



Ian Cruise

Hume's Account of the Scope of  
Justice

*Hume Studies* Volume 46, Number 1–  
2, 2020, pp. 101-119

Your use of the HUME STUDIES archive at <https://www.humesociety.org/hs> indicates your acceptance of HUME STUDIES' *Terms of Use*, which can be accessed at <https://www.humesociety.org/hs/terms>.

HUME STUDIES' *Terms of Use* provides, in part, that unless you have obtained prior permission, you may not download an entire issue of the journal, or multiple copies of articles, and you may use content in the HUME STUDIES archive only for your personal, non-commercial use.

For more information on HUME STUDIES contact: [editors@humestudies.org](mailto:editors@humestudies.org)

# Hume's Account of the Scope of Justice<sup>1</sup>

IAN CRUISE

*Abstract:* Hume's account of the scope of justice, many think, is implausibly narrow, applying almost exclusively to respect for property rights. Such a view would indeed be highly objectionable because it would leave out of the scope of justice altogether requirements to keep our promises, obey the law, and refrain from threats and violence (among many others). I argue that Hume's theory of justice, properly understood, avoids this objection. And seeing how is instructive because once we understand his account correctly, we can appreciate its resources for offering attractive explanations of why a number of diverse phenomena fall within the scope of justice. Overcoming this challenge is a major stepping stone on the way to seeing Hume's theory of justice as a genuine competitor with the other dominant theories of justice in the philosophical literature.

Philosophers, as they are wont to do, disagree sharply about the precise scope of justice. But one philosopher's account of the scope of justice has been widely dismissed on the grounds that it is far too narrow. That philosopher is Hume. The accusation, which, admittedly, has some plausible grounding in the text, is that Hume's theory of justice is concerned almost exclusively with the regulation of property rights. Witness Barry Stroud's disappointed remark: "Even after giving 'the vulgar definition of justice,' according to which justice is '*a constant and perpetual will of giving every one his due*' . . . [Hume] goes on to discuss nothing but property and one's right to it as that which is secured by the institution of justice."<sup>2</sup> Don Garrett similarly complains that Hume's "very narrow" focus on property is "uncharacteristic even for the period."<sup>3</sup> If these commentators are correct about Hume's view of the scope of justice, then his account is utterly indefensible because, as Gerald Postema reminds us in his own discussion of Hume, "Ordering property relations . . . is a part of justice, but it is only a

---

Ian Cruise is Lecturer in the Department of Philosophy and Postdoctoral Fellow with the Political Economy Project at Dartmouth College, Silsby Hall, Hanover, NH 03755, HB 6108, United States.  
Email: Ian.P.Cruise@dartmouth.edu

part, and not obviously the most important part.”<sup>4</sup> According to this reading, Hume’s view cannot make sense of why, for example, justice also demands that we adhere to our contracts and promises, obey the law, and refrain from threats and violence (among others).

In this paper, I defend Hume against this longstanding objection, not on the grounds that justice actually does apply only to the regulation of property (which is clearly false), but instead on the grounds that Hume’s account of the scope of justice has been misunderstood. By attending to the fundamental structure of his theory of justice, I bring out how Hume conceives of the scope of justice, and I highlight his account’s versatility in offering attractive explanations of why a number of diverse phenomena fall within the scope of justice.<sup>5</sup> Along the way, I develop his important and underappreciated accounts of the obligations of justice and the conditions in which these obligations arise. Though I obviously cannot address every objection to Hume’s theory of justice, once we answer this major concern, we overcome a significant hurdle on the way to seeing Hume’s theory of justice (or a suitably modified version thereof) as a serious competitor with the other prominent theories of justice in the philosophical literature.

## Section I: The Challenge

Justice does not apply only to the regulation of property. If Hume’s theory of justice cannot explain why more than just property falls within the scope of justice, then it ought to be rejected. Of course, if we could reduce all of the other demands of justice to property, the worry might evaporate. For instance, if we embraced a conception of self-ownership, we could make sense of why restrictions against threats and violence fall within the scope of justice because, on such a view, threats and violence would be property rights violations.

Yet, there are a number of reasons to resist this strategy and, in particular, not to attribute it to Hume. First, we might have serious worries about the attempted reductions and the commitments that we have to assume in making them. For example, in the case of threats and violence, we would have to adopt the idea that we have property rights in ourselves, which is itself highly controversial. But second, and more importantly, Hume is clear that he thinks that our property rights apply only to “external goods” (T 3.2.2.9; SBN 489),<sup>6</sup> which are those easily transferable goods that are external to ourselves (things like tables and chairs). Because our time, our labor, and, more generally, ourselves are not external goods, the view that self-ownership can explain why restrictions against threats and violence fall within the scope of justice is simply not open to Hume.

As a result, we shouldn’t attribute this more capacious conception of property rights to him. But once we deny this response to Hume, he appears to fall victim to the objection. If he has the ordinary and narrow conception of property rights and that is the only thing, on his view, to which justice applies, his view is extremely implausible.

So, why, then, do Hume’s commentators believe that his theory of justice applies only to property? Some passages encourage this reading. For example, in the *Enquiry Concerning the Principles of Morals*, he writes:

It seems evident, that, in [a condition of extreme abundance of goods], every other social virtue would flourish, and receive tenfold increase; but the cautious, jealous virtue of justice would never once have been dreamed of. For what purpose make a partition of goods, where every one has already more than enough? (EPM 3.3; SBN 183–84)

Here Hume explicitly links justice with “a partition of goods,” that is, a scheme of property rights.

In addition, Hume traces the origin of justice to the origin of property conventions designed (in a loose sense of “designed”) to stabilize possession. He writes: “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*” (T 3.2.2.11; SBN 490–91). At the very least, Hume must think that property takes pride of place in his theory of justice.

