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Hume on the Moral Obligation to Justice

JAMES A. HARRIS

Abstract: There is a prominent place in recent work on Hume's moral philosophy for the idea that Hume is best placed in the tradition of virtue ethics. I argue in this paper that Hume's theory of justice cannot be given a virtue-theoretic construal. I argue that Hume should rather be placed in the tradition of theorizing about justice inaugurated by Grotius. In this tradition, the moral obligation to justice is spelled out in terms of the necessity of respect for property, for contracts, and for political authority in a stable and peaceful society. In this tradition, furthermore, justice is regarded as primarily as a matter of respecting perfect rights, and, relatedly, as primarily manifest in omissions rather than in actions. The search for an agent-state definitive of Hume's just person is fruitless, I suggest, because Hume himself gives reasons to believe that there is no such thing. I argue that for Hume the just person is, simply, someone who obeys the conventions that define the nature of justice, regardless of why she does so.

1

Our understanding of the philosophers of the past is not always assisted by the attempt to fit them under one or other of the categories that we currently use to map the philosophical landscape. We have grown used to the idea that there are three principal kinds of moral theory—deontological and broadly Kantian, consequentialist and broadly Millian, virtue-theoretic and broadly Aristotelian—and so historical approaches to moral philosophy tend to orientate themselves by

assuming that each and every object of study must count as one or other of these kinds of moralist. This is unfortunate. It is particularly unfortunate in respect of the moral philosophy of the seventeenth and eighteenth centuries. Philosophers from Grotius, Hobbes and Pufendorf, through Cudworth, Shaftesbury, Hutcheson, and Butler, and on to Price, Paley, and Reid are not easy to understand if it is taken as axiomatic that each must be, in essence, either a deontologist, a consequentialist, or a virtue ethicist. My concern in this essay is Hume. No one, so far as I know, has suggested that he should be read as a deontologist in the manner of Kant, and so it seems obvious that he must be either a consequentialist or a virtue theorist. With the waning of the idea that all that is really significant in Hume's moral philosophy is his "meta-ethics" and his "moral psychology," the question of which of these two kinds of moral theorist he is has become a significant feature of the literature on Hume's ethics.¹ I believe that the question is not helpful as a means of getting to the heart of Hume's moral philosophy. The subject of this essay is not the entirety of Hume's ethics, but rather his theory of justice, and, for the most part, the first formulation of that theory, in Book 3 of the *Treatise*. I argue that that theory cannot be given a virtue theoretic reading. But I do not think that it follows from the fact that Hume is not a virtue ethicist that he must be a consequentialist. I shall suggest that it is more productive to place his theory of justice in a different tradition altogether, the tradition of modern natural law inaugurated by Grotius with the publication of *De Iure Belli ac Pacis* in 1625.

As the title of Grotius's book suggests, the fundamental notion for this tradition is that of *right (ius)*, and the object of enquiry is to specify—through the exercise of "natural" reason, without reliance on tradition or on revelation—the rights that must be respected if peace is to be secured and war avoided. Right, according to Grotius, "consists in leaving others in quiet Possession of what is already their own, or in doing for them what in Strictness they may demand."² The strictness of moral demands alluded to here is an important part of the theory: for Grotius, all rights are what would later be termed "perfect" rights, rights the violation of which justifies punitive retaliation either on the part of the right-holder or on the part of the state on the right-holder's behalf. These rights can be specified with exactitude. Moral philosophy, in other words, can be made into a science—just as natural philosophy, at much the same time, was being described, by Descartes among others, as finally on the way toward certainty. There was therefore no place in the theory for the old Aristotelian idea that there are some people—the virtuous or the sages—who, as matter of their character, or station, have a more complete insight into the nature and demands of morality than others. As Jerome Schneewind has put it, for Grotius, "The virtuous are simply those who obey the law where it is specific, and stay within the bounds of the permissible where it leaves room for choice. In the Grotian morality of rule and act there is no room for any special cognitive ability arising from virtue."³ In fact,

an animosity towards ancient conceptions of virtue is a notable characteristic of Grotius's project, made especially obvious in the Prolegomena to *De Iure Belli ac Pacis*, where, in Schneewind's words, Grotius argues that "a central feature of such theories is wrong. The motive of the just agent does not matter. To be just is simply to have the habit of following right reason with respect to the rights of others. It does not matter why the agent has and sustains the habit."⁴ This is to say that to be just is to have the habit of not violating the rights of others. It is in the first instance a negative virtue, a virtue that manifests itself in refraining from doing things. Justice, as Grotius himself puts it, "consists wholly in abstaining from that which is another Mans."⁵ It is usually injustice, not justice, that shows itself in actions; but with respect to injustice, too, the motive is of no importance. "[T]he very Nature of Injustice consists in nothing else, but in the Violation of another's Rights," Grotius says;

nor does it signify, whether it proceeds from Avarice, or Lust, or Anger, or imprudent Pity, or Ambition, which are usually the Sources of the greatest Injuries. For to resist all Temptations of what Kind soever, and that for this only Reason, *viz.* the preserving of Human Society inviolable, is indeed the proper Business of Justice.⁶

I believe that Hume shares Grotius's lack of interest in the motives of just action, and that, like Grotius, he attaches no moral significance to justice considered as a distinct trait of character.⁷

The idea that Hume's theory of justice has significant affinities with the jurisprudence of Grotius is not new. The claim has been made before by, among others, Duncan Forbes, Knud Haakonssen, Stephen Buckle, and J. B. Stewart.⁸ But it appears not to have been generally accepted by those currently working on Hume's moral philosophy. Much of that work, in fact, is curiously decontextualised, with little close attention paid to Hume's relations with his contemporaries and immediate predecessors. Hume's treatment of justice is frequently presented as if it were a kind of puzzle, and the assumption is that all the pieces for the solution of the puzzle are contained in the text itself. I think this assumption is mistaken. A more fruitful approach, I shall suggest, is to consider Hume's treatment of justice in relation to a tradition of thought, a tradition that is for the most part latent and implicit in the text, alluded to at various points, but not directly quoted from.⁹ In the next section of the paper, Section 2, I discuss and criticise what might be termed the strong form of the virtue-theoretic reading of Hume, which sees affinities between Hume's moral philosophy and modern virtue ethics. I then turn to a weaker form of the virtue-theoretic reading, which holds that character is the basic and central concept of Hume's ethics. In Section 3, I set the scene for a discussion of what, according to Hume, is morally estimable in justice by means of a consideration of

Hume's definition of justice. I contend that Hume conceives of justice in Grotian manner, as a necessary and sufficient condition of life in society, and also that it would appear, from Hume's definition of justice, as from Grotius's, that just actions, considered in themselves, must be morally insignificant. I then introduce a distinction made by Hume's contemporaries between the moral worth of just actions and the moral worth of just agents. Reid, for example, accepts that there is little to say about the moral value of just actions, but argues that the moral value of justice lies elsewhere, in the extent to which agents act justly out of respect for duty. In Section 4 I describe Hume's rejection of the idea that moral approval might be prompted by respect for duty as such. There has to be some other kind of motive in play, Hume holds, in order for approval to be excited. I argue that Hume's view is that in the case of justice it does not matter what that motive is, just so long as it issues in a reliable disposition to abide by the conventions of justice. Moral approval of justice is approval of the consequences of general adherence to the rules of justice—consequences spelled out not in terms of the maximization of happiness or welfare, but in terms of the procuring of peace and order in society.¹⁰ In a brief conclusion, Section 5, I turn from the *Treatise* to the second *Enquiry*, and suggest that rejection of the idea that the morality of justice is to be spelled out in terms of a particular set of motives, or kind of character, is even clearer there.

