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# Justice, Language and Hume: A Reply to Matthew Kramer

*James Allan*

How much reliance, in David Hume's convention-based picture of the origins of justice, needs to be placed on a pre-existing common language amongst the various participants? Matthew Kramer has argued that Hume's story of the passage "from the hostilities of nature to the serenity of civilized life"<sup>1</sup> is, in effect, incoherent. It is incoherent, Kramer asserts, because "language must be in place already" (Kramer, 148) in order for family groups to join together into larger social units by means of Humean convention. In other words, Kramer takes the view that a common language is needed amongst all the players for the gradual establishment of justice *by human conventions* to be possible. But it is just this very thing, a relatively sophisticated common language, that can only be achieved *after* the establishment of the larger societal unit. Kramer therefore sees Hume's account of the origins of justice as, at best, paradoxical because "the founding of a societal unit can take place only if such a unit has already been founded" (Kramer, 149).

This article shall be concerned to defend, against the thrust of Kramer's attack, the broad outlines<sup>2</sup> of Hume's story of the origins of justice in book 3 of the *Treatise*. At any rate, I will argue that Hume's explicitly ahistorical account *is coherent*.<sup>3</sup> But in making this argument I shall be careful to place Hume's account of justice in its proper perspective. It must be recalled that Hume was attempting to explain all of human morals, aesthetics and virtues in a scientific way. In this scheme, justice—for him, the stability of possessions or the basic rules of property—was the pre-eminent "artificial" virtue. As we shall see, no interpretation of Hume's account of the escape to justice can ignore his wider concern, to explain empirically human nature and conduct.

Let us start, however, with a bare summary of Kramer's thesis. Firstly, Kramer sets out Hume's core position. Justice (basic rules of property) and thus society result from the re-directing of self-love. The process does *not* rely on agreement and is thus immune from one of the main criticisms of social contract theories (that is, how to explain the bindingness of a first ever contract).<sup>4</sup> Rather, Hume's account is of justice emerging ever so gradually from reciprocal conventions. Where small family living is "natural"—some original or inherent

principle—life in society is created by convention. In this sense justice is “artificial.”

Secondly, two critiques of Hume’s position are considered and found, by Kramer, ultimately to be unsuccessful. The first is the weakness noted above and common to all social contract analyses: from where does the bindingness of a first contract come? But Hume explicitly rejected contractarian theories as Kramer allows. Hume’s conventional theory “is not of the nature of a *promise*: ... it arises gradually, and acquires force by a slow progression, and by our repeated experience of the inconveniences of transgressing it.”<sup>5</sup> The second critique which Kramer finds abortive, and to which I shall return below, involves the role of reason in the creation of justice. Primitive reflection based on already experienced events, impressions or ideas would not be sufficient to overcome avid self-interest.<sup>6</sup> But in response to this attack Kramer retorts that it is at most inconclusive whether the experiences of family life combined with reason could overcome self-interest on Hume’s model.

Thirdly, Kramer offers his own critique in the hope of showing that “Hume’s story disrupts itself when it narrates certain events that cannot possibly materialize until they have already occurred” (Kramer, 143). Kramer’s attack on the Humean conventional move to justice, as indicated above, concentrates on language. But it is well to note carefully Kramer’s interpretation of Hume’s account of the building of stable, society-wide property rules. Kramer takes this to be that, “[a]s a result of crude reflection and the restraints of family life, most people come to realize that a persistent demand for goods can be better filled within society than without it” (Kramer, 147; emphasis mine). Thus, says Kramer, the first step, temporally, is a rational deduction. *After* reason has alerted us to a better alternative, the Humean conventional solution then offers an account of how people, without relying on agreements, can gain confidence that most or all others will follow rules of justice—in other words, of how expectations about, conformity to and rules formalizing a regularity against the taking of others’ possessions can gradually arise.

Given this interpretation of Hume’s account, Kramer proceeds to make the ingenious argument that expectations can only arise if intentions can be communicated. Suggestions (not promises) for reciprocal self-restraint require “sophisticated concepts and modes of discourse” (Kramer, 149). The move from small family groupings to transfamilial ties thus needs a common language already to be in place or “such ties will never come into being, for they would have to precede themselves” (Kramer, 148-49). However, as regards this needed common language, “it will emerge as the *product* of society” (Kramer, 150; emphasis mine). The trap is apparently shut. Hume’s account of

a convention-based escape to justice requires a discursive medium amongst all the pre-society participants, but such a universal medium can arise only after society is established.

