

Philosophy 174
Notes on Hume's *Treatise*, Book 3, Part 2
Of justice and injustice
G. J. Matthey
March 31, 2020

Section 1, *Justice, whether a natural or artificial virtue?*

Justice is a virtue that is artificial, in the sense that it produces “pleasure and approbation by means of an artifice or contrivance, which arises from the circumstances and necessity of mankind.” Here, the project will be to examine the nature of this artifice or contrivance.

Before examining the specific case of justice and injustice, Hume makes a general claim about the nature of moral praise and blame: that they are directed at the person who acts, rather than the acts of the person, which themselves function only as outward signs of the moral quality of the person. The motive that produces the actions is what matters for praise and blame. When circumstances produce an unfavorable action despite a good motive, the circumstances are dismissed. (The goal of this prelude is to set the stage for the project of discovering which motives are relevant to assessments of justice and injustice.)

The first conclusion drawn from this claim is that only a natural motive or principle is what bestows merit on an action cannot be a regard for virtue (the act is virtuous because it was undertaken with the end of being a virtuous act). If it were a regard for virtue that motivates the act, then the act cannot be virtuous because of its motive, since virtue would already have to have been established. “An action must be virtuous, before we can have a regard to its virtue.”

The argument is not a mere metaphysical subtlety, but in fact we generally have some notion of virtue in mind on the basis of which we judge an act, as in the case of the father who is blamed for neglecting his child, because he lacks the motive of “natural affection,” not because he flouts a duty that he recognizes. Another example is our praise of a humanitarian for his noble motives, as opposed to the merit of his actions. The final conclusion is that an action is morally good only because of some motive, distinct from a sense of its morality, to undertake it.

This is not to say that we may not sometimes act out of a sense of duty, perhaps as an exercise to develop virtuous motives or to cover up motives that are not virtuous.

Performing the duty still results in gratification to the person. But the fact remains that there must be some motive that defines what the duty is.

After this preliminary argument for the primacy of motive in the determination of virtue, Hume turns to “the present case,” that of the virtue of justice and vice of injustice. He begins with a test case: the motive one has to repay the money one was loaned. Two cases are distinguished. The first is simply a regard for justice in a person who has some honesty or “sense of duty and obligation.” This is “satisfactory,” so long as the person has such a sense as the result of “a certain discipline and education.” The second is where the person is in “his rude and more *natural* condition,” in which case the answer “would be rejected as perfectly unintelligible and sophistical.” The reason is that honesty, as a virtue, cannot be the motive of the action unless it is already regarded as a virtue.

The “great difficulty” lies in the search for some motive other than regard for honesty. It cannot be regard for our reputation, since without this, there would be no basis for honesty (or perhaps justice) if our reputation were not at stake. This “self-love,” or concern for our private interest rather works against justice, and a regard for justice requires “correcting and restraining the natural movements of that appetite.”

A second possibility is regard to public interest, which injustice and dishonesty are contrary. To this Hume has three responses: (1) regard to public interest will be shown to be only artificially connected with honesty after the establishment of rules of justice, (2) sometimes the interest in the loan is purely private, (3) the motive of public interest is “too remote and sublime” to be the basis of action of ordinary people.

More generally, Hume asserts that there is no human emotion of the love of mankind, as our love only extends to those who are nearby and resemble us. This accounts for our stronger approval of the good qualities of those we love.

A third possibility is regard for private interests, as with those of the lender. There are many reasons why one would not feel motivated to return the loan to the lender, e.g., if he is justly hated, is vicious, a profligate debauchee, etc., or if one needed the money to satisfy the needs of his own family. Other examples are given.

The main reason people are attached to their possessions is because they are his property, but the notion of property presupposes a prior notion of justice.

The overall conclusion is that there can be no “real and universal motive for observing the laws of equity, [except for] the very equity and merit of that observance.” But it has been shown that this requires a separately established notion of equity and merit, on pain of arguing in a circle. And in that case, the motive is not real and universal, or derived from nature, but rather “arises artificially, though necessarily from education and human conventions.”

A corollary of this reasoning is that the “motives or impelling passions” of an action that is praised or blamed have a great influence on the sense of morals, and “our sense of duty always follows the common and natural course of our passions.” This can be seen from the fact that we feel a greater duty toward those more closely related to us.

