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Hume Studies Volume 36, Number 2 (2010), 125-148.

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The Circumstances of Justice

SIMON HOPE

Abstract: The aim of this paper is, first, to address three recent criticisms of Hume’s account of the circumstances of justice, and secondly, to consider how an account of the circumstances of justice may be deployed in philosophical argument when detached from Hume’s own narrow concern with rules of property. Against the criticisms lodged by Brian Barry and Martha Nussbaum, I argue that Hume does not build a conception of justice as mutual advantage into the circumstances of justice. Against the criticism lodged against modern invocations of the circumstances of justice by Gerry Cohen, I argue that any plausible account of deliberative reflection must be at once action-guiding and world-guided. This allows an account of the circumstances of justice—those features of the world no plausible theory of justice can idealize away—to do some justificatory work.

1. The Circumstances of Justice

David Hume famously states, in his *A Treatise of Human Nature*, “that ’tis only from the selfishness and confin’d generosity of men, along with the scanty provision nature has made for his wants, that justice derives its origin” (T.3.2.2.18; SBN 495).¹ This is Hume’s summary of the conditions under which the very idea of rules of justice makes practical sense, and he effectively repeats it in the *Enquiry Concerning the Principles of Morals* (EPM 3.12; SBN 188).² To put it briefly at the outset, Hume’s point is simply this: if there was either a superabundance or drastic scarcity of

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resources, or if everyone were either completely and unfailingly virtuous or completely and unfailingly wicked, we would not need rules of justice at all.

Many political philosophers subsequent to Hume have found, in various ways and for various reasons, a connection between justice and the conditions of limited scarcity and “confin’d generosity” attractive.³ Skepticism has been reserved, however, for the idea that Hume’s circumstances of justice can tell us anything about what social justice requires. The late Gerry Cohen has argued that what counts as a circumstance of justice depends on the conception of justice we hold; so any such account is unilluminating as to what a conception of justice should be.⁴ Cohen’s criticism recalls Brian Barry’s earlier complaint that Hume’s picture is only able to tell us something of the *content* of justice because he smuggles his solution into his account of the problem.⁵ Taking a different line of attack, Martha Nussbaum has recently included a reliance on Hume’s account of the circumstances of justice among the major failings of the social contract tradition of liberal thought: Nussbaum claims that any conception of justice invoking Hume’s account, or a modified version thereof, arbitrarily excludes some agents and issues from consideration by insisting that rules of justice apply only under some circumstances.⁶

All three of these objections go beyond Hume’s own deployment of the idea of the circumstances of justice and attack any appeal to the circumstances of justice, even those detached from Hume’s own criteria of justice, in setting out plausible criteria of social justice. We can distinguish an account of the *circumstances* of justice from an account of the *criteria* of justice. The *criteria* of justice are the standards by which we assess justice and injustice. The *circumstances* of justice, as I have crudely glossed them, are those conditions under which there is an intelligible need for criteria of justice. It is quite possible that very different accounts of the *substantive criteria* of justice (egalitarian, libertarian, consequentialist, eudaimonist, and so on) may all derive their intelligibility from the existence of the same circumstances. This should not be surprising: the distinction between circumstances and criteria explains how many modern philosophers, who do not endorse Hume’s *criteria* of justice, can still find his account of the circumstances of justice attractive. Yet the distinction between *criteria* and *circumstances* must be argued for. How precise a distinction we can draw, and what use there is in drawing it are the subjects of the three criticisms of Hume I consider here.

I shall argue for two conclusions. In sections 2–4, I show how both Barry’s and Nussbaum’s objections dissolve once we see Hume’s circumstances of justice as *features of the world no plausible conception of justice can idealize away*. In sections 2 and 3, I show how we can accept Hume’s circumstances of justice even if we find Hume’s substantive, property-focused *criteria* of justice unconvincing. Against Nussbaum’s objection, I argue that once we see Hume’s list of the circumstances of justice as depicting enduring features of the world, no arbitrary restriction on

the scope of justice is entailed by our accepting Hume's list. Section 4 then takes up Barry's objection that Hume is smuggling a mutual advantage criterion of justice into his circumstances of justice. I argue that Barry's objection rests on an inaccurate reading of the "equality of powers" passage of the *Enquiry*, to which I offer an alternative.

The second conclusion I argue for is that we can plausibly expand Hume's list of the circumstances of justice and profitably employ this expanded list to place limits on what a justifiable conception of social justice must involve. In section 5, I consider Cohen's claim that any account of the circumstances of justice is unenlightening as to what justice involves. Cohen's conclusion rests on an untenably strong distinction between deliberative and explanatory judgments about justice. I argue that deliberative judgments about justice must be "world-guided" if they are to be plausibly action-guiding, so must take into account those salient features of the world picked out by Hume's circumstances of justice. Section 6 adds to Hume's list of the circumstances of justice, and I suggest *human vulnerability* (which Hume also emphasises) and *ethical diversity* (which Hume does not emphasise at all) as two further circumstances. While my expanded list of the circumstances of justice cannot determine the *criteria* of social justice (it is a list of problems, not solutions), it can perform an extremely useful justificatory role, helping to delineate the range of plausible conceptions of social justice, for we can straightforwardly reject any conception of social justice that idealizes away any of the circumstances of justice.

2. Limited Scarcity and Confined Generosity

I begin by glossing Hume's descriptions of limited scarcity and confined generosity and explaining what Hume wants to say about justice in describing them. Hume's account of the circumstances of justice emerges out of reflection on two "mere fictions." The first is that of a Golden Age, "which poets have invented." In this age, "the rivers flow'd with wine and milk: the oaks yielded honey; and nature spontaneously produced her greatest delicacies" (T 3.2.2.15; SBN 495; compare EPM 3.14; SBN 188–89). With such a superabundance of resources no questions of distributive justice need be asked: "why call this object *mine*, when upon the seizing of it by another, I need but stretch out my hand to possess myself of what is equally valuable?" (EPM 3.3; SBN 184). The poets' imaginations did not stop there, as "the storms and tempests were not alone removed from nature; but those more furious tempests were unknown to human breasts, which now cause such uproar and engender such confusion." In the Golden Age, "avarice, ambition, cruelty, selfishness were never heard of." The conditions of the Golden Age, Hume observes, "render justice useless, by supplying its place with much nobler virtues, and more valuable blessings" (T 3.2.2.16; SBN 495).⁷

The second fiction Hume asks us to consider originates with philosophers rather than poets, namely “the suppos’d *state of nature*” which resembles the Golden Age “only with this difference, that the former is describ’d as full of war, violence, and injustice; whereas the latter is painted out to us as the most charming and peaceable condition, that can possibly be imagin’d” (T 3.2.2.15; SBN 493).⁸ On this dismal view, instead of superabundance one finds “such want of all common necessities, that the utmost frugality and industry cannot preserve the greater number from perishing, and the whole from extreme misery” (EPM 3.8; SBN 186). Instead of complete benevolence, one sees “such a desperate rapaciousness prevail; such a disregard to equity, such contempt of order, such stupid blindness to future consequences, as must immediately have the most tragical conclusion” (EPM 3.9; SBN 187). Each of Hume’s two circumstances, *confined generosity* and *limited scarcity*, therefore, have both upper and lower bounds: rules of justice have no practical application in either utopian or extremely dystopian circumstances.

