain why our obligations of inter-societal justice are stronger than they once were.

also coheres nicely with the reading of Hume as a functionalist. According to Humean Functionalism, obligations of justice are a product of the solving of particular problems. The problems that we solve in inter-societal contexts are not the same problems that we solve in intra-societal contexts, so it stands to reason that the obligations in each context would be different. And because the problems we face in intra-societal contexts have more pervasive impacts on our lives than the problems we face in inter-societal contexts, intra-societal obligations of justice are correspondingly more extensive.

Turning now to the second objection, Reid is worried about what he sees as Hume's attempt to derive the obligation of justice directly from the value of certain conventions. Reid does not, of course, deny that justice has value. He denies only that we can derive the *obligation* of justice straightforwardly from the *value* of justice. The thought guiding Reid's concern is spot on. It is absolutely true that facts about goodness don't directly entail any facts about rightness or obligation. The action that promotes the most value might violate a right, for instance, as many of the standard (at least purported) counterexamples to consequentialism attest. Even utilitarians can claim that our obligations are sensitive to *expected* utility and not *actual* utility.

The key to understanding Hume's response to this objection is his account of moral obligation. It is true that Hume *grounds* facts about obligations of justice in facts about the value of conventions. But he does not claim that facts about value immediately entail facts about the obligations of justice. Facts about obligations of justice follow immediately from facts about disapproval from the General Point of View. We are obligated to abide by conventions if failing to abide by those conventions would be disapproved from the General Point of View. It turns out that whether failing to abide by those conventions would be disapproved from the General Point of View depends on the value of the relevant conventions, and that's why obligations are *grounded*

in value. But Hume's appeal to disapproval from the General Point of View serves as the bridge between value and obligation.

And notice that Hume's account does not entail or depend on a general obligation to promote value, as Reid suggests. The fact that we would disapprove of failing to abide by conventions that themselves garner approval does not entail that we have any general obligation to promote value. This still leaves open the question about why disapproval from the General Point of View generates moral obligations, but that goes beyond the scope of this chapter. I am not trying to defend Hume's theory of moral obligation at this point. I'm simply trying to understand it and the role it plays in his theory of justice.

Of course, for deeper reasons, this response wouldn't satisfy Reid. In response to my defense of Hume, Reid might allow that Hume can overcome the worry about directly deriving facts about obligations of justice from the value of the relevant conventions. But Reid's concern is ultimately rooted in a different view of the value of justice and the source of our moral obligations. Justice is not valuable simply because of what the relevant conventions do for us and the way in which they are *well-suited* to do things for us. It is valuable in some deeper sense. Reid writes, "When men come to the exercise of their moral faculty, *they perceive* a turpitude in injustice, as they do in other crimes, and consequently *an obligation to justice*, abstracting from the consideration of its utility" (Reid, pp. 342-343).

On a straightforward reading, Reid is suggesting that injustice has a property, *turpitude*, which, once perceived, lays upon us an obligation to refrain from injustice. Hume is, of course, famously opposed to this way of thinking about the metaphysics of morality. Hume writes:

But can there be any difficulty in proving, that vice and virtue are not matters of fact, whose existence we can infer by reason? Take any action allow'd to be vicious: Wilful murder, for instance. Examine it in all lights, and see if you can find that matter of fact, or real existence, which you call *vice*. In which-ever way you take it, you find only certain

passions, motives, volitions and thoughts. There is no other matter of fact in the case. The vice entirely escapes you, as long as you consider the object. You never can find it, till you turn your reflection into your own breast, and find a sentiment of disapprobation, which arises in you, towards this action (*T* 3.1.1.26; SBN 468-469).

If this disagreement bottoms out in a disagreement about the metaphysics of morals, then Hume does not owe Reid a response. Obviously, there is an important debate to be had here, but Hume is not obliged to offer a defense of a metaethical theory in order to respond to an objection to his theory of justice.

On a less literal reading, Reid might simply be saying that the value of particular acts of justice is intrinsic and not to be found in any facts about the conventions, but rather in facts about the particular acts. Endorsing just this much does not commit him to any view on the metaphysics of the morality of justice. And Reid clearly thinks that this is true. He writes:

The power with which the Author of nature hath endowed us, may be employed either to do good to our fellow men, or to hurt them. When we employ our power to promote the good and happiness of others, this is a benefit or favour; when we employ it to hurt them, it is an injury. Justice fills up the middle between these two. It is such a conduct as does no injury to others; but it does not imply the doing them any favour (Reid, p. 345).

We find injustice in causing an *injury* and justice in *refraining* from causing an injury. Because, on Reid's view, we can understand the concept of an injury outside of conventional contexts, the value of justice cannot depend on conventions.

Reid is careful in the way he defines an injury. Crucially, he takes an injury to be the object of a "natural passion," namely, *resentment*. For example, I have not done you an injury, in the relevant sense, if I hurt you as a result of a reflex or because I am pushed into you or anything like that. An injury requires intent. Why? Because accidents don't properly provoke resentment. In addition, I don't do you an injury if I use your property without asking first if 1) I was in desperate need and 2) I'm willing to compensate you. Again, Reid thinks that in these cases, you wouldn't properly resent me. Once we understand the concept of injury, we can explain justice and injustice.

Hume could make two responses. First, there are many injuries that we can't make sense of except within conventional contexts. In many ways, what drives Hume's account of justice is the recognition that some of our most basic rights, such as our property rights, are complicated, deeply socially-embedded things.⁵⁰ I injure you (and thereby make resentment *directed at my violating your property right* appropriate) in taking your things only because we have developed a complex social convention that assigns those things to you as a matter of *right*. You have these rights only because of a social convention that we have developed to solve an important problem. If Hume is correct that property, promising, law, etc. are deeply conventionally-dependent in these ways, then even what constitutes an injury is often dependent upon conventions.

Second, not all injuries are (necessarily) a matter of justice. On Hume's view, justice applies in contexts in which we are jointly engaged in the maintenance of conventions designed to solve problems. It is right to say that not all injuries take place in such contexts. This is a situation in which Hume's modus ponens is Reid's modus tollens. For Hume, this means that not all injuries are a matter of justice. For Reid, this means that justice is not about engagement in the maintenance of conventions designed to solve a problem.

There may ultimately be no good way of resolving this disagreement without it devolving into a verbal dispute. And, of course, philosophers have recognized since at least Aristotle that

⁵⁰ Annette Baier (2010) makes the same point (pp. 27-28). See also Hume's comments about how mysterious promising is (until, that is, we understand it as a social practice). He writes, "I shall farther observe, that since every new promise imposes a new obligation of morality on the person who promises, and since this new obligation arises from his will; 'tis one of the most mysterious and incomprehensible operations that can possibly be imagin'd, and may even be compar'd to *transubstantiation*, or *holy orders*, where a certain form of words, along with a certain intention, changes entirely the nature of an external object, and even of a human creature" (T 3.2.5.14; SBN 524)

the term “justice” has broader and narrower senses. Let me simply conclude this section by describing how I think Hume understands the place of justice in moral philosophy.

Justice concerns the *cooperative* aspect of our social lives. Unless we cooperate with one another, we face problems that stand in the way of our securing the benefits of social life. Hume thinks that the most significant of these problems concerns our relation to material goods and our relationships with others in light of our need for material goods. But there are other problems as well, most significantly concerning our need to be able to trust that others will do what they say and our need to be able to enforce the rules that we establish. In order to solve these problems, we establish conventions. We find the value of justice in these conventions. But what justice *demand*s of us is that we do our part in the maintenance of the conventions. That is the sense in which justice is, for Hume, about the *cooperative* aspect of our social lives. Justice is about each of us doing our part and each of us getting what the conventions secure for us for doing our part.

Perhaps Hume’s emphasis on material goods is misplaced. Maybe our natures are, after all, more Hobbesian than Humean. And so perhaps Reid is right that Hume should have focused more on non-property-based injuries. But that’s no threat to Hume’s theory of justice, at least not in its mechanics. Justice, for Hume, is fundamentally a problem-solving tool, a tool with two-fold value. It is valuable, first, because it helps us to realize valuable ends and, second, because of its being well-suited to help us realize these ends (even if it sometimes fails). We realize these values by cooperating with one another in the maintenance of conventions. Living up to the demands of these conventions has a distinctive kind of moral value, and violating their demands is a distinctive form of wrongdoing. Hume thinks that the moral concepts in play here are justice and injustice. When we talk about other demands of morality, we need to use other concepts.

Section V: Conclusion

My goal in this paper has been to defend an interpretation of Hume's account of the value of justice. I have argued that Hume's account does not fit neatly into the contractarian tradition in which it is sometimes placed. Instead, Hume is a *functionalist*. While it is true that he thinks that justice is instrumentally valuable, he also thinks that justice has a non-instrumental form of value that I've called *functional value*.

CHAPTER 3: CONVENTIONS AND THE CIRCUMSTANCES OF JUSTICE

Abstract: Hume famously defends the view that justice has application only in certain conditions, conditions that Rawls later called “the circumstances of justice.” Hume’s account of the circumstances of justice has many defenders and critics, but it has been frequently misunderstood. The goal of this chapter is to explain Hume’s account of the circumstances of justice and show that it is more plausible and has more resources than its critics typically think. Its most important feature, which is lost in most discussions of it, is its explanation of *why* justice has application only in certain conditions. If this explanation is plausible, then it advances our understanding of the very concept of justice itself.

Contemporary political philosophy exhibits a nearly incoherent reaction to two features of Hume’s theory of justice. On the one hand, the standard account of the circumstances of justice, usually attributed to Hume, is widely, though certainly not universally, accepted as a plausible account of the application conditions of justice.⁵¹ On this view, the conditions that make up the circumstances of justice are moderate scarcity of goods, limited or constrained benevolence, and (sometimes) rough equality of physical power. On the other hand, Hume’s account of justice is often summarily dismissed on the grounds that it applies almost exclusively to the regulation of property.⁵²

This is a strange development because the standard account of the circumstances of justice (or something close to it) is, for Hume, nothing more than the circumstances of justice with respect

⁵¹ Defenders (often with modifications) include Rawls (1999), Wolff (1977), Hart (1994), O’Neill (1996), Waldron (1999), Miller (2013), and Vanderschraaf (2018). In fact, Wolff goes so far as to claim that the idea that at least two of these conditions—moderate scarcity and limited benevolence—are necessary for the applicability of justice “is well-known and uncontroversial” (p. 36). Critics include Barry (1989) and Nussbaum (2006).

