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PARENTS, POLITICIANS, AND THE PUBLIC:  
HUME'S NATURAL HISTORY OF JUSTICE IS HUMEAN ENOUGH

by

SCOTT COLLISON

Under the Direction of Eric Entrican Wilson, PhD

ABSTRACT

David Hume argues that reflections upon public utility explain the psychological foundations of justice and the moral feelings attendant on it. Adam Smith objects that Hume's theory of justice is psychologically implausible. A just punishment attracts the approval of every citizen on Hume's alleged view. Not every citizen can consider the abstract public interest every time, Smith observes, so Hume can't have explained all of justice. I argue, in response, that Smith's objection has not accounted for all of the causal processes that Hume draws upon in support of reflections upon public utility. Conventions establish the very possibility of public interest, and socializing processes lend the public interest its moral salience. Human nature includes a species-general passion for acquiring property for the sake of family. The motivational centrality and universal scope of this passion, coupled with the dramatic psychological power of sympathy, generates the first moral feelings. Social conditioning develops those feelings into attitudes about reward and punishment. Hume's theory of justice, with his conjectures about sociocultural processes, is both psychologically plausible and more complex than commentators tend to appreciate.

INDEX WORDS: David Hume, Adam Smith, Justice, Sympathy, Empathy, Moral Sentimentalism, Conventions, Scottish Enlightenment, Natural Jurisprudence

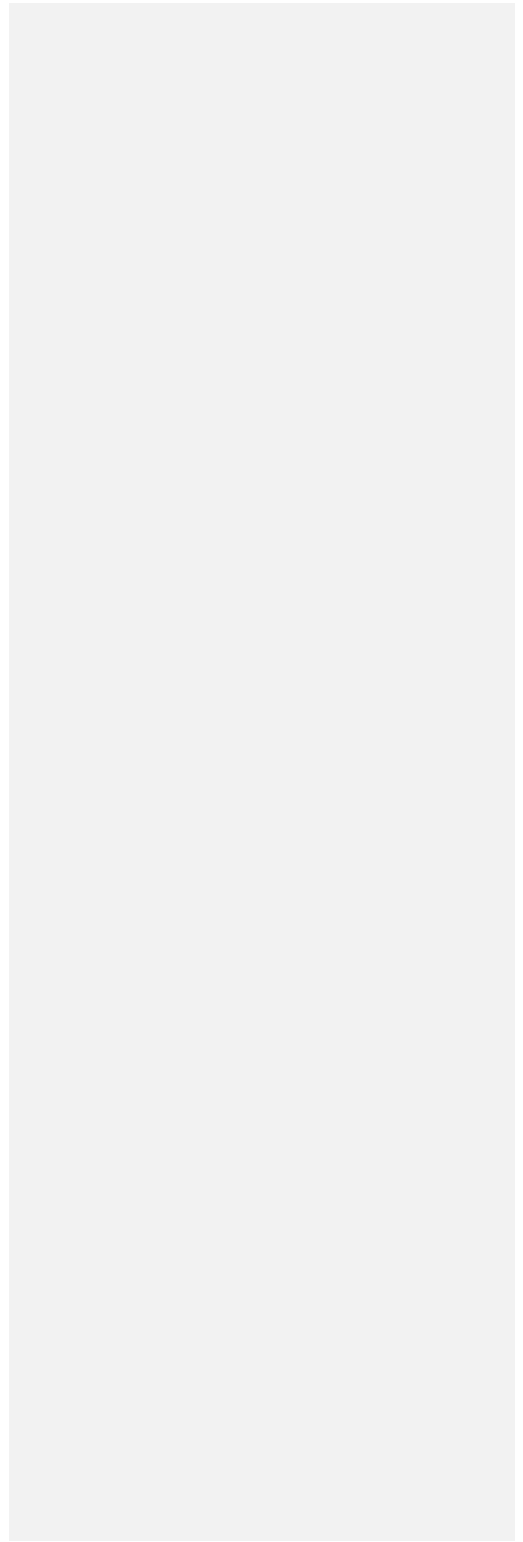
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Scott Collison  
2016



PARENTS, POLITICIANS, AND THE PUBLIC: HUME'S NATURAL HISTORY OF  
JUSTICE IS HUMEAN ENOUGH

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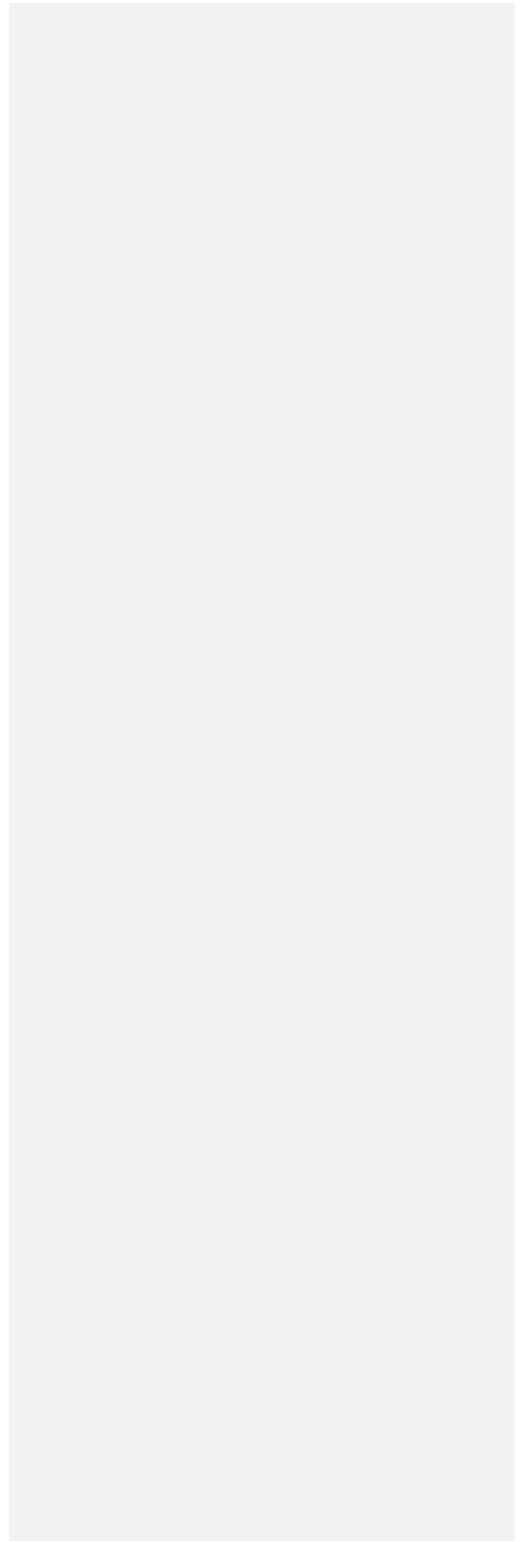
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August 2016

**DEDICATION**

To the circle of my limited beneficence, who'll know who they are.



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Eric Wilson provided tremendous support and flexibility throughout, and has surpassed expectations with advice extending beyond the merely professional. Jessica Berry convinced me that serious scholarship is rare and hard and modeled what that should look like. Dan Weiskopf humored my Humean skepticism of contemporary philosophy of mind in class, and provided invaluable steering in my final year at GSU. Tim O'Keefe is the most competent university administrator in the world, and a fount of great advice for living. Jeff Black introduced me to the kind of historical scholarship represented herein.