The upper and lower bounds of both generosity and scarcity are set by specific considerations concerning the instability of possessions. Hume, in the *Treatise*, invokes a threefold categorization of goods: goods of the mind, goods of the body (health, for example), and such external possessions “as we have acquir’d by our industry and good fortune.” Hume continues:

We are perfectly secure in the enjoyment of the first. The second may be ravish’d from us, but can be of no advantage to him who deprives us of them. The last only are both expos’d to the violence of others, and may be transferr’d without suffering any loss or alteration; while at the same time, there is not a sufficient quantity of them to supply every one’s desires and necessities. As the improvement, therefore, of these goods is the chief advantage of society, so the instability of their possession, along with their scarcity, is the chief impediment. (T 3.2.2.7; SBN 487–88)

This argument is somewhat odd, for there clearly are circumstances when it may be to your advantage to destroy my bodily or mental capabilities or capacities. Oddness aside, this argument perfectly captures the extremely narrow understanding of justice Hume has in mind.

The upper and lower bounds of the circumstances of justice are set by the circumstances in which we need social conventions to reduce the instability of possessions. Justice, for Hume, is the *disposition to honour and respect rules of property*. Accordingly, the circumstances of justice are circumstances under which the disposition to honour and respect rules of property is intelligible as a virtue.⁹ Nevertheless, Hume’s account of the circumstances of justice ought not to be confused with an account of the necessary conditions *for justice to be done*. On any account of the latter, there would be no need to specify the upper bounds of

limited scarcity and confined generosity, because the conditions for justice to be done still hold in utopian cases.¹⁰ Hume's point is, rather, that outside the upper and lower bounds there would be *no need* for rules of justice: the circumstances of justice are those in which rules of justice are practically necessary.

In giving his account of the circumstances of justice, Hume is after both a simple claim and a complex claim. The complex claim is that justice is an *artificial* virtue.¹¹ I shall not address that claim here. What interests me is the simple claim Hume is after: that justice has no place in either utopian or extremely dystopian conditions. Good reasons can be adduced for accepting Hume's simple claim.

Consider first *confined generosity*. Because *systemic* injustices could persist in a society where everyone was perfectly just (and, indeed, could increase the instability of possessions¹²), one may resist including *confined generosity* among the circumstances of justice. For instance, to give an un-Humean example, from certain egalitarian points of view an unfettered market economy, no matter how virtuous its members, still contains the same blindness to inequalities across social positions that allows some agents to enter the market with more bargaining power than others and thus creates systemic inequalities. This objection is unconvincing. *If* there is an indefinite succession of perfectly virtuous agents, it can be expected that voluntary transfers of wealth (motivated by the care and charity of the virtuous towards the needy) will correct for the negative impact of systemic effects; so, even if bargaining power technically remains unequal, no pernicious inequalities result. As the succession of virtuous agents in the poets' Golden Age is never broken, there would be no need to include institutional structures within the scope of rules of justice.

While the bounds of *confined generosity* are straightforward, Hume's delineation of the bounds of *limited scarcity* is more complex. J. L. Lucas, indirectly criticizing Hume, has suggested that *limited scarcity* should not be a circumstance of justice at all, on the grounds that some communities (Lucas mentions "scholars" in making the point) are not at all materialistic.¹³ This objection is easily disposed of. Hume is pretty clear that *needed* resources are scarce, so even if a community's "wants" are few, limited scarcity affects the resources they need.

At first glance, a more compelling objection to Hume runs in the opposite direction: in dire circumstances, there are still just ways to decide who dies first, so there is no lower bound to scarcity below which justice has no purchase.¹⁴ This makes some sense considered from the point of view of those who survive; it seems analogous to hard cases in medical ethics where not all patients can be saved. Yet the medical analogy is, in fact, false. To make Hume's point clear, we must imagine the *entire domain* of agents facing potential death. Furthermore, the point of view of the survivor is misleading. In Humean terms, when conditions are so bad that many of us are facing death, other, more pressing necessities defeat any obligatory force that rules determining ownership of property may have. No one in a

shipwreck refuses to take what they need to survive simply because it belongs to someone else (EPM 3.8; SBN 186).

While Hume's examples focus on unstable possessions, there is a broader point about supererogation to be made here. Under drastic scarcity, *anything* advanced as a duty of justice can reasonably be considered supererogatory by those who starve, including following the procedure by which they are selected to starve. To insist that anyone who *did* follow the rules and starved was simply discharging obligations of justice is to implausibly flatten the moral landscape: what that person does is an exceptional act of sacrifice.¹⁵ To suppose otherwise is to see all agents under the rules of justice as moral saints. And if that assumption were justified, one would then be above the upper bound of *confined generosity*. Hume's argument concerning why talk of justice loses all purchase below the lower bound of scarcity is extremely apt: when society "is ready to perish from extreme necessity, no greater evil can be dreaded from violence and injustice" (EPM 3.8; SBN 186).

These remarks will not allay all doubts about the lower bound of scarcity. Barry, accepting that Hume's point is plausible if the lower bound is set at the point at which resources are *so* scarce that no matter how the distribution falls, some agents will have to kill or steal in order to survive, objects that Hume himself sets the bound somewhat higher. Hume notes that "in less urgent necessities," such as famines, the existing rules of property can be overturned, and asks, "were any number of men to assemble, without the tie of laws or civil jurisdiction; would an equal partition of bread in a famine, though effected by power and even violence, be regarded as criminal or injurious?" (EPM 3.8; SBN 186–87). The answer is, I take it, "Not in those special circumstances," but in normal circumstances, such a violation of the laws of property would be unjust. As Barry has it, if Hume places these special circumstances *outside* the circumstances of justice, then he is simply mistaken: questions of rationing (outside conditions of drastic scarcity mentioned above) always raise questions of justice (*Theories of Justice*, 155–56).

Barry's objection here is best taken as a warning about detaching Hume's account of the circumstances of justice from Hume's own narrow concern with unstable possessions. Not all questions of rationing raise questions of justice on Hume's account. Barry acutely registers the fact that Hume specifies an *equal* partition in the "less urgent" case of a temporary famine, and Barry speculates that perhaps an *unequal* partition would still be considered unjust (*Theories of Justice*, 156). Hume's choice of words here is certainly significant. Why, after all, should not each person grab what they can get? But Hume is not obviously making a point about justice. Instead, the point could well be about *benevolence*. Hume holds that there are some things any normal person simply will not be disposed to do to any other.¹⁶ Perhaps grabbing all you can get when others are also in great need may very well violate these "laws of humanity" (EPM 3.18; SBN 190). If so, it does not follow that grabbing all you can get is *unjust*.

These fine-grained distinctions between the demands of justice and humanity disappear, however, if we see no reason to follow Hume in restricting the scope of justice to a concern with the instability of property and possessions alone. (Shortly, I shall suggest there are good reasons *not* to follow Hume.) On any plausible conception of distributive justice, questions of rationing can be expected to raise questions of justice outside of situations of dire scarcity. One could then place what Hume calls “less urgent” cases, such as temporary famines, above the lower bound of scarcity, while still maintaining that there *is* a lower bound. Hume’s point in the paragraph preceding the famine discussion, that below the lower bound of scarcity *no* injury is to be feared from injustice, retains its force, although where the lower bound is set will depend on the scope one gives to the concept of justice.