Garrett, I believe, offers the most straightforward reason for thinking that Hume understands the scope of justice so narrowly. He writes: “Hume most commonly uses the term ‘justice’ in a limited way that designates only respect for property. Although he sometimes adds the keeping of promises—which are also a person’s ‘due’—to the scope of ‘justice,’ he more commonly distinguishes promise keeping under the distinct term ‘fidelity.’”<sup>7</sup> If Hume applies the term “justice” almost exclusively to respect for property, then the simplest explanation is that he takes the term to apply almost exclusively to respect for property. Moreover, if he applies the term “justice” to property and uses distinct terms (like “fidelity”) for other domains, then he must think that justice applies to property and not to these other domains.

Garrett admits that Hume sometimes uses the term “justice” to pick out requirements to keep our promises, but, he claims, “this usage is only sporadic.”<sup>8</sup> And some passages in Hume’s corpus support Garrett’s reading. For instance, in “Of the Original Contract,” Hume writes, “It is thus *justice* or a regard to the property of others, *fidelity* or the observance of promises, become obligatory, and acquire an authority over mankind” (*Essays*, 480). Here Hume does appear to distinguish justice from fidelity, and thus seems to exclude promise-keeping from the scope of justice. On this reading, promise-keeping falls within the scope of fidelity, not justice. Moreover, in the section of the *Treatise* in which Hume lays out his account of promising (T 3.2.5), he uses the term “justice” only once (T 3.2.5.6; SBN 518) and does not clearly intend, in that context, to apply it to promise-keeping.

On the other hand, later in part 3.2 of the *Treatise*, Hume is explicit that he conceives of promise-keeping as one of the “fundamental rules of justice” (T 3.2.11.2; SBN 567). Moreover, he refers to the “breach of promises” as a form of “private injustice” (T 3.2.8.7; SBN 545–46) and claims that the “execution of justice” involves the “performance of promises” (T 3.2.8.7; SBN 546). Hume’s inclusion of promise-keeping within the scope of justice, at least in the *Treatise*, is not as “sporadic” as Garrett claims.

In addition, Garrett’s suggestion that Hume wants to distinguish “justice” and “fidelity” does not fit well with the relation that Hume sees between justice and property. As Garrett

himself notes, Hume is clear that we find justice in the *respect* for property, not in property itself. Here is how I think Hume conceives of this relationship. Property is the relevant convention, and it demands that we refrain from the property of others. When the property convention in question meets certain normative standards (to be discussed in detail in section II), its demands are reified as demands of justice. Once its demands are reified as demands of justice, *respect* for property secures its status as a virtue. Thus, on my reading of Hume's account of justice, what we have here is a schema with four variables: 1) The type of convention, 2) What the convention demands, 3) The moral status of the demands of the convention, and 4) The virtue associated with (the right kind of) adherence to the convention.<sup>9</sup>

With this in mind, is Garrett correct that Hume wants to contrast "justice" and "fidelity"? The answer must be no. Were Hume trying to contrast "justice" and "fidelity," here's how he would have to fill in the schema. 1) Promising is the relevant convention, and 2) the convention demands that we keep our promises. When the convention meets the relevant normative standards, then 3) its demands secure the status of demands of fidelity. And 4) once the convention meets the relevant normative standards, fidelity secures its status as a virtue. The problem with this way of filling in the schema is that it flies in the face of Hume's explicit claim that fidelity to promises falls within the scope of justice.<sup>10</sup> As a result, the more plausible reading would have Hume claiming that 1) promising is the relevant convention, and 2) the convention demands that we keep our promises. When the convention meets the relevant normative standards, 3) its demands secure the status of demands of justice. Then, 4) once the convention satisfies the normative standards and thereby generates demands of justice, fidelity secures its status as a virtue.

One might object that this schema leaves no room for the *virtue* of justice. Hume clearly thinks that there is such a virtue, so how does it fit into my interpretation? As I substantiate through the argument of this paper, the virtue of justice, for Hume, is a generic virtue of (the right kind of) adherence to the demands of certain sorts of conventions, including not only property but also promising, law, and others. Thus, in a way, justice is always the virtue that fills in (4) in the schema, but there are different modes of the virtue of justice, which are given different names. The virtue of justice regarding property is respect for property. The virtue of justice regarding promising is fidelity, and so on.

All that said, Hume does indeed sometimes write as though justice and fidelity are distinct virtues. No doubt, his terminological choices vary across his works. The textual evidence is mixed. However, charity dictates that when the textual evidence is mixed, we ought to attribute to Hume the more plausible view, and the more plausible view is that promise-keeping falls within the scope of justice. As a result, the best interpretation of Hume's view is that "justice" applies to fidelity to promises, as well as to respect for property.

That would still leave the scope of justice quite narrow and, indeed, implausible. But in other places, Hume suggests that the scope of justice is wider still. One initial point to make here is that he calls the whole of 3.2 of the *Treatise* "Of Justice and Injustice," which suggests that he intends all of the artificial virtues<sup>11</sup> (or, at least, all of the artificial virtues he discusses in T 3.2) to fall within the scope of justice.<sup>12</sup> If we accept this point, then allegiance

to domestic law, respect for international law, and the duty of chastity all fall within the scope of justice as well.<sup>13</sup>

Additionally, Hume identifies the “laws of justice” with the “laws of society” (T 3.2.2.11; SBN 491), which indicates that he thinks of the rules of justice as at least the most basic rules that govern social interaction. Assuming, plausibly, that the rules of property and the rules of promise-keeping are not the only rules we need to enable peaceful and productive social interaction, then Hume must think that the scope of justice is wider than property and promising alone.

This consideration, however, has no force unless we can find an explanation from within Hume's theory of justice for why the “laws of society” cover more than just the rules of property and promising. I take up that task in section III. But before getting there, in section II, I make the case that Hume understands the scope of justice in a broad and at least initially attractive way by offering an interpretation of the structure of his theory of justice. Once we have a firm grip on the structure of his theory, we will be able to see how he applies it to domains other than property and how it naturally extends beyond even those conventions that Hume explicitly discusses.

## Section II: The Structure of Hume's Theory of Justice

On Hume's view, justice arises when conventions successfully solve collective action problems in a way that meets certain normative standards, such that they give rise to a distinctive species of our moral obligations: obligations of justice. The task of this section is to explain this basic structure.

