

THESIS

DAVID HUME'S THEORY OF JUSTICE: AN EXAMINATION OF THE POSSIBILITY OF  
AN INSTINCTUAL CONCEPT OF PROPERTY AND NATURAL VIRTUE OF JUSTICE

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## ABSTRACT

### DAVID HUME'S THEORY OF JUSTICE: AN EXAMINATION OF THE POSSIBILITY OF AN INSTINCTUAL CONCEPT OF PROPERTY AND NATURAL VIRTUE OF JUSTICE

In this work I argue that David Hume's classification of the virtue of justice as artificial is mistaken, and propose that the possibility of the existence of a natural virtue of justice should be taken seriously within Hume's moral framework. In the first chapter of this work, I present Hume's moral theory, with a focus on Hume's distinction between natural and artificial virtues. In the second chapter, I argue that Hume's certainty concerning the classification of justice as an artificial virtue is mistaken, and offer a positive account of the possibility of a natural origin, and ultimately a natural virtue of justice. In the third chapter I will entertain possible objections Hume might offer to my argumentation, and offer responses accordingly.

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## INTRODUCTION

This work concerns David Hume's distinction between what he names the natural virtues and the artificial virtues. Hume, notably, argues that justice, which under his rather limited interpretation is honesty with respect to property, should undoubtedly be understood as one of the artificial virtues. So, on Hume's account, justice arises not from a simple original instinct which nature has implanted within the human breast, as the natural virtues have, but instead arises out of a human convention invented to satisfy the needs and necessities of humans, as an artificial solution intended to solve the problems humans face. This work will argue that Hume's certainty concerning the categorization of justice as an artificial virtue was a mistake. I will argue that the possibility of a natural origin of justice is not only feasible within Hume's moral framework, but is also an explanatory option which should be taken seriously.

In the first chapter of this work Hume's moral theory, as I understand it, will be presented with an especially hearty focus on Hume's claims concerning the distinction between the natural and artificial virtues, the differences in the origin of these two different types of virtue, and the placement of the virtue of justice within this distinction. In the second chapter it will be argued that Hume's certainty concerning the classification of justice as an artificial virtue was a mistake. The main arguments Hume gives to reject the possibility of a natural origin of justice will be presented and responded to, and a positive account of the possible natural virtue of justice will be offered and defended. In the third chapter of this work an objection Hume might offer, concerning a possible confusion of cause and effect, to my positive account of a possible natural virtue of justice will be offered, and responded to. Finally I will conclude that one has good

reason to carefully consider the possibility of a natural explanation of the virtue of justice, and that doing so could actually offer Hume several explanatory benefits.

## CHAPTER ONE

### *Section I: Hume's Moral Theory*

Before Hume's distinction between natural and artificial virtues is presented, it will be beneficial to the overall current project to give a brief and very general summary of the major points of Hume's moral theory which are presented in his works *A Treatise of Human Nature* Book 3, "Of Morals" and *An Enquiry Concerning the Principles of Morals*.<sup>1</sup> In his work *Hume's Moral Theory*, J.L. Mackie explains Hume's primary overall moral project in what I found to be a very clear and concise way. Hume's

question is a demand for an explanation of the sort typically given by the empirical sciences: 'here is this curious phenomenon, human morality, a cluster of attitudes, dispositions, practices, behavioral tendencies, and so on that we find almost universally among men... why is it there, and how did it develop?' (Mackie 6).

Famously Hume claims that "reason is, and ought only to be the slave of the passions, and can never pretend to any other office than to serve and obey them" (*Treatise* 2.3.3.4). Although this claim is presented in a much tamer way in Hume's later work, his second *Enquiry*, it still maintains its importance, and prominence within Hume's moral theory. Before this claim can be clarified some quick definitional work must first be considered.

When considering Hume's use of the word 'reason' it is most helpful to think of knowledge. As Mackie explains, knowledge "whether of *a priori* truths or of empirical facts, all beliefs, and all rational calculation" fall under Hume's heading of reason (1). When considering Hume's use of the term 'passions' one may be tempted to immediately consider only those things that one feels passionately about, or things that cause passionate feelings, but this would be incorrect (Baillie 40). Instead what we consider as strong, or violent, emotions is a much

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<sup>1</sup> Here after "The *Treatise*" and "The *Enquiry*." No reference will be made to Hume's first *Enquiry* until the conclusion of this work.

better understanding of Hume's use of the term passions, although these emotions need not always be violent, he does hold that in general the passions will be violent or strong emotions (Treatise 2.1.1.3). Hume explains that "bodily pains and pleasures are the source of many passions," and that this source requires no preceding thought or perception (Treatise 2.1.1.2). For example, "A fit of the gout produces a long train of passions, as grief, hope, fear; but is not deriv'd immediately from any affection or idea" (Treatise 2.1.1.2). Hume holds that there are direct passions and indirect passions. "By direct passions I understand such as arise immediately from good or evil, from pain or pleasure," such as: desire, aversion, grief, joy, hope, fear, despair, and security (Treatise 2.1.1.4). "By indirect such as proceed from the same principles [as the direct passions], but by the conjunction of other qualities," such as, primarily: pride, humility, love, and hatred (Treatise 2.1.1.4).

With this terminology in mind we can now examine Hume's claim that "reason is, and ought only to be the slave of the passions, and can never pretend to any other office than to serve and obey them" (Treatise 2.3.3.4). What Hume means by this claim concerns, what Mackie calls, Hume's psychology of action. Mackie explains, Hume's "view is that all knowledge, whether of *a priori* truths or of empirical facts, all beliefs, and all rational calculation are by themselves inert" (1). So, nothing which falls under the heading of 'reason' is able to, on its own, offer a motive for action, or inaction. Hume holds that when we are in fact motivated to act we can be sure reason has not been performing alone. For Hume, "motivation for or against any action requires something else, what he would call a passion or sentiment, and more particularly a desire" (Mackie 1). Thus, for Hume one must have a desire to complete action X, to be motivated to complete action X.

As was earlier presented in the Treatise, Hume maintains that reason is a part of the motivation to act, but in one's motivation to act attends the passions in a subservient roll. In the Enquiry Hume allows for reason and the passions to work on closer to equal grounds, but with the passions always manning the helm. As Baillie explains Hume "is making a claim about the *structure* of motivation, and denying reason the major role in the genesis of action" (89). Hume is not claiming that reason plays no role in his psychology of action; it merely plays a lesser role than the passions do.

The next central feature of Hume's moral theory involves his claims concerning moral distinctions. Although two distinct claims are actually made regarding this topic (in two different sections in the third book of the Treatise), they can, roughly, be summarized as such: moral distinctions are not derived from reason, but are instead derived from the moral sentiments, or a moral sense<sup>2</sup>. Hume claims that moral distinctions, a distinction between those character traits which are virtuous and those which are vicious, or what one can think of as morally right or good traits and morally wrong or bad traits, cannot be derived from reason alone. Hume asserts that since moral distinctions, or morals as he calls them, motivate one to act we can safely be assured that reason is not acting alone in making said distinctions, because, as was examined above, Hume holds that reason alone can never motivate one's will to act. "Since morals, therefore, have an influence on the actions and affections it follows, that they cannot be deriv'd from reason; and that because reason alone, as we have already prov'd, can never have any such influence" (Treatise 3.1.1.6). Hume provides an example to support his claims concerning moral distinctions. He considers the act of willful murder, and concludes that if willful murder is examined in every rational way possible, including the character traits one must possess to

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<sup>2</sup> As Mackie points out when Hume uses the word "sense" here, it should carry none of the troublesome difficulties it would if it were interpreted as it is in "sense-perception." Rather Hume means "sense" as we use it when we talk of our "sense of beauty." (For more on this topic see Mackie 65-66).

commit willful murder, we will not find “that matter of fact, or real existence, which you call *vice*” (Treatise 3.1.1.26). Thus, Hume is able to conclude that “the rules of morality, therefore, are not conclusions of our reason” (Treatise 3.1.1.6).