⁵² See Flew (1976), Stroud (1977), Woozley (1978), Harrison (1980), and Garrett (2007).

to property. As a result, if contemporary political philosophers accept the standard account, then they seem committed to thinking that justice is concerned exclusively with the regulation of property. But as many of Hume's commentators have pointed out, that position is highly implausible. After all, justice concerns more than simply the regulation of property. To think that the standard account of the circumstances of justice is correct while simultaneously thinking that justice concerns more than the regulation of property borders on incoherent.

In Chapter 1, I defended the view that Hume's account of justice applies much more broadly than simply to the regulation of property. If that's right, then Hume himself seems to be subject to the charge of incoherence that I've just levelled against contemporary political philosophers. He is vulnerable to this charge, however, only if the standard account of the circumstances of justice captures Hume's own account. The goal of this chapter is to argue that it doesn't, and for good reason. In comparison to Hume's actual account, the standard account both fails to capture all of the relevant conditions and, more importantly, fails to explain what unifies these conditions in a way that illuminates why justice is dependent on background circumstances.

Here's the plan. In Section I, I outline the standard account of the circumstances of justice and explain why this account has typically been attributed to Hume. In Section II, I argue that one of the most controversial conditions—the equality of physical power condition—is not among the circumstances of justice for Hume. Though there is textual evidence to support attributing this condition to Hume, the balance of evidence points to an alternative interpretation, namely, that Hume conceives of interdependence, not rough equality of physical power, to be among the circumstances of justice. In Section III, I defend the claim that the standard account of the circumstances of justice does not capture all of the conditions that Hume thinks render justice applicable. I work through each of the conventions that Hume includes within the scope of justice

and show that the circumstances of justice are the conditions that give rise to the problems to which those conventions are the solution. We need additional conditions, beyond the standard account, to explain the emergence of all of the relevant problems. In Section IV, I conclude by explaining what, for Hume, *unifies* the circumstances of justice and explains their connection to justice.

Section I: The Standard Account of the Circumstances of Justice

The term “circumstances of justice” was popularized by Rawls (1999, p. 109), and contemporary interest in the topic can be primarily attributed to him.⁵³ Rawls claims that his account of the circumstances of justice “largely follows that of Hume” (p. 109; fn. 3), and those who have discussed the circumstances of justice since Rawls have retained this account.⁵⁴ According to these commentators, the circumstances of justice are, on Hume’s view, limited benevolence, moderate scarcity of goods, and rough equality of power.⁵⁵ In this section, I explain why commentators have attributed this view to Hume.

⁵³ Though, besides Hume himself, both Hart (1994) and Lucas (1966) also discussed the circumstances of justice prior to Rawls.

⁵⁴ Vanderschraaf calls this view “The Standard Account” (p. 86). Hubin (1979), Mackie (1980), Barry (1989), Ci (2006), Nussbaum (2006), Hope (2010), Tebble (2016), and Andreou (2017) all also claim that this is Hume’s account.

⁵⁵ Some philosophers (most notably Rawls) change the limited benevolence condition. They argue instead that the relevant condition is the fact that we have different and often conflicting interests. This is the condition that gives rise to the kinds of conflicts that justice helps to adjudicate. To motivate this shift, philosophers typically point out that even if we were all maximally benevolent, we would need rules to coordinate our behavior in order to make sure that we achieve the goals that we share. If my goal is to help you at my own expense and your goal is to help me at your own expense, both of our goals are likely to be frustrated unless we can coordinate. It is not clear to me that we find justice in the solving of these kinds of *pure coordination* problems, largely because it is not clear to me that there is any virtue in following the rules of a convention designed to solve a pure coordination problem. So I am not convinced that Hume’s condition should be changed.

But first, I should explain what has drawn philosophers to the standard account. Hume's vivid and punchy discussion of the circumstances of justice in Section III of the *Enquiry Concerning the Principles of Morals* is, I believe, the source of much of the standard account's appeal. Hume colorfully describes conditions outside of these circumstances and asks, rhetorically, whether justice has any application in them. For instance, Hume writes:

Let us suppose, that nature has bestowed on the human race such profuse abundance of all external conveniencies, that, without any uncertainty in the event, without any care or industry on our part, every individual finds himself fully provided with whatever his most voracious appetites can want, or luxurious imagination wish or desire (*EPM* 3.2; *SBN* 183).

Hume is describing a condition of superabundance of goods. He goes on:

It seems evident, that, in such a happy state, every other social virtue would flourish, and receive tenfold encrease; but the cautious, jealous virtue of justice would never once have been dreamed of. For what purpose make a partition of goods, where every one has already more than enough? Why give rise to property, where there cannot possibly be any injury? Why call this object mine, when, upon the seizing of it by another, I need but stretch out my hand to possess myself of what is equally valuable? (*EPM* 3.3; *SBN* 183-184)

Here, Hume is suggesting that conventions of property have no point when goods are in superabundance. And this claim is intuitively quite plausible. One possible explanation (and the one that Hume endorses) is that these conventions play an important role in the constitution of society. They stabilize possession, which increases social trust and enables productive exchanges. But they need to play this role only because goods are scarce. If goods were in superabundance, we wouldn't have to worry about the instability of possession. Without the instability of possession, we would have no need for property conventions. And obviously without property conventions, it would be either incoherent or vacuous to demand respect for property. In other words, justice with respect to property would have no application.

Hume further justifies this conclusion by arguing that our actual practices support it. Take, for example, the air we breathe. Except in certain specific cases, we do not establish property

rights over air.⁵⁶ Why not? Because air is in superabundance. Because air is in superabundance, there would be no point in establishing property rights in it. Not only is Hume’s conclusion—that property conventions have no point when goods are in superabundance—plausible in the hypothetical situation in which all goods are in superabundance, it is also reflected in our actual practice. As a result, as long as we have no reason to think that this feature of our practice is objectionable, Hume’s conclusion looks doubly secure.⁵⁷

To complete his argument that justice with respect to property applies only in the presence of the moderate scarcity of goods, Hume reverses the case and imagines a situation not of superabundance, but of extreme scarcity:

Suppose a society to fall into such want of all common necessaries, that the utmost frugality and industry cannot preserve the greater number from perishing, and the whole from extreme misery: It will readily, I believe, be admitted, that the strict laws of justice are suspended, in such a pressing emergence, and give place to the stronger motives of necessity and self-preservation (*EPM* 3.8; SBN 186).

In such apocalyptic conditions, “every man may now provide for himself by all the means, which prudence can dictate, or humanity permit” (Ibid).

Again, Hume notes that this view is reflected in our actual practice: “Is it any crime, after a shipwreck, to seize whatever means or instrument of safety one can lay hold of, without regard to former limitations of property?” (Ibid). In an emergency situation, such as a shipwreck, I am permitted to grab the means to save my own life. Even if the means to save my life is the captain’s

⁵⁶ Some exceptions include cases in which people purchase air in tanks because of breathing problems, scuba diving, high elevation mountain climbing, etc. But notice that in each of these cases, the person with a right to that air has it because the air has, in various ways, become scarce.

⁵⁷ This is not to say that there are no objections to this claim. Some philosophers have argued, for example, that we establish property rights in certain goods that are not in scarce supply. Consider intellectual property. See Faraci (2014) for discussion. My view is that once we get clear on the relevant notion of scarcity, this kind of objection loses its force. But I don’t have space in this paper to get into this issue.

prized lifejacket and he explicitly told me earlier in the day that it is his property and no one may touch it but him, I am, in such dire conditions, simply not bound by “former limitations of property.” Similarly, in post-apocalyptic fiction, such as *The Walking Dead*, no one bats an eye when the survivors raid old convenience stores for food. Justice with respect to property loses its application when conventions of property lose their point. When resources are in extreme scarcity, conventions of property lose their point.

One might object here by claiming that while conventions of property lose their point in such conditions, *justice* doesn't. It would still be unjust, say, for one person to hoard all of the resources leaving none for anyone else. This does look like an instance of a certain pattern that we typically describe in terms of justice and injustice. In particular, the objection is to an arrangement that looks structurally similar to the kinds of arrangements that we object to in terms of distributive justice. When we object to unjust income distributions, we are making an apparently similar complaint.

A few points. First, as I defend in Section III, Hume's concern is only with justice with respect to property in these passages. Justice *with respect to property* loses its point when property conventions lose their point. That's all Hume is trying to defend with the example. Second, I think we should be careful about thinking of justice in terms of these patterns without sensitivity to the contexts in which the patterns appear. Third, and relatedly, the context seems to me to affect the kind of complaint that's appropriate. My concern with the person who hoards resources in the post-apocalyptic environment is rooted in a concern for the well-being of the other survivors. I object to one person hoarding all the resources in this situation because as a result, the others are badly off. But a concern for people's well-being is not the same as a concern for justice, as Hume (I think) rightly points out (*T* 3.2.1.11-13; SBN 480-482). According to the view I defend,

distributive justice emerges from the constraints that a convention instituting justice must meet in order to secure approval.⁵⁸ Where there is no convention, there can be no objection stemming from distributive justice, though there can, of course, be other kinds of moral objections.

Hume uses the same strategy to defend the other conditions that make up the standard account of the circumstances of justice. He argues, for example, that justice is inapplicable in conditions in which we are all extremely benevolent (such that we are never tempted not to work for the betterment of all) (*EPM* 3.6-7; SBN 184-186) and in which we are all (or nearly all) extremely rapacious (such that we are utterly unwilling to temper the pursuit of our own advantage in order to secure the benefits of cooperative social life) (*EPM* 3.9-11; SBN 187-188). Hume concludes that justice has application only in conditions of limited or constrained benevolence.

The final condition that constitutes the standard account—rough equality of physical power—has proven to be much more controversial. In the next section, I explain why Hume’s commentators have attributed this condition to his account, the objection to the claim that this condition is among the circumstances of justice, and why the common interpretation of this condition is not Hume’s.

Section II: Rough Equality of Physical Power or Interdependence?

Let’s begin with an (in)famous passage from Hume’s *Enquiry Concerning the Principles of Morals*:

Were there a species of creatures, intermingled with men, which, though rational, were possessed of such inferior strength, both of body and mind, that they were incapable of all resistance, and could never, upon the highest provocation, make us feel the effects of their resentment; the necessary consequence, I think, is, that we should be bound, by the laws of humanity, to give gentle usage to these creatures, but should not, properly speaking, lie under any restraint of justice with regard to them, nor could they possess any right or property, exclusive of such arbitrary lords. Our intercourse with them could not be called society, which supposes a degree of equality; but absolute command on the one side, and

⁵⁸ I discuss distributive justice in more detail in Chapter 4.

servile obedience on the other. Whatever we covet, they must instantly resign: Our permission is the only tenure, by which they hold their possessions: Our compassion and kindness the only check, by which they curb our lawless will: And as no inconvenience ever results from the exercise of a power, so firmly established in nature, the restraints of justice and property, being totally *useless*, would never have place in so unequal a confederacy (*EPM* 3.18; SBN 190-191).