2

When seen in its eighteenth-century context, one of the more striking features of the moral philosophy presented in Book 3 of the *Treatise* is that it is organized around a distinction between kinds of virtue.¹¹ Hume's contemporaries, especially his Scottish contemporaries, understood the basic category in ethics to be that of right, along with the closely associated notions of duty, obligation, and law. The teaching of George Carmichael, Francis Hutcheson, Adam Smith, and Thomas Reid at Glasgow; of William Law, William Scott, John Pringle, and James Balfour at Edinburgh; and of George Turnbull and David Verner at Aberdeen consisted in large part of lectures on the theory of natural rights.¹² The tradition of natural jurisprudence was introduced in Scotland by Carmichael, who based his lectures on Pufendorf's *De Officio Hominis et Civis*, and who published a comprehensive commentary, or series of "supplements and observations," on Pufendorf's text. Carmichael rejected Pufendorf's understanding of the basis of natural right, however, on the grounds that Pufendorf was mistaken in trying to keep natural jurisprudence separate from the principles of Christian theology. In his teaching Hutcheson, too, retained the Pufendorffian superstructure of natural right, while refusing to accept not only Pufendorf's own conception of their basis but also his predecessor Carmichael's revisions of Pufendorf. Hutcheson sought to effect a combination of natural rights theory with a theory of virtue and of the supreme

good, thereby, as he saw it, correcting the moral philosophy of his time's excessive concern with what he terms "the external duties of life," and reinstating the importance of the question of how human nature may be brought to perfection.¹³ This latter question had been forgotten, Hutcheson thought, on account of the unduly pessimistic conception of human nature that earlier natural lawyers had taken wholesale from Calvin and the Augustinian tradition. One way of understanding Hume's moral philosophy is to see him as wanting to develop further the Hutchesonian rejection of Augustinian pessimism and as dispensing altogether with the natural rights framework.¹⁴ On this way of understanding Hume, the central notion of his ethics, as of Hutcheson's, is virtue, as opposed to duty; and his project may be thought, like Hutcheson's, to have important affinities with the project of the Graeco-Roman philosophers. I believe that this way of understanding Hume is mistaken.

Some of Hume's readers have gone so far as to take the prominence of the language of virtue in his moral philosophy as a sign that Hume is best placed in the tradition of "virtue ethics" that has its origins and inspiration in Aristotle and that was reinvented in the mid-twentieth century by philosophers such as Elizabeth Anscombe, Alasdair MacIntyre, and Philippa Foot. The most fully-developed virtue-theoretic readings of Hume are those of Rosalind Hursthouse and Christine Swanton. Their approach to Hume's ethics takes as its point of departure Hume's claim that it is traits of character, rather than actions or states of affairs in the world or maxims of choice, that are the primary objects of moral evaluation. "Tis evident," Hume says, "that when we praise any actions, we regard only the motives that produced them, and consider the actions as signs or indications of certain principles in the mind and temper. The external performance has no merit. We must look within to find the moral quality" (T 3.2.1.2; SBN 477). But this claim by itself is not sufficient to make a virtue ethicist of Hume. As Swanton puts it, there is a distinction to be drawn between being a *theorist of virtue* and being a *virtue ethicist*.¹⁵ A virtue ethic is more than an account of the objects of moral judgment. It is in addition a normative theory concerning the nature of right action. On that theory, the answer to the question "What is a right action?" is that, in Hursthouse's words, "It is not, necessarily, an action that maximizes utility; not, necessarily, an action that is in accordance with any moral rule, principle, or law (as those terms are normally understood); but, simply, what a virtuous agent would, characteristically, do (or have done) in the circumstances."¹⁶ This invites the question, "What is a virtuous agent?" to which the answer is, "[a]n agent who possesses those character traits that are virtues"; and this in turn invites the question, "Which character traits are the virtues?" There will be disagreements among virtue ethicists about the means by which this last question is to be answered, but the fundamental idea is that it is possible, by one means or another, to specify character traits which any human being *ought* to cultivate if he is to live a fully flourishing life. The notion

that Hume is a virtue ethicist, then, hinges on the plausibility of the claim that Hume provides a specification of traits of character that realise themselves in any properly lived human life.

Hursthouse has argued in favour of adopting the traditional Aristotelian method of identifying the character traits that are virtues by means of an objectively definable conception of human flourishing, a conception provided by a consideration of the biological and psychological needs of creatures like us. And she thinks that a place can be found for Hume in this tradition of thought despite the fact that Hume himself says that there are *four* kinds of character traits that excite pleasure in the moral sense, those that are useful to ourselves and to others, and those that are agreeable to ourselves and to others. This, as Hursthouse accepts, appears to be a *disjunctive* account of the virtues, and as such it does not look a promising basis for an integration of Hume into an Aristotelian approach to normative ethics: as she says, “it is disastrously obvious that the four causes of pleasure are bound to yield many inconsistent or inconclusive results.”¹⁷ What is useful to others need not be agreeable to me, what is agreeable to me need not be useful to others, and so on. Hursthouse observes that there are occasions when Hume appears to understand his position conjunctively rather than disjunctively and claims that, since it is just so plain that there will be inconsistent and inconclusive results on his official theory, Hume must in fact be in the grip of “the conjunctive claim of the ancient tradition.”¹⁸ But this kind of interpretative speculation is only warranted to the extent that there is reason to think that Hume might be worried by inconsistency and inconclusiveness in a specification of the character traits that are virtues. And I see no reason to think that he would. I think that Hume shows every sign of being willing to accept that it is impossible to give a unified and harmonious account of virtuous character. Michael Gill is correct, I believe, in his portrayal of Hume’s moral philosophy as a species of pluralism.¹⁹ This is especially obvious in Hume’s conception of the relation between justice on the one hand, and benevolence on the other. In his initial argument against the naturalness of the virtue of justice, Hume points out, first, that there is no such thing as general benevolence (that is, “the love of mankind, merely as such, independent of personal qualities, or services, or of relation to ourself” (T 3.2.1.12; SBN 481)), and then goes on to emphasise the frequent tensions between a concern for justice and a concern for the good of particular others. Hume is clear that justice cannot be conceived as, so to speak, a kind of higher benevolence. The doing of justice may well require the violation and suppression of benevolent affection.²⁰

There is, in addition, *prima facie* reason to doubt that Hume has a view as to what the best life for human beings as such might be. For one thing, he never takes it upon himself to argue for one conception of human flourishing over and against another conception. For another, he more than once appears to express scepticism as to the possibility of coming to a principled decision on the matter. In

a letter to Hutcheson, for example, he distances himself from the whole project of identifying the life that is *natural* to human beings, and from the notion of “final Causes” upon which that project rests:

For pray, what is the End of Man? Is he created for Happiness or for Virtue? For this life or for the next? For himself or for his Maker? Your Definition of *Natural* depends upon solving these Questions, which are endless, & quite wide of my Purpose.²¹

In the essay “The Sceptic,” Hume, ventriloquizing but surely also speaking for himself, pours scorn on those who “come to a philosopher to be instructed, how we shall chuse our ends,” and argues that it is impossible for philosophy to do much to alter the “fabric and constitution of our mind,” by which a particular individual’s highest happiness will always be determined.²² Indeed, there are reasons to take the four essays on happiness as a whole as a concerted deconstruction of the entire ancient project of grounding moral philosophy on a definition of the best life for human beings as such.²³ Christine Swanton has argued that, on the contrary, there is no tension between Hume’s sentimentalism—expressed by Hume’s Sceptic in the judgment “that there is nothing, in itself, valuable or despicable, desirable or hateful, beautiful or deformed”²⁴—and the idea that he is a virtue ethicist.²⁵ She accepts that for Hume, as not for Aristotle, virtue is a *response-dependent* property, but points out that it is also a response-dependent property *of objects*, that is, of human beings, and not a mere projection. Moreover, she argues, the relation between property and response is not brutally causal: a virtue, as she puts it, is a property that *merits* approval. The notion of merited approval is to be spelled out in terms of, first, the fact that a character trait tends to the happiness of mankind, and, secondly, the fact that it has properties which make it naturally fitting that its appearance causes an immediate sentiment of approval in an authoritative judge. Swanton’s reading thus hangs on the possibility of spelling out in Humean terms what might make a judge *authoritative*. And the problem, again, is that this is not something that Hume himself says anything about. Hume’s theory of the means by which we overcome the natural partiality of the sentiments through the development of general rules will not help, because the point of view that these rules make possible is merely *common*, and not *ideal*.²⁶ Nor will the theory of the ideal critic developed in the essay “Of the Standard of Taste” help. That theory explains how agreement is reached about standards of appreciation despite its being true *both* that all judgments of taste are expressions of sentiment *and* that “no sentiment represents what is really in the object.”²⁷ Nowhere does Hume describe the judgment of the ideal critic in terms of its “fittingness” with respect to the object of judgment. As we will see below, when it comes to justice, Hume explains our moral judgments in terms of a very minimal conception of the good, which is to

say, in terms of its conduciveness to the peace and stability of society, rather than to any substantial conception of human flourishing.²⁸