Instead, Hume holds that to find that which we call vice in some character trait or action, willful murder for example, you must “turn your reflection into your own breast, and find a sentiment of disapprobation, which arises in you, towards this action” (Treatise 3.1.1.26). Hume claims that this sense of disapprobation towards willful murder is the matter of fact we were looking for, but “’tis the object of feeling, not of reason,” and one that lies within us (Treatise 3.1.1.26). Hume associates this feeling of disapprobation with uneasiness or pain. At this point it is important to note, for the purpose of an important distinction, that Hume commits to the claim that:

If any *action* be either virtuous or vicious, ’tis only as a sign of some quality or character. It must depend upon durable principles of mind, which extend over the whole conduct, and enter into the personal character. Actions themselves, not proceeding from any constant principle, have no influence on love, hatred, pride or humility; and consequently are never consider’d in morality (Treatise 3.3.1.4).

So we find our labeling of any act, or more specifically, as the above passage illustrates any character trait which motivates some act, such as willful murder, as vicious only when we acknowledge the sense of disapprobation we have and feel towards a character trait or traits which would motivate one to act in such a way.

Likewise, we understand a character trait to be virtuous if the contemplation of it arises within us a feeling of approbation or agreeableness (Treatise 3.1.2.1). So, we must still turn our reflection inward, but when faced with virtue the feeling which arises will be a pleasure or agreeableness, devoid of all uneasiness and pain. For example, when we know a person to be benevolent it arises in us a particular kind of pleasure, causing us to know such a character trait

is virtuous. As Hume explains, “to have a sense of virtue, is nothing but to *feel* a satisfaction of a particular kind from the contemplation of a character. The very *feeling* constitutes our praise or admiration” (Treatise 3.1.2.3). Thus, “an action, or sentiment, or character trait is virtuous or vicious; why? because its view causes a pleasure or uneasiness of a particular kind” (Treatise 3.1.2.3). These sentiments of pleasure and pain, which enable us to make moral distinctions, are associated with our passions of pride and humility, and love and hatred.<sup>3</sup> When one has a feeling of approbation towards some character trait we feel love of that trait and possessor of that trait, likewise we hate the pain we feel towards vicious character traits. We feel pride when we have a feeling of approbation towards a trait of our own, and are humbled by the pain the possession of a vicious character trait causes us (Treatise 3.3.1.3).

Importantly, Hume does stipulate that it is not every instance of pleasure or pain which will arise in us an ascription of virtue or vice. These instances of pleasure and pain must be of a “particular kind.” “’Tis only when a character is consider’d in general, without reference to our particular interests, that it causes such a feeling or sentiment, as denominates it morally good or evil” (Treatise 3.1.2.4). Hume provides an analogy to aid in this distinction. When one hears a talented singer performing a particular kind of pleasure is felt, but if a specific listener knows the singer to be an enemy, or rival of his, then it might be hard for that listener to be sensible, and agree that the singing is pleasurable. Hume points out that a listener “of a fine ear, who has the command of himself, can separate these feelings, and give praise to what deserves it” (Treatise 3.1.2.4). In like manner we must be able to separate our feelings, most importantly our feelings of self-interests, when considering moral issues, and praise what deserves it. Although this may

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<sup>3</sup> It should be noted that different interpreters of Hume claim different relations between these four passions, and our moral sentiments. “Some interpreters analyze the moral sentiments as themselves forms of these four passions; others argue that Hume’s moral sentiments are pleasures and pains that tend to cause the latter passions” (Cohon). I maintain, leaning towards the latter camp, that James Fieser is correct in claiming that these passions are caused by virtuous or vicious character traits which are themselves the product of the moral sentiments. (Fieser).

seem like a tall order, Hume has confidence in our ability to do this concerning moral distinctions. Hume claims our “quick sensibility... is so universal among mankind” that it enables the philosopher to do this quite easily. The philosopher “needs only enter into his own breast for a moment, and consider whether or not he should desire to have this or that quality ascribed to him, and whether such or such an imputation would proceed from a friend or enemy” (Enquiry 1.1.10).

Hume holds that these moral sentiments, which are so important in making distinctions between vice and virtue, are results of the operation of the psychological function or mechanism of sympathy. Thus, “sympathy is the chief source of moral distinctions” (Treatise 3.3.6.1). Essentially, sympathy for Hume, which may sound more like empathy after this general account is given, allows one to feel the pain and pleasure felt by others as a result of certain character traits, or actions resulting from specific character traits. “The minds of all men are similar in their feelings and operations; nor can any one be actuated by any affection, of which all others are not, in some degree, susceptible” (Treatise 3.3.1.7). So, for example, when we learn of some stranger who has acted benevolently towards others, even when said benevolence does not affect us at all, we still feel a sentiment of approbation or pleasure towards that character trait, similarly to how we would have if some personal friend had acted benevolently towards us. Sympathy is likely the most important aspect of Hume’s moral theory, because the operations of sympathy have “force sufficient to give us the strongest sentiments of approbations” (Treatise 3.3.6.1). Sympathy is what enables us to be affected by the happiness, resulting from virtue, of strangers and importantly by public utility in general. It also, conversely, enables us to feel the pain of others caused by vice. For Hume, Sympathy alone is what enables us “to feel approbation in response to actions contributing to the public good” (Norton 196). So, it is by this natural human

function that we feel a sense of approbation towards character traits which result in public good, and promote public interest. Hume notes that one might object to this understanding of sympathy by claiming that sympathy is itself variable, as we may feel a stronger connection to those we know than those we don't. So morality must too be variable. For example, we might feel that it is a greater wrong for one of our friends to be harmed in some way, than for a stranger to be harmed, because we feel a stronger pain when sympathizing with a friend than a stranger. To this Hume response "notwithstanding this variation of our sympathy, we give the same approbation to the same moral qualities in *China* as in *England*. They appear equally virtuous and recommend themselves equally to the esteem of a judicious spectator." (Treatise 3.3.1.14).

Now that Hume's concept of virtue and vice has been presented it is possible to examine a very important division Hume makes concerning virtue. This division is between that of the natural virtues and the artificial virtues.<sup>4</sup> This distinction is very important as it not only will enable us to know which virtues we can naturally have and which we have only by means of an artificial human convention, but it will also enable us to know which virtues we naturally approve of, and which we approve of due to an artificial human convention (Mackie 76). I will start by presenting what Hume holds the natural virtues to be, with a focus on the origin of these virtues.<sup>5</sup>

To understand Hume's natural virtues, we must first explore what he means by 'natural.' Hume presents three different understandings of the term 'natural,' in an effort to initially present his intended use of the term, via a process of elimination. Hume holds "we can

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<sup>4</sup> It is important to note that Hume abandons the use of the terms "natural virtues" and "artificial virtues" in the Enquiry, but, importantly, the distinction itself remains, only with slightly different language. I will use the terms natural and artificial throughout this entire work, as a way to distinguish between these two kinds of virtue, and I hold that doing so does not alter any commitment Hume makes in the Enquiry.