TABLE OF CONTENTS

ACKNOWLEDGEMENTS.....v

1 INTRODUCTION ..... 1

2 ORIGINAL OBLIGATIONS ..... 7

3 MORAL OBLIGATIONS TO JUSTICE ..... 14

4 CONCLUSION.....27

WORKS CITED.....30

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## 1 INTRODUCTION

In his *Enquiry Concerning the Principles of Morals*, Hume's explanation of the human sense for justice seems to depend upon only one psychological principle. He concludes 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" (*M* 3.1.1).<sup>1</sup> Hume reaches this general principle, he claims, by comparison of particular instances (*M* 1.10). While Hume endeavors to explain "all effects from the simplest and fewest causes," his explanation of justice as grounded in public utility must also accord with experience (*T* 1.*intro*.8). Where a causal principle explains a phenomenon philosophers ought not "multiply causes without necessity" (*T* 3.3.1.10). Sympathy, the human tendency to pick up each others' emotions and passions via psychological association, is just such a principle in Hume's explanation of the sense for justice as deriving from a psychological process on public utility. The formulation of Hume's view in the second *Enquiry* compresses his account in book III of *A Treatise of Human Nature*, which locates the origin of justice in property conventions, and explains our sense for its merit as a product of a natural progress of moral sentiment, guided by sympathy, vanity, and education. Hume's presentation of his view in the second *Enquiry* invites misreadings that have plagued the reception of his moral philosophy. This essay aims to clarify the causal structure of Hume's explanation of our sense for justice, against criticism from, presumably, one of Hume's most charitable readers.

Hume's protégé Adam Smith objects that reflection upon justice's benefit to the public cannot explain the moral sentiments that everyone usually feels about justice. "All men, even the most stupid and unthinking, abhor fraud, perfidy, and injustice, and delight to see them punished. But few men have reflected upon the necessity of justice to the existence of society, how obvious

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<sup>1</sup> In-text citations will use standard abbreviations for Hume's and Smith's works, and refer to book.part.section.paragraph where applicable. *T* = *A Treatise of Human Nature*, *M* = *An Enquiry Concerning the Principles of Morals*, *ST* = *Of the Standard of Taste*, *P* = *A Dissertation on the Passions*. Smith: *TMS* = *A Theory of Moral Sentiments* (Book.Section.Paragraph), *WN* = *Wealth of Nations*

soever that necessity may be” (*TMS* 2.2.3.9). Smith insists that the psychological processes explaining justice should be no more complicated than instinctive disgust at licentious speech and behavior (*TMS* 2.2.3.8). Though justice is in fact useful to the public, Smith’s account of the moral sentiments behind it focuses on internal, psychological causes “implanted in the human breast” for the sake of that overarching function (*TMS* 2.2.3.4-5). In his attempt to minimize basic principles in an explanation of human nature, as Smith sees it, Hume has relied too much upon an implausibly sophisticated imaginative exercise to explain the moral sentiments behind justice.

Smith’s examples clarify that he has an explanation of proximate motives in mind with this critique. Hume is less concerned with explaining particular actions or practices, since the details will depend on particular circumstances within a community (*T* 3.2.3*ff*). In extraordinary cases where the just thing to do comes into conflict with passions or circumstances, Smith concedes, we do reflect on the consequences of justice in order to do or approve of the right action. A condemned murderer’s horror at her impending execution excites particularly strong feelings of pity in those with an extraordinary tendency to feel pity for strangers. This pity recommends against carrying out or approving of the punishment. To overcome an extraordinary motive to bend the rules out of sympathy with the present and terrified criminal, such a “generous and humane” person must reflect that society has an interest in seeing the punishment through, thereby “counterbalanc[ing] the impulse of weak and partial humanity by the dictates of a humanity that is more generous and comprehensive” (*TMS* 2.2.3.7). Smith admits, then, that sentiments extraordinarily tuned to particular and present objects can be corrected through reflection upon the generalized humanity, or sense for public utility, with which Hume explains justice.

Yet an explanation of extraordinary cases is not an explanation of the phenomenon in general. Extraordinary circumstances can also demand reflection upon public utility for the execution of justice. Under military discipline, a reflection on public interest allows us to overcome a

mismatch between seemingly minor crimes, their dire consequences, and the severe punishment that is due. If a sentinel dozes off on her watch, military law often demands that she be put to death, as such a lapse in discipline could endanger the whole army. That punishment appears just and proper, because of the extreme necessity of sentinels performing their duties without exception (*TMS* 2.2.3.11). The severity of the punishment so much outstrips the “natural atrocity of the crime” that any of us with even the slightest humanity must “recollect himself, must make an effort, and exert his whole firmness and resolution, before he can bring himself either to inflict [the punishment], or to go along with it when it is inflicted by others” (*TMS* 2.2.3.11). Reflections on the interest of the multitude give a cold motivation to punish the sleeping sentinel, and a spectator would happily see the punishment fail. In contrast, no one is pleased with the failure of justice in the relatively ordinary case of murder. According to Smith, these examples illustrate that public utility cannot explain the whole edifice of justice. Pity for the condemned is a fleeting effect of the violence of her terror. Reflections on public utility correct the sentiments to their proper course in those overly prone to humane feelings.<sup>2</sup> The extreme severity of injustice’s consequences to an army, a group whose individual interests are powerfully aligned by external circumstances, makes a view to the general interest of that social group particularly salient to each member. Reflections on public utility, then, do explain the feeling for and execution of justice in extraordinary cases. Yet a good explanation should shed light on normal cases. Most (dis)approval for (in)justice happens in circumstances in which the consequences to public interest are too remote and abstract to support the fervent passions we feel about just punishment.

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<sup>2</sup> This suggests that a person can be objectionably altruistic, which fits into Hume’s theory: consider a parent who, instead of using his resources to support his or her children and spouse, gives everything to strangers. Would you blame that person? George Price’s story, told by Radiolab and Oren Harman is relevant: <http://www.radiolab.org/story/103983-equation-good/>. The “Price equation,” which he discovered, describes selection pressures for altruism. Price ended up committing suicide in a London flat, an ocean away from his family, having given all of his property away to strangers on the street. See also: Harman, Oren (2011). Helical Biography and the Historical Craft: The Case of Altruism and George Price. *Journal of the History of Biology* 44 (4):671 - 691.

Smith argues that the reaction to a particular injury is a more plausible explanation for the immediate and vivid approval people feel about just punishments. He asks us to consider the moral reaction a wealthy person (with an account of a thousand guineas) would have to the theft of a single guinea (about two hundred dollars, in 2016 money)<sup>3</sup>:

As when a small sum is unjustly taken from us, we do not so much prosecute the injury from a regard to the preservation of our whole fortune, as from a regard to that particular sum which we have lost; so when a single man is injured, or destroyed, we demand the punishment of the wrong that has been done to him, not so much from a concern for the general interest of society, as from a concern for that very individual who has been injured (*TMS* 2.2.3.10).