Hume concludes the section with a word to head off the objection that his view is offensive or odious. He is not claiming that the rules of justice are arbitrary (as the next section will show), but only that they are artificial. They are natural in the sense that they are the product of human ingenuity that satisfies a real need.

Section 2, *Of the origin of justice and property*

In this section, two questions will be addressed. The first is how the rules of justice are established artificially, and the second is why observance or flouting of the rules are regarded as virtuous and vicious, respectively.

The problem for humans is the fact that our natural needs are great but our natural means for satisfying those needs are meager. Only society allows humans to survive and even surpass the creatures whose needs are minimal or whose means for satisfying them are maximal, such as an ox and a lion, respectively. We humans if acting alone are faced with “three inconveniences”: (1) we have little force to “execute considerable work,” (2) our many needs restrict the development of our skills, (3) we are insecure in our ability to satisfy our needs based on the force and skill that we have. Society provides the cure by (1) aggregation of force, (2) dividing types of labor, (3) aiding one another when misfortune and accident strike. “It is by this additional *force, ability, and security*, that society becomes advantageous.”

These advantages exist only if people are aware of the benefits of society, which cannot happen in the wild and uncultivated state of human beings. The reason the requisite awareness arises is that society is formed in the process of family-building, originating from the passions of lust and natural affection, where the children are taught the benefits of society by their parents.

On the other hand, there are two factors which would tip the scales in the other direction, were it not for a regard for justice. The first is our natural selfishness, though tempered by natural affection, which is “the most considerable.” The problem is that natural affection extends selfishness to a small group, rather than to the whole of society.

This would not be so much of a problem if were not for the fact that our outward circumstances are such that our possessions may be taken from us without any loss of value, as opposed to our mental satisfaction and bodily advantages, which cannot be taken from us, in the first case, or would be of no value to one who harmed our body, in the second case. What is problematic about this susceptibility to being deprived of the products of our efforts is the relative scarcity of goods. Improvement of these goods is how society chiefly benefits us (see above), and instability of possession of scarce goods is the chief impediment to these benefits.

There is no natural remedy for this problem, as might arise in uncultivated society. The idea of justice will not do, because of the limited range of our natural affections, which exacerbates the problem.

So it is artifice which must provide the solution, which is really the product of nature insofar as it depends on our understanding and judgment. When humans realize the value of society, they form an agreement or convention to respect the property of others. The convention is not a promise, as like the respect for property, respect for promise-keeping is a consequence of justice. Rather, it “is only a general sense of common interest; which sense all the members of the society express to one another, and which induces them to regulate their conduct by certain rules.” The rules basically say that I will leave everyone else’s property alone as long as they will do the same to mine. Other such conventions are those that establish languages and currency.

From this basic sense of justice are derived the notions of property, right and obligation, which are unintelligible without the prior notion of justice. So trying to base the notion of justice on them is getting it backwards.

This convention is really all that is needed for society to function properly, as other passions, such as vanity, pity, love, envy, and revenge, are “either easily restrained or are not of such pernicious consequence, when indulged.”

There is no passion that can control “the interested affection” other than that affection itself. Benevolence to strangers is not strong enough, and the other passions just make it worse. So this affection has to be turned on itself (or have its direction altered) by reflection on the fact that it is best satisfied through restraint, without which one’s condition would be miserable. It does not matter in the case of the establishment of society how self-interest is regarded from a moral point of view or how wise or foolish humans are.

If the rule were abstruse, it would be accidental that it arose, but in fact it is the simplest and most obvious thing there could be, as parents learn in the governance of the family.

We can form the fiction of a state of nature by separating the two basic components of action, affections and understanding, and recognize that if our passions were at full liberty, there would be no society. But this could not happen to human beings, who need both to make it in the world.

A more profitable fiction is that of a golden age, where everyone’s temperaments were universally beneficent and there was no scarcity. This fiction brings into relief the two components that require the convention of justice, selfishness and limited generosity on the one hand, and scarcity of what is needed and wanted by humans. In this situation, there would be no need for justice.

This fact can be established from common experience, without resort to fictions. People with close ties share their property, and when something is common, like air, everyone shares in it.