But what does the trap ensnare? My own view is that the Humean narration of the emergence of justice *is* internally consistent. Kramer's attack misses the mark, or at any rate it goes wide of one particular version of Hume's thesis. Nevertheless, Kramer's critique is valuable in reminding us of the looseness of expression evident in some of Hume's writing and of the need for occasional sympathetic readings of *prima facie* contradictory passages. In fact, it is precisely such allowances that Kramer himself makes (Kramer, 141) when resolving the ambiguity in Hume's indeterminate use of the term '*society*' to cover both the familial (pre-justice) and transfamilial (post-justice) stages in the escape to civilization.

Allowing myself a similar latitude in reading Hume, I will now turn to the merits of Kramer's position. It is essential, though, to specify exactly where the logic of that position might lead. It seems that Kramer takes the view that transfamilial social life *in fact* precedes any sophisticated language. It appears implicit from his arguments that social life is in some sense 'natural' or 'original' because it must be in existence for language to form at a later time. In fact, though, no position is directly taken by Kramer on this question and on whether the move from small atomized groupings to a new, larger state *is possible*—it is simply argued that Hume's conventional solution fails demonstratively to account for this passage. In other words, the journey to a civilized life cannot be fuelled by convention (or language on Kramer's analysis) although it may be achieved in some other, unspecified way. This latter reading of Kramer is admittedly not the one most obviously implied in the text, but then neither is it ruled out by the arguments there offered. Indeed, beyond making his point about the need for mutually understood sophisticated expressions in building a convention, Kramer's conclusion seems merely to restate or regress a level from the problem of how to account for the rules of justice. In its place, Kramer must answer how the "discursive structure ... will emerge as the product of society" (Kramer, 150) given his views of convention building requiring a shared language<sup>7</sup> and without his pre-supposing a society which already has any rules of justice.

The defence of Hume I shall here offer is an interpretation which attempts to salvage the coherence of the Humean escape story from Kramer's attack. Let me start that defence, then, with a very bare summary of my views. First, I am agnostic about the origins of language. It seems to me far from evident that transfamilial society must *precede* transfamilial language. Certainly the reverse seems less likely. However, the two may well grow up together, concurrently.

Hume himself, immediately after tracing out the conventional road to justice, says, "In like manner are languages gradually establish'd by human conventions without any promise" (T 490).<sup>8</sup> Language and justice could grow concurrently on a conventional basis provided that the justicial convention, at least in its initial stages, *does not rely on language* in the way Kramer asserts. Indeed, if the origin of language itself can be given a conventional solution<sup>9</sup> then conventions, *per se*, do not necessarily require expressed intentions, and so why should justice? Second, I offer a reading of Hume in which reason is secondary and thus where the motivating push to escape to justice is *not* provided by reason.<sup>10</sup> This will influence the need for expressed intentions to maintain coherence. Third, and this is related to my second position, I adopt a picture of convention building which does not, anyway, rely on language. This picture, I will suggest, can be applied to the growth of basic rules for stable possessions as well as to the growth of language itself.

Putting these three points together, I conclude that Hume's account, at least on one possible reading, is coherent. I then finish by considering briefly what it might be that makes Hume's narrative, in fact, ahistorical.

Let me now fill in this sketch.

Kramer explicitly limits himself to the *coherence* of Hume's account of justice. On this ground, Kramer's avoidance of modern anthropological and linguistic materials on the origins of language is explicable. What is being attacked by him is *not* an historical claim by Hume, but rather a logical claim. Given the Humean premises, is Hume's account of the origins of justice coherent? Do the mechanics of convention-based solutions necessarily rely on language, even in the early stages? If not, then Hume's escape story will be coherent regardless of any "real" chronology or "current" anthropological theories.