Smith's argument here is about plausibility and common experience. When we seek punishment for a minor theft, we pursue the criminal for the sake of the injury itself, not for the roundabout reason that the whole bank account has become less capable of buying pleasure and security. Public interest has certainly suffered at the loss of one person in the case of a murder: one less person can contribute to commerce, or defend the city in case of attack. But the thought that we consider such an abstruse consequence of an injury, in *every* instance of approving a punishment, strikes Smith as absurd. The victim's resentment, taken up in a spectator by means of sympathy, offers a much more plausible explanation. We don't even need to have any particular concern for the victim, Smith argues, because a victim's fitting resentment for an unprovoked injury is particularly salient on Smith's theory of the imagination. The extreme impropriety of unprovoked injury makes a victim's resentment into a particularly contagious passion for sympathetic transference.

Hume doesn't concern himself nearly as much as Smith does with our approval for punishment, nor does he discuss particular types of crime in detail. Smith's analogy about a single guinea and the whole account offers a readymade way to see why Hume is more interested in a general account of institutions like property and promises than he is in punishment. Injury and the resentment we expect it to provoke, Hume would notice, is relevantly dissimilar for property crime

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<sup>3</sup> I used Frink for this calculation: <https://futureboy.us/fsp/dollar.fsp?quantity=1&currency=guineas&fromYear=1776>.

and violent injury. Smith's phenomenological observation about the immediacy of our approval for punishment in a particular injury seems reasonable. Yet Hume's concern in his explanation of justice focuses on how we can approve of a bodily punishment for crimes that cause no bodily harm to a victim. The loss of a single guinea doesn't hurt the victim's bodily security, at least not right away. Her natural passion of retaliation isn't stirred in the same way that retaliation for a physical injury would be. Yet a spectator might sanction physical punishments, like lopping off a thief's hand, for thefts that are of vanishingly small consequence to a wealthy person's interest. Hume concerns himself not with the resentment behind our desire for punishment, but with an explanation of how the righteousness of moral sentiment could possibly be connected to property, promises, and the rule of law—none of which excite natural, or bodily, passions.

Smith doesn't mention Hume explicitly in his presentation of this critique, and Hume never responded publicly to this seeming difference in his protégé's view of justice.<sup>4</sup> Yet Smith's objection exemplifies a common misreading of Hume's theory of justice. The above quotation in the second *Enquiry*, "reflections on the consequences [to the public] of [justice] are the sole foundation of its merit," has led Smith's editor, D.D. Raphael, and insightful commentators like Eric Schliesser to conclude that Hume's theory of justice "over-intellectualizes" an explanation for justice, and that Smith's critique proceeds from "Humean" explanatory principles, whatever they may be. This is an ironic accusation for Smith to make, given Hume's project of explaining human nature in terms of rules of association and dynamics of the passions. Schliesser especially argues that Smith's theory of natural jurisprudence is a better "Humean" theory of justice.

Hume's own mention of the very same argument casts doubt on the notion that Smith really did have Hume in mind. Even so, Schliesser's and Raphael's arguments have been influential in shaping Hume's contemporary reception, and so demand a response. In the negative phase of his

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<sup>4</sup> David Raynor (1984, 1993) argues that Hume anonymously corrects Smith in an "abstract" of *TMS*, in a similar fashion to Hume's own, anonymous, abstract of his *Treatise*.

theory of justice, Hume rules out “regard for the publick interest” as a plausible explanation of the motivation to approve justice:

Experience sufficiently proves, that men, in the ordinary conduct of life, look not so far as the public interest, when they pay their creditors, perform their promises, and abstain from theft, and robbery, and injustice of every kind. That is a motive *too remote and too sublime* to affect the generality of mankind, and operate with any force in actions so contrary to private interest as are frequently those of justice and common honesty (*T* 3.2.1.11, emphasis mine).

Even more obviously, Hume notes that a natural regard for public interests would render rules about justice and social institutions superfluous: we’d behave in a public-spirited way without having to cause harm to wayward individuals, or even a momentary harm to public interest, for the sake of long-term social stability (*T* 3.2.2.19). So Hume and Smith do agree that a natural ability to reflect upon justice’s consequences to the public isn’t a good way to explain justice. Hume must have a different kind of causal process, or a suite of interrelated causal processes, in mind when he argues that reflections upon public utility ground justice’s merit.

I argue, in what follows, that Hume’s insights about group- and culture-level psychological causes explain away the seeming implausibility that Smith attributes to his theory of justice. These insights are perfectly Humean, on Hume’s own principles. These causal processes are rendered more plausible, at least within Hume’s explanatory project, by his tentative findings about the idea of self and the porousness of human minds introduced by sympathy. Two causal processes in particular, sympathy with public interest and social conditioning, explain the causal links between public interest, justice’s origin in a conjectured environment, and the moral aspect of our obligations to justice today. Hume’s theory of justice does not over-intellectualize justice, whatever other faults it may suffer.

## 2 ORIGINAL OBLIGATIONS

Hume's theory of justice focuses on property, promises, and the rule of law—all institutions that have no basis, for Hume, in natural passions like self-love, public beneficence, or indignation. Without a natural passion on which to rest the edifice of justice, Hume must provide a kind of origin story for justice, in terms of social interactions, while other virtues can be explained with roughly species-wide and biological facts about human emotional responses. Both Hume and Smith are famous as moral sentimentalists. Under this approach virtue and vice are like the secondary properties of “sounds, colors, heat and cold, which according to modern philosophy, are not qualities in the objects, but perceptions in the mind” (*T* 3.1.1.26). When someone pronounces a punishment just, for instance, she is referring only to an affective process within herself. That sentiment gets its rightness, or something like normativity, from its reference to an impartial (Smith) or general (Hume) point of view.<sup>5</sup> Sympathy allows humans to take up that general perspective, entering into others' (or an idealized other's, for Smith) sentiments through an imaginative process of association.

Justice cannot be explained by restricting oneself to the natural (not-invented) passions for Hume. In contrast, some natural relations plausibly depend on moral sentiments that must have been present in ancestors of the human species, such as caring for children. If parents didn't have a pre-rational inclination to take care of their offspring, the species wouldn't have survived long enough to develop into the linguistic, social beings we are. Justice is just as necessary to a properly human existence, but for reasons that are more psychological than biological. The human needs that justice addresses are less obvious than the infirmity of infants, but are causal necessities nonetheless.

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<sup>5</sup> The question of how Hume and Smith handle normativity is a topic of lively debate. Sayre-McCord (1994, 2013) offers insightful commentary about “moral judgment” in Hume and Smith. Kauppinen (2014) makes a convincing case that “regulated empathy” is what Hume and Smith have in mind when discussing normativity, and argues, against Jesse Prinz and Paul Bloom, that sufficiently regulated empathy is a good foundation for moral judgment. This debate would take me too far afield in this essay.

In his second *Enquiry*, Hume found the distinction between artificial and natural to be a mere verbal dispute, as human cognitive capabilities, like relatively facile imagination and delicate sympathy, remain within the natural system of causes (*M Appendix:3.9*). Even so, a key difference between justice and the natural virtues, such as care for one's children, is that justice requires *some* degree of "reason, forethought, design, and a social union and confederacy among men" (*M Appendix:3.9ff*). Yet this amount of cognitive capability, at least at the origin of justice, is within the bounds of what we can expect of the average human, as I'll argue shortly.