<sup>5</sup> It should be noted that this is the opposite order of presentation which Hume utilizes in the Treatise, but is the order which Baillie presents them, and the one I chose in an attempt to better illustrate the differences between these two types of virtue.

distinguish three senses of 'natural', depending on whether it is contrasted with the *miraculous*, the *unusual*, or the *artificial*" (Baillie 153). "If *nature* be oppos'd to miracles, not only the distinction betwixt vice and virtue is natural, but also every event, which has ever happen'd in the world," except, Hume sarcastically adds "*those miracles, on which our religion is founded*" would be natural (Treatise 3.1.2.6). Thus, if we understand 'natural' in this way we would be saying very little, if not nothing at all. Next, 'natural' can be understood as opposed to rare or unusual. Although Hume holds that this may be the most standard understanding of natural, it too does not alone enable us any greater understanding of the distinction between virtues, because "if ever there was any thing, which cou'd be call'd natural in this sense, the sentiments of morality certainly may; since there never was any nation of the world, nor any single person in any nation, who was utterly depriv'd of them" (Treatise 3.1.2.8). So, this too, would eliminate any distinction, as all virtues would seem to be natural, as we have a sentiment of approbation towards both natural and artificial virtues, and these sentiments are far from rare or unusual. Ultimately, Hume lands on the understanding of 'natural' which is opposed to 'artificial.' Although contrasting natural with artificial may initially seem as if it has communicated very little about what 'natural' actually means, Hume will alleviate this confusion by clearly defining both terms.

The key, then, to understanding what Hume intends by 'natural' lies within understanding what Hume means by 'artificial.' Although a much more detailed account of Hume's artificial virtues will be provided below, roughly, for Hume something is artificial if it is the result of the circumstances and necessities of mankind or what can be thought of as a solution to problems the lack of such necessities could create (Treatise 3.2.1.1). We can now understand 'natural' as opposed to something which is created to meet or alleviate the necessities that the circumstances

of mankind creates. So, conversely to artificial, “a mental process or character trait is *natural* if we possess it purely by being a normally functioning human being” (Baillie 153). This means something is natural, for Hume, if it is not a result or solution, or creation of mankind, but merely a consequence of being a normally functioning human being. Thus, we have, and approve of or disapprove of, character traits of this kind independently of any circumstances of our environment or culture, or any necessity that such circumstance may dictate (Baillie 153).

Now that Hume’s definition of ‘natural’ has been presented, we can offer his account of the natural virtues, with a focus on Hume’s explanation of the origin of these virtues. The easiest way to understand Hume’s natural virtues is to combine Hume’s notion of natural with his already presented notion of virtue. The natural virtues then, are those character traits in which any normally functioning human being would, after a disinterested contemplation, naturally approve of with a sense of approbation. Likewise they are also those character traits that humans naturally approve of when present within themselves, and are naturally motivated to act in accordance with.<sup>6</sup> This means that when considering the natural virtues, no reference or connection to any social convention or necessity will ever need to be made. One important distinction, which may aid in furthering the current explanation, can be seen in Hume’s initial claims concerning what natural is not, as was presented above. Hume claims that we cannot understand natural as opposed to rare or unusual, because, Hume believes, we can easily see the universality of human sentiment, and thus know that the approbation or disapprobation we feel whenever making moral distinctions is far from rare. Hume goes as far to say, “these sentiments

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<sup>6</sup> One important aspect of Hume’s view of the natural virtues is his distinction, or lack thereof, between natural virtues, and natural abilities. Ultimately Hume concludes that although there are differences between some natural abilities, and natural virtues, these differences are no greater than the differences among specific natural virtues. We approve of natural abilities in the same way we approve of natural virtues, and thus they are often considered together as natural virtues. This paper will not place a great importance on this distinction, and will instead proceed, as Hume does, considering them together. For more on this topic see Norton p. I95, and Treatise 3.3.5.6.

are so rooted in our constitution and temper, that without entirely confounding the human mind by disease or madness, 'tis impossible to extirpate and destroy them” (Treatise 3.1.2.7). Here Hume is speaking of the sentiments of approbation and disapprobation we have towards certain character traits, and why a comparison of natural to what is rare or unusual would lend us little information, but this passage also sheds an important light on Hume’s conception of the natural virtues. These basic human sentiments which are rooted in our very constitution and temper are sufficient to explain the origin of the natural virtues, whereas they are merely necessary to explain the origin of the artificial virtues, as reference to some social convention or social need must also be cited. So, the natural virtues can be thought of as “original or inherent features of human nature” which all normal functioning humans are both disposed to have, and approve of (Norton I81).

Hume exemplifies, and solidifies, the foundation of the natural virtues in human nature by comparing them with human appetites. Hume claims that like hunger, thirst, and other appetites, natural passions resulting from natural virtues such as resentment, love of life, and attachment to offspring “arise from a simple original instinct in the human breast which nature has implanted for like<sup>7</sup> salutary purposes” (Enquiry 3.2.40).<sup>8</sup> So, these inherent features of human nature, the natural virtues, should be thought of as the products of simple original instincts, or what can be thought of as an “innate capacity or predisposition” that a normally functioning human being has, in the same way that human hunger or thirst should be thought of in this way (Beauchamp 215). Thus, “natural virtues, then, are instinctive character traits of the agent which give rise to passions, which in turn motivate the will to action” (Fieser). So, we can

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<sup>7</sup> Here “like” means “like in the case of human appetites.”

<sup>8</sup> It should be noted that at this point in the text Hume is claiming that justice is an artificial virtue, because it is unlike the natural virtues in this way. A much more detailed account of Hume’s claims concerning the artificial virtue of justice will be provided below.

understand the natural motivation to act in accordance with the natural virtues as a part of these human instincts. The natural virtues have “always motivated specific kinds of human behaviour” and will always continue to do so (Norton I81).

Although in the treatise Hume does not give us an exhaustive list of the natural virtues, he does provide us with many of them, and we can elicit many more from the Enquiry. To uncover some of the natural virtues Hume “applies his scientific method... observing the kinds of acts which [naturally] elicit our approval, together with the character traits constantly conjoined with them” (Baillie 144). Thus, Hume is able to conclude that: generosity, humanity, compassion, gratitude, friendship, fidelity, zeal, disinterestedness, liberality, and “all those other qualities, which form the character of good and benevolent” are some of the natural virtues (Treatise 3.3.3.3). In the Enquiry, although the natural-artificial distinction is not expressly present, we are able to elicit a similar list of natural virtues, again under the heading of benevolence (Enquiry 2.1.1). Thus, for Hume, benevolence, like attachment to offspring is a natural virtue, which itself arises from a simple original instinct, which nature has imbedded within the human breast, and like the appetites of hunger or thirsts needs no defense to secure its origin in our human nature.

As was discussed above, Hume claims “that our sense of every kind of virtue is not natural; but that there are some virtues, that produce pleasure and approbation by means of an artifice or contrivance, which arises from the circumstances and necessities of mankind” (Treatise 3.2.1.1). As we have already presented what ‘artificial’ means above, we can simply, as we did with natural, combine this term with Hume’s understanding of virtue, to present Hume’s notion of the artificial virtues. Thus, the artificial virtues are those virtues, “that produce pleasure and approbation by means of an artifice or contrivance, which arises from the circumstances and

necessities of mankind,” (Treatise 3.2.1.1). Importantly, these are virtues which are not a part of the fundamental fiber of human existence. Meaning these artificial virtues, unlike the natural virtues, are virtues which are not woven into our human constitution and temper, and are thus not products of simple original instincts found in human nature. Instead “artificial virtues are intentions which hold out an artificially instilled prospect of pleasure or pain; these evoke passions which in turn motivate willful actions” (Fieser).