What is distinctive about obligations of justice for Hume? They are obligations to abide by the rules or procedures of the relevant conventions (for instance, property conventions, promising conventions, and so on). But on Hume's view, these obligations take a particular shape. Specifically, they are obligations to do what the rules or procedures of the relevant conventions require when and only when the other participants in the convention constituted by these rules and procedures also abide by them.

When conventions generate obligations of justice to abide by them, the obligations have this reciprocal shape. The reason is that conventions are, themselves, partially a product of reciprocal conditional motives to behave in certain ways. According to Hume, a convention:

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 interest in the regulation of his conduct. When this common sense of interest is mutually express'd, and is known to both, it produces a suitable resolution and behaviour. (T 3.2.2.10; SBN 490)<sup>14</sup>

We each regulate our behavior in accordance with the convention *provided* that other people do as well. Because conventions depend for their stability (and so, for their effectiveness) on the mutual compliance of their participants, when conventions generate obligations, they are reciprocal. Our obligations to abide by the rules and procedures depend on others fulfilling their obligations to do the same.<sup>15</sup>

This conditional character of obligations of justice distinguishes them from other sorts of moral obligations. I am, for example, morally obligated to wade into a shallow pond to save a drowning child. But this obligation is not (or, at least, need not be) dependent upon a convention. It is a convention-independent obligation. Obligations of justice, by contrast, are, on Hume's view, convention-dependent obligations. It is because the success of the convention (and so, its value) depends on the mutual restraint and participation of each that we have obligations of justice.

What kinds of rules and procedures generate obligations of justice? The answer is those rules and procedures constituting conventions that work to solve collective action problems that stand in the way of fruitful social interaction. A collective action problem is a problem that arises from uncoordinated individual behavior which produces a socially undesirable outcome. In order to solve these problems, we establish conventions.

Do any rules and procedures that constitute a convention that solves a relevant collective action problem generate obligations of this kind? No. Hobbes's *Leviathan* solves some of the relevant collective action problems, but not in a way that generates obligations of justice. As Hume points out:

'Tis certain, therefore, that in all our notions of morals we never entertain such an absurdity as that of passive obedience, but make allowances for resistance in the more flagrant instances of tyranny and oppression. The general opinion of mankind has some authority in all cases; but in this of morals 'tis perfectly infallible. Nor is it less infallible, because men cannot distinctly explain the principles, on which it is founded. Few persons can carry on this train of reasoning: "Government is a mere human invention for the interest of society. Where the tyranny of the governor removes this interest, it also removes the natural obligation to obedience. The moral obligation is founded on the natural, and therefore must cease where *that* ceases; especially where the subject is such as makes us foresee very many occasions wherein the natural obligation may cease, and causes us to form a kind of general rule for the regulation of our conduct in such occurrences." (T 3.2.9.4; SBN 552–53)<sup>16</sup>

Hume endorses this train of reasoning, and so, he must think that not just any convention that solves a collective action problem can generate obligations of justice. Of course, Hume's view does have certain affinities with Hobbes's. Both Hume and Hobbes think that obligations of obedience to the law spring from problem-solving conventions sustained by the compliance of many people. Hume, however, rejects the Hobbesian view that oppressive and tyrannical conventions could generate obligations of justice, a possibility that Hobbes seems to allow in

cases in which these conventions stand between us and the state of nature. For this reason, it is not enough that a convention solves the relevant problem. It must solve the problem in a certain way, namely, in a way that meets the moral standard, which, for Hume, is approval and disapproval from a certain neutral perspective that he calls the General (or Common) Point of View.<sup>17</sup>

How does the General Point of View function in the specific case of justice? What must a convention be like in order to secure approval from the General Point of View? It must meet a number of constraints. First, a convention must actually work to solve the relevant problem. Obligations of justice do not emerge from consistently ineffective conventions for the reason that such conventions lack value, and only valuable conventions establish justice (EPM 3.1; SBN 183).

Second, a convention must generate overall expected benefits for *each person*, and not just the aggregate. Hume writes, "But however single acts of justice may be contrary, either to public or private interest, 'tis certain, that the whole plan or scheme is highly conducive, or indeed absolutely requisite, both to the support of society, *and the well-being of every individual*" (T 3.2.2.22; SBN 497, my emphasis). I need to clarify two features of this claim. First, we need to get clear on the kind of benefits at issue. Second, we need to understand why the convention must generate the benefits not only for the community as a whole, but also for each individual.

I say "overall expected benefits" because these conventions can demand sacrifice. Particular demands of justice might be bad for the person required to satisfy them, or even bad for the community as a whole. In fact, it might be burdensome for people to fulfill *each and every* demand of justice to which they are subject. But the "whole plan or scheme" (that is, the convention) can be expected to be good overall for both the community and each person. When the community members generally abide by the rules of the convention, that generates benefits for *each person* in the community.

I say "overall *expected* benefits" because a convention, for a variety of reasons, might not actually provide benefits to particular people.<sup>18</sup> For example, a national defense convention requiring military service might very well not benefit a particular soldier (for example, one who is killed in the line of duty very early on in his or her service). But such a convention nonetheless offers expected benefits to each person, including the soldiers, as long as the state is not too quick to go to war and does not send its soldiers on suicide missions (and, in fact, this is a nice explanation for *why* states ought not to be too quick to send their soldiers to war or to send them out on suicide missions).

Hume's claim that the conventions must produce overall expected benefits for both the community *and each person* is sometimes glossed as the claim that the conventions must be mutually beneficial. Yet, this phrase—"mutually beneficial"—is misleading for two reasons. First, the claim that a convention must be mutually beneficial is at best silent on whether any particular demand that the convention makes must benefit each person. Second, the claim does not capture the fact that the benefits need only be expected. Nonetheless, the label "mutually

beneficial” is convenient, so I will use it going forward to describe a convention that provides overall expected benefits to the whole community and to each person.

There are two reasons that these conventions must be mutually beneficial. First, conventions depend for their stability on *compliance*. If people did not comply with them, they would fall apart. In order to secure compliance, they must offer overall expected benefits for each. If they fail in that regard, then those who see no prospect of benefitting would be unlikely to comply, which would destabilize the conventions.