Perhaps, though, even if Hume cannot be read as a *virtue ethicist*, he can, to use Swanton's distinction, still be read as a *theorist of virtue*. That is, perhaps it is true that virtue and character are the basic concepts of his moral philosophy, in the sense of being the primary objects of moral evaluation, such that the larger project of Hume's moral philosophy taken as a whole can be understood to be clearly different both from Kantian deontology and from Benthamite and post-Benthamite consequentialism. On this reading, it is a defining feature of Hume's moral philosophy, first, that it understands moral distinctions in terms of differences between kinds of character, and, secondly, that it analyses different kinds of character purely in terms of different mixtures of passions. The distinctive Humean move was thus to ground morality in the passions, and to do so both in a much richer and less reductive way than had been possible within the terms of the theories of philosophical egoists such as Hobbes and Mandeville, and in a more realistic and "naturalistic" way than had been attempted by Hutcheson. The ground was cleared for such a reading of Hume's ethics by Páll Árdal in his pioneering study of the relations between Books 2 and 3 of the *Treatise*, and it has been since been worked up into a number of sophisticated interpretations, including those of David Fate Norton, Annette Baier, and Jacqueline Taylor. Indeed, much recent scholarship appears to take it as simply axiomatic that a commitment to a theory of virtue is central to Hume's moral philosophy. "Hume's moral philosophy may plausibly be construed as a version of virtue ethics," Taylor states in the opening sentence of a recent essay: "Among the central moral concepts of his theory are character, virtue, and vice, rather than rules, duty, or obligation. The importance of character focuses theoretical attention on the emotions and other affective aspects of our moral psychology that are essential to our developing an appreciation of what is worthwhile and praiseworthy."²⁹ Stephen Darwall describes as "the fundamental principle of [Hume's] virtue ethics" "that the direct object of moral approbation is always some trait of character."³⁰ Don Garrett terms Hume's "Core Virtue Ethics Thesis" the claim "that the moral merit of an action is derived entirely from the merit of the virtuous "motive" of which it is a sign."³¹ It is my contention here that this construal of what is distinctive of Hume's moral philosophy meets with a serious problem in his account of justice.

Rachel Cohon has argued that, whatever may be said as to the possibility of fitting Hume's analysis of the natural virtues into the virtue theoretic tradition, in the case of the artificial virtues, the nature of right action is *not* settled in terms of the specification of a particular trait of character.³² At least, it is not settled that way in the first instance, prior to the establishment of conventions regarding property and promise-keeping. It is precisely those conventions that determine the distinction between just and unjust acts, and the motive to respect those conventions comes

first from self-interest. Nevertheless, Hume remains on Cohon's reading a virtue ethicist, because she sees him as holding that a regard for justice can become part of someone's character, to the point where, as a result of habituation and association with pride and shame, it becomes a motivating sentiment, strong enough to move people to action even where they see that justice is not in their interests. There is thus such a thing as a virtue of justice, even though such respect for duty is not natural: justice, as Cohon puts it, is a virtue in roughly the same sense in which an artificial leg is a leg.³³ It is, Cohon argues, respect for justice as such, and, crucially, *only* respect for justice as such, that makes obedience to property conventions a matter of virtue. The idea is that moral sentiment itself, internalised and self-directed, can be strengthened to become a virtuous motive. Now, it is certainly true that Hume allows that a regard for duty as such can become a motive for human beings.³⁴ But he gives no signs of holding that an action *must* be done out of regard for duty before the agent can be morally approved of, nor that an agent is disapproved of, or even so much as held in suspicion, in case he does not act out of regard for duty. Cohon remarks that, "For a virtue ethicist Hume says surprisingly little about what he thinks a virtue or a vice is, or even a 'character' trait in general."³⁵ This is true. For a virtue ethicist, furthermore, Hume says surprisingly little about what he thinks the virtue of justice is, considered as a character trait of human agents. I believe that what this suggests is that the whole project of trying to fit Hume's theory of justice into the framework of a theory of virtue is misguided. Hume says little about what he thinks the virtue of justice is, considered as a stable character trait, because he does not hold that there is a single such character trait that all just actions are praiseworthy as manifestations of, and that unjust actions show agents to lack. When it comes to his theory of justice, at least, virtue ethics is not the tradition of moral philosophy into which Hume should be inserted. The question as to how his approach to justice should be characterised is best approached, I shall now suggest, from another direction, via a consideration of how justice is defined.

3

Part 2 of Book 3 of the *Treatise* has the title "Of Justice and Injustice." It turns out that Hume's understanding of what falls under the term "justice" is rather narrow. At its widest, and in line with the title of Part 2, justice would appear to comprise the "artificial virtues" taken as a whole: to comprise, that is, respect for property and for the ways it can be transferred from one owner to another; respect for the terms of promises and contracts; respect for those in positions of political and legal authority; respect on the part of those in positions of political and legal authority for the rules making up international law; and respect, on the part of both men and women, for the principles of chastity. More narrowly, justice is sometimes referred to by Hume as if it comprised only respect for property, for the ways it can

be transferred, and for promises and contracts.³⁶ Most narrowly of all, “justice” sometimes means only respect for property, with promise-keeping categorized as a different virtue altogether.³⁷ Even on the widest of these definitions of justice, much that was traditionally thought to be part of justice is missing: there is nothing corresponding to the concerns of criminal law, and no place for criminal law’s fundamental concept of *desert*; and nor is there anything which speaks to the idea that there may be justice or injustice in the way in which a society distributes its wealth or its opportunities.³⁸ It is unlikely that Hume—who had, after all, been a student of law, albeit a negligent one, in the 1720s—wrote the *Treatise* in ignorance of how justice was usually defined. If one were to be ungenerous, one might hypothesize that he defines justice as narrowly as he does in order to make it easier to reach the conclusion that justice is not a natural virtue but rather the product of artifice and invention. Criminal law, after all, might plausibly be said to have its basis in the difference between mere regret at misfortune and resentment at injury, and resentment is admitted by Hume himself to be a passion natural to human beings.³⁹ It would be more fair, perhaps, to explain Hume’s definition of justice by situating it in the context provided by Books 1 and 2 of the *Treatise*. The way in which reason is portrayed in Book 1, together with the analysis of the passions offered in Book 2, gives a particular sharpness to the question of how “sociability,” or peaceful co-existence in society, is possible for beings like us. The way Hume deploys the concept of sympathy in his account of the passions is meant, I have argued elsewhere, to go some way toward answering the question concerning sociability.⁴⁰ But it does not go all the way. Ideas of morality are needed as well to explain the possibility of social life, and Hume begins Book 3 concerned with the moral ideas most pertinent to this particular explanatory task.

Such an understanding of Hume’s definition of justice receives support when, at the beginning of *Treatise* 3.2.6, Hume describes as “the three fundamental laws of nature” the moral principles that he has analysed in the preceding five sections, viz., “*that of the stability of possession, of its transference by consent, and of the performance of promises.*” He continues:

’Tis on the strict observance of those three laws, that the peace and security of human society entirely depend; nor is there any possibility of establishing a good correspondence among men, where these are neglected. Society is absolutely necessary for the well-being of men; and these are as necessary to the support of society. (T 3.2.6.1; SBN 526)

The use here of the language of “laws of nature” that are “fundamental” to “the support of society” provides some clear evidence that in his approach to the virtue of justice, Hume was thinking in the terms of a problem of sociability. In rejecting the idea that human beings are necessarily motivated solely by self-love, Hume

rejected the form that that problem usually took in the seventeenth century; but in giving priority to the interplay of the passions of pride, humility, love, and hatred, Hume equally rejected the idea, promulgated by Hutcheson, that the admission of a natural benevolence was sufficient for the problem's solution. While love naturally gives rise to benevolence, the form that love takes is in a continual state of flux, as it is modified by, and modifies in turn, the other indirect passions of pride, humility, and hatred. In Book 2 Hume depicts human beings as caught up in a complex network of social relations and as significantly determined in their passions by their sense of where in that network they are situated and, just as important, by their sense of where they are taken to be situated by those around them. We are, according to Hume, preeminently concerned with social status and with the things that confer such status, including material possessions, rank, and reputation. Life in society is thus in a significant sense natural to human beings—or, at least, has become so—but it is, at the same time, an essentially competitive business, and our competitiveness constantly threatens to undo the bonds of social living. One of Hume's tasks in Book 3 is to describe the means we have developed of containing this competitiveness and of preserving social order without seeking, impossibly, to repress altogether the passions that make us what we are. To understand Hume as having begun his moral philosophy with the question of sociability at the front of his mind is, as I suggested above, to locate him in the new tradition of moral philosophy inaugurated by Grotius, a tradition concerned above all with the rights that need to be respected and protected if peace and stability are to replace war and disorder.

