

# David Hume's Account of Justice

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**Abstract:** In this study, Hume's theory of justice is examined critically with respect to morality, politics, and society. In addition to that, Hume's account of justice is questioned owing to the free rider problem. First, the relationship between morality and justice is investigated. Although Hume takes sympathy seriously in his early works, he does not take sympathy to be a sure foundation in his later works. Then, circumstances of justice are explained to find exact place and necessity of the virtue of justice. With the way of deconstruction, Hume shows the cases that the virtue of justice is needed. Justice is largely concerned with the environment and dispositions of persons. Next, the artificial character of justice will be explained. Then, *Hume's laws of justice* will be given and assessed: *stability of property, exchange of property by agreement, and performance of promises*. It is argued that Hume's laws of justice mostly relate to economic justice. The chief drive that causes individuals to act justly is disciplined self-interest. Self-interest should be organized for public utility. Laws of justice are created by human conventions. The primary sources of the investigation are: Hume's *A Treatise of Human Nature*, [1739] 1978; *An Enquiry Concerning the Principles of Morals*, [1751] 1998 and *Political Essays*, 1994.

**Keywords:** Hume, ethics, politics, economics; society, the rules of justice, the free rider problem.

**Öz:** Bu çalışmada, David Hume'un adalet kuramı ahlak, siyaset ve toplum açısından eleştirel bir şekilde incelenmiştir. Bunlara ek olarak Hume'un adalet anlayışı bedavacılık sorunu sayesinde sorgulanmıştır. İlk olarak ahlak ve adalet arasındaki ilişki tahkik edilmiştir. Erken çalışmalarında Hume duygudaşlığı ciddiye alsa da sonraki çalışmalarında onu sağlam bir temel olarak görmez. Ardından adalet erdeminin tam yerini ve gerekliliğini belirlemek için adalet koşulları açıklanmıştır. Yapıbozum yoluyla Hume, adalet erdeminin gerekli olduğu durumları göstermektedir. Adalet büyük oranda insanların çevresiyle ve eğilimleriyle ilişkilidir. Sonra, adaletin yapay yapısı açıklanacaktır. Sonra, *Hume'un adalet yasaları* verilecek ve değerlendirilecektir: *mülkiyetin istikrarı, sözleşme yoluyla mülkiyet alışverişi ve ahde vefa*. Hume'un adalet yasalarının ekseriyetle iktisâdî adaletle ilgili olduğu tartışılmıştır. Bireylerin adil davranmalarını sağlayan temel saik kontrol edilmiş kişisel çıkarıdır. Kişisel çıkar kamu yararına hizmet edecek şekilde düzenlenmelidir. Adalet yasaları insani uzlaşımın sayesinde oluşturulmuştur. Araştırmanın başlıca kaynakları David Hume'un şu eserleridir: *İnsan Doğası Üzerine Bir İnceleme*, [1739] 1978; *Ahlakın İlkeleri İle İlgili Bir Araştırma*, [1751] 1998 ve *Siyasi Denemeler*, 1994.

**Anahtar Kelimeler:** Hume, adalet kuralları, etik, siyaset, toplum, iktisat, bedavacılık sorunu.

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## Introduction

The problematic in Hume's account of justice emerges when we test its capacity to overcome the free rider problem. The free rider problem occurs when the matter is about collective goods. The problem is roughly as follows: there are collective goods (e.g. public services such as streetlights) that everyone utilizes. Since everyone takes advantage of streetlights, everyone should contribute to the cost of this service. Otherwise streetlights would shut down for financial reasons. However, since persons utilize streetlights collectively, we cannot measure and invoice the cost one by one like domestic electric consumption. The free rider utilizes streetlights but does not contribute to the cost. The free rider thus thinks that everyone *except me* should contribute to the cost of streetlights. If I don't pay, nothing happens to streetlights. So, she takes a free ride. Since the good is a collective one, the free rider cannot be found.<sup>1</sup>

A. T. Nuyen applies to the free rider problem in order to understand Hume's account of justice in the article titled, "Hume's Justice as a Collective Good" (Nuyen, 1986). Nuyen considers that Hume sees and solves the problem with the notion of sympathy and moral education. However, it is known that Hume himself observes sympathy to be a slender basis so that he abandones it in his later works (Hume, 1998; Selby-Bigge, 1975, p. xxi; MacIntyre, 1984, p. 49). Thus, in this paper Hume's account of justice will be examined from the point of view of the free rider. This investigation will show that Hume fails to overcome the free rider problem in his account of justice. Neither sympathy nor public utility can convince the free rider. There is a serious gap in the foundation of justice. The free rider would not feel responsible to obey Hume's laws of justice. Hume and Nuyen is so naïve with respect to the free rider problem.

## Justice and Morality

Since the writing style of David Hume is not analogous to analytical, academic, and formalistic techniques of contemporary scholars, understanding his theses is a challenging work. Perhaps, this is the fundamental reason of debates on his ideas related with epistemology, ethics, politics, and religion. The notion of justice is a typical indicator of this ambiguity in the philosophy of Hume. The first problem is whether

1 For the free rider problem in detail, see Hardin, 2013.

justice is a moral issue or not. Some scholars claim that in Hume's conception, justice is not autonomous when ethics is considered, i.e. justice is a prudential issue. Others maintain that obeying the rules of justice is a moral subject. On the other hand, there is one more viewpoint that defends Humean conception of justice both as a moral and a prudential issue. The problem is not concerned with ethics in small communities, but as the population increases justice becomes a moral issue. Hume examines genealogy of justice in Book III of *A Treatise of Human Nature*.<sup>2</sup> He starts his investigation with the question: "Why [do] we annex the idea of virtue to justice, and of vice to injustice" (Hume, 1978, p. 498). Hume inspects the source of justice in a hypothetical condition which is similar to the conception of state of nature:

After men have found by experience, that their selfishness and confin'd generosity, acting at their liberty, totally incapacitate them for society; and at the same time have observ'd, that society is necessary to the satisfaction of those very passions, they are naturally induc'd to lay themselves under the restraint of such rules, as may render their commerce more safe and commodious. To the imposition then, and observance of these rules, both in general, and in every particular instance, they are at first induc'd only by a regard to interest; and this motive, on the first formation of society, is sufficiently strong and forcible. But when society has become numerous, and has increas'd to a tribe or nation, this interest is more remote; nor do men so readily perceive, that disorder and confusion follow upon every breach of these rules, as in a more narrow and contracted society. But tho' in our own actions we may frequently lose sight of that interest, which we have in maintaining order, and may follow a lesser and more present interest, we never fail to observe the prejudice we receive, either mediately or immediately, from the injustice of others; as not being in that case either blinded by passion, or byass'd by any contrary temptation. Nay when the injustice is so distant from us, as no way to affect our interest, it still displeases us; because we consider it as prejudicial to human society, and pernicious to every one that approaches the person guilty of it (Hume, 1978, pp. 498-499).

