

POLITICS, LAW AND MORALITY: DAVID HUME ON JUSTICE

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ABSTRACT

POLITICS, LAW AND MORALITY: DAVID HUME ON JUSTICE

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This thesis evaluates David Hume's notion of justice by examining the coherence in his legal, moral, and political philosophy. It is argued that on the whole, Hume's use of the concept justice is coherent in his theories of law, ethics, and politics. To this end, firstly, Hume's moral thought is examined in detail. Secondly, his legal theory and his position in legal philosophy are considered with references to its moral aspects. Next, Hume's notion of justice is examined in its relation with the state. It is observed that Hume's conception of justice has moral, legal, and political foundations, and that all of these subjects depend on the same principles. It is shown that the laws of justice constitute an ethical, legal, and political issue in Hume's philosophy. According to Hume, although obeying the rules of justice is a moral topic, the laws of justice are guaranteed by the state in large societies.

Keywords: Hume, laws, ethics, politics, justice

ÖZ

SİYASET, HUKUK VE AHLAK: DAVID HUME'UN ADALET ÜZERİNE GÖRÜŞLERİ

Eryılmaz, Enes

Yüksek Lisans, Felsefe Bölümü

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Bu tez David Hume'un adalet düşüncesini onun hukuk, ahlak ve siyaset felsefesi arasındaki uyumu inceleyerek değerlendirir. Hume'un hukuk, ahlak ve siyaset kuramlarında adalet kavramının kullanımının genel olarak tutarlı olduğu öne sürülmektedir. Bu hedef için, ilk olarak, Hume'un ahlaki düşüncesi ayrıntılı olarak incelenmiştir. İkinci olarak, Hume'un hukuk kuramı ve onun hukuk felsefesindeki yeri ahlaki yönlerine atıflarla ele alınmıştır. Bunun üzerine, Hume'un adalet kavramının devletle ilişkisi ortaya koyulmuştur. Hume'un adalet anlayışının ahlaki, hukuki ve siyasi temelleri olduğu ve bu konuların tümünün aynı ilkelere dayandığı saptanmıştır. Hume'un felsefesinde "adalet yasalarının" etik, yasal ve siyasal bir konu olduğu gösterilmiştir. Hume' göre, genel olarak, adalet kurallarına uymak ahlaki bir sorun olsa da, adalet yasaları büyük toplumlarda devlet tarafından teminat altına alınmıştır.

Anahtar Kelimeler: Hume, yasalar, etik, siyaset, adalet

To My Family

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CHAPTER I

INTRODUCTION

Iustitia Fundamentum Regnorum
Latin Proverb

Although Hume's thoughts concerning justice, laws, morality, and politics have remained under the shadow of his ideas about causality, reason, epistemology, scepticism, religion, and the is-ought question for a long time, they are now the recent topics in Hume studies. In this thesis my aim is to present David Hume's notion of justice in order to consider coherence of his ethics, law and politics. Investigation of Hume's comprehension of justice will be fruitful for this objective, because the relations among moral, legal, and political views of David Hume best appears in the question of justice. In the light of this background I will attempt to find out answers to certain questions in order to understand whether Hume was consistent in his ethical, legal and political thought. Or does he change his attitude when the point is politics and law? What are the characteristics of the virtue justice? What is the nature of justice? Is the discussion of justice an extension of Hume's moral, legal, and political philosophy? How does Hume's moral sentimentalism reflect his understanding of justice and law? What is the role of laws in Hume's politics? What is the function of the state for justice? Why do persons become just? Which motive forces people to act justly? What is justice and lastly, how could justice be possible?

To answer these questions, I start with Hume's moral philosophy in the second chapter, and examine his doctrine of passions. Then, I examine sympathy in Hume's different works and consider the is-ought problem in his writings with reference to his legal theory.

In the third chapter, I concentrate on Hume's legal theory, and consider the task of law, distinguishing the qualities and the source of laws in his political thought. I inquire laws and their outcomes. Finally, I try to understand the status of Hume in legal philosophy.

In the fourth chapter, I focus on the most important topic of the thesis, namely justice. I consider it in detail with references to Hume's moral and political philosophy. I try to evaluate the relation between ethics and justice and to show the conditions of justice in *Humean* political society. I examine justice as an "artificial virtue" and continue with the three rules of justice. I discuss Hume's arguments on the motive of observation of the laws of nature. Lastly, I study the rise of states and the existential reason of governments.

In the fifth chapter, I summarize the conclusions of this work and argue that there is a unity in Hume's philosophy by considering his politics, law and ethics with respect to his conception of justice.

In this thesis, I refer to David Hume's texts of to clarify his ideas on justice. Although I examine *An Enquiry Concerning Human Understanding*, *the History of England*, *Essays: Moral, Political, & Literary* where necessary, in general I

focus on passages from *A Treatise of Human Nature, An Enquiry Concerning the Principles of Morals, and Political Essays*.

CHAPTER II

MORAL PHILOSOPHY OF HUME

2.1 Hume's Approach to Ethics

Before describing David Hume's moral theory, let us note that he does not write on ethics as a moralist. Hume does not give commandments to obey. He does not provide answers to questions like "Which behaviour or character is more virtuous? What should I do? Is lying good or bad? Are sexual relationships without marriage good or not? What is the *summum bonum* of life?" Central issues which are Hume's interest are related with theoretical and not practical morality.¹ He does not motivate people to act morally, but he inspects motives behind the actions. Hume offers us an analysis of ethics and describes its components. He describes his approach to moral subjects at the end of the Book III of the *Treatise* by using an analogy of painter and anatomist:

The anatomist ought never to emulate the painter: nor in his accurate dissections and portraitures of the smaller parts of the human body, pretend to give his figures any graceful and engaging attitude or expression. There is even something hideous, or at least minute in the views of things, which he presents; and 'tis necessary the objects shou'd be set more at a distance, and be more cover'd up from sight, to make them engaging to the eye and imagination. An anatomist, however, is admirably fitted to give advice to a painter; and 'tis even impracticable to excel in the latter art, without the assistance of the former. We must have an exact knowledge of the parts, their situation and connexion, before we can design with any elegance or correctness. And thus the

¹ Michael B. Gill, *The British Moralists on Human Nature and the Birth of Secular Ethics* (Cambridge: Cambridge University Press, 2006), p. 203.

most abstract speculations concerning human nature, however cold and unentertaining, become subservient to *practical morality*; and may render this latter science more correct in its precepts, and more persuasive in its exhortations.¹

Thus the “anatomist” Hume examines foundations of morality to give us “a map of the moral world.”² He draws a parallel between an anatomist and a theoretical moralist. Then, Hume differentiates himself from the practical moralist, but he claims that he assists practical ethics. As a result, Hume’s method in ethics is one that suits a metaphysician. Answers to the following questions could be discovered in the works of David Hume:

“What does reason discover, when it pronounces any action vicious?”³

“[Why is] an action, or sentiment, or character is virtuous or vicious?”⁴

“[F]rom what principles is [moral good and evil] it derived, and whence does it arise in the human mind?”⁵

“Ought [we] to search for these principles in *nature*, or whether we must look for them in some other origin?”⁶

“[W]hat is meant by *liberty*, when applied to voluntary actions?”⁷

Before these questions, there is another fundamental issue that has to be enlightened: whether humans are free in their acts.

¹ David Hume, *A Treatise of Human Nature*, ed. L.A. Selby-Bigge, 2nd ed. (Oxford: Oxford University Press, 1978), pp. 620-1 (hereafter cited as *Treatise*).

² Knud Haakonssen, “The Structure of Hume’s Political Theory,” in *The Cambridge Companion to Hume*, ed. David Fate Norton (Cambridge: Cambridge University Press, 1993), p. 190.

³ *Treatise*, p. 464.

⁴ *Treatise*, p. 471.

⁵ *Treatise*, p. 473.

⁶ *Treatise*, p. 473.

⁷ David Hume, *An Enquiry Concerning Human Understanding and Other Writings*, ed. Stephen Buckle (Cambridge: Cambridge University Press, 2007), p. 85 (hereafter cited as the first *Enquiry*).

2.2 Hume on Necessity

Freedom of the will is one of the most controversial issues in the history of moral philosophy. According to David Hume, however, there is a reconciliation in this topic. Yet this does not mean that he was eclectic, because Hume appears to stand more close to necessity. But, necessity should be understood in the *Humean* sense. To elucidate the issue, two works of Hume have to be analyzed. *A Treatise of Human Nature* and *an Enquiry Concerning Human Understanding* differ slightly on the topic of necessity. I will first examine the former work.

In the Book II of the *Treatise*, Hume considers the problem of freedom in morals: "I assert, that whoever reasons after this manner, does *ipso facto* believe the actions of the will to arise from necessity, and that he knows not what he means, when he denies it."¹ Let me explain Hume's manner as follows. Hume describes his view on necessity by virtue of external circumstances that determine actions of the subject in an immediate way:

The skin, pores, muscles, and nerves of a day-labourer are different from those of a man of quality: So are his sentiments, actions and manners. The different stations of life influence the whole fabric, external and internal; and different stations arise necessarily, because uniformly, from the necessary and uniform principles of human nature. Men cannot live without society, and cannot be associated without government. Government makes a distinction of property, and establishes the different ranks of men. This produces industry, traffic, manufactures, law-suits, war, leagues, alliances, voyages, travels, cities, fleets, ports, and all those other actions and objects, which cause such a diversity, and at the same time maintain such an uniformity in human life.²

¹ *Treatise*, p. 405.

² *Treatise*, p. 402.

Namely, will of persons is an outcome of division of labour, internal and external circumstances, and states. Environment, state of affairs, regime, and social classes establish how humans should act. Man is an effect not a cause. Thus, from the point of view of David Hume, the citizen is a product of the society and is not free. Again, "our actions have a constant union with our motives, tempers, and circumstances."¹ Hence, the ego is not decisive and has no role in one's acts in practice.² Hume says the following in the *Treatise*: "we can never free ourselves from the bonds of necessity. We may imagine we feel a liberty within ourselves; but a spectator can commonly infer our actions from our motives and character."³ In other words, "I am a free person, I act how I will!" is false. In fact dispositions, conditions, and other forces decide achievements of mankind. People are determined by the circumstances, culture or temperament. For Hume the human being is an effect, but in a Humean sense as it is stated at the beginning of this part. David Hume's notion of causality is very different from conventional approaches. Man assigns causes and effects by experience. Unless it is comprehended by an observer, there is no necessary connection. The knowledge of causation comes "only from experience and the observation of their constant union, that we are able to form this inference; and even after all, the inference is nothing but the effects of custom on the imagination."⁴ It can be seen that Hume's system of ethics is much related with his

¹ *Treatise*, p. 401.

² Henry Sidgwick argues that "'I' is not a fact but a fiction, as Hume and his followers maintain." Henry Sidgwick, *The Methods of Ethics* (Chicago: University of Chicago Press, 1907), p. 419.

³ *Treatise*, p. 408.

⁴ *Treatise*, p. 405.

epistemology. As a result, the conception of necessity which is asserted by Hume is concerned with his understanding of causation:

[T]he idea of cause and effect arises from objects constantly united; but [I] must affirm, that 'tis the very same with the idea of those objects, and that the *necessary connexion* is not discover'd by a conclusion of the understanding, but is merely a perception of the mind. Wherever, therefore, we observe the same union, and wherever the union operates in the same manner upon the belief and opinion, we have the idea of causes and necessity, tho' perhaps we may avoid those expressions. Motion in one body in all past instances, that have fallen under our observation, is follow'd upon impulse by motion in another. 'tis impossible for the mind to penetrate farther. From this constant union it *forms* the idea of cause and effect, and by its influence *feels* the necessity.¹

Thus, the necessity that governs human beings in morality is not deterministic, because of Hume's general consideration of causality. So, necessity does not exist in a traditional manner. Hume considers the case of a prisoner. He associates guardians to stones and walls; he sees almost no distinction between them. The nature of prison and prisoner is not dissimilar, "[w]e may change the names of things; but their nature and their operation on the understanding never change."² Consequently, if we consider Hume's understanding of necessity and causality in the *Treatise*, there is no liberty. On the other hand, in the first *Enquiry*, Hume puts forth a "reconciling project" concerning freedom and necessity. He defines liberty as imaginary:

We cannot surely mean that actions have so little connexion with motives, inclinations, and circumstances, that one does not follow with a certain degree of uniformity from the other, and that one affords no inference by which we can conclude the existence of the other. For these are plain and acknowledged matters of fact. By *liberty*, then, we can

¹ *Treatise*, pp. 405-6.

² *Treatise*, p. 407.

only mean a power of acting or not acting, according to the determinations of the will; that is, if we choose to remain at rest, we may; if we choose to move, we also may. Now this hypothetical liberty is universally allowed to belong to every one who is not a prisoner and in chains. Here then is no subject of dispute.¹

As it can be observed from the passage, Hume says that people are *free* but that they are *in chains*. It seems that Hume does not change his view concerning the question of necessity and liberty, yet he just recognizes freedom as a supposition. Arguments of the first *Enquiry* are similar to the *Treatise*. There are no radical modifications in the first *Enquiry*. In my opinion, Hume does not abandon the idea of necessity in his moral thought. Nevertheless it is probable that he “rejects the rationalist understanding of human freedom.”²

2.3 Moral Rationalism versus Moral Sentimentalism

The anti-rationalistic standpoint of Hume can clearly be seen especially when the subject is ethics. He vigorously criticizes moral rationalism and advocates moral sentimentalism. Reason is impotent in morality. On the contrary, sentiments and feelings identify what is good or what is bad, “since vice and virtue are not discoverable merely by reason, or the comparison of ideas, it must be by means of some impression or sentiment they occasion, that we are able to mark the difference betwixt them.”³ Ethics concerns moral sense rather than the intellect; “[m]orality, therefore, is more properly felt than

¹ First *Enquiry*, p. 85.

² Terence Penelhum, “Hume's Moral Psychology,” in *The Cambridge Companion to Hume*, ed. David Fate Norton (Cambridge: Cambridge University Press, 1993), p. 132.

³ *Treatise*, p. 470.

judg'd of."¹ Sensations and feelings are characterized by means of pleasure and pain: "'Tis obvious, that when we have the prospect of pain or pleasure from any object, we feel a consequent emotion of aversion or propensity, and are carry'd to avoid or embrace what will give us this uneasiness or satisfaction."² Reason could only provide the means to an end in contrast to what Kant thought.³ Here the objective is determined by enjoyment and grief. From the standpoint of Hume, moral sentimentalism must replace moral rationalism. Hume rejects reason in the ethical world.

2.3.1 Moral Rationalism

Friedrich Hayek remarked that Hume's disapproval of reason from moral arena is a point of departure. Hayek says that "Hume's starting point is his anti-rationalist theory of morals."⁴ Hume attempted to refute theses of moral rationalists. They assert that "moral distinctions are based on transcendental principles and immutable relations that oblige all rational creatures and that can only be discerned by the use of reason."⁵ Hume says that moral worth is involved in human nature. In other words, it is immanent in the nature of

¹ *Treatise*, p. 470.

² *Treatise*, p. 414.

³ Against Hume, Kant maintains that reason must and can decide ends. See Paul Guyer, *Knowledge, Reason, and Taste: Kant's Response to Hume* (Princeton: Princeton University Press, 2008), p. 161. Also, for a comprehensive analysis of Kantian and Humean moral motivation, see Margaret Ann Watkins Tate, "The Autonomous Hume: On the Search for the Kantian Moral Motive in Hume's Moral Philosophy" (PhD Diss., University of Notre Dame, 2002).

⁴ F.A. Hayek, *Studies in Philosophy, Politics and Economics* (Chicago: University of Chicago Press, 1967), p. 111.

⁵ D. F. Norton, "Hume, Human Nature, and the Foundations of Morality," in *The Cambridge Companion to Hume*, ed. David Fate Norton (Cambridge: Cambridge University Press, 1993), p. 156.

man. David Norton explains this idea by indicating the traditional background of Hume: "But if founded neither on rules or forces that transcend nature, nor on features of physical nature, where may the foundations of morality lie? In human nature, said Hume, echoing Grotius, Shaftesbury, and Hutcheson."¹ In particular, Hutcheson has a great influence on Hume's moral epistemology as well.² Hume's negative idea about incapability of reason in actions is also comes from Francis Hutcheson. Hume says that "morals excite passions, and produce or prevent actions. Reason of itself is utterly impotent in this particular. The rules of morality therefore, are not conclusions of our reason."³ At that point, Hume asserts that the intellect has an inert power:

Nothing can oppose or retard the impulse of passion, but a contrary impulse; and if this contrary impulse ever arises from reason, that latter faculty must have an original influence on the will, and must be able to cause, as well as hinder any act of volition. But if reason has no original influence, 'tis impossible it can withstand any principle, which has such an efficacy, or ever keep the mind in suspence a moment. Thus it appears, that the principle, which opposes our passion, cannot be the same with reason, and is only call'd so in an improper sense. We speak not strictly and philosophically when we talk of the combat of passion and of reason. *Reason is, and ought only to be the slave of the passions, and can never pretend to any other office than to serve and obey them.*⁴

¹ Ibid., p. 158.

² MacIntyre argues that Hume preserved Hutcheson's moral epistemology, "amending it where necessary, and reject his view of moral principles, of the law of nature, of justice, and of our duties of God." Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame: University of Notre Dame Press, 1988), p. 280. For a complete comparison of Hutcheson and Hume with respect to their moral thought, see *ibid.*, pp. 280-7.

³ *Treatise*, p. 457.

⁴ *Treatise*, p. 415 (emphasis added).

It can be plainly seen that reason cannot be in command of passions. *Passions* direct *reason* to achieve its aims¹. Hence reason is instrumental in the moral philosophy of Hume. Major policies are determined by passions. The master is passions and the slave is reason. However, “there are many things that we can do with the help of a slave...”² Even, a master may be in need of a slave.³ Though, according to David Hume, reason is the mediator. Its sole task is to realize the means to the goal. For instance, will desires power for pleasure. Reason recognizes the requirements to attain power. Then, the agent takes actions to gain authority. Passion for power commands reason to reach to the end. Reason just unveils this connection: “Here then reasoning takes place to discover this relation; and according as our reasoning varies, our actions receive a subsequent variation. But ‘tis evident in this case that the impulse arises not from reason, but is only directed by it.”⁴ Passions and sentiments dominate reason. For Hume, rationalism is ineffective in the question of motivation from the point of view of the thinker. In conclusion, Hume claims that “since reason alone can never produce any action, or give rise to volition, I infer, that the same faculty is as incapable of preventing volition,

¹ MacIntyre refers to Hume’s Calvinistic past for his views on the weaknesses of reason: “Reason can supply, so these new theologies assert, no genuine comprehension of man’s true end; that power of reason was destroyed by the fall of man. ‘Si Adam integer stetisset’, on Calvin’s view, reason might have played the part that Aristotle assigned to it. But now reason is powerless to correct our passions (it is not unimportant that Hume’s views are those of one who was brought up a Calvinist).” Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame: University of Notre Dame Press, 1984), pp. 53-4.

² Terence Penelhum, “Hume’s Moral Psychology,” in *The Cambridge Companion to Hume*, ed. David Fate Norton (Cambridge: Cambridge University Press, 1993), p. 129.

³ Hegel’s master and slave dialectic could be a demonstration of this view. See G.W.F. Hegel, *Phenomenology of Spirit*, trans. A.V. Miller (Oxford: Oxford University Press, 1977), p. 118.

⁴ *Treatise*, p. 414.

or of disputing the preference with any passion or emotion. This consequence is necessary.”¹

Sometimes, in daily life, it is stated that someone has acted with reason alone, that he or she was not defeated by his or her passions. Yet “every action of the mind, which operates with the same calmness and tranquillity, is confounded with reason by all those, who judge of things from the first view and appearance.”² These acts, in Hume’s view, are due to “calm desires and tendencies.”³ But thinking reason as quiet passion is illusive: “[w]hen any of these passions are calm, and cause no disorder in the soul, they are very readily taken for the determinations of reason, and are suppos’d to proceed from the same faculty, with that, which judges of truth and falshood.”⁴ In addition to calm passions, there are aggressive emotions that have severe effects on the will. For example: “[w]hen I receive any injury from another, I often feel a violent passion of resentment, which makes me desire his evil and punishment, independent of all considerations of pleasure and advantage to myself.”⁵ Hume distinguishes calm and violent passions in contrast to reason and passions. He gives details of this delusion in this manner: “[t]he common error of metaphysicians has lain in ascribing the direction of the will entirely to one of these principles, and supposing the

¹ *Treatise*, pp. 414-5.