Second, only conventions that are mutually beneficial would secure approval from the General Point of View. When we take up the General Point of View, we occupy a perspective from which we sympathize with each of the convention’s participants. We could not occupy this perspective and yet approve of a convention that failed to provide the prospect for benefit to even one of its participants, as long as there is a possible convention that would provide the prospect for benefit to each. By meeting these two conditions, the conventions, our acts of abiding by the conventions, and the motive to do one’s part in the maintenance of those conventions in which one participates secure approval from the General Point of View.

This discussion of mutual benefit raises an important question about the relationship between justice and self-interest. One might easily misunderstand Hume’s view here as suggesting that the demands of justice are ultimately the product of some form of enlightened self-interest. After all, a crucial feature of any convention that would secure approval from the General Point of View is that it provides overall expected benefits for the community *and each individual*. As a result, one might be tempted to think that our moral obligations to do as justice demands are simply the result of the fact that self-interest demands that we abide by the conventions, in order to put ourselves in the best position to secure their benefits for ourselves.<sup>19</sup>

This is a mistaken impression. While Hume does believe that it is self-interest that plays the most significant role in the *establishment* of the conventions, he does not believe that self-interest is ultimately what guides the *approval* of the conventions from the General Point of View. Self-interest has only the following limited role in guiding our approval: it is important in the establishment and maintenance of the conventions that each person can expect to benefit overall from them.<sup>20</sup> So it is in each person’s interest to participate in the conventions, and because it is in each person’s interest to participate, each person is more likely to comply with the conventions. Compliance is crucial for effectiveness, and effectiveness is important for securing approval from the General Point of View.

But when I take up the General Point of View, I do not approve of the conventions because I expect them to benefit *me*. Rather, I approve of the conventions from the General Point of View because I expect them to benefit *each person* who participates in them. This emphasis on our approval being sensitive to the benefits for each explains why we are capable of approving of even those conventions in which we do not participate. As Hume writes, “*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*” (T 3.2.2.24; SBN 499–500).

In this passage, Hume is concerned with the virtue of justice rather than the conventions. But his account of the virtue of justice is derivative of his account of the value of the

conventions. The virtue of justice, for Hume, is the disposition to act from a concern to do one's part in conventions that realize a distinctive form of value that I call *functional* value.<sup>21</sup> This is the kind of value that a convention has when it is well-suited to solve a collective action problem in a way that generates overall expected benefits for the community and for each person (whether it always succeeds or not). Thus, the motive upon which the person with the virtue of justice acts depends on the presence of conventions that realize this kind of value. And approval of that motive is dependent upon its relation to the maintenance of conventions of value.

As a result, we should interpret Hume's appeal to "a sympathy with the public interest" as an appeal, ultimately, to the value of the conventions. Because of our sympathy with the public interest, we approve of those conventions that realize functional value. In other words, we approve of those conventions that are well-suited to solve collective action problems in a way that secures overall expected benefits both for the community as a whole and for each person.

Why would our *obligations* depend on the value of the conventions? Hume's account of moral obligation explains why. For Hume, we lie under moral obligation to do something just in case we would disapprove of failing to do it from the General Point of View (T 3.2.5.4; SBN 517). In the case of justice, we would disapprove, from the General Point of View, of failing to abide by the conventions just when the conventions themselves secure approval from the General Point of View. Our obligations of justice are grounded in our approval of the conventions, but our disapproval of failing to do as the conventions demand bridges the gap between our approval of the conventions and their generating obligations of justice.

Let us call the view I have been sketching in this section *Humean Functionalism* about justice because for Hume, justice emerges from conventions that occupy a certain social functional role, namely, the role of solving collective action problems in ways that would secure approval from the General Point of View. This is the basic structure of Hume's account of justice.

One might object here that all I have done is offer an account of the basic structure of the artificial virtues, of which justice is simply one among many. Why think that the structure I have outlined is the basic structure of Hume's theory of *justice*? My answer goes back to the point I made in section I that Hume clearly includes fidelity to promises within the scope of justice. What unites Hume's account of fidelity to promises with his account of respect for property is precisely the structure that I have identified in this section. If both fidelity to promises and respect for property fall within the scope of justice, then the best explanation for why is that they share this common structure. And if *that* is right, then for Hume, what it takes for something to fall within the scope of justice is that it fits within this structure.

Thus, in determining Hume's account of the *scope* of justice, we simply need to examine all of the places in which this basic structure applies. First, we need to identify a collective action problem. Second, we need to see how a convention solves the problem. Finally, in evaluating the convention, we need to determine whether it would secure approval from the General Point of View. If it does, then it establishes obligations of justice. The goal of the next section is to show how Hume applies this basic structure to several of the conventions he discusses in part 3.2 of the *Treatise*.

### Section III: Widening the Scope

In T 3.2 (“Of Justice and Injustice”), Hume discusses five problems, the conventions that solve them, and the moral status of these conventions. The three on which he spends the most time, and which he seems to regard as most important, are the problems solved by the conventions of property, promising, and domestic law. The other two concern the conventions of international relations and chastity. I will focus my discussion in this section on property, promising, and law. Hume’s discussion of international relations is very brief, and his discussion of chastity raises special issues that I do not have space to address here.

#### *III.a. Property*

##### *The Problem*

On Hume’s view, in the absence of property conventions, we face a problem, one that we must overcome if we are to be able to interact with one another securely and productively. The problem is the product of two conditions. The first condition is our limited benevolence. That is, we care more for ourselves, our families, and our friends (“those close to us” for short) than we do more distant others. And because of our limited benevolence, we work to advance the interests of those close to us more ardently than the interests of more distant others.

The second condition is the moderate scarcity of external goods. According to this condition, goods must be in such a supply that we can expect to gain from the social productive process. Hume’s view is that were these goods in superabundance or in dramatic scarcity, we could expect no gain from the productive process (T 3.2.2.17; SBN 495, EPM 3.2–3; SBN 183–84, EPM 3.8; SBN 186–87).