In the first stage of a society, in a small community, if a merchant is not loyal to his promises, he could not do business with other individuals. However, in a country or a nation state, cheaters can easily find new customers. Free riders take part at that point. In a small community they could not free ride, because they get caught. But in a large society they can vanish without a trace. They can sustain their interests in the short term, but in the long-term knaves would fail. This "natural myopia" (Yellin, 2000, p. 378) puts obstacles in the way of private and public interest. Interest thus is not sufficient to motivate just actions in large societies.<sup>3</sup> Here

2 Hereafter this book will be abbreviated as *Treatise*.

3 Of course, in our global world motivating persons to be just is much more difficult. Certainly, global

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

We partake of their uneasiness by *sympathy*; and as every thing, which gives uneasiness in human actions, upon the general survey, is call'd Vice, and whatever produces satisfaction, in the same manner, is denominated Virtue; this is the reason why the sense of moral good and evil follows upon justice and injustice. And though this sense, in the present case, be deriv'd only from contemplating the actions of others, yet we fail not to extend it even to our own actions. The *general rule* reaches beyond those instances, from which it arose; while at the same time we naturally *sympathize* with others in the sentiments they entertain of us. *Thus self-interest is the original motive to the establishment of justice: but a sympathy with public interest is the source of the moral approbation, which attends that virtue* (Hume, 1978, pp. 499-500).<sup>4</sup>

For this reason, the status of virtue is assigned to justice and vice to injustice. Approval of public interest by sympathy is the starting place of justice in morality. Injustice is destructive to public interest. It is harmful to the interests of human beings indirectly. Therefore, the moral basis of justice is clear. Hume asserts that since justice is beneficial to humanity, the notion turns out to be an ethical virtue: "no virtue is more esteemed than justice, and no vice more detested than injustice; nor are there any qualities, which go farther to the fixing the character, either as amiable or odious" (Hume, 1978, p. 577). Hence, for Hume, justice grounds itself on public interest with the support of sympathy. In this way, people obey the laws of justice even if they do not have direct interests. Next, Hume relates sympathy to the public good. Moral approbation of justice and disapproval of injustice is possible in this approach:

[s]ince there is a very strong sentiment of morals, which in all nations, and all ages, has attended them, we must allow, that the reflecting on the tendency of characters and mental qualities, is sufficient to give us the sentiments of approbation and blame. Now as the means to an end can only be agreeable, where the end is agreeable; and as the good of society, where our own interest is not concern'd, or that of our friends, pleases only by sympathy: It follows, that sympathy is the source of the esteem, which we pay to all the artificial virtues (Hume, 1978, p. 577).

justice need better justifications to be reached, because one cannot mention a society of nations. With the help of communication across the world, borders are very loose now. There should be a system of global ethic for individuals in a cosmopolitan world; see Küng, 1998.

4 For a summary of Humean sympathy see Cohon, 2010.

Hence, the artificial virtue justice is possible thanks to the Humean *sympathy*. The conception of justice is obviously in accordance with Hume's moral thought. Moreover, it can be said that "[u]nlike many contemporary political theorists, David Hume sought to ground his political philosophy on epistemological and moral foundations" (Church, 2007, p. 169). Likewise, Gilles Deleuze locates Hume's conception of justice under ethics as well: "[u]nder the name of belief, we have a practise of the understanding, and under the form of social organization and justice, a theory of morality" (Deleuze, 1991, p. 32). Knud Haakonssen identifies *Humean* principles of justice with his normative rules too: "the basic rules of justice pertaining to property and contract come to be accepted as moral rules" (Haakonssen, 1993, pp. 190-191).<sup>5</sup> David Gauthier also confirms the relation of justice and morality in Hume's ethical and political thought: "[a]rrangements may be expected to be useful to each person; therefore they are just. These arrangements may also be expected to have beneficial consequences; therefore they receive moral approval, and justice is a virtue" (Gauthier, 1979, p. 18). Sharon Krause formulates this idea as follows: "[w]hen we contemplate justice through the lens of sympathy, the moral sentiment of approbation arises in us" (Krause, 2004, p. 641).<sup>6</sup>

To understand Hume's position on the relation of justice and ethics clearly, it is helpful to describe "first period"<sup>7</sup> with the role of prudence and "second stage", namely large society, with morality. In a small society, justice is more related with prudence because interests of individuals are present, and they can see their interests. If they do not abide by the laws of justice and working together, they would instantly face the consequences. For instance: "[t]wo neighbours may agree to drain a meadow, which they possess in common; because 'tis easy for them to know each others mind; and each must perceive, that the immediate consequence of his failing in his part, is the abandoning the whole project" (Hume, 1978, p. 538).

Neighbors accordingly comply with the rules that manage society. When the population is low, "prudence will be a sufficient motive to induce proper co-operation. In the case of a collective good such as national defense, which affects the whole nation, prudence alone is not sufficient" (Nuyen, 1986, p. 51). Nuyen seeks to explicate the relation of prudence and morals in terms of justice:

5 Furthermore, Haakonssen argues that Hume was influenced from the eighteenth-century moral thought which is highly theological and teleological; see Haakonssen, 1993, pp. 190-191.

6 Krause also elaborates his understanding of Hume's view of justice with emphasizing public interest: "[s]ympathy takes us beyond self-interest by communicating to us the pleasures and pains of others, thereby engaging our interest in broader concerns and ultimately in the common good" (Krause, 2004, p. 641).

7 The small community is examined in the beginning of this article.

An individual does not see that his or her refusal to pay will undermine national security. A free rider believes that not too many people have the same idea. Prudence, therefore, tends to induce us to take a free ride. If we do pay our fair share in this case, the motive that induces us to do so is not prudence, but something like the sense of fairness based on the realisation that by not paying we are hurting others who are willing to pay. It is a sense of fair play based on an empathy we have for others (Nuyen, 1986, pp. 51-52).

That is to say, *sympathy* is required in large societies to realize and reinforce the rules of justice. Because of this factual and historical experience, i.e., transition to a large society, just persons pass “from a narrow prudential perspective, that gave us a natural obligation to adjust our passions and concur in a scheme of conduct, to a moral point of view” (Taylor, 1998, p. 20). For this reason, the principles of justice constitute an ethical matter in nation states. Nuyen thinks that Hume solves the free rider problem by appeal to sympathy, but why does a free rider sympathize with others? If she has a fair or moral perspective, she would not free ride anyway. If she does not view others fairly and ethically, she would free ride altogether. It seems like sympathy is not a satisfactory concept to overcome the free rider problem. After that Hume reckons justice among artificial moral duties in the *Political Essays*:

The *second* kind of moral duties are such as are not supported by any original instinct of nature, but are performed entirely from a sense of obligation, when we consider the necessities of human society, and the impossibility of supporting it, if these duties were neglected. It is thus *justice* or regard to the property of others, *fidelity* or the observance of promises, become obligatory, and acquire an authority over mankind (“Of the Original Contract,” 1994, p. 196).

Unlike other passages, in this passage he highlights justice as a moral duty depending on the sense of obligation. Haakonssen interprets justice in line with duty and obligation as well.<sup>8</sup> Yet the concept of moral duty or the sense of obligation does not make sense for the free rider. She thinks that it does not make any difference if she would not obey the rules of justice, because everyone except she obeys

8 “In a social group where just behaviour is generally approved as good because it produces social utility, people who in a particular case lack any motive for justice ... will tend to have a motive supplied. Because everyone generally approves of just behaviour as if it sprang from a separate laudable motive, people lacking such a motive will feel morally deficient as compared with their surroundings and will come to disapprove of or hate themselves on that account. In this they will be reinforced by the disapproval of their fellows. This self-loathing becomes the motive or the will by which people act justly as a matter of obligation” (Haakonssen, 1993, p. 191).

the rules of justice. Although she is obligated to do his part in principle, it does not matter in practice. Public order is stable and economic system works adequately as long as free riders are in the minority. Moral duty and the sense of obligation is not a sufficient reason to force free riders to act justly. In the conclusion of the *Treatise*, Hume, however, stresses sympathy with public interest in the source of the morality of justice again:

We may observe, that all the circumstances requisite for its [sympathy's] operation are found in most of the virtues; which have, for the most part, a tendency to the good of society, or to that of the person possess'd of them. If we compare all these circumstances, we shall not doubt, that sympathy is the chief source of moral distinctions; especially when we reflect, that no objection can be rais'd against this hypothesis in one case, which will not extend to all cases. Justice is certainly approv'd of for no other reason, than because it has a tendency to the public good: And the public good is indifferent to us, except so far as sympathy interests us in it. We may presume the like with regard to all the other virtues, which have a like tendency to the public good. They must derive all their merit from our sympathy with those, who reap any advantage from them: As the virtues, which have a tendency to the good of the person possess'd of them, derive their merit from our sympathy with him (Hume, 1978, p. 618).