So, being a normally functioning human being is not enough to assure a sentiment of approbation towards a character trait resulting from an artificial virtue, as it was when considering the natural virtues. Instead, artificial virtues are products of human existence, or what can be thought of as a result or contrivance of the necessities this existence might entail. A specific example of such a necessity will be examined when Hume’s notion of justice is presented below, but broadly speaking, an artificial virtue arises due to a particular circumstance as a solution to some problem said circumstance entails. As Hume claims, if the “necessity” for these virtues did not exist, the virtues themselves would not exist (Treatise 3.2.1.1). The very existence of the artificial virtues depends on the necessities resulting from the circumstances of mankind. With his conception of the artificial virtues, Hume is clearly committed to the claim that these artificial virtues have no original permanent basing or fixture within human nature. If a particular problem or necessity never existed, the corresponding artificial virtue would have never existed. As James Baillie explains, “the very existence of the artificial virtues rests on various contingencies of the human condition, such as a limited and uncertain supply of material goods requisite for our wants and needs” (Baillie 154).

It should be noted that our sentiments of approbation towards the artificial virtues, once they arise as the result of a necessity of mankind, are natural aspects of human existence. The

only difference in the case of the artificial virtues, as opposed to the natural virtues, is that the moral sentiments of approbation towards artificial virtues depend, completely, on the needs and necessities which the circumstances of human existence dictate, and are not, as they are in the case of the natural virtues, an inseparable part of human nature. “After [an artificial virtue] is once establish’d by these conventions, it is *naturally* attended with a strong sentiment of morals” (Treatise 3.3.1.12). But, importantly it must first be established.

To utilize an analogy to aid in this specific distinction, take the taste of an apple. Consider how, to many, the taste of an apple is pleasing, possibly even naturally pleasing. Now consider the taste of artificial apple flavoring. That taste (assuming the taste of the apple was pleasing and that the artificial flavoring is of a high quality, meaning it resembles the taste of an apple in a realistic manner) is also pleasing, and the pleasure one derives from that artificial flavoring is not artificial pleasure, but is instead pleasure which depends on an artifice. Although this analogy is far from perfect for the entirety of the natural virtue-artificial virtue distinction, it does, I believe, aid in clarifying what is sometimes called the inherently natural features of the artificial virtues, namely the pleasure they cause once they arise as artificial coping mechanisms to the needs and necessities of mankind.

It should be noted that although initially it may appear as if the term artificial is intended to maintain some negative connotation, consequently giving a second-rate status to virtues of this type, that is not in any way Hume’s intention. When considering this distinction in virtue Hume clarifies that, “I make use of the word, *natural*, only as oppos’d to *artificial*,” (Treatise 3.2.2.19). Baillie articulates this commitment by assuring that Hume’s use of ‘artificial’ is as “a purely descriptive term, with no pejorative connotations” (Baillie 153). Meaning virtues which are artificial are in no way “less of a virtue” than any of their natural counterparts (Baillie 153).

Simply put, Hume believes that these are two equal, but different, types of virtue, which have drastically different origins. Although a minor point, this is an important one, because it is essential that the current project of this work not be understood as an attempt to save justice from an undesirable fate, trapped within the category of artificial virtues. Instead, I merely hope to show that there are good reasons to believe that justice should be understood as one of the natural virtues.

### *Section II: The Artificial Virtue of Justice*

Justice is certainly the most prominent, and arguably the most important, instantiation of an artificial virtue which Hume directly discusses, although there are other very important artificial virtues, such as fidelity to promises and allegiance to one's government. For Hume, the term justice may carry a slightly different, albeit simpler, meaning than one is accustomed to. Justice, holds Hume, is honesty with respect to property, or material honesty. Thus, to understand Hume's conception of justice it is very important to understand Hume's conception of property (although property, for Hume, holds a much more standard meaning). "What is a man's property? Any thing, which it is lawful for him, and for him alone, to use" (Enquiry 3.2.35). There is one aspect of this definition which does require some specificity, which is, under Hume's conception of property, it is only material or external goods that one can have and use which entail property. Throughout the Treatise and the Enquiry Hume refers to property exclusively as external goods (Treatise 3.2.2.9). Although a minor point, it is important to keep in mind, as I believe Hume's concept of property, and the one presented in the second chapter of this work, will not concern instances of intellectual property, or anything of that type. This will become more important, when, in chapter two of the current work, a slightly altered conception of property is offered. So, as food is the object of hunger, or children the object of caring for

offspring, external goods are the object of justice. Importantly, as will be discussed in more detail in the second chapter of this work, Hume holds that our conception of property, like our concept of the virtue of justice, arises out of the needs and necessities of mankind, as the artificial virtues do, and is not based in human nature, as our simple original instincts are.

The first example of a situation involving the virtue of justice that Hume offers is a case in which a sum of money is borrowed, under the express condition that it will be returned in full to the lender in a few days. Hume claims that if the loan goes unpaid, causing the lender to demand her money back, the borrower may ask himself “what reason or motive have I to restore the money?” (Treatise 3.2.1.9). Hume claims that one might be tempted to claim that one’s “regard to justice, and abhorrence of villainy and knavery, are sufficient reason[s]” to repay the loan (Treatise 3.2.1.9). Although this answer would be satisfactory in what Hume calls a “civiliz’d state,” it in actuality provides us with no information as to the origin of this virtue. Hume claims that it is an undoubted maxim “that no action can be virtuous, or morally good, unless there be in human nature some motive to produce it, distinct from the sense of its morality” (Treatise 3.2.1.7). For example, as was presented above, sighting a simple original instinct was sufficient to explain the origin of the natural virtues. So when one asks: “what reason do I have to be benevolent?” or “what reason do I have to care for my offspring?” the answer is clearly found by simply examining our instinctual human nature. Citing a regard to the virtue of justice would not be a motive distinct from the sense of its morality, and thus leaves us in a difficult position. We know that justice is indeed a virtue, as we have a sense of approbation towards character traits that produce just acts, but we seem to have a difficult time articulating our foundational reasons for acting justly without making reference to the virtue itself, and thus begging the question.

This might seem like an excellent place in which to introduce an instinct which could be responsible for character traits resulting in just acts, which we have an accompanying instinctual sense of approbation towards, but Hume believes this option is a nonstarter.

As justice evidently tends to promote public utility and to support civil society, the sentiment of justice is either derived from our reflecting on that tendency, or like hunger, thirst, other appetites, resentment, love of life, attachment to offspring, and other passions, arises from a simple original instinct in the human breast which nature has implanted for like salutary purposes. If the latter be the case, it follows, that property, which is the object of justice, is also distinguished by a simple, original instinct, and is not ascertained by any argument or reflection. But who is there that ever heard of such an instinct? Or is this a subject, in which new discoveries can be made? We may as well expect to discover, in the body, new senses, which had before escaped the observation of all mankind (Enquiry 3.2.40).