² *Treatise*, p. 417.

³ *Treatise*, p. 417.

⁴ *Treatise*, p. 417.

⁵ *Treatise*, p. 418.

other to have no influence."¹ That is to say, making fierce emotions major and peaceful passions secondary is the usual mistake. In fact, struggle happens between these passions not between reason and emotions:

In general we may observe, that both these principles operate on the will; and where they are contrary, that either of them prevails, according to the *general* character or *present* disposition of the person. What we call strength of mind, implies the prevalence of the calm passions above the violent; tho' we may easily observe, there is no man so constantly possess'd of this virtue, as never on any occasion to yield to the sollicitations of passion and desire.²

In conclusion, we see that for Hume, the motivation of moral actions does not come from reason. For Hume, moral rationalism could not provide necessary foundation to ethical behaviours. Man is conducted by passions and feelings, not by reason.

Another point concerning the issue of reason and morality is the inability of the intellect to evaluate ethical values. Again Hume opposes the rationalistic approach in morals. He rejects the idea that reason is sufficient to attribute good and bad to moral actions. Hume is very clear in this matter as well: "'tis impossible, that the distinction betwixt moral good and evil, can be made to reason; since that distinction has an influence upon our actions, of which reason alone is incapable."³ As already mentioned, reason is likened to bondage, so it cannot affect our acts. Reason has no direct effect on ethical actions, but it is just a mediator: "Reason and judgment may, indeed, be the mediate cause of an action, by prompting, or by directing a passion: But it is

¹ *Treatise*, p. 418.

² *Treatise*, p. 418.

³ *Treatise*, p. 462.

not pretended, that a judgment of this kind, either in its truth or falshood, is attended with virtue or vice.”¹ Deciding whether something is true or false is different from the determination of moral good or evil. Hume explains this thought as follows:

Reason is the discovery of truth or falshood. Truth or falshood consists in an agreement or disagreement either to the *real* relations of ideas, or to *real* existence and matter of fact. Whatever, therefore, is not susceptible of this agreement or disagreement, is incapable of being true or false, and can never be an object of our reason. Now ‘tis evident our passions, volitions, and actions, are not susceptible of any such agreement or disagreement; being original facts and realities, compleat in themselves, and implying no reference to other passions, volitions, and actions. ‘Tis impossible, therefore, they can be pronounced either true or false, and be either contrary or conformable to reason.²

Thanks to this argument, according to Hume, two inferences could be drawn. First, “actions do not derive their merit from a conformity to reason, nor their blame from a contrariety to it.”³ Second, “as reason can never immediately prevent or produce any action by contradicting or approving of it, it cannot be the source of moral good and evil, which are found to have that influence. Actions may be laudable or blameable; but they cannot be reasonable.”⁴ In view of Hume, “[m]oral distinctions ... are not the *offspring* of reason. Reason is wholly inactive, and can never be the source of so active a principle as conscience, or a sense of morals.”⁵ To describe the roles of moral rationalism and moral sentimentalism, Hume gives some striking

¹ *Treatise*, p. 462.

² *Treatise*, p. 458.

³ *Treatise*, p. 458.

⁴ *Treatise*, p. 458.

⁵ *Treatise*, p. 458.

examples in the *Treatise*. He imagines ungratefulness to parents as an instance of immoral act. That ingratitude is evil is approved by all individuals. Now, the question is: can iniquity of this action be comprehended by means of reason or via moral sense? Certainly Hume supports the latter. He endeavours to show the diverse nature of same relation of ideas. To illustrate this, Hume signifies two causal relations. In this fashion, he will prove that the sole task of reason is “comparing of ideas, and the discovery of their relations.”¹ Hume makes an analogy between an oak and humans:

To put the affair, therefore, to this trial, let us chuse any inanimate object, such as an oak or elm; and let us suppose, that by the dropping of its seed, it produces a sapling below it, which springing up by degrees, at last overtops and destroys the parent tree: I ask, if in this instance there be wanting any relation, which is discoverable in parricide or ingratitude? Is not the one tree the cause of the other's existence; and the latter the cause of the destruction of the former, in the same manner as when a child murders his parent? 'Tis not sufficient to reply, that a choice or will is wanting. For in the case of parricide, a will does not give rise to any *different* relations, but is only the cause from which the action is deriv'd; and consequently produces the *same* relations, that in the oak or elm arise from some other principles. It is a will or choice, that determines a man to kill his parent; and they are the laws of matter and motion, that determine a sapling to destroy the oak, from which it sprung. Here then the same relations have different causes; but still the relations are the same: And as their discovery is not in both cases attended with a notion of immorality, it follows, that that notion does not arise from such a discovery.²

This remarkable comparison explicates clearly the incapacity of reason in judgment of ethical issues. If we consider the relation between these two cases, they appear similar. However, morality does not depend only on

¹ *Treatise*, p. 466.

² *Treatise*, p. 467.

factual relations and reason cannot notice the moral value. In other words, “morality consists not in any relations, that are the objects of science; but if examin’d, will prove with equal certainty, that it consists not in any *matter of fact*, which can be discover’d by the understanding.”¹ Otherwise, the death of the parent tree by its offspring must be branded as unethical, but this would be a ridiculous evaluation. Men and women attribute virtue and vice only to human beings.

Although Hume persuades his readers, there are various scholars who criticize David Hume for his views on moral rationalism. One of these thinkers is Alasdair MacIntyre. MacIntyre claims that in his critique of moral rationalism Hume does not provide any positive reasoning, that he only refutes the idea that reason can render judgments on moral subjects. He makes this way of thinking by forcing people to either/or clauses, “either morality is the work of reason or it is the work of passions and his own apparently conclusive arguments that it cannot be the work of reason.”² MacIntyre possibly refers to Hume’s well-known statement in Book II of the *Treatise*.³ Afterward, MacIntyre blames Hume for imposing “the conclusion that morality is the work of the passions quite independently of and prior to his adducing of any positive arguments for that position.”⁴ Then, MacIntyre criticizes another point in the *Treatise*. He emphasizes that there is a difficult problem in the constitution of the *Treatise*; the difficulty is “how to move

¹ *Treatise*, p. 468.

² MacIntyre, *After Virtue*, p. 49.

³ “Reason is, and ought only to be the slave of the passions, and can never pretend to any other office than to serve and obey them.” *Treatise*, p. 415

⁴ MacIntyre, *After Virtue*, p. 49.

from the egotisms of Book I to the social relationships of the moral arena of Book III...Hume's solution to this problem is provided by the doctrine of the passions in Book II."¹ To understand MacIntyre's second criticism to Hume, we have to examine the conceptualization of passion in Hume's sense.

2.3.2 Passions

Given that for Hume "reason is, and ought only to be the slave of the passions" and that he advocated *moral sense* as the foundation of moral actions, one may consider that there is an inconsistency in the motivation of ethical acts in Hume's system of ethics. However, there is no contradiction, because in the time of Hume passions have a similar meaning to sensations and emotions. Nowadays, the terms emotion and passion are taken to be different, but individuals in the eighteenth-century England comprehend these words synonymously. That is to say, "passions motivate us" and "emotions and feelings motivate us" are almost alike. *Oxford English Dictionary* supports this view.² Isaac Watts gives a definition of passion in the early 18th century: "[t]he word *passion* signifies the *receiving any action*, in a large philosophical sense; in a more limited philosophical sense, it signifies *any of the affections of Human Nature, as Love, Fear, Joy, Sorrow*."³ If Watt's comments and the dictionary are considered together, Hume's concept of

¹ MacIntyre, *Whose Justice? Which Rationality?*, p. 290.

² *Oxford English Dictionary*, s.v. "passion, n," <http://www.oed.com:80/Entry/138504> (accessed April 18, 2011).

³ Isaac Watts, *Logick: or, the Right Use of Reason in the Inquiry After Truth, with a Variety of Rules to Guard Against Error, in the Affairs of Religion and Human Life, as Well as in the Sciences*, 12th ed. (London: Printed for J. Buckland et al., 1725), p. 66.

passion becomes clear. Passions motivate individuals.¹ Passions are senses relating to emotional states. Sensations and emotions thus motivate human beings. MacIntyre and John Rawls interpret *Humean* passions in this fashion.² Passion and emotion are two notions that are used *interchangeably* in the following passage:

A passion is an, original existence, or, if you will, modification of existence, and contains not any representative quality, which renders it a copy of any other existence or modification. When I am angry, I am actually possess'd with the *passion*, and in that *emotion* have no more a reference to any other object, than when I am thirsty, or sick, or more than five foot high. 'Tis impossible, therefore, that this passion can be oppos'd by, or be contradictory to truth and reason; since this contradiction consists in the disagreement of ideas, consider'd as copies, with those objects, which they represent.³

Hume differentiates passions from ideas and says that passions exist for themselves. Passions refer to certain aims, they are not means. He locates passions on the opposite side of mental considerations, but this does not mean that passions are irrational. According to Terence Penelhum "Hume teaches the *a-rationality* of passion where the rationalist teaches the *irrationality* of passion."⁴ But this does not mean that Hume's account of passions is rationalistic: "[p]assions stand to actions as nonrational causes to

¹ "On Hume's view, although it is indeed the case that the prospect of pleasure and pain moves me to action, what moves me is the relevant passion – in modern idiom the relevant desire." MacIntyre, *Whose Justice? Which Rationality?*, p. 305.

² "Sentiments are simple conjunctions of judgment and passion, whether calm or violent." MacIntyre, *Whose Justice? Which Rationality?*, p. 302. John Rawls too equates passions to sentiments and emotions; "human passions, that is, feelings and emotions, desires and sentiments." John Rawls, *Lectures on the History of Political Philosophy*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 2007), p. 164.

³ *Treatise*, p. 415 (italics are added).

⁴ Penelhum, "Hume's Moral Psychology," p. 139.

effects.”¹ Passions are driving factors in the actions of man. Besides, as Hume suggests in the *Treatise*, passions are similar to emotions and sentiments. To elucidate passions in detail MacIntyre adds a useful description, he construes Humean passions as “preconceptual and prelinguistic.”² To be precise, passions are related with sentimental sources; because previous to language and concepts, there are only sensations.

Let us return to Hume’s problem in the *Treatise*. According to MacIntyre, Hume solved it with the theory of passions in Book II. In short, the passions such as pride, humility, love, and hatred bridge the gap between first-person standpoint of Book I and third-person point of view of Book III.³ This can be seen in the following citation from the *Treatise*:

Pride and humility, love and hatred are excited, when there is any thing presented to us, that both bears a relation to the object of the passion, and produces a separate sensation related to the sensation of the passion. Now virtue and vice are attended with these circumstances. They must necessarily be plac’d either in ourselves or others, and excite either pleasure or uneasiness; and therefore must give rise to one of these four passions.⁴

Hume draws a relation between passions and virtues here. Hence, the road to ethical society from the egoistic individual could be paved. MacIntyre, however, asserts that Hume’s attempt is in vain, because of his theory of passions and morals is “specific to one particular type of social and cultural

¹ MacIntyre, *Whose Justice? Which Rationality?*, p. 304.

² *Ibid.*, p. 302.

³ *Ibid.*, p. 291.

⁴ *Treatise*, p. 473

order.”¹ Since “the directedness of the passions within social life has generally to be toward objects particularized in some specific cultural and social idiom”² a universal human nature and the social order of mankind cannot be conceived. For MacIntyre, unfortunately, Hume’s project is “local and particular.”³ Under these circumstances other communities, which are distant from Hume in terms of time and place, cannot glean lessons from his ethico-political system. Hume’s doctrine just obligates eighteenth-century English human nature.⁴

2.3.3 Moral Sentimentalism

David Hume’s position on behalf of moral sentimentalism clarified in the first part of Book III of the *Treatise*. He demonstrates his arguments in the section two of this part entitled “Moral distinctions deriv’d from a moral sense.” Hume first reminds his negation of moral rationalism, and then he starts to explicate his theory of moral sentiments; “since vice and virtue are not discoverable merely by reason, or the comparison of ideas, it must be by means of some impression or sentiment they occasion.”⁵ Next, Hume justifies moral sentimentalism by explaining the process: “Of what nature are these impressions, and after what manner do they operate upon us? Here we

¹ MacIntyre, *Whose Justice? Which Rationality?*, p. 293.

² *Ibid.*, p. 293.

³ *Ibid.*, p. 293.

⁴ “[T]his is the type of social and cultural order portrayed by Hume in the *Treatise* as exhibiting the characteristics of universal human nature, but it is also of course the type of social and cultural order described by Roy Porter as constituting the highly specific way of life of the eighteenth-century English landowning class and its clients and dependants. What Hume presents as human nature as such turns out to be eighteenth-century English human nature, and indeed only one variant of that, even if the dominant one.” MacIntyre, *Whose Justice? Which Rationality?*, p. 295.

⁵ *Treatise*, p. 470.

cannot remain long in suspense, but must pronounce the impression arising from virtue, to be agreeable, and that proceeding from vice to be uneasy.”¹ Imagine an honest person and a liar, which one gives more enjoyment? Will you feel pleased when you are cheated? Hume describes the foundation of morality in a hedonistic manner: “Every moment’s experience must convince us of this. There is no spectacle so fair and beautiful as a noble and generous action; nor any which gives us more abhorrence than one that is cruel and treacherous.”² Moral sense by virtue of pleasure and pain thus constitutes Hume’s system of ethics:

Now since the distinguishing impressions, by which moral good or evil is known, are nothing but *particular* pains or pleasures; it follows, that in all enquiries concerning these moral distinctions, it will be sufficient to shew the principles, which make us feel a satisfaction or uneasiness from the survey of any character, in order to satisfy us why the character is laudable or blameable. An action, or sentiment, or character is virtuous or vicious; why? because its view causes a pleasure or uneasiness of a particular kind. In giving a reason, therefore, for the pleasure or uneasiness, we sufficiently explain the vice or virtue. To have the sense of virtue, is nothing but to *feel* a satisfaction of a particular kind from the contemplation of a character. The very *feeling* constitutes our praise or admiration. We go no farther; nor do we enquire into the cause of the satisfaction. We do not infer a character to be virtuous, because it pleases: But in feeling that it pleases after such a particular manner, we in effect feel that it is virtuous. The case is the same as in our judgments concerning all kinds of beauty, and tastes, and sensations. Our approbation is imply’d in the immediate pleasure they convey to us.³

On the other hand, to comprise the sense of vice is an impression of a discontent of a particular kind from the consideration of a character. The

¹ *Treatise*, p. 470.

² *Treatise*, p. 470.

³ *Treatise*, p. 471.

sentiment generates our blame. We do not go beyond and investigate the reason of uneasiness. We assume a personality as vicious, because we *feel* that it is vicious. Our disapproval is entailed in the direct grief it transmits to us. For instance, “when I perceive the signs of what is called vanity: the peculiar movements of the eyes, lips, hands, and of course the choice of words and intonation, all affect me at once as the sign of the value this person attaches to her or himself.”¹ Hence, we identify a person as vicious owing to his conveying vanity to society.

Hume defends his theory of moral sentiments: “Thus all probable reasoning is nothing but a species of sensation. ‘Tis not solely in poetry and music, we must follow our taste and sentiment, but likewise in philosophy.”² This way of thinking may seem bizarre to moral rationalists, but this is typical for Hume: “When I am convinc’d of any principle, ‘tis only an idea, which strikes more strongly upon me. When I give the preference to one set of arguments above another, I do nothing but decide from my feeling concerning the superiority of their influence.”³ That is to say, Hume’s moral theory could be depicted as a “matter of sensuous experience.”⁴

In the determination of moral value of actions, incentives should be evaluated not deeds. Hume points out that “when we praise any actions, we regard only the motives that produced them, and consider the actions as

¹ Halil Turan, “The Existence of Other Egos and the Philosophy of Moral Sentiments,” *Analecta Husserliana*, 84 (2005): p. 181.

² *Treatise*, p. 103.

³ *Treatise*, p. 103.

⁴ Turan, “Existence of Other Egos,” p. 180.

signs or indications of certain principles in the mind and temper. The external performance has no merit. We must look within to find the moral quality.”¹ As a result of moral internalism, “the ultimate object of our praise and approbation is the motive, that produc’d them.”² For example, if a son, who has a little brother as well, helps his old father in daily life by expectations of inheritance, that son is actually immoral. His actions may be laudable, but his motive is abhorrent:³

After the same manner, when we require any action, or blame a person for not performing it, we always suppose, that one in that situation shou’d be influenc’d by the proper motive of that action, and we esteem it vicious in him to be regardless of it. If we find, upon enquiry, that the virtuous motive was still powerful over his breast, tho’ check’d in its operation by some circumstances unknown to us, we retract our blame, and have the same esteem for him, as if he had actually perform’d the action, which we require of him.

It appears, therefore, that *all virtuous actions derive their merit only from virtuous motives*, and are consider’d merely as signs of those motives.⁴

This is similar to the case, which is known in the law as criminal intention. If a man kills an innocent woman with the aim of assassination, his punishment would be much more. Or else, if a man kills a woman by accident, his sentence will be less. Since his motive is not cruel, his action would not be as worse as a murderer. As a consequence, to appreciate or

¹ *Treatise*, p. 477.

² *Treatise*, p. 477.

³ Immanuel Kant’s account in this subject is parallel to Hume. “...incentives, because when we are talking about moral worth, it does not depend on the actions, which one sees, but on the inner principles, which one does not see.” Immanuel Kant, *Groundwork for the Metaphysics of Morals*, trans. and ed. Allen Wood (New Haven: Yale University Press, 2002), p. 23.

⁴ *Treatise*, pp. 477-8 (emphasis mine).

condemn moral actions, we have to look for the motivations behind them. Hume gives an example to delineate his ideas on motivation and action: "Here is a man, that does many benevolent actions; relieves the distress'd, comforts the afflict'd, and extends his bounty even to the greatest strangers. No character can be more amiable and virtuous."¹ On Hume's view these are *external signs*, but what about the motive behind these actions? "We regard these actions as proofs of the greatest humanity. This humanity bestows a merit on the actions. A regard to this merit is, therefore, a secondary consideration, and deriv'd from the antecedent principle of humanity,"² this principle deserves admiration and esteem. From this line of arguments, Hume reaches that maxim: "*that no action can be virtuous, or morally good, unless there be in human nature some motive to produce it, distinct from the sense of its morality.*"³ From this maxim two points could be inferred. Firstly, as it is mentioned, moral worth lies in incentives of actions. Secondly, motives are derived from human nature.⁴ David Norton argues that "[t]o rest morality on human nature is also to suggest that it exhibits certain substantive features which, in conjunction with other circumstances of human life, operate to produce moral experience and moral distinctions."⁵ Hence, it can be argued that sentimental ethics of Hume is in accordance with human nature.⁶

¹ *Treatise*, p. 478.

² *Treatise*, p. 478.

³ *Treatise*, p. 479.

⁴ On the idea that Hume builds morality on human nature, see Norton, "Hume, Human Nature, and the Foundations of Morality," p. 149.

⁵ *Ibid.*, p. 160.