However, Hume gives up employing the notion of sympathy in his later work, *An Enquiry Concerning the Principles of Morals* (1751).<sup>9</sup> In this passage of the *Treatise* (1739), this is the last usage of sympathy as the source of morals. Selby-Bigge underlines this change: “[t]he psychology of sympathy which occupies so much space in Bk. II, and on which so much depends in Bk. III of the *Treatise*, is almost entirely ignored in the [second] *Enquiry*” (Selby-Bigge, 1975, p. xxi). So, Hume does not see *sympathy* in the foundation of morality of just actions in the second *Enquiry*. Alasdair MacIntyre too discerns this abandonment. MacIntyre says that Hume invented the concept of sympathy to justify the rules of justice, but since sympathy is a “philosophical fiction” (1984: 49) it could not provide good reasons for people to obey the laws of justice.<sup>10</sup> In *Whose Justice? Which Rationality?* MacIntyre rejects

9 Hereafter this book will be abbreviated as second *Enquiry*.

10 “In the *Treatise* Hume posed the question why, if such rules as those of justice and of promise-keeping were to be kept because and only because they served our long-term interests, we should not be justified in breaking them whenever they did not serve our interests *and* the breach would have no further ill consequences. In the course of formulating this question he denies explicitly that any innate spring of altruism or sympathy for others could supply the defects of an argument from interest and utility. But in the *Enquiry* he feels compelled to invoke just such a spring. Whence this change? It is clear that Hume's invocation of sympathy is an invention intended to bridge the gap between any set of reasons which could support unconditional adherence to general and unconditional rules and any set of

sympathy as a satisfactory motivation: “the sympathy which we do indeed feel for particular others on occasion will not furnish a motive for a regard for the rules of justice whomsoever they may protect” (MacIntyre, 1988, p. 307). Additionally, MacIntyre refuses interest as a justification of principles of justice: “neither interest nor sympathy seems able to explain why each one of us should approve of the rules of justice or of the administration of those rules by government” (1988, p. 306). Both Hume and Nuyen thus fail to overcome the free rider problem, because neither the concept of sympathy nor public good can persuade free riders. These arguments could not provide firm justification or motive in order to compel free riders to obey the laws of justice. They act only from self-interest and do not think about the rest.

After leaving behind the principle of sympathy in the *Treatise*, Hume focuses on the principle of utility to supply ethical basis of the concept of justice in the second *Enquiry*. He preferred public interest in the *Treatise* to ground the morality of justice, but in the second *Enquiry* Hume employs the notion of utility. David Miller draws an attention to this nuance: “Hume uses ‘the public interest’ in the *Treatise* and ‘utility’ in the *Enquiry* with, so far as one can tell, an identical meaning. No doubt this reflects changing intellectual fashions” (Miller, 1976, p. 161). Miller argues that Hume modified his ideas on justice and public interest in his second *Enquiry*. Miller criticizes Hume for interrupting relations with justice and ethics: Hume “justified the existence of rules of justice in terms of their utility, and refused to see justice as an independent moral value” (1976, p. 170). It seems that Miller is right in condemning opinions of Hume in this topic, because the measure of justice becomes utility. The source of justice loses its moral autonomy. The value of justice is determined by public utility now. This interpretation can be inferred evidently from the beginning part of section three of the second *Enquiry*:

Justice is useful to society, and consequently that *part* of its merit, at least, must arise from that consideration, it would be a superfluous undertaking to prove. That public utility is the *sole* origin of justice, and that reflections on the beneficial consequences of this virtue are the *sole* foundation of its merit; this proposition, being more curious and important, will better deserve our examination and enquiry (Hume, 1998, p. 13).

reasons for action or judgment which could derive from our particular, fluctuating, circumstance-governed desires emotions and interests. Later on Adam Smith was to invoke sympathy for precisely the same purpose. But the gap of course is logically unbridgable, and ‘sympathy’ as used by Hume and Smith is the name of a philosophical fiction” (MacIntyre, 1984, p. 49).

Finally, it is apparent that Hume sees public utility as the foundation of the value of justice. He puts off the principle of sympathy to ground just actions. In his later work, Hume gives emphasis to *public utility* for the virtue of justice. Yet public utility could not solve the problem of free rider either. The free rider utilizes from the beneficial consequences of the rules of justice, but she herself does not obey the rules. How will Hume or Nuyen convince the free rider? Why should she act according to the rules of justice? Since everyone except she obeys the rules of justice, social and economic life goes on. There is not a total defect in the system and public order is preserved. Which motive will force the free rider to comply with the laws of justice? The public utility argument could not persuade the free rider too.

## Circumstances of Justice

To delineate the concept of justice then Hume presents some hypothetical conditions. In a sense, he offers thought experiments. In this way, Hume shows where and when we need justice. Throughout his investigation, he has recourse to negative arguments in locating the notion of justice. Hume demonstrates where and when people do not and should not take into consideration the laws of justice. The essential requirements of justice then become visible. For Hume, therefore, it should first be understood where the laws of justice do not work. There are some conditions, communities, and beings for which the rules of justice become useless. Hume enumerates these exceptional states in the third section of the second *Enquiry*. To Hume, we do not need the idea of justice in these cases:

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

These cases show where justice becomes useless. Counter situations thus indicate required states of justice. So, these circumstances lead to the virtue of justice. Hume goes on to say that “there are some virtues, that produce pleasure and approbation by means of an artifice or contrivance, which arises from the circumstances and necessity of mankind. Of this kind I assert justice to be” (Hume, 1978, p. 477). Now, let us try to see these conditions of justice one by one.

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

Let us suppose that nature has bestowed on the human race such profuse *abundance* of all *external* conveniencies, that, without any uncertainty in the event, without any care or industry on our part, every individual finds himself fully provided with whatever his most voracious appetites can want, or luxurious imagination wish or desire. His natural beauty, we shall suppose, surpasses all acquired ornaments: The perpetual clemency of the seasons renders useless all clothes or covering: The raw herbage affords him the most delicious fare; the clear fountain, the richest beverage. No laborious occupation required: no tillage: no navigation. Music, poetry, and contemplation form his sole business: conversation, mirth, and friendship his sole amusement (Hume, 1998, p. 13).

Hume concludes that the virtue of justice would be pointless in such a state. Since dispute and aggression will not occur in a satisfactory state, people do not require justice and equity: "in such a happy state, every other social virtue would flourish, and receive tenfold increase; but the cautious, *jealous virtue of justice* would never once have been dreamed of" (Hume, 1998, p. 13; italics mine). In this circumstance, unlimited abundance of needs annihilates the jealous virtue of justice. Hume draws a relation between the virtue of justice and jealousy: we discover that in this happy state there would be no jealousy. Given that in the perfect "welfare state" there is nothing to quarrel for, it is impossible to be jealous. So, if there is no jealousy, there is no disagreement. If there is no disagreement, there is no need for the virtue of justice. Hume contends that jealousy of advantage is an assumption of justice: "if nature supplied abundantly all our wants and desires, that the jealousy of interest, which justice supposes, could no longer have place" (1978, p. 494). Jealous virtue of justice therefore presumes jealousy of benefit. We cannot conceive of justice unless there is some jealousy of interest. Since extreme abundance does not permit jealousy of others' objects and possessions, justice becomes entirely impractical. Hume supports his ideas at that point by means of questions, such as "[f]or what purpose make a partition of goods, where every one has already more than enough? Why give rise to property, where there cannot possibly be any injury?" (Hume, 1978, p. 13). Why should anyone insist on *mine* and *thine*? The rules of justice and property would be unnecessary in this ideal state. Hume concludes that: "justice, in that case, being totally USELESS, would be an idle ceremonial, and could never possibly have place in the catalogue of virtues" (Hume, 1998, p. 13).