3. Nussbaum’s Objection to the Circumstances of Justice

So far I have sought to outline Hume’s circumstances of justice and to suggest that limited scarcity and confined generosity remain at least *prima facie* plausible circumstances of justice when detached from Hume’s own narrow view of the criteria of justice. I now turn to some recent criticisms of Hume’s circumstances, taking first Martha Nussbaum’s claim that Hume’s list arbitrarily restricts the scope of justice.

Nussbaum bases her objection to Hume’s conception of the circumstances of justice on a comparison between the approaches of Hume and John Rawls and an “Aristotelian/Marxist” approach to social justice. Nussbaum draws the comparison as follows: whereas on the Humean/Rawlsian approach, justice only applies in “a particular type of situation,” her “Aristotelian/Marxist” approach is capable of capturing the insight that “justice makes sense whenever human beings are around.”¹⁷ Nussbaum is correct that for Hume, the circumstances of justice describe the conditions under which contracts determining just entitlements are *necessary* between individuals. But do human beings ever find themselves *outside* of these circumstances? Nussbaum assumes they do, and that assumption explains why she thinks we should prefer her “Aristotelian/Marxist” account. On Nussbaum’s account, basic entitlements of justice are derived from a conception of human flourishing, and so all human beings, in whatever circumstances, are entitled in justice to certain goods.¹⁸

I see no basis in Hume’s remarks about confined generosity or limited scarcity for supposing that Hume is offering an unduly restricted account of the *circumstances in which obligations of justice apply*. As far as Hume is concerned, the only conditions human beings will ever find themselves in that lie outside the circumstances of justice will be below the lower bounds of scarcity and generosity: dire scarcity or perfect viciousness, which is vanishingly unlikely unless accompanied

by such scarcity. That is why Hume is clear that conditions falling over the upper bounds exist only in “the idle fictions of poets” (T 3.2.2.15; SBN 495). Perfect viciousness alone is also a fiction, given Hume’s belief that some virtues are, indeed, natural; however, such viciousness might possibly come about when scarcity is sufficiently extreme. It, therefore, seems no strike against Hume’s account of the circumstances of justice that it offers us a limited range of application for any resulting conception of justice, for the only real situations Hume’s account rules out are cases of catastrophic depravation, and this is something that Aristotelians, by their own lights, should also accept.¹⁹

At this point, one must ask, “how bad is *catastrophic*?” Recall that Hume sets the lower bound of scarcity at the point at which “no greater evil can be dreaded from violence and injustice” (EPM 3.8; SBN 186). That point changes whether we think (with Hume) that justice is solely concerned with property or whether we include wider distributive considerations within its scope. If we include wider distributive considerations, the plausible answer is that the lower bound should be set at the point of societal collapse. As Jared Diamond has convincingly shown, societies that exhaust their natural resources to the point where extremely dire scarcity prevails simply collapse, and justice becomes impossible.²⁰ If we are ever unlucky (or foolish) enough to find ourselves below the lower bound of scarcity, under such circumstances rules of justice will be rendered inoperable. This is no arbitrary exclusion.²¹

Contra Nussbaum, then, Hume’s account of the circumstances of justice should be read as an account of the *problems a plausible conception of justice must try to solve*. This is exactly how the argument of the *Treatise* runs. Having opened with the intention of showing that justice is an artificial virtue and ruling out various natural motives one might have for acting justly, Hume begins his account of where the motive of justice stems from. His starting point is the classical view of society arising from the family structure: “the first and original principle of human society” stems from “the natural appetite betwixt the sexes” and the “principle of union betwixt the parents and offspring” (T 3.2.2.4; SBN 486). Hume then notes that while the family structure renders society “unavoidable,” “yet there are other particulars in our *natural temper*, and in our *outward circumstances*, which are very incommodious, and are even contrary to the requisite conjunction” (T 3.2.2.5; SBN 486). These problems are captured in the two circumstances of justice. Our “natural temper” is not one of perfect virtue but rather of benevolence that is, at times severely, constrained by selfishness. The relevant external circumstances turn out to be both the scarcity of the goods we desire and the fact that we cannot secure them alone; our possessions “are expos’d to the violence of others” (T 3.2.2.7; SBN 487–88). Hume triumphantly concludes his argument by claiming that “[i]n vain shou’d we expect to find, in *uncultivated nature*, a remedy to this inconvenience. . . . The remedy, then, is not deriv’d from nature, but from *artifice*” (T 3.2.2.8–9; SBN

488–89). The circumstances of justice are an account of the problems that must be overcome if our natural inclination to peaceable society is to be realised. Justice is the remedy to these problems; the circumstances of justice are those problems that *no plausible conception of justice can idealize away*.²²

Nussbaum's charge that Hume's account of justice is arbitrarily confined in scope is an old one, indeed, typically, following Thomas Reid's 1788 essay, laid against Hume's claim that the criteria of justice are given by existing rules of property.²³ And Reid, rather than Nussbaum, lays the charge in the right place. As noted above, the utility of rules of justice are, for Hume, tied to the ways in which our possessions are less vulnerable to the predations of others when generally accepted social rules concerning the ownership and transfer of property are recognised. Yet it is by no means clear why the concern is solely with the instability of possessions, given that it may profit others to cause both psychological and physical damage to me. Hume is simply wrong to say that goods of the mind are "perfectly secure," and that goods of the body "can be of no advantage to him who deprives us of them" (T 3.2.2.7; SBN 487). I suspect Hume is thinking too literally on this last point: it is true that chopping off your leg leaves me with nothing more than an extra, useless disembodied limb, but it is not hard to think of ways in which mental states can be destabilised by others, nor to think of circumstances in which your taking goods of mind or body from me by destroying them brings you a considerable advantage. (For example, suppose we are to race tomorrow; your chopping off my leg or driving me insane beforehand would guarantee your success.)

How arbitrary a restriction Hume's focus on stability of possessions is can only be seen once we have a full picture of all the natural and artificial virtues in place, and I cannot provide a full picture here. My point is, rather, that any unjustifiable restriction in scope in Hume's account of justice does *not* stem from Hume's account of confined generosity and limited scarcity as circumstances of justice. From an Aristotelian perspective such as Nussbaum's, where flourishing is the fundamental focus of social justice, Hume's focus on property will seem too narrow. But it is simply puzzling to lay the blame for the narrowness of Hume's conception of justice, if it is indeed unjustifiably constricted in scope, on Hume's circumstances of justice.

4. Barry's Objection and an Alleged Third Conception of Justice

Rather than taking issue with the *very idea* of circumstances of justice, Brian Barry is skeptical as to how much weight Hume's account can bear. An account of the problems a conception of social justice must address will not, Barry holds, give us any guidance as to the content of that conception: it gives us the right questions but no clue as to how to answer them correctly. I would add that this is not nothing: we can specify questions of justice as questions of practical reason for which purely

theoretical “possible-world” scenarios can be discounted.²⁴ Yet Barry’s objection is that Hume rigs his list of the problems a plausible conception of social justice must address in such a way that Hume’s preferred conception of social justice appears the most plausible solution.