Here Hume imagines a species of creature that is profoundly weaker than human beings. They are so weak that they are “incapable of all resistance, and could never, upon the highest provocation, make us feel the effects of their resentment.” Moreover, because our power over them is so complete, “no inconvenience ever results” from our interaction with them (for us, anyway!), and so the restraints of justice are completely useless “in so unequal a confederacy.” This certainly sounds like Hume is claiming that the strong lie under no restraint of justice with respect to the weak.

This is highly objectionable. Many critics worry that rough equality of physical power can't be an application condition of justice because one of the important functions of justice is to protect weaker people and groups from stronger people and groups. Inequalities of these sorts, far from rendering justice inapplicable, make it especially pressing.⁵⁹

I do not think that, on Hume's view, dramatic inequality of physical power is what is doing the work of rendering justice inapplicable. Instead, as I argue in this section, what renders justice inapplicable is when groups have no relations of mutual dependence upon one another. As a result, the relevant condition within Hume's account of the circumstances of justice is interdependence,

⁵⁹ For other presentations of this criticism, see Reid (1843), Barry (1989), Buchanan (1990), and Nussbaum (2006).

not rough equality of physical power.⁶⁰ To see why, we need to appreciate the way that Hume argues for each condition in Section III of the *Enquiry*.

For both limited benevolence and moderate scarcity, Hume shows that justice is applicable only in those conditions by showing that it is clearly inapplicable at the extremes—that is, in conditions of extreme benevolence and extreme malevolence and conditions of superabundance and extreme scarcity. We should expect him to adopt the same strategy with the final condition as well. And in fact he does present two extremes. But two extremes of what?

We can get a better sense of what the relevant feature is by examining what Hume takes to be the opposite extreme of this condition of justice. Hume writes:

Were the human species so framed by nature as that each individual possessed within himself every faculty, requisite both for his own preservation and for the propagation of his kind: Were all society and intercourse cut off between man and man, by the primary intention of the supreme Creator: It seems evident, that so solitary a being would be as much incapable of justice, as of social discourse and conversation” (*EPM* 3.20; SBN 191).

This passage suggests that there is something crucially important about *social interaction* to justice. When our interests are completely independent of anyone else’s interests, such that we don’t need anyone to help us satisfy our interests, social interaction loses its point.

The opposite of this kind of complete independence is a form of complete dependence. When one party is completely dependent upon another, in this sense, the dependent party is the only one that can even in principle gain from interaction. Again, in conditions of complete dependence, social interaction loses its point. We might very well find ourselves in situations in which we do in fact interact with creatures wholly dependent upon us. These interactions call for kindness and charity, but they involve no distinctively social projects. They don’t involve each of

⁶⁰ Gerald Postema also interprets this condition in this way. See, “Making Resentment Felt: Hume on the Environment of Justice” (ms.)

us *working together* for mutual benefit. Let's consider, then, whether the reason the inequality between us and the "species of creatures" matters to whether justice applies in our relations with them is that they are completely dependent on us.

The key moment in the controversial passage, I think, is this: "Our intercourse with [the species of creatures] could not be called society, which supposes a degree of equality." Something about *society* is important in answering the "equality of what?" question. But strength has nothing to do with society. Hume thinks that whatever it is that must be roughly equal for social interaction to have a point is not something possessed by animals (*EPM* 3.19; SBN 191). Plenty of animals are roughly as strong as human beings, and many are much stronger.

For Hume, social interaction depends upon a number of capacities. We need to be able to communicate with each other, to coordinate our actions, and to hold one another accountable when we fail. When we possess these capacities to a roughly equal degree in conditions in which we can be mutually serviceable to one another, we are able to create social conventions, which help to govern our conduct by tempering our less sociable tendencies. It is when we engage in these kinds of interactions that we incur a distinctive species of moral obligation, which Hume understands under the concept of justice.

The species of creatures, unfortunately, does not possess these capacities. Only they could benefit from our interaction. Their weakness of body and mind makes interactions with them unlikely to be *mutually* beneficial. And they can't even "make us feel the effects of their resentment." In other words, they don't even have the capacity to hold us to account for failures to adhere to the standards of cooperative ventures.⁶¹ In other words, they are dependent on us in

⁶¹ An important problem arises at this point, one that I will set aside for the purposes of this paper. The problem is that resentment appears to presuppose justice. To feel resentment is to feel that one has been harmed *unjustly*. But if resentment presupposes justice, then on pain of circularity,

the relevant sense. We are, as a result, required to treat these creatures as we are required to treat our pets. We must be kind to them and care for them if we have taken responsibility for them, but they possess what they possess only with our permission. Justice applies neither in conditions of complete dependence nor in conditions of complete independence. Rather, it applies only when interacting beings are *interdependent*.⁶²

Nearly all human social relationships are characterized by interdependence. But the exceptions do require comment because they might be thought to make Hume's view objectionable. We similarly can't interact cooperatively with future generations, people with particularly debilitating disabilities, and people in persistent vegetative states. Does it then follow that we have no moral obligations at all to these people, that we may, as Allen Buchanan worries, "choose to use noncontributors in experiments on the nature of pain or for military research on the performance of various designs of bullets when they strike human tissue, slaughter them for food, or bronze them to make lifelike statues" (Buchanan, p. 232)?

Of course not, just as it does not follow that we have no moral obligations to animals. In the infamous passage, Hume explicitly says of the species of creatures that we are "bound, by the laws of humanity, to give gentle usage to [them]." We aren't permitted to torture them for our own amusement, for example. We might even have quite stringent obligations of assistance

Hume can't invoke resentment in the conditions that are supposed to give rise to justice. To my knowledge, this criticism originates with Reid (1843) and is discussed in more depth by Postema (ms.). Some of what I said at the end of Chapter 2 goes some way to addressing this concern.

⁶² Of course, whether humans and animals could stand in the kinds of relations of interdependence that Hume takes to be necessary for justice to obtain between them is ultimately an empirical question. If we can stand in such relations to animals, then our interactions with them might very well fall within the circumstances of justice. And same for Hume's species of creatures, though I take it that Hume has intentionally constructed them so as to rule out that possibility.

towards them. But these obligations are simply not obligations of justice. We may owe them a certain standard of treatment, but we don't owe it to them as a matter of justice.

In fact, Hume provides a general account of moral obligation, one that does not reduce all of our moral obligations to obligations of justice. According to Hume, we lie under moral obligation to ϕ just in case we would disapprove of failing to ϕ were we to consider the matter from a certain neutral perspective called the General Point of View.⁶³ The function of the General Point of View is to eliminate the biases associated with untutored sympathy in order to arrive at a shareable moral perspective. The details of the General Point of View and Hume's argument for thinking that approval and disapproval from it sets the standard of moral judgment is unimportant for present purposes (and I discuss it in detail in other chapters) because I'm not trying to determine the precise content of our moral obligations. The crucial point for my purposes here is that not all of our moral obligations are obligations of justice because we might disapprove, from the General Point of View, of failing to ϕ and yet not thinking that failing to ϕ is a failure of justice.

We are morally obligated to give gentle usage to the species of creatures so long as we would disapprove of failing to give gentle usage to them from the General Point of View. And similarly for future generations, people with debilitating disabilities, and people in persistent vegetative states. We are obligated to treat them well so long as we would disapprove of failing to treat them well from the General Point of View. Exactly what we owe to these people, what we owe to animals, and what we would owe to Hume's species of creatures is a substantive issue that I will not address in this chapter. The point is simply that Hume has the resources to explain why

⁶³ T 3.2.5.4; SBN 517. Hume's exact wording is this: "All morality depends upon our sentiments; and when any action, or quality of the mind, pleases us *after a certain manner*, we say it is virtuous; and when the neglect, or non-performance of it, displeases us *after a like manner*, we say that we lie under an obligation to perform it." I interpret approval "after a certain manner" and disapproval "after a like manner" to be references to the General Point of View.

the fact that we don't have obligations of justice towards each of these groups does not entail that we don't have (perhaps even quite stringent) moral obligations to treat them well.

The project of establishing and maintaining a society depends for its success on our solving a number of significant collective action problems. The way that we solve these problems is by establishing and maintaining certain conventions, e.g., property conventions, promising conventions, legal conventions, etc. When these conventions solve these problems in ways that secure approval from the General Point of View, they generate obligations of justice to abide by them. Justice, then, is the product of the project of, together, solving the collective action problems that stand in the way of the establishment and maintenance of secure and productive social interaction.⁶⁴ I call this account of justice *Humean Functionalism*.

According to Humean Functionalism, justice, at least in some of its forms, loses application outside conditions marked by the moderate scarcity of goods, limited benevolence, and interdependence. With the exception of the significant revision I've suggested, this is the account of the circumstances of justice that is typically attributed to Hume. However, this is not yet Hume's full account. In the next section, I show that, for Hume, more conditions constitute the circumstances of justice than only these three. As it turns out, the circumstances of justice are the conditions that give rise to the problems to which conventions instituting justice are the solution. The standard account does not capture all of these conditions.

Section III: Conventions and the Circumstances of Justice

For Hume, the interdependence condition must hold in any situation in which justice applies for the simple reason that justice depends on people cooperating to solve collective action problems. But the other conditions are indexed to particular problems and particular conventions.

⁶⁴ I explain this account in more detail in Chapter 1.

The other two conditions that make up the standard account of the circumstances of justice—moderate scarcity and limited benevolence—are the conditions that, on Hume’s view, give rise to the problem to which property conventions are the solution. When he goes on to discuss other problems and conventions, Hume describes additional conditions that make up his account of the circumstances of justice. For this reason, the standard account is at best an incomplete specification of Hume’s. And because the scope of justice extends beyond property and its regulation, it’s a good thing that the standard account isn’t Hume’s. In this section, I briefly describe four problems, the conditions that give rise to them, and their solutions. The goal is to defend the view that, for Hume, the circumstances of justice are the conditions that give rise to the problems to which conventions instituting justice are the solution and these conditions go beyond the standard account of the circumstances of justice.

Property

According to Hume, the possibility of secure and productive social interaction depends on our solving a particular problem. This problem is the product of two conditions, our limited benevolence and moderate scarcity of goods. When scarcity is combined with limited benevolence, then the inevitable result is competition. If you possess a good that I need for myself or for those close to me, I will take it. And if I take it, you will try to take it back. In the absence of a reason to think that those close to me will be better off if I leave you in possession of your goods, the inevitable result is the instability of possession. Unstable possession has three bad effects. First, when people take our possessions, we are less able to meet our needs. Second, the very threat of others taking our possessions makes us guarded and stressed. Third, we can’t trust others enough to engage in trade, and so we miss opportunities for mutual gain.