The rights that Humean justice protects—the rights of property owners; the rights of those to whom promises have been made, and with whom contracts have been made; perhaps also the rights of magistrates and sovereigns—are said by Hume himself to be “perfect.” In *Treatise* 3.2.6 he makes a distinction between “all kinds of vice and virtue,” on the one hand, and “rights, and obligations, and property” on the other: the former, like all “*natural* qualities,” “run insensibly into each other, and may approach by such imperceptible degrees as will make it very difficult, if not absolutely impossible, to determine when the one ends, and the other begins”; while the latter “admit of no such insensible gradation,” so that “a man either has full and perfect property, or none at all; and is either entirely oblig'd to perform an action, or lies under no manner of obligation” (T 3.2.6.7; SBN 529). Although Hume does not himself make this explicit, two things would seem to follow from an understanding of the obligation to justice as a perfect obligation. The first is that, very often, there will not be anything especially morally admirable to individual instances of just action. Hume's first example of such an action is the repayment of a loan (T 3.2.1.9; SBN 479–80). A man is surely blameworthy if he does not pay back what he owes, but it is very far from obvious that he is praiseworthy if he does. In repaying the loan, he does no more than what he is obliged to do: or, to say the

same thing in a different way, he gives back the lender what is the lender's due. All that is at issue is the lender's right to have his money back, and the borrower's perfect obligation to respect that right. The second thing that would seem to follow from an understanding of justice as consisting in respect for perfect rights is that very often the virtue is going to lie in *not* doing things, in refraining from action, in omission. Respect for rights of property is shown by not stealing, or otherwise misusing, what belongs to someone else. Respect for the rightful authority of monarchs and magistrates is shown, usually at least, in not breaking the laws that they have laid down. In general, respect for a perfect right is very often a matter of not violating that right: there is nothing, in particular, that one might do in order to manifest such respect. These are, to repeat, not inferences that Hume himself makes explicit, but they would appear to be, at the least, implicit in the conception of justice he works with, and in the examples of just acts that he discusses.

Hume was criticized on account of the narrowness of his conception of justice by his contemporaries Thomas Reid and Adam Smith. In the chapter on justice in *Essays on the Active Powers of Man*, Reid observes that, since "justice is directly opposed to injury," a definition of justice may be given in terms of the various ways in which a man may be injured. He continues:

A man may be injured, *first*, in his person, by wounding, maiming or killing him; *secondly*, in his family, by robbing him of his children, or any way injuring those he is bound to protect; *thirdly*, in his liberty, by confinement; *fourthly*, in his reputation; *fifthly*, in his goods or property; and, *lastly*, in the violation of contracts or engagements made with him.⁴¹

Justice is the protection of the right not to be injured in these six ways. Reid then points out that whether or not Hume is successful in his argument that justice is an artificial and not a natural virtue, that argument bears only on the fifth and sixth branches of justice: "He seems, I know not why, to have taken up a confined notion of justice, and to have restricted it to a regard to property and fidelity in contracts."⁴² However, it turns out that, like Hume, Reid, even though he defines justice in a much more expansive sense, finds little or no positive value in particular just acts. Justice, according to Reid, fills the middle ground between benefit and injury: "It is such a conduct as does no injury to others; but it does not imply the doing them any favour."⁴³ In a just action considered in itself, Reid says, "we perceive no high degree of moral worth."⁴⁴ In *The Theory of Moral Sentiments*, Smith makes a point of bringing claims of desert under the remit of justice, but he holds that, even given a less counterintuitive definition, justice is a virtue of omission:

Mere justice is, upon most occasions, but a negative virtue, and only hinders us from hurting our neighbour. The man who barely abstains

from violating either the person, or the estate, or the reputation of his neighbours, has surely very little positive merit. He fulfils, however, all the rules of what is peculiarly called justice, and does every thing which his equals can with propriety force him to do, or which they can punish him for not doing. We may often fulfil all the rules of justice by sitting still and doing nothing.⁴⁵

It was not unusual for eighteenth-century British philosophers to conceive of just actions in a Grotian way, as omissions which, in so far as they amount to respect for rules, obedience to which is non-negotiable for members of human society, deserve little if any moral praise. Nevertheless, Hume's contemporaries kept alive the question of the proper motive to justice by means of a distinction between a just action and a just person.

Reid's acceptance of the idea that just actions in themselves may often be morally nugatory goes along with the claim that an agent, in performing a just action, deserves praise in so far as he acts out of concern for what is his duty. There is, on Reid's account, little to be said about the moral goodness of actions "considered abstractly": an action is morally good when "it is an action which ought to be done by those who have the power and opportunity, and capacity of perceiving their obligation to do it. . . . And this goodness is inherent in its nature, and inseparable from it." An agent, by contrast, is morally good in performing an action in so far as "he applied his intellectual powers properly, in order to judge what he ought to do, and acted according to his judgment."⁴⁶ The very possibility of virtue in an agent depends on the agent's having the intellectual power of conscience to inform his judgments and on his acting according to what conscience dictates. An agent could only be a proper object of moral approbation "if he had a power of discerning a right and a wrong in human conduct, and of being influenced by that discernment."⁴⁷ In the case of justice, then, an agent's virtue lies in acting on perceptions of moral obligation, perceptions that are the work of a faculty that Reid prefers to call "conscience" and that he takes to be natural because derived from natural notions of resentment and of gratitude. Reid's conception of the nature of virtue, and of the centrality to it of respect for conscience, strongly suggests that Butler was a key influence on the formation of his moral philosophy. The very constitution of our nature, Butler had argued in the Preface to *Fifteen Sermons Preached at The Rolls Chapel*, "requires, that we bring our whole conduct before this superior faculty; wait its determination; enforce upon ourselves its authority, and make it the business of our lives, as it is absolutely the whole business of a moral agent, to conform ourselves to it."⁴⁸ Hutcheson, too, especially in his later works, was influenced by Butler's conception of virtue as lying in respect for "conscience or moral sense," that "nobler sense which nature has designed to be the guide of life."⁴⁹ Hume, however, as Reid saw clearly, had no place in his moral philosophy

for the idea that the goodness of an agent, considered as distinct from the goodness of actions, might lie in a simple respect for the deliverances of the moral faculty. In the following section we will see that Hume explicitly argues that the idea of such goodness makes no sense.

4

Hume begins *Treatise* 3.2 taking two things for granted: that as a matter of fact, people do usually respect the property of others, keep their promises and contracts, repay their loans, and so on; and that people are ordinarily taken to have a moral obligation to do these things. Hume's question is why we take there to be such a moral obligation, why we approve of people when they do these things, or at least disapprove of them when they do not. We morally assess actions in terms of their motives, he notes, and so presumably in the case of just actions, and refrainings, there is a motive that we find praiseworthy and that we take just actions and refrainings to manifest. The first candidate motive that Hume considers is the motive that philosophers such as Butler and Reid take to be the proper motive of all virtuous actions, a regard for the fact that they are what virtue consists in and what duty requires. Hume argues that being done out of a regard for virtue is not by itself sufficient to explain why an action is morally approved of. There must be some other feature of the action, which is to say, some other motive, that explains why it is supposed by the agent to be virtuous and a matter of duty; and it is that further motive that has to be identified if our moral approval is to be accounted for. Hume's contention is that in the case of a just action—for example, the repayment of a loan—it is very far from obvious what kind of motive plays the role of the motive that explains our belief that the action is morally obligatory. Hume considers three possible motives: self-interest, regard to the public interest, and benevolent concern for a particular individual. None of these motives, he argues, is what we suppose the repayment of a debt to be motivated by when we judge such repayment to be a matter of moral obligation. It would, therefore, seem that, in fact, “we naturally have no real or universal motive for observing the laws of equity, but the very equity and merit of that observance” (T 3.2.1.17; SBN 483), and so, given that the merit of actions lies in their “natural” motives, there would appear to be a serious obstacle in the way of explaining why observing the laws of equity is taken to be morally obligatory.