Central to Barry’s objection is the claim that Hume attempts to justify a *mutual advantage* conception of justice by appeal to the circumstances of justice. Broadly speaking, a mutual advantage conception of justice assesses the rules governing social cooperation from the baseline of how far each agent could achieve his or her ends individually. When cooperating in accordance with the rules will advance an agent’s ends beyond this baseline, the agent has good reason to accept those rules; when such rules advance the ends of *all* the involved agents beyond their respective baselines, mutual advantage is achieved. According to a view of justice as mutual advantage, the criterion of justice is whether the terms of social cooperation advance parties beyond their individual baselines.

The problem with Hume’s account of the circumstances of justice, Barry alleges, is that in order to justify a mutual advantage position Hume fudges the difference between the circumstances under which the *very idea* of rules of justice make practical sense and the circumstances under which we have reason to adopt a *specifically mutual-advantage criterion* of justice. In his account of the circumstances of justice in both the *Treatise* and the *Enquiry*, Hume constantly refers to the *uselessness* of justice under conditions falling outside the upper and lower bounds of scarcity and generosity. By “useless” Hume may mean one of two things: first, that there is no general benefit to be gained or problem to be solved from such rules being established as conventions; or second, that *each agent* stands to gain no benefit (their baseline is not further advanced) from establishing such rules.

Hume’s claim that while we have no natural disposition to act justly, we can, given the existence of certain practices, understand that rules of justice are necessary and thus see reasons to conform to them invokes only the first sense of “useful.” The reason to conform may be derived from the *general* benefit the practice provides. Barry, however, attributes to Hume “the idea that justice represents the terms of rational cooperation for mutual advantage under the circumstances of justice” (148). In doing so, Barry assumes that “useful” and “useless” are to be understood strictly in terms of mutual advantage, where the only reason to conform to a practice is that it advances *one’s own* ends further than one could achieve by not conforming. This underwrites Barry’s claim that for Hume, the circumstances under which the *very idea* of justice is socially beneficial are tailored to match the circumstances under which rules of justice work to each agent’s advantage (Barry, *Theories of Justice*, 151–63).

Is Hume a mutual advantage theorist in this modern sense? I am not persuaded that he is. As Richard Hiskes observes, “utility signifies to Hume nothing more than that which is necessary for the survival of society.”²⁵ More tellingly,

there are clear cases where Hume's discussion of the utility of social rules directly contradicts a mutual advantage account of their utility. For example, Hume is clear, in discussing the practice of matrimonial fidelity in both the *Treatise* and the second *Enquiry*, that although the practice is socially beneficial because it allows for a stable family structure for the raising of children, this is so *despite* the fact that it penalises women who are either infertile or past child-bearing age. Such women are expected to remain faithful to their husbands, although no advantage comes to them from doing so (T 3.3.12.1–9; SBN 570–73 and EPM 4.6–7; SBN 207).²⁶ If Hume is not a mutual advantage theorist about other social rules, why think he is one about the rules governing ownership of property?

To go further, I do not detect any attempt on Hume's part to smuggle a mutual advantage conception into his account of the circumstances of justice. Barry, interestingly, concurs with Hume's claim that limited scarcity and confined generosity are among the circumstances of justice. Discussing the bounds of scarcity, Barry observes that "[w]e can accept Hume's claim that justice would be 'useless' in a Golden Age without accepting the corollary that in real life, where resources are scarce in relations to demands, what makes justice a virtue is its usefulness." ("Usefulness" here is to be understood in terms of mutual advantage.) He continues, "[t]hat justice comes into play where there is a conflict does not tell us anything about the way in which it should operate when it does come into play" (155), and he makes an identical point about confined generosity (160). Barry construes this as Hume's trying, and failing, to smuggle a mutual advantage criterion of justice into his account of the circumstances of justice. We should, instead, construe this as evidence that Hume is *not* trying to smuggle an account of justice as mutual advantage into his account of the circumstances of justice but is, instead, setting out a list of problems that no plausible conception of justice can idealize away.

Barry is untroubled by these observations, as his objection to Hume is directed elsewhere. Barry observes that "a third condition, approximate equality of strength, is introduced explicitly only in the *Enquiry*, though it is implicit in the *Treatise*" (154). It is through this third condition that Hume allegedly smuggles his conception of mutual advantage into his account of the circumstances of justice. That justice only applies between those who have equal strength can easily be read as revealing a mutual advantage view. On a strict mutual advantage position, the entitlements of the disabled and worst off are weak because the able-bodied and well-off have little to gain by agreeing to assist them.²⁷ Nussbaum, too, exploits the same passage in Hume: it allows her to argue that for Hume, rules of justice do not apply between the able-bodied and the disabled, and thus, human beings may easily find themselves outside of the circumstances of justice (Nussbaum, *Frontiers of Justice*, especially 20, and 46–48).

The passage of the *Enquiry* that both Barry and Nussbaum rely on here is as follows:

Were a species of creatures intermingled with men, which, though rational, were possessed of such inferior strength, both of body and mind, that they were incapable of all resistance, and could never, upon the highest provocation, make us feel the effects of their resentment; the necessary consequence, I think, is that we should be bound by the laws of humanity to give gentle usage to these creatures, but should not, properly speaking, lie under any restraint of justice with regard to them, nor could they possess any right or property, exclusive of such arbitrary lords. Our intercourse with them could not be called society, which supposes a degree of equality; but absolute command on the one side, and servile obedience on the other. Whatever we covet, they must instantly resign: Our permission is the only tenure, by which they hold their possessions: Our compassion and kindness the only check by which they curb our lawless will: And as no inconvenience ever results from the exercise of a power, so firmly established in nature, the restraints of justice and property, being totally *useless*, would never have place in so unequal a confederacy. (EPM 3.18; SBN 190–91)

Is Hume espousing a view of justice as mutual advantage here? Not necessarily.

Immediately after the passage just quoted, Hume describes three possible scenarios by way of clarification: they involve the difference in powers between humans and animals, the difference in powers between the developed European nations and the relatively primitive nations they colonized, and the difference in powers between men and women. Hume asserts that his picture holds true for the relationship between humans and animals, as our treatment of them is governed by the laws of humanity alone. Hume goes on to note that “the great superiority of civilised Europeans above barbarous Indians, tempted us to imagine ourselves on the same footing [as we are with animals] with regard to them, and made us throw off all restraints of justice, and even humanity, in our treatment of them” (EPM 3.19; SBN 191). Hume then also notes that many have been tempted to think that men are similarly far superior in power to women. While Hume gives no reason for why Europeans are only “tempted” to imagine themselves far superior to other societies, he notes that women possess sufficient feminine wiles to be balanced in power with men.²⁸