Turning back to Hume's narrative of the escape to justice, it should not be considered in isolation from his main concern, to bring a scientific attitude<sup>11</sup> to bear on questions of human nature such as believing, knowing and evaluating. As Kemp Smith illustrates,<sup>12</sup> a main theme of that undertaking, in all Hume's works, is the denigration of reason and the concomitant uplifting of natural belief. Hume denigrates reason, only to elevate the natural dispositions, but in doing so he uses the term "reason" somewhat loosely with shifting meanings. In book 1 of the *Treatise* Hume's main target is causation and the concomitant inductive process on which all science rests. He argues that induction can never be deductively proven; that however many past experiences of an A followed by a B there might have been, there are no demonstrative, a priori grounds for ever believing, on the

present instance of an A, that a B will occur. Belief in causation and induction is unreasonable (in the *narrow sense* of demonstrative, a priori comparing of ideas).

However, Hume is *not* an extreme sceptic, an arch-destroyer, a nihilist. Having laid open to philosophical doubt attempts to base science on a purely deductive, relation of ideas type analytical tool such as narrow reason, he shifts ground. Of course we believe in causation; all humans do, he gaily admits. Total scepticism is impossible.

[T]his question is entirely superfluous, and that neither I, nor any other person was ever sincerely and constantly of that opinion. Nature, by an absolute and uncontrollable necessity has determin'd us to judge as well as to breathe and feel; ... Whoever has taken the pains to refute the cavils of this *total* scepticism, has really disputed without an antagonist, and endeavour'd by arguments to establish a faculty, which nature has antecedently implanted in the mind, and render'd unavoidable." (T 183)<sup>13</sup>

Reason, in the narrow sense, may not justify empirical generalizations and the natural sciences, but humans are so constructed that they naturally believe anyway. No one can really be a total sceptic. All of us rely on a certain degree of uniformity in nature, whether that reliance is demonstratively well-founded or not. This is a natural belief based on the constant conjunction of cause and effect: what Hume sometimes called probable reasoning<sup>14</sup> and what I might term causal reason. Thus, in matters of causation and the existence of an external world, narrow reason is inert. Probable reason derives its force from a unreasonable natural belief.

But even this wider probable reason comes in for attack. In book 3 of the *Treatise* Hume discusses morality, how and why humans make distinctions between what is virtuous and vicious, and in doing so he again attacks the pretensions of reason.<sup>15</sup> Here, though, he is attacking *not* the narrow sense of reason attacked in book 1, but the much wider target of causal reason. According to Hume, such probable or causal reason yields empirical or causal knowledge (or, strictly speaking, belief). It might even be termed natural belief in that it leaves unexamined the assumption of uniformity which is inherent in induction. Probable or causal reason tells us about means, about the fastest way to travel from here to London, or ways to avoid catching disease, or how to launch a military attack or make new friends. It informs us of likelihoods and best options: given *these* past experiences, *this* route will give us the best results. Probable or causal reason is based solely on empirical premises,<sup>16</sup> the evaluating and deciding on

efficient methods based on known past empirical results. As we shall see, Hume asserts that probable reason cannot supply action-motivating dispositions or desires.

There are no other sorts of reason besides the narrow, demonstrative sort and the probable, practical sort. Everything else, for Hume, is a passion, being calmer or more intense. The Aristotelian notion of practical reason, which is the faculty that tells us what to do or what actions need to be taken, is a hybrid concept according to Hume. It inevitably combines a pre-existing desire or disposition or sentiment with either probable or narrow reason, and the combination is not properly called reason if the label 'reasonable' is to signify more than mere approval. Clear thinking is helped by distinguishing desires or dispositions from Hume's two sorts of reason and nowhere is this more so than as regards morality.

Hume takes it that moral evaluations can lead to action.<sup>17</sup> Deciding that 'X is the right thing to do' will impel one, at least sometimes, towards doing X. But can the process of probable reason provide us with the moral distinctions which spur action? Hume argues that the answer is no, even the broader probable reason is completely inert. It can *guide* action by showing better and worse means, but that is all. It cannot *initiate* or *originate* action.<sup>18</sup> Probable reason, leading to causal knowledge and factual information, is *not* dispositional. Some pre-existing desire or disposition is needed to initiate action. Probable reason certainly discovers likely results and guides effective action, but without the non-reason based desire there could be no action.