⁶ David Norton also considers the unchanging structure of human nature: "To rest morality on human nature is also to suggest that, for a start, this nature provides a stable base for

Meanwhile, Hume disagrees with the idea that fundamental motive of actions is self-interest. Hume is contrasted with Thomas Hobbes in this matter by Norton. Hobbes thought that all of the actions are stimulated by self-interest; “Hume accepts one premise of this argument, the claim that motives play a pre-eminent role in the determination of virtue, but he rejects as ill-founded the claim that all our motives are self interested.”¹ This approach is supported by Hume’s words: “‘Tis only when a character is considered in general, without reference to our particular interest, that it causes such a feeling or sentiment, as denominates it morally good or evil.”² In addition to this, in *an Enquiry Concerning the Principles of Morals* Hume rejects self-interest:

This deduction of morals from self-love, or a regard to private interest, is an obvious thought, and has not arisen wholly from the wanton sallies and sportive assaults of the sceptics. To mention no others, POLYBIUS, one of the gravest and most judicious, as well as most moral writers of antiquity, has assigned this selfish origin to all our sentiments of virtue. But though the solid practical sense of that author, and his aversion to all vain subtilties, render his authority on the present subject very considerable; yet is not this an affair to be decided by authority, and the voice of nature and experience seems plainly to oppose the selfish theory.³

morality. For Hume, this base is not merely stable, but also unalterable.” Norton, “Hume, Human Nature, and the Foundations of Morality,” p. 159.

¹ Norton, “Hume, Human Nature, and the Foundations of Morality,” p. 155.

² *Treatise*, p. 472.

³ David Hume, *An Enquiry Concerning the Principles of Morals*, ed. Tom L. Beauchamp (Oxford: Oxford University Press, 1998), p. 35, (hereafter cited as second *Enquiry*). See also second *Enquiry*, pp. 90-5 for Hume’s refusal of self-interest.

Although Polybius defends egoistic thesis, Hume rejects the determining role of self-interest in the foundation of morality, “contrary to the claims of Hobbes and the other sceptical, "selfish" moralists, humans have a moral sense: a natural moral character that includes a genuinely unselfish concern for others and the facility to recognize objectively founded moral distinctions.”¹ Moral sentimentalism thereby constitutes ethical values without a selfish foundation.

2.4 Sympathy

David Hume’s significant concept of sympathy in his moral philosophy comes from Greek *sympatheia*,² which is the combination of *syn* and *pathos*. *Syn* is the Greek prefix that means *with another*. *Pathos* expresses suffering and emotion in Greek.³ *Pathos* also turns into *passio* in Late Latin⁴ that is the oblique stem of *passion*.⁵ This etymological research and Hume’s notion of sympathy in the *Treatise* evokes in one’s mind sensations of passions of others; but passions here should be thought in Humean sense.⁶ In that sense, passion is one-dimensional, whereas sympathy is two-dimensional. Thus sympathy means receiving emotions and sentiments of other persons by

¹ Norton, “Hume, Human Nature, and the Foundations of Morality,” p. 154.

² Eric Partridge, *Origins: A Short Etymological Dictionary of Modern English* (London: Routledge & K. Paul, 1966), p. 475.

³ Walter W. Skeat, *A Concise Etymological Dictionary of the English Language* (Oxford: Clarendon Press, 1956), p. 376.

⁴ *Online Etymology Dictionary*, s.v. “passion, n,” <http://www.etymonline.com/index.php?term=passion> (accessed April 22, 2011).

⁵ Partridge, *Origins*, p. 475.

⁶ See Subsection 2.3.2. to remind *Humean* passions.

communication. Nuyen, calls it “empathy for others.”¹ This interpretation could be inferred directly from Hume’s *Treatise* as well: “[n]o quality of human nature is more remarkable, both in itself and in its consequences, than that propensity we have to *sympathize with others, and to receive by communication their inclinations and sentiments*, however different from, or even contrary to our own.”² Thanks to sympathy, one can share feelings and emotions, i.e. passions of others. This affection immediately can be seen between children. If a kid is crying, her mate cries without delay. It is obvious in children, “who implicitly embrace every opinion propos’d to them; but also in men of the greatest judgment and understanding, who find it very difficult to follow their own reason or inclination, in opposition to that of their friends and daily companions.”³ Interaction of sentiments and passions is evident between mates. Likewise, the principle of sympathy provides similarity of a nation, too; “[t]o this principle we ought to ascribe the great uniformity we may observe in the humours and turn of thinking of those of the same nation; and ‘tis much more probable, that this resemblance arises from sympathy.”⁴ Fellow-feeling broadens to sharing of passions and sentiments of others, in this way other is no more *other*. The other and the self are precisely alike. David Hume illuminates the process of sympathy in detail:

A chearful countenance infuses a sensible complacency and serenity into my mind; as an angry or sorrowful one throws a sudden dump upon me. Hatred, resentment, esteem, love, courage, mirth and

¹ A. T. Nuyen, “Hume’s Justice as a Collective Good,” *Hume Studies*, 12 (1986): p. 52.

² *Treatise*, p. 316 (emphasis added).

³ *Treatise*, p. 316.

⁴ *Treatise*, pp. 316-7.

melancholy; *all these passions I feel more from communication than from my own natural temper and disposition. So remarkable a phaenomenon merits our attention, and must be trac'd up to its first principles.*

When any affection is infus'd by *sympathy*, it is at first known only by its effects, and by those external signs in the countenance and conversation, which convey an idea of it. This idea is presently converted into an impression, and acquires such a degree of force and vivacity, *as to become the very passion itself, and produce an equal emotion, as any original affection.*¹

In Hume's account of sympathy, this communication can be compared to a *mirror*. Emotions and sensations are reflected thanks to the principle of sympathy. Hume draws an analogy between the process of sympathy and mirror; "the minds of men are mirrors to one another, not only because they reflect each other's emotions, but also because those rays of passions, sentiments and opinions may be often reverberated, and may decay away by insensible degrees."² When I see the pains of my brother everyday, my suffering³ will intensify; but if I do not visit him, I will be less sorrowful. "A perfect solitude is, perhaps, the greatest punishment we can suffer. Every pleasure languishes when enjoy'd a-part from company, and every pain becomes more cruel and intolerable."⁴ The opposite is also true. Every contentment flourishes when enjoyed together with our friends and every grief becomes less harsh and unbearable when we are with our family. Furthermore, Hume adduces another example to bolster the principle of sympathy: "[a]s in strings equally wound up, the motion of one

¹ *Treatise*, p. 317 (italics added).

² *Treatise*, p. 365.

³ Besides, it must be noted that there is another meaning of *pathos*, which is the stem of sympathy, is suffering. Sympathy is then related with sharing pains of other persons; but Hume does not use sympathy with only negative significance, he ascribes positive meaning as well.

⁴ *Treatise*, p. 363.

communicates itself to the rest; so all the affections readily pass from one person to another, and beget correspondent movements in every human creature."¹ Further,

When I see the *effects* of passion in the voice and gesture of any person, my mind immediately passes from these effects to their causes, and forms such a lively idea of the passion, as is presently converted into the passion itself. In like manner, when I perceive the *causes* of any emotion, my mind is convey'd to the effects, and is actuated with a like emotion. Were I present at any of the more terrible operations of surgery, 'tis certain, that even before it begun, the preparation of the instruments, the laying of the bandages in order, the heating of the irons, with all the signs of anxiety and concern in the patient and assistants, would have a great effect upon my mind, and excite the strongest sentiments of pity and terror. No passion of another discovers itself immediately to the mind. We are only sensible of its causes or effects. From *these* we infer the passion: And consequently *these* give rise to our sympathy.²

The ethical system of Hume is completed with the contribution of the principle of sympathy: "[w]e are certain, that sympathy is a very powerful principle in human nature."³ In particular, when the moral issue is social; since, the principle of sympathy "has force sufficient to give us the strongest sentiments of approbation, when it operates alone, without the concurrence of any other principle; as in the cases of justice⁴, allegiance, chastity, and good-manners."⁵ Humean sympathy thus functions especially in public

¹ *Treatise*, p. 576.

² *Treatise*, p. 576.

³ *Treatise*, p. 618.

⁴ According to Hume, sympathy has a significant role in the source of the just actions. The principle of sympathy is principal when the case is artificial virtue, such as justice. The relation between sympathy and justice will be exposed in detail in the Section I of Chapter IV.

⁵ *Treatise*, p. 618.

matters, because it supplies transmission of passions and sensations between individuals. It can be concluded from the following text that principle of sympathy promotes moral sense:

It requires but very little knowledge of human affairs to perceive, that a sense of morals is a principle inherent in the soul, and one of the most powerful that enters into the composition. But this sense must certainly acquire new force, when reflecting on itself, it approves of those principles, from whence it is derived, and finds nothing but what is great and good in its rise and origin. Those who resolve the sense of morals into original instincts of the human mind, may defend the cause of virtue with sufficient authority; but want the advantage, which those possess, who account for that *sense by an extensive sympathy with mankind*.¹

Sympathy with humanity reinforces the foundation of moral sense and actions. In the conclusion of the *Treatise*, Hume gives the signs of principle of humanity which would be introduced in the second *Enquiry* in place of sympathy; he asserts that one has “an extensive sympathy with mankind.” Nevertheless, the principle of sympathy performs a critical role in the determination and motivation of ethical deeds: “‘sympathy’ renders moral acts possible by forming a tie between human beings.”² Rawls says that the concept is a guide: “sympathy is the main psychological propensity at work, and it will at least guide our considered moral judgments.”³ Rawls then points out that Hume “traced moral judgments in the *Treatise* as deriving importantly from our capacity for sympathy—which is replaced in the

¹ *Treatise*, p. 619 (emphasis mine).

² Turan, “Existence of Other Egos,” p. 184.

³ John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), p. 186.

Enquiry by the Principle of Humanity.”¹ David Miller endorses this view: “[S]ympathy in the *Treatise*, ‘sentiment of humanity’ in the *Enquiry*. These are essential components of Hume’s system of thought. If we did not possess these feelings, we would be unable to make moral judgments at all.”² Let us now concentrate on the *principle of humanity*.

It is apparent that the principle of humanity is incompatible with self-interest and accordingly Hume ignores egoistic suppositions. Every passion which is related to private interest is “here excluded from our theory concerning the origin of morals, not because they are too weak, but because they have not a proper direction, for that purpose.”³ Selfishness has another agenda than Hume’s ethics. The principle of Humanity in *Humean* moral philosophy anticipates a more general point of view. He enlightens this in *an Enquiry Concerning the Principles of Morals*:

The notion of morals, implies some sentiment common to all mankind, which recommends the same object to general approbation, and makes every man, or most men, agree in the same opinion or decision concerning it. It also implies some sentiment, so universal and comprehensive as to extend to all mankind, and render the actions and conduct, even of the persons the most remote, an object of applause or censure, according as they agree or disagree with that rule of right which is established. These two requisite circumstances belong alone to the sentiment of humanity here insisted on.⁴

Since feelings and passions such as love and hatred are restricted to certain people from a particular point of view, the principle of humanity is essential

¹ Rawls, *Lectures on the History of Political Philosophy*, pp. 164-5.

² David Miller, *Social Justice* (Oxford: Clarendon Press, 1976), p. 173.

³ Second *Enquiry*, p. 74.

⁴ Second *Enquiry*, p. 74.

to institute the basis of moral theory. Self-love is parallel to these sentiments as well. The *Self* and *other* are essential parts of this type of thinking and subsequently others become either your enemy or your friend. Individuals stand either on your or your opponent's side. The dichotomy between friend and enemy cannot provide an agreement when there is self-love. This is known as a state of war or emergency.¹ According to Hume perceiving *other* as adversary is "the language of self-love, and to express sentiments, peculiar to himself, and arising from his particular circumstances and situation."² Egoism cannot transcend its limits afterwards. At that point, Hume suggests the principle of humanity to agree upon conflicting moral issues:

[W]hen he bestows on any man the epithets of vicious or odious or depraved, he then speaks another language, and expresses sentiments in which, he expects, all his audience are to concur with him. *He must here, therefore, depart from his private and particular situation, and must chuse a point of view, common to him with others: He must move some universal principle of the human frame, and touch a string, to which all mankind have an accord and symphony.* If he mean, therefore, to express, that this man possesses qualities, whose tendency is pernicious to society, he has chosen this common point of view, and has touched the principle of humanity, in which every man, in some degree, concurs.³

In this way, moral actions could be grounded. Otherwise, disagreements cannot cease to exist. The universal initial position can be beneficial to humanity and thereby self-love is transformed to love of humanity. Although the principle of humanity is not as firm as self-love, public utility is crucial for society and people. "While the human heart is compounded of the

¹ For in-depth analysis of friend or foe distinction See Carl Schmitt, *The Concept of the Political*, trans. George Schwab (Chicago: The University of Chicago Press, 2007).

² Second *Enquiry*, p. 75.

³ Second *Enquiry*, p. 75 (emphasis added).

same elements as at present, it will never be wholly indifferent to public good, nor entirely unaffected with the tendency of characters and manners.”¹ For this reason, the *Humean* principle of *humanity* could provide a solid basis to moral sentimentalism. Hume adds that “though this affection of humanity may not generally be esteemed so strong as vanity or ambition, yet, being common to all men, it can alone be the foundation of morals, or of any general system of blame or praise.”² Passions such as avarice, ambition, affection, hatred are more personal, yet the sentiment of humanity is more universal. In other words, “[o]ne man's ambition is not another's ambition; nor will the same event or object satisfy both: But the humanity of one man is the humanity of every one; and the same object touches this passion in all human creatures.”³ For Hume, the principle of humanity is the major source of moral evaluations. John Rawls emphasizes Hume’s principle of humanity and his notion of judicious spectator. In his *Lectures on the History of Political Philosophy*, Rawls explains the *Humean* principle in this fashion: “[t]he “principle of humanity” is the psychological tendency we have to identify with the interests and concerns of others when our own interests do not come into competition with them.”⁴ That is to say, the principle of humanity is a kind of empathy process as the Humean sympathy. The *Rawlsian* reading of Hume points out that there is one more notion other than the principle of humanity in Hume’s moral philosophy: the Judicious Spectator is like a complement to the *principle of humanity* in the determination of moral values. Rawls says the following regarding Hume’s conception of judicious

¹ *Second Enquiry*, p. 75.

² *Second Enquiry*, p. 75.

³ *Second Enquiry*, p. 75.

⁴ Rawls, *Lectures on the History of Political Philosophy*, p. 184.

spectator: “when we say qualities of character are virtuous or vicious, or actions are right or wrong, we are considering them from a suitably general or “common point of view,””¹ This judicious spectator is objective to everyone. In another sense, the judicious spectator acts objectively in the resolution of ethical cases “without any reference to our own interests; and we are *expressing*, by making the moral judgment, our *approval* and *disapproval*.”² Rawls again maintains that according to Hume, the criterion of the moral judgment is welfare of the community from the point of view of judicious spectator “when we consider them from this general point of view, our judgments are guided by the tendency of these actions or qualities or institutions to affect the general interests of society, or the general happiness of society.”³ Certainly, it should not be forgotten that this interpretation is Rawlsian, it is not only Hume’s exact ideas. I think that Rawls slightly rationalizes and institutionalizes Hume’s moral theory. For instance, Rawls states that “[w]hat Hume is trying to do is [to] explain the fact that we agree. *How can there be a basis on which people can agree when they judge institutions?*”⁴ Rawls offers remarkable comments to comprehend the principle of humanity and the judicious spectator: “When looked at from each person’s own standpoint, it is not possible to have agreement as to whether institutions or actions are good or bad. How then can there be a basis for people to agree about these things?”⁵ John Rawls answers this question as follows: “[o]n Hume’s view there is only one possible basis, and that is one that appeals to

¹ Ibid., p. 185.

² Ibid., p. 185.

³ Ibid., p. 185.

⁴ Ibid., p. 185 (emphasis mine).

⁵ Ibid., p. 185.

our principle of humanity.”¹ For instance, if a baby dies from starvation, one can ask why her parents did not feed her. For her family is responsible from the death of this baby. Why did her parents bring a child into the world? They should not have a baby, unless they can nourish her. In this viewpoint, the death of the baby is only a fault of her father and mother; and there is no morally unacceptable situation for mankind. However, if we look from a common point of view with the help of *principle of humanity* and judicious spectator, the loss of the child is morally wrong for her relatives, nation, state, and human beings; because the death of this baby is pernicious to society: her family will be unhappy and anti-social. Her parents may even decide not to bring a child into being in future. Since death of newborns can pose a threat to posterity, the consequences are harmful to society in the long run and against general interest as well. Now, in consideration of this case, the principle of humanity illuminates this ethical disagreement. Rawls analyzes establishment of agreement in moral problems with respect to David Hume: “[i]t does so because the only factor in our, you might say, “sensible nature” that is brought into play when we take up the point of view of the judicious spectator is our *principle of humanity*, or fellow-feeling.”² To expose the position of judicious spectator in detail, John Rawls argues as follows:

When our own interests and the interests of our family are not involved or affected, the only motivational aspect of our character that is going to direct our judgment, and that we are going to express, is how an action or an institution or quality of character is going to affect the interests and concerns of those who are themselves involved. So, on Hume’s view, then, what makes agreement on moral judgment possible is our

¹ Ibid., p. 185.

² Ibid., p. 186.

being able to take up and to imagine ourselves into the point of view of the judicious spectator.¹

At this point, moral distinctions could be assigned. Ascribing virtue and vice to personalities impartially could be possible now thanks to the principle of humanity and judicious spectator. Rawls concludes his account of Humean judicious spectator with this commendation: “the idea of the judicious spectator is one of the most important and interesting ideas in moral philosophy. It appears in Hume for the first time.”²

Before ending this section one point should not be omitted: when Rawls says that moral judgment in Hume is related to the principle of humanity, we should not think that moral distinctions are derived by reason. Hume’s anti-rationalistic attitude in morality is already examined.³ Passions and sentiments have principal role in the determination of moral distinctions. Hume draws attention to this subject in the *Treatise*: “[h]ere we are contented with saying, that reason requires such an Impartial conduct, but that it is seldom we can bring ourselves to it, and that our passions do not readily follow the determination of our judgment.”⁴ Principle of Humanity thus proposed as a sentiment by David Hume.⁵

¹ Ibid., p. 186. David Hume’s conceptualization of judicious spectator and principle of humanity reminds the Rawlsian *original position*. At least it can be said that Hume influenced Rawls to imagine and develop original position. For resemblance between judicious spectator and principle of humanity of Hume and original position of Rawls, See Rawls, *A Theory of Justice*, pp. 102-167 and *Second Enquiry*, pp. 74-5; *Treatise*, pp. 581-2-3-4.

² Rawls, *Lectures on the History of Political Philosophy*, pp. 186-7.

³ See Subsection 2.3.1.

⁴ *Treatise*, p. 583.

⁵ *Second Enquiry*, p. 75

2.5 The Is-Ought Question

The distinction between fact and value namely “is” and “ought” question, which is now one of the central issues in ethics, is identified first by David Hume. The problem is whether “ought” can be inferred from “is” statements. Hume tackles this question in Book III of his *Treatise*, in the last paragraph of section one, entitled “Moral Distinctions not deriv’d from Reason.” The conventional view argues that Hume rejects inferring prescriptive statements from descriptive statements. Even the proponents of this interpretation give the name of *Hume’s Law* to this attitude. On the other hand, there is another wave of argument that blames others because of misunderstanding Hume. This new trend declares that actually Hume strives to show how this deduction could be made properly. However, a new reading of Hume appeared which claimed that both sides did not understand Hume correctly. In fact, Hume does not talk about *ought* as we comprehend it. Former interpretations took the passage out of its context and observed as Hume enunciating moral judgments and obligations. Hume did not use “ought” as a moral category. Hence, Hume did not point out moral judgments but moral sentiments. Arguments of all three viewpoints will be summarized in the following pages. At the moment, let us take a look at the famous passage by Hume:

In every system of morality, which I have hitherto met with, I have always remark’d, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surpriz’d to find, that instead of the usual copulations of propositions, *is*, and *is not*, I meet with no proposition that is not connected with an *ought*, or an *ought not*. This change is imperceptible; but is, however, of the last consequence. For as this *ought*, or *ought not*, expresses some new relation or affirmation, ‘tis necessary that it shou’d be observ’d and explain’d; and at the same time that a reason should be given, for what

seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it. But as authors do not commonly use this precaution, I shall presume to recommend it to the readers; and am persuaded, that this small attention wou'd subvert all the vulgar systems of morality, and let us see, that the distinction of vice and virtue is not founded merely on the relations of objects, nor is perceiv'd by reason.¹

First we assume that Hume considers the possibility of deduction of “ought” from “is”. Then, David Hume “is first urging us to take note of the key point where we do pass from “is” to “ought” and arguing that this is a difficult transition.”² Hume, according to MacIntyre, criticizes others who pass straight away without justifying their inference; and later in “the next part of the *Treatise* he shows us how it can be made; clearly in the passage itself he is concerned to warn us against those who make this transition in an illegitimate way.”³ For MacIntyre, however, this transition is not made by deductive reasoning, because David Hume employs deduction in the sense of inference.⁴ MacIntyre bases his explanation on etymology, dictionary and some other texts of Hume. In other words, Hume refers to inductive reasoning rather than deductive reasoning. Hume’s aim, thus, to question how we reach values from facts: “[w]hat he does is to ask how and if moral rules may be inferred from factual statements, and in the rest of Book III of the *Treatise* he provides an answer to his own question.”⁵ On the contrary, Atkinson objects to Macintyre’s interpretation of deduction as induction.