On colonization, Barry accuses Hume of “drawing back from the full implications of his doctrine.” Barry asks, “Why does [Hume] say that the European settlers were only ‘tempted to imagine’ themselves above justice? Surely, on his theory, they *were* above justice in relation to the Indians. Right from the start, the European settlers were able to impose their ‘lawless will’ on the Indians” (162). Barry’s criticism makes some sense if we assume that Hume is here making the point that equality of powers must hold for justice to be useful in the mutual

advantage sense: where one party's power is so great that their baseline is further advanced by dominating others rather than by cooperation.²⁹ However, another possibility exists: Hume is not being inconsistent because he is *not* making any claim about equality of powers' being necessary for justice to be useful where this utility is understood in terms of mutual advantage.³⁰

Indeed, Barry's reading of the "equality of powers" passage is hard to endorse when the surrounding passages of 3.1 of the *Enquiry* are considered. One paragraph prior to the "equality of powers" passage, Hume announces that "the more we vary our views of human life," the more we will be convinced that his circumstances of justice provide the "real and satisfactory" origin of the virtue of justice (EPM 3.17; SBN 190). The "equality of powers" paragraph and the paragraph on animals, cultures, and sexes immediately follow. Hume argues, in the next, crucial paragraph, that "[w]ere the human species so framed by nature as that each individual possessed within himself every faculty, requisite both for his own preservation and for the propagation of his kind . . . so solitary a being would be as much incapable of justice, as of social discourse and conversation" (EPM 3.20; SBN 191–92). It seems clear from the context that this is an additional variation on the "equality of powers" passage (we move from the lower bound of significant inequality to the upper bound of complete, self-sufficient equality).³¹ Read in light of Hume's subsequent point that nature has framed us with social needs and inclinations, the most plausible conclusion is *that rough equality of powers highlights the interdependence of human agents, and nothing more*. J. R. Lucas makes the point Hume is after well: "[f]or a conflict to be a conflict, its outcome must still be open."³² Hume has given us an account of the problems rules of justice are required to solve; he is now supporting that account by showing (again with a what-if-things-were-otherwise story) that such problems *are* causes of conflict that need to be settled. As Lucas points out, "the limits between which the parties to a conflict must be equally matched are so wide that it is best not to talk of even an approximate equality."³³ Rough equality of powers is met by the simple fact of human interdependence.

In support of this reading, I think it deeply significant that throughout the argument Hume refers to the *species* of mankind, and of the three possible cases of severe inequality of power Hume mentions, only the difference between humans and animals turns out to be an actual instance. Both Barry and Nussbaum overlook the emphasis on species in Hume's discussion, and this leads them to misinterpret the "equality of powers" passage as a point about a series of pairwise comparisons between agents who are each considering whether it is to their advantage to follow rules of justice. Yet Hume never explicitly says that equality of powers must hold in a series of pairwise comparisons, and the emphasis on species suggests that any such comparison would be out of place. All that is suggested is that nature has framed human beings such that no one is so much more powerful than the others

that he or she can operate independently. For Hume, the family is the best proof of this fact. In the closing paragraph of 3.1, Hume is then able to appeal (in very condensed form) to the argument given at length in the *Treatise*: justice provides the rules that allow us to overcome the problems caused by limited scarcity and confined generosity.³⁴

Against my reading of *Enquiry* 3.1, one might reply that *if* a species of rational but exceedingly weak aliens were to be discovered, we would then have no obligations of justice to them. Hume would exclude such a species, but that does not imply he is a mutual advantage theorist: Hume grounds the *general necessity* of rules of justice in the instability of possessions, and powerless beings would be incapable of rendering possessions unstable. If we detach the circumstances of justice from Hume's focus on the instability of property, the criteria for exclusion would change (or cease to exist), a point I will return to shortly.

A second objection to my reading is also possible. One might appeal to the remark about political geography with which Hume ends *Enquiry* 3.1. Hume insists that societies can be so independent of each other that rules of justice, which "enlarge themselves to the utmost extent" of each society become "entirely useless, [and] lose their force when carried one step further" (EPM 3.21; SBN 192). This is so only for *isolationist* societies: Hume goes on to say that if "several distinct societies maintain a kind of intercourse for mutual convenience and advantage, the boundaries of justice grow still larger" (EPM3.21; SBN 192). Surely, one might think, this is what a mutual advantage theorist would say. Yet once again, Hume has other grounds for saying it. For Hume, obligations of justice are conventional, and these conventions do not have global reach. That is why duties to distant others are covered by the laws of humanity rather than justice.³⁵ Considerations of equality of powers or mutual advantage do no work here.

Barry's charge that Hume smuggles a mutual advantage conception of justice into his account of the circumstances of justice thus dissolves. While Hume does make some claims that a mutual advantage theorist would also make, it is not at all clear that he makes them on mutual advantage grounds. And while we may certainly have qualms about Hume's narrow focus on the instability of property, this should not raise alarm bells over Hume's account of the circumstances of justice themselves. Hume's account of the circumstances of justice neither arbitrarily restricts the scope of justice nor disguises a mutual advantage conception.

5. Cohen's Objection to the Circumstances of Justice

I turn now to Gerald Cohen's powerful objection to accounts of the circumstances of justice. Whereas Barry's objection is that Hume is rigging his account of the problems justice must solve in favour of his preferred criteria of justice, Cohen argues that we cannot say what the circumstances of justice are until we have a

worked-out conception of justice in place. What we think the circumstances of justice are will *follow from* what we think justice *is*. Accordingly, no account of the circumstances of justice can illuminate what a plausible conception of justice is, and any appeal to the circumstances of justice in order to justify a substantive conception of justice is simply putting the cart before the horse (Cohen, *Rescuing Justice and Equality*, 331–37). Cohen’s point seems confirmed by the fact, noted earlier, that where one draws the line with respect to the lower bound of scarcity changes depending on whether one follows Hume in excluding certain distributive questions from the scope of justice.

Unlike Barry and Nussbaum, who aim both at Hume and at modern deployments of Hume’s circumstances, Cohen appears to target only modern appeals to the circumstances of justice. Cohen notes that “Hume himself does not confuse the question of what justice is with the question under what circumstances it may be expected to appear” (*Rescuing Justice and Equality*, 335). Cohen objects to a *certain sort* of deployment of Hume’s account. We cannot, he argues, say that the circumstances of justice pick out facts that bear on “what the fundamental principles of justice are” (*Rescuing Justice and Equality*, 331), or that can be appealed to in justifying a substantive conception of justice. In order to respond to Cohen, it is, therefore, necessary to leave Hume behind and focus on how one might deploy the circumstances of justice in a justificatory argument.

One possible deployment of the circumstances of justice is that used by David Miller who argues that the fact that the circumstances of justice are presupposed by certain principles of justice constitutes independent grounds in favor of said principles. Against this, Cohen offers the following irresistible objection: because both affirmations and denials of, for example, liberty involve the same presupposition (that autonomous beings exist), this presupposition cannot count as a reason for one rather than the other. Cohen concludes that, “if you have no more reason to affirm principle P than its opposite in the light of F, then F is not even a *partial* ground for P: P-grounding-wise, you are no better off than you were before the news that F arrived” (*Rescuing Justice and Equality*, 336).