We solve the problem of the instability of possession by establishing property conventions. When these conventions work to solve the problem in a way that would be approved from the General Point of View, they establish property rights and the correlative obligation to respect property rights. This obligation is the source of justice with respect to property. Hume thinks that justice with respect to property is a product of property conventions, which are themselves the solution to the problem of the instability of possession, which arises when moderate scarcity of goods meets limited benevolence. The circumstances of justice with respect to property (two out of the three conditions that make up the standard account) are the conditions that give rise to the problem to which property conventions are the solution.

Promising

According to Hume, promising conventions arise in order to solve a problem generated by our limited benevolence and the way it manifests itself in the face of our inability to trust others to do what they say they will do. The particular example that Hume gives to illustrate these conditions is one of two farmers. Farmer 1's crops will be ready to harvest tomorrow, and Farmer 2's crops will be ready to harvest next week. Both need the other's help to make a successful harvest. Farmer 2 could help Farmer 1 tomorrow hoping that Farmer 1 will help Farmer 2 next week. But both have limited benevolence. If Farmer 2 helps Farmer 1 tomorrow, then Farmer 1 will have gotten all of the benefits he can expect from the transaction. So then why would he help Farmer 2 next week? As Hume notices, Farmer 2 would be relying on Farmer 1's gratitude, which is "slender security" (*T* 3.2.5.8; SBN 519). Farmer 2 would happily help if he could get some assurance that Farmer 1 will help next week. But he can't know what Farmer 1's intentions are (regardless of what Farmer 1 might say), nor can he know whether Farmer 1's intentions will change in the next week. As a result, he simply relies on what he does know, namely, that people

are generally not willing to labor for no further benefits. The inevitable result is that Farmer 2 does not help Farmer 1 tomorrow, Farmer 1 does not help Farmer 2 next week, and they are both worse off than they would have been if Farmer 2 could have only gotten assurance that Farmer 1 would have helped.

And this point about our epistemic limitations generalizes beyond cases with the same structure as the case of the farmers. When we can rely on others to do what they say they will do, we open up opportunities for more beneficial and secure interaction. However, we do not have reliable epistemic access to the intentions of other people, so we can't trust others to do what they say they will do.

Thus, these epistemic limitations are among the conditions that give rise to the problem solved by promising conventions. They play precisely the same role in Hume's account of promising that the conditions that make up the standard account of the circumstances of justice play in his account of property conventions. And because Hume conceives of promising as within the scope of justice, his account of the circumstances of justice must include these epistemic limitations.

One objection to this account of the problem solved by promising conventions is that promising conventions don't just function to enable us to trust that people will do what they say. They also function to get people to do what we want them to do. If I can get you to promise to do something, then I've given you a reason to do it, a reason that you might not have otherwise had. But this function of promising conventions doesn't depend at all on our epistemic limitations. Even if we were all omniscient, we could still secure additional benefits through promising conventions by getting people to do things that they wouldn't otherwise do. For example, even if

Hume's farmers were omniscient, they could still both benefit if Farmer 2 could get Farmer 1 to help harvest next week (on the condition that Farmer 2 helps Farmer 1 tomorrow).

This is not an objection to the account given so far. Even if promising conventions have this additional function, that fact doesn't undermine the claim that promising conventions help to solve the problem generated by our limited benevolence and our epistemic limitations. It just shows that that isn't the only function of promising conventions. Moreover, if it is correct that promising conventions solve multiple problems and thereby have multiple functions, that's just grist for the Humean mill. It might show that Hume's stated account of the function of promising conventions is incomplete, but it supports his general approach to thinking about the value of promising conventions (i.e., in functionalist terms).

Law

Hume's story of the emergence of justice in 3.2 of the *Treatise* is developmental.⁶⁵ He begins with the problem of the instability of possession and argues that property conventions solve this problem. He then notices that once possession is stable, we have the opportunity for gain through mutually rendered services. But in order for these interactions to be possible, we need a solution to the problem generated by our epistemic limitations and consequent inability to trust one another. Promising conventions solve this problem.

Once these conventions emerge to solve these problems, reasonably commodious social and economic interaction is possible. However, according to Hume, as societies increase in size, "The consequences of every breach of equity seem to lie very remote, and are not able to counter-balance any immediate advantage, that may be reap'd from it" (*T* 3.2.7.3; SBN 535). In short, we are tempted to violate the terms of the conventions when we think we can gain from doing so.

⁶⁵ Baier (2010) makes this point as well.

According to Hume, this is an instance of our tendency systematically to undervalue long term advantages in favor of short-term advantages. And his theory of the passions supplies an explanation. Our passions are more strongly activated by what is near to us, either in time, space, or relation. Thus, something of great value strikes us as less valuable than it is when it is distant and something of lesser value strikes us as more valuable than it is when it is near.

This psychological distortion (along with our limited benevolence) causes a problem. If enough of us reliably violate the conventions of property and promising when we think we can gain an advantage from doing so, the conventions will fall apart and we will all be worse off. The solution to this problem, according to Hume, is government under law. Government under law is, again, a convention (or set of conventions), though it is more formalized and structured than the conventions Hume has considered so far.

The function of government under law is to correct for our tendency to undervalue long-term advantages and overvalue short-term advantages. It does this in three ways. First, it levels sanctions against those who violate the requirements of the law, which provides motivation not to violate the law. Next, because we all recognize that government under law is advantageous, we disapprove of violations of the law. Our disapproval has two important motivational effects, one having to do with our own reputation and the other having to do with morality. Thus, the second way that government under law corrects our psychological distortion is through the negative effect of our violating the law on our reputations. We do not want others to disapprove of us because we are concerned to preserve our reputations. And third, our disapproval of those who violate the law is of a moral kind. As a result, we also have moral motivation not to violate the law.

Hume conceives of the requirement to obey the law as a matter of justice. As a result, we can add another item to our list of the circumstances of justice. In particular, we can add our

tendency to value things incorrectly depending on our distance from them. This psychological distortion helps to give rise to a problem that a convention instituting justice is meant to solve.⁶⁶

Chastity

3.2.12, which deals with chastity, is one of the most challenging sections of the *Treatise* to interpret. On a cursory read, it appears to be outright sexist because Hume seems to make the claim that women have a stronger obligation to remain chaste than men do. However, he also explains a number of ways in which the apparent obligation makes no sense. That said, he clearly thinks that chastity fits the same structure as the other artificial virtues. That is, he argues that people have at least *believed* that it is the solution to a problem that arises because of certain background conditions. And as a result, people have *believed* that women lie under a stronger obligation of chastity than men. In this section, I'll explain the supposed problem and its solution and show how, as a result, chastity fits the same structure as property, promising, and law. I'll then discuss the implications, if any, for Hume's account of justice.

As Hume presents it, the requirement of chastity for women is the solution to a problem. The problem arises as follows. Human children require sustained care throughout infancy and beyond. Parents naturally care for their children and willingly take care of them, despite the fact

⁶⁶ Hume also devotes some space (3.2.11) to a discussion of international law (what he calls "the law of nations"). He gives the same explanation of the emergence of international law as that of domestic law, though in this case, the relevant agents are political societies rather than individual persons. So he doesn't devote much space to discussing the problem that international law solves. The interesting feature of 3.2.11 is his argument that the strength of the moral obligation that agents of the state have in their dealings with one another is lower than the strength of the moral obligation that individuals within a society have in their dealings with one another. The argument works as follows. The strength of our moral obligations (at least our obligations of justice) is determined by the interest that we have in interaction that these obligations partially govern. We have a very strong interest in basic social interaction. But we have a less strong interest in interacting with other societies. As a result, our obligations to other societies are less strong than our obligations to those in our own society. This is an interesting argument, and its cogency has important implications for Hume's account of our obligations of justice. I discuss this in detail in Chapter 2.

that childcare can be onerous. But in order for parents to take on these burdens, they need to be confident that the child they are raising is their own. Women can always be virtually certain that they are raising their own children because they give birth to their own children. Men, on the other hand, can be confident that they are raising their own children only if they can be confident that the mother of their children was not having sex with other men around the time of conception. Thus, in order to ensure that both parents take on the burdens of childcare, it is important for women to remain chaste in order to give men sufficient confidence that they are the fathers of the children.

Just as before, conventions (in this case surrounding chastity) arise in order to solve a problem. As a result, assuming these conventions do or could secure approval from the General Point of View, we can add a number of conditions to the circumstances of justice: the long infancy of human children, the inability of men (but not women) to know with confidence that the children they are raising are theirs, the burdensomeness of child-rearing, etc. All of these conditions are necessary to give rise to the supposed problem to which conventions of chastity are the solution.

It is not entirely clear where Hume ultimately comes down on the status of chastity as a virtue. On the one hand, he does present conventions of chastity as the solution to a problem, which suggests that he puts it on the same footing as conventions of property, promising, and law. He also ends the chapter by appearing to endorse the claim that women do indeed lie under a stronger obligation to remain chaste than men do (*T* 3.2.12.9; SBN 573). On the other hand, he points out some ways in which conventions of chastity don't make any sense. He notices, for instance, that "tho' all these maxims [surrounding chastity] have a plain reference to generation, yet women past child-bearing have no more privilege in this respect, than those who are in the flower of their youth and beauty" (*T* 3.2.12.7; SBN 572-573). He also attributes the account of

chastity as the solution to a problem to a “speculative philosopher” who examines the matter “*a priori*” (T 3.2.12.4 and 3.2.12.6; SBN 571-572). Hume is not generally sympathetic to that style of doing philosophy, which suggests that he intends to be presenting a view that he doesn’t endorse.

Regardless of what Hume actually thought, what should we say about his account of chastity? My view is that he is in the neighborhood of something that is ripe for his functionalist analysis, namely, fidelity within relationships. But the supposed problem to which chastity is the solution is no problem at all, especially not now. With the invention of paternity testing, whatever problem there might once have been no longer exists. Moreover, it is not clear that there was ever a serious problem of men refusing to take care of children because of suspicion that they weren’t theirs. It is true that men cannot be as confident as women that the children they raise are theirs. But I see no evidence that this fact explains any significant number of cases of men refusing to behave as parents should.

That said, stable and successful relationships are a social good (and, of course, a personal good), both because of the benefits that come from raising children in two-parent homes and because happy people are more productive. And, at least for some people, there is a temptation to infidelity. Conventions of fidelity provide reason and motivation to remain faithful, and in just the same way as in the cases of property, promising, and law. First, the convention is ultimately to each person’s benefit, so each person sees his or her own interest tied up in the preservation of the convention, which provides reason to remain faithful. Second, the person’s reputation is tied up in abiding by the convention. Third, abiding by a successful convention garners approval from the General Point of View, and so each person has moral reason to abide by the convention. If this approach to making sense of the justice of fidelity within relationships is plausible, then we can

add at least one more condition to our growing list of the circumstances of justice, namely, the temptation to infidelity within a relationship.