When combined, these two conditions—limited benevolence and moderate scarcity—cause a problem: the problem of the instability of possession. Here is how the problem arises. Because we have limited benevolence, we are more concerned to ensure that those close to us are provided for and benefitted than we are to ensure that others are provided for and benefitted. Hume writes, “This avidity alone, of acquiring goods and possessions for ourselves and our nearest friends is insatiable, perpetual, universal, and directly destructive of society” (T 3.2.2.12; SBN 491–92).<sup>22</sup> When this condition is combined with the fact of moderate scarcity, what we get is competition for goods. If I possess something that you could use to benefit those close to you, and the only way that you can get it is by taking it from me, you will do so, on the assumption that you can anticipate no greater benefits from leaving me in possession of it. Once you take it from me, however, I will try to take it back. The sad and predictable result is that possession becomes insecure and each of us is worse off than we would be if we would only leave each other in secure possession of needed goods. This, Hume thinks, is the fundamental problem standing in the way of secure and productive social interaction. Until we secure possession, we cannot interact with each other with sufficient trust.

### *The Solution*

According to Hume, the solution to this problem is property conventions. We have a mutual interest in solving the problem of the instability of possession. This problem can be solved only if we refrain from taking each other's possessions. As a result, we need conventions that establish who rightfully gets to possess what and when. We express our interest in resolving this problem to one another, perhaps by simply refraining from taking each other's possessions (conditional upon their not taking ours). The benefits of our not seizing one another's possessions generate a motive to refrain. The rules that define this convention constitute the rules of property.<sup>23</sup>

### *The Moral Status of the Conventions*

Social interaction brings a number of benefits that would be otherwise impossible to realize. But the possibility of social interaction is (partially) dependent on our solving a particular problem, the problem of the instability of possession. We solve this problem, according to Hume, through a set of property conventions. When these conventions solve the problem of the instability of possession in a way that generates overall expected benefits for the community and for each person, they secure approval from the General Point of View. And conventions of this kind create obligations of justice to abide by their demands. The disposition to do one's part in the maintenance of such conventions (by refraining from the property of others) constitutes the virtue of respect for property.

## *III.b. Promising*

### *The Problem*

As with the conventions of property, the conventions of promising, on Hume's view, arise as the solution to a problem that is itself the product of certain conditions. One of these conditions is, again, limited benevolence (T 3.2.5.8; SBN 519). The other is uncertainty about the future behavior of others (Ibid). To illustrate, consider Hume's case of two farmers, A and B (T 3.2.5.8; SBN 520). A's crops will be ready for harvest tomorrow and B's crops will be ready to harvest next week. A will be better off if she can get B to help harvest tomorrow. B will be better off if she can get A to help harvest next week.

In this case, A and B have an opportunity for mutual gain. But the benefits to A are available tomorrow, whereas the benefits to B are not available until next week. As a result, B must decide whether or not to help A before securing her hoped-for benefits. The problem is that both A and B have limited benevolence. B wonders whether she should help A to harvest her crops tomorrow, hoping for A's help next week. She cannot be sure what A will do even once B helps. She does know that once A has secured these benefits, then A anticipates no further benefits from the transaction. Maybe A will help and maybe not. But regardless, B would be relying on A's gratitude, which, as Hume points out, is "slender security" (ibid.). Anticipating this sad result, B does not help out A, and both are worse off. B cannot fully anticipate A's

future behavior, but she does know that A has limited benevolence, so she cannot *trust* that A will help next week.

### *The Solution*

The solution to this problem, Hume argues, is a convention that assigns a distinctive moral significance to a “*certain form of words*” (T 3.2.5.10; SBN 522), words like “I promise” and others that implicate a promise. This convention solves the problem by putting each of us in a position to trust what others say that they will do.

A reasonable worry about this account is that conventions of promising have a greater function than Hume’s example of the farmers appears to allow. In particular, promises are not just useful (and certainly do not just obligate) either when they are mutual (I promise to  $\phi$  on the condition that you promise to  $\psi$ ) or when the benefits are realized at different times by the parties to the promise, as in the case of the farmers. So, if we are to make sense of the institution of promising as a solution to a problem, we either need a more general statement of the problem or we need to provide a patchwork of problems that, together, could account for the range of promises.

On my reading, the particular condition (mutual reliance with time asymmetric benefits) that Hume uses to account for the emergence of promising is just a specific, and particularly stark, illustration of a general point. The general point is that lack of trust in what each of us says that we will do compromises opportunities for benefit. In fact, Hume concludes his story about the farmers as follows: “Both of [the farmers] lose [their] harvests *for want of mutual confidence and security*” (T 3.2.5.8; SBN 521, my emphasis).

### *The Moral Status of the Conventions*

Fruitful social interaction is dependent upon our being able to rely on others to do what they say they will do. In order to foster trust in what we say we will do, we establish promising conventions. The fact that these conventions solve the trust problem in a way that generates expected overall benefits for the community and for each person secures their approval from the General Point of View. Conventions of this kind generate obligations of justice to abide by their demands. The disposition to do one’s part in the maintenance of these conventions (by keeping one’s promises) constitutes the virtue of fidelity.

## *III.c. Law*

### *The Problem*

According to Hume, as societies grow, the interest that each of us has in strictly regulating our conduct by the conventions of property and promising appears to us less pressing. We are tempted to think that breaching the convention’s rules when we can secure a gain is worth it because we do not think that our behavior will cause any serious “disorder and confusion” (T 3.2.2.24; SBN 499). Part of the explanation is that we have a hard time seeing the benefits

of the conventions when those with whom we interact, and those on whom we depend for the maintenance of the conventions, are both more physically and socially distant from us. This threatens our motivation to abide by the conventions.

The other part of the explanation is that we suffer from a general psychological distortion, namely, that we sacrifice long-term advantages for smaller, present advantages (T 3.2.7.3; SBN 535).<sup>24</sup> Hume is not pointing only to cases in which we recognize that the long-term advantages are superior to the short-term advantages, the short-term advantages come at the cost of the long-term advantages, and yet we go for the short-term advantages anyway. This is a form of practical irrationality.<sup>25</sup> Rather, Hume is, in addition, drawing our attention to the fact that we systematically undervalue long-term advantages. These mistakes cause a problem. The problem, of course, is that if everyone thinks and acts this way, we will indeed experience long-term disadvantages. The conventions will crumble, and secure and productive social interaction will become impossible.