The second thought experiment of Hume is an ideal fraternity where human beings are extremely benevolent to each other.<sup>11</sup> Man considers interests of others rather than their subjective good. In case of extensive generosity justice becomes useless: “[e]ncrease to a sufficient degree the benevolence of men, or the bounty of nature, and you render justice useless, by supplying its place with much nobler virtues, and more valuable blessings” (Hume, 1978, pp. 494-495). For instance, when a son asks for a considerable amount of money from his father, the father gives the required amount and does not make a written agreement. The rules of justice are not necessary between a father and a son. Hypothetically, this is a family relation between the members of the society which is extremely benevolent:

Why raise land-marks between my neighbour's field and mine, when my heart has made no division between our interests; but shares all his joys and sorrows with the same force and vivacity as if originally my own? Every man, upon this supposition, being a second self to another, would trust all his interests to the discretion of every man; without jealousy, without partition, without distinction. And the whole human race would form only one family; where all would lie in common, and be used freely, without regard to property; but cautiously too, with as entire regard to the necessities of each individual, as if our own interests were most intimately concerned (Hume, 1998, p. 14).

In such a state, each person is a supernatural being. Individuals treat each other as if they live in a big family; nobody is “other,” or “alien.” The principle of humanity is endorsed by the entire community. As they are close friends, they do not distinguish their commodities and facilities; “a cordial affection renders all things common among friends” (Hume, 1978, p. 495).<sup>12</sup> They use their goods with others without hesitation. Likewise, “married people in particular mutually lose their property, and are unacquainted with the *mine* and *thine*, which are so necessary” (Hume, 1978, p. 495). Until couples are divorced, their properties and goods are considered together. Hume generalizes these specific cases and says that “if *every one* had the same affection and tender regard for *every one* as for himself; justice and injustice would be equally unknown among mankind” (Hume, 1978, p. 495).

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

12 This idea reminds Aristotle's famous statement in *Nicomachean Ethics*: “when people are friends, they have no need of justice” (Aristotle, 2011, Book 8, 1155a27).

In the following two conditions, David Hume conceives of opposite situations and imagines a place where there is a shortage of all vital requirements: a severe scarcity of basic needs. Again, the laws of justice are in limbo for a period when circumstances become normal. In this state, “[g]rievous shortage would wreck laws of justice;” (Hardin, 2007, p. 141) similarly the rules of justice would be suspended in a disaster too. Catastrophic disasters demand emergency operations and the virtue of justice can be an obstacle in a state of necessity. Hume describes this atmosphere as follows:

Suppose a society to fall into such want of all common necessities, that the utmost frugality and industry cannot preserve the greater number from perishing, and the whole from extreme misery; it will readily, I believe, be admitted, that the strict laws of justice are suspended, in such a pressing emergence, and give place to the stronger motives of necessity and self-preservation. Is it any crime, after a shipwreck, to seize whatever means or instrument of safety one can lay hold of, without regard to former limitations of property? Or if a city besieged were perishing with hunger; can we imagine, that men will see any means of preservation before them, and lose their lives, from a scrupulous regard to what, in other situations, would be the rules of equity and justice? (Hume, 1998, p. 15).

Obviously, people will try to survive in that condition. Since, “[t]he USE and TENDENCY of that virtue is to procure happiness and security, by preserving order in society,” (Hume, 1998, p. 15) justice can be ignored in excessive famine and wants. Prudence takes the role; the common people does not consider the principles of justice in such a situation. For example, a hopeless person about to die of hunger should not be punished because of stealing something to eat. In the same way, “[t]he public, even in less urgent necessities, opens granaries, without the consent of proprietors; as justly supposing, that the authority of magistracy may, consistent with equity, extend so far...” (Hume, 1998, p. 15). Thus, the virtue of justice is of no use again.

In the fourth hypothetical state, Hume imagines a society which is governed by perfect greed and malice. This is the *state of nature* as described by Thomas Hobbes in *Leviathan* (1994),<sup>13</sup> but I think it is best portrayed in William Golding’s novel *Lord of the Flies* (1962). David Hume gives a picture of this savage condition in the second *Enquiry*:

13 Hume also refuses to see Thomas Hobbes as the first philosopher who conceives of the state of nature and argues that it can be found in the works of Cicero and Plato as well. For the details see second *Enquiry* (Hume, 1998, p. 17).

Suppose likewise, that it should be a virtuous man's fate to fall into the society of ruffians, remote from the protection of laws and government; what conduct must he embrace in that melancholy situation? He sees such a desperate rapaciousness prevail; such a disregard to equity, such contempt of order, such stupid blindness to future consequences, as must immediately have the most tragical conclusion, and must terminate in destruction to the greater number, and in a total dissolution of society to the rest. He, meanwhile, can have no other expedient than to arm himself, to whomever the sword he seizes, or the buckler, may belong: To make provision of all means of defence and security (Hume, 1998, pp. 15-16).

A man has no choice in those terms. From Hume's point of view, behaving in accordance with the society is so natural. When the public is barbarous, you become brutal as well. When a state wage war with an uncivilized community "who observed no rules even of war, the former must also suspend their observance of them, where they no longer serve to any purpose; and must render every action or rencounter as bloody and pernicious as possible to the first aggressors" (Hume, 1998, p. 16). One suspends principles of justice and humanity in this situation. Hence, in this state of affairs, a man's "particular regard to justice being no longer of use to his own safety or that of others, he must consult the dictates of self-preservation alone, without concern for those who no longer merit his care and attention" (Hume, 1998, p. 16). Consequently, the state of necessity trumps the laws of justice and equity.

In Hume's view, the fifth set of condition is the state of war and emergency. In those circumstances, the virtue of justice is adjourned until the end of warfare or emergency. First, Hume asserts that state of war dictates exceptional laws: "the rage and violence of public war; what is it but a suspension of justice among the warring parties, who perceive, that this virtue is now no longer of any *use* or advantage to them?" (Hume, 1998, p. 16). To Hume, an administration should defer the rules of justice in case of war. Second, a state of emergency causes interruption of justice as well. Hume argues that "the rules of justice may be dispensed with in cases of urgent necessity" ("Of Passive Obedience," 1994, p. 203). Hume justifies suspension of the laws of justice in necessary situations. He grounds his argument in public utility:

As the obligation to justice is founded entirely on the interests of society, which require mutual abstinence from property, in order to preserve peace among mankind; it is evident, that, when the execution of justice would be attained with very pernicious consequences, that virtue must be suspended, and give place to public utility, in such extraordinary and such pressing emergencies. The maxim, *fiat Justitia & ruat Coelum*, let justice be performed, though the universe be destroyed, it apparently false, and by sacrificing the end to the means, shews a preposterous idea of the subordination of duties ("Of Passive Obedience," 1994, p. 202).

Hume employs one more exception in the adherence of the laws of justice: a state of emergency and necessity makes exceptions to justice.<sup>14</sup> Hume gives this privilege to the sovereign state for the sake of *raison d'etat*: “[a]ll politicians will allow, and most philosophers, that REASONS of STATE may, in particular emergencies, dispense with the rules of justice, and invalidate any treaty or alliance, where the strict observance of it would be prejudicial” (Hume, 1998, p. 29). Further, Hume supports this authoritarian supremacy with the delay of the laws of justice in his ideal commonwealth: “[t]he protector, the two secretaries, the council of state, with any five or more that the senate appoints, are possessed, on extraordinary emergencies, of *dictatorial* power for six months” (“Idea of a Perfect Commonwealth,” 1994, p. 227). However, the problem is once the ruler seizes this supreme power, why should she leave this position and its prerogatives? One can easily prolong this period; as a matter of fact, states of exceptions are usually extended arbitrarily in history. So, shelving laws of justice is an ambiguous and open practice.<sup>15</sup>

Hume’s sixth exception concerns punishment of public criminals. He recommends that persons who harm public order should be penalized according to their “own laws.” For Hume, this is the best way to discipline public criminals. Hence, the laws of justice may be forgotten once again. He explains the postponement of justice in the second *Enquiry*:

When any man, even in political society, renders himself by his crimes, obnoxious to the public, he is punished by the laws in his goods and person; that is, the ordinary rules of justice are, with regard to him, suspended for a moment, and it becomes equitable to inflict on him, for the *benefit* of society, what otherwise he could not suffer without wrong or injury (Hume, 1998, p. 16).