So what lessons can we learn from Hume's discussion of chastity for his theory of justice more generally? One might have worried that the applicability of his functionalist analysis to a sexist institution like female chastity would be a problem for his functionalism. I've argued that this particular case is no threat to his functionalism because the supposed problem that he identifies is no problem at all.

However, applying his functionalist analysis to fidelity within committed relationships does, I believe, yield insights. One might object that the moral reason to remain faithful within a relationship has something to do with concern for the welfare of one's beloved, not a concern to do one's part in a mutually advantageous convention. This worry is misguided. There can be more than one good moral reason to do certain things. For example, one might repay a loan because one is concerned to ensure that the person one is paying back is benefitted. That's a perfectly good moral reason to pay back a loan. One is acting from benevolence. But one might also repay a loan from a concern for justice. On Hume's analysis, this concern is a concern to do one's part in the maintenance of mutually advantageous conventions. This is a good moral reason to respect the property rights of others, to keep one's promises, and to obey the law. And it seems to me a good moral reason to remain faithful in a relationship as well, even if there are other good (and, plausibly, better) moral reasons to remain faithful in a relationship. One might worry about what the state of the relationship is if one is remaining faithful for this reason, and I'm sympathetic to this worry, but I don't think it undermines the moral status of this reason.

Section IV: Conclusion

Why does it matter that Hume's account of the circumstances of justice is broader than the standard account? Does this have any significance beyond historical interest? I think it does. What is really crucial is seeing *why* Hume's account is broader than the standard account. It is broader because Hume thinks of the conventions of justice as the solution to a number of distinct problems, problems that nevertheless share a common structure. The conditions that give rise to these problems are the circumstances of justice. Clarifying this common structure demonstrates how deeply systematic Hume's theory of justice is.

What we end up with is a more theoretically rich way of thinking about the circumstances of justice than we find in the contemporary literature. It is perfectly true that the circumstances of justice are the conditions of the "applicability" of justice, that (some of them) are "necessary" conditions of justice (in some of its forms), and that they are the conditions in which justice has a "place and point."⁶⁷ But these accounts of the relationship between justice and its circumstances are vague. The account I've offered gives us a much clearer view of this relationship. Why is justice applicable only in these circumstances? Why are (some of) these conditions necessary for justice (in some of its forms)? Why does justice have a point and place only in these conditions? Because it is in these conditions that conventions of justice solve important collective action problems.

One lesson that we should learn from Hume's account of the circumstances of justice is that we shouldn't think of them as a single, unified group of conditions that give rise to the need

⁶⁷ Estlund (2016/2018) uses the language of "applicability." Vanderschraaf (2018) claims that the circumstances of justice are the conditions necessary and sufficient for justice. I think that the sufficiency claim is too strong. On Hume's view, at least, we also need the presence of a convention working to solve a relevant problem before we can make sense of the demands of justice. The "place and point" language comes from Sayre-McCord (2017).

for justice. Rather, we should think about the conditions that give rise to important shared problems that we need to solve.

CHAPTER 4: HUME'S THEORY OF DISTRIBUTIVE JUSTICE

Abstract: Hume's theory of justice is sometimes thought to be incapable of accommodating distributive justice. In this chapter, I show how, contrary to these appearances, the fundamental structure of Hume's theory makes distributive concerns absolutely central to the realization of justice. Hume emerges as a philosopher whose thought is much friendlier to distributive questions than is often realized.

The title of this chapter is designed to be shocking. Those familiar with Hume's account of justice are likely to react to this title as one might react to a title such as "Plato's Defense of Democracy." Hume has no theory of distributive justice and in fact thinks that efforts to "improve" distributions are both impractical and morally objectionable. Right?

The only place in his two major works of moral philosophy in which he discusses distributive justice at all comes in the second *Enquiry*. There, he does nothing more than reject the view of the "levellers," who claim that the only just distribution of goods is an equal distribution of goods (*EPM* 3.23-3.25; SBN 193-194). Moreover, his theory of justice, dominated as it is with a concern for securing property rights,⁶⁸ seems on its face unable to generate any concern at all with distributive justice, except in the trivial, roughly Nozickian sense in which a just distribution is one in which people securely possess their property.

Of course, it doesn't follow from the fact that Hume objects to perfectly equal distributions of goods that he is completely unconcerned with distributive justice. It also doesn't follow from

⁶⁸ Some philosophers think that Hume's focus on property renders his view of justice implausibly narrow. Gerald Postema (2006) writes, "This narrow focus on conventions of property, however, is puzzling to 21st-century eyes. Ordering property relations...admittedly, is a part of justice, but it is only a part, and not obviously the most important part" (p. 372). Don Garrett (2007), who clearly finds Hume's narrow conception of justice odd, notes that it is "uncharacteristic even for the period" (fn. 2). I reject this interpretation in Chapter 1.

the fact that Hume is especially concerned to secure property rights that he is unconcerned with distributive justice. But some of Hume's commentators have nonetheless accused him of lacking a concern with questions of distributive justice. Regarding Hume's writings on justice, Jonathan Harrison (1980) claims, disapprovingly, "The need for just distribution...is not discussed at all" (p. 42). In addition, Barry Stroud (1977) writes, "There is no mention of justice as a set of procedures for guaranteeing fairness or equity in the distribution of goods or opportunities. Questions about why this person, and not that person, should be in a particular position in society seem not to have occurred to [Hume] at all" (p. 203).

The implication of these remarks is that Hume either never (seriously) considered distributive questions or considered them but judged that they are unimportant. I think distributive questions are important, and if Hume's account can provide no answers to these questions, it is, I believe, in that respect objectionable. Luckily, as I will argue, the fundamental structure of his theory of justice generates a concern with how goods are distributed. My central goal in this paper is to argue for this claim. Hume emerges as a philosopher whose thought is friendlier to distributive justice than is often realized.

My central contention is that for Hume, the standard for the conventions of justice makes their justification dependent upon meeting distributive standards. In order to see how, I need to explain (my interpretation of) the basic framework of Hume's theory of justice. I also need to explain how to make my reading of Hume's account of justice consistent with his few remarks on distributive justice. If his account generates a concern with distributive justice, why no love for the levellers?

The paper unfolds as follows. In Section I, I explain Hume's account of the moral standard, namely, approval and disapproval from what he calls the General Point of View. In Section II, I

explain how this standard works within Hume's theory of justice. I ultimately arrive at the view of justice that I attribute to Hume, which I call Humean Functionalism. In Section III, I explain how Humean Functionalism gives us a theory of *distributive* justice, or, at least, a way of thinking about questions of distributive justice. I also address the passages in which Hume objects to the egalitarianism of the levellers and show that his argument actually confirms my reading of his view.

Section I: Hume's General Point of View

Hume famously argues that morality is founded on sentiment rather than reason. This is not to say that reason has no role to play in moral deliberation. As Hume claims, "In order to pave the way for [our moral sentiments], and give a proper discernment of its object, it is often necessary, we find, that much reasoning should precede, that nice distinctions be made, just conclusions drawn, distant comparisons formed, complicated relations examined, and general facts fixed and ascertained" (*EPM* 1.9; SBN 173). We need our faculty of reason in order to put ourselves in the right position to make justified moral judgments. But our sentiments ultimately serve as the ground for these judgments.

The primary psychological mechanism on which moral sentiments depend is what he calls sympathy. Simplifying quite a bit, the idea is that when I observe (in a capacious sense of "observe") the emotional state of another person, I enter, by sympathy, into a harmonious emotional state.⁶⁹ Our capacity for sympathy is, on Hume's view, crucial for our ability to make moral judgments. Without sympathy, we would be entirely indifferent to other people, and this indifference would be disastrous for the possibility of morality (*EPM* 1.8; SBN 172).

⁶⁹ For a fuller statement of the account, see *T.* 2.1.11.1-8; SBN 316-320

One might expect, then, that Hume would argue that our moral judgments are simply reflections of our actual sympathetic reactions. Hume, however, rejects this view. He thinks it is both false as a description of how we actually make moral judgments and false as an account of how we ought to make moral judgments (*T* 3.3.1.14-15; SBN 580-582; *T* 3.3.6.3; SBN 619). For example, our sympathy is typically more strongly activated by those closer to us in time and relation, but our moral judgments are not similarly sensitive. To illustrate, though our sympathy is more strongly activated by a courageous friend, we nonetheless judge that a similarly courageous person in Ancient Greece is just as praiseworthy (*T* 3.3.1.15; SBN 581). Our sympathy is also typically more sensitive to actions that affect our own interests or the interests of those closest to us than to actions that don't have such effects. For instance, I get much more upset when my friend is injured by a negligent driver than when a stranger is. But I don't think that the negligent driver who injures my friend is more blameworthy than the driver who hits the stranger.

To fix the problems associated with these limitations of sympathy, Hume proposes a standard for our moral judgments. The standard is approval or disapproval when we examine the person's character from a certain point of view, which is often called the Common or General Point of View. This point of view eliminates the distorting influences of sympathy. A key feature of this point of view is that when we evaluate a character trait from it, we do not focus only on the effects of the character trait on those we care about. We abstract from the biases inherent in our untutored sympathy and focus on the effects of the character trait on each person who is affected by the behavior issuing from the character trait, at least each person within the "narrow circle."⁷⁰

⁷⁰ There's a scholarly controversy here that I will not get too far into. Briefly, Hume claims that we are to confine our evaluations of a person's character to its effects on the "narrow circle" (*T* 3.3.3.2; SBN 602). Some people, such as J.L. Mackie (1980), interpret the content of this circle quite narrowly indeed. Others, like Annette Baier (2006), think that, for Hume, how far our concern extends depends on which trait we are evaluating and the position of the person whose

The reason is simple. As Geoffrey Sayre-McCord (1994) notes, the General Point of View fulfills a function. Its function is to regulate and normalize our sympathetic reactions in order to render our evaluative communication intelligible and accessible to one another. We need to do this, on Hume's view, because the very possibility of society depends on it (Sayre-McCord pp. 215-216).