Another distinction between justice and the natural virtues is that justice achieves its purpose of conditioning social interactions like commerce and cooperation only if the virtue is exercised as a "general scheme or system of action" (*T 3.3.1.12*). The theft of a single guinea doesn't matter much to the one who lost it, but if the account-holder let that small loss slide, the general scheme of respect for property and trust of neighbors would crumble quickly. The delicacy of justice requires that humans take up the practice of respecting property as a matter of strict policy, in Don Garrett's terms (2007, 267). Society cannot persist unless nearly all citizens adopt a policy of justice—but this need for strict adherence doesn't explain how we *find ourselves* with a habit of justice, without having committed to a policy explicitly. Hume's famous arguments about conventions and artificial virtues are, in a sense, about how humans could come to feel sentiments that produce patterns of behavior that reliably accord with policy-oriented action, though Hume doesn't put his point in those terms.

Garrett convincingly squares the circle of Hume's famous argument that justice must be an "artificial," or for my purposes here, *interpersonal* virtue. Hume's concludes "that those impressions, which give rise to this sense of justice, are not natural to the mind of man, but arise from artifice and human conventions" (*T 3.2.2.21*). This conclusion establishes an explanatory constraint on moral feelings, which Garrett terms the 'first virtuous motive principle': "for any virtuous action, there must be a 'first virtuous motive' that is other than a sense of moral duty to the action itself" (2007,



258). In other words, a good explanation of the distinctly moral attitude most people have toward some motive (i.e., character trait, ability, interested affection, disposition) cannot appeal to the explanandum in question. An explanation of morality must bottom out in some causal factor that doesn't include moral value in its description, on pain of "reasoning in a circle," or what today's philosophers might call begging the question (*T* 3.2.1.17).

Hume rules out a number of common contenders for a first virtuous motive, including a natural regard for public interest I mentioned above, as well as the passions of vanity, pity, love, envy and revenge. Hume settles on an acquisitive passion, directed for the benefit of "ourselves and our nearest friends" as justice's first virtuous motive. That passion, "avidity," is the only interest within human nature that is "insatiable, perpetual, and directly destructive of society," so much that it must be redirected by the edifice of justice (*T* 3.2.2.12).<sup>6</sup> Avidity draws humans into commercial relations with strangers, yet these commercial relations can lead to violence and strife if avidity is not somehow checked. Since avidity is so powerful a motivational force, it must somehow check itself, with the aid of extra-personal psychological processes. This passion is the driving motive in the dynamic between "natural temper and outward circumstances" with which Hume explains the first emergence of property conventions (*T* 3.2.2.5). The mismatch between our species' resource needs and our individual ability to get them drives us into social arrangements that extend beyond the scope of the sentimental ties between family members. The first concept of a public, and the interests such a group might have as a whole, comes along with this expansion in scope. Smith's objection, though he doesn't quite put it this way, extends to the origin of justice. The critique entails the objection that the original property conventions require implausibly sophisticated feats of reason and forethought on the part of pre-social humans. Hume's explanation of contemporary

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<sup>6</sup> Hume does *not* have greed or avarice in mind here. I'll argue that point in §3, but for now, the key distinction is that avidity is a warm passion directed toward a group of people, while avarice is cold and concerned solely with the individual. Hume's retracted essay "Of Avarice" supports this interpretation, as Postema argues (p 376-377, 2006).

motives to justice rests on this conventional beginning, so I need to establish that Hume's account of the origin of justice is not overly intellectualized, before I defend Hume's account of justice's grounding and moral psychology.

Humans have greater resource needs than other species, relative to an individual's ability to extract them (*T* 3.2.2.2). Hume identifies three types of goods that are necessary in a biological sense: inner peace of mind, outward security of body, and external goods. An aggressor can't take away another person's inner peace of mind, at least not directly. Though the body can be injured, potential criminals in Hume's view of a pre-justice environment wouldn't have any *reasonable* interest in a victim's pain (*T* 3.2.2.7).<sup>7</sup> External possessions, on the other hand, are liquid and scarce. Even land is a liquid resource in this sense, since people's use of it is contingent upon their location upon a parcel, and an individual's location can be changed by force. People want to take external goods, have little difficulty in doing so, and there aren't enough to go around. Conventions emerge in response to this tension, without presupposing an implausible degree of sagacity or forethought in human nature. A "general sense of common interest" is recognized by each member of early social groups, "which sense all the members of the society express to one another, and which induces them to regulate their conduct by certain rules" (*T* 3.2.2.10). Hume cannot mean that people explicitly regulate their own conduct, as he also argues that the will is epiphenomenal (*T* 2.3.1.2). Instead, a system of passions within individual humans, taken as a complex whole, yields changes in the individual behavior of each passionate actor within that system. Crucially, this group-level change can take place without explicit mental representations or rational reflection on the part of each individual.

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<sup>7</sup> If humans do have a natural instinct or desire for cruelty, Hume's argument cannot withstand Smith's objection. Hume sees no reason to suppose that humans in a sufficiently "natural" position have such a desire, and thinks that Hobbes' view of naturally vicious and avaricious humans distorts human nature into a picture of the "monsters which we meet in fables and romances" (*T* 3.2.2.5). This issue has implications for a public disagreement between Hume and Smith, about the pleasure we take in sympathizing with another *simpliciter*, even with unpleasant sensations. See Raynor (1984) for an interesting discussion of how Hume chides Smith about this "hinge" of Smith's moral psychology.

Hume illustrates the unreflective emergence of coordinated behavior with an analogy to rowing a boat. He uses this analogy to argue that the recognition of a general sense of common interest need not be rational or reflective in nature. A team of rowers can recognize, without explicit reflection, that they ought to row in equal coordinated strokes in order to travel in a straight line (*T* 3.2.2.10). A team of rowers doesn't have to discuss the matter, or explicitly agree, and each might not be aware that she's entered into a remarkable arrangement. They simply start pulling their oars in time. For the rowers, the benefits of coordinated rowing are tangible, through the oar's interaction with the water and the frustration of spinning about in circles while using uncoordinated strokes. Synchronized rowing is absolutely necessary to using a rowboat, so necessary that it's practically an obligation: if a team of rowers cannot manage to coordinate their strokes, they won't make any progress. Social feedback, however, isn't so tangible as water pressure on an oar. But Hume's account of sympathy, I'll argue presently, is not objectionably more "intellectual" than the tangible feedback of an oar in the hand.

Sympathy mediates social coordination, on Hume's view, and its importance in Humean psychology is difficult to overstate (*T* 2.1.11.2). Human minds, on one of Hume's characterizations of sympathy, "are similar in their feelings and operations...as in strings equally wound up, the motion of one communicates itself to the rest" (*T* 3.3.1.7). The circumstances relevant to justice are particularly amenable to the reverberation of passions among individuals. Early humans had close relations, following Hume's three cardinal rules of psychological association: resemblance, contiguity, and cause-effect (*T* 1.1.4.1). They lived in close physical proximity, resembled each other in their low degree of cultural cultivation, and had obvious causal involvement in each other's ability to extract and hold resources. In early human communities, Hume's associative sympathy would operate immediately, due to the external circumstances that humans would have found themselves in. The psychological consequences of the similarity of those external circumstances could be

dramatic, even though the psychological shift that comes along with conventions may not change human nature *per se*.