Some commentators have suggested that what Hume is leading the reader towards here is the conclusion that, in fact, repayment of loans, and other instances of “observing the laws of equity” are not *morally* obligatory at all. The belief that they are morally obligatory is false, foisted upon us by our rulers and educators.⁵⁰ More common in the literature is the claim that Hume is pointing to the limitation of explanation of moral approval and disapproval in terms of *natural* motives. It is

frequently pointed out that in the passage quoted last in the above paragraph, the “naturally” was in fact not in the text of the *Treatise* as published in 1740. Hume added the word in manuscript to a copy of the *Treatise* now held by the British Library. The implication of the addition, it is argued, is that Hume wanted to emphasise that the morally approvable motive to justice is, not non-existent, but rather non-natural, in the sense of being non-innate, the result of artifice and invention. There is, however, considerable disagreement among proponents of this view as to how, exactly, the non-natural motive should be characterized. Baier argues that the moral obligation as well as the natural obligation to justice is to be understood as a mode of self-interest.⁵¹ It is a narrow, though not purely egoistical, conception of self-interest that explains the origins of the conventions of justice; it is a much broader, “enlightened,” self-interest that generates moral approval of abiding by those conventions, even in cases where the benefit to self (or to family and friends) is not obvious. This expanded sense of self-interest is born of one’s sense of oneself as a member of a large community, perhaps as a member of humankind at large. Cohon, as was seen above, characterizes the motive to justice in terms of an internalised and appropriated moral approval. Darwall argues that what Hume’s theory points towards is a view according to which the just person is one who morally commits herself to the rules governing the society in which she lives, such that she decides she will, all things being equal, abide by them in all cases and always allow them to guide her decision making. Such an agent is no longer thinking in terms of her self-interest, even if it was self-decision that prompted the commitment: she has adopted a wholly new principle of action.⁵² Darwall thinks that, in actual fact, Hume cannot hold this theory himself, because it is incompatible with his passion-driven moral psychology. Garrett argues that not only is it true that Hume should hold the theory, it is also true that he can, and that he does.⁵³

What explains this lack of consensus among commentators as to Hume’s explanation of the belief in a moral obligation to justice is the fact that Hume himself fails to give an explicit solution to the problem he sets up in *Treatise* 3.2.1. Having shown to his own satisfaction that “the sense of justice and injustice is not deriv’d from nature, but arises artificially, tho’ necessarily from education, and human conventions” (T 3.2.1.17; SBN 483), Hume sets off in the next section to give a conjectural-historical reconstruction of how one such convention, that of property as distinct from possession, might have developed. That explanation is given in terms of self-interest, and Hume himself insists that to show that there is a “natural obligation” to justice (meaning, here, respect for property) is not the same thing as to make sense of the idea that there is a “moral obligation” to it. The things that we have moral obligations with regard to—most notably, property and promises—are brought into existence by means of artifice and invention, so that we can only be said to have obligations to these things where the conventions exist; but showing how the conventions developed is not the same thing as showing why

we believe that we are morally obliged to respect the conventions.⁵⁴ Hume only turns back to the question of what explains belief in a moral obligation to justice in the final seven paragraphs of T 3.2.2, but what he says there does not appear to speak directly to the problem he set up in T 3.2.1. The principal claim he makes is that while self-interest is the “*original motive to the establishment of justice*,” “*a sympathy with public interest is the source of the moral approbation, which attends that virtue*” (T 3.2.2.24; SBN 499–500). The claim, it seems, is not that we praise people for acting in line with the conventions of justice just in so far as they act out of sympathy with public interest. Rather, Hume’s claim is that we accord moral significance to what others do only in so far as we, the observers and judges of the actions of others, sympathise with the public interest. And what this appears to suggest is that it is in terms of their *consequences*, not in terms of their *motives*, that just actions are morally appraised in the first instance. In T 3.2.2, Hume writes that he will explain further later in the book, but when he returns to the issue, in T 3.3.1, what he writes is most naturally construed in the same way. He declares that “justice is a moral virtue, merely because it has that tendency to the good of mankind”; like the laws of nations, of modesty, and of good manners, justice is a “mere human contrivance for the interest of society” (T 3.3.1.9; SBN 577). He adds,

And since there is a very strong sentiment of morals, which has always attended them, we must allow, that the reflecting on the tendency of characters and mental qualities, is sufficient to give us the sentiments of approbation and blame. (T 3.3.1.9; SBN 577)

It is perhaps worth saying that Hume’s reference to “tendencies,” and my reference to “consequences,” should not be taken as evidence that Hume is here heading off in a “consequentialist” direction. There is no sign that Hume is thinking in terms of something—happiness, or wellbeing—that approval tracks, such that the more of that thing there is, the greater the approval is. The interest of the public, according to Hume, as according to Grotius, is in peace and stability, in the rule of law, in respect for property, contracts, and the authority of the magistrate.⁵⁵

Hume’s reluctance to specify the non-natural but yet non-dutious motive to actions such as debt-repayments, when taken together with the way sympathy is excited primarily by the consequences of actions (and inactions), suggests to me that his view is that in the case of justice, there is no one kind of motive which actions are taken to be prompted by, and which explains why those actions are approved of. It does of course matter that people be just, and that they not be unjust, and so what we look for, in respect of justice, is a disposition in an agent that makes justice what is usual, and that makes injustice unusual, preferably very unusual indeed. Hume’s explanation of the basis of attributions of moral responsibility makes it important that actions be intelligible as expressions of such dispositions,

or, what amounts to the same thing, as expressions of the agent's *character*. But it would not seem to matter, within the terms of Hume's moral theory, what, exactly, grounds and explains such dispositions. We will approve, simply, of whatever kind of motive, and disposition of character, reliably causes actions with consequences beneficial to society at large. This approval is artificial, non-natural in the sense that it depends for its possibility on general adherence to conventions, for example those that bring into existence property and promises. Where there is no general adherence to such conventions, for example in emergency conditions where the social order has broken down, a disposition to adhere to them has no moral value whatsoever. Where there is general adherence, an individual's disposition to adhere to them acquires its moral value from the consequences of general adherence. Thus it is not quite true to say that the motive of a just action is morally attractive, and approvable, and obligatory, in light of its consequences. More precisely, it is approvable and obligatory in so far as the actions it produces fall under a rule, general obedience to which has beneficial consequences for society at large. In some people, perhaps, compliance with the rules of justice derives, along the lines of Baier's construal of the motive to justice, from an enlightened grasp of the benefits to self that flow from the existence of the convention. In others, perhaps, it derives, along the lines of Cohon's reading, from an internalisation of and orientation by sympathy-generated moral approval of such behaviour. In still others, perhaps, it derives, along the lines of Darwall's and Garrett's reading, from a self-conscious willing of commitment to the conventions that structure life in society, a commitment to abide by those conventions even where it is not obvious what the benefits, to self or others, may be. Nothing in Hume's explanation of why just actions are morally approved, so far as I can see, makes it important where the disposition to abide by the rules of justice comes from. Our "intuitions" might tell us that there is a morally significant difference between repaying a loan out of a sense of what honesty requires and doing so only because one fears the consequences of not doing so, but such intuitions are not substantiated in Hume's text.⁵⁶