In order for the General Point of View to fulfill this function, it must be mutually accessible (Ibid p. 217) and capable of securing our approval. This claim might seem initially puzzling. If the General Point of View sets the standard for our judgments, how could it possibly be that the General Point of View must itself secure approval? By what standard could we evaluate the General Point of View if the General Point of View itself sets the evaluative standard? The answer is contained in the question. The General Point of View must be reflexively endorsed from the General Point of View. On this point, Hume writes:

It requires but very little knowledge of human affairs to perceive, that a sense of morals is a principle inherent in the soul, and one of the most powerful that enters into the composition. But this sense must certainly acquire new force, *when reflecting on itself, it approves of those principles* [my emphasis], from whence it is deriv'd, and finds nothing but what is great and good in its rise and origin. Those who resolve the sense of morals into original instincts of the human mind, may defend the cause of virtue with sufficient authority; but want the advantage, which those possess, who account for that sense by an extensive sympathy with mankind. According to the latter system, *not only virtue must be approv'd of, but also the sense of virtue: And not only that sense, but also the principles, from whence it is deriv'd* [my emphasis]. So that nothing is presented on any side, but what is laudable and good (*T* 3.3.6.3; SBN 619).

trait it is. I find Baier's interpretation more plausible both because it fits better with the text and because it attributes to Hume a more plausible view. Baier's reading fits better with the text because Hume's appeal to the narrow circle has a circumscribed function. Hume's concern, I believe, is simply to vindicate the judgment that people can be good even if their moral horizons don't extend beyond those they interact with on a regular basis. If my character traits are useful or agreeable to myself and my community members and I simply don't interact much with those beyond this circle, then Hume would want to say that I'm a good person. But of course if it is my *job* to work for the interests of more than my immediate community (if I'm the president, for instance), then we don't evaluate my character solely on the basis of how it impacts my immediate community.

How can we ensure that the General Point of View is both mutually accessible and secures its own approval? The answer is that the standard it establishes must be one that each person could accept. And in order for the standard to be such that each person could accept it, it must be the case that the evaluative perspective does not inherently disadvantage anyone relative to anyone else (where there are no relevant differences between the persons). If the standard failed to consider each person affected equally (and there were alternatives that did consider each equally), then there would be people who had reason to reject the standard. But if there were people who had reason to reject the standard, then they would have reason not to adopt it. And if they had reason not to adopt it, it would fail to fulfill its function of regulating and normalizing our evaluative judgments.

This is bound to be a controversial reading of Hume. He never explicitly endorses the claim that the General Point of View requires equal consideration of the interests of each person affected by the behavior issuing from the character trait under evaluation. What Hume does do is provide some constraints that the standard set by the General Point of View must meet, and I think that these constraints push us towards my interpretation. For instance, Hume writes:

Our situation, with regard both to persons and things, is in continual fluctuation; and a man, that lies at a distance from us, may, in a little time, become a familiar acquaintance. Besides, every particular man has a peculiar position with regard to others; and 'tis impossible we cou'd ever converse together on any reasonable terms, were each of us to consider characters and persons, only as they appear from his peculiar point of view. In order, therefore, to prevent those continual *contradictions*, and arrive at a more *stable* judgment of things, we fix on some *steady* and *general* points of view; and always, in our thoughts, place ourselves in them, whatever may be our present situation (*T* 3.3.1.15; SBN 581-582).

In order to enable us to “converse together on any reasonable terms,” we need to abandon our “peculiar point of view” and instead take up the General Point of View. One of the hallmarks of our “peculiar point of view” is our bias towards those close to us in time and relation, hence

Hume's example of my courageous friend and the equally courageous Ancient Greek person. When I sympathize with those who benefit from the courage of these two people, do I consider the interests of those that my friend benefitted more because *my friend* benefitted them? Is there an unbiased perspective that I could take up that nonetheless does not consider the interests of each person within the narrow circle equally? I would think not.

Another piece of textual evidence in favor of my interpretation comes the second *Enquiry*.

Hume writes:

When a man denominates another his *enemy*, his *rival*, his *antagonist*, his *adversary*, he is understood to speak the language of self-love, and to express sentiments, peculiar to himself, and arising from his particular circumstances and situation. But when he bestows on any man the epithets of *vicious* or *odious* or *depraved*, he then speaks another language, and expresses sentiments, in which, he expects, all his audience are to concur with him. He must here, therefore, depart from his private and particular situation, and must chuse a point of view, common to him with others: He must move some universal principle of the human frame, and touch a string, to which all mankind have an accord and symphony (*EPM* 9.6; *SBN* 272).

The standard that the General Point of View sets must be such that it accords with "some universal principle of the human frame." It's hard to imagine that a standard allowing for unequal consideration of interests would accord with such a *universal* principle. Would I have "an accord and symphony" with a standard that discounts my interests relative to others? I doubt it.

This textual evidence, admittedly, does not decisively count in favor of my reading, but I think that it pushes us in that direction. At the very least, it should place the burden on those who would reject my interpretation to explain how to make doing so consistent with the constraints that Hume places on the General Point of View.

I should also note that equal consideration does not entail equal treatment. As I read Hume, equal consideration simply entails equal regard. How equal regard manifests itself in treatment depends on lots of factors, such as need and responsibility. I might help A rather than B because

A is in greater need. That's consistent with giving equal regard to the interests of A and B. I might also help A rather than B because B, but not A, is responsible for his/her condition. That's also consistent with giving equal regard to the interests of A and B.

In the next section, I turn to Hume's theory of justice. In particular, I offer an interpretation of Hume's theory of justice according to which conventions of justice fulfill a certain social functional role, namely, the role of solving important collective action problems. When these conventions secure approval in a way that would be approved from the General Point of View, they generate legitimate demands of justice.

Section II: Humean Functionalism about Justice

Hume's theory of justice is a form of conventionalism about justice. Conventionalism is the view that the principles of justice are determined by certain social conventions. To understand why Hume accepts conventionalism, we can fruitfully follow him in asking what *purpose* these conventions are supposed to serve. In the *Treatise*, Hume answers this question, and his answer reveals an important feature of his theory of justice, namely, that justice fulfills a function.

In 3.2.2, Hume presents the heart of his theory of justice, which takes the form of an account of the origin of property. He begins by noticing, as many writers had done before him, that human beings are rather pathetic in conditions outside of society. We have a hard time providing ourselves with food, water, clothing, and shelter. Our lives are consumed by the pursuit of mere survival. In society, we overcome the problems associated with life outside society. When we live and work together, we increase our power and ability, and we protect ourselves from bad fortune (*T* 3.2.2.3; SBN 485).

But the very possibility of society depends on our overcoming some problems, the most significant and fundamental of which is the product of two conditions, moderate scarcity of goods

and limited benevolence (*T* 3.2.2.5-7; SBN 486-488), which Rawls (1999) famously calls “the circumstances of justice” (p. 109). When moderate scarcity of goods is combined with limited benevolence, we get a problem, the problem of the instability of possession.

Here’s how the problem arises. Because our benevolence is limited, we care more about the interests of ourselves and those close to us than we do more distant others. And given that goods are crucially important for promoting the interests of ourselves and those close to us, we are more strongly motivated to ensure that ourselves and those close to us possess these goods than to ensure that others possess them. Hume writes, “This avidity alone, of acquiring goods and possessions for ourselves and our nearest friends, is insatiable, perpetual, universal, and directly destructive of society” (3.2.2.12; SBN 491-492). Of course, limited benevolence causes no problems in and of itself. But when combined with moderate scarcity of goods, the inevitable result is competition for goods. In the absence of conventions securing possession, competition leads to unstable possession. And if possession of goods is unstable, then society and its attendant benefits are impossible.

What we need is a solution to this problem. It is in solving this problem that, on Hume’s view, justice with respect to property emerges. The solution to the problem of insecure possession is a scheme of property conventions. These conventions solve the problem of insecure possession by establishing who gets rightfully to possess what and when. When we all respect these prescriptions, we stabilize possession by eliminating the threat of having one’s possessions seized. Justice, Hume thinks, originally emerges in the prescriptions of these conventions.

This explanation reveals why Hume is a conventionalist about justice. Justice (at least in its initial guise as a scheme of property rights) is the solution to a certain collective action problem. So for the demands of justice to obtain, two conditions must hold. First, the problem must actually

exist, and we must be able to solve it. If we found ourselves outside the circumstances of justice, as Hume imagines in detail in the second *Enquiry* (*EPM* 3.1-21; SBN 183-192), then either there would be no problem or we wouldn't be able to solve it. Either way, the demands of justice would not obtain. Second, something must actually be in place to work to solve the problem. On Hume's view, that something is a set of social conventions. Thus, for Hume, justice is the product of certain social conventions.

As Hume moves on to discuss other aspects of justice besides property, the same structure repeats itself. Hume identifies a problem and the conditions that give rise to it and then notices that conventions that institute the aspect of justice in question are the solution to the problem. For example, he points out that promising conventions are the solution to a problem of lost opportunities for mutual advantage, which he traces to our limited benevolence and our inability to trust that others will do what they say (*T.* 3.2.5.8; SBN 519-520). Additionally, Hume argues that legal institutions (and by extension, our allegiance to them) are the solution to a problem that arises from the fact that we are apt to sacrifice our long-term interests for short-term benefits (*T.* 3.2.7.3-6; SBN 535-537).

That Hume locates the same structure within each example suggests, I propose, the way that he understands what justice is. Justice, in whatever guise we find it, is the product of certain conventions that work to solve a problem. It is essential to justice that it fulfills this functional role. But justice is not a standard merely of functional efficacy, even if fulfilling a function is part of its nature. Justice is a moral standard. As we've already seen, Hume has an overarching moral standard, namely, approval and disapproval from the General Point of View. What is the relationship between the General Point of View and the functionalist aspect of his account justice? For Hume, justice is the product of social conventions that work to solve important collective

action problems *in a certain way*. In particular, these conventions must solve these problems in a way that would be approved from the General Point of View. This is now a conception of justice as a moral standard. I call this view *Humean Functionalism*.

Section III: Humean Functionalism and Distributive Justice

How does Humean Functionalism generate a concern for distribution? In order to answer this question, we need a better understanding of the standards for the conventions of justice that Humean Functionalism gives us. According to Humean Functionalism, conventions of justice occupy a certain social functional role, namely, the role of solving important collective action problems. Thus, in order for these conventions to be conventions from which standards of justice could emerge, they must actually occupy this role, and in order to occupy this role, they must actually work to solve the relevant problems. So we immediately get a standard that these conventions must meet, namely, efficacy. As I argue in Chapter 2, these conventions need not successfully solve the relevant problem in each and every situation, but they need to be designed in such a way that they will be generally efficacious.

Let's focus on the example of property for the moment. In order to be efficacious, property conventions need to stabilize possession. We get some concern for distribution immediately from this standard. A property convention that did not ensure that at least most people have steady and secure access to sufficient goods would not be very stable and would probably dissolve because those who do not have steady and secure access to sufficient goods would not be motivated to refrain from the possessions of others. Obviously if the convention were to dissolve, then possession would become unstable again. Thus, from the efficacy standard alone, property conventions need at least to be such that they ensure steady and secure access to sufficient goods for enough people to guarantee the conventions' stability.