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

The seventh thought experiment is about an imaginary class of rational creatures who have mental and physical disabilities. A vulnerable group of people should be treated with the principle of humanity rather than the principle of justice. It

14 Hume’s ideas on the state of emergency and necessity run through the minds Giorgio Agamben’s state of exception if the laws of *justice* are considered as *law*. Agamben, however, rejects “suspension of law” in the state of exception. For Agamben’s state of exception see Agamben, 2005, pp. 1-4.

15 For instance, “from a juridical standpoint the entire Third Reich can be considered a state of exception that lasted twelve years” (Agamben, 2005, p. 2).

seems that these helpless people may be taken as psychologically ill or handicapped in need of nursing. To Hume, benevolence precedes justice in such a situation:

Were there a species of creatures intermingled with men, which, though rational, were possessed of such inferior strength, both of body and mind, that they were incapable of all resistance, and could never, upon the highest provocation, make us feel the effects of their resentment; the necessary consequence, I think, is that we should be bound by the laws of humanity to give gentle usage to these creatures, but should not, properly speaking, lie under any restraint of justice with regard to them, nor could they possess any right or property, exclusive of such arbitrary lords (Hume, 1998, p. 18).

In that condition, suspension of rules of justice may be acceptable, but Hume holds this inequality as good: “[o]ur intercourse with them could not be called society, which supposes a degree of equality; but absolute command on the one side, and servile obedience on the other” (Hume, 1998, p. 18). These independent persons control themselves if they wish, but they do not cross the line because of tenderness and benevolence. Therefore, “as no inconvenience ever results from the exercise of a power, so firmly established in nature, the restraints of justice and property, being totally *useless*, would never have place in so unequal a confederacy” (Hume, 1998, p. 18). Rules of justice suspended in this case as well.

Finally, Hume says that relations of human beings with a class of rational creatures who have psychological and bodily disabilities (the former group) bear the same resemblance to their relations with animals: mankind has superiority over animals (Hume, 1998, p. 18).<sup>16</sup> Rules of justice do not work before the animals too. Man behaves towards animals in accordance with benevolence and compassion. For Hume, the laws of justice cannot be employed for animals.

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

16 Meanwhile, Hume, having made an analogy between helpless people and animals, he also observes the relations of power between the American Indians and the “civilized Europeans” in the same fashion. He confesses that Europeans suspended principles of justice and humanity in America: “[t]he great superiority of civilized EUROPEANS above barbarous INDIANS, tempted us to imagine ourselves on the same footing with regard to them, and made us throw off all restraints of justice, and even of humanity, in our treatment of them” (Hume, 1998, p. 18).

'tis evident, that the only cause, why the extensive generosity of man, and the perfect abundance of every thing, wou'd destroy the very idea of justice, is because they render it useless; and that, on the other hand, his confin'd benevolence, and his necessitous condition, give rise to that virtue, only by making it requisite to the publick interest, and to that of every individual. (Hume, 1978, p. 496).

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

Thus, the rules of equity or justice depend entirely on the particular state and condition in which men are placed, and owe their origin and existence to that UTILITY, which results to the public from their strict and regular observance. Reverse, in any considerable circumstance, the condition of men: Produce extreme abundance or extreme necessity: Implant in the human breast perfect moderation and humanity, or perfect rapaciousness and malice: By rendering justice totally *useless*, you thereby totally destroy its essence, and suspend its obligation upon mankind. (Hume, 1998, p. 16).

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

Besides, Hume's arguments about conditions of justice point out that the virtue of justice should be considered in its background. A just person comes into existence in a community. For Hume, the moral subject is in conformity with the society and circumstances. There is no tension between the society and the individual. If there are circumstances to be just, one can behave justly; if not, one does not act justly. There is no distinction between the empirical and the intelligible realm in Hume's theory of justice. The "moral subject" adheres to the community in which she exists. Circumstantial and empirical environment is notoriously important in the observance of the rules of justice. So, if one lives in a society that is not just, then one acts unjustly too. If one lives in a group of people who are just because of their interests and public utility, then one becomes a just individual too. The reverse is not true. If a society is constituted by immoral persons, you do not have to be just. Circumstances and human beings are therefore very significant in determining justice. To Hardin, Hume "shows that we cannot sensibly have a theory of justice that is not contingent on human nature and the conditions that humans face in their world" (Hardin, 2007, p. 140). So, it appears that there is no idea of justice regardless of interests in Hume. Unlike Plato, there is not a world of ideas

in which justice exists. In Hume's view, the virtue of justice is in the sensible world and it is related with the human condition. Despite John Rawls' entire approval of Hume's circumstances of justice,<sup>17</sup> the Humean conception of justice is unlike the Rawlsian; because the Rawlsian theory of justice is abstract and ideal, whereas Hume's notion of justice is concerned with normal conditions. Hardin draws our attention to this point: "Hume demonstrates that any notion of justice we might be committed to cannot simply be abstract or inferred entirely from reason or idealized circumstances" (2007, p. 140). It is obvious that Hume's anti-rationalistic attitude can be seen in his conception of justice. Hardin underlines this point: "Hume's empiricism and naturalism (and by his lights his Newtonian stance) on these factors are forcefully represented by his discussion of the empirical circumstances of justice" (2007, p. 139). Dependence of justice on human and social conditions evidently indicates Hume's empirical methodology.<sup>18</sup>

## Artificial Virtue of Justice

Hume seeks out motivations behind actions in determining virtue and vice; so, in Part II of Book III of the *Treatise*, he inspects motives behind just actions. Hume cannot find any natural motive behind just actions. Accordingly, he concludes that "the sense of justice and injustice is not derived from nature, but arises artificially, though necessarily from education, and human conventions" (Hume, 1978, p. 483). Conditions and necessities of nature compel men to establish rules of justice. Hence, convention and education foster the sense of justice. For Hume, we need justice because of the troubles in human nature and society, such as self-love, limited generosity, and scarcity of goods (Hume, 1978, p. 495). These deficiencies cannot be removed by natural ways. Hume emphasizes this fact in the *Treatise*:

In vain shou'd we expect to find, in *uncultivated nature*, a remedy to this inconvenience; or hope for any inartificial principle of the human mind, which might controul those partial affections, and make us overcome the temptations arising from our circumstances (Hume, 1978, p. 488).

17 "Now this constellation of conditions I shall refer to as the circumstances of justice. Hume's account of them is especially perspicuous and the preceding summary adds nothing essential to his much fuller discussion" (Rawls, 1999, p. 110).

18 This conclusion forces us to see Alasdair MacIntyre as right concerning the is/ought question and justice: "Hume himself derives "ought" from "is" in his account of justice" (MacIntyre, 1959, p. 459).

Hence, to Hume, human conventions and artifices<sup>19</sup> can bring relief to these problems. What does human convention mean? What is the characteristic of a convention? Is it a contract, a treaty or a promise? Hume mentions the following ideas regarding these questions:

This convention is not of the nature of a *promise*: For even promises themselves, as we shall see afterwards, arise from human conventions. It is only a general sense of common interest; which sense all the members of the society express to one another, and which induces them to regulate their conduct by certain rules. I observe, that it will be for my interest to leave another in the possession of his goods, *provided* he will act in the same manner with regard to me. He is sensible of a like interest in the regulation of his conduct. When this common sense of interest is mutually expressed, and is known to both, it produces a suitable resolution and behaviour. And this may properly enough be call'd a convention or agreement betwixt us, tho' without the interposition of a promise; since the actions of each of us have a reference to those of the other, and are perform'd upon the supposition, that something is to be perform'd on the other part (Hume, 1978, p. 490).