Hume seems in fact to wish to draw attention to the moral insignificance of what explains the disposition to act in line with the conventions of justice. In a further manuscript amendment, Hume added the following to the T 3.2.2 statement of the thesis that sympathy is the source of the moral approbation of justice: "This latter Principle of Sympathy is too weak to controul our Passions; but has sufficient Force to influence our Taste, and give us the Sentiments of Approbation or Blame" (T 3.2.2.24; SBN 670).⁵⁷ This raises the question of what, exactly, *is* able to control our passions and to prompt us to act in accord with the sentiments of approbation or blame. Hume goes on to mention three things. First, he acknowledges the effects of "the artifice of politicians, who, in order to govern men more easily, and preserve peace in human society, have endeavour'd to produce an esteem for justice, and an abhorrence of injustice" (T 3.2.2.25; SBN 500). He qualifies the

blatantly Mandevillean overtones of this suggestion by quickly acknowledging the force of Hutcheson's argument that the artifice of politicians cannot be responsible for the sense of virtue itself, but the fact remains that politicians are charged with task of extending the moral sentiments beyond their natural bounds, and giving them sufficient hold to ensure that they (the moral sentiments) actually make us do things. Hume is silent as to how, exactly, politicians do this, but presumably one means at their disposal is state power, and the threat of punishment in the form of fines, prison, and, in Hume's day, various forms of corporal punishment, including execution. The second source of motivational efficacy for ideas of justice is provided by "private education and custom," and, in particular, by the inculcation in children of "sentiments of honour" and of an aversion to what is "base and infamous" (T 3.2.2.26; SBN 500–501). Here again Hume sounds a Mandevillean note. According to Mandeville, the ethic of honour was in the real world considerably more efficacious and prevalent than the ethic of Christianity.⁵⁸ The third consideration helpful to the end of giving justice a practical role is *reputation*, the desire we have to be well regarded by others and to do what is necessary to avoid general opprobrium.⁵⁹ The idea would seem to be that these three considerations line our passions up with the judgments produced by sympathy and make us act in accord with those judgments. Sympathy with the interests of society taken as a whole provides the idea that, for example, it is morally right and obligatory to repay a loan. But that idea, by itself, is not sufficient to get us to make the repayment. The idea is given motivating force by politics and law, by education and custom, and by the ethic of honour—none of which, taken by themselves, are able to help with the question of why just actions are morally approved. Hume repeats the claim that such considerations are crucial to giving ideas of morality motivating force in his treatment of the belief in a moral obligation to keep promises (T 3.2.5.12; SBN 523), and in his final summing up of his account of the "two different foundations" of the distinction between justice and injustice (T 3.2.6.11; SBN 533–34).

My conclusion is that Hume's explanation of moral approval of justice gives further reason to align his theory of justice with the natural jurisprudence of Grotius. Hume not only defines justice in a Grotian manner, in terms of the minimal rights that have to be respected if social life is to be possible for human beings, but he also rejects the idea that there is some particular motive and disposition of character that identifies the *truly just person*. The just person, on Hume's account as on Grotius's, is simply the person who reliably abides by the rules of justice and respects the rights that secure peace in society. There is nothing over and above the mere fact of her compliance with the rules of justice to explain why we approve of the actions, and omissions, of such a person. Nevertheless, Hume is not Grotian through and through in his moral philosophy. In the *Treatise*, his moral philosophy is structured by the distinction between "artificial" and "natural" virtues, and in the case of the latter kind of virtue, it surely does matter what is responsible for

the behaviour that manifests the virtue. Ordinary moral sentiment tells us that it makes a difference, for example, whether someone acts benevolently out of love, or out of self-serving ambition; and in this case, Hume says nothing to problematize our ordinary sentiments. Approval of benevolence is “natural” in the sense that there is no difficulty in identifying a morally attractive motive to such behaviour, a motive whose attractiveness explains why benevolent actions are approved of, and which enables a distinction between *true benevolence*, on the one hand, and disingenuousness and hypocrisy, on the other. Benevolence is not absolutely essential to social life, of course, in the way that justice is; but it still matters morally, and to the extent that Hume acknowledges this fact, he differentiates his moral philosophy from pure, minimalistic, Grotianism. Even so, however, it is important to see that, according to Hume, in the case of the natural virtues, too, “tendency” and consequences are relevant to moral judgment. Once again, Hume does not rest content with the Hutchesonian claim that approval of benevolence is innate, simple, and unanalyzable. In the case of the natural virtues as in the case of the artificial, Hume finds the origins of moral ideas in the operations of sympathy and not in the deliverances of a “moral sense,” a thesis that receives confirmation, he says, from the fact that “most of those qualities, which we *naturally* approve of, have actually [a tendency to the good of mankind], and render a man a proper member of society” (T 3.3.1.10; SBN 578). The fact that many—though not all—of the natural virtues have a tendency to the good of society is, Hume argues, at least part of the reason why they are denominated virtues.

5

It is sometimes said that when he wrote *An Enquiry concerning the Principles of Morals*, Hume meant to tone down the more obviously controversial aspects of his moral philosophy and to present his ideas in a way that would make them more agreeable to his contemporaries.⁶⁰ The most obvious means to that end, it is said, was the removal of the distinction between artificial and natural virtues and the downplaying of the role of invention in the marking of the distinction between justice and injustice.⁶¹ And it is, of course, true both that all trace of *Treatise* 3.2.1’s argument for the artificiality of justice is absent from the second *Enquiry* and that T 3.2.2’s account of the origins of justice is much abbreviated and relegated to an appendix. The principal claim of the *Treatise* theory of justice remains intact, however—by which I mean the claim that justice receives its moral value from its utility for society at large, along with the closely related claim that where circumstances make it the case that there is no benefit to, for example, respecting rights of property, it makes no sense to talk of there being a moral obligation to justice. By emphasizing the importance of utility to the morality of justice, Hume continues to be unambiguous about the fact that he rejects altogether the idea that there is

something “good in itself” about respect for justice. Hume’s contemporaries were as appalled by the *Enquiry* as by the *Treatise* just because it gave such prominence to utility in moral judgment. They did not deny, of course, that justice is useful, even essential to human beings living in society with each other. But they did deny that it is only in so far as it is useful that justice is morally admirable. James Balfour, for example, claims that there is a “peculiar beauty and excellence” to virtue taken as a whole, that has nothing to do with the utility of particular moral qualities, and that cannot be defined, but is yet testified to by “the general consent of mankind.” Hume, he remarks, “has misunderstood the proper nature of virtue, and, proceeding upon a fundamental mistake, has been led into a thousand absurdities,” including the idea that the virtue of justice lies in its utility and not in “right intention.”⁶² “To perceive that justice tends to the good of mankind,” argues Reid in his summing up of his criticisms of the second *Enquiry*’s account of justice, “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.” Hume has surely heard of “a principle called *conscience*, which nature has implanted in the human breast”: “From this principle, I think, we derive the sentiment of justice.”⁶³ It is sometimes said that Smith took the fundamentals of his moral philosophy from Hume, but in this connection, he echoes Balfour, and prefigures Reid. “All men,” Smith writes, “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 soever that necessity may appear to be.”⁶⁴ Smith develops his case against utility as the ground of moral approval in general in Part IV of *The Theory of Moral Sentiments*, where Hume’s second *Enquiry* is explicitly his target. He points out that, while utility undoubtedly bestows moral beauty on actions, “[t]his beauty . . . is chiefly perceived by means of reflection and speculation, and is by no means the quality which first recommends such actions to the natural sentiments of the bulk of mankind.”⁶⁵ In the first instance, “the sentiment of approbation always involves in it a sense of propriety quite distinct from the perception of utility.”⁶⁶ There is no reason to imagine that Hume would have been surprised by such responses to the second *Enquiry*.