So, Hume obviously wants to reject the possibility of a natural origin of justice, by pointing out that the object of justice, property, has certainly not arisen from a simple original instinct found as an inseparable part of human nature. Instead Hume will argue that justice, and our concept of property, has arisen as a result of our reflection on the public utility justice offers, while understanding that this utility is in actuality a solution to the problems that specific needs and necessities have created for mankind. In the second chapter of this work the particular arguments Hume gives rejecting the possible instinctual origin of justice and property will be examined, and replied to. For the remaining portion of this chapter Hume's explanation of how justice arose solely out of public utility will be presented.

As Hume clearly rejects the place of justice within the natural virtues, he must, to confirm justice within the place of the artificial virtues, offer an account of the origin of justice which shows that it arose from the circumstances and necessities of mankind. To do this, he first proposes his observation that nature has loaded humans with, "numberless wants and necessities" but correspondingly with "slender means" with which to achieve these immeasurable wants and necessities (Treatise 3.2.2.2). Thus, Hume has pointed out a unique

problem which mankind must face if these necessities are to be obtained. Simply put, if a group does not have the means to achieve their wants and necessities, then they will be unable to sustain their existence. To exemplify this problem, a point of comparison is utilized involving a creature, which is not faced with this obstacle, “The lion as a voracious and carnivorous animal, we shall easily discover him to be very necessitous; but if we turn our eye to his make and temper, his agility, his courage, his arms, and his force, we shall find, that his advantages hold proportion with his wants.” (Treatise 3.2.2.2). Hume offers this comparison to show that a lion is an animal that, like a human, has numerous wants and necessities, but unlike a human does not face the problem Hume has exposed: a deficiency in one’s proportion of advantages to wants. Since the lion does not face this problem, it likewise does not require any solution (i.e. it does not require any artificial conventions). Clearly, the second point of this comparison is to further Hume’s claim that a human does in fact require some artificial convention, if her advantages are to hold proportion to her wants and necessities. Otherwise the humans would simply be unable to achieve these countless wants and necessities, and thus would not be able to maintain any sort of sustainable existence

Hume proposes that the solution which mankind has produced to compensate with said deficiency is the forming of society. Hume claims that “’tis by society alone he is able to supply his defects, and raise himself up to an equality with his fellow-creatures” (Treatise 3.2.2.3). Hume holds this is the reason why humans have been able to maintain a very sustainable existence even with the initial problematic deficiency we face. He further claims that it is even the case that society has enabled humans to surpass their fellow-creatures due to their ability to “acquire superiority above them” (Treatise 3.2.2.3). Specifically, Hume asserts that once a part of a society, a human has their “infirmities... compensated” and thus has removed the deficiency

of advantages to necessities and wants (Treatise 3.2.2.3). Hume believes that the forming of society provides remedies for problems that humans would face if on their own, meaning living in small familial groups. These remedies are the results of “the conjunction of forces,” which enable “additional *force, ability, and security*” as beneficial products of society (Treatise 3.2.2.3). Therefore the forming of society becomes “advantageous” to its members (Treatise 3.2.2.3).<sup>9</sup>

Next, Hume argues once society is formed, its members will realize that “the principal disturbance in society arises from those goods, we call external, and from their looseness and easy transition from one person to another” (Treatise, 3.2.2.9). This means that the main trouble those in a society face is a lack of certainty when considering the stability of their possessions or property. For Hume, “the enjoyment of such possessions as we have acquir’d by our industry and good fortune,” are possessions which are “expos’d to the violence of others, and may be transferr’d without suffering any loss or alteration” (Treatise 3.2.2.7). This claim further explains the problem those in a society face by proposing that the vast majority of those possessions one can acquire are possessions which can be stolen with no negative affect on the possession itself. For example, if one has a sack of apples there will be no negative affect on the sack of apples if at some point it is stolen by another person. The thief will simply be able to enjoy all the benefits of obtaining a sack of apples that said apples would have provided its initial owner.

This presents a serious problem for society because these possessions which can be stolen are in low supply and high demand. Importantly, Hume holds that this is always the case. As will be presented in more detail in the second chapter of this work, Hume assumes that these possessions, which will ultimately entail property, presupposes scarcity, thus if property is stolen

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<sup>9</sup> Although interesting, a more detailed discussion of the initial reasons for the forming of society are beyond the present scope of this work. Simply put, small familial groups are formed due to the natural attraction between the sexes. The forming of a society acts as remedy to problems these small familial groups face. For more on this topic see Treatise 3.2.2

from you, then something which is scarce has been stolen from you. This is the case because, “there is not a sufficient quantity of them [possessions] to supply every one’s desires and necessities” (Treatise 3.2.2.7). Due to this possibility of losing desired and necessary possessions, humans must seek a solution so as to be able to maintain their existence. Hume believes that the solution that is reached is the social convention of justice. In its very essence Hume believes that the doctrine of ‘if you do not steal my possessions, I will not steal yours’ is at work.<sup>10</sup> Hume thinks that this “convention enter’d into by all the members of the society” is able to, “bestow stability on the possession of those external goods, and leave every one in the peaceable enjoyment of what he may acquire by his fortune and industry” (Treatise 3.2.2.9). This leads Hume to the conclusion “that public utility is the sole origin of justice” and consequently that justice, “as it is now understood, wou’d never have been dream’d of among rude and savage men”<sup>11</sup> ((Enquiry 3.1) (Treatise 3.2.2.8)). By reaching this conclusion Hume is claiming that justice is not an inseparable aspect of the human existence, but instead is something which is the solution to a problem that humans have faced. Thus, Hume claims, justice is one of the artificial virtues. So, the only reason we approve of just character traits (or have a conception of property in general for that matter) and call the possession of such character traits virtuous is due to this artificial human convention. “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” (Treatise 3.3.6.1). So, human sympathy enables us to feel the

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<sup>10</sup> Importantly this doctrine of ‘if you do not steal my possessions, I will not steal yours’ is not a promise, which is actually, thinks Hume, another artificial human convention. Instead this doctrine is really “an expression of conditional intention” (Cohon).

<sup>11</sup> In the second chapter of this work, what Hume really intends by “rude and savage men” will be presented. In short, Hume is referring to humans in a pre-societal state.

pleasure public good creates, and we thus have a sense of approbation towards just character traits.

Importantly, Hume does maintain that other virtues, natural and artificial alike, acquire much of their approval due to their tendency to produce public utility and our psychological function of sympathy (which enables us to have a sense of approbation towards such utility). But it is crucial to note that “whereas we approve of benevolent actions [meaning character traits] *primarily* because of their social utility, we approve systems of justice *exclusively* because of their social utility” (Beauchamp 209). Whereas a natural virtue like benevolence is approved of because of the public utility it entails, and because such character traits can be understood as originating from simple original instincts embedded within human nature, and artificial virtue like justice is approved of solely due to the public utility it creates, and is thus the result of an artificial human convention.

As was presented above, it should lastly be again noted that Hume is not claiming that justice now holds some second rate status to the natural virtues. “These reflections are far from weakening the obligations of justice, or diminishing any thing from the most sacred attention to property” (Enquiry 3.2.39). Instead Hume holds that justice and our concept of property, are important and even necessary aspects of our social existence, but are not products of instincts embedded within our human nature. They are instead the result of artificial human convention.