An acceptance of these premises, that moral "judgements" could initiate action and that reason could not, by itself, cause action, led Hume to assert that morality was not based solely on reason. What is antecedently needed, for one *TODO* anything, is a desire or feeling. All actions are, at core, founded on feeling, not reason.<sup>19</sup>

This then, in a nutshell, is Hume's position on reason. In the narrow sense, it is insufficient to save induction and science. Nevertheless, we as humans will always naturally believe in the process of causation.<sup>20</sup> In fact, it is this process of generalizing from cause to effect on which probable reason, broadly speaking, is based. Humans are distinctly rational, not because reason rules over desire, sentiment and feelings, but because humans, better than all others, are able to calculate future events based on past events. No other animal can reason as proficiently as we do from past empirical happenings to future predictions, but this is a matter of degree not kind.

In the moral realm, neither can narrow reason lead us to demonstrative moral values nor can the wider probable reason, by itself, lead us to act or to value. Morality is made not discovered, is subjective not objective. At core, what is involved are feelings. We do

not make moral judgements, but rather experience moral feelings. Probable reason, of course, plays an important role in the whole process, discovering likely results, pointing up effective paths, guiding action. But it is unwise to elide probable reason with the underlying desire or feeling which gives us a motive for action and call this practical reason. Reason and feeling are distinct. Ultimately it is true that, “[r]eason 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” (T 415).

This denigration of the Cartesian picture of reason was consistently maintained by Hume throughout his writings. I have only traced the bare outlines of the Humean attack. Nevertheless, it is my submission that Hume’s escape story to justice must be seen in the light of his position on reason. Reason is inert. While it is true that probable reason can guide and influence action by pointing out competing probable consequences, wider reason must do this *on the basis of experience*.

How does this affect one’s reading of Hume’s narrative recounting the escape to justice? Certainly *before* experience of justice, *before experience* of primitive rules for stable possessions, Hume could not have meant that reason gave us a motive to flee to justice. Only the wider probable reason could show us the consequences and benefits of justice; and it could only do that *after* we had experienced some form, weak or strong, of rule-inspired stable possessions. Kramer does not capture the Humean sceptical flavour when he interprets Hume’s position thus: “*As a result of crude reflection* and the restraints of family life, most people come to realize that a persistent demand for goods can be better filled within society than without it” (Kramer, 147; emphasis mine). Experience, retroactively, may point out the benefits of justice but narrow reason, prospectively, cannot deduce them nor can either type of reason provide a motive for change. Does that leave us to agree with the criticism that “the main stumbling block is that Hume’s empiricist principles would rule out the sort of innovation required at the alleged founding of society; one cannot ‘view something that is not yet existent and of which one can therefore form no impression (recognize what one has never cognized)’ ” (Kramer, 145)? I think not. And this takes us to the very heart of Hume’s conventional model of justice.

### Justice—the Unreasonable Convention

Consider Hume’s escape narrative from the point of view of the part played by reason in the emancipation. This is helpfully illustrated by distinguishing two queries.

- i) WHY was justice adopted? (Query #1)
- ii) HOW was justice adopted? (Query #2)

It is true that Hume himself does not explicitly make this distinction. Moreover, the failure to do so creates ambiguity and enables a reading of his justice narrative which does not mesh with his attacks on the pretensions of reason. For example:

The remedy, then, is not deriv'd from nature, but from *artifice*; or more properly speaking, nature provides a remedy *in the judgment and understanding*, for what is irregular and incommodious in the affections. (T 489; second emphasis mine)

There is no passion, therefore, capable of controlling the interested affection, but the very affection itself, by an alteration of its direction. Now this alteration must necessarily take place *upon the least reflection*. (T 492; emphasis mine)

Kramer appears to interpret these and other passages as suggesting that it is reason that propels us out of the state of nature—in other words, that the answer to Query #1 is reason. However, I believe that Hume can be read otherwise, in a way that is not inconsistent with his overall position on reason.

*How* justice is created is indeed by probable reason. It is reasonable because as each instance of reciprocity and co-operation takes place, probable reason will use this experience, recognise the good consequences, and opt for more of the same. *After* a few ventured pulls on the oar causal reasoning—that is, judgement, understanding, reflection—plays a huge part in achieving the convention of justice. *Once begun*, the process of trial and error is fuelled by probable reason. Indeed, it is probable reason that shows us, ever so gradually over a vast timescale, where our long term interests truly lie. Reason offers piecemeal guidance, not abrupt solutions.