¹ *Treatise*, pp. 469-70.

² Alasdair MacIntyre, “Hume on “Is” and “Ought”,” *The Philosophical Review*, 68 (1959): p. 463.

³ *Ibid.*, pp. 463-4.

⁴ *Ibid.*, p. 461.

⁵ *Ibid.*, p. 461.

Atkinson asserts that Hume conveys deduction in the narrow sense. Atkinson also refers to Thomas Reid's understanding of the passage and his resemblance between Hume in considering deduction in the narrow sense. Reid "interprets the "ought/is" passage as if it concerned the entailment or deduction (narrow sense) of moral conclusions"¹ as well.

Let me turn to claims of MacIntyre as an exemplar of supporters of the idea that Hume attempts to deduce moral judgments from factual cases. MacIntyre contends that Hume does not suggest the is/ought distinction. He declares that in the famous passage David Hume is not "asserting the autonomy of morals-for he did not believe in it; and he is not making a point about entailment-for he does not mention it."² With the conceptualization of the autonomy of morals MacIntyre denotes Hume's disbelief on "ought" as a distinct moral category. In this interpretation, Hume denies the autonomy of morals.³ That is to say, prescriptive statements could be inferred from descriptive statements. To understand this reading of Hume, MacIntyre proposes that "one has to go beyond the passage."⁴ MacIntyre indicates whole of *Treatise*: Hume's "work is full of anthropological and sociological remarks."⁵ Due to factual observations in Hume's book, MacIntyre maintains that Hume moves to value judgments from factual judgments. To support this thesis, MacIntyre inspects Hume's conception of justice. On MacIntyre's

¹ R. F. Atkinson, "Hume on 'Is' and 'Ought': A Reply to Mr MacIntyre," *The Philosophical Review*, 70 (1961): p. 235.

² MacIntyre, "Hume on "Is" and "Ought"," p. 465.

³ For a comprehensive criticism of MacIntyre's view on this issue, see Atkinson, "Hume on 'Is' and 'Ought': A Reply to Mr MacIntyre," pp. 232-3.

⁴ MacIntyre, "Hume on "Is" and "Ought"," p. 465.

⁵ *Ibid.*, p. 455.

view, Hume infers “ought” from “is” in case of justice¹ and in other facts as well. The *argumentation* concerning this transition is as follows: if I transgress the rules of justice,² other persons transgress too and in conclusion well-being of every individual and of course mine would be harmed; but I do not want to be harmed; so I ought to obey the rules of justice. In this case, the inference of *ought* statements from *is* statements is clear, but someone can also assert that “it is a perfectly ordinary entailment relying upon the suppressed major premise ‘If it is both the case that if I do *x*, the outcome will be *y*, then if I don’t want *y* to happen, I ought not to do *x*.’”³ This statement is clearly an example of reasoning in a circle. According to MacIntyre, this objection “will certainly make the argument in question an entailment.”⁴ To surmount this difficulty, MacIntyre has recourse to Aristotelian syllogisms. MacIntyre maintains that Aristotle “have a premise which includes some such terms as “suits” or “pleases.” We could give a long list of the concepts which can form such bridge notions between “is” and “ought”: wanting,

¹ “Is Hume making a moral point or is he asserting a causal sociological connection or is he making a logical point? Is he saying that it is logically appropriate to justify the rules of justice in terms of interest or that to observe such rules does as a matter of fact conduce to public interest or that such rules are in fact justified because they conduce to public interest? All three. For Hume is asserting both that the logically appropriate way of justifying the rules of justice is an appeal to public interest and that in fact public interest is served by them so that the rules are justified.” MacIntyre, “Hume on “Is” and “Ought”,” p. 456. John Rawls, however, clearly objects to this reading. It can be seen from his explanation of *Humean* justice which is an artificial virtue. Rawls highlights that moral good or bad is not discerned by induction or deduction: “More specifically, we recognize moral distinctions and have the ability to apply them, not via deductive or inductive or probabilistic arguments, but from an *internal sense*. Moral judgments express a response of our moral sensibility to the awareness of certain facts from a certain point of view.” Rawls, *Lectures on the History of Political Philosophy*, p. 177.

² For *Humean* rules of justice and property see Subsection 4.3.1.

³ MacIntyre, “Hume on “Is” and “Ought”,” p. 462.

⁴ *Ibid.*, p. 462.

needing, desiring, pleasure;¹ but, these concepts are related with passions and sentiments in Humean moral philosophy. Especially pleasure and pain are the principal features² in “moral judgments.” Moral good and evil originate from moral sense which involves particular pains and pleasures. MacIntyre’s suggestion is that these notions are conducive to make the transition from “is” to “ought,” and these notions corresponds to sentiments and passions in Hume’s moral theory. However, David Hume gives a central role to sentiments and passions in the determination of moral sense. Therefore, MacIntyre’s classification of them in the second degree is evidently against the ethical system of Hume. Moral sense via particular pains and pleasures, decides moral distinctions. These notions thus are major characteristics on account of Hume. I think that MacIntyre makes a mistake in the justification of transition of is and ought. Nevertheless, there is another approach in the interpretation of Hume as confirming the change from prescriptive statements to descriptive statements. In this approach, pains and pleasures are taken as facts. Hence, pains and pleasures have a principal function to justify Hume as a supporter of inference from *is* to *ought*: “sensitivity to pain and pleasure and the habit of anticipating the consequences of one’s acts enable Hume to argue from facts to values.”³ With this approach, Humean foundation of morality, which is pain and pleasure, is recognized as facts. Since Hume argues that moral distinctions are derived by moral sense that is formed by particular pains and pleasures, road to values could be seen by virtue of pain and pleasure. For instance, if I am

¹ Ibid., p. 463.

² See *Treatise*, p. 471.

³ Halil Turan, “Does the Is-Ought Issue Suggest a Transcendental Realm?” in *Ethics: The Proceedings of the Twenty-First World Congress of Philosophy*, ed. Stephen Voss and Harun Tepe, vol. 1 (Ankara: Philosophical Society of Turkey, 2007), p. 8.

pleased in helping the poor, this impression produces a moral sense in my heart. Then, I define helping the poor as an ethical act. In this simple example, a change from is-statements to ought-statements can be seen.

Second discourse that will be examined now is the former interpretation of Hume. According to the classical reading, Hume strictly distinguished “is” from “ought.” The phenomenal world and ethical realm are exactly distinct fields, so prescriptive statements cannot be inferred from descriptive statements. That understanding is best expressed by *Hume’s Law*. That is to say, a moral conclusion could not be deduced from factual statements. Followers of this view, read the passage in its special context not in one that comprises the whole book. It is assessed in accordance with the section entitled “Moral Distinctions not deriv’d from Reason.” In this frame Atkinson argues, David Hume “thought that he had disposed of the philosophical systems in the earlier part of the section by showing that virtue and vice consist neither in ‘relations of ideas’ nor in ‘matters of fact’.”¹ Moreover, Hume argues in the last sentence of the famous passage that “the distinction of vice and virtue is not founded merely on the relations of objects, nor is perceiv’d by reason.”² This part of the text also seems to imply categorization of *is* and *ought*. Deduction or inference of ethical judgments from descriptions are not be permitted by Hume. Furthermore, Atkinson refers to the challenge of David Hume to William Wollaston;³ Hume

¹ Atkinson, “Hume on ‘Is’ and ‘Ought’: A Reply to Mr MacIntyre,” pp. 236-7.

² *Treatise*, p. 470.

³ In fact Hume never uses the name of Wollaston, but the editor, Selby-Bigge guesses the source of this claim. This attribution is also accepted by scholars. See, Atkinson, “Hume on ‘Is’ and ‘Ought’: A Reply to Mr MacIntyre,” p. 237; Oliver A. Johnson, “Hume’s Refutation of Wollaston?” *Hume Studies* 12 (1986): p. 194, n.2; John J. Tilley, “Physical Objects and Moral

mentions Wollaston's idea of creating a false conclusion in other people's mind is "the first spring or original source of all immorality."¹ Hume "argues that such an attempt to supply a nonmoral foundation for morality is either circular or invalid."² Hume emphasizes the circularity of Wollaston's argument:

Besides, we may easily observe, that in all those arguments there is an evident reasoning in a circle. A person who takes possession of *another's* goods, and uses them as his *own*, in a manner declares them to be his own; and this falsehood is the source of the immorality of injustice. But is property, or right, or obligation, intelligible, without an antecedent morality?

A man that is ungrateful to his benefactor, in a manner affirms that he never received any favours from him. But in what manner? Is it because 'tis his duty to be grateful? But this supposes, that there is some antecedent rule of duty and morals.³

Then, Hume refuses Wollaston's assertion:

But what may suffice entirely to destroy this whimsical system is, that it leaves us under the same difficulty to give a reason why truth is virtuous and falsehood vicious, as to account for the merit or turpitude of any other action. I shall allow, if you please, that all immorality is derived from this supposed falsehood in action, provided you can give me any plausible reason, why such a falsehood is immoral. If you consider rightly of the matter, you will find yourself in the same difficulty as at the beginning.⁴

Wrongness: Hume on the "Fallacy" in Wollaston's Moral Theory," *Hume Studies*, 35 (2009): p. 87; Joel Feinberg, "Wollaston and his Critics," *Journal of the History of Ideas*, 38 (1977): p. 346.

¹ *Treatise*, p. 461.

² Atkinson, "Hume on 'Is' and 'Ought': A Reply to Mr MacIntyre," p. 237.

³ *Treatise*, p. 461, n.1.

⁴ *Treatise*, p. 461, n.1.

Hume says that “Wollaston's arguments either lack a moral premise and hence are defective, or, if they have a moral premise and so are deductive, that they are circular and fail to supply a (nonmoral) foundation for morality.”¹ According to the classical interpretation, therefore, Hume could not be in a defending position of the possibility of is/ought derivation. He discerns value statements from factual statements. As a result, *Hume's Law* preserves its place.

Lastly, an alternative on account of Hume's controversial passage is offered by Nicholas Capaldi who argues that Hume is misinterpreted by previous scholars, because Hume's usage of *ought* is different from standard interpreters'. Capaldi determines four things about *ought* in the related passage of Hume: “[f]irst, he [Hume] says it is a relation; second, he specifically calls it a new relation; third, he asks that this relation be observed and explained; finally, he asks for an explanation for the deduction of this new relation from ‘others,’”² Capaldi reaches the conclusion that “Hume is rejecting any normative conception of morals.”³ Additionally, the is/ought passage “is not concerned with moral judgments but with moral sentiments.”⁴ This can be seen from the sole problem of the section; “the

¹ Atkinson, “Hume on ‘Is’ and ‘Ought’: A Reply to Mr MacIntyre,” p. 238.

² Nicholas Capaldi, “Hume's Rejection of “Ought” as a Moral Category,” *The Journal of Philosophy*, 63 (1966): p. 127.

³ Capaldi elaborates this point: “The rejection of “ought” has been contextually supported in three ways. (1) Hume clearly identifies “ought” as a *new relation*, and he rejects moral relations in general and new relations in particular. (2) There are *no contexts in which he uses “ought” as a moral category*. (3) The rejection of “ought” is consistent with Hume's epistemology, psychology, and moral theory.” *Ibid.*, p. 134.

⁴ *Ibid.*, p. 135. Concerning the interpretation of is-ought passage José de Sousa e Brito observes that “Hume was not aware of today's usual distinctions in the theory of meaning nor of the different types of ethical theory we are able to recognize. Perhaps, he was not even

attempt to show that moral distinctions or sentiments are perceived not as relations of ideas but as impressions.”¹ Also, conclusions of the famous passage “deal with the analysis of moral distinctions as impressions.”² Meanwhile, according to Capaldi’s understanding, “ought” in Hume does not mean obligation. In view of the fact that passions motivate the will according to Hume, obligations could not be motive for him: “Since nothing can oppose one passion except another passion, it makes no sense for any moral philosophy to command passion to obey any other principle. The passions recognize no ‘ought.’”³ Capaldi’s interpretation is consistent with the Humean theory of passions. If *ought* could be taken in this framework, it is true that it cannot be a distinct moral motivator. As a consequence, the paragraph is not related to deduction of “ought” from “is.”⁴ After attaining this conclusion, Capaldi deciphers implications of this result. He argues that Hume’s denial of “ought” as a distinctive ethical category “stands as an unanswered challenge to the whole tradition of normative ethics.”⁵ Maybe, this is the reason of reactions to David Hume, “our willingness to accept the normative conception of ethics is so deeply embedded that, when someone such as Hume challenges it, we take the challenge as a classic defense.”⁶

mainly interested in these questions.” José de Sousa e Brito, “Hume's Law and Legal Positivism,” (*Filosofía del Derecho y Filosofía de la Cultura, Memoria del X Congreso Mundial ordinario de Filosofía del Derecho y Filosofía Social*, VIII, Mexico, Universidad Nacional Autónoma de Mexico, 1982), p. 253.

¹ Capaldi, “Hume's Rejection of “Ought” as a Moral Category,” p. 135.

² *Ibid.*, p. 135.

³ *Ibid.*, p. 134.

⁴ *Ibid.*, p. 135.

⁵ *Ibid.*, p. 136.

⁶ *Ibid.*, p. 137.

Besides, the passage “is not the foundation of normative ethics but its death warrant.”¹

2.5.1 Implications of the Is-Ought Question in Philosophy of Law

“Is” and “Ought” issue, which is discussed depending on David Hume, resulted in differentiation of legal positivism and natural law theory. Legal positivists argue that deduction of norms and laws from factual statements is illicit. Hence, they interpret the is/ought problem as a distinction. On the other hand, natural law theorists supports that inference of moral judgments from facts is possible and right. Therefore, they read the famous passage in the *Treatise* as a small attention of Hume to point out legitimate deductions of “ought” statements from “is” statements. The traditional interpretation of the passage is stated by Jeremy Bentham:² according to *Hume’s Law*, that is value judgments cannot be inferred from factual statements. Bentham who is “the faithful disciple of Hume”³ carried the distinction to legal philosophy. Jeremy Bentham, “in his *Fragment on Government*, which was inspired by David Hume,”⁴ distinguishes what the law is and what the law ought to be: “To the province of the *Expositor* it belongs to explain to us what, as he supposes, the Law *is*: to that of the *Censor*, to observe to us what he thinks it *ought to be*.”⁵ Bentham classifies *is* and *ought* as distinct categories because

¹ Ibid., p. 137.

² Brito, “Hume's Law and Legal Positivism,” p. 250.

³ Elie Halevy, *The Growth of Philosophic Radicalism*, trans. Mary Morris (London: Faber & Faber, 1928), p. 42.

⁴ Ibid., p. 88.

⁵ Jeremy Bentham, *A Fragment On Government*, eds. J. H. Burns and H. L. A. Hart (Cambridge: Cambridge University Press, 1988), p. 7.

"[l]aw, is, in different countries, widely different: while that which *ought to be*, is in all countries to a great degree the same."¹ Thus, the founder of legal positivism,² Jeremy Bentham applies the is/ought distinction to legal theory. In other words, the categories of "is" and "ought" are "at the very heart of the idea of an "expositive" or positive science of law, that can be sharply separated from ethics or political philosophy. From the best possible law nothing can be deduced about what is the law."³ Consequently, the is/ought question influenced legal positivists in the separation of facts from norms and morals. However, the followers of the natural law tradition interpreted the passage as Hume argued and urged legitimate deduction of values from factual statements. Since, in the natural law theory "there is a close connection between natural law and what man is—human nature. Because natural law contains prescriptions of what ought or ought not to be done."⁴ In spite of the fact that John Finnis' objection⁵ to ascription of derivation of *ought* from *is* to the natural law doctrine, in general scholars attributed inference of norms and values from factual circumstances to the natural law tradition. Whether natural law theory derives values and norms from facts or not, the is/ought question in Hume's *Treatise* inspired legal positivists and natural law theorists in legal philosophy. Now, keeping in mind the

¹ Ibid., p. 8.

² "Jeremy Bentham, whom I take to be the grounding father of legal positivism, acknowledges more than once his great indebtedness to David Hume." Brito, "Hume's Law and Legal Positivism," p. 245.

³ Brito, "Hume's Law and Legal Positivism," p. 246.

⁴ Martin P. Golding, *Philosophy of Law* (Englewood Cliffs, NJ: Prentice-Hall, 1975), pp. 32-3.

⁵ For Finnis' rejection of deduction of "ought" from "is" in the natural law theory see John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), pp. 33-4.

implementation of moral topics to legal fields, let us examine David Hume's philosophy of law.

CHAPTER III

LEGAL PHILOSOPHY OF HUME

3.1 The Role of Law

Since the Code of Hammurabi was legislated law has been one of the most controversial issues in the world. Some utilized them to preserve their hegemony, while others employed laws to gain some privileges dissimilar to public. Maybe, some people really wished to enact laws by humanitarian manners, but others degenerated with depraved and dreadful actions. When we come to modern times, there is a strong *rule of law* discourse with the force of revolutions. In the Anglo-Saxon Tradition we meet David Hume who is asserting the significance of laws. The aim of this section is to understand the role of laws in the legal and political philosophy of Hume. In the first part, I will focus on the following problems: what the nature of laws is, what properties they need to, how laws will be legislated, what origin they come from, and what prevents making wise laws. Then, I will concentrate on the two central questions, which are: what are the purposes of the laws, and what are the codes they bring to the society? Before we can begin exploring the idea of law, we need to skim Hume's England and need to regard his personal capabilities, inclinations, and methodology.

First of all, we have to recall that David Hume is a representative of empiricism. He constitutes political maxims from past occurrences. Throughout his political essays, we can quite easily feel the impact of history.

For instance, one of his famous books, *The History of England*,¹ which consists of six volumes, demonstrates the influence of history on Hume. It is apparent from Hume's historical works and empiricist viewpoint that history is the key point to perceive the nature of laws. This is why Hume is called as a "great historian." Thus, it is not unusual to see Hume referring to history from Xenophon to Hannibal or from Turkish Sultans to Venetians. While exposing good laws, we should expect him to give examples from Ancient Greece to the House of Hanover. This is also the reason of his Tory traditionalism; he definitely borrows ideas from the Tories.² Moreover, diplomatic duties of David Hume provided him with the experience for analyzing political and legal issues. Then, Hume was charged as the secretary to the British ambassador in Paris.³ Of course during his duty in Paris, Hume experienced French republic closely. After that job, he performed in various governmental duties in ministries. On the other hand, it should be kept in mind that Hume lives in the Enlightenment Age. Hume's point of view maintains the ideas of Enlightenment; he is an Enlightenment philosopher. This is evident from the fact that his book, *The History of England*, ends with the Revolution of 1688 which is called the Great Revolution. It can be admitted that the Revolution of 1688 initiated modern English parliamentary democracy; never again would the monarch hold absolute power, and the Bill of Rights became one of the most important documents in the political history of Britain. Hume advocates this administration because of limiting the monarch and assisting liberty: "the reason, why the laws indulge us in such a liberty seems to be derived from

¹ David Hume, *The History of England: From the Invasion of Julius Caesar to the Revolution in 1688*, Foreword by William B. Todd, 6 vols. (Indianapolis, Ind.: Liberty Classics, 1983).