## CHAPTER TWO

### *Introduction*

As was presented in the first chapter of this work, Hume clearly holds that just character traits, which we have a strong sense of approbation towards, and which comprise the virtue of justice, cannot arise from a simple original instinct embedded within human nature. So the virtue of justice is not an innate capacity or predisposition that normally functioning humans have merely by being normally functioning human beings. As was earlier presented, “Hume is denying that justice is, like benevolence, an original instinct” (Beauchamp 215). Hume believes we can quite easily come to this conclusion because if justice holds a place among the natural virtues, due to human instinct, then property, which is the sole object of justice, must also be distinguished, or known, by some simple original instinct which is an inseparable part of human nature. Hume believes this can quickly, and obviously, be rejected, “who is there that ever heard of such an instinct?” he says when considering the possibility of an instinct which distinguishes property (Enquiry 3.2.40).

Hume goes as far to say that to expect to discover a property instinct, and correspondingly an instinct which gives rise to justice, would be equivalent to expecting “to discover, in the body, new senses, which has before escaped the observation of all mankind” (Enquiry 3.2.40). Mackie, among many others, agrees that Hume “is probably right” to reject an instinctual origin of our concept of property, and correspondingly an instinctual origin of the virtue of justice (82). This ultimately leads Hume to confidently place justice among the artificial virtues, which, as was previously presented, arise as an artificial solution to the problems the many needs and necessities of mankind create. Thus, Hume claims 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” (Enquiry 3.1.1).

As Baillie points out, Hume dismisses the possibility of an instinctual origin of justice quickly in the *Treatise*, but spends a considerably larger amount of time rejecting this possibility in his later moral work, the *Enquiry* (155). Although Hume allows a longer path to be taken in the *Enquiry* he settles on the same position, justice cannot arise from a simple original instinct which is an inseparable part of human nature, and this should be obvious because property cannot be known via some simple original instinct. The current chapter of this work will challenge this claim, by examining the arguments Hume offers which reject an instinctual origin of property and thus justice, and offer objections to those arguments. A possible instinctual concept of property will be offered which I hold can avoid the major objections Hume has to an instinctual origin of our concept of property, and ultimately a natural origin of the virtue of justice.

### *Section I: Hume’s Concept of Property*

Before the specific arguments Hume provides to reject the possibility of an instinctual origin of property, and thus justice, can be considered and responded to, Hume’s general conception of what property is must be offered in greater detail than it was in the first chapter of this work. This is especially important, because later in this chapter a possible conception of property, which I believe could arise from a simple original instinct, will be presented, and this concept of property will rely on the major tenets of Hume’s general understanding of property.<sup>12</sup>

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<sup>12</sup> I believe this is an important aspect of the current project, because to offer a concept of property which is unrecognizable compared to Hume’s understanding of property, could be, I believe, stacking the deck in favor of a natural origin of justice, thus I will attempt to offer an instinctual concept of property which Hume would still be able to recognize as a concept of property.

As previously presented, Hume holds that external goods, which are lawful for some person, and that person alone to, keep and use, are things one can call their property (Enquiry 3.2.35). Hume explains his use of lawful by asserting “our property is nothing but those goods, whose constant possession is establish’d by the laws of society; that is, by the laws of justice” (Treatise 3.2.2.11). Importantly, these ‘laws of justice’ which Hume refers to are those laws founded on the artificial virtue of justice. Thus, for Hume, our ability to distinguish property is itself a result of an artificial human convention, meaning it too arises out of the needs and necessities of mankind, and is not founded within human nature, as the natural virtues are. So without the artificial social convention of justice, we would have no concept of property. As Hume explains, “A man’s property is some object related to him. This relation is not natural, but moral, and founded on justice” (Treatise 3.2.2.11). From this understanding Hume is able to conclude that “The origin of justice explains that of property. The same artifice gives rise to both” (Treatise 3.2.2.11).

So, as was presented in the first chapter of this work Hume is claiming that our concept of property arises, like justice, as a kind of artificial human convention which is meant to help humans attain requisite desires and necessities. As was previously presented, the uncertain and limited supply of external goods and necessities poses a problem for humans, and the virtue of justice and concept of property aid humans in limiting the difficulties resulting from this disadvantaged starting point. Without the artificial virtue of justice, we would have no conception of property and likewise without the artificial concept of property there would be no virtue of justice. “Hume maintains that the notion of property depends on the concept of justice because it is only as the conventions of justice are established that the notion of property becomes intelligible” (Norton 544). Hume claims that initially “within small groups of

cooperators, individuals signal to one another a willingness to conform to a simple rule: to refrain from the material goods others come to possess by labor or good fortune, provided those others will observe the same restraint toward them” and thus, as was presented above, the artificial virtue of justice arises, and correspondingly our artificial concept of property (Cohon).

To further this claim Hume utilizes the idea of pre-societal humans, meaning humans who are in small familial groups which are not a part of any larger community, and claims that in this “rude and savage” state neither justice nor a concept of property would be understood (Treatise 3.2.2.8). Importantly, the time of pre-societal humans need not, for my purposes or Hume’s, have been an actual state of existence for any real length of time in human history. Instead, one only needs to be able to contemplate the possibility of pre-societal humans, because doing so should enable one to see which virtues remain, natural virtues arising from simple original instincts, which are themselves inseparable parts of human nature and which virtues would disappear, those which can only arise from societal convention. As Baillie explains Hume’s claim “it is not that a pre-societal person would find any appeal to justice unintelligible when he asks why he should *keep his promise* to return someone else’s *property*. Rather, the very ideas of property and promising would be equally unintelligible to him, since they come into existence only as a result of human convention” (155). So, the pre-societal human would have no understanding of property at all. A simple question such as: “is this my apple or is this your apple?” would, under this theory, be unintelligible. There would be, in this state of unrestricted nature, as Hume calls it, no concepts of ‘mine’ or ‘yours,’ because “the objects [external goods] which receive those appellations, are, of themselves, foreign to us, they are totally disjoined and separated from us; nothing but the general interests of society can form the connexion” (Enquiry 3.2.30).

Thus, external goods, ownership of which can only be understood once the artificial human convention of justice is understood, initially comprise Hume's concept of property. There is, however, another very important aspect of Hume's concept of property. This aspect concerns scarcity. For Hume, ownership of property entails scarcity. This means without the scarcity of some external good there can be no concept of ownership of that good, meaning if some type of good is not scarce, then that type of good cannot be property of anyone. "We see, even in the present necessitous condition of mankind, that, wherever any benefit is bestowed by nature in an unlimited abundance, we leave it always in common among the whole human race, and make no subdivisions of right and property" (Enquiry 3.1.4). Hume uses the examples of water and air to exemplify this point. "Water and air, though the most necessary of all objects, are not challenged as the property of individuals; nor can any man commit injustice by the most lavish use and enjoyment of these blessings" (Enquiry 3.1.4). Hume even claims that in some "fertile extensive countries" land is in such abundance that it cannot be considered property (Enquiry 3.1.4). Hume does leave open the possibility "in some countries, at some periods, that there be established a property in water, and none in land; if the latter be in greater abundance than can be used by the inhabitants, and former be found, with difficult, and in very small quantities" (Enquiry 3.1.5).<sup>13</sup> So, Hume holds, that even once the artificial human convention brings the concept of property into existence, it still only pertains to those external objects which are scarce.

Hume considers a fictional instantiation of human existence to exemplify his claim concerning scarcity, ultimately concluding that scarcity is necessary for a concept of property to exist, and thus scarcity is necessary for the virtue of justice to exist. "Let us suppose, that nature

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<sup>13</sup> Importantly, I believe that Hume's disclaimer here enables him to avoid modern objections which call into question the factuality of his claim concerning water and air. For example, the fact that water is, now, almost always understood as property or even a more abstract objection in which air is considered to be one's property, possibly in the case of compressed air.