The problem is that merely solving the problem of the instability of possession does not guarantee that *each person's* needs for goods are addressed. It would be possible to render possession stable (on a society-wide level) while leaving some people destitute (and, historically-speaking, this is probably the norm). If this were all that Hume could say about distribution, then his theory of justice wouldn't be very plausible. A theory of distributive justice that leaves open the possibility of pronouncing a distribution just that leaves some people destitute is not a plausible theory of distributive justice.

Luckily, Hume has not yet exhausted the resources available to him within Humean Functionalism. Conventions of justice must not only solve collective action problems. They must do so in a way that would secure approval from the General Point of View. Can the General Point of View help us to narrow the range of justifiable conventions even further? Because of the need for conventions to solve problems in a way that would be approved from the General Point of View, a convention is justified only if when considering it as a solution, we regard the interests of each person equally. One might think, then, that a convention ensuring equality of property (perhaps with deviations for need and responsibility) enjoys a kind of default (though perhaps not ultimate) justification.

This looks as though Hume is committed to some form of resource egalitarianism in the distribution of property rights over goods. But as I mentioned in the introduction, Hume explicitly rejects this view. Is there a way of rendering his view both consistent and plausible?

Before turning to Hume's objection to the kind of egalitarianism endorsed by the levelers, I should note up-front that there is textual evidence in Hume's corpus to support the claim that he thinks that we ought to try to bring about distributions that approach equality. In his essay, "Of Commerce," Hume argues that lessening distributive inequalities is desirable. He claims that

dramatic inequality “weakens any state.” How? He writes, “Where the riches are in few hands, these must enjoy all the power, and will readily conspire to lay the whole burthen on the poor, and oppress them still farther, to the discouragement of all industry” (Co 17; *Essays: Moral, Political, and Literary*, p. 265). He also claims:

Every person, if possible, ought to enjoy the fruits of his labour, in a full possession of all the necessaries, and many of the conveniencies of life. No one can doubt, but such an equality is most suitable to human nature, and diminishes much less from the happiness of the rich than it adds to that of the poor” (Ibid).

These comments echo similar claims in the second *Enquiry* (EPM 3.25; SBN 193-194). Hume does not endorse a full-throated resource egalitarianism in these passages, but he does suggest that everyone ought to enjoy goods above a sufficiency level and that when wealth accumulates in the hands of the few, the society suffers. He also notices the standard point about diminishing marginal value that gains for those at the bottom are more valuable than gains for those at the top. Movement towards equality, then, seems to be valuable on Hume’s view, at least all else equal.

If Hume takes the moral judgments that he makes to accord with his own theory of moral judgment, then these passages validate my suggestion that Hume’s General Point of View yields a default (though, as mentioned, not necessarily ultimate) preference for conventions that distribute whatever the good in question is in a way that at least approaches equality. So then why does Hume reject resource egalitarianism? Hume has two objections.

First, he thinks that resource egalitarianism is impractical. He writes, “Render possessions ever so equal, men's different degrees of art, care, and industry will immediately break that equality” (EPM 3.26; SBN 194). The kind of governmental intervention in the affairs of a society that would be required to maintain equality is impractical. The economic activity of an entire society is so complicated that trying to maintain equality would be nearly impossible. And as I interpret Hume’s theory of justice, this kind of objection significantly counts against a proposed

distributive standard. The reason is that a convention is justified only if it occupies the social functional role of working to solve the relevant sorts of problems. If a convention mandating a perfectly egalitarian distribution is impractical, then it won't work to solve the relevant problems. And so it would fail to secure justification.

Second, Hume thinks that equal distributions would be, to use his term, *pernicious* to society. His argument here appeals to the consequences of trying to bring about and maintain equality. His concern is primarily with the kinds of disincentives that this kind of equality would generate. In particular, if the fruits of production and exchange were immediately seized, then there would be a big disincentive to production and exchange, which are crucial for the health and well-being of a society. He is also concerned with how much power a government would need to be vested with in order to maintain resource equality in society.

It is important to attend to the *kind* of objection that Hume is making here. He's arguing that while resource egalitarianism enjoys default justification, putting it into practice would be really bad for people. This is not an argument grounded in a Nozickian conception of distributive justice, according to which the just distribution is the one in which people securely possess those goods in which they have property rights, where property rights are a function of just acquisition and just exchange. Instead, Hume's concern is with how this particular distributive scheme actually impacts the interests of each person. In figuring out what Hume's account of distributive justice is, then, we need to keep in view the effects that a proposed property convention has on the interests of each person.

So how would a convention need to distribute property rights over goods in order to be justified? In an important sense, this is, for Hume, at least in part an empirical question. We would need to know a lot about the actual effects of different possible distributive schemes. But

nonetheless, we can make some progress on this question by thinking about how a distributive scheme could take equal account of the interests of each person. My proposal is, admittedly, an attempted development of Hume's view. He does not make this proposal anywhere. That said, here's the idea. We can regard each person equally (as the General Point of View requires) if 1) each person has at least formal equality of opportunity to gain from the productive mechanisms that we have in place and 2) we include a safety net that allows each person at least to meet his or her needs if s/he fails to gain from the productive mechanisms that we have in place. If it is impractical to demand equality in the distribution of goods, then we must satisfy the General Point of View's requirement that we consider each participant in a convention equally by ensuring that each participant has equal opportunity to access the benefits of the convention, in this case secure access to enough goods that one has no motive to take from others. This is at least an initially plausible account of justice in the distribution of goods.

I should say that I take these two conditions to be minimal necessary conditions. By "minimal," I mean that a convention instituting stronger conditions would also be justified. But no convention instituting a condition weaker than either of these would be justified. Why are these conditions minimally necessary in order for a convention to secure approval from the General Point of View? Let's think about what denying them would involve.

If we deny the formal equality of opportunity condition, then we have to say that a convention that, as a matter of formal policy, restricts the opportunities of some can nonetheless secure justification. What do formal policies that restrict the opportunities of some look like? One kind of example is a restriction on certain people holding certain kinds of jobs. For example, a society might have a policy that members of some minority group can't become doctors or teachers. It's hard to see how we could, from the General Point of View, properly sympathize

with members of these groups and yet maintain that they should be formally excluded from these kinds of pursuits.

If we deny the safety net condition, then we have to say that a convention that leaves some people destitute could nonetheless secure approval from the General Point of View. Since some degree of unemployment is nearly inevitable,⁷¹ we would be saying that the convention would provide no protection for some percentage of the population that will *inevitably* be unemployed. It is of course true that the makeup of the unemployed class shifts over time. But it still seems to me implausible that we could sympathize with each person equally and yet approve of a convention that leaves some of them inevitably destitute, when we could instead put into place policies that secure for them access to the benefits of property conventions.

What happens when we turn to the distribution of other sorts of things? For example, we typically assume that we are all equal before the law. In other words, when it comes to the law, we would find any view implausible that could not yield the result that standing before the law is distributed equally. Can Hume's view account for this desideratum?

One might initially worry that he can't precisely because he objects to the kind of equal distributions of goods endorsed by the levellers. But his reason for rejecting equal distributions in that case does not hold in the legal case. Ensuring equal standing before the law does not face the

⁷¹ See Mortensen (2011) for a history and explanation of the so-called DMP model of unemployment. The basic idea is that even when the price for labor matches the market-clearing price (which it never does anyway in the presence of a functional minimum wage), there are barriers to full employment. These barriers are collectively called "search friction." "Search friction" captures all of the factors that might prevent employers from hiring otherwise qualified candidates and that might prevent qualified candidates from accepting suitable jobs (hopes for something better, inability to be matched up for whatever reason, etc.). And it is worth noting that even at the market-clearing price, we achieve full employment only on one way of understanding full employment. Setting aside search friction for the moment, at the market-clearing price, everyone who wants to work at that price has a job. That's not the same thing as everyone having a job. Some people might not be willing to work at the market-clearing price.

kind of impracticality and disincentive concerns that equal distributions of goods face. As a result, in order to secure approval from the General Point of View, legal conventions need to distribute standing before the law equally. The General Point of View does indeed yield a default preference for equal distributions, but because the relevant conventions must occupy their functional role, Humean Functionalism has the flexibility to accept departures from equal distributions when bringing about equal distributions is impractical or when they would have predictably bad effects.

What we get from Hume's view isn't quite a theory of distributive justice. Rather, what we get is a way to think about questions of distribution in the context of conventions of justice. There are standards that we need to meet. We need to ensure that our conventions work to solve whatever the problem in question is, and we need to ensure that they do so in a way that would be approved from the General Point of View, which itself requires us to consider equally the interests of each person affected by a convention. But I take it that this view can allow that the answer to the question of what constitutes a just distribution varies from context to context.

One might object that I have made things easier for myself by presupposing a particular way of thinking about what it would take for each person to be regarded equally in a convention. One might say that property conventions could be justified even if some people are left destitute because these conventions do successfully consider each person. Each person equally has the right securely to possess whatever property s/he has acquired. Even someone who possesses nothing satisfies this standard, albeit trivially. As a result, a person left destitute could not complain that the convention is unjustified because s/he was in fact regarded equally.

The Humean Functionalist has two available responses to this concern. First, s/he might insist on the conception of equal regard that I proposed earlier. We need to think in terms of the interest that each of us has in participating in property conventions. We participate in property

conventions because we wish securely to possess not just whatever we happen to possess, even if that's nothing. We participate in property conventions because they are supposed to help us eliminate the inconveniences of pre-conventional life. And one of those inconveniences is that individuals have insufficient productive capacity to provide for themselves on their own (*T* 3.2.2.2; SBN 484-485). As a result, we participate in property conventions at least partially in order to ensure that our needs are met. When we evaluate a property convention from the General Point of View, from which we must sympathize equally with each person's interests, we approve only of those conventions that ensure that at least meet each person's needs.

Second, the Humean could agree with the critic that any property convention that equally guarantees secure possession of whatever property each person possesses would secure approval from the General Point of View. However, the Humean could then claim that the resulting unequal distribution is its own problem to be solved. After all, the Humean, most fundamentally, conceives of justice as a problem-solving tool. Distributive justice, on this view, would simply be the solution to a distinct problem, rather than, as I've been suggesting, a constraint on how other problems must be solved. Either way, the Humean does not lose the ability to account for distributive justice.

Section VI: Conclusion

One of the most significant objections facing Hume's theory of justice is that it cannot account for distributive justice. Some critics seem to think that to the extent that we get a theory of distributive justice from his view, it looks very much like Nozick's. The just distribution is the one in which people securely possess whatever they have property rights in. And this is true regardless of the initial distribution or later distributions that result from exchanges. I've argued that Hume's theory of justice is capable of producing a much more robust theory of distributive

justice than this. We can see why by bringing out the standards that conventions instituting justice must meet in order to be justified. Hume's view can make sense of these standards despite being a conventionalist view. What we end up with is a conventionalist account of justice that can nonetheless account for standards that the conventions must meet, including distributive standards.