² Knud Haakonssen, "Introduction" to *Political Essays*, by David Hume (Cambridge: Cambridge University Press, 1994), p. xiv.

³ Most probably, friendship of David Hume with Rousseau started in this period.

our mixed form of government, which is neither wholly monarchical, nor wholly republican.”¹ By this way, polity of England emerges roughly; a complex of House of Commons, House of Lords, monarch, and constitution. Now, we can construe the spirit of the laws in these circumstances.

3.1.1 Nature of Laws

In this part, we will investigate the nature of laws, namely preferences of laws, source of laws, legislation of laws, obstacles before the laws, and the ideal law system according to David Hume. To begin with, Hume answers the question ‘What is a good law?’ in the essay of “That Politics May Be Reduced To A Science,” but before following this question we have to note that Hume does not trust human nature in politics. Furthermore, Hume argues that humans have an ill-nature when it comes to politics, especially when they have authority and power: “[g]ood laws may beget order and moderation in the government, where the manners and customs have instilled little humanity or justice into the tempers of men.”² Thus, laws should not be bound to the characters of the individuals. The distinction between law and humans is so obvious that Hume asserts this fact in the certainty of a “mathematical science.”³ Hence, laws have to be enacted strictly and harshly in order to hinder men’s role and disposition. Next, Hume suggests defining the boundaries of laws: “one extreme produces another. In the same manner as excessive severity in the laws is apt to beget great relaxation in their execution; so their excessive lenity naturally produces

¹ David Hume, “Of the Liberty of the Press,” in *Political Essays*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 1994), p. 1.

² David Hume, “That Politics may be Reduced to a Science,” in *Political Essays*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 1994) p. 11.

³ *Ibid.*, p. 5.

cruelty and barbarity.”¹ Consequently, law makers have to legislate to make rigid and certain laws, which do not vary from person-to-person. However, trying to make precise and valid laws for everyone lead to the question of universalism:

All general laws are attended with inconveniencies, when applied to particular cases; and it requires great penetration and experience, both to perceive that these inconveniencies are fewer than what result from full discretionary powers in every magistrate; and also to discern what general laws are, upon the whole, attended with fewest inconveniencies.²

Hume emphasizes two points in this passage. One is difficulty in the execution of general laws to specific cases; the other concerns difficulties due to unrestricted powers of the magistrates. Then first, general laws³ attained from particular cases cause several problems, nevertheless Hume prefers these troubles rather than troubles occurring from leaders’ subjective and arbitrary decisions. McArthur underlines this choice of Hume “it also requires ensuring that these [general] laws are applied universally and uniformly, rather than at the discretion of judges.”⁴ Second point that is indicated by Hume is generalizing, which gives rise to a problematic issue.

¹ David Hume, “Of the Populousness of Ancient Nations,” in *Essays: Moral, Political, & Literary*, ed. Eugene F. Miller, revised ed. (Indianapolis, Ind.: Liberty Fund., 1987), p. 415.

² David Hume, “Of the Rise and Progress of the Arts and Sciences,” in *Political Essays*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 1994) p. 61.

³ McArthur describes four aspects of *general laws*: “1. They apply to everyone, including the magistrates themselves. 2. They are rigid in their execution—dictating uniform treatment of offences, and ensuring officials carry out their duties in the prescribed fashion. 3. They are clear and determinate in their application. 4. They are known to the public in advance.” Neil McArthur, “David Hume’s Legal Theory: The Significance of General Laws,” *History of European Ideas* 30 (2004): p. 157.

⁴ Neil McArthur, *David Hume’s Political Theory: Law, Commerce, and the Constitution of Government* (Toronto: University of Toronto Press, 2007), p. 48.

There are various kinds of individuals and cases. Similar to his famous idea, sun rises everyday, but can we generalize and infer that sun will rise tomorrow?¹ We are inclined to infer rules from the past occurrences, but can we be sure that the sun will rise tomorrow? It could be excused that induction is a common way in daily lives. Hume says that “[l]aws, order, police, discipline; these can never be carried to any degree of perfection, before human reason has refined itself by exercise.”² Therefore, the only solution appears to be having more experience. It is apparent that empiricist viewpoint of David Hume reveals itself here obviously. So, the remedy of perfect laws is examining new cases and solutions. Hume claims that, “...frequent trials and diligent observation can alone direct their improvements.”³ In the *Political Essays*, Hume puts this as follows:

To balance a large state or society, whether monarchical or republican, on *general laws*, is a work of so great difficulty, that no human genius, however comprehensive, is able, by the mere dint of reason and reflection, to effect it. The judgments of many must unite in this work: Experience must guide their labour: Time must bring it to perfection: And the *feeling of inconveniencies* must correct the mistakes, which they inevitably fall into, in their first trials and experiments.⁴

Hume uses the expression “feeling of inconveniences” in a peculiar manner. He points out to *feeling* in the designation of general laws. Hume also mentions the significance of taste in *An Enquiry Concerning the Principles of Morals*:

¹ First *Enquiry*, p. 29.

² David Hume, “Of Refinement in the Arts,” in *Political Essays*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 1994), p. 109.

³ Hume, “Of the Rise and Progress of the Arts and Sciences,” pp. 61-2.

⁴ *Ibid.*, pp. 67-8 (emphasis added).

In general, it may safely be affirmed, that jurisprudence is, in this respect, different from all the sciences; and that in many of its nicer questions, there cannot properly be said to be truth or falsehood on either side. If one pleader bring the case under any former law or precedent, by a refined analogy or comparison; the opposite pleader is not at a loss to find an opposite analogy or comparison: And the preference given by the judge is often founded more on *taste* and imagination than on any solid argument.¹

Here, Hume states that the judge decides on cases depending on his taste and imagination rather than rationality. He confirms that jurisprudence, in the last instance, is not determined by reasoning. If jurisprudence is replaced by ethics, the similarity between Hume's legal theory and moral theory can clearly be seen. As discussed in the former chapter of the thesis, Hume argues that "*moral distinctions [are] not deriv'd from reason*"² and here in the second *Enquiry* he declares that *distinctions of jurisprudence are not derived from reason*. Therefore, law and morality is coherent in the philosophy of Hume. This conclusion could be inferred from "feeling of inconveniences" as well. Again in Hume's ethics: "[m]orality, therefore, is more properly *felt* than judg'd of."³ In the *Political Essays*, he says that the inconveniences of general laws are felt by the magistrates and judges.⁴ This analysis shows that Hume's moral philosophy coheres with his legal philosophy.

¹ Second *Enquiry*, p. 99 (italics mine).

² *Treatise*, p. 455.

³ *Treatise*, p. 470 (emphasis mine).

⁴ Neil McArthur confirms this resemblance too: "It is interesting to note that, in the above quote, he says that the "laws" inconveniences are "felt." This suggests a parallel to moral and aesthetic response" McArthur, "David Hume's Legal Theory," p. 163.

On the other hand, if experience is considered as the *source of law*, it is also true that if a law that does not stem from experience, namely spontaneous promises cannot be a foundation for a lawful government. From the point of view of Hume, “[t]he doctrine, which founds all lawful government on an *original contract*, or consent of the people, is plainly of this kind.”¹ According to Hume, the basis of law could not be the original contract, in contrast to what major contractarian philosophers think. Additionally, in the essay entitled “Idea of a Perfect Commonwealth,” Hume imagines and gives course of actions through an ideal state: “[e]very new law must first be debated in the senate; and though rejected by it, if ten senators insist and protest, it must be sent down to the counties.”² Moreover, according to Hume, there should be a council of laws in order to control and ensure laws. The council of laws, “inspects all the abuses of law by the inferior magistrates, and examines what improvements may be made of the municipal law.”³ Then, Hume acknowledges the best law system he ever knows thanks to Lord Shaftesbury:

A wheel within a wheel, such as we observe in the German empire ... as an absurdity in politics: But what must we say to two equal wheels, which govern the same political machine, without any mutual check, controul, or subordination; and yet preserve the greatest harmony and concord? To establish two distinct legislatures, each of which possesses full and absolute authority within itself, and stands in no need of the other's assistance, in order to give validity to its acts; this may appear, before-hand, altogether impracticable, as long as men are actuated by the passions of ambition, emulation, and avarice, which have hitherto been their chief governing principles. And should I assert, that the state I have in my eye was divided into two distinct factions, each of which

¹ David Hume, “Of the Original Contract,” in *Political Essays*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 1994), p. 200.

² *Ibid.*, p. 224.

³ David Hume, “Idea of a Perfect Commonwealth,” in *Political Essays*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 1994), p. 225.

predominated in a distinct legislature, and yet produced no clashing in these independent powers; the supposition may appear incredible. And if, to augment the paradox, I should affirm, that this disjointed, irregular government, was the most active, triumphant, and illustrious commonwealth, that ever yet appeared.¹

In addition, this ideal legislation is administered by the House of Hanover, which also governed Great Britain until the Victorian Era. Hume adds that the house of Hanover “have, since their accession, displayed, in all their actions, the utmost mildness, equity, and regard to the laws and constitution.”² Then, thanks to the exemplar of the house of Hanover, Hume goes one step further and suggests “division of legislation,” he does not mean only “division of power.” The best system of laws stems from separation of legislation. With a typical *Humean* approach, demonstration of this argument underlies historical evidences: “But there is no need for searching long, in order to prove the reality of the foregoing suppositions: For this was actually the case with the Roman republic.”³ Lastly, there are some drawbacks in order to settle this perfect system, which are due to sects, factions, and demagogues. Leading barriers in front of laws are sects and factions: “the founders of sects and factions to be detested and hated; because the influence of faction is directly contrary to that of laws. Factions subvert government, render laws impotent.”⁴ Another handicap of codes is due to demagogues as can be easily seen in Ancient Greece. By their influence, same law could be

¹ David Hume, “Of Some Remarkable Customs,” in *Political Essays*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 1994), p. 182.

² David Hume, “Of the Protestant Succession,” in *Political Essays*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 1994), p. 220.

³ Hume, “Of Some Remarkable Customs,” p. 182.

⁴ David Hume, “Of Parties in General,” in *Political Essays*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 1994), pp. 33-4.

accepted and rejected in different times, they “on the establishment of any law esteemed very useful or popular ... prohibit for ever its abrogation and repeal. Thus the demagogue [diverts] all the public revenues to the support of shows and spectacles.”¹ If, laws are not defined initially, judges can be in a difficulty; “during the flourishing period of *Greek* and *Roman* learning, the municipal laws, in every state, were but few and simple, and the decision of causes, was, in a great measure, left to the equity and common sense of the judges.”² Laws have to be determined without leaving the choice to the demagogues, and lawyers. Eventually acts should be defended from demagogues and parties to guarantee legality of society and state.

3.1.2 Laws and Virtues

Armed with this account of nature of laws, we can now turn to the central significance of laws in the politics. To explain this role we have to find the answer to the question “what is the mission of laws in politics?” To follow this inquiry, we should remember that, David Hume values law as a limiter for magistrate’s arbitrary, uncertain, infinite, and oppressive power. Then, people would be happy, secured, free, just, and virtuous persons, but all of these can be made possible by the limitation of political power. The limitation of political authority is not sufficient by itself; all individuals have to be restricted by virtue of inflexible laws.³ Also, laws function as a remedy

¹ Hume, “Of Some Remarkable Customs,” p. 181.

² David Hume, “Of Eloquence,” in *Essays: Moral, Political, & Literary*, ed. Eugene F. Miller, revised ed. (Indianapolis, Ind.: Liberty Fund., 1987), p. 102.

³ Hume, “That Politics may be Reduced to a Science,” p. 14.

against authority's unstable behaviours.¹ Commons could be secured from authoritarian governments in this way; otherwise every action can be expected from men who have absolute power. Therefore, laws provide balance of power between governors and public, because "the monarch is ignorant and uninstructed; and not having knowledge sufficient to make him sensible of the necessity of balancing his government upon general laws, he delegates his full power to all inferior magistrates."² In this sense, Hume maintains codes exactly in contrast to authority in the art of government.³ Indeed, "authority, in times of full internal peace and concord, is armed against law."⁴ So, power ought to be constrained thanks to the law, because, "the law always limits every power which it bestows, the very receiving it as a concession establishes the authority whence it is derived, and preserves the harmony of the constitution."⁵ In other words, laws function as a guarantor in spite of authority. Accordingly, discretionary powers have to be controlled by rules, and acts. Hume states that "a power, however great, when granted by law to an eminent magistrate, is not so dangerous to liberty, as an authority."⁶ This means that, Hume argues that law is a decision maker for the legitimacy

¹ David Hume, "Whether the British Government Inclines More to Absolute Monarchy, or to a Republic," in *Political Essays*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 1994), p. 30.

² Hume, "Of the Rise and Progress of the Arts and Sciences," p. 62.

³ Neil McArthur maintains that Hume foresees the law as autonomous: "For a state to be truly civilized, according to Hume, the government, and its laws, must be self-supporting and self-perpetuating. This means that a civilized monarchy is *not* simply a state ruled by a wise and equitable monarch. On the contrary, its legal system must not depend for its execution on the abilities or intentions of the sovereign." McArthur, *David Hume's Political Theory*, p. 68.

⁴ Hume, "Of Some Remarkable Customs," p. 185.

⁵ *Ibid.*, p. 184.

⁶ *Ibid.*, p. 184.

of sovereign. Law has a privilege to define whether a government is right or wrong. Consequently “any monarch; but who, in the usual course of administration, must act by general and equal laws that are previously known to all the members and to all their subjects.”¹ By this means, laws of nations hinder the dictators and usurpers rule of power, because they assume to bring justice into society by violence. Yet, codes disable despotic methods. Roots of this idea reach to the Roman Empire; it is substantiated by Romans as well:

The Roman Consuls, for some time, decided all causes, without being confined by any positive statutes, till the people, bearing this yoke with impatience, created the *decemvirs*, who promulgated the *twelve tables*; a body of laws, which, though, perhaps, they were not equal in bulk to one English act of parliament, were almost the only written rules, which regulated property and punishment, for some ages, in that famous republic. They were, however, sufficient, together with the forms of a free government, to secure the lives and properties of the citizens, to exempt one man from the dominion of another; and to protect every one against the violence or tyranny of his fellow-citizens. In such a situation the sciences may raise their heads and flourish: But never can have being amidst such a scene of oppression and slavery, as always results from barbarous monarchies, where the people alone are restrained by the authority of the magistrates, and the magistrates are not restrained by any law or statute. An unlimited despotism of this nature, while it exists, effectually puts a stop to all improvements, and keeps men from attaining that knowledge, which is requisite to instruct them in the advantages, arising from a better police, and more moderate authority.²

¹ David Hume, “Of the Origin of Government,” in *Political Essays*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 1994), p. 23. Even though here Hume asserts that the monarch ought to be restrained by general laws, in another essay he mentions that the sovereign is exempt from laws: “[i]n a civilized monarchy, the prince alone is unrestrained in the exercise of his authority, and possesses alone a power, which is not bounded by any thing but custom, example, and the sense of his own interest.” *Ibid.*, p. 69. As a result, Neil McArthur observes righteously that “Hume fails to spell out clearly what uniquely distinguishes monarchs” from tyrants. McArthur, *David Hume’s Political Theory*, p. 53.

² Hume, “Of the Rise and Progress of the Arts and Sciences,” p. 63.

It can be seen that for Hume laws precede arts and sciences. Firstly, requirements such as security and liberty have to be satisfied, and then a suitable environment for arts and sciences will be created. On the other hand, we realize that laws also protect the lives and properties of citizens, because “public utility is the general object of all courts of judicature.”¹ A court of justice has to oversee interests of the society. Hume recommends another point in one of the most illuminating passages about the benefits of law: “From *law* arises *security*: From *security* *curiosity*: And from *curiosity* *knowledge*.”² In a different approach, he attaches these three factors to arts and sciences, thereby in a mediated way arts and sciences result from law.³ Otherwise, one has to wait for advancements in arts and sciences in autocratic regimes. Unfortunately, since the beginning of the history, when monarchs or tyrants establish despotic governments, advances in art and science diminish seriously. The reason why David Hume claimed, “law [is] the source of all security and happiness”⁴ is more comprehensible now. The famous Roman author Cicero was quoted by Hume about the relation between law and security: “*Salus populi suprema Lex*, the safety of the people is the supreme law.”⁵ In that case, “a system of laws and institutions to secure the peace, happiness, and liberty of future generations”⁶ would be arranged for the continuity of mankind. Furthermore, Hume suggests a system of laws as the

¹ Second *Enquiry*, p. 99.

² Hume, “Of the Rise and Progress of the Arts and Sciences,” p. 63 (italics mine).

³ *Ibid.*, p. 63.

⁴ *Ibid.*, p. 68.

⁵ David Hume, “Of Passive Obedience,” in *Political Essays*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 1994), p. 202.

⁶ Hume, “Of Parties in General,” p. 33.

best inheritance to the descendants, “effects will always correspond to causes; and wise regulations in any commonwealth are the most valuable legacy that can be left to future ages.”¹ Another concept developing from laws, according to Hume, is the republican system; “laws, and methods, and institutions, and consequently its stability and order, from free governments. These advantages are the sole growth of republics.”² On this view, Hume accepts Harrington’s viewpoint in contrast to Hobbes, because Harrington embraces the idea that, “*a government of Laws, not of Men*”³ would establish the order. To this end, laws are the foundation of government against humans, monarchs, magistrates, or to whomever with authority.

I examined David Hume’s conception of laws, to understand the characteristics, purpose, and place of them in his political and legal philosophy. Firstly, Hume emphasizes the unreliable nature of men when they are left free in the highest ranks. People, administrators, kings have to be controlled to ensure order and peace by means of solid and disciplinary rules. Although general and universal laws involve lots of imperfections, lawgivers should enact general laws. Nevertheless, since the source of law is in experience, the solution is observing cases and enacting better codes. In this approach, Hume finds the best legislation in the House of Hanover in the seventeenth-century similar to Rome. Hence, the ideal legislation necessitates division of it and with two independent institutions; undoubtedly this system

¹ Hume, “That Politics may be Reduced to a Science,” p. 11.

² Hume, “Of the Rise and Progress of the Arts and Sciences,” p. 68.

³ David Hume, “Of Civil Liberty,” in *Political Essays*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 1994), p. 56. However, Neil McArthur points out the role of monarchy in the administration: “Hume means not merely, as his readers often assume, that it is a government subject to the rule of law. He is also telling us that such a monarchy governs entirely by means of law-making.” McArthur, *David Hume’s Political Theory*, p. 55.

supports division of power too. Laws have to overcome troubles of some groups, agitators, judges. Secondly, in this section I tried to indicate the functions of laws, and tried to show advantages gained by the law such as freedom, safety, eudemonia, arts and sciences. Before these advantages are founded, general laws ought to resist extravagant forces of the sovereign. In fact, according to Hume, the significant role of law in politics is to limit absolute and arbitrary powers. In this way, a liberal and secure life can be possible with virtuous citizens. Hume eloquently describes the liveliest benefits of law: *Law prepares security, and security generates curiosity, and curiosity proceeds knowledge*. In another context, he relates these merits with *arts and sciences* and at last with *happiness*. So, all of these values can be possible in a free government, whose power is restricted thanks to the acts. In an overwhelming administration, none of these virtues could flourish. Virtues, and in general morals can develop only in a liberal, lawful environment. Moreover, sustainability of humanity is dependent on the codes as well. Finally, law is the essence of government; politics without law would be in vain. Therefore, general laws constitute a milestone in the legal and political thought of David Hume. Law functions to protect the public against governors. In other words, law has a critical role in the balance of power between officers who have authority and the folk who obeys.