So, convention is neither a compact<sup>20</sup> nor a promise. Convention is a sensation of public interest that arranges actions of people. In the second *Enquiry*, Hume relates human conventions with “public utility” (Hume, 1998, p. 98).<sup>21</sup> In the *Treatise* he explains conventions by referring to values of gold and silver: “[i]n like manner do gold and silver become the common measures of exchange, and are esteemed sufficient payment for what is of a hundred times their value” (Hume, 1978, p. 490). The same is true for the money we use: if individuals did not accept money as a measure of value and use it as everyone does, it would be a piece of paper. Human convention adds value to money.

Let us now consider Hume’s distinction between natural and artificial virtues. The difference between natural and artificial virtues becomes visible when the con-

19 To Hume, *artifice* means that “the rules of justice were invented by human beings in the course of their natural history and thus cannot be considered original, or as innate principles made known to men by nature’s Author” (Lecaldano, 2008, p. 258).

20 Macnabb underlines this view in Hume: “The principles of justice are, indeed, founded on artifices, and are therefore not “natural laws”. But they are not founded on any contract, since the keeping of contracts is itself one of the principles of justice. They are founded on customary conventions which command our approbation because of their utility” (Macnabb, 1991, p. 171).

21 “[I]f by convention be meant a *sense of common interest*; which sense each man feels in his own breast, which he remarks in his fellows, and which carries him, in concurrence with others, into a general plan or system of actions, which tends to public utility; it must be owned, that, in this sense, justice arises from human conventions” (Hume, 1998, p. 98).

sequences are considered. For instance, benevolence is a natural virtue and justice an artificial one; Hume associates benevolence with a wall, and justice with a vault:

The happiness and prosperity of mankind, arising from the social virtue of benevolence and its subdivisions, may be compared to a wall, built by many hands, which still rises by each stone that is heaped upon it, and receives increase proportional to the diligence and care of each workman. The same happiness, raised by the social virtue of justice and its subdivisions, may be compared to the building of a vault, where each individual stone would, of itself, fall to the ground; nor is the whole fabric supported but by the mutual assistance and combination of its corresponding parts (Hume, 1998, p. 97).

This striking illustration shows the distinction between justice and benevolence clearly, or the one between artificial virtues and natural virtues. Therefore, if a just society is dreamed of, all human beings should obey the laws of justice completely. This is also the ground of inflexible laws that Hume advocates. Inflexible laws can be secured when every single person sticks to them. When the social virtue of justice is endorsed in this manner, it can be satisfied; otherwise the vault would be demolished. In artificial virtues, all people should comply with plans and rules of conduct. This is the critical point in the distinction between natural and artificial virtues. Hume confirms and elaborates this distinction in the *Treatise*:

The only difference betwixt the natural virtues and justice lies in this, that the good, which results from the former, arises from every single act, and is the object of some natural passion: Whereas a single act of justice, consider'd in itself, may often be contrary to the public good; and 'tis only the concurrence of mankind, in a general scheme or system of action, which is advantageous. When I relieve persons in distress, my natural humanity is my motive; and so far as my succour extends, so far have I promoted the happiness of my fellow-creatures. But if we examine all the questions, that come before any tribunal of justice, we shall find, that, considering each case apart, it wou'd as often be an instance of humanity to decide contrary to the laws of justice as conformable them (Hume, 1978, p. 579).

General rules of justice (artificial virtues) thus should not be examined separately. The important thing is “[t]he whole scheme ... of law and justice is advantageous to the society; and it was with a view to this advantage, that men, by their voluntary conventions, established it” (Hume, 1978, p. 579). However, in large societies free riders can elude their responsibilities ingeniously. They do not destroy the entire system. Free riders pursue their interests without abolishing the system of laws directly. Of course, if every citizen acts like that, the system collapses. In practice, governments seek to prevent free riders with penalties, but Hume does

not refer to legal or financial sanctions (Nuyen, 1986, p. 53). So, how will he deter free riders and make them respect the laws of justice? Since justice is an artificial virtue, there is not any natural motive that forces people to abide by the laws. So how will Hume bridge the gap morally? Why should free riders obey the rules of justice? Why should they leave this advantaged position? Unfortunately, Hume could not answer these questions. He just mentions benefits of justice, but he could not find a solid moral basis for just actions. Hume expresses that artificial virtues should be performed by all, but he could not explain how it is possible.

In addition to that Hume speaks of law and justice together. He says that both are beneficial to the public. Since law and justice are compatible in Hume's political thought, we can say that justice can be achieved and preserved by law. Then, *the laws of justice* are needed for ordering human conduct in the society.

## The Laws of Justice

In Hume's works, we encounter concepts such as "rules of justice" (Hume, 1978, p. 480), "laws of nature" (Hume, 1978, p. 520), "laws of society" (Hume, 1978, p. 491), "fundamental laws of nature" (Hume, 1978, p. 526), "fundamental rules of justice" (Hume, 1978, p. 567), "rules of justice and equity" (Hume, 1978, p. 505), "laws of equity and justice" (Hume, 1998, p. 28), "laws of justice" (Hume, 1978, p. 491), and "laws of justice and of property" (Hume, 1998, p. 23). In fact, these conceptualizations refer to same principles, which are as follows:

1. Stability of property;
2. Transfer of property by consent;
3. Fulfilment of promises (Hume, 1978, p. 526).

Hume elucidates the first law of nature as follows: "man's property is supposed to be fenced against every mortal, in every possible case" (Hume, 1978, p. 483). Hume sees the right to property as an absolute right. He subsequently draws a parallel between property and justice:

After this convention, concerning abstinence from the possessions of others, is entered into, and every one has acquired a stability in his possessions, there immediately arise the ideas of justice and injustice; as also those of *property*, *right*, and *obligation*. The latter are altogether unintelligible without first understanding the former. Our property is, nothing but those goods, whose constant possession is established by the laws of society; that is, by the laws of justice (Hume, 1978, pp. 490-491).

Humean rules of justice are very much related with the rules of property. This is also apparent from his frequent use of these notions together. For instance, in the second *Enquiry* Hume says that “the ultimate point ... is the interest and happiness of human society. Where this enters not into consideration, nothing can appear more whimsical, unnatural, and even superstitious, than all or most of the laws of justice and of property” (Hume, 1998, p. 23; emphasis added). In his *Political Essays*, Hume admits that “private justice, or the abstinence from the properties of others, is a most cardinal virtue” (“Of the Original Contract,” 1994, p. 197). In the second *Enquiry*, he uses justice and property interchangeably (Hume, 1998, p. 19). It is evident that Humean laws of justice are in line with the rules of property.<sup>22</sup> As John Rawls observes, “Hume’s principles of justice are, in effect, largely principles for the regulation of economic production and competition between the members of civil society, as they pursue their economic interests” (Rawls, 2007, pp. 178-179). Hence, Hume’s rules of justice are mostly principles of economic activities; because the rules of justice derive from the rules of property, and these rules seek to regulate economic transactions. For Hume, since all the three rules of justice is related to property and economics, the laws of justice are the laws of finance and commerce (Wennerlind, 2002).