REFERENCES

- Abramson, Kate. "Correcting *Our Sentiments* about Hume's Moral Point of View." *The Southern Journal of Philosophy* Vol. 37, no. 3 (1999), pp. 333-361.
- "Sympathy and the Project of Hume's Second Enquiry." *Archiv für Geschichte der Philosophie* Vol. 83, no. 1 (2001), pp. 45-80.
- Andreou, Chrisoula. "Advantage, Restraint, and the Circumstances of Justice." *Social Theory and Practice* Vol. 43, no. 2 (2017), pp. 397-419.
- Baier, Annette. *A Progress of Sentiments: Reflections on Hume's Treatise*. Cambridge: Harvard University Press, 1991.
- "How Wide is Hume's Circle?" *Hume Studies* 32, no. 1 (2006): 113-118.
- The Cautious Jealous Virtue: Hume on Justice*. Cambridge: Harvard University Press, 2010.
- Baillie, James. *Hume on Morality*. New York: Routledge Press, 2000.
- Barry, Brian. *Theories of Justice: A Treatise on Social Justice Volume I*. Berkeley: University of California Press, 1989.
- Brennan, Jason and Bas van der Vossen. "The Myths of the Self-Ownership Thesis." In *The Routledge Handbook of Libertarianism*. Edited by Jason Brennan, Bas van der Vossen, and David Schmidtz. New York: Routledge Press (2018), pp. 199-211.
- Broad, C.D. *Five Types of Ethical Theory*. London: Routledge Press, 2013.
- Buchanan, Allen. "Justice as Reciprocity vs. Subject-Centered Justice." *Philosophy and Public Affairs* Vol. 19, no. 3 (1990), pp. 227-252.
- Ci, Jiwei. *The Two Faces of Justice*. Cambridge: Harvard University Press, 2006.
- Cicero. Selection from *De Officiis*. In *Justice*. Edited by Alan Ryan. Oxford: Oxford University Press (1993), pp. 41-45.
- Cohen, G.A. *Self-Ownership, Freedom, and Equality*. Cambridge: Cambridge University Press, 1995.
- Cohon, Rachel. "The Common Point of View in Hume's Ethics." *Philosophy and Phenomenological Research* Vol. 57, no. 4 (1997), pp. 827-850.

- Cudd, Ann. "Feminism and Libertarian Self-Ownership." In *The Routledge Handbook of Libertarianism*. Edited by Jason Brennan, Bas van der Vossen, and David Schmidtz. New York: Routledge Press (2018), pp. 127-139.
- Epicurus. *Key Doctrines 33, 32*. In *The Hellenistic Philosophers*. Edited by A.A. Long and Translated by D.N. Sedley. Cambridge: Cambridge University Press, 1987.
- Estlund, David. *Utopophobia: On the Limits (If Any) of Political Philosophy*. Princeton: Princeton University Press, 2020.
- "What Is Circumstantial About Justice?" *Social Philosophy and Policy* Vol. 33, no. 1-2 (2016), pp. 292-311.
- Faraci, David. "Do Property Rights Presuppose Scarcity?" *Journal of Business Ethics* Vol. 125 (2014), pp. 531-537.
- Flew, Antony. "Three Questions About Justice in Hume's *Treatise*." *The Philosophical Quarterly* Vol. 26, no. 102, pp. 1-13.
- Garrett, Don. "The First Motive to Justice: Hume's Circle Argument Squared." *Hume Studies* 33, no. 2 (2007): 257-288.
- *Hume*. New York: Routledge Press, 2015.
- Gauthier, David. "Artificial Virtues and the Sensible Knave." *Hume Studies* Vol. 18, no. 2 (1992), pp. 401-428.
- "David Hume, Contractarian." *The Philosophical Review* Vol. 88, no. 1 (1979), pp. 3-38.
- Gigerenzer, Gerd. *Rationality for Mortals: How People Cope with Uncertainty*. Oxford: Oxford University Press, 2008.
- Hampton, Jean. "The Hobbesian Side of Hume." In *Reclaiming the History of Ethics: Essays for John Rawls*, Edited by Andrews Reath, Barbara Herman, and Christine M. Korsgaard. Cambridge: Cambridge University Press, 1997. Pp. 66-101.
- Hardin, Russell. *David Hume: Moral and Political Theorist*. Oxford: Oxford University Press, 2007.
- Harrison, Jonathan. *Hume's Theory of Justice*. Oxford: Oxford University Press, 1980.
- Hart, H.L.A. *The Concept of Law Second Edition*. Oxford: Oxford University Press, 1994.
- Hayek, F. A. "The Use of Knowledge in Society." *The American Economic Review* Vol. 35, no. 4 (1945), pp. 519-530.

- Hobbes, Thomas. *Leviathan*. Edited by Edwin Curley. Indianapolis: Hackett Publishing, 1994.
- Hope, Simon. "The Circumstances of Justice." *Hume Studies* Vol. 36, no. 2 (2010), pp. 125-148.
- Hubin, D. Clayton. "The Scope of Justice." *Philosophy and Public Affairs* Vol. 9, no. 1 (1979), pp. 3-24.
- Hume, David. *A Treatise of Human Nature*. Edited by David Fate Norton and Mary J. Norton. Oxford: Oxford University Press, 2007.
- *A Treatise of Human Nature*. Edited by L.A. Selby-Bigge, revised by P.H. Nidditch. Oxford: Oxford University Press, 1978.
- *An Enquiry Concerning the Principles of Morals*. Edited by Tom L. Beauchamp. Oxford: Oxford University Press, 1998.
- *Enquiries Concerning Human Understanding and Concerning the Principles of Morals*. Edited by L.A. Selby-Bigge, revised by P.H. Nidditch. Oxford: Oxford University Press, 1975.
- *Essays: Moral, Political, and Literary*. Edited by Eugene F. Miller. Indianapolis: Liberty Fund, 1994. Mackie, J.L. *Hume's Moral Theory*. London: Routledge, 1980.
- Lucas, J.R. *The Principles of Politics*. Oxford: Clarendon Press, 1966.
- Mack, Eric. "Self-Ownership, Marxism, and Egalitarianism: Part II: Challenges to the Self-Ownership Thesis." *Politics, Philosophy, and Economics* Vol. 1, no. 2 (2002), pp. 237-276.
- Mackie, J.L. *Hume's Moral Theory*. London: Routledge, 1980.
- Mill, John Stuart. *Utilitarianism Second Edition*. Edited by George Sher. Indianapolis: Hackett Publishing Company, 2001.
- Miller, David. *Justice for Earthlings: Essays in Political Philosophy*. Cambridge: Cambridge University Press, 2013.
- Mortensen, Dale T. "Markets with Search Friction and the DMP Model." *The American Economic Review* 102, no. 4 (2011): 1073-1091.
- Morton, Jennifer. "Reasoning under Scarcity." *Australasian Journal of Philosophy* Vol. 95, no. 3 (2017), pp. 543-559.

- Nussbaum, Martha. *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge: Harvard University Press, 2006.
- O'Neill, Onora. *Towards Justice and Virtue*. Cambridge: Cambridge University Press, 1996.
- Plato. *Republic*. In *Plato: Collected Works*, edited by John M. Cooper. Indianapolis: Hackett Publishing, 1997.
- Postema, Gerald. "Making Resentment Felt: Hume on the Environment of Justice." Manuscript. -----"Whence Avidity? Hume's Psychology and the Origins of Justice." *Synthese* 152 (2006): 371-391.
- Prinz, Jesse. *The Emotional Construction of Morals*. Oxford: Oxford University Press, 2007.
- Rawls, John. *A Theory of Justice Revised Edition*. Cambridge: Belknap Press, 1999.
- Lectures on the History of Political Philosophy. Cambridge: Belknap Press, 2007.
- Reid, Thomas. *Essays on the Active Powers of the Human Mind*. London: Printed for Thomas Tegg, Cheapside; R. Griffin and Co., Glasgow; T. Messurier, Dublin; J. and S.A. Tegg, Sydney and Hobart Town, 1843.
- Rosen, Frederick. *Classical Utilitarianism from Hume to Mill*. London: Routledge Press, 2003.
- Sayre-McCord, Geoffrey. "Hume and the Bauhaus Theory of Ethics." *Midwest Studies in Philosophy* Vol. 20, no. 1 (1995), pp. 280-298.
- "Hume on Practical Morality and Inert Reason." In *Oxford Studies in Metaethics Volume 3*. Edited by Russ Shafer-Landau. Oxford: Oxford University Press (2008), pp. 299-320.
- "Hume on the Artificial Virtues." In *The Oxford Handbook of Hume*. Edited by Paul Russell. Oxford: Oxford University Press (2016), pp. 435-469.
- "Hume's Theory of Public Reason." In *Public Reason in Political Philosophy: Classic Sources and Contemporary Commentaries*, edited by Piers Norris Turner and Gerald Gaus. New York: Routledge. Pp. 303-329.
- "On Why Hume's 'General Point of View' Isn't Ideal—and Shouldn't Be." *Social Philosophy and Policy* Vol. 11, no. 1 (1994), pp. 202-228.
- Snare, Francis. *Morals, Motivation, and Convention: Hume's Influential Doctrines*. Cambridge: Cambridge University Press, 1991.
- Sobel, David. "Backing Away from Libertarian Self-Ownership." *Ethics* Vol. 123, no. 1 (2012), pp. 32-60

----- “Self-Ownership and the Conflation Problem.” In *Oxford Studies in Normative Ethics Volume 3*. Edited by Mark Timmons. Oxford: Oxford University Press, 2013.

Stroud, Barry. *Hume*. New York: Routledge Press, 1977.

Taylor, Robert S. “A Kantian Defense of Self-Ownership.” *Journal of Political Philosophy* Vol. 12, no. 1 (2004), pp. 65-78.

Tebble, Adam J. “On the Circumstances of Justice.” *European Journal of Political Theory* Vol. 0, no. 0 (2016), pp. 1-23.

Vanderschraaf, Peter. *Strategic Justice: Conventions and Problems of Balancing Divergent Interests*. Oxford: Oxford University Press, 2018.

Waldron, Jeremy. *Law and Disagreement*. Oxford: Oxford University Press, 1999.

Wolff, Robert Paul. *Understanding Rawls: A Reconstruction and Critique of A Theory of Justice*. Princeton: Princeton University Press, 1977.

Woozley, A.D. “Hume on Justice.” *Philosophical Studies: An International Journal of Philosophy* Vol. 33, no. 1 (1978), pp. 81-99.