3.2 The Place of Hume in Legal Theory

It is evident that Hume's position is discussed mostly in political and moral philosophy, but his place in the history of legal theory led to a debate as well. In legal philosophy, there can be seen three choices for Hume's standpoint. David Hume is assigned to legal realism, legal positivism, and natural law theory, but Haakonssen advocates that Hume soundly disapproved of legal

positivism.¹ Haakonssen says that “Hume avoids the pitfalls of legal positivism, and keeps the options open for some kind of ‘natural law’, or ‘basic law’, standing above all positive law.”² Recently, there are numerous scholars that interpret Hume as engaged in the natural law tradition³ against legal positivism, yet they seem to argue that Hume has a modernising natural law theory. In other words, Hume rejects traditional natural law theory, but approves and improves a contemporary natural law theory. Knud Haakonssen adds that Hume transforms traditional natural law theory to a “secular and empirical conception of fundamental law, which makes it truly ‘natural’ in the sense that it can be accounted for within his science of human nature and thus be accounted a full member of his Newtonian universe.”⁴ In addition to that Stephen Buckle acknowledges that Hume’s “theory [is] a contribution to the modern theory of natural law.”⁵ Likewise, Buckle comments favourably on David Hume’s objective: “Hume’s aim is not to replace natural law, but to complete it, by calling on the powerful resources

¹ Knud Haakonssen, *The Science of a Legislator: The Natural Jurisprudence of David Hume and Adam Smith* (Cambridge: Cambridge University Press, 1989), p. 1.

² *Ibid.*, p. 20.

³ However, there is an exception in placing Hume in the natural law doctrine; John Rawls distinguishes Hume from John Locke whom characterized with natural law tradition: “[O]n Locke’s account, a system of property would appear to be derivative from the fundamental law of nature, and it would include certain rights to property which would have to be respected in certain ways. This is, as I have said, a normative account. One is working within a kind of system of natural law, with all its overtones. Whereas on Hume’s view, any system of rights is just going to be a system of *institutional rules* that will be recognized in society and acted upon because of certain psychological forces that he has attempted to explain.” Rawls, *Lectures on the History of Political Philosophy*, pp. 183-4.

⁴ *Ibid.*, p. 21.

⁵ Stephen Buckle, *Natural Law and the Theory of Property: Grotius to Hume* (Oxford: Clarendon Press, 1991), p. 295.

of the new experimental philosophy.”¹ H. L. A. Hart supports this reading and stresses that Hume “gives empirical good sense to the terminology of Natural Law.”² Tom L. Beauchamp unanimously endorses influence of the natural law theory on David Hume by referring to its theorists: “he appears to assume some aspect of natural law theory. Most likely to have influenced his thought are Dutch jurist and states-man Hugo Grotius and German jurist and historian Samuel Pufendorf.”³ Besides, Buckle claims that Hume’s theory of justice is a demonstration of his relation with natural law doctrine: “[i]n other respects his account of justice conforms with the main aims of the seventeenth-century natural law theories.”⁴ Another scholar, Graefrath also sees Hume in the natural law tradition but with some difference, he highlights anti-rationalistic attitude of Hume; “if Hume’s moral and legal philosophy is to be classified at all, it is best characterized as a secular, non-rationalist natural law theory.”⁵ This interpretation permits Hume’s resemblance with natural law doctrine and reserves his anti-rationalism and secularism. Finally, Charles E. Cottle differentiates David Hume from legal positivism and natural law doctrine and locates Hume in legal realism. Cottle grounds his analysis depending on Hume’s factual basis in the legal verdicts, repudiation of logical deductions, and obedience to inflexible rules in judicial

¹ Ibid., p. 298.

² H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), p. 187.

³ Tom L. Beauchamp, introduction to second *Enquiry*, p. xix.

⁴ Stephen Buckle, *Natural Law and the Theory of Property*, pp. 295-6.

⁵ Bernd Graefrath, “Hume’s Metaethical Cognitivism and the Natural Law Theory,” *The Journal of Value Inquiry* 25 (1991): p. 77.

judgments.¹ Additionally, Cottle claims that “Hume anticipated the “realistic” position by some two-hundred years.”² Anyway, it is certain that Hume “deserves greater credit as a legal thinker than he has so far received.”³

¹ “While Hume's approach to the study of justice shares similarities with a number of theorists interested in the sociology of law, his emphasis on the acquisition of facts for adequate judicial decisions, his arguments showing the fallacies of decision by logical deduction, and his warnings against any strict adherence to fixed principles and general rules in judicial decisions make him a forerunner of American legal “realists” such as Justice Holmes, Jerome N. Frank, and John Dewey.” Charles E Cottle, “Justice as Artificial Virtue in Hume's Treatise,” *Journal of the History of Ideas* 40 (1979): p. 466.

² *Ibid.*, p. 466. Moreover, Cottle contends that “[i]n his theory of knowledge, he had no profound respect for any conclusions reached by deduction. In morals he displaced knowledge reached by deduction with a knowledge based on an understanding of probability and causality, that is, a knowledge of matters of fact. This transition influenced every aspect of his social and political philosophy.” *Ibid.*, p. 466.

³ McArthur, “David Hume’s Legal Theory,” p. 166.

CHAPTER IV

HUME'S CONCEPTION OF JUSTICE

4.1 Justice and Morality

Since the writing style of David Hume is not analogous to analytical, academic, and formalistic techniques of contemporary scholars, understanding his theses is a challenging work. Perhaps, this is the fundamental reason of debates on his ideas related with epistemology, ethics, politics, and religion. The notion of justice is a typical indicator of this ambiguity in the philosophy of Hume. In particular, the problem is whether justice is a moral issue or not. Some scholars claim that in Hume's conception justice is not morally autonomous when ethics is considered, i.e. justice is a prudential issue. Others maintain that obeying the rules of justice¹ is a moral subject. On the other hand, there is one more viewpoint that defends the conception of justice in Hume's thought both as a moral issue and a prudential issue. That is to say, the problematic is not concerned with ethics in small communities, and as the population increases justice becomes an object of morality. Hume examines genealogy of justice in Book III of the *Treatise*. He starts his investigation with the question: "*Why [do] we annex the idea of virtue to justice, and of vice to injustice.*"² Hume inspects the source of justice in a hypothetical condition which is similar to the conception of state of nature:

¹ For *Humean* rules of justice or laws of justice see Subsection 4.3.1.

² *Treatise*, p. 498.

After men have found by experience, that their selfishness and confin'd generosity, acting at their liberty, totally incapacitate them for society; and at the same time have observ'd, that society is necessary to the satisfaction of those very passions, they are naturally induc'd to lay themselves under the restraint of such rules, as may render their commerce more safe and commodious. To the imposition then, and observance of these rules, both in general, and in every particular instance, they are at first induc'd only by a regard to interest; and this motive, on the first formation of society, is sufficiently strong and forcible. But when society has become numerous, and has encreas'd to a tribe or nation, this interest is more remote; nor do men so readily perceive, that disorder and confusion follow upon every breach of these rules, as in a more narrow and contracted society. But tho' in our own actions we may frequently lose sight of that interest, which we have in maintaining order, and may follow a lesser and more present interest, we never fail to observe the prejudice we receive, either mediately or immediately, from the injustice of others; as not being in that case either blinded by passion, or byass'd by any contrary temptation. Nay when the injustice is so distant from us, as no way to affect our interest, it still displeases us; because we consider it as prejudicial to human society, and pernicious to every one that approaches the person guilty of it.¹

In the first stage of society, in a small community, a merchant is not recognized as honest when he is not loyal to his promises, because if he were not, he could not do business with other individuals. However, in a country or a nation state, cheaters can easily find new customers. They can sustain their interests in the short term, but in the long term knaves would fail. This "natural myopia"² puts obstacles in the way of private and public interest. Thus, interest is not sufficient to motivate just actions in large societies.³

¹ *Treatise*, pp. 498-9.

² Mark E Yellin, "Indirect Utility, Justice, and Equality in the Political Thought of David Hume," *Critical Review*, 14/4 (2000): p. 378.

³ Of course, in our global world motivating persons to be just is much more difficult. Certainly, global justice need better justifications to be reached, because one cannot mention a society of nations. With the help of communication across the world, borders are very loose now. There should be a system of ethics for individuals in a cosmopolitan world.

Humean sympathy takes the role again; by virtue of sympathy the road to morality is prepared in the case of justice. People communicate their feelings thanks to sympathy, so no one can remain insensitive to injustice. David Hume explicates source of the morality of just actions in the level of state:

We partake of their uneasiness by *sympathy*; and as every thing, which gives uneasiness in human actions, upon the general survey, is call'd Vice, and whatever produces satisfaction, in the same manner, is denominated Virtue; this is the reason why the sense of moral good and evil follows upon justice and injustice. And though this sense, in the present case, be deriv'd only from contemplating the actions of others, yet we fail not to extend it even to our own actions. The *general rule* reaches beyond those instances, from which it arose; while at the same time we naturally *sympathize* with others in the sentiments they entertain of us. *Thus self-interest is the original motive to the establishment of justice: but a sympathy with public interest is the source of the moral approbation, which attends that virtue.*¹

For this reason, the status of virtue is assigned to justice and vice to injustice. Approval of public interest by sympathy is the starting place of justice in the moral arena. Injustice is destructive to public interest. It is harmful to interests of human beings indirectly. Therefore, the moral basis of justice is clear. Hume asserts that since justice is beneficial to humanity, the notion turns out to be an ethical virtue: "no virtue is more esteemed than justice, and no vice more detested than injustice; nor are there any qualities, which go farther to the fixing the character, either as amiable or odious."² Hence, for Hume, justice grounds itself on public interest with the support of sympathy. In this way, people obey the laws of justice even if they do not have direct interests. Next, Hume relates sympathy to the public good. Moral approbation of justice and disapproval of injustice is possible in this approach:

¹ *Treatise*, pp. 499-500.

² *Treatise*, p. 577.

[S]ince there is a very strong sentiment of morals, which in all nations, and all ages, has attended them, we must allow, that the reflecting on the tendency of characters and mental qualities, is sufficient to give us the sentiments of approbation and blame. Now as the means to an end can only be agreeable, where the end is agreeable; and as the good of society, where our own interest is not concern'd, or that of our friends, pleases only by sympathy: It follows, that sympathy is the source of the esteem, which we pay to all the artificial virtues.¹

Hence, the artificial virtue² justice is possible thanks to the Humean *sympathy*. Thus, the conception of justice is obviously in accordance with Hume's moral thought. Moreover, it can be said that "[u]nlike many contemporary political theorists, David Hume sought to ground his political philosophy on epistemological and moral foundations."³ Likewise, Deleuze's reading of Hume locates his conception of justice under ethics as well: "[u]nder the name of belief, we have a practise of the understanding, and under the form of social organization and justice, a theory of morality."⁴ Knud Haakonssen too identifies *Humean* principles of justice with his normative rules: "the basic rules of justice pertaining to property and contract come to be accepted as moral rules."⁵ Gauthier also confirms the relation of justice and morality in

¹ *Treatise*, p. 577.

² In section 4.3 artificial character of justice is going to be explained.

³ Jeffrey Church, "Selfish and Moral Politics: David Hume on Stability and Cohesion in the Modern State," *The Journal of Politics*, 69/1 (2007): p. 169.

⁴ Gilles Deleuze, *Empiricism and Subjectivity: An Essay on Hume's Theory of Human Nature*, trans. Constantin V. Boundas (New York: Columbia University Press, 1991), p. 32.

⁵ Haakonssen, "The Structure of Hume's Political Theory," pp. 190-1. Furthermore, Knud Haakonssen argues that David Hume was influenced from the eighteenth-century moral thought which is highly theological and teleological; see *ibid.*, pp. 190-1.

Hume's ethical and political thought.¹ Krause formulates this idea as follows: "[w]hen we contemplate justice through the lens of sympathy, the moral sentiment of approbation arises in us."²

To understand Hume's position on the relation of justice and ethics clearly, it is helpful to describe first period³ with the role of prudence and second stage, namely large society, with morals. In a small society, justice is more related with prudence because interest of the individuals is present, and they can see their interests. If they do not abide by the laws of justice and work together, they would instantly face the consequences. For instance:

Two neighbours may agree to drain a meadow, which they possess in common; because 'tis easy for them to know each others mind; and each must perceive, that the immediate consequence of his failing in his part, is the abandoning the whole project.⁴

Neighbours accordingly comply with the rules that manage society. When the population is low, "prudence will be a sufficient motive to induce proper co-operation. In the case of a collective good such as national defense, which

¹ "Arrangements may be expected to be useful to each person; therefore they are just. These arrangements may also be expected to have beneficial consequences; therefore they receive moral approval, and justice is a virtue." David Gauthier, "David Hume, Contractarian," *The Philosophical Review*, 88/1 (1979): p. 18.

² Sharon R. Krause, "Hume and the (False) Luster of Justice," *Political Theory*, 32/5 (2004): p. 641. Krause elaborates his understanding of Hume's view of justice with emphasizing public interest: "[s]ympathy takes us beyond self-interest by communicating to us the pleasures and pains of others, thereby engaging our interest in broader concerns and ultimately in the common good." *Ibid.*, p. 641.

³ The small community is examined in the beginning of this section.

⁴ *Treatise*, p. 538.

affects the whole nation, prudence alone is not sufficient.”¹ So we need *sympathy* in large societies to realize and reinforce the rules of justice. As a result of this factual and historical experience, i.e., transition to a large society, just persons pass “from a narrow prudential perspective, that gave us a natural obligation to adjust our passions and concur in a scheme of conduct, to a moral point of view.”² For this reason, it is evident that principles of justice are constitute an ethical matter in nation states or in the global world. In the *Political Essays*, Hume reckons justice among moral duties:

The *second* kind of moral duties are such as are not supported by any original instinct of nature, but are performed entirely from a sense of obligation, when we consider the necessities of human society, and the impossibility of supporting it, if these duties were neglected. It is thus *justice* or regard to the property of others, *fidelity* or the observance of promises, become obligatory, and acquire an authority over mankind.³

Unlike other passages of Hume, in this part of the essay he highlights justice as a moral duty and obligation. Knud Haakonssen interprets justice in line with duty and obligation as well.⁴ In the conclusion of the *Treatise*, David

¹ Nuyen, “Hume’s Justice as a Collective Good,” p. 51. Nuyen expands the relation of prudence and morals in terms of justice: “An individual does not see that his or her refusal to pay will undermine national security. A free rider believes that not too many people have the same idea. Prudence, therefore, tends to induce us to take a free ride. If we do pay our fair share in this case, the motive that induces us to do so is not prudence, but something like the sense of fairness based on the realisation that by not paying we are hurting others who are willing to pay. It is a sense of fair play based on an empathy we have for others.” *Ibid.*, pp. 51-2.

² Jacqueline Taylor, “Justice and the Foundations of Social Morality in Hume’s *Treatise*,” *Hume Studies*, 24/1 (1998): p. 20.

³ Hume, “Of the Original Contract,” p. 196.

⁴ “In a social group where just behaviour is generally approved as good because it produces social utility, people who in a particular case lack any motive for justice ... will tend to have a motive supplied. Because everyone generally approves of just behaviour as if it sprang from a separate laudable motive, people lacking such a motive will feel morally deficient as compared with their surroundings and will come to disapprove of or hate themselves on

Hume, however, stresses sympathy with public interest in the source of the morality of justice again:

We may observe, that all the circumstances requisite for its [sympathy's] operation are found in most of the virtues; which have, for the most part, a tendency to the good of society, or to that of the person possess'd of them. If we compare all these circumstances, we shall not doubt, that sympathy is the chief source of moral distinctions; especially when we reflect, that no objection can be rais'd against this hypothesis in one case, which will not extend to all cases. Justice is certainly approv'd of for no other reason, than because it has a tendency to the public good: And the public good is indifferent to us, except so far as sympathy interests us in it. We may presume the like with regard to all the other virtues, which have a like tendency to the public good. They must derive all their merit from our sympathy with those, who reap any advantage from them: As the virtues, which have a tendency to the good of the person possess'd of them, derive their merit from our sympathy with him.¹

As it is stated in chapter two,² Hume gave up employing the notion of sympathy in the second *Enquiry*. In this passage of the *Treatise*, this is the last usage of sympathy as a source of morals. Selby-Bigge underlines this modification: “[t]he psychology of sympathy which occupies so much space in Bk. II, and on which so much depends in Bk. III of the *Treatise*, is almost entirely ignored in the *Enquiry*.”³ So we cannot see *sympathy* in the foundation of morality of just actions in the second *Enquiry*. Alasdair MacIntyre too discerns this abandonment. MacIntyre says that Hume invented the concept of sympathy to justify the rules of justice, but since

that account. In this they will be reinforced by the disapproval of their fellows. This self-loathing becomes the motive or the will by which people act justly as a matter of obligation.” Haakonssen, “The Structure of Hume's Political Theory,” p. 191.

¹ *Treatise*, p. 618

² See Section 2.4. of Chapter II.

³ L. A. Selby-Bigge, editor's introduction to *Enquiries Concerning Human Understanding and Concerning the Principles of Morals*, by David Hume (Oxford: Clarendon Press, 1975), p. xxi.

sympathy is a “philosophical fiction” it could not provide good reasons to obey the laws of justice.¹ In *Whose Justice? Which Rationality?*, MacIntyre rejects sympathy as a satisfactory motivation: “the sympathy which we do indeed feel for particular others on occasion will not furnish a motive for a regard for the rules of justice whomsoever they may protect.”² Additionally, MacIntyre refuses interest as a justification of principles of justice: “neither interest nor sympathy seems able to explain why each one of us should approve of the rules of justice or of the administration of those rules by government.”³

Subsequent to leaving behind the principle of sympathy in *the Treatise*, David Hume focuses on the principle of utility to supply ethical basis of the concept of justice in *an Enquiry Concerning the Principles of Morals*. He preferred public interest in the *Treatise* to ground the morality of justice, but in the second *Enquiry* Hume employs the notion of utility. David Miller draws an attention to this nuance: “Hume uses ‘the public interest’ in the *Treatise* and ‘utility’ in the *Enquiry* with, so far as one can tell, an identical meaning. No doubt this

¹ “In the *Treatise* Hume posed the question why, if such rules as those of justice and of promise-keeping were to be kept because and only because they served our long-term interests, we should not be justified in breaking them whenever they did not serve our interests *and* the breach would have no further ill consequences. In the course of formulating this question he denies explicitly that any innate spring of altruism or sympathy for others could supply the defects of an argument from interest and utility. But in the *Enquiry* he feels compelled to invoke just such a spring. Whence this change? It is clear that Hume’s invocation of sympathy is an invention intended to bridge the gap between any set of reasons which could support unconditional adherence to general and unconditional rules and any set of reasons for action or judgment which could derive from our particular, fluctuating, circumstance-governed desires emotions and interests. Later on Adam Smith was to invoke sympathy for precisely the same purpose. But the gap of course is logically unbridgable, and ‘sympathy’ as used by Hume and Smith is the name of a philosophical fiction.” MacIntyre, *After Virtue*, p. 49.

² MacIntyre, *Whose Justice? Which Rationality?*, p. 307.

³ *Ibid.*, p. 306.

reflects changing intellectual fashions.”¹ Miller argues that Hume modified his ideas on justice and public interest in his second *Enquiry*. Miller criticizes Hume for interrupting relations with justice and ethics: Hume “justified the existence of rules of justice in terms of their utility, and refused to see justice as an independent moral value.”² It seems that Miller is right in condemning opinions of Hume in this topic, because the measure of justice becomes utility. The source of justice is no more autonomous in ethics. Merit of justice is determined by utility. This interpretation can be inferred evidently from the beginning part of section three of the second *Enquiry*:

Justice is useful to society, and consequently that *part* of its merit, at least, must arise from that consideration, it would be a superfluous undertaking to prove. That public utility is the *sole* origin of justice, and that reflections on the beneficial consequences of this virtue are the *sole* foundation of its merit; this proposition, being more curious and important, will better deserve our examination and enquiry.³

Finally, it is apparent that Hume sees public utility as the foundation of the value of justice. He puts off the principle of sympathy to establish morality of just actions. In his later work, the second *Enquiry*, David Hume gives emphasis to *public utility* for the moral worth of justice.

4.2 Circumstances of Justice

To delineate the concept of justice, David Hume presents some hypothetical conditions. In a sense, he offers thought experiments. In this way, Hume shows where and when we need justice. Throughout his investigation, he has recourse to negative arguments in locating the notion of justice. In fact, Hume

¹ Miller, *Social Justice*, p. 161, n. 6.