Underlying Cohen’s argument is the following thought: we cannot justify some normative principle by appealing to a set of facts, unless we have a prior principle explaining why those facts have normative salience (Cohen, *Rescuing Justice and Equality*, chap. 6). Cohen also seems to reduce any account of the circumstances of justice to a purely explanatory role: *given* a substantive conception of the requirements of social justice, an account of the circumstances of justice will explain when the relevant principles of social justice are applicable and when they are not (Cohen, *Rescuing Justice and Equality*, 336). Yet accepting Cohen’s claim about the relationship between principles and facts does not warrant a complete denial of any useful justificatory role for an account of the circumstances of justice that is detached from Hume’s own singular focus on property.

Cohen's argument appears to rely on a distinction like that made by some modern Humean writers³⁶ on ethics between *deliberative* reflection (what I have reason to do) and *explanatory* reflection (why things are as they are). However, it is not plausible to suppose that any such distinction cuts sharply in all cases. Sound deliberative reflection contains an explanatory element: an account of why things are as they are, in addition to an accurate account of how things are in the world in which one acts, is typically an important input into sound practical deliberation. This, I suggest, implies at least a minimal justificatory role for an account of the circumstances of justice.

Given the direction of fit between practical reasoning and the world, the claim that deliberative reflection is not wholly distinct from explanatory reflection may sound odd. As is well-known, any plausible explanation of what is in the world must fit with how the world really is, whereas practical reasoning about how to act aims to fit the world to an intended outcome of action.³⁷ Nonetheless, if practical reasoning is to *effectively* guide action, practical reason must accurately reflect how the world is.³⁸ Furthermore, the justification for norms of action must turn, at least in part, on whether the norm is in principle actionable (if it is not, the agent one is justifying the norm *to* will hardly see a reason to make that norm a maxim of action).³⁹ For example, norms of reasoning that assume a strong self-interest on the part of all rational agents will fail to constitute reasonable norms for agents who are not self-interested in the stipulated way. Insofar as the action guidance such norms offer is based on predictions about how similarly-motivated agents will act and react, such norms will fail to guide action effectively in a world where rational agents are not all possessed of such a strong self-interest.

The direction of fit between practical reasoning and the world thus does not run entirely one way: if practical deliberation is to effectively fit the world to an intended result, it must (flukes aside) begin with an accurate picture of the world. Accordingly, Cohen's denial that an account of the circumstances of justice provides any illumination as to what a plausible conception of justice entails appears too stark. Principles of justice must be world-guided if they are to be plausibly action-guiding, and this, in turn, requires that certain features of the world are not idealized away. If one formulates principles of justice on the assumption, for example, that resources are superabundant or that virtue is entirely absent from human character, then the resulting principles of social justice will provide precious little guidance for effective action. If this is correct, then an account of the circumstances of justice would have at least a minimal justificatory role, that of providing a degree of ground-clearing regarding implausible conceptions of justice. It can play this role even though Cohen's abstract claim about the relationship between principles and facts is correct. The principle that normative principles ought to be action-guiding does the necessary work.⁴⁰

6. The Possibility of Adding to the Circumstances of Justice

One can expand this ground-clearing justificatory role by adding to the list of circumstances of justice themselves. Here I suggest two additions: one is implicit in Hume's own account (indeed, is clear in the "equality of powers" passage), while the other is most definitely not part of Hume's view.

As several modern commentators have noted, our finite powers give rise to an immediate candidate for a third circumstance of justice: that humans are *vulnerable* to the actions of others (Hart, *Concept of Law*, 190; Lucas, *Principles of Politics*, 4). *Whatever* goals or values one has, one is dependent, in a sense, on how others act or react. To focus on vulnerability is to focus on the lines of connection and effect that hold among the agents who populate the world and along which effective agency plays out, on the nature of effective agency, and on the corresponding threat of impotence.⁴¹ In this sense I am not simply vulnerable with respect to some desire or need I have; I am vulnerable to *this or that agent* with respect to that desire or need.⁴² It is of course true that *which* vulnerabilities matter for justice will be extremely contentious, as the ongoing debates over what is owed to those rendered more vulnerable by bad choices rather than bad luck attest. But the different positions taken in such debates simply illustrate the fact that different substantive conceptions of social justice can lead to different approaches to the problem of human vulnerability.

Hume himself recognises the importance of human vulnerability: it is clearly featured in the "equality of powers" passage, and it is what causes the instability of property in the first place (T 3.2.2.4–7; SBN 486–88). But Hume gives only a narrow account of human vulnerability, because he is interested in it only insofar as it renders possessions unstable. As I argued, Hume's focus seems implausibly narrow: goods of the mind and of the body are just as vulnerable to the predations of others as our worldly possessions are. Once we expand the conception of human vulnerability beyond Hume's narrow focus, two further conclusions follow. First, principles governing the structure and operation of social institutions must be a part of any plausible conception of social justice.⁴³ The lines of connection and effect through which social interaction plays out render agents vulnerable to each other but also to effects of institutional schemes in which those lines of connection and effect are embodied. How vulnerable, for instance, my food supply is will depend on the institutional structures of the society in which I live: it would be an implausibly *athletic* view to ignore the systemic effects of a distributional scheme and insist that my own efforts are the sole factor in determining how secure my food supply is.⁴⁴ Secondly and relatedly, attention must be paid not merely to the institutional structure of a society alone, but to institutions with global reach. Given institutions with such reach, I may be vulnerable to the choices and actions of distant others.⁴⁵ This is not an argument for any particular conception of global justice; it only shows that the

consistent application of a concern with institutional structures on the grounds of human vulnerability requires a global view.

Neither of these points are explicit in Hume. Hume's lack of concern with the *content* of rules of property blinds him to the first point (of institutional concern), but several sympathetic readers of Hume have suggested that Hume's position can be consistently amended in this regard.⁴⁶ However, the second point (considerations of global reach) cannot obviously be incorporated into Hume's own account. However, Hume cannot be accused of blindly ignoring an obvious implication of our vulnerability. While economic institutions with global reach do feature in eighteenth-century moral argument (typically as instruments of peace rather than causes of increased vulnerability), the possibility of insulation from such institutions remained, as it no longer does, a very live one.⁴⁷

A fourth circumstance of justice, which is certainly out of place in Hume's own account, can also be introduced: the depth and breadth of variety among social moralities and corresponding problems of disagreement and justification. Hume explicitly denies the existence of such variety, writing in the *Treatise* that "there is such a uniformity in the *general* sentiments of mankind" that questions of ethical diversity are "of but small importance" (T 3.2.8.8n; SBN 547n). Hume does talk of both *barbarism* and *fanaticism*,⁴⁸ but these are the wrong concepts to use: they equate problems of ethical variety and disagreement with the problem of what to do with the recalcitrant and bloody-minded. The facts of ethical variety do not, however, merely raise questions about how to enforce decisions over those who refuse to comply. Complicated questions of justification, of what it is to offer a reason to others, are also raised. Categories of barbarism, fanaticism, or recalcitrant intransigence are of little help once the problem is seen, as it should be seen, as one of how rationality and sentimentality fail to secure agreement among agents who have different social moralities and conceptual schemes.⁴⁹