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” (Enquiry 3.1.3). In this “happy state,” as Hume calls it, there would be no concept of property and correspondingly no need for the virtue of justice at all. To prove this point Hume poses some rhetorical questions concerning the role property would play within such a state of human existence: “for 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? Why call this object mine, when, upon the seizing of it by another, I need but stretch out my hand to possess myself of what is equally valuable?” (Enquiry 3.1.3). Hume holds that even the poets imagined such a fictional instantiation of human existence “in their descriptions of the felicity, attending the golden age or the reign of Saturn” (Enquiry 3.1.14).<sup>14</sup> Hume points out that as he had, the poets too found no need for a mine/your distinction<sup>15</sup>, concept of property, or virtue of justice in such a state of overabundance, “Even the punctilious distinction of *mine* and *thine* was banished from among the happy race of mortals, and carried with it the very notion of property and obligation, justice and injustice” (Enquiry 3.1.14).

Hume holds that by using this thought experiment one can see, that there would be no mine/your distinction because there would be an unlimited supply of desired and necessary external goods. With no mine/your distinction there would be no concept of property in such a happy state, and with no concept of property there would be no virtue of justice. The human convention of justice would no longer be needed, because, as Hume claims, there could be no

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<sup>14</sup> As Beauchamp describes Hume’s reference to the Golden Age: “the reference is to the ancient legend that an ideal period existed on earth during the reign of Saturn (Greek Cronus)” (Beauchamp 210).

<sup>15</sup> I am assuming that Hume intended this to mean “no use for a mine/your distinction concerning external goods.” I will in this work use the term “mine/your distinction” to mean “mine/your distinction concerning external goods.”

injury involving the seizing of another's goods. Essentially Hume is claiming that without scarcity the need for a concept of property would have never come into existence, and so too the human convention that is the virtue of justice would have never come into existence. Justice in such a state of human existence as this would be totally and completely useless, making it an "idle ceremonial" which "could never possibly have place in the catalogue of virtues" (Enquiry 3.1.3).

At this point it is now possible to present a general understanding of what Hume's concept of property entails. It is, like justice, a human convention, which allows members of a society to alone have a right to use and keep some external good. Importantly, Hume holds that only scarce external goods, meaning those in a limited and uncertain supply, can be one's property. Thus, though Hume spends the majority of his time offering an example in which all external goods are overabundant, Hume holds that even in our current necessitous condition external goods like water or air, or any external good which nature has provided an unlimited supply of, cannot be understood as one's property.

### *Section II: Hume on the Artificial Origin of Our Concept of Property*

Now that Hume's general conception of property has been presented, it is possible to present why Hume holds that this general concept of property cannot arise from a simple original instinct embedded within human nature, which in turn will show why Hume believes that the virtue of justice cannot hold a place among the natural virtues. As was presented above, Hume claims that our concept of property, like our concept of the virtue of justice, arose from an artificial human convention, and not a simple original instinct. Hume offers three thought experiments which concern fictional instantiations of human existence which are supposed to show that the specific structure of human existence can remove the human convention that is our

concept of property, and thus the virtue of justice, concluding that this is evidence against a natural origin. Hume also offers an argument which concerns our particular rules, laws and human conventions concerning property, and claims that our concept of property is too complex to have arisen from a simple original instinct. The remainder of this chapter will present these arguments Hume offers to reject an instinctual concept of property and natural virtue of justice, and then respond to each of them in an attempt to show that Hume was wrong to claim an instinctual concept of property and natural virtue of justice are not possible.

The first of these three fictional instantiations of human existence is the “happy state” of overabundance of all external goods, which was presented in Section I. In this happy state, as presented above, Hume claims that with an overabundance of all necessary and desired external goods no concept of property would have ever existed, and thus no virtue of justice would have ever existed. Hume holds that this provides proof of the artificial origin of our concept of property and virtue of justice because in this happy state of overabundance the natural virtues would not vanish.<sup>16</sup> When considering this state Hume claims “it seems evident, that, 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” (Enquiry 3.1.3). Hume often uses the phrase “social virtues” to refer to benevolence and justice, and as justice is excluded by the “every other,” meaning every other social virtue besides justice, we know Hume is referring to benevolence. Benevolence, which as was presented in chapter one when the natural virtues were presented, is the term Hume uses to describe, in the *Treatise*, such natural virtues as: generosity, humanity, compassion, gratitude, friendship, fidelity, zeal,

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<sup>16</sup> This, although not explicitly stated, can, I believe, be elicited from the text of the *Enquiry*. The reason this has to be elicited from the text, and is not, instead, directly stated by Hume is because as was presented in the first chapter of this work Hume does not use the actual words ‘natural’ and ‘artificial’ in the *Enquiry*. However I hold, as do others, that the distinction remains in the same force as was presented in the *Treatise*.

disinterestedness, liberality, and “all those other qualities, which form the character of good and benevolent” (Treatise 3.3.3.3). Hume offers a very similar list of virtues under the heading of benevolence in the *Enquiry*: sociable, good-natured, humane, merciful, grateful, friendly, generous, beneficent, “or their equivalents” (Enquiry 2.1.1). In the *Enquiry* Hume even states that these virtues “or their equivalents, are known in all languages, and universally express the highest merit, which *human nature* is capable of attaining,” showing his continued commitment to the foundation of benevolence within human nature (i.e. firmly categorizing them under the heading of the natural virtues). Thus, Hume believes that this happy state of overabundance shows an instantiation of human existence, in which the artificial virtue of justice would have never been actualized, because there would be no concept of property, but importantly the natural virtue of benevolence would indeed still be present.

Hume’s claim concerning the resilience of the natural virtues in a happy state of overabundance is clearly supported by Hume’s understanding of what these natural virtues are. These natural virtues are inseparable aspects of human nature, which originate from human instinct, thus it seems evident that simply imagining humans in a fictitious state of overabundance could not eliminate them. To take another natural virtue, such as caring for one’s offspring, we can clearly see that imagining humans in a state of overabundance would not cause this virtue to vanish. Thus, Hume is arguing that unlike in the case of our concept of property and virtue of justice we cannot easily imagine a situation in which the natural virtues would become useless and vanish.

Hume offers two more fictional instantiations of human existence, which are also intended to further Hume’s claim that our concept of property and virtue of justice are human conventions, which could vanish given the right alternative circumstances of mankind, meaning

they are not the result of human instinct. In the first of these two alternatives to human existence Hume asks us to “suppose, that, though the necessities of human race continue the same as at present, yet the mind is so enlarged, and so replete with friendship and generosity, that every man has the utmost tenderness for every man, and feels no more concern for his own interest than for that of his fellows” (Enquiry 3.1.6). Given this greatly enlarged capacity for benevolence Hume holds that “it seems evident, that the use of justice would, in this case, be suspended by such an extensive benevolence, nor would the divisions and barriers of property and obligation have ever been thought of” (Enquiry 3.1.6). Hume claims that given this extreme benevolence “the whole human race would form only one family, where all would lie in common” meaning everything would be communally shared, and “be used freely, without regard to property” (Enquiry 3.1.6). Hume holds this to be the case because such inflated benevolence would have each of us treat each of our fellow humans in the same way we would treat ourselves. We would hold a “regard to the necessities of each individual, as if our own interests were most intimately concerned” (Enquiry 3.1.6).