The final conclusion is drawn, that justice is the result of selfishness and confined generosity in conditions of scarcity. This will reinforce observations made earlier.

The rules would never have been thought of if people’s benevolence were extensive.

The sense of justice is not derived from any relation of ideas “which are eternal, immutable, and universally obligatory,” since it would not arise at all were our temperaments and circumstances different.

The principles of justice are artificial, and not natural, since they would not exist were humans by nature more extensive in their beneficence.

The claim that justice is established on the basis of interest is made more evident by considering the fact that interests are at times in conflict. Single acts of justice may by themselves be detrimental to public interest such as when a debt is repaid to a bigot. And justice is often detrimental to private interests. On the other hand, the “whole scheme” is beneficial to both public and private interests. “It is impossible to separate the good from the ill.” The steady observance of the rule protects the public interest, by establishing peace and order, and it protects private interests by keeping society intact. The essential supposition in the agreement that establishes justice is that everyone will behave the same way. The first person who behaves with restraint provides an example to others, and the agreement comes into force.

The second part of the system is to establish why it is that observance of the rules of justice is considered virtuous and the flouting of them vicious. The full explanation depends on what is established in Part 3.

With society established, we lose sight of the utility of the rules of justice in maintaining order, but we still disapprove of injustices, even when they occur far from ourselves, as detrimental to society. By sympathy we partake of the uneasiness of those suffering injustice, which leads us to call it vice, while the acts of justice that produce satisfaction are deemed virtuous. Then by a general rule, we extend these sentiments to all actions.

There is a “progress of sentiments here” (from the perception of uneasiness in others, to the production of uneasiness in ourselves through sympathy, and finally to a generalized uneasiness with the violation of the rules of justice). This progress is natural, and though it is “forwarded by the artifices of politicians,” it is the origin of the distinction between virtue and vice.

Public praise and blame by politicians is not the only way in which the sentiments of justice are forwarded: private education and instruction help as well. Parents establish a sense of honor in their children, almost as durable as the passions established by nature.

Regard for our reputation requires that we act from principles of justice.

The section ends with another defense against misunderstanding that might render the system “odious.” Since there is no property in the state of nature, there is no permission to violate the properties of others.

Section 3, *Of the rules, which determine property*

A method is needed to determine which particular persons are entitled to which particular pieces of property. While the convention respecting the stability of property (and the general rule that “possession must be stable”) is supposed to prevent conflict, it cannot do so as long as there are no boundaries regarding ownership in the first place. Fitness for ownership will not do as a criterion. A rule that everyone is entitled to continue to possess what he already possesses will work only upon the first formation of a society. After that, possession is not enough, as it may be obtained by theft, etc. Hume proposes four bases for the determination of property. Occupation, or first possession, is the base, but it has the drawback that its existence and extent is hard to determine. A partial remedy is prescription, or long possession, which points to the past. For a forward-looking principle, Hume proposes accession to objects which are closely connected to what is possessed, such as the fruit of one’s garden. The final principle is that of succession or inheritance, by which property is passed on to succeeding generations.

Section 4, *Of the transference of property by consent*

Rules promoting the stability of property are not sensitive to utility, as possession on these grounds depends largely on chance. One remedy would be to allow everyone to take what they need from anyone else, but this would destroy society. The obvious, and only, solution is to allow people to agree to transfer their property—a practice that does no harm to society. Due to the difficulties of the human mind in keeping track of agreements, concrete signs of the voluntary exchanges are used.

Section 5, *Of the obligations of promises*

A rule of morality is that promises must be kept, but this rule is not natural. It would not be intelligible in the absence of human conventions, and even if it were, it would not carry any moral obligations with it. The act of promising is thought by philosophers and common people to be the willing of an obligation. But we have an obligation to do something when its non-performance displeases us in a manner like that in which its performance pleases us, and no act of will can change these sentiments. The obligation stems from our natural selfishness and the limited efficacy of the rules of the transfer of property, where exchanges that are in our self-interest frequently do not coincide in space and time. The mechanism for trustworthy exchanges is the expression of a resolution, attested to by some signs, whose violation carries the penalty of a lack of trust in the future. People “by concert, enter into a scheme of actions, calculated for common benefit, and agree to be true to their word.” Their interest is then reflected in a new moral obligation to keep promises, which is

ingrained in people through public interest, education, and the devices of politicians. The alleged act of willing an obligation covers up the true origin of the obligation.