## Self-love

At first sight, self-interest seems to be in contrast with the laws of justice; however, for Hume, self-love is the original motive for the rules of justice. To underline this nuance, let us first consider rough and brutal self-interest. In the *Treatise*, Hume states that “self-love, when it acts at its liberty, instead of engaging us to honest

22 David Gauthier confirms this interpretation; he says that in Hume’s view “property is determined by a system of rules for the possession and use of objects, so that my property is what, in accordance with rules, I possess and use, and my exclusive property, what I alone possess and use. Justice, then, is the virtue determined by such a system, so that just behaviour consists in adherence to the rules governing the possession and use of objects” (Gauthier, 1979, pp. 4-5). Furthermore, Alasdair MacIntyre observes Humean conception of justice as rules of property as well: “[t]he problem of justice was according to Hume centrally a problem about the rules of property and their enforcement, and as I have already suggested, it was property conceived of in one highly particular way” (MacIntyre, 1988, p. 307). Similarly, Charles Cottle understands Hume’s notion of justice in accordance with the notion of property; “because Hume’s conception of property depends upon the laws which regulate it, one who wishes to hold, acquire, transfer, or even respect property must abide by such rules of justice. For Hume it is definitionally impossible to violate the rules of justice and still respect property rights. Semantically, the rules of justice and property are inseparable” (Cottle, 1979, p. 460). A. T. Nuyen thinks so as well: “Justice, for Hume, is observation of the rules designed to promote the stability of property.... Justice, for Hume, has to do only with material possessions.” (Nuyen, 1986, p. 43).

actions, is the source of all injustice and violence; nor can a man ever correct those vices, without correcting and restraining the natural movements of that appetite” (Hume, 1978, p. 480). Hence, self-interest should be controlled; otherwise it is impossible to satisfy the desires of self-love. No one can be satisfied in his or her interests. At that point, persons should control their self-love just because of their self-interest.<sup>23</sup> The obstacle of self-love is thus transformed to become the first origin of justice. Hume contends that “the mutual shocks, in society, and the oppositions of interest and self-love have constrained mankind to establish the laws of *justice*, in order to preserve the advantages of mutual assistance and protection” (Hume, 1998, p. 67). Hence, for Hume, the motivation of the laws of justice comes from the domestication of self-love:

We have already shewn, that men invented the three fundamental laws of nature, when they observed the necessity of society to their mutual subsistence, and found, that it was impossible to maintain any correspondence together, without some restraint on their natural appetites. The same self-love, therefore, which renders men so incommodious to each other, taking a new and more convenient direction, produces the rules of justice, and is the first motive of their observance (Hume, 1978, p. 543).

Self-interest so tamed becomes the first origin of justice. For Hume, therefore, individuals obey the laws of justice. In other words, “artificially-redirected interest naturally obliges us and serves as the original motive to justice” (Taylor, 1998, p. 19) or “enlightened self-interest” (Krause, 2004, p. 639) motivates us to obey the laws of justice.

It may be argued that Hume denies self-love as a foundation of morality. Indeed, Hume rejects selfishness as a basis in ethics, but he acknowledges the role of self-interest in politics. This distinction is observed by Jeffrey Church. He argues that “[a]lthough Hume began his moral philosophy with a critique of the selfish system, he returns to the selfish hypothesis in his political philosophy” (Church, 2007, p. 174). As I have noted above, this can be seen in Hume’s arguments on justice. In this question, Hume stands between Hutcheson and Mandeville. Hume is not in agreement with Hutcheson with respect to the self-interest: “[u]nlike his predecessor Hutcheson, who thoroughly repudiated the selfish system, Hume remained ambivalent about it, accepting its institutional solutions while rejecting its

23 A relation could be drawn between this remark of Hume and Game Theory. John Nash introduced this original approach to Game Theory. In zero sum games, one’s profit is others’ deficit, but in non-zero sum games all sides of the competition can win. Everyone can satisfy their interests. This can be also named as restriction of self-love in Hume. Nash formulates this idea in economic terms. See Nash, 1950.

moral assumptions” (Church, 2007, p. 179). Hume “seems to accept Mandeville’s system in the end” (Church, 2007, p. 174), but only in the political realm. However, MacIntyre claims that grounding the rules of justice on self-love is unsatisfactory: “the kind of connection between the passions and adherence to a rule or principle, which the Humean account requires, cannot be established by way of any conception of self-interest” (MacIntyre, 1988, p. 307). To Sharon Krause, Hume’s approach to justice is related with interests; “defining justice as narrowly as he does, Hume means to force a change in our orientation to justice, to make us feel for justice from the standpoint of our interests rather than our ideals” (Krause, 2004, p. 639). Idealistic discourses thus leave their place to egoistic discourses in the theory of justice. However, Hume’s approach could not remedy the free rider problem. The free rider does not control and redirect her self-love. Hume suggests that she should restrict her self-love for the sake of self-love. This argument looks like a vicious circle. The cunning free rider satisfies her self-love anyway. Why would she limit her self-love? Hume needs another reason to curb self-love and to arrive at the rules of justice. Self-love is not a sure foundation in ethics as well as in politics. Self-love could not serve just and moral actions.

## The Origin of the State

In his philosophical and political texts, Hume prefers the notion of government rather than state, but this does not mean that he refers to a different apparatus. In general, Hume implies state when he uses the term government. In fact, the term government was not employed as we understand and perceive it now. Today, as a rule the government is responsible for executive and legislative powers. However, in Hume’s theory, the term government includes judicial power as well (Dees, 2008, p. 396). To be brief, in Hume, the term government has a larger sense than its contemporary meaning. Therefore, we can use government and state interchangeably in our investigation of the rules of justice.

An anarchist can ask why we need a state. Cannot we live without government? Hume would consider this question as important to some extent. Considering American clans, he argues that the state is superfluous in small societies (Hume, 1978, p. 540); but in a large and developed society an authority is necessary to guarantee the laws of justice. Hence, people “establish government, as a new invention to attain their ends, and preserve the old, or procure new advantages, by a more strict execution of justice” (Hume, 1978, p. 543). Thanks to the state, the public will obey the laws of justice. Thus, “the principal object of government is to

constrain men to observe the laws of nature” (Hume, 1978, p. 543). Therefore, governments, parliaments, soldiers, officers are all needed for the sake of justice. On Hume’s view, therefore mankind needs an institution like the state:

MAN, born in a family, is compelled to maintain society, from necessity, from natural inclination, and from habit. The same creature, in his farther progress, is engaged to establish political society, in order to administer justice; without which there can be no peace among them, nor safety, nor mutual intercourse. We are, therefore, to look upon all the vast apparatus of our government, as having ultimately no other object or purpose but the distribution of justice, or, in other words, the support of the twelve judges. Kings and parliaments, fleets and armies, officers of the court and revenue, ambassadors, ministers, and privy-counsellors, are all subordinate in their end to this part of administration (“Of the Origin of Government,” 1994, p. 20).

The artificial virtue of justice thus stands above all these organizations and individuals. Political society functions as a controller and guardian. States are means to the ends of a just society; they guarantee the adherence to the rules of justice. Since human nature is inclined to self-interest, the government hinders people crossing the line. In the *Political Essays*, Hume underlines the purpose of state:

All men are sensible of the necessity of justice to maintain peace and order; and all men are sensible of the necessity of peace and order for the maintenance of society. Yet, notwithstanding this strong and obvious necessity, such is the frailty or perverseness of our nature! It is impossible to keep men, faithfully and unerringly, in the paths of justice (“Of the Origin of Government,” 1994, p. 20).

In Hume’s political thought, therefore, it can be said that states are just “useful tools” (Dees, 2008, p. 404). Governments should support the laws of justice for the well-being of the society.