### *The Solution*

The remedy, according to Hume, is government under law. Legal conventions, particularly those that establish sanctions for violations of the law, significantly increase the costs of violations of the conventions that they are designed to protect. Because of these increased costs, even if we systematically undervalue long-term advantages, we are not (at least typically) tempted to think that violating the rules of the conventions is worth it. Seeing our self-interest tied up in our mutual restraint is important for the establishment of legal conventions.

### *The Moral Status of the Conventions*

Hume's account of law has precisely the same structure as his account of property and promising. He identifies a problem (in this case generated by our tendency to undervalue long-term benefits). He then shows how the relevant legal conventions solve the problem he identifies. When these conventions solve the problem in a way that creates overall expected benefits for the community and for each person, they secure approval from the General Point of View. And the conventions of these sorts generate obligations of justice to abide by their demands.<sup>26</sup> The disposition to do one's part in the maintenance of these conventions (by obeying the law) constitutes the virtue of allegiance.

### *Summary of the Section*

Hume methodically applies the basic framework of his account of justice to each of the topics he discusses in T 3.2. He begins by locating a problem and finding that the solution to this problem is a convention. When this convention successfully solves the problem in a way that would be approved from the General Point of View, it generates obligations of justice to abide by it. Any domain that fits this schema falls within the scope of justice, as Hume conceives of it. Thus, we have no reason to think that Hume's account of the scope of justice ends where T 3.2 ends. It extends to *any* domain that fits the schema.

As a brief illustration of the reach of Hume's account, consider the case of threats and violence, restrictions against which many philosophers have thought fall within the scope of justice. Some commentators have noted the oddity of Hume's not discussing these issues at any length. James Baillie writes, "[Hume's] emphasis on property, rather than equally obvious factors such as protection from personal assault, is because out of the three kinds of goods existing in the state of nature, only material possessions can be transferred to someone else."<sup>27</sup> Francis Snare comments, "It seems odd that Hume does not mention murder, assault, defamation, etc., in his discussion of justice."<sup>28</sup>

Can Humean Functionalism make sense of such restrictions? To answer this question, we need to determine whether we can identify a problem in need of a conventional solution. Our limited benevolence in combination with our physical and psychological vulnerability, in the right conditions, generate incentives to threats and violence. For example, if I could gain an advantage for myself or for those close to me by taking out an opponent, then I have an incentive to do so, and the same is true of anyone else. This possibility threatens trust among interacting parties. The solution to this problem is a convention of refraining from acts of violence. Assuming that this convention solves this problem in a way that would be approved from the General Point of View, then, according to Humean Functionalism, it generates obligations of justice to abide by its strictures. Thus, according to Hume's account of justice, restrictions against threats and violence fall within the scope of justice.

It is important to notice, here, what I am *not* saying. I am not saying that on this Humean view, if there were no such convention, there would be no moral reason not to threaten or harm other people. There are reasons stemming from a concern for the welfare of others not to threaten or harm them. As a result, we should think of the disposition to refrain from acts of violence as *also* a natural virtue. The point, however, is that when this motive is not sufficient reliably to move us, we face a problem. And in establishing a convention to solve this problem, we get a new obligation not to threaten or harm others. We get an obligation of justice.<sup>29</sup>

#### Section IV: Conclusion

The central contention of this paper is that Hume's account of the scope of justice is less narrow than critics tend to think. In particular, it applies not only to property, but also to any conditions in which we could institute conventions to solve collective action problems in a way that secures approval from the General Point of View. The argument for this conclusion depends on appreciating the basic structure of Hume's theory of justice and the way he applies it (and could apply it) to other domains besides just property. Defusing this objection is a major stepping stone on the way to seeing Hume's theory of justice (or a suitably modified version thereof) as a plausible contender among the theories of justice in contemporary moral and political philosophy.

## NOTES

1 I would like to thank Geoff Sayre-McCord, Gerald Postema, Alex Worsnip, Sarah Stroud, Keshav Singh, Jim Cruise, and two anonymous reviewers for very helpful written feedback on earlier drafts of this paper. I would also like to thank Luc Bovens and Alex Campbell for fruitful discussion.

2 Stroud, *Hume*, 266.

3 Garrett, "The First Motive to Justice," 282.

4 Postema, "Whence Avidity?" 372. Other commentators who raise this worry include Antony Flew, "Three Questions," 10; A. D. Woozley (who bemoans Hume's "obsessive preoccupation with property"), "Hume on Justice," 89; Jonathan Harrison, *Hume's Theory of Justice*, 42; Thomas Reid, *Essays on the Active Powers of Man*, 314–15; and James A. Harris, "Hume's Peculiar Definition of Justice."

5 I am not the first to argue that Hume thinks of the scope of justice as wider than his commentators typically think that he does. Annette Baier also defends this conclusion, though her defense depends largely on his application of the term "justice" to things besides property in his *History of England*. See Baier, *The Cautious Jealous Virtue*. My view is that Hume has a philosophical account of the scope of justice, and my central goal in this paper is bring out that account. This account helps to explain his broader use of the term in the *History*.

6 Here and throughout this paper, I adopt the citation practice common within Hume studies to cite Hume's *A Treatise of Human Nature* as "T" and his *Enquiry Concerning the Principles of Morals* as "EPM." The numbers within citations to the *Treatise* refer to Book, part, section, and paragraph number, respectively, and come from the Clarendon Edition of the *Treatise* edited by David Fate Norton and Mary J. Norton. "SBN #" refers to the page number within the L. A. Selby-Bigge edition of the *Treatise*, revised by P. H. Nidditch. Citations of the *Enquiry Concerning the Principles of Morals* follow a similar pattern. The numbers refer to the section and paragraph number within the Clarendon Edition of the *Enquiry* edited by Tom L. Beauchamp. "SBN #" refers to the page number within the L. A. Selby-Bigge edition of the *Enquiries*, revised by P. H. Nidditch.