Section 6, *Some farther reflections concerning justice and injustice*

The present section summarizes the system and provides some new arguments in its favor. The virtue of justice depends on property, which is the result of human convention, rather than property depending on the virtue of justice. But we have no natural sentiment in favor of justice which would have any consequence of a sentiment concerning actions involving property. Three arguments are given for this thesis.

In the final paragraph, Hume sums up his conclusions to this point. The distinction between justice and injustice has two foundations: self-interest and morality. The former lies in the fact that it is in the interest of individual humans to restrain themselves by rules, since they require society for their well-being, and living in society requires submission to rules. The latter comes after it is found that everyone has this interest, in which case people take pleasure of those actions which promote peace in society and displeasure in those that work against it. Government depends on a voluntary convention, and in this sense justice is an artificial virtue. The sense of morality follows naturally from this, and it is also augmented by artificial means, such as “the public instruction of politicians, and the private education of parents,” both of which give “a sense of honour and duty in the strict regulation of our actions with regard to the properties of others.”

Section 7, *Of the origin of government*

People commonly act from in their own interests, and when they do not, such actions extend only to their closest acquaintances and relatives. The best way they can promote their interests is to follow strictly the rules of justice, which prevent them from falling into the so-called “state of nature,” a “wretched and savage condition.” The interest is evident even to the least developed social groups. This raises a question: why is this powerful and evident interest so often undermined? It must be by a principle of human nature powerful enough to overcome the passion of self-interest and violent enough to “obscure so clear a knowledge” of the need to uphold the rules of justice.

The answer lies in a feature of the passions that was described in Book 2, Section 6: the influence of the imagination upon them. The influence on an “affection” by a very vivid idea is quite strong, to the point that it is the appearance of value, rather than value itself, that dictates the attitude toward an object, and this tendency can be overcome only when the view of the real value is itself very strong. The chief way in which the imagination enlivens the relevant ideas is through one principle of association: contiguity. The effect on the passions is proportional, and we tend to act on the basis of passions which are moved by the proximity of objects.

This is why people in general are affected more strongly by their interest in nearby things than by the more distant and obscure conception of the interest of society as a whole. That people tend to act on this interest poses a danger to society and renders its success uncertain. When someone acts against the general interest and in favor of their more local interests, this action moves others to behave the same way, through sheer imitation, and out of a desire to protect themselves in the local situation by not adhering to the rules of society, either.

At first sight, it is hard to see how this situation can be remedied. How can one explain a choice based on a remote view of things over one based on the immediate view of them?

Hume answers this question by showing how this natural tendency in people to prefer what is nearby actually promotes our valuing what is more remote. We are naturally inclined to be “negligent” about remote object and take steps to counter this negligence. When we think about actions to be undertaken a year in the future, we resolve to do what we recognize to be the greater good, regardless of considerations of contiguity. We can do this because the circumstances are so distant that the degree of contiguity is hard to determine. But as the time approaches, it does come into view and can undermine our original resolution. We can try to avoid this tendency by various means, such as study, reflection, and the advice of friends, but these turn out to be ineffectual and leave us hoping for a remedy that will be effective.

Since we cannot change our nature, the only recourse is to change our circumstances, making our interest in the observation of the rules of justice more near and that in their violation more distant. We do this with individuals whose immediate interest is upholding justice: “civil magistrates, kings and their ministers, our governors and rulers.” Such rulers not only observe the rules of justice themselves, but also enforce those rules upon the rest of society. If needed, they may recruit others to assist them in this task: “a number of officers, civil and military.”

Although the execution of justice is the primary advantage of government, there are others. There is a parallel phenomenon to that described above, where the near view predominates over the distant view of one's interest in behaving equably toward others. "Violent passion" also hinders our seeing what equitable behavior is, and gives people "a remarkable partiality in their own favor." Again, the remedy is the existence of judges, who are "indifferent to the greatest part of society," and thus will make more equitable decisions than those who have their own immediate interests at heart.