It is also sometimes said that the influence of ancient philosophy upon Hume is stronger in the second *Enquiry* than it had been in the *Treatise*. It might be thought that, if this is true, then a virtue-theoretic construal of Hume’s moral philosophy, and so of his theory of justice, might perhaps be on firmer ground when it comes to the later work than it is in the context of the *Treatise*. Baier has suggested that, in the second *Enquiry* it is the views of Cicero, in particular, that Hume is “largely following,” and whose questions, even where Hume disagrees with the answers Cicero gives (as on the issue of tyrannicide), are being addressed.⁶⁷ Here Baier follows the lead of James Moore, who has argued that Hume’s ambition in the second *Enquiry* was “to rewrite the moral philosophy of Cicero in a manner relevant for the readers

of his generation.”⁶⁸ The particular Ciceronian concern that Hume addresses, according to Moore, is that of how to define the *honestum*, that which is good in itself and praiseworthy even if no one actually praises it. Hutcheson had identified benevolence as the *honestum*, but this answer to the question depended on the possibility of reducing all of virtue to modes of benevolence, and Hume believed that there were virtues, most notably justice, which could not be so reduced. The nature of justice is determined by considerations of utility, according to Hume, but utility was not a candidate for the *honestum*, since, as Hume himself argues, utility is a means, not an end. The conclusion to draw, Moore says, is that for Hume, the *honestum* is conceived of as the sentiment of humanity, “a feeling that links all mankind in an aversion to cruelty.”⁶⁹ But, while it is true that Hume grounds “the pleasure, which arises from views of utility” in “the sentiments of humanity and sympathy” (EPM 9.12; SBN 276), nothing in the second *Enquiry* commits him to the idea that our approval of just actions depends on being able to identify humanity and sympathy as what motivated those actions. On the contrary, in the second *Enquiry* the question of the motive to justice has simply disappeared from view.⁷⁰ There is no reformulation of the puzzle about the approved motive of the just person that occupies Hume in *Treatise* 3.2.1. I believe that this is because in the second *Enquiry*, Hume means to strip down his account of the morality of justice to its essentials, and because one of the essential features of the account is that when it comes to the moral estimation of actions (and inactions) in accord with the conventions of justice, motives do not matter. In general, I think, there is little to be gained from looking for ways of relating Hume to one or other of the schools of ancient philosophers. Hume intended his philosophy to be modern, to be, in Moore’s phrase, “relevant for the readers of his generation,” and it was Grotius who had shown Hume how a theory of justice could be modernized. In the *Enquiry*, in fact, Hume is perfectly explicit about his debt to the founder of modern natural jurisprudence: the theory presented there, he says, “concerning the origin of property, and consequently of justice, is, in the main, the same with that hinted at and adopted by Grotius” (EPM App 3.8n; SBN 307). Recent work on Hume’s theory of justice, and on his moral philosophy more generally, has been too much influenced by the relatively recent division of the field of ethics into deontology, consequentialism, and virtue theory, and too little attentive to Hume’s engagement with a tradition, that of modern natural law, which does not fit neatly under any of those three headings.

NOTES

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places for many helpful questions and suggestions. Michael Gill has been consistently encouraging as I have tried to make my view clearer, and I thank him as well. I would also like to thank the editors of *Hume Studies* for some very useful advice. Annette Baier and I have never met, but we have been having a conversation about Hume on justice for several years now, and it is out of my admiration for her work on Hume that I dedicate this paper to her.

1 Two prominent virtue-theoretic readings will be discussed below. For recent consequentialist interpretations, see Elizabeth Ashford, "Utilitarianism with a Humean Face," *Hume Studies* 31 (2005): 63–92 and Roger Crisp, "Hume on Virtue, Utility, and Morality," in *Virtue Ethics Old and New*, ed. Stephen M. Gardiner (Ithaca, NY: Cornell University Press, 2005), 159–78.

2 Hugo Grotius, *The Rights of War and Peace*, trans. John Morrice, ed. Richard Tuck (Indianapolis: Liberty Fund, 2005), 88–89.

3 Jerome Schneewind, "The Misfortunes of Virtue," *Ethics* 101 (1990): 42–63, 47–48.

4 *Ibid.*, 47.

5 Grotius, *Rights of War and Peace*, 120.

6 *Ibid.*, 120–21.

7 It is not only Grotius who refuses to accord moral significance to the motives of actions that fall under the purview of natural jurisprudence. Unlike "Moral Divinity," according to Pufendorf, and as with all matters of "Human Judicature," which "regards only the external Actions of Men, but can no ways reach the Internal Thoughts of the Mind, which do not discover themselves by any Signs of Effects," "the *Law of Nature* is for the most part exercised in forming the outward Actions of Men": *The Whole Duty of Man, According to the Law of Nature*, trans. Andrew Tooke, ed. Ian Hunter and David Saunders (Indianapolis: Liberty Fund, 2003), 20.

8 Duncan Forbes, *Hume's Philosophical Politics* (Cambridge: Cambridge University Press, 1975), chaps. 1–2; Haakonssen, *Science of Legislator*, chap. 1; Stephen Buckle, *Natural Law and the Theory of Property: Grotius to Hume* (Oxford: Clarendon Press, 1991), chap. 5; J. B. Stewart, *Opinion and Reform in Hume's Political Philosophy* (Princeton, NJ: Princeton University Press, 1992), chap. 1. In "The Misfortunes of Virtue," Schneewind argues that Hume's deployment of the terminology of virtue and vice shows him to be in important respects a critic of the theory of natural law introduced by Grotius and developed by such as Pufendorf, Cumberland, and Locke. It will be obvious in what follows that this is a view I disagree with.

9 In their notes to the Clarendon edition of the *Treatise*, David and Mary Norton identify a number of places where Hume may be thought to be engaging with the details of Grotian natural jurisprudence: see their index to "Hume's Texts, Editors' Annotations," 1102–03.

10 It might be that on Hume's view, the harm done to us by the injustice of others is the occasion of our first objections to injustice (this is suggested by his remark that "we never fail to observe the prejudice we receive . . . from the injustice of others" (T 3.2.2.24; SBN 499)); but those objections become properly moral condemnations only when related to the interests of society at large.

11 Quotations from the *Treatise* are from David Hume, *A Treatise of Human Nature*, ed. David Fate Norton and Mary J. Norton (Oxford: Clarendon Press, 2007), abbreviated “T” in the text and cited by Book, part, section, and paragraph, followed by page numbers in *A Treatise of Human Nature*, ed. L. A. Selby-Bigge, 2nd ed., revised by P. H. Nidditch (Oxford: Clarendon Press, 1978), abbreviated “SBN” in the text.

12 See the editors’ Introduction to *Natural Rights on the Threshold of the Scottish Enlightenment: The Writings of Gershom Carmichael*, ed. James Moore and Michael Silverthorne (Indianapolis: Liberty Fund, 2002), ix.

13 Francis Hutcheson, *Philosophiae Moralis Institutio Compendaria/A Short Introduction to Moral Philosophy*, ed. and trans. Luigi Turco (Indianapolis: Liberty Fund, 2007), 4.

14 This is essentially the interpretation developed in Michael Gill, *The British Moralists on Human Nature and the Birth of Secular Ethics* (Cambridge: Cambridge University Press, 2006). See also Isabel Rivers, *Reason, Grace, and Sentiment: A Study of the Language of Religion and Ethics in England, 1660–1780*, 2 vols. (Cambridge: Cambridge University Press, 1991–2000), vol. 2.

15 Christine Swanton, “Can Hume be Read as a Virtue Ethicist?” *Hume Studies* 33 (2007): 91–113, 93. See also Swanton, “What Kind of Virtue Theorist is Hume?” in *Hume on Motivation and Virtue*, ed. Charles Pigden (Basingstoke: Palgrave Macmillan, 2009), 226–48.

16 Rosalind Hursthouse, “Virtue Ethics and Human Nature,” *Hume Studies* 25 (1999): 67–82, 68.

17 *Ibid.*, 71.

18 *Ibid.*, 73.

19 Michael Gill, “Humean Moral Pluralism,” *History of Philosophy Quarterly* 28 (2011): 45–64.

20 Hume seems to make an analogous point in a letter to Hutcheson, where he observes that were it the case that all virtue could be reduced to benevolence, “no Characters could be mixt”: *The Letters of David Hume*, ed. J. Y. T. Greig, 2 vols. (Oxford: Clarendon Press, 1932), 1:34.

21 *Letters of David Hume*, 1:33.

22 David Hume, *Essays Moral, Political, and Literary*, ed. Eugene F. Miller, revised edition (Indianapolis: Liberty Fund, 1987), 161, 168.

23 See James A. Harris, “Hume’s Four Essays on Happiness and their Place in the Move from Ethics to Politics,” in *New Essays on David Hume*, ed. Emilio Mazza and Emanuele Ronchetti (Milan: FrancoAngeli, 2007), 223–35.

24 Hume, *Essays*, 162

25 Swanton, “Can Hume be Read as Virtue Ethicist?” 93–106.

26 Here I follow Geoffrey Sayre-McCord, “On why Hume’s General Point of View Isn’t Ideal—And Shouldn’t Be,” *Social Philosophy and Policy* 11 (1994): 202–28.