One might object that including ethical variety among the circumstances of justice is, again, to rig the circumstances of justice in favour of a specific conception of social justice, in this case liberal principles of accommodation. Thus, Michael Sandel has alleged that an emphasis on ethical variety ignores the wide variety of homogenous communities in which moral discord is virtually absent and principles of accommodation are unnecessary.⁵⁰ Yet Sandel's objection is easily answered: no anthropologist has ever or will ever discover a community in which the key evaluative terms of its central traditions are not subject to competing rhetorical redescriptions that shift the range of application of the terms in question.⁵¹ You and I may both agree that God dislikes acquisitiveness and rewards providential behaviour, yet when you call my commercial activities acquisitive, I reply they are providential. Or we may agree that the coward should be shunned while the wise person be praised, yet when I call you "coward," you reply you were

not fleeing the battle but wisely preserving your strength for tomorrow. In any such case, appeal to our “shared moral tradition” will simply be question-begging, amounting to the claim “What you say is acquisitiveness or cowardice is not what I say it is.” Reasons must then be given to the other party as to why it is *this* and not *that*, and the question of which reasons can be given simply becomes more complex the more culturally diverse the community in question is. As Jeremy Waldron reminds us, “[o]ur common basis for action in matters of justice must be forged in the heat of our disagreements, not predicated on the assumption of a cool consensus that exists only as an ideal.”⁵²

There is, it is true, an oddity about the circumstance of *ethical variety*, in that it has no upper bound: if everyone shared the same outlook and always agreed, justice would simply be *uncontroversial*. But nothing hangs on this. My argument has been that a substantive conception of justice provides a set of norms that guide practical reasoning in a world of indefinite possibilities for action, and thus it must register those features of the world that can hinder effective interaction between agents. *Limited scarcity* and *confined generosity* are among such features, as are *vulnerability* and *ethical variety*.

It may be possible to add further circumstances, but I shall not pursue that idea here. Adding to Hume’s list of the circumstances of justice in the ways I have just suggested involves detaching the list from Hume’s own philosophical approach. My construal of the circumstances of justice is an account of circumstances of the human condition that bear on action-guiding principles that aim to coordinate behaviour among agents. None of the four circumstances outlined have anything to do with the particular demands of justice, whatever they may be; but, if a conception of justice is to yield action-guiding principles, then that conception of justice cannot, optimistically or pessimistically, ignore these four features of the world. Thus, the circumstances of justice can, *contra* Cohen, bear some justificatory weight, by counting as points against conceptions of justice that rely on certain idealisations about the material conditions of human existence, about the psychological make-up of human beings, and about the depth and breadth of moral diversity.

NOTES

Sincere thanks are due to Amanda Perreau-Saussine, Dudley Knowles, Onora O’Neill, the editors and anonymous referees for *Hume Studies*, and my colleagues at Stirling for helpful comments on the argument of this paper.

1 References to the *Treatise* are to David Hume, *A Treatise of Human Nature*, ed. David Fate Norton and Mary J. Norton (New York: Oxford University Press, 2000), hereafter

cited in text as “T” followed by Book, part, section, and paragraph numbers; and to *A Treatise of Human Nature*, ed. L. A. Selby-Bigge, revised by P. H. Nidditch, 2nd ed. (Oxford: Clarendon Press, 1978), hereafter cited in text as “SBN” followed by page number.

2 References to the *Enquiry* are to David Hume, *An Enquiry concerning the Principles of Morals* (hereafter “EPM”), ed. Tom L. Beauchamp (Oxford: Oxford University Press, 1998), hereafter cited in text by section and paragraph, and to *An Enquiry concerning the Principles of Morals*, ed. L. A. Selby-Bigge, revised by P. H. Nidditch, 3rd ed. (Oxford: Clarendon Press, 1975), hereafter cited in text as “SBN” followed by page number.

3 See, for example, John Rawls, *A Theory of Justice*, revised ed. (Oxford: Oxford University Press, 1999), 109–12; H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), 198–195; J. R. Lucas, *The Principles of Politics* (Oxford: Clarendon Press, 1966), 1–8; David Miller, “Political Philosophy for Earthlings,” 31–38, in *Political Theory: Methods and Approaches*, ed. David Leopold and Marc Stears (Oxford: Oxford University Press, 2008); Onora O’Neill, *Towards Justice and Virtue* (Cambridge: Cambridge University Press, 1996), 98–99; and Jeremy Waldron, *Law and Disagreement* (Oxford: Oxford University Press, 1999), 101–03.

4 G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard, 2008).

5 Brian Barry, *Theories of Justice* (Hemel-Hempstead: Harvester-Wheatsheaf, 1989).

6 Martha Nussbaum, *Frontiers of Justice* (Cambridge, MA: Belknap Press, 2006).

7 Compare EPM 3.6 (SBN 184–85).

8 Compare EPM 3.14 (SBN 188–89).

9 These circumstances are not the same as those in which rules of property themselves might plausibly arise: one could easily imagine rules of property being asserted in conditions of drastic scarcity by the haves seeking to protect their stockpiles against the have-nots. What one could not reasonably expect under such conditions is that the have-nots will find intelligible any virtue of respect for such rules.

10 See, for example, the excellent account of the preconditions for reparative justice in Andrew Sharp, *Justice and the Maori*, 2nd ed. (Auckland: Oxford University Press, 1997), 104–07.

11 See, for clear exegesis, Ken O’Day, “Hume’s Distinction between the Natural and Artificial Virtues,” *Hume Studies* 20 (1994): 121–42.

12 See Andrew Lister, “Hume and Rawls on the Circumstances and Priority of Justice,” *History of Political Thought* 26 (2005): 664–95, 680, for some plausible remarks about how Hume himself was not, but should have been, aware of this point.

13 Lucas, *Principles of Politics*, n5.

14 See D. Clayton Hubin, “The Scope of Justice,” *Philosophy and Public Affairs* 19 (1979): 3–24, 9–10.

15 Admittedly, a rather large assumption underlies this claim, namely that a philosophical account of moral requirements must, if it is to plausibly explain its ethical appeal, allow room for the actual tensions and strains adherents to existing social

moralties feel (or, where the tension involves an action which is morally wrong, by the lights of the philosophical account, intelligibly justify *why* the action is wrong). See, for another example of the same thought, H. L. A. Hart on disobeying unjust laws: *Concept of Law*, 206–07.

16 For chapters and verses see the excellent account by Remy Debes, “Humanity, Sympathy, and the Puzzle of Hume’s Second Enquiry,” *British Journal for the History of Philosophy* 15 (2007): 27–57.

17 Nussbaum, *Frontiers of Justice*; the comparison is made between 27–29 and 85–88. See also 157.

18 See Nussbaum, *Frontiers of Justice*, chap. 3.

19 “If we allow our society to degenerate into a state in which it is extremely difficult for many of the people within it to exercise the virtues of honesty, generosity, courage, and justice, because their best chances of minimal comfort and even survival lie in the opposing vices . . . even if, under such circumstances, we were able to convince the next generation that there really is a concept of flourishing, grasped only by the virtuous, in terms of which one can flourish when too poor to be able to do anything for one’s family and friends, even save them from starvation or hypothermia, and circumscribed in such a way that even the minimal physical pleasures are denied one, we would, I think, be offering them false coin. Aristotle recognises as a constraint on his account of eudaimonia that the flourishing life should contain the real advantages of (some) material wealth and pleasure to which the vicious attach such importance, and we should be honest enough to do the same.” Rosalind Hursthouse, “Aristotle: Nicomachean Ethics,” *Philosophy: The Journal of the Royal Institute of Philosophy* 20 (1986): 33–53, 52–53.