7 Garrett, *Hume*, 262.

8 Garrett, "The First Motive to Justice," 282.

9 I develop this framework in more detail in section II, and I walk through the way that Hume applies this framework not only to property but also to promising and law in section III.

10 This point explains why any other proposed schema designed to maintain a hard distinction between justice and fidelity cannot save the standard interpretation. For example, an anonymous reviewer suggests the following. 1) Justice is the virtue associated with property conventions. 2) Respect for property is what the virtue of justice motivates. 3) Property conventions establish what it takes to respect property. Then for fidelity, we would have the following. 1) Fidelity is the virtue associated with promising conventions. 2) Keeping one's promises is what fidelity motivates. 3) Promising conventions establish what it takes to keep one's promises. The problem with this alternative schema is precisely that, as I have already mentioned, Hume clearly states that fidelity to promises falls within the scope of justice. We simply cannot make sense of Hume's claim that the keeping of promises is one of the "fundamental rules of justice" (T 3.2.11.2; SBN 567) on this interpretation.

11 How precisely to understand the distinction between natural and artificial virtues in Hume is a matter of some controversy. But the rough idea is that the natural virtues, on Hume's view, are those virtues constituted by a disposition to act from a motive that we both naturally have and that is approved of independently of its relation to any convention. The artificial virtues, on the other hand, are those virtues constituted by a disposition to act from a motive that we do not naturally have and that is approved of only because of its relation to conventions.

12 Geoffrey Sayre-McCord notes this point as well in passing. See, "Hume on the Artificial Virtues," 443. An anonymous reviewer objects that Hume's titles are not a good guide to the contents of the parts of the *Treatise*. After all, if his titles were a good guide, then pity would turn out to be a species of love or hatred because Hume discusses it in T 2.2 ("Of Love and Hatred"). Just as we should not conclude that pity is a species of love or hatred on the basis of the title of T 2.2, we should not conclude that, for example, allegiance is a species of justice on the basis of the title of T 3.2. The problem with this argument is that Hume explicitly explains the link he sees between pity, on the one hand, and love and hatred, on the other, in the opening paragraph of T 2.2.7. He also makes clear in T 2.2.8 that pity "imitates the effects" (T 2.2.8.1; SBN 372) of love. But he makes no similar attempt to justify his discussion of allegiance in T 3.2. Of course, he explains the connection between allegiance and the "fundamental rules of justice" (T 3.2.11.2; SBN 567). But this is in the service of showing how a convention with precisely the same structure as the other conventions of justice arises to address the problem to which government under law is the solution (as I explain in more detail in section III). In any case, if Hume intended justice to be simply one among many artificial virtues, he could easily have titled T 3.2 "Of the Artificial Virtues," while no similarly simple and yet encompassing title is available for T 2.2.

13 Hume's discussion of chastity is complicated, and his inclusion of it within the scope of justice might look initially implausible (making it too *broad* rather than too narrow). Because this issue requires an extended discussion, I set it aside for the purposes of this paper.

14 One might reasonably think that Hume has made a category mistake here. The *convention* is not constituted by the sense of common interest. Rather, the convention is constituted by the rule-governed arrangement that we establish on the basis of our sense of common interest. I think that is right, and the rest of the passage suggests that Hume would agree. We have not established a convention until we establish "a suitable resolution and behaviour." Hume is guilty of poor phrasing here, but not a category mistake.

15 Geoffrey Sayre-McCord also highlights this point. See, "Hume on the Artificial Virtues," 457–58.

16 For clarity, Hume distinguishes between moral obligation and natural obligation. A moral obligation is obviously a command of morality. A natural obligation, on Hume's view, is basically a command of prudence.

17 The precise nature of the General Point of View is up for debate and has been debated. See, for example, Sayre-McCord, "On Why Hume's 'General Point of View' Isn't Ideal—And Shouldn't Be"; Cohon, "The Common Point of View in Hume's Ethics"; Abramson, "Correcting *Our* Sentiments"; and Ben-Moshe, "Hume's General Point of View." I am not going to get into this debate in any detail, but I am taking on an interpretive commitment here, which I shall not defend. In particular, I am assuming that when one takes up the General Point of View, one can evaluate things like conventions and the rules and procedures that constitute them. Some commentators think that when one takes up the General Point of View, one can only evaluate traits of character. I see

no definitive textual evidence for this interpretation, and more importantly I see no philosophical reason for this restriction.

18 Just to be crystal clear, “expected” should always be read as “reasonably expected.” People can expect things while having no evidence that they are forthcoming. The expectation of benefit that conventions provide must be reasonably grounded in the quality of the conventions.

19 David Gauthier attributes a view of this sort to Hume in his “David Hume, Contractarian” and “Artificial Virtues and the Sensible Knave.”

20 This, I take it, is what Hume means when he writes, “The moral obligation is founded on the natural, and therefore must cease where *that* ceases” (T 3.2.9.4; SBN 552–53). Whether we are morally obligated to abide by the conventions is dependent upon their serving our self-interest. But we are not morally obligated to abide by them *because* they serve our self-interest.

21 This view of the virtue of justice is similar to Sayre-McCord’s (in “Hume on the Artificial Virtues”), though Sayre-McCord does not speak in terms of functional value. I take functional value to be a subcategory of what Hume calls “usefulness” or “utility.” Not every form of usefulness has a specific relation to justice. Hume, for example, takes some qualities to be virtues because they are useful to ourselves, such as industry and frugality. I discuss this interpretation of Hume’s account of the value of justice in greater detail in my “The Value and Obligation of Justice in Hume” (ms.).

22 Hume might be employing a bit of hyperbole here. I am not so sure that this drive is actually “insatiable” and “perpetual.” But some level of it is clearly present in most people, and the problem to which it contributes would still result.

23 I will also note that property conventions not only protect us from the threats against our possessions of others, but also foster cooperation and social and economic opportunity, which is why Hume’s discussion of property naturally leads into his discussion of promises and contracts.