Hume's conjectured early humans share the same base level of associative and sympathetic capacities that any human would have. And these very capacities, given the likely external circumstances in Hume's conjectured pre-justice environment, can yield the first motive to justice. Every individual needs to collect resources, for the sake of herself and close friends. In early communities, neighbors plausibly see each other daily, and express their desire that others leave their property alone through body language and conversation. In such intimate circumstances, neighbors can easily recognize that each person in the neighborhood prefers that her property be secured by a coordinated system of behavior. Our minds are so similar that when a neighbor expresses displeasure in person, someone intruding on property can't help but feel that displeasure herself, through a quick association of ideas. The general sense of common interest doesn't need an abstract representation so long as neighbors can express their pleasure and displeasure at each other's behavior on a face-to-face and regular basis.<sup>8</sup>

Communities soon outgrow a sympathetic general sense of common interest, as distant individuals become relevant to each other's economic activities (*T* 3.2.5.8). Hume unfortunately argues by emphatics for his solution to this scale problem. After a system of humans creates the advantageous scheme of law and justice, that scheme is "*naturally* attended with a strong sentiment of morals; which can proceed from nothing but our sympathy with the interests of society" (*T* 3.3.1.12, Hume's emphasis). The moral sense that comes to attend upon justice also "follows naturally, and of itself," while it is also "augmented" by the machinations of parents and politicians

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<sup>8</sup> Hume only needs this emergence story to be a plausible beginning for the moral sentiments behind justice. Economic modeling and comparative studies with apes could demonstrate that conventions can arise in relatively unsophisticated social groups. Experimentally demonstrating the presence of a particularly *moral* feeling behind cooperative behavior, however, is much more difficult. Hume may have anticipated this difficulty in a science of human nature, which supports my deflationary reading of Hume's treatment of moral feelings. I return to this issue in section 3.

(*T* 3.2.6.11). ‘Naturally’ in these passages seems to contrast with human-made, rather than the divine or unusual. Yet Hume may have dubbed a process ‘natural’ where he felt himself short on details here. Hume states that sympathy with society’s interests drives this change, but Hume has already argued that the “publick interest” is too abstract an idea to excite the motivations of most people (*T* 3.2.1.11). We don’t have a pre-social, instinctive, or biological interest in public welfare, since we can’t consider a coordinated group of strangers before property conventions are invented: a confederation of strangers underwrites the security of property, and property conventions simultaneously produce that confederacy of strangers. The redirection of the central interest in human nature—our acquisitive interest in external goods for the sake of ourselves and close friends—does explain how we can easily and naturally sympathize with the interests of a group beyond the bounds of the family.

Eric Schliesser reads Hume as arguing that greed, or avarice, is the passion that drives conventions. This reading renders the problem of explaining our moral sense for public interests insuperable (pp. 51, 59, 2006). Though Hume does write of “self-interest” as the driving motive for conventions, he also argues against “self-love” and avarice, or greed, as the first motive to justice. Avarice leads misers to conceal their holdings, while the self-interest relevant to justice is in having public goods, for the sake of gaining esteem and social standing. Simple greed leads us to desire gain for the sake of the individual only, and such a passion would be too solipsistic to lead us into the general or common point of view from which moral feelings proceed. The general point of view is not an implausible innovation in our social practices, however, since the central interest of avidity naturally takes a small group as its concern. This scope of avidity’s concern supplies a grain of normative force that seeds the natural sense of justice’s morality.

### 3 MORAL OBLIGATIONS TO JUSTICE

The first motive to justice, Hume argues, has a wider scope than simple self-interest. Justice attracts moral feelings because the passion driving it can be found in any member of the species, and because it concerns itself with a group of close associates. His description of this passion is somewhat complex:

This avidity alone, of acquiring goods and possessions *for ourselves and our nearest friends*, is insatiable, perpetual, universal, and directly destructive of society. There scarce is any one, who is not actuated by it; and there is no one, who has not reason to fear from it, when it acts without any restraint, and gives way to its first and most natural movements. (*T* 3.2.2.12, my emphasis)

Justice depends entirely on humans' ability to regulate and restrain avidity as a group of sympathetically engaged individuals. This avid desire never ceases, everyone feels it, and its concern is not just the individual self, but a group of close friends and family with which we each identify. That circle of close relations, as well as the basket of external goods we hold and share among that circle, play a crucial role in supporting the very possibility of an idea of self, which explains why Hume argues for avidity as the central human interest. Avidity's centrality in human nature underwrites the sympathetic process by which we get moral feelings for justice. Postema writes that "property" had a different connotation in Hume's historical context, beyond signifying the basket of material objects that one possesses. The goods signified the values of their beholders through quantity and fineness. Property also shaped values themselves, so much that "property shaped personality" (Postema p. 374, 2006). Hume's earlier accounts of cognitive and affective psychology support this reading. Hume shows that our sense of self depends essentially upon support from external props and social bonds, so that these props and relations can be just as important in our motivational economy as our interests in bodily integrity and peace of mind.

Whatever idea of the self that we do have, Hume argues early in the *Treatise*, depends on memory, which enables humans to discern the resemblance between past and present seats of

impressions (T 1.4.6.2). Possessions serve as props for that memory: “Ourself, independent of the perception of every other object, is in reality nothing: For which reason we must turn our view to external objects; and ’tis natural for us to consider with most attention such as lie contiguous to us, or resemble us” (T 2.2.2.18). Hume wouldn’t disagree with Smith that bodily injury provokes natural responses of resentment that, from the appropriate perspective, can feel like they’re moral. The sense of self is so tenuous for Hume, however, that socially guaranteed property, for the sake of our close relations, is of practically existential importance. Property crime doesn’t hurt in a bodily sense, but it does threaten our sense of psychological continuity, which is just as important to an individual’s interests. Property’s practically existential importance makes the passion of avidity into a plausible ground for the moral feeling of justice.

Avidity has something like normative force before any conventional arrangements arise because the exercise of this passion is constitutive of our sense of psychological continuity. Hume’s findings within his cognitive psychology put property wholly on a par with bodily safety and peace of mind in basic human concerns. The public interest with which we sympathize is a compound of each person’s overriding interest in gaining property for the benefit of her family and close friends. Hume writes that this interest is “the greatest imaginable, and extends to all times and places,” so that avidity is as universal and stable as original instincts like retaliation and love of life (T 3.3.6.5). These considerations account for the seriousness of feelings derived from avidity. This seriousness helps to ground the original sense of obligation we feel about justice, but Hume still needs to explain how sympathy with a group-level interest could motivate the full suite of behavior that we call justice.

Smith and Hume agree that the sense for virtue are mediated wholly by sympathy. Smith’s point about the single guinea and the whole account is about the kinds of motives that are salient to a sympathetic taking-up of passions. An injury to a single victim, or the loss of a single guinea, has

particular qualities; we can enter into *this* victim's resentment of that harm. A group, on the other hand, doesn't exactly experience particular passions. A group of people don't have a mind, so the group lacks particular ideas that can turn into vivid impressions. At best, the imagination can aggregate the passions of a group, but even then, the group has no singular perspective to imagine oneself into; no vivid, particular interest to take up as one's own. Sympathy as Hume understands its operation in the imagination, however, doesn't require a particular individual in order to yield strong, even moral-feeling, affections. The sympathetic uptake of pleasure and pain that follows upon group-level interests explains key features of the moral obligation we feel to justice, for Hume.