20 Jared Diamond, *Collapse: How Societies Choose to Fail or Succeed* (London: Penguin, 2006).

21 It might be thought that Nussbaum still has a point regarding *global* justice if stable societies have no duties of justice to collapsed societies. This, however, would be a misunderstanding. Hume’s argument only shows that members of *collapsed societies* would have no use for rules of justice—survival is their only aim. It is perfectly consistent with Hume’s argument that rules of justice in other societies (or globally) may require members and institutions of those other societies to come to the aid of victims of societal collapse. Hume’s argument is simply that, until catastrophic scarcity is reversed, we could not expect rules of justice to hold internally in a collapsed society. I remark on this below.

22 Incidentally, what is true of Hume is true of Rawls as well. For Rawls, the circumstances of justice are “the background conditions that give rise” to the necessity of using agreed-upon principles to resolve questions of distribution. Rawls, *Theory of Justice*, 109.

23 Thomas Reid, *Essays on the Active Powers of the Human Mind* (New York: Garland, 1977), 425–27.

24 For this reading of Hume’s account, see O’Neill, *Towards Justice and Virtue*, 98–99.

25 Richard Hiskes, "Has Hume a Theory of Social Justice?" *Hume Studies* 3 (1977): 72–93, 75.

26 The point is well-made by Dudley Knowles, "Conservative Utilitarianism," *Utilitas* 12 (2000): 157–74, 162–63. Someone taking Nussbaum's view may reply that the example proves nothing, as women's interests fall outside of the circumstances of justice. As I explain in note 28 below, Nussbaum's view is contradicted by what Hume explicitly says.

27 See David Gauthier, *Morals By Agreement* (Oxford: Clarendon Press, 1986), 218, on the fate of those with little bargaining power.

28 On Hume's actual argument for the rough equality of men and women, Nussbaum is suitably acidic, noting that "seductive wives" actually often give men "an additional incentive to use force" against women. See Nussbaum, *Frontiers of Justice*, 48–49. But her conclusion that women "never get *justice*, although they may seduce their way into certain advantages," seems to me straightforwardly contradicted by what Hume says. While his reasoning may be dated and chauvinistic, Hume's clear conclusion is that the inequality of power between men and women is insufficient to exclude women from considerations of justice, including property ownership.

29 Note that Barry's charge of inconsistency *may* not be appropriate even within Barry's reading of Hume: while the Indians lack sufficient power, European nations may hold *each other* back from exploiting this. For this interpretation, see Peter Vander-schraaf, "The Circumstances of Justice," *Politics, Philosophy, and Economics* 5 (2006): 321–51, 332.

30 See also Arthur Kuflik, "Hume on Justice to Animals, Indians, and Women," *Hume Studies* 24 (1998), 53–70, for further doubts about Barry's reading of the "equality of powers" passage. My reading differs from Kuflik's, however.

31 Hubin, "The Scope of Justice," 7, suggests that this paragraph introduces a separate point about interdependence, so that the circumstances of justice are four in number. I see no basis for preferring Hubin's reading to mine: the "equality of powers" paragraph and the "framed by nature" paragraph appear to be part of the same what-if story.

32 Lucas, *Principles of Politics*, 64.

33 Ibid. (especially n1). Compare Hart, *Concept of Law*, 190–91; and Rawls, *Theory of Justice*, 110.

34 "But suppose the conjunction of the sexes to be established in nature, a family immediately arises; and particular rules being found requisite for its subsistence, these are immediately embraced; though without comprehending the rest of mankind within their prescriptions" (EPM 3.21; SBN 192).

35 For background detail, see Debes, "Humanity, Sympathy, and the Puzzle of Hume's Second Enquiry."

36 See, for example, Simon Blackburn, *Ruling Passions* (Oxford: Clarendon Press, 1998), 41–43.

37 G. E. M. Anscombe, *Intention*, 2nd ed. (Oxford: Blackwell, 1963), §32.

38 Bernard Williams describes this feature of reasoning as “world-guided.” See *Ethics and the Limits of Philosophy* (London: Fontana, 1985), 141. My debt to Williams’s writings on the points I make in this section is immense.

39 See, further, O’Neill, *Towards Justice and Virtue*, 57–58.

40 A defender of Cohen might maintain that his point stands, by imagining someone with a concept of justice entirely different from any in modern political philosophy (for example, that justice is a sort of mental equilibrium in agents, unconcerned with any features of the external world). Yet such a reply would be unintelligible; what one would have there is simply two entirely different concepts, with no reason to think that a meaningful disagreement existed. In order to be sure that there is a meaningful disagreement about concepts belonging to different conceptual schemes, the concepts in question must be directed to at least some of the same features of the world.

41 Lucas, *Principles of Politics*, 59–60; compare O’Neill, *Towards Justice and Virtue*, 166ff.

42 See, for instance, Robert Goodin, *Protecting the Vulnerable* (Chicago: University of Chicago Press, 1984).

43 Rawls, *Theory of Justice*, 76; see, further, Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 257–88.

44 I take the phrase “athletic” from G. A. Cohen, “Equality of What?” in *The Quality of Life*, ed. Amartya Sen and Martha Nussbaum (Oxford: Clarendon Press, 1993), 9–29, 22.

45 O’Neill, *Towards Justice and Virtue*, 113–21. Compare the stronger phrasing in John Dunn, “The Future of Liberalism,” in *Rethinking Modern Political Theory: Essays 1979–83* (Cambridge: Cambridge University Press, 1985), 156–57: “a conception of political value which sees this essentially in terms of domestic welfare, distributive justice and free cultural expression will be shown to be pretty callow if the human world happens to end shortly with a bang.”

46 Lister, “Hume and Rawls on the Circumstances and Priority of Justice,” 680; Hiskes, “Has Hume a Theory of Social Justice?” *passim*.

47 On international economic institutions as instruments of peace in eighteenth-century thought, see Albert O. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism Before its Triumph* (Princeton: Princeton University Press, 1977).

48 See, for example, Knud Haakonssen, “The Structure of Hume’s Political Theory,” in *The Cambridge Companion to Hume*, ed. David Fate Norton (Cambridge: Cambridge University Press, 1993), 182–221, 205. For an attempt at saving Hume’s graces on this point, see Kate Abramson, “Hume on Cultural Conflicts of Values,” *Philosophical Studies* 94 (1999): 173–87.

49 Rawls, *Political Liberalism*, 56–58. The contrast between Hume and Rawls here is well-marked by Lister, “Hume and Rawls on the Circumstances and Priority of Justice.”

50 As argued by Michael Sandel, *Liberalism and the Limits of Justice*, 2nd ed. (Cambridge: Cambridge University Press, 1998), 30–31.

51 See especially Garry Runciman, "Cultural Selection, Axiological Rationality, and Paradiastole," *Archives Europeennes de Sociologie* 48 (2007): 173–89.

52 Jeremy Waldron, *The Dignity of Legislation* (Cambridge: Cambridge University Press, 1999), 155; compare Waldron, *Law and Disagreement*, 149–63.