27 Hume, *Essays*, 230.

28 For additional reasons for scepticism about the virtue theoretic reading of Hume, see Jacqueline Taylor, "Humean Ethics and the Politics of Sentiment," *Topoi* 21 (2002): 175–86. See also Annette C. Baier, "Kinds of Virtue Theorist: A Response to Christine Swanton," in Pigden, *Hume on Motivation and Virtue*, 249–58.

29 Jacqueline Taylor, "Virtue and the Evaluation of Character," in *The Blackwell Guide to Hume's Treatise*, ed. Saul Traiger (Malden, MA: Blackwell Publishing, 2006), 276–95, 276.

30 Stephen Darwall, *The British Moralists and the Internal 'Ought': 1640–1740* (Cambridge: Cambridge University Press, 1995), 290.

31 Don Garrett, "The First Motive to Justice: Hume's Circle Argument Squared," *Hume Studies* 33 (2007): 257–88, 257–58.

32 Rachel Cohon, *Hume's Morality: Feeling and Fabrication* (New York: Oxford University Press, 2008), 166–71.

33 Cohon, *Hume's Morality*, 171.

34 See T 3.2.1.8 (SBN 479). Knud Haakonssen has argued that this paragraph, taken together with elements of Hume's account of promising, contains the essence of Hume's explanation of moral motivation: see *The Science of a Legislator: The Natural Jurisprudence of David Hume and Adam Smith* (Cambridge: Cambridge University Press, 1981), 30–35.

35 Cohon, *Hume's Morality*, 162.

36 Such a definition would appear to be implicit in the title and subject-matter of *Treatise* 3.2.6, "Some farther reflections concerning justice and injustice."

37 The clearest example of this way of defining justice is in fact to be found in the essay "Of the Original Contract" (first published in 1748), where Hume talks in terms of "justice, or a regard to the property of others" as distinct from "fidelity or the observance of promises" (*Essays*, 480).

38 See David Raphael, *Concepts of Justice* (Clarendon Press, 2001), chap. 9; and also J. L. Mackie, *Hume's Moral Theory* (London and New York: Routledge and Kegan Paul, 1980), 94; and Jonathan Harrison, *Hume's Theory of Justice* (Clarendon Press, 1981), 28ff. For extensive commentary on Hume's definitions of justice, see Annette C. Baier, *The Cautious Jealous Virtue: Hume on Justice* (Cambridge, MA: Harvard University Press, 2010), part 1, *passim*.

39 For criticism of Hume along these lines, see Thomas Reid, *Essays on the Active Powers of Man*, ed. Knud Haakonssen and James A. Harris (Edinburgh: Edinburgh University Press, 2010), essay 5, chap. 5. For Hume's own treatment of resentment, see Baier, *Cautious Jealous Virtue*, chap. 7.

40 See James A. Harris, "'A Compleat Chain of Reasoning': Hume's Project in *A Treatise of Human Nature*, Books 1 and 2," *Proceedings of the Aristotelian Society* 109 (2009): 129–48.

41 Reid, *Active Powers*, 312.

42 *Ibid.*, 314–15.

43 *Ibid.*, 309.

44 Ibid., 311.

45 Adam Smith, *The Theory of Moral Sentiments*, ed. D. D. Raphael and A. L. Macfie (Indianapolis: Liberty Fund, 1982), 82.

46 Reid, *Active Powers*, 297.

47 Ibid., 299–300.

48 Joseph Butler, *Fifteen Sermons Preached at The Rolls Chapel*, ed. T. A. Roberts (London: S. P. C. K., 1970), 9.

49 Hutcheson, *Institutio Compendaria/Short Introduction*, 39, 40.

50 See especially Marcia Baron, “Hume’s Noble Lie: An Account of his Artificial Virtues,” *Canadian Journal of Philosophy* 12 (1982): 273–89. David Gauthier holds that this is in effect the view Hume reaches in second *Enquiry*, after his consideration of the “sensible knave”: see “Artificial Virtues and the Sensible Knave,” *Hume Studies* 18 (1992): 401–27.

51 Baier reaffirms this view in *Cautious Jealous Virtue*, especially in chap. 3, “The Interested Affection and its Variants.”

52 See Stephen Darwall, *The British Moralists and the Internal ‘Ought’: 1640–1740* (Cambridge: Cambridge University Press, 1995), chap. 10.

53 See Don Garrett, “The First Motive to Justice: Hume’s Circle Argument Squared,” *Hume Studies* 33 (2007): 257–88.

54 Hume’s account of the “natural obligation” to justice, in other words, has no relevance to his account of how we ordinarily acquire belief in a “moral obligation” to justice. Here I agree with, for example, Jacqueline Taylor, “Justice and the Foundations of Social Morality in Hume’s *Treatise*,” *Hume Studies* 24 (1998): 5–30; and, especially, Michael Gill, *The British Moralists on Human Nature and the Birth of Secular Ethics* (Cambridge: Cambridge University Press, 2006), chap. 18. Gill interprets Hume as respecting the difference between the *chronological* origin of morals and the *foundational*, or normative, origin. So do I.

55 It is of course true that the public is interested in the rule of law, not for its own sake, but because of the many and various things that are possible in a peaceful and orderly society and impossible in a violent and disorderly society. But Hume shows no sign of being inclined to bring all of those things under one single heading, such as ‘happiness’ or ‘well-being.’

56 I take the opinions expressed in this paragraph to be in accord with the views developed and defended in Jason Baldwin, “Hume’s Knave and the Interests of Justice,” *Journal of the History of Philosophy* 42 (2004): 277–96. See, for example, page 283: “there is no need for there to be one approved motive to justice; the motives to justice may be, and likely are, quite various; and the Humean spectator morally approves of those motives so long as they are generally the means to ends which move her sympathy.”

57 In line with their editorial principles, David and Mary Norton simply alter the text of the *Treatise* in accord with the manuscript emendation. I express reservations about

the Nortons' edition of the *Treatise* in "Editing Hume's *Treatise*," *Modern Intellectual History* 5 (2008): 633–41.

58 Hume's earliest known work is the manuscript entitled "An Historical Essay on Chivalry and Modern Honour" (National Library of Scotland MS 23159 [4]). For the Mandevillian overtones of this text, see John P. Wright, "Hume on the Origin of Modern Honour: A Study in Hume's Philosophical Development," forthcoming in *Philosophy and Religion in Enlightenment Britain*, ed. Ruth Savage (Oxford: Oxford University Press).

59 The importance to us of reputation is, as noted above, a prominent theme of *Treatise* Book 2, and Hume's explanation of it is the occasion of his first deployment of the faculty of sympathy.

60 Quotations from the *Enquiry concerning the Principles of Morals* are from David Hume, *An Enquiry concerning the Principles of Morals*, ed. Tom L. Beauchamp (Oxford: Clarendon Press, 1998), abbreviated "EPM" in the text and cited by section and paragraph numbers, followed by page numbers in *Enquiries concerning Human Understanding and concerning the Principles of Morals*, ed. L. A. Selby-Bigge, 3rd ed., revised by P. H. Nidditch (Oxford: Clarendon Press, 1975), abbreviated "SBN" in the text.

61 See, for instance, Cohon, *Hume's Morality*, 163n. Selby-Bigge suggested that there is significance to the fact that in the second *Enquiry*, benevolence is discussed before justice and declared that "the system of Morals in the *Enquiry* is really and essentially different from that in the *Treatise*," so much so that "we can hardly help feeling that Hume is approximating to the position of Hutcheson" (SBN xxiii, xxiv).

62 [James Balfour], *A Delineation of the Nature and Obligation of Morality, with Reflexions upon Mr Hume's Book Intituled An Inquiry concerning the Principles of Morals* (Edinburgh 1753), 106–14.

63 Reid, *Active Powers*, 326–27.

64 Smith, *Theory of Moral Sentiments*, 89.

65 *Ibid.*, 192.

66 *Ibid.*, 188.

67 Baier, *Cautious Jealous Virtue*, 225–26.

68 James Moore, "Utility and Humanity: The Quest for the *Honestum* in Cicero, Hutcheson, and Hume," *Utilitas* 14 (2002): 93–107, 93.

69 Moore, "Utility and Humanity," 106.

70 As Baier says, in the second *Enquiry* "it is not so much moral motivation, as human recognition of human merit, that is now under scrutiny" (*Cautious Jealous Virtue*, 215).