Interest and desire are essentially social activities for Hume, so much that Smith's apparent worry about sympathy with interests relevant only to a whole group is short-circuited by Hume's earlier treatment of the passions. Since any sympathy is with another person who must be embedded within a group, sympathy with public interest is only nominally different from sympathizing with an individual. A truly isolated person, aside from being simply unimaginable, could hardly have interests since her sense of self is really nothing and her passions fleeting. "Social referencing," in Postema's terms, allows us to have interests at all. It is "a kind of double triangulation in which our cognitive, affective, or evaluative grasp of an object of experience is shaped by comparison with other objects and with other people's opinions of or affective responses to those objects" (2006, p 378). To know what we want, or even to want some object long enough to act on that desire in the first place, we need the passion to reverberate among the mirrors that human minds are to one another (*T* 2.2.5.21). Central human interests need "second[ing] by the opinions and sentiments of others" in order to persist, even within an individual (*T* 2.1.11.1). Hume puts the matter with elegant starkness in supporting his argument that sympathy mediates our esteem for the rich:

We can form no wish which has not a reference to society. A perfect solitude is, perhaps, the greatest punishment we can suffer. Every pleasure languishes when enjoy'd a-part from company, and every pain becomes more cruel and intolerable. Whatever other passions we



may be actuated by; pride, ambition, avarice, curiosity, revenge or lust; the soul or animating principle of them all is sympathy; nor wou'd they have any force, were we to abstract entirely from the thoughts and sentiments of others. Let all the powers and elements of nature conspire to serve and obey one man: Let the sun rise and set at his command: The sea and rivers roll as he pleases, and the earth furnish spontaneously whatever may be useful or agreeable to him: He will still be miserable, till you give him some one person at least, with whom he may share his happiness, and whose esteem and friendship he may enjoy (*T* 2.2.5.15).

The individual self, as Hume understands it, has blurry boundaries, which are given some definition only by friends and possessions. When Hume argues that the moral sense we get for justice comes about through sympathy with public utility, this sympathy isn't different in kind from the sympathy we feel from other individuals, though it does refer to a seemingly abstract idea of a political community. The idea of another's self is no less abstract than the idea of the public, and both are bounded by a group's interests and goods. The details of Hume's account of sympathy support this interpretation. The mechanism behind sympathy in general, on Hume's account, depends on his rough and fluid distinction between impressions and ideas. The human mind consists in dual streams of association, ideas and impressions, distinguished only by their liveliness in the imagination. A particularly vivid idea can transform into an impression, which can then produce the bodily expressions of affect. Hume addresses sympathy in the course of explaining vanity, or the love of fame, which he also cites as the initial cause for justice's moral import. Vanity and avidity are closely tied in Hume's motivational psychology—avid desires are vain, since they want a public basket of possessions, while the taste for vanity is itself explained in part by our avid interest in forming social groups of strangers.

When someone takes up another person's affect, she is first aware of that affect by its external signs only, such as the person's gestures and her speech. The observer ends up with an idea of that affect, associated with an idea of the other person (*T* 2.1.11.3). The representation of the other person's affect becomes lively enough to produce the emotion itself because the observed person is closely associated with the observer's representation of the her own self. That "idea, or

rather impression of ourselves is always intimately present with us” (*T* 2.1.11.4). This passage seems to stand in tension with my insistence that Hume thinks of the idea of self, and the presence of desire, as tenuous and fleeting. Yet Hume does not specify in this passage *how* the “conception of our own person” is intimately present. Though Hume doesn’t press this point in his general account of sympathy, that conception of ourselves is itself defined by the things and friends we hold close. Then sympathy with even with an individual’s pleasures and pains depends upon the circle of friends and possessions around that individual. This unremarked feature of the mechanism behind sympathy explains why Hume takes property to be the primary concern of justice and makes the aggregated pleasure of a public into the kind of idea that can, through sympathy, generate a feeling of moral obligation to justice.

Hume admits that this process in the imagination isn’t obvious to those of us who experience it, which is all of us. The associations between another’s affect, our own self-concept, and the affect so produced are rapid and unconscious. Hume cites resemblance as the rule of association that most easily drives sympathy, noting “that nature has preserv’d a great resemblance among all human creatures,” in the general sense that our bodies and minds follow similar structural patterns (*T* 2.1.11.5). Avidity, as I’ve argued above, is the main resemblance among all human creatures, making it a passion particularly amenable to sympathy. When we feel approval for a just but immediately harmful act, like repaying a loan to a miser, that approval comes from the public’s long-term “pleasure” at having a system of behavior that conditions the possibility of credit. This pleasure isn’t entirely a figment of the imagination, but is instead an aggregate of each citizen’s feeling of ease at living in the kind of place where we can trust in credit, promises, and the rule of law. This pleasure feels distinctly moral because it aggregates a set of pleasures that *everyone* in a community, or even in the species, feels. This isn’t an implausibly complicated feat of imagination, since the idea of another person’s individuality, and even the ever-present impression I have of

myself, is already built up from bodily expressions, external props, and social relations. So when we sympathize with public interest, we're not doing anything radically different from sympathizing with someone's personal interest or affections. Sympathy with public interest easily extends to a "delicate" sympathy with benefits that excite the interests of all humans. This wide social scope of the utility that derives from justice explains the distinctly moral aspect of the obligations we feel to justice (*T* 3.3.1.8). Each human can plausibly sympathize with pleasures that follow upon a group's interests, since sympathy with individuals is bounded by the group that defines an individual. Those pleasures feel especially moral once they extend throughout the species.

For Hume, our regard for justice is also mediated by sympathy. Praise, whether it's prompted by the view of a work of art, a person's stature and physical courage, or her trustworthiness, all depends on sympathy with the usefulness or immediate pleasure afforded some possession or trait, experienced by that person herself or her associates (*T* 3.3.1.8). Justice excites approbation along all four of these dimensions of sympathized value: being just is useful to the person principally concerned and her associates, and the observer, as well as the person principally concerned's associates, take immediate pleasure in the view of a just character. Insofar as justice is distinguished as a *moral* virtue for Hume, with obligations distinct from our natural 'obligation' to act in accordance with interest, it gets this distinction from its tendency to benefit the entire species. "Now justice is a *moral* virtue, *merely because* it has that tendency to the good of mankind; and, indeed, is nothing but an artificial invention to that purpose" (*T* 3.3.1.9, my emphasis). In this usage, "moral" simply means "species-general," on Hume's deflation of that term. Even though this motivational feature might not be obvious to each of us, it yields a feeling we call "moral" which also shapes behavior in a distinctive way.

This sense of the distinction between moral and natural virtue is a difference in quantity, or scale, that feels like a qualitative difference in the sentiments involved. I've argued that sympathy

with public interest, insofar as it's sympathy with a group, isn't different in kind from sympathy with individuals, since individuals get their definition as sources of sympathetic affections from the groups with which they identify. Traits like trustworthiness and self-restraint with respect to others' property, developed in relatively limited social circles, turn out to be useful to any member of the species. When we feel approval for those traits, that approval comes from a general perspective in the imagination. This associative viewpoint surveys interests that we expect every human to share in. Humans get practice in this imaginative, yet still subconscious, process by which 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" in the basic exercise of "convers[ing] together on reasonable terms" (*T* 3.3.1.15). The virtues we take to be moral are distinguished by the praise they excite from the most general and steady point of view, that encompassing the whole species.