Thus, people "acquire a security against each other's weakness and passion, as well as against their own," through the execution of justice and the decisions regarding the justness of actions. This allows people to recognize the benefits of government, "under the shelter of their governors." A yet-further benefit of government is that it forces people to co-operate to promote their own more remote interests. This is difficult to do when the end involves a multitude of persons, each of which would be tempted to shirk his own contribution to the goal, and when the goal itself is very complex. The magistrate has in his own interest that of a considerable number of the governed, and they can by themselves undertake projects that will promote that interest. If the individuals involved fail to advance a given project, it will fail, but it can succeed if the magistrate compels co-operation. The government makes possible the building of infrastructure, fleets, trained armies, etc. Although those who govern are subject to the human shortcomings noted above, together they compose something that is itself not so subject, "by one of the finest and most subtle inventions imaginable."

Section 8, *Of the source of allegiance*

Primitive societies have no need of leadership while they are at peace and only require it when under attack, in which case they rally behind a leader and discover the societal benefits of leadership. This explains why first governments are monarchical, contrary to the claim that they are based on the patriarchal relation. Stability and consensual transfer property, along with the obligation of promise precede "the duty of allegiance to civil magistrates." The popular view is that contractual promises are the very foundation of all government, but Hume finds this to be "entirely erroneous," in that once the advantages of government are seen, there arises an "original obligation and authority, independent of all contracts." The obligation to keep promises becomes just one obligation among the others. The notion of an implicit promise or tacit contract is something that would scarcely occur to those common people who are supposed to have made it and is an invention of the philosophers.

Section 9, *Of the measures of allegiance*

Political philosophers (such as Hobbes) who invoke a tacit contract allow that if it is violated by the magistrate, by tyranny and oppression, it becomes void, and the people are no longer bound to obey his commands. Hume agrees with the condition for termination of allegiance, but he rejects the argument of the contract theorists in favor of one that he finds to be “more reasonable.” It is the interests that prompt the institution of government: once the actions become intolerable, and contrary to the interests of the people, there is no more obligation to submit to it. It might still be thought that a moral obligation remains, due to general rules, but we admit of exceptions to them. Rulers sometimes put their own interests ahead of those of society, and “the general opinion of mankind” is that when they do so, the obligation ceases (whether or not people can articulate the basis of that opinion). When the natural obligation, to further the interests of the people, is removed, so is the moral obligation.

Section 10, *Of the objects of allegiance*

Nothing can be worse than to resist the authority of the government “in the ordinary course of events,” as this undermines civilized societies. The exception comes “only in cases of grievous tyranny and oppression.” So who are the lawful magistrates to be obeyed? At first, they are those whom the people have promised to obey. But later, the basis is “nothing but the *advantage* reap’d from government,” and whom to obey is not so clear as when a promise is made. We must have recourse to general rules, regulating ourselves “by general interests,” when there are disputes surrounding the rules governing the stability property. Long possession often determines who will be the magistrate, but in the absence of this, present possession will sometimes do. A third basis is the right of conquest, and in the absence of this, there is the right of succession. A fifth source of authority is positive law, particular fundamental laws. But any student of history will discover that all of these sources of authority are “entirely subordinate to the interests of peace and liberty” when they are in conflict. However, the establishment of particular rules to decide controversies is impossible. There follows a discussion of the application of these reflections to the situation in Great Britain.

Section 11, *Of the laws of nations*

Nations are like individuals in that they require mutual assistance to flourish, but there are other ways in which they are not resembling. There must be a “new set of rules, which we

call *laws of nations*” to govern their interaction. These involve “the sacredness of the persons of ambassadors, the declaration of war, the abstaining from poison’d arms, with other duties of that kind.” These extra rules do not abolish the underlying bases for the regulation of society, and in fact these apply to them just as they do to individuals. Hume allows that “*there is a system of morals calculated for princes, much more free than that which ought to govern private persons.*” The extent of the two sets of rules is the same, but its force is different. The reason is that inter-state interests are different from the intra-state interests that govern a particular society, which may require a loosening of moral standards.

Section 12, *Of chastity and modesty*

Modesty and chastity, regarded as duties of women at the time, are traced to “education, . . . the voluntary conventions of men, and . . . the interests of society.” The greater toleration of the violation of these duties in men is traced to a weaker interest of civil society in male fidelity.