## Conclusion

In this paper, Hume’s theory of justice is examined in terms of its foundations, circumstances, and characteristics. Hume analyses justice by referring to sympathy first; but in his later works he leaves sympathy for the sake of public utility. He considers sympathy as a weak foundation for the virtue of justice. Then he emphasizes public utility for the moral approbation of justice. For Hume, the sense of justice does not originate from reason. His understanding of justice is not idealistic, absolute, and abstract; it is empirical and down-to-earth because he is concerned with interests rather than transcendental ideas. However, in Hume’s view, justice is a

moral issue in large and refined societies. Obeying the laws of justice is a moral duty; hence, moral persons act in accordance with the principle of public utility. On the one hand, Hume could not overcome the free rider problem. Neither sympathy nor public utility could not supply the required ground work for justice. Free riders and sensible knaves can benefit from exceptions without violating general rules. Hume could not offer a remedy for free riders. Although Hume is a realist in politics, he seems like a Pollyanna in ethics. Hume's account of justice could not provide a solution to the free rider problem that any theory of justice must deal with. On the other hand, Hume argues that justice is an artificial virtue and at the same time he contends that it is a moral duty and derives from a sense of obligation. But since justice does not involve a natural motive in human nature, a sense of obligation could not lead to justice. Although Hume adopts an empirical and anti-rationalist methodology, he appeals to rationalist solutions as well (Slote & LeBar, 2016). At the end of the day, Hume's account of justice contains a set of gaps and contradictions. Therefore, he could not develop a complete well-grounded theory of justice (Reidy, 1993).

For Hume, the virtue of justice becomes redundant in some situations, such as in states of perfect abundance, scarcity, war, and emergency. Similarly, when one is faced with perfectly generous, or extremely cruel and voracious persons, or when one is dealing with a class of rational creatures with mental and corporal disabilities, or with animals, or in the punishment of unlawful people, the virtue of justice would be pointless. In all other cases, the artificial virtue of justice plays an important role. Circumstances and dispositions of men are thus highly important in the requirements of justice. This observation points to another resemblance between his theory of morality and justice, and helps us to see his experimental method of reasoning. As it is shown, Hume's empirical methodology is clear in his arguments concerning the circumstances of justice; but in the foundation of justice he implies rationalist concepts.

To Hume, justice is an artificial virtue, it does not stem from nature, and it has not got a natural motive in human nature. The chief drive that causes individuals to act justly is disciplined self-interest. Self-love should be organized for needs of the public. Laws of justice are created by people thanks to the conventions. Civil society requires the rules of justice to institute and maintain order. With the rules of justice, the security and stability of the community is guaranteed. Unlike beneficence or charity, justice necessitates participation of all people. The laws of justice should be followed by everybody; this is how a just society becomes possible. In

this way, well-being and maintenance of the society might be possible. If the virtue of justice is undermined, civil society collapses. Justice is a *sine qua non* for the humanity. Otherwise, brutality and anarchy overwhelm mankind.

The laws of justice are mainly related to economic justice. In Hume's political theory, the concept of justice chiefly concerns principles of economic activities; because he views the rules of justice from the lens of property. The laws of justice are: stability of property, exchange of property by consent, and performance of promises. The laws of justice are directly associated with the laws of property and exchange. Hume identifies the concept of justice with the rise of the first rule, i.e. stability of property. The other rules of justice too are concerned with property, trade, and contracts. Hume's laws of justice are thus all about economics.

## References

- Agamben, G. (2005). *State of exception* (K. Attell, Trans.). Chicago: University of Chicago Press.
- Aristotle. (2011). *Aristotle's nicomachean ethics* (R. C. Bartlett & S. D. Collins, Trans.). Chicago and London: The University of Chicago Press.
- Church, J. (2007). Selfish and moral politics: David Hume on stability and cohesion in the modern state. *The Journal of Politics*, 69(1), 169-181.
- Cohon, R. (2010). Hume's moral philosophy. (Fall Edition). In E. N. Zalta (Ed.), *The stanford encyclopedia of philosophy*. Retrieved from <https://plato.stanford.edu/archives/fall2010/entries/hume-moral/>
- Cottle, C. E. (1979). Justice as artificial virtue in Hume's treatise. *Journal of the History of Ideas*, 40, 457-466.
- Dees, R. H. (2008). "One of the finest and most subtle inventions": Hume on government. In E. S. Radcliffe (Ed.), *A companion to Hume* (pp. 388-405). Oxford: Blackwell Publishing.
- Deleuze, G. (1991). *Empiricism and subjectivity: An essay on Hume's theory of human nature* (C. V. Boundas, Trans.). New York: Columbia University Press.
- Eryilmaz, E. (2011). *Politics, law, and morality: David Hume on justice*. Unpublished master's thesis, Middle East Technical University, Ankara.
- Gauthier, D. (1979). David Hume, contractarian. *The Philosophical Review*, 88(1), 3-38.
- Golding, W. (1962). *Lord of the flies*. London: Faber & Faber.
- Haakonssen, K. (1993). The structure of Hume's political theory. In D. F. Norton (Ed.), *The Cambridge companion to Hume* (pp. 182-201). Cambridge : Cambridge University Press.
- Hardin, R. (2007). *David Hume: Moral and political theorist*. Oxford: Oxford University Press.
- Hardin, R. (2013) The free rider problem. In E. N. Zalta (Ed.), *The Stanford encyclopedia of philosophy* (Spring 2013 Ed.). Retrieved from <https://plato.stanford.edu/archives/spr2013/entries/free-rider/>
- Hobbes, T. (1994). *Leviathan*. E. Curley (Ed.). Indianapolis: Hackett Publishing Company.
- Hume, D. (1978). *A treatise of Human nature*. Oxford: Oxford University Press.
- Hume, D. (1994). *Political essays*. Cambridge: Cambridge University Press.
- Hume, D. (1998). *An enquiry concerning the principles of morals*. Oxford: Oxford University Press.
- Krause, S. R. (2004). Hume and the (false) Luster of justice. *Political Theory*, 32(5), 628-655.

- Küng, H. (1998). *A global ethic for global politics and economics*. Oxford: Oxford University Press.
- Lecaldano, E. (2008). Hume's theory of justice, or artificial virtue. In E. S. Radcliffe (Ed.), *A companion to Hume* (pp. 257-272). Oxford: Blackwell Publishing.
- MacIntyre, A. (1959). Hume on "Is" and "Ought". *The Philosophical Review*, 68(4), 451-468.
- MacIntyre, A. (1984). *After virtue: A study in moral theory*. Notre Dame: University of Notre Dame Press.
- MacIntyre, A. (1988). *Whose justice? Which rationality?* Notre Dame: University of Notre Dame Press.
- Macnabb, D. G. (1991). *David Hume: His theory of knowledge and morality*. Aldershot, England: Gregg Revivals.
- Miller, D. (1976). *Social justice*. Oxford: Clarendon Press.
- Morwood, J. (1998). *A dictionary of Latin words and phrases*. Oxford: Oxford University Press.
- Nash, J. F. (1950). The bargaining problem. *Econometrica*, 18(2), 155-162.
- Nuyen, A. T. (1986). Hume's justice as a collective good. *Hume Studies*, 12(1), 39-56.
- Rawls, J. (1999). *A theory of justice* (Rev. ed.). Cambridge, Mass.: Harvard University Press.
- Rawls, J. (2007). *Lectures on the history of political philosophy*. S. Freeman (Ed.). Cambridge, Mass.: Harvard University Press.
- Reidy, D. A. (1993). Does Hume have a theory of justice? *Auslegung: A Journal of Philosophy*, 19(1), 63-74.
- Selby-Bigge, L. A. (1975). Editor's introduction. In D. Hume (Ed.), *Enquiries concerning human understanding and concerning the principles of morals* (p. xxi). Oxford: Clarendon Press.
- Slote, M., & LeBar, M. (2016). Justice as a virtue. In E. N. Zalta (Ed.), *The Stanford encyclopedia of philosophy* (Spring 2016 Ed.). Retrieved from <https://plato.stanford.edu/entries/justice-virtue/>
- Taylor, J. (1998). Justice and the foundations of social morality in Hume's treatise. *Hume Studies*, 24(1), 5-30.
- Wennerlind, C. (2002). David Hume's political philosophy: A theory of commercial modernization. *Hume Studies*, 28(2), 247-270.
- Yellin, M. E. (2000). Indirect utility, justice, and equality in the political thought of David Hume. *Critical Review*, 14(4), 375-389.