Hume's use of "moral" here contrasts with "natural," signaling that justice is more important to us than the natural (contra artificial) obligations due to goodness or courage, because of the universal scope of its usefulness, that is, as a matter of policy and a system or scheme of action.<sup>9</sup> These merely natural virtues, also known as the social virtues, are useful only to a person's immediate social circle, and a lack in them cannot cause wide-scale or cascading harms. Other natural virtues do have a wider scope of necessity, such as care for children, and our moral feelings about these nearly match the seriousness of justice. Hume explains this virtue with appeal to the "common and natural course of passions" (*T* 3.2.1.10). Without a universal tendency to care for offspring, none of us would live past infancy. Everyone disapproves of deviations from a standard of care for children with a moral fervor because, if most parents didn't meet a basic standard of care, the species wouldn't persist (*T* 3.2.2.4). We don't especially praise parents for caring for their

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<sup>9</sup> Garrett introduces this fourth distinction that is appropriate to the sense in which Hume uses 'natural,' for obligations. The other three are not-supernatural, not-unusual, and not-human (*T* 3.1.2.10). The policy-directed nature of moral obligation is related to, but distinct from, the universal scope of justice's concern.

children, but the failure to do so excites the strongest disapprobation, on a par with the blame we accord parricide. Without a universal tendency to respect property, promises, and the rule of law, no one would be able to live in society. As I've argued above, the failure to respect these standards of behavior would deny Humean humans the chance to sustain a sense of self, pursue esteem, and have meaning over a bare existence by exercising the central interested passion of avidity.

I make this analogy between care and justice to highlight how little Hume is concerned with a defense of, or exhortation to, the *morality* of justice, or what we might speak of as its normative force. I've argued that Hume's theory of justice can plausibly explain our moral feelings about justice, without introducing implausible rational powers or a supernaturally determined normative standard. Hume's approach doesn't attack or undermine morality, but instead deflates the importance of the term 'moral', in order to wrest an account of social relations from a tradition freighted with natural rights and divine commands. Justice carries along distinct moral feelings, and these are best explained in terms of the universal scope of the interests it addresses, along with the peculiar strictness justice demands as a matter of policy. Though justice starts in local conventions, the basic arrangements would benefit every human in Earthlike circumstances. These circumstances are modally contingent, but necessary as a matter of natural law—every bit as necessary as the laws of physics (*T* 2.3.1.8). The conventional arrangements therefore attract moral praise, but in the deflated, quasi-technical sense in which 'moral' picks out a useful practice that would attract approbation from *any* human in *all* imaginable situations. The expansion of sympathy's scope is continuous from the self, to the family, to the public, to humanity—yet the final transition yields feelings with a distinct, universal phenomenal feel. Education and socialization into civic life makes those moral feelings into a habit, further obscuring that the source of our moral feelings about justice lie in public utility. The effectiveness of punishment and reward in motivating justice, or at least just action, further distinguishes justice as moral, in a sense more familiar to today's readers.

Parents and politicians, and the importance accorded them by their relative surplus of natural abilities, inculcate this psychological element of justice in the general population.

Hume closes his *Treatise* account of morals with an argument that praise for moral virtues is equivalent, for all intents and purposes, to praise for natural abilities like wit and physical strength or beauty (T 3.3.4.1). Both are mediated by a sympathetic appreciation of the pleasure someone takes in the usefulness of some character trait to a person herself, or the pleasure that trait excites in those around her. “Let a man have the best intentions in the world, and be the farthest from all injustice and violence, he will never be able to make himself be much regarded, without a moderate share, at least, of parts and understanding” (T 3.3.4.1). Humans can earn esteem for virtue, which for Hume is a central motive to being virtuous, only if they have the mental and physical capabilities requisite to remembering a promise or imagining the distant consequences of the rule of law. Without at least a basic degree of mental and physical ability, in other words, moral character is ineffectual and counts for nothing in the eyes of others. In order to respect property or keep promises, people must have some degree of foresight and self-control. The mental qualities we praise in praising justice are those that allow a person to best serve public interests. And these qualities, at the bottom of an explanation, will be natural abilities for which the person can take little or no credit. Supposedly moral virtues are no more voluntary than natural abilities, in line with Hume’s book II analysis of liberty and necessity, so the apparent liberty of one set of praiseworthy traits over another cannot distinguish them.

Punishment and reward, however, do distinguish moral virtues from mere abilities. Hume stops short of explaining how that works, except from an appeal to conjectured history. “Legislators, and divines, and moralists...knew that to punish a man for folly, or exhort him to be prudent or sagacious, wou’d have but little effect; tho’ the same punishments and exhortations, with regard to justice and injustice, might have a considerable influence” (T 3.3.4.4). Hume has already conceded

that morals are wholly a matter of taste (*T* 3.3.1.15). At some point in the past, some critics of moral taste must have stumbled onto the recognition that punishment and reward are effective motivators for justice. These moral critics have a surplus of natural ability, which gives them license to set a standard of taste. Hume notes that natural ability lends a certain *importance* and *weight*, attracting attention on psychological grounds. With “extraordinary parts and abilities,” a person’s actions affect a greater number of people around her. The magnitude of this influence “challenges our attention,” so that those with a surfeit of natural ability can set standards of taste (*T* 3.3.4.14). Parents, at least during development, have power and authority over their children, and so have this importance and weight. At least in Hume’s conjectured historical situation, magistrates should have a surplus of self-command and foresight that lends them the relevant importance to set legal standards. This natural (and salutary) inequality lends punishment and reward their motivating force.

Parents are the first critics any of us encounter, and we get our first standards of taste from them. All parents, being participants in social conventions about property and trust, encourage their children to think of stealing and breaking trust as *wrong*, as children cannot yet comprehend, or even sympathize with, the long-term and large-scale coincidence of personal with public interest. Punishment and reward happens to be an effective way to “make [children] sensible of the advantages, which they may reap from society,” and the practice “fashions them by degrees for [society] by rubbing off those rough corners and untoward affections, which prevent [children’s] coalition” (*T* 3.2.2.4).<sup>10</sup> Relative to their children, parents have all the qualifications to judge a standard of moral taste as a critic. They have a strong sense for public utility, delicate sentiments of humanity, practice with conventions, plenty of experience for the sake of comparison, and the ability to take on a variety of disinterested perspectives (*ST* 23). Parents “easily observe, that man is the more useful, both to himself and others, the greater degree of probity and honor he is endowed

<sup>10</sup> Just how it is that punishment and reward can be psychologically effective for this purpose remains a vexing question for Hume, and empiricists more generally.

with” (*T* 3.2.2.26). This observation proceeds via sympathy, as I’ve argued above. By using punishments and rewards, parents attach a sense of praise to just behavior, and inculcate a sense that violations of justice are “base and infamous” (*T* 3.2.2.26). This sense of infamy fills in for a child’s underdeveloped capacity for extensive sympathy with the species-wide usefulness of justice.