A thoroughly Humean answer to *why* justice is first adopted would *not* involve reason. Those first hesitating steps towards justice could never be taken because of reason, either analytical or probable. Reason is inert. Just as moral actions always require an underlying desire or disposition which reason cannot provide, so too do the initial steps towards justice. The process of reaching justice can never begin with reason, but only with the aid of some desire—perhaps spurred by imagination or sympathy. What, then, might provide initial examples of the benefits of regularity of possessions, of not taking if not taken

from? Well, perhaps someone with a gambling disposition or with a feeling of curiosity or moved by sympathy will take an “unreasonable” chance and forgo an opportunity to take my food. Gratitude or an occasional spell of natural benevolence (for Hume is clear that we are far from completely selfish) might move me to reciprocate. Many different “feelings” might motivate someone to pull the oar those first few times—but not reason. After a few such sentiments (perhaps with a bit of luck) in a few different people and probable reason will eventually tell others the good consequences that usually, as it happens, occur. Then the contingent but real fact of the passion of self-interest will powerfully join in as it alters its direction away from free-for-all and towards rules of property.

Hume’s escape story *can be* interpreted in a way which is consistent with his position on reason and better still, in a way that shows the strength and force of that position. Kramer does recognize that Hume wants to treat separately my above two queries.<sup>21</sup> Nevertheless, the tenor of his argument implicitly ignores Hume’s whole attack on reason in books 1 and 3 of the *Treatise*. Surely in the two passages cited above (T 489, 492), Hume, in mentioning “the judgment and understanding” and “the least reflection” is referring to the essential role reason plays in answering Query #2—*how* justice is adopted. Reason, narrow or wide, could not for Hume play any role in giving impetus to adopt conventions that originate justice.

And if reason is not a requirement for solving Query #1, this may alter the picture one has of the need for “expressed intentions” in answering Query #2—for surely language is more central in the very early stages of a reason-driven escape than a feeling-driven one.<sup>22</sup> Of course, even if Kramer is wrong about the role of reason in Query #1, he might still be correct that language *is needed* to generate a convention, to solve the second query. But again, I think not.

### How to build a Convention

Is a discursive medium needed *to generate* a convention-based escape? It is Kramer’s affirmative response to this question that provides him with the second main support of his argument. Indeed, this point is the main thesis of his article—that although conventions may form without explicit agreement, nevertheless the process of achieving justice requires a mutually understood, sophisticated language amongst the various participants. I think that Kramer is simply wrong on this assertion, possibly because he infuses the process of convening around a co-ordination equilibrium with too much rationality<sup>23</sup> and too little arbitrariness, or possibly because his gaze inadvertently slips to the historical development of justice. In terms of *coherency*, a model of the

conventional origins of rules of property need *not* pre-suppose a sophisticated transfamilial language.

I do not here propose to be hugely ambitious and attempt to construct a detailed scheme of the conventional origins of Humean justice. As Kramer's attack is directed against the coherence of Hume's model, I will limit myself to three short points.

Firstly, we can quite easily imagine *co-ordination* without communication. For example, in trying to meet up again, we might both go back to where we met yesterday and then go there whenever we wish to meet again. Or, if a new phone system is installed which fails regularly, you, the original caller, may call back the first time the lines fail. The second time, I, being the caller, might remember and call back. This then is established as the *regular* procedure. Or again, she might repeat the noise that she made last week when we were all together and she saw the buffalo. This gradually becomes the buffalo recognition signal. Or finally, you leave me with what I gather for as long as I leave you with what you gather. Many examples of co-ordinated behaviour can be *imagined* where the co-ordination does not result from expressed intentions. All that is then left is to move from co-ordination to regularity where:

- (a) the regularity is *not* the result of agreement;
- (b) the regularity is *not* produced by verbally expressed suggestions or intentions; and
- (c) the regularity gradually, due perhaps to habit or custom, becomes formalized into a rule.

Secondly, the conventional origins of *language itself* have been treated just this way—as growing up slowly, without explicit agreement, and as a product of shared human perceptions of salience—in David Lewis' book *Convention*.<sup>24</sup> Using game theory and a plethora of examples, Lewis argues that at least one type of convention is a "co-ordination over time" whose main ingredients are expectations, conformity and regularity (*ex hypothesi not* verbal communication). Such conventions arise in circumstances where there is more than one possible co-ordination equilibrium—the actual choice being arbitrary<sup>25</sup>—and without reliance on agreement or communicating. "Thus even in a novel co-ordination problem agents can sometimes obtain the concordant expectations they need without communicating."<sup>26</sup> If Lewis' thesis is plausible for language,<sup>27</sup> then why not for Humean justice? Indeed, if language and justice grow *concurrently*, then expressed intentions can play a role, *at some later*

*stage*, in the convention's ever greater sophistication. At any rate, the Lewisian analysis supports my view that Hume's theory of justice *prima facie* is *coherent* while undermining Kramer's assertion that a discursive medium is needed.