² *Ibid.*, p. 170.

³ Second *Enquiry*, p. 13.

demonstrates where and when people do not and should not take into consideration the laws of justice. Then, the essential requirement of justice becomes visible. Therefore, it should first be understood where the laws of justice do not work. There are some particular conditions, communities, and beings that the rules of justice do not function. Hume enumerates these exceptional states in the third section of the second *Enquiry*. According to him, we do not need the notion of justice in these cases:

1. Unlimited abundance of blessings
2. Extensive benevolence of man
3. Shortage of all common necessities
4. Perfect greed and malice of a society
5. State of emergency and war
6. Punishment of criminals
7. A class of rational creatures with mental and physical disabilities
8. Animals

These cases show where justice becomes useless. Thus counter situations indicate required states of justice. So, these circumstances lead to the virtue of justice. Hume goes on to say that “there are some virtues, that produce pleasure and approbation by means of an artifice or contrivance, which arises from the circumstances and necessity of mankind. Of this kind I assert justice to be.”¹ At the moment, let us try to see the conditions of justice one by one.

The first imaginary situation is a place where there is a profusion of every type of needs and amenities. Anybody can obtain whatever she or he wants in large quantities. There is no need to argue and fight for any object in this prosperous state. Hume describes this condition as follows:

¹ *Treatise*, p. 477.

Let us suppose that nature has bestowed on the human race such profuse *abundance* of all *external* conveniencies, that, without any uncertainty in the event, without any care or industry on our part, every individual finds himself fully provided with whatever his most voracious appetites can want, or luxurious imagination wish or desire. His natural beauty, we shall suppose, surpasses all acquired ornaments: The perpetual clemency of the seasons renders useless all clothes or covering: The raw herbage affords him the most delicious fare; the clear fountain, the richest beverage. No laborious occupation required: no tillage: no navigation. Music, poetry, and contemplation form his sole business: conversation, mirth, and friendship his sole amusement.¹

Hume concludes that the virtue of justice is needless in such a state. Since dispute and aggression will not occur in a satisfactory state, people do not require justice and equity: “in such a happy state, every other social virtue would flourish, and receive tenfold increase; but the cautious, *jealous virtue* of *justice* would never once have been dreamed of.”² In this circumstance, unlimited abundance of blessings annihilates the jealous virtue of justice. Interestingly enough, Hume draws a relation between the virtue of justice and jealousy: we discover that in this happy state there would be no jealousy. Given that in the perfect welfare “state” there is nothing to quarrel for, it is impossible to be jealous. So, if there is no jealousy, there is no disagreement. If there is no disagreement, there is no need for the virtue of justice. Hume contends that jealousy of advantage is an assumption of justice: “if nature supplied abundantly all our wants and desires, that the jealousy of interest, which justice supposes, could no longer have place.”³ Therefore, jealous virtue of justice presumes jealousy of benefit. We cannot conceive of justice

¹ Second *Enquiry*, p. 13.

² Second *Enquiry*, p. 13 (italics mine).

³ *Treatise*, p. 494.

unless there is some jealousy of interest. Since extreme abundance does not permit jealousy of others' objects and possessions, justice becomes entirely impractical. Hume supports his ideas at that point by means of questions, such as "[f]or what purpose make a partition of goods, where every one has already more than enough? Why give rise to property, where there cannot possibly be any injury?"¹ Why should anyone insist on *mine* and *thine*? The rules of justice and property would be unnecessary in this ideal state. Hume concludes that: "justice, in that case, being totally USELESS, would be an idle ceremonial, and could never possibly have place in the catalogue of virtues."²

The second thought experiment of Hume offers is that of an ideal fraternity where human beings are extremely benevolent to and are compassionate to each other.³ Man considers interests of others rather than their subjective good. In case of extensive generosity justice becomes useless: "[e]ncrease to a sufficient degree the benevolence of men, or the bounty of nature, and you render justice useless, by supplying its place with much nobler virtues, and more valuable blessings."⁴ For instance, when a son asks for a considerable amount of money from his father, the father gives the sum and does not make a written agreement. The rules of justice are not necessary between a father and a son. Hypothetically, this is a family relation between the members of the society which is extremely benevolent:

¹ Second *Enquiry*, p. 13.

² Second *Enquiry*, p. 13.

³ It is apparent that circumstances and dispositions are very significant in the prerequisites of justice. There is a parallel between the conditions of justice and human beings. Hume also emphasizes situations and tempers in the actions of men. See Section 2.2 in this work.

⁴ *Treatise*, pp. 494-5.

Why raise land-marks between my neighbour's field and mine, when my heart has made no division between our interests; but shares all his joys and sorrows with the same force and vivacity as if originally my own? Every man, upon this supposition, being a second self to another, would trust all his interests to the discretion of every man; without jealousy, without partition, without distinction. And the whole human race would form only one family; where all would lie in common, and be used freely, without regard to property ; but cautiously too, with as entire regard to the necessities of each individual, as if our own interests were most intimately concerned.¹

In such a state, each person is a supernatural being. Individuals behave to each other as if they live in a big family; nobody is “other,” or “alien.” The principle of humanity is endorsed by the entire community. As they are close friends, they do not distinguish their commodities and facilities; “a cordial affection renders all things common among friends.”² They use their goods wit others without hesitation. Likewise, “married people in particular mutually lose their property, and are unacquainted with the *mine* and *thine*, which are so necessary.”³ Until couples are divorced, their properties and goods are considered together. Hume generalizes these specific cases and says that “if *every one* had the same affection and tender regard for *every one* as for himself; justice and injustice would be equally unknown among mankind.”⁴

In the following two conditions, David Hume conceives of a different situation and imagines a place where there is a shortage of all vital requirements, a severe scarcity of basic needs. In the same manner, the laws

¹ Second *Enquiry*, p. 14.

² *Treatise*, p. 495.

³ *Treatise*, p. 495.

⁴ *Treatise*, p. 495.

of justice are in limbo for a period when circumstances become normal. In this state, “[g]rievous shortage would wreck laws of justice;”¹ similarly the rules of justice would be suspended in a disaster too. Catastrophic disasters demand emergency operations and the virtue of justice can be an obstacle for a state of necessity. Hume describes this atmosphere as follows:

Suppose a society to fall into such want of all common necessaries, that the utmost frugality and industry cannot preserve the greater number from perishing, and the whole from extreme misery; it will readily, I believe, be admitted, that the strict laws of justice are suspended, in such a pressing emergence, and give place to the stronger motives of necessity and self-preservation. Is it any crime, after a shipwreck, to seize whatever means or instrument of safety one can lay hold of, without regard to former limitations of property? Or if a city besieged were perishing with hunger; can we imagine, that men will see any means of preservation before them, and lose their lives, from a scrupulous regard to what, in other situations, would be the rules of equity and justice?²

Obviously, the people will struggle for their life in that condition. Since, “[t]he USE and TENDENCY of that virtue is to procure happiness and security, by preserving order in society,”³ justice can be ignored in excessive famine and wants. Prudence takes the role, the common people does not take into account the principles of justice in such a situation. For example, a hopeless person about to die of hunger should not be punished because of stealing something to eat. In the same way, “[t]he public, even in less urgent necessities, opens granaries, without the consent of proprietors; as justly

¹ Russell Hardin, *David Hume: Moral and Political Theorist* (Oxford: Oxford University Press, 2007), p. 141.

² Second *Enquiry*, p. 15.

³ Second *Enquiry*, p. 15.

supposing, that the authority of magistracy may, consistent with equity, extend so far..."¹ Thus, the virtue of justice is of no use again.

In the fourth hypothetical state, Hume imagines a society which is governed by perfect greed and malice. This is the *state of nature* as described by Thomas Hobbes,² but I think it is best portrayed in William Golding's novel *the Lord of the Flies*.³ David Hume gives a picture of this savage condition in the second *Enquiry*:

Suppose likewise, that it should be a virtuous man's fate to fall into the society of ruffians, remote from the protection of laws and government; what conduct must he embrace in that melancholy situation? He 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, and must terminate in destruction to the greater number, and in a total dissolution of society to the rest. He, meanwhile, can have no other expedient than to arm himself, to whomever the sword he seizes, or the buckler, may belong: To make provision of all means of defence and security.⁴

A man has no choice in those terms. From Hume's point of view, behaving in accordance with the society is so natural. When the public is barbarous, you become brutal as well. When citizens of a state wage war with an uncivilized community "who observed no rules even of war, the former must also suspend their observance of them, where they no longer serve to any

¹ Second *Enquiry*, p. 15.

² Hume also refuses to see Thomas Hobbes as the first to conceive the state of nature and argues that it can be found in the works of Cicero and Plato as well. For the details see second *Enquiry*, p. 17, n.

³ William Golding, *Lord of the Flies* (London: Faber & Faber, 1962).

⁴ Second *Enquiry*, pp. 15-6.

purpose; and must render every action or rencounter as bloody and pernicious as possible to the first aggressors.”¹ Here, Hume thinks of *lex talionis*, or eye for eye, and tooth for tooth.² One suspends principles of justice and humanity in this situation. Hence, in this state of affairs, a man’s “particular regard to justice being no longer of use to his own safety or that of others, he must consult the dictates of self-preservation alone, without concern for those who no longer merit his care and attention.”³ Consequently, the state of necessity trumps the laws of justice and equity.

In Hume’s view, another set of conditions is due to state of war and emergency. In those circumstances, the virtue of justice is adjourned until the end of warfare or emergency. First, Hume asserts that state of war dictates exceptional laws: “the rage and violence of public war; what is it but a suspension of justice among the warring parties, who perceive, that this virtue is now no longer of any *use* or advantage to them?”⁴ According to Hume, an administration should defer the rules of justice in case of war. Second, a state of emergency causes interruption of justice as well. Hume argues that “the rules of justice may be dispensed with in cases of urgent necessity.”⁵ Hume justifies suspension of the laws of justice in necessary and critical situations. He grounds his argument in public utility:

¹ Second *Enquiry*, p. 16.

² This Latin phrase means “the law of retaliation.” James Morwood, *A Dictionary of Latin Words and Phrases* (Oxford: Oxford University Press, 1998), p. 104.

³ Second *Enquiry*, p. 16.

⁴ Second *Enquiry*, p. 16.

⁵ Hume, “Of Passive Obedience,” p. 203.

As the obligation to justice is founded entirely on the interests of society, which require mutual abstinence from property, in order to preserve peace among mankind; it is evident, that, when the execution of justice would be attained with very pernicious consequences, that virtue must be suspended, and give place to public utility, in such extraordinary and such pressing emergencies. The maxim, *fiat Justitia & ruat Coelum*, let justice be performed, though the universe be destroyed, it apparently false, and by sacrificing the end to the means, shews a preposterous idea of the subordination of duties.¹

Hume employs one more exception in the adherence of the laws of justice. A state of emergency and necessity makes exceptions to justice.² Hume gives this privilege to the sovereign state for the sake of *raison d'état*: “[a]ll politicians will allow, and most philosophers, that REASONS of STATE may, in particular emergencies, dispense with the rules of justice, and invalidate any treaty or alliance, where the strict observance of it would be prejudicial.”³ Further, Hume supports this authoritarian supremacy with delay of the laws of justice in his ideal commonwealth: “[t]he protector, the two secretaries, the council of state, with any five or more that the senate appoints, are possessed, on extraordinary emergencies, of *dictatorial* power for six months.”⁴ However, the problem is once the ruler seizes this supreme power, why does should he leave the position? The sovereign can easily prolong this period and as a

¹ Hume, “Of Passive Obedience,” p. 202.

² Hume’s ideas on the state of emergency and necessity run through the minds Agamben’s state of exception if the laws of *justice* are considered as *law*. Agamben, however, rejects “suspension of law” in the state of exception. For a resemblance between Hume’s conception of state of emergency and Agamben’s state of exception see Giorgio Agamben, *State of Exception*, trans. Kevin Attell (Chicago: University of Chicago Press, 2005), pp. 1-4.

³ Second *Enquiry*, p. 29.

⁴ Hume, “Idea of a Perfect Commonwealth,” p. 227.

matter of fact, supreme rulers usually do not go away.¹ So shelving the laws of justice is a dangerous responsibility.

Hume's sixth exception concerns public criminals in the case of justice. He recommends that persons who harm the people should be penalized according to their laws. For Hume, this is the best way in disciplining public criminals. Hence, the laws of justice will be forgotten once again. He gives an explanation for the postponement of justice in the second *Enquiry*:

When any man, even in political society, renders himself by his crimes, obnoxious to the public, he is punished by the laws in his goods and person; that is, the ordinary rules of justice are, with regard to him, suspended for a moment, and it becomes equitable to inflict on him, for the *benefit* of society, what otherwise he could not suffer without wrong or injury.²

Public utility justifies this exception once more. Rules of justice happen to be futile again in order to sustain society.

The thought experiments of Hume continue with an imaginary class of rational creatures who have mental and physical disabilities. A vulnerable group of people should be treated with the principles of humanity rather than with the principles of justice. It seems that these helpless people can be taken as psychologically ill or handicapped in need of nursing. According to Hume, benevolence precedes justice in such a situation:

¹ For instance, "from a juridical standpoint the entire Third Reich can be considered a state of exception that lasted twelve years." Agamben, *State of Exception*, p. 2.

² Second *Enquiry*, p. 16.

Were there a species of creatures intermingled with men, which, though rational, were possessed of such inferior strength, both of body and mind, that they were incapable of all resistance, and could never, upon the highest provocation, make us feel the effects of their resentment; the necessary consequence, I think, is that we should be bound by the laws of humanity to give gentle usage to these creatures, but should not, properly speaking, lie under any restraint of justice with regard to them, nor could they possess any right or property, exclusive of such arbitrary lords.¹

In that condition, suspension of rules of justice may be acceptable, but Hume holds that this inequality good: “[o]ur 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.”² Independents control themselves if they wish, but they do not cross the line because of tenderness and benevolence. Therefore, “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.”³

Finally, Hume says that relations of human beings with a class of rational creatures who have psychological and bodily disabilities bear a resemblance to their relations with animals: mankind has superiority over animals.⁴ Rules

¹ Second *Enquiry*, p. 18.

² Second *Enquiry*, p. 18.

³ Second *Enquiry*, p. 18.

⁴ Meanwhile, Hume, having made an analogy between helpless people and animals, he also observes those relations of power between the American Indians and the “civilized Europeans.” He confesses that Europeans suspended principles of justice and humanity in America: “[t]he great superiority of civilized EUROPEANS above barbarous INDIANS, tempted us to imagine ourselves on the same footing with regard to them, and made us throw off all restraints of justice, and even of humanity, in our treatment of them.” Second *Enquiry*, p. 18.

of justice do not work before the animals too. Man behaves towards animals in accordance with benevolence and compassion. For Hume, the laws of justice cannot be employed for animals.

Hence, in certain conditions compliance with rules of justice become worthless, in others it is against to public utility, and in some cases it is at odds with the principle of humanity. In his investigation, Hume first establishes where justice is futile and pernicious in aforementioned circumstances, and says that justice is necessary except these conditions. Hume discusses the subject in a similar way in the *Treatise*:

'tis evident, that the only cause, why the extensive generosity of man, and the perfect abundance of every thing, wou'd destroy the very idea of justice, is because they render it useless; and that, on the other hand, his confin'd benevolence, and his necessitous condition, give rise to that virtue, only by making it requisite to the publick interest, and to that of every individual.¹

If extensive generosity of men does not permit the rise of justice, then limited generosity can provide it. If extreme abundance and shortage makes justice pointless, then some degree of requirements makes justice possible. Hume's negative approach to the laws of justice is apparent in the second *Enquiry* as well:

Thus, the rules of equity or justice depend entirely on the particular state and condition in which men are placed, and owe their origin and existence to that UTILITY, which results to the public from their strict and regular observance. Reverse, in any considerable circumstance, the condition of men: Produce extreme abundance or extreme necessity: Implant in the human breast perfect moderation and humanity, or perfect rapaciousness and malice: By rendering justice totally *useless*,

¹ *Treatise*, p. 496.

you thereby totally destroy its essence, and suspend its obligation upon mankind.¹

Although Hume has a negative viewpoint in his analysis, he nevertheless wishes a society with the rules of justice. He aspires to find the exact place of the notion of justice, and he follows the principle of utility in this pursuit.

Besides, Hume's arguments about conditions of justice point that the virtue of justice should be considered in its background. A just person comes into existence in a community. For Hume, the moral subject is in conformity with the society and circumstances. There is no tension between the society and the individual. If there are circumstances to be just, one can behave justly; if not, one does not act justly. There is no distinction between the empirical and the intelligible realm in Hume's conception of justice. The "moral subject" adheres to a community in which he or she exists. Circumstantial and empirical environment is notoriously important in the observance of the rules of justice. So, if one lives in a society that is not just, then one acts unjustly too. If one lives in a group of people who are just because of their self-interests and public utility, then one becomes a just individual too. The reverse is not true. That is to say, if a society is constituted by immoral persons, you do not have to be just. Therefore, circumstances and human beings are very significant for locating justice. According to Hardin, Hume "shows that we cannot sensibly have a theory of justice that is not contingent on human nature and the conditions that humans face in their world."² So, it appears that there is no idea of justice in Hume, regardless of interests. Unlike Plato, there is not a world of ideas in which justice exists. In Hume's view, the

¹ Second *Enquiry*, p. 16.

² Hardin, *David Hume*, p. 140.

virtue of justice is in the sensible world and it is related with human conditions. In spite of John Rawls' entire approval of Hume's circumstances of justice,¹ the Humean conception of justice is unlike the Rawlsian; because the Rawlsian theory of justice is abstract, whereas Hume's notion of justice is concerned with state of affairs. Russell Hardin draws our attention to this point: "Hume demonstrates that any notion of justice we might be committed to cannot simply be abstract or inferred entirely from reason or idealized circumstances."² It is obvious that Hume's anti-rationalistic attitude can also be seen in his conception of justice. His epistemology, ethics and politics are clearly harmonious. Hardin underlines this point: "Hume's empiricism and naturalism (and by his lights his Newtonian stance) on these factors are forcefully represented by his discussion of the empirical circumstances of justice."³ Hume's account of justice as depending on conditions evidently indicates his empirical methodology.⁴

4.3 Artificial Virtue of Justice

As discussed earlier,⁵ Hume searches for motivations of actions in the determination of virtue and vice; so in Part II of Book III of the *Treatise*, he inspects motives of just actions. Hume cannot find any natural motive behind just actions. Accordingly, he concludes that "the sense of justice and injustice

¹ "Now this constellation of conditions I shall refer to as the circumstances of justice. Hume's account of them is especially perspicuous and the preceding summary adds nothing essential to his much fuller discussion." Rawls, *A Theory of Justice*, p. 110.

² Hardin, *David Hume*, p. 140.

³ *Ibid.*, 139.

⁴ Thus, this conclusion forces us to see Alasdair MacIntyre as right concerning the is/ought question and justice. "Hume himself derives "ought" from "is" in his account of justice." MacIntyre, "Hume on "Is" and "Ought"," p. 459.

⁵ See Subsection 2.3.3 for moral sentimentalism of Hume.

is not derived from nature, but arises artificially, though necessarily from education, and human conventions."¹ Conditions and necessities of nature compel men to establish rules of justice *conventionally*. In addition, education motivates sense of justice in society. We need justice because of the troubles in human nature and society, namely, self-love, limited generosity, and scarcity of goods.² These deficiencies cannot be removed by natural ways. David Hume emphasizes this fact in the *Treatise*:

In vain shou'd we expect to find, in *uncultivated nature*, a remedy to this inconvenience; or hope for any inartificial principle of the human mind, which might controul those partial affections, and make us overcome the temptations arising from our circumstances.³

Hence, human conventions and artifices⁴ can bring relief to these problems. What does human convention mean? What is the characteristic of a convention? Is it a contract, a treaty or a promise? Hume says the following regarding these questions:

This convention is not of the nature of a *promise*: For even promises themselves, as we shall see afterwards, arise from human conventions. 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. I observe, that it will be for my interest to leave another in the possession of his goods, *provided* he will act in the same manner with regard to me. He is sensible of a like

¹ *Treatise*, p. 483.