24 Hume makes the same point in his essay “Of the Origin of Government.” See *Essays*, 38.

25 Though see Morton (“Reasoning under Scarcity”) (and the “ecological rationality” tradition heralded by Gigerenzer [*Rationality for Mortals*] more generally) for an argument that this norm does not apply in all contexts.

26 The discussion of law highlights an important challenge for Hume’s theory of justice. If conventions fix what precisely counts as just and unjust, then it looks like Hume cannot give an explanation for the justice or injustice of conventions themselves. This seems especially problematic in the case of law because of how common it is to think in terms of unjust laws and legal systems. I think Hume has some resources to respond to this objection, but I will not pursue the issue here.

27 Baillie, *Hume on Morality*, 156.

28 Snare, *Morals, Motivation, and Convention*, 210.

29 There remains an interesting question of why Hume did not emphasize threats and violence in his account of justice. In fact, he is quite clear that cruelty is a natural vice (T 3.3.3.8; SBN 605) and so, not a form of the vice of injustice at all, which suggests that, as I have mentioned, Hume thinks of some threats and acts of violence (namely, those motivated by cruelty) as morally objectionable though not because they are injustices. This is a significant contrast between Hume’s view and those of several of his fellow Scottish Enlightenment thinkers, like Hutcheson, Turnbull, Stewart, and Reid, each of whom finds justice to be at least in part natural. That Hume made no room for God in his moral philosophy might be part of the explanation. In any case, Hume’s account of justice as an

*artificial* virtue aligns better with the tradition of thought about justice that begins with Glaucon's account of the origin of justice in the *Republic* and goes through Epicurus and Hobbes, than it does with his rough contemporaries in Scotland. But Hume's view is to be contrasted with even these views in that Hume begins his account of justice with security of possession of material goods rather than restrictions against violence. Why Hume does this is an interesting question. See Postema for a nice discussion of this question. My aim in this essay has certainly not been to downplay these important contrasts. Hume's theory of justice is distinctive in several ways. However, it does not, as I have argued, render the scope of justice objectionably narrow. Of course, much more would need to be said to defend the way that Hume treats each of the things that, on his view, fall within the scope of justice. But that is a different issue than the one with which I am engaged in this essay.

## WORKS CITED

- Abramson, Kate. "Correcting *Our Sentiments* about Hume's Moral Point of View." *The Southern Journal of Philosophy* 37.3 (1999): 333–61.
- Baier, Annette. *The Cautious Jealous Virtue: Hume on Justice*. Cambridge: Harvard University Press, 2010.
- Baillie, James. *Hume on Morality*. New York: Routledge Press, 2000.
- Ben-Moshe, Nir. "Hume's General Point of View: A Two-Stage Approach." *Pacific Philosophical Quarterly* 101 (2020): 431–53.
- Cohon, Rachel. "The Common Point of View in Hume's Ethics." *Philosophy and Phenomenological Research* 57.4 (1997): 827–50.
- Flew, Antony. "Three Questions About Justice in Hume's *Treatise*." *The Philosophical Quarterly* 26.102 (1976): 1–13.
- Garrett, Don. "The First Motive to Justice: Hume's Circle Argument Squared." *Hume Studies* 33.2 (2007): 257–88.
- Garrett, Don. *Hume*. New York: Routledge Press, 2015.
- Gauthier, David. "Artificial Virtues and the Sensible Knave." *Hume Studies* 18.2 (1992): 401–28.
- Gauthier, David. "David Hume, Contractarian." *The Philosophical Review* 88.1 (1979): 3–38.
- Gigerenzer, Gerd. *Rationality for Mortals: How People Cope with Uncertainty*. Oxford: Oxford University Press, 2008.
- Harris, James A. "Hume's Peculiar Definition of Justice." In *Philosophy, Rights, and Natural Law: Essays in Honor of Knud Haakonssen*. Edited by Ian Hunter and Richard Whatmore, 216–35. Edinburgh: Edinburgh University Press, 2019.
- Harrison, Jonathan. *Hume's Theory of Justice*. Oxford: Oxford University Press, 1980.
- Hume, David. *Enquiries Concerning Human Understanding and Concerning the Principles of Morals*. Edited by L. A. Selby-Bigge, revised by P. H. Nidditch. Oxford: Oxford University Press, 1975.
- Hume, David. *An Enquiry Concerning the Principles of Morals*. Edited by Tom L. Beauchamp. Oxford: Oxford University Press, 1998.
- Hume, David. *Essays: Moral, Political, and Literary*. Edited by Eugene F. Miller. Indianapolis: Liberty Fund, 1994.
- Hume, David. *A Treatise of Human Nature*. Edited by David Fate Norton and Mary J. Norton. Oxford: Oxford University Press, 2007.

- Hume, David. *A Treatise of Human Nature*. Edited by L. A. Selby-Bigge, revised by P. H. Nidditch. Oxford: Oxford University Press, 1978.
- Morton, Jennifer. "Reasoning under Scarcity." *Australasian Journal of Philosophy* 95.3 (2017): 543–59.
- Postema, Gerald. "Whence Avidity? Hume's Psychology and the Origins of Justice." *Synthese* 152.3 (2006): 371–91.
- Reid, Thomas. *Essays on the Active Powers of the Human Mind*. Edited by Knud Haakonsen and James A. Harris. Edinburgh: Edinburgh University Press, 2010.
- Sayre-McCord, Geoffrey. "Hume on the Artificial Virtues." In *The Oxford Handbook of Hume*. Edited by Paul Russell, 435–69. Oxford: Oxford University Press, 2016.
- Sayre-McCord, Geoffrey. "On Why Hume's 'General Point of View' Isn't Ideal—and Shouldn't Be." *Social Philosophy and Policy* 11.1 (1994): 202–28.
- Snare, Francis. *Morals, Motivation, and Convention: Hume's Influential Doctrines*. Cambridge: Cambridge University Press, 1991.
- Stroud, Barry. *Hume*. New York: Routledge Press, 1977.
- Woozley, A. D. "Hume on Justice." *Philosophical Studies: An International Journal of Philosophy* 33.1 (1978): 81–99.