Thirdly and finally, to the extent that Kramer's conclusion merely restates the problem in a different form, it would seem that the onus is on him to show that no form of convention can arise without pre-supposing a sophisticated, mutually understood language and indeed, to suggest what might replace convention. Hume, if right, offers a way out. Kramer, if right, does not.

### Conclusion and Difficulties

I have endeavoured in the course of this article to defend the coherence of Hume's conventional account of the escape to justice; a version which is both consistent with his views on the role of reason in human affairs and one which does *not* pre-suppose a transfamilial language at the dawn of the passage. I have been spurred to do this by the conclusion of Matthew Kramer<sup>28</sup> to the effect that the Humean conventional solution fails because of the absence of a shared discursive structure. It is, I think, a misunderstanding of the piecemeal operations of probable reason and of the mechanics of some possible conventional solutions to say: "Without such dialogues, people can have no basis for presuming that their own willingness to form a society has become widespread" (Kramer, 148).

Of course, it may be conceded that this is correct and yet, nevertheless, that Hume *himself* had in fact imagined language as central to the escape to justice—whatever subsequent glosses may or may not now salvage his overall position. But exegetical analysis can read overmuch into the term "express."<sup>29</sup> Expectations may be communicated without language; they may in fact, at a primitive stage, depend upon the essential similarity of humans' passions, sympathy and imagination.

Perhaps, too, criticism can be made of Hume's looseness of expression, though I do not think one should take this objection too far.<sup>30</sup> At any rate, I do not seek here actual authorial intentions, but a version of Hume's thesis which is coherent *and*, at the same time, consistent with the main doctrines of his works.

There is one last issue I would like to raise, although not to settle. If Hume's escape story is ahistorical, the state of nature being "a mere philosophical fiction" (T 493), and yet coherent, then where does it differ from the actual, historical reality? Kramer refers to one possibility: "human impulses toward sociality" (Kramer, 143) might be greater than Hume posited. In other words, social life might be largely the

result of instinct. In effect, we are born into society. This, though, might seem to lie uncomfortably beside Hume's claims that justice is artificial.

I suggest another possibility—Hume's model deliberately ignores the role played by force, violence and aggression. Actual history recounts partial conflict situations, not the coincidence of interest which dominates the "fictitious" Humean narrative and the Lewisian conventional model. Small minorities impose their wills by force, and in this manner bring the result to everyone's attention in much the same way as an explicit agreement. Hume the historian would have been well aware of the part played by force in history. Yet his narration of the escape to justice completely omits it. Why? What is the point of a coherent but explicitly ahistorical account?<sup>31</sup> This, I think, is a difficult query for a Humean, one to which it is far from easy to offer a satisfactorily plausible answer. And one, in my opinion, which does seem to hint at a chink in Hume's theory of justice—in notable contrast to Kramer's critique, posited as his is on an unHumean conception of reason and on an unduly narrow image of convention building as requiring large scale communication.

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1. Matthew Kramer, "The Deferral of Nature in Hume's Theory of Justice," *The Canadian Journal of Law and Jurisprudence* 2, no. 2 (July 1989): 139 (hereafter cited as "Kramer").
2. Kramer has certainly pointed up some ambiguities in Hume's arguments (see below). Nevertheless it will be here argued that the Humean position can, with minor clarifications, be made coherent.
3. Cf. Kramer, 142-43.
4. See Kramer, 143-45. Cf. Neil MacCormick, "Justice: an Un-original Position," in *Legal Right and Social Democracy* (Oxford, 1982), esp. 87-90.
5. David Hume, *A Treatise of Human Nature*, ed. L. A. Selby-Bigge, 2d ed., rev., ed. P. H. Nidditch (1978; reprint, Oxford 1987), 490 (hereafter cited as "T").
6. This second critique is set out at Kramer, 145, and represents the view of Jerome Christensen, *Practising Enlightenment: Hume and the Formation of a Literary Career* (Madison, Wisconsin, 1987).
7. Perhaps Kramer *could* say that only the justicial convention, not any linguistic convention, requires a shared language. It is far from obvious, though, why this should be so.
8. See, too, David Hume, *Enquiries Concerning the Human Understanding and Concerning the Principles of Morals*, ed. L. A.