² *Treatise*, p. 495.

³ *Treatise*, p. 488.

⁴ According to Hume, *artifice* means that "the rules of justice were invented by human beings in the course of their natural history and thus cannot be considered original, or as innate principles made known to men by nature's Author." Eugenio Lecaldano, "Hume's Theory of Justice, or Artificial Virtue," in *A Companion to Hume*, ed. Elizabeth S. Radcliffe (Oxford: Blackwell Publishing, 2008), p. 258.

interest in the regulation of his conduct. When this common sense of interest is mutually expressed, and is known to both, it produces a suitable resolution and behaviour. And this may properly enough be call'd a convention or agreement betwixt us, tho' without the interposition of a promise; since the actions of each of us have a reference to those of the other, and are perform'd upon the supposition, that something is to be perform'd on the other part.¹

So, convention is neither a compact² nor a promise. Convention is a sensation of public interest that arranges actions of people. In the second *Enquiry*, Hume relates human conventions with "public utility."³ In the *Treatise* he explains conventions by referring to values of gold and silver: "[i]n like manner do gold and silver become the common measures of exchange, and are esteemed sufficient payment for what is of a hundred times their value."⁴ The same is true for the money we use: if individuals did not accept money as a measure of barter and use it as everyone does, it would be a piece of paper. Convention adds value to money.

Let us now consider Hume's distinction between natural and artificial virtues. The difference between natural and artificial virtues becomes visible when the consequences are considered. For instance, benevolence is a natural virtue

¹ *Treatise*, p. 490.

² Macnabb underlines this view in Hume: "The principles of justice are, indeed, founded on artifices, and are therefore not "natural laws". But they are not founded on any contract, since the keeping of contracts is itself one of the principles of justice. They are founded on customary conventions which command our approbation because of their utility." D. G. C. Macnabb, *David Hume: His Theory of Knowledge and Morality* (Aldershot, England: Gregg Revivals, 1991), p. 171.

³ "[I]f by convention be meant a sense of common interest; which sense each man feels in his own breast, which he remarks in his fellows, and which carries him, in concurrence with others, into a general plan or system of actions, which tends to public utility; it must be owned, that, in this sense, justice arises from human conventions." Second *Enquiry*, p. 98.

⁴ *Treatise*, p. 490.

and justice an artificial one; Hume likens benevolence to a wall, and justice to a vault:

The happiness and prosperity of mankind, arising from the social virtue of benevolence and its subdivisions, may be compared to a wall, built by many hands, which still rises by each stone that is heaped upon it, and receives increase proportional to the diligence and care of each workman. The same happiness, raised by the social virtue of justice and its subdivisions, may be compared to the building of a vault, where each individual stone would, of itself, fall to the ground; nor is the whole fabric supported but by the mutual assistance and combination of its corresponding parts.¹

This striking illustration shows the distinction between justice and benevolence clearly, or that between artificial virtues and natural virtues. Therefore, if a just society is dreamed of, every human being should obey the laws of justice completely. This is also the ground of inflexible laws that Hume advocates.² When the social virtue of justice is endorsed in this manner, it can be satisfied; otherwise the *vault* is demolished, since natural virtues would not have to be supported by everybody in all cases. However, in artificial virtues, whole people should comply with plans and rules of conduct. This is the critical point in the distinction between natural and artificial virtues. Hume confirms and elaborates this distinction in the *Treatise*:

The only difference betwixt the natural virtues and justice lies in this, that the good, which results from the former, arises from every single act, and is the object of some natural passion: Whereas a single act of justice, consider'd in itself, may often be contrary to the public good; and 'tis only the concurrence of mankind, in a general scheme or system of action, which is advantageous. When I relieve persons in distress, my natural humanity is my motive; and so far as my succour extends, so far have I promoted the happiness of my fellow-creatures. But if we

¹ Second *Enquiry*, p. 97.

² See Subsection 3.1.2.

examine all the questions, that come before any tribunal of justice, we shall find, that, considering each case apart, it wou'd as often be an instance of humanity to decide contrary to the laws of justice as conformable them.¹

Thus, general rules of justice, or artificial virtues, should not be examined separately. The important thing is "[t]he whole scheme ... of law and justice is advantageous to the society; and it was with a view to this advantage, that men, by their voluntary conventions, established it."² In addition to total adherence to and performance of artificial virtues, Hume here speaks of law and justice together and sees them in the same category; He says that both are salutary to the public. Owing to the fact that law and justice are compatible in Hume's political thought, we can say that justice can be preserved by virtue of law. Then, the *laws of justice* are needed for ordering human conduct in the society.

4.3.1 The Laws of Justice

In Hume's works, we encounter concepts such as "rules of justice,"³ "laws of nature,"⁴ "laws of society,"⁵ "fundamental laws of nature,"⁶ "fundamental rules of justice,"⁷ "rules of justice and equity,"⁸ "laws of equity and justice,"¹

¹ *Treatise*, p. 579.

² *Treatise*, p. 579.

³ *Treatise*, p. 480.

⁴ *Treatise*, p. 520.

⁵ *Treatise*, p. 491.

⁶ *Treatise*, p. 526.

⁷ *Treatise*, p. 567.

⁸ *Treatise*, p. 505.

“laws of justice,”² and “laws of justice and of property.”³ In fact, all of these conceptualizations refer to same principles, which are:

1. Stability of property,
2. Transference of property by consent,
3. Fulfilment of promises.⁴

Hume elucidates the first law of nature: “man's property is suppos'd to be fenc'd against every mortal, in every possible case.”⁵ Hume sees the right to property as absolute. He subsequently draws a parallel between property and justice:

After this convention, concerning abstinence from the possessions of others, is enter'd into, and every one has acquir'd a stability in his possessions, there immediately arise the ideas of justice and injustice; as also those of *property*, *right*, and *obligation*. The latter are altogether unintelligible without first understanding the former. Our property is, nothing but those goods, whose constant possession is established by the laws of society; that is, by the laws justice.⁶

It is clear that *Humean* rules of justice are much related with the rules of property. This is also apparent from his frequent usage of these notions together. For instance, in the second *Enquiry* Hume says that “the ultimate point ... is the interest and happiness of human society. Where this enters not into consideration, nothing can appear more whimsical, unnatural, and even

¹ Second *Enquiry*, p. 28.

² *Treatise*, p. 491.

³ Second *Enquiry*, p. 23.

⁴ *Treatise*, p. 526.

⁵ *Treatise*, p. 483.

⁶ *Treatise*, pp. 490-1.

superstitious, than all or most of the *laws of justice and of property*.”¹ Or in his *Political Essays*, Hume admits that “private justice, or the abstinence from the properties of others, is a most cardinal virtue.”² In the second *Enquiry*, he uses justice and property interchangeably.³ It is evident that Humean laws of justice are in line with the rules of property.⁴ Nonetheless, it is at least certain that “Hume’s principles of justice are, in effect, largely principles for the regulation of economic production and competition between the members of civil society, as they pursue their economic interests.”⁵ Hence, Hume’s rules of justice can be seen as principles of economic activities.

4.3.2 Self-love

At first sight, self-interest seems to be in contrast with the laws of justice; however, for Hume, self-love is the original motive for the rules of justice. To underline this nuance, let us first consider rough and brutal self-interest. In

¹ Second *Enquiry*, p. 23 (emphasis added).

² Hume, “Of the Original Contract,” p. 197.

³ See the second *Enquiry*, p. 19.

⁴ David Gauthier confirms this interpretation; he says that in Hume’s view “property is determined by a system of rules for the possession and use of objects, so that my property is what, in accordance with rules, I possess and use, and my exclusive property, what I alone possess and use. Justice, then, is the virtue determined by such a system, so that just behaviour consists in adherence to the rules governing the possession and use of objects.” Gauthier, “David Hume, Contractarian,” pp. 4-5. Furthermore, Alasdair MacIntyre reduces Humean conception of justice to rules of property: “[t]he problem of justice was according to Hume centrally a problem about the rules of property and their enforcement, and as I have already suggested, it was property conceived of in one highly particular way.” MacIntyre, *Whose Justice? Which Rationality?*, p. 307. Similarly Charles Cottle understands Hume’s notion of justice in accordance with the notion of property; “because Hume’s conception of property depends upon the laws which regulate it, one who wishes to hold, acquire, transfer, or even respect property must abide by such rules of justice. For Hume it is definitionally impossible to violate the rules of justice and still respect property rights. Semantically, the rules of justice and property are inseparable.” Cottle, “Justice as Artificial Virtue in Hume’s Treatise,” p. 460.

⁵ Rawls, *Lectures on the History of Political Philosophy*, pp. 178-9.

the *Treatise*, Hume states that “self-love, when it acts at its liberty, instead of engaging us to honest actions, is the source of all injustice and violence; nor can a man ever correct those vices, without correcting and restraining the natural movements of that appetite.”¹ Hence, self-interest should be controlled; otherwise it is impossible to satisfy the desires of self-love. No one can be satisfied in his or her interests. At that point, persons have to limit their self-love because of their self-interest.² Thus, the obstacle of self-love is transformed to become the first origin of justice. Hume contends that “the mutual shocks, in society, and the oppositions of interest and self-love have constrained mankind to establish the laws of *justice*, in order to preserve the advantages of mutual assistance and protection.”³ Hence, for Hume, the motivation of the laws of justice comes from the domestication of self-love:

We have already shewn, that men invented the three fundamental laws of nature, when they observed the necessity of society to their mutual subsistence, and found, that it was impossible to maintain any correspondence together, without some restraint on their natural appetites. The same self-love, therefore, which renders men so incommodious to each other, taking a new and more convenient direction, produces the rules of justice, and is the first motive of their observance.⁴

Self-interest so tamed, therefore becomes the first origin of justice. For Hume,

¹ *Treatise*, p. 480.

² A relation could be drawn between this remark of Hume and Game Theory. In particular, John Nash introduced this original approach to Game Theory. In zero sum games, one's profit is others' deficit, but in non-zero sum games all sides of the competition can win. That is to say, everybody can satisfy his or her interests. This can be also named as restriction of self-love in Hume. Nash formulates this idea in economic terms. See John F. Nash, Jr., “The Bargaining Problem,” *Econometrica*, 18/2 (1950): pp. 155-162.

³ Second *Enquiry*, p. 67.

⁴ *Treatise*, p. 543.

this is why individuals obey the laws of justice. In other words, “artificially-redirected interest naturally obliges us and serves as the original motive to justice;”¹ or “enlightened self-interest”² motivates us to obey the laws of nature.³

It may be argued that Hume denies self-love as a foundation of morality. Indeed Hume rejects selfishness as a basis in ethics,⁴ but he acknowledges the role of self-interest in politics. This distinction is detected by Jeffrey Church. He argues that “[a]lthough Hume began his moral philosophy with a critique of the selfish system, he returns to the selfish hypothesis in his political philosophy.”⁵ As I have noted above, this can be seen in Hume’s arguments on justice. In this question Hume stands between Hutcheson and Mandeville. Hume is not in line with Hutcheson with respect to the self-interest: “[u]nlike his predecessor Hutcheson, who thoroughly repudiated the selfish system, Hume remained ambivalent about it, accepting its institutional solutions while rejecting its moral assumptions.”⁶ That is to say, Hume “seems to accept Mandeville’s system in the end,”⁷ but only in political realm. However, Alasdair MacIntyre claims that grounding the rules of justice on self-love is unsatisfactory: “the kind of connection between the passions and adherence

¹ Taylor, “Justice and the Foundations of Social Morality in Hume’s Treatise,” p. 19.

² Krause, “Hume and the (False) Luster of Justice,” p. 639.

³ David Miller does not differentiate self-love and domesticated self-love; he says that “Hume rests justice on the sure foundation of self-love.” Miller, *Social Justice*, p. 162.

⁴ See Subsection 2.3.3.

⁵ Church, “Selfish and Moral Politics: David Hume on Stability and Cohesion in the Modern State,” p. 174.

⁶ *Ibid.*, p. 179.

⁷ *Ibid.*, p. 174.

to a rule or principle, which the Humean account requires, cannot be established by way of any conception of self-interest.”¹ According to Sharon R. Krause, Hume’s approach to justice is related with interests; “defining justice as narrowly as he does, Hume means to force a change in our orientation to justice, to make us feel for justice from the standpoint of our interests rather than our ideals.”² Idealistic discourses leave their place to egoistic discourses in the theory of justice.

4.4 The Origin of State

In his philosophical and political texts, Hume prefers the notion of government rather than state, but this does not mean that he refers to a different object. In general, Hume implies state when he uses the term government. In fact, the term government was not employed as we understand and perceive it now. Today, the term government means elected members in power. However, in Hume’s language, the term government includes judicial power as well.³ To be brief, in Hume, the term government has a larger sense than the contemporary. Therefore, we can use government and state interchangeably in our examination of the rules of justice.

An anarchist can ask why we need a state. Could not we live without government? Interestingly enough, David Hume would consider this question as important to some extent. Considering American clans, Hume

¹ MacIntyre, *Whose Justice? Which Rationality?*, p. 307.

² Krause, “Hume and the (False) Luster of Justice”, p. 639.

³ Richard H. Dees, ““One of the Finest and Most Subtile Inventions”: Hume on Government” in *A Companion to Hume*, ed. Elizabeth S. Radcliffe (Oxford: Blackwell Publishing, 2008), p. 396.

argues that state is superfluous in small societies;¹ but in a large and developed society an authority is necessary in order to guarantee the laws of justice. Therefore, they “establish government, as a new invention to attain their ends, and preserve the old, or procure new advantages, by a more strict execution of justice.”² Thanks to the state, the public will definitely obey the laws of nature. Therefore, “the principal object of government is to constrain men to observe the laws of nature.”³ Hence, governments, parliaments, soldiers, officers are all needed for the sake of justice. On Hume’s view, this is why mankind needs an institution like the state:

MAN, born in a family, is compelled to maintain society, from necessity, from natural inclination, and from habit. The same creature, in his farther progress, is engaged to establish political society, in order to administer justice; without which there can be no peace among them, nor safety, nor mutual intercourse. We are, therefore, to look upon all the vast apparatus of our government, as having ultimately no other object or purpose but the distribution of justice, or, in other words, the support of the twelve judges. Kings and parliaments, fleets and armies, officers of the court and revenue, ambassadors, ministers, and privy-counsellors, are all subordinate in their end to this part of administration.⁴

As a result, the artificial virtue of justice stands above all these organizations and individuals. Political society and association function as controller and guardian. States are means to the end of just society; they guarantee the adherence to the rules of justice. Since human nature is inclined to private

¹ *Treatise*, p. 540.

² *Treatise*, p. 543.

³ *Treatise*, p. 543.

⁴ Hume, “Of the Origin of Government,” p. 20.

interest, the government hinders people crossing the line. In the *Political Essays*, Hume underlines the purpose of state:

All men are sensible of the necessity of justice to maintain peace and order; and all men are sensible of the necessity of peace and order for the maintenance of society. Yet, notwithstanding this strong and obvious necessity, such is the frailty or perverseness of our nature! It is impossible to keep men, faithfully and unerringly, in the paths of justice.¹

Therefore, according to Hume's political thought, it can be said that states are just "useful tools."² Governments should assist the laws of justice.

¹ Ibid., p. 20.

² Dees, "Hume on Government," p. 404.

CHAPTER V

CONCLUSION

In this thesis my purpose was to understand David Hume's conception of justice and to assess consistency of his moral, legal, and political philosophy. I have argued that Hume's morality, law, and politics are in harmony with some slight exceptions. While elaborating his philosophy of justice, Hume demonstrated ethical, legal, and political dimensions of the virtue of justice. Hume's anti-rationalistic theory of moral sentiments is seen throughout his philosophy. Moral sentimentalism is principal in Hume's theory of law, politics, and justice. Hume analysed justice by referring to sympathy and public utility; for him moral approbation of justice results from the principles of sympathy and utility. For Hume the sense of justice does not originate from reason. His understanding of justice was not idealistic, absolute, and abstract; it was down-to-earth, because he was concerned with interests rather than transcendental ideas. As a result Hume's ethics and justice appears to be coherent. In Hume's view, justice is a moral issue in large and refined societies. Obeying the laws of justice is a moral duty, because otherwise "sensible knaves" can benefit from exceptions without violating general rules. Hence, moral persons act in accordance with the principles of sympathy and utility.

For Hume, the virtue of justice becomes redundant in some situations, such as in states of perfect abundance, scarcity, or in war, and emergency.

Similarly, when one is faced with perfectly generous, or extremely cruel and voracious persons, or when one is dealing with a class of rational creatures with mental and corporal disabilities, or with animals, or in the judgment of unlawful people, the virtue of justice turns out to be pointless. In all other cases, the artificial virtue of justice plays an important role. Thus, circumstances and dispositions of men are highly important in the requirements of justice. This follows from Hume's ideas about necessity that which I have tried to clarify in section two of the second chapter. This points to another resemblance between his theory of morals and justice and helps us to see the experimental method of reasoning of Hume. Hume's empirical methodology is clear in his arguments concerning the circumstances of justice and the nature of laws. Hume analyses the nature of laws by means of historical events and regimes. He also suggests that we must improve laws by trial and error. Furthermore, Hume's account of law is in line with his morality. For instance, he says that in verdicts of judges rely more on *taste* rather than on lines of reasoning. In short, moral sentimentalism is apparent in Hume's legal philosophy as in his ethics.

As explained earlier, Hume has a uniform and systematic philosophy; but it seems that there are several ambiguities in his writings. An example is self-interest. Hume definitely rejects self-love in the foundation of ethics, whereas in politics he accepts the role of self-interest in the performance of the rules of justice. Although his moral and political views are sufficiently coherent, there is one exception, namely self-love, and this may be due to peculiarity of politics.

The role of the government is to ensure the rules of justice and property. According to Hume, the objective of state is preservation of the laws of justice. States are merely instruments to achieve justice in the society.

The laws of nature are related to economics. In Hume's political theory, the concept justice concerns chiefly principles of economic activities. The laws of justice are: Stability of property, exchange of possession by consent and performance of pledges. The laws of justice are directly associated with the laws of property, because Hume identifies the concept of justice with the rise of the first rule, i.e. stability of property. The other rules of justice too are concerned with possessions.

Justice is an artificial virtue, it does not stem from nature, and it has not got a natural motive in human nature. The chief drive that causes individuals to act justly is self-interest, but it cannot be boundless. It is reorganized for needs of the public. Laws of justice are created by people thanks to the conventions. The society requires rules of justice to institute order. As a consequence, security of the community is guaranteed. Unlike beneficence or charity, justice necessitates participation of mankind. The laws of justice should be followed by the all people; this is how a just world becomes possible. Happiness is possible in the society. If justice is undermined, civil society collapses. Justice is *sine qua non* for humanity. Otherwise, brutality and chaos overwhelms mankind.

In this work, I have also tried to underline that David Hume is an influential philosopher. From moral, legal, and political perspectives, Hume has

inspired various philosophers and thinkers, such as Adam Smith,¹ Jeremy Bentham, and John Rawls. With regard to moral sentiments and sympathy, Hume had an influence on Smith. Bentham drew advantage from Hume in his legal philosophy. Lastly, Hume's account of sympathy and circumstances of justice strongly influenced John Rawls, but this does not mean that Rawlsian theory of justice is an extension and improvement of Hume's philosophy. Both philosophers have distinct methodologies and different conclusions. However, the Rawlsian concepts "original position" and "circumstances of justice" seem to be derived from Hume's views.

Hume offers us an argument for rethinking the state. He describes his rules of justice as conventions. States depend on conventions; they lose their legitimacy if their reality is questioned. Human beings have to know their power and opportunity, for the public can change the structure of states, because the state is dependent on people. Hence, states should be moulded according to the laws of justice, as the power is in the just persons. Justice is an artificial virtue, and as such it gives us the chance to improve our world in community.

¹ See Adam Smith, *The Theory of Moral Sentiments*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 2002).

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