Politicians carry this molding process further, and their own distinction of importance and weight helps them to do so. The first politicians emerged, Hume supposes, with the experience of war, when naturally strong and courageous captains earned a “shadow of authority” by leading communities into battle (*T* 3.2.8.2). This practice in obeying authority yields civil government and the rule of law, which attract their first moral sense through the same necessity that attends property and promises. Legislators occupy their position, at least in Hume’s conjectured historical situation of small communities and simple economic relations, due to their natural abilities for foresight and a wide comprehension of human interest.<sup>11</sup> They set standards of civic taste, as it were, because of inequities in natural abilities similar to those between parents and children. Hume recognizes that he cannot propose a meta-standard of taste, by which we could judge the appropriateness of a critic’s own judgment (*ST* 25). Yet he doesn’t need to, in order to explain the motivationally relevant, and lasting, value of our standards for justice. As long as we can expect that some humans will be better judges of standards set by public utility, we can expect that those standards will actually serve public utility, with a long-enough history of trial and error, and perhaps the failure of many civic arrangements set by less-effective critics of moral taste. Evaluating a particular society’s laws and conventions is not Hume’s task as a philosopher; his abstract treatment of morals only has to

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<sup>11</sup> In modern circumstances, under conditions of cultural development (or decline), this conjectured position does not hold. Remember that Hume is concerned, at least in the philosophical mode of the *Treatise*, with a wholly general account of social arrangements and the mechanisms by which we establish moral standards of taste. Decadence and corruption can yield less-ideal arrangements in local communities. Hume does seem to think that the species on the whole progresses in cultivation and the arts and sciences. He might be wrong about that, but his cheery optimism is a welcome and encouraging outlook—and perhaps that is what an account of morality should be.



establish the psychological plausibility of moral standards, and sentimental reactions to them, that can in fact track public utility.

Social conditioning, as a general psychological process, fills in for the motivational inadequacy that Smith alleges of Hume's theory of justice. The influence of parents and politicians, as critics of taste, means that Hume does not require that each of us reflect, even sympathetically, upon public utility when approving of a just punishment in each case. Just as we can enjoy a good work of art without explicitly reflecting on its value or knowing how to explain why the work is so good, we can respond immediately to situations of justice and injustice out of moral taste. In both cases, the extraordinary discernment of critics explains, in part, how the standard got to be how it is.<sup>12</sup> Only some members of society, beginning with parents' realization of the effectiveness of punishment and exhortations about the infamy and baseness of injustice, need to have the "parts and understanding" requisite to understanding the relevance of justice to public utility.

The rest of us end up with strong sentiments of morals that, at least most of the time, do indeed track traits and practices that serve public utility. Those sentiments proceed almost mechanically once we've been educated and habituated into social life, so that "we are not, in every instance, conscious of any immediate reflection on the pernicious consequences of [injustice]" (*M* 3.2.47). Smith, or the commentators who take his critique to be an attack on Hume, have fallen into this habitual view of human nature. Habits make use apt to "continue on mechanically," forgetting that relatively wise parents and civic leaders educated us to feel blame distinctive of injustice for character traits that are pernicious to society on the whole, *because* those traits are destructive of society as a whole. If we come to doubt our own sentimental reactions or conscience, we have "recourse to the principle of public utility," and we can, with Hume's help, ask a policy question:

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<sup>12</sup> I'll admit, as would Hume, that this is an inadequate explanation of standards for taste. Our taste for wit, for instance, retains a certain *je ne sais quoi* that will stand outside a psychological explanation of standards of taste. Hume does not intend to offer a final explanation, however.

*“what must become of the world, if such practices prevail? How could society subsist under such disorders?” (M*

3.2.47) Though we didn’t voluntarily take up the policy of behaving justly and expecting the same of others, Hume’s account of our strong personal interest in property, and of the outsize effect of education on our sentiments, gives us good reason to trust that the sense of morals we have does in fact take its source from public utility. As readers of philosophy, we likely have some interest in participating in society, so that Hume’s account of justice does attain reflective endorsement, though it lacks a distinctly normative basis in natural principles.

#### 4 CONCLUSION

I've argued that sympathy and the influence of critics of moral taste make sense of Hume's argument that justice depends entirely upon public utility, instead of some natural standard of propriety or a well-tuned reaction to unprovoked injury. Hume recognizes that it's hard to tell which of a person's qualities are voluntary, and he denies that any of those qualities are freely chosen (*T* 3.3.4.3). Some of our actions have been made to seem more voluntary than others in most cultures, however. They were made so by those who recognized, luckily, that some passions are susceptible to punishment and exhortation. These qualities are themselves particularly social; one's tendency to repay a loan depends on one's reputation, and an essential part of the risk in earning a punishment is the loss of esteem it entails. So designating some character traits as particularly moral, makes them so moral, in a process similar to that "facility" by which a difficult exercise becomes pleasant with practice (*T* 2.3.5.1-5). Though this reasoning sounds circular, the dynamical nature of interpersonal relations demands it. When we examine virtuous action or reactions in fully socialized contexts, it's practically impossible to sort out the sentimental responses that are underwritten by natural psychological principles and those that involve a degree of social feedback. This epistemic difficulty offers Hume a principled reason to prefer public utility, over propriety and resentment, as the sole explanation for justice.

Public utility offers Hume an explanation of justice that relates a wide profile of behavior to one class of sentimental responses. Three causal processes tie the practice of justice to recognitions of and reflections upon public utility: conventions, sympathy with public interest, and education and habit. Justice becomes a kind of quasi-technical term for Hume, describing those mental qualities and characters that promote public utility. Hume's story about conventions establishes that justice is originally constituted by a recognition of public utility. Hume's cognitive psychology of the passions

shows that this constitution of justice would not have required implausibly sophisticated cognitive abilities, under the circumstances in which justice must have begun.

Two further processes show that Hume has an explanation of the power by which we care about justice that also isn't too cognitive in nature. The passions that support justice, along with the material conditions that shape its particular expressions, are sufficiently universal throughout the species, so that the sympathetic engagement we have with justice's usefulness feels universal enough to count as moral. The social influence of parents and politicians lends justice its particular strictness. These critics of moral taste inculcate the notions of right and wrong into children and citizens. Since those moral critics have an exceptional ability to sympathize with public utility, they've developed sentimental responses in their charges that do, most of the time, track qualities that are useful to the public. When our experience of society indicates that the standards of justice have gone awry, Hume's explanation offers a kind of critical baseline, with a heavy dose of conservatism.

The details of Hume's explanation are so scattered throughout his *Treatise* that contemporary readers can easily confuse his account with a utilitarian's, and take Smith to have criticized his mentor harshly. Hume's account of justice is not utilitarian, as it nowhere proposes that a maximization or optimization of utility relative to individual self-interests justifies some social arrangement or another. Instead, the fundamental passion behind justice, that of avidity, takes a small group of humans as its concern. Truly just social arrangements are not determined by some kind of utility-calculus, but instead by culturally mediated intuitions about right and wrong. While a utilitarian calculus is supposed to be objective in some sense, Hume's moral standards of taste are culturally determined and essentially intersubjective.

Schliesser, at least, goes further and argues that Smith has a better account of justice. That argument is deeply flawed, but I'll leave my criticism for another time. Smith may be able to connect

all of justice to natural principles of property and resentment, but he never finished his attempt at a treatise on natural jurisprudence. I've shown that Smith's objection to Hume's natural jurisprudence fails to reach its alleged target. Hume's account of justice as grounded in and fueled by reflections upon public utility is at least consistent with his accounts of cognitive psychology and the passions, which we might expect Smith to endorse. From radical philosophical conclusions about the self and the social nature of human passion, Hume lands on a socially conservative politics, under which most of us are best off trusting authority and education. His underlying philosophical assumptions are deeply humane, however, and too often misunderstood.

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