- Selby-Bigge, 3d ed., rev., ed. P. H. Nidditch (Oxford, 1975), 306-7 (hereafter cited as "E").
9. Again, it is unclear whether Kramer accepts this possibility or not, but if he does, *then reasons need be given why verbal sounds can 'convene' around particular meanings* (in the absence of, *ex hypothesi*, a shared language or explicit agreement) *and yet the allocation of basic goods cannot so 'convene' without language.*
  10. This is not the premise on which Kramer proceeds. See above.
  11. The full title of Hume's *Treatise* is: *A Treatise of Human Nature: Being An Attempt to introduce the experimental Method of Reasoning into Moral Subjects.*
  12. Norman Kemp Smith, *The Philosophy of David Hume* (London, 1966). See, for example, 8-12, 110-32, 143-50, 193-202, etc.
  13. See, too, E 149-65 ("Of the academical or sceptical Philosophy").
  14. For example, see T 98-106 ("Of the causes of belief").
  15. This attack on reason actually begins in *Treatise*, 2.3.3 and then is picked up and finished in *Treatise*, 3.1.1. It seems that Kramer's reason is this latter type of reason—technically a form of natural belief.
  16. I shall not here enter into the debate on whether empiricism is deficient, or into the mind/body divide or whether humans can know anything not perceived by the senses. Suffice it to say that Hume was an empiricist and thus Humean practical reason could only operate in the physical realm.
  17. See, for example, J. L. Mackie, *Hume's Moral Theory* (London, 1980), 54-55. It would seem rather uncontroversial, though, that moral determinations may and sometimes do influence actions.
  18. In one sense reason can provide ends. For example, if I have a desire to be healthy, reason can indicate that I avoid red meat and chocolate, in other words, that my end be a better diet. But "ends" in this sense still require the pre-existing urge, desire, or disposition to be healthy. See Mackie (above, n. 17), chap. 3, on Hume's psychology of action.
  19. Thus Hume was led to moral subjectivism—the view that morality springs from subjective feelings, perhaps bolstered by sociological considerations—*after* having come to the conclusion that reason was inert, and as such could not *discover* any action-initiating objective values out somewhere in the fabric of the world. One had to look elsewhere for the source of normative opinions and a natural place is inwards. For an in-depth review of Hume's arguments for a non-cognitive or projectivist ethics see Mackie (above, n. 17), chaps. 4, 5.
  20. Of course we can coherently demand certain standards, that the generalization be based on sufficient past experiences, but we

cannot disbelieve *all* such evidence even if we are aware of the logical flaw. Nature has made our natures such that total scepticism is impossible.

21. See Kramer, 140: "Hume's tack was to explore not only *why* people adopt conventions that originate justice, but likewise *how* they go about doing so."
22. The more is this so when a basic core of human passions are seen to be more or less universal across the species.
23. See, for example, Kramer, 148. Here Kramer emphasizes "enlightened" self-seeking in the convention building exercise.
24. David Lewis, *Convention: A Philosophical Study* (Cambridge, Massachusetts, 1969). The book expands Hume's short insight into a detailed discussion of conventions and rules and how a convention can arise without agreement.
25. Which, of course, is exactly Hume's position on the *content* of justicial rules; they are arbitrary and linked to imagination, not reason.
26. Lewis (above, n. 24), 36.
27. And, in the foreword to Lewis' book, Quine seems prepared to accept that Lewisian conventions may be plausible origins of primitive languages.
28. See Kramer, 149.
29. For example, Hume says that "all the members of the society *express* to one another," and "this common sense of interest is *mutually express'd*" (T 490; emphasis mine). Indeed, it is on Hume's use of such terms that Kramer founds his argument. See Kramer, 148.
30. As I have already noted, Kramer himself is prepared to make favourable allowances for indeterminacies and ambiguities. See above, p. 83 and Kramer, 141.
31. This, of course, is also a criticism of social contract theories, although perhaps Hume has helped to show that they *are not even coherent*.