Although initially this may seem like a rather incomprehensible idea, Hume claims that such benevolence is not as farfetched as one might think. Hume offers the real life examples of families, and married couples. In these cases he holds that, although the benevolence is not as enlarged as it is in the fictitious state described above, “the stronger the mutual benevolence is among the individuals, the nearer it approaches [the perfect benevolence described above]; till all distinction of property be, in a great measure, lost and confounded among them” (Enquiry 3.1.7). Hume even points out that in the case of married couples, the law even reflects this fading distinction of property, “the cement of friendship is by the laws supposed so strong as to abolish all divisions of possessions” (Enquiry 3.1.7).

The second of these latter two alternatives to human existence which Hume intends to further demonstrate the artificial foundation of justice and property, concerns imagining the opposite to the limitless abundance Hume first describes. Hume imagines a situation in which a society falls into extreme “want of all common necessaries, that the utmost frugality and industry cannot preserve the greater number from perishing, and the whole from extreme misery” (Enquiry 3.1.8). Hume claims that in such a situation “that the strict laws of justice are suspended” and likewise our concept of property would dissolve (Enquiry 3.1.8). “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?” (Enquiry 3.1.8). Similarly, Hume believes that this kind of situation can be observed even if we only consider one person to “fall into the society of ruffians” who have no “protection of laws and government” (Enquiry 3.1.9). In both situations Hume holds that our virtue of justice and concept of property would be useless and thus melt away, again showing that these do not belong to the category of natural virtues, which are inseparable aspects of human nature.

Hume concludes that these three thought experiments concerning fictional instantiations of human existence are able to provide evidence that his artificial categorization of our concept of property and virtue of justice are correct. Hume holds that by showing the possibility of this convention and virtue disappearing given specific fictional situations humans, or a society, are placed in he has provided evidence for their placement within human convention. This shows, thinks Hume, that unlike the natural virtues, our virtue of justice cannot be an inseparable part of human nature, because our concept of property cannot arise from a simple original instinct embedded within human nature, as alterations in the structure of human existents cause such a concept to vanish. “Produce extreme abundance or extreme necessity: Implant in the human

breast perfect moderation and humanity, or perfect rapaciousness and malice” and, as was shown, we will eliminate our concern for, or even understanding of, the concept of property (Enquiry 3.1.12). Thus by eliminating our concept of property we are “rendering justice totally *useless*... thereby totally destroy[ing] its essence, and suspend[ing] its obligation upon mankind” (Enquiry 3.1.12).

### *Section III: The Artificial Origin of Our Concept of Property Reconsidered*

Ultimately I believe that the three thought experiments which concern fictional instantiations of human existence that Hume offers to show that a general concept of property, and thus the virtue of justice, cannot be the result of a simple original instinct, and must be the result of artificial human convention, fail. First, I believe a strong objection to these three counterfactuals can be found in their factual distance from reality. I believe that most would agree, as even Hume does himself, that none of these three fictional states of human existence are close to representing reality. Hume even claims that “the common situation of society is a medium amidst all these extremes” (Enquiry 3.1.13).

Although I know that this objection seems not only weak, but to miss the point of Hume’s argumentation altogether, I think it is important. I believe it is especially important concerning the second of the three alternate realities which Hume offers, greatly enlarged benevolence. I think it is rather important to note that such benevolence is not only unrealistic, but considering humans’ actual benevolence, unnatural. As Hume notes several times throughout his moral writings, our sympathy is partial to ourselves in that we sympathize with those closer to us to a greater extent than with those far removed. Meaning we feel pain and pleasures more greatly when considering vice and virtue which affects us or those we are close to, then we do when considering the affect vice and virtue has on those far removed from us. Hume even claims

that we must make moral distinctions from a disinterested point of view to assure that variations in our sympathy do not result in like variations in our moral distinctions. That is not to say that we ought to discount the natural virtue of benevolence, but using a fictional state of perfect benevolence seems to be stacking the deck against the possibility of a natural origin of property, and thus justice.

To make this objection clear, consider an alternate reality in which only friendship is greatly enlarged in the human breast instead of all of the virtues under the heading of benevolence. In such a society all would have the perfect virtue of friendship, and, as Hume describes when considering enlarged benevolence in general, there would most likely be no concept of property in this society either, and thus no virtue of justice, because there would be no distinctions of ‘mine’ and ‘yours’. This would be the case because this perfect friendship would have each of us treat others as a “second self”<sup>17</sup> (Enquiry 3.1.6) Importantly, though, when all in a society are treating each other in the same way they treat themselves I believe that our concept of property, and thus virtue of justice would not be the only virtue to disappear. I believe that clearly disinterestedness would in fact disappear, as it too would be completely useless. In what way could we be self-interested when our perfect virtue of friendship already entails treating all others as we treat ourselves? The very concept of self-interests seems likely to vanish from a society with such an enlarged virtue of friendship. Likewise, I think fidelity, would likely, also disappear as being faithful seems to entail the possibility of treating others differently than we treat ourselves. For example, I am unsure how a situation could arise in which one is unfaithful to one’s self.

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<sup>17</sup> It should be noted that I am assuming, as Beauchamp does, that by “second self” Hume is falling in line with Aristotle’s theory that friendship between virtuous people “entails a mutual concern for the other’s good; a friend acts so that the other becomes like a ‘second self’” (Beauchamp 210).

When Hume initially presents the notion of enlarged benevolence, because so many virtues are included under that heading, and they are all considered to be enlarged at once, it is easy only to see how such benevolence could eliminate our concept of property, and thus the virtue of justice. But by separating off just the virtue of friendship, and considering what a greatly enlarged virtue of friendship would entail, I think it is easy to see that such enlarged friendship would eliminate not only our concept of property, but also other natural virtues.

Ultimately, this objection is not intended to show that because we can imagine a scenario in which a greatly enlarged virtue of friendship can eliminate the usefulness of the natural virtues of disinterestedness and fidelity we ought to remove disinterestedness and fidelity from the catalogue of natural virtues. Instead I hope this objection highlights the problem with using unrealistic and unnatural enlarged versions of the natural virtues to exclude the place of other virtues in the catalogue of natural virtues. Simply put, I agree that exaggerated benevolence could eliminate the usefulness of our concept of property, and thereby dissolve the virtue of justice, but I believe it must also be accepted that such a method, of imagining such exaggerated virtues, could also be used to show that we can eliminate the usefulness of other natural virtues, causing them to likewise dissolve. Thus, the fact that greatly enlarged benevolence may show an imaginary instance, in which property and justice disappear, does not, itself, provide a sufficient reason to reject the possibility of an instinctual origin of property, and a natural origin of justice.

Likewise to implant “perfect rapaciousness and malice”<sup>18</sup> would too, I think, be stacking the deck in the same way (Enquiry 3.1.12). Humans are not perfectly malevolent, in actuality, even Hume presents an almost opposite picture of human nature by placing benevolence in the category of natural virtues. Such perfect maleficence would, like perfect friendship, eliminate the

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<sup>18</sup> Hume seems to mention this objection to the natural origin of property and justice in passing. I do not think that it is equivalent to the third objection Hume offers presented above, concerning the opposite of the happy state of overabundance. This objection, concerning a great state of scarcity and need, will be discussed on its own below.

possibility of many of the natural virtues which we know Hume holds are based in instinct. For example, all of the virtues under the heading of benevolence would be useless to a perfectly maleficent society (if such a thing can even be imagined). So, I again agree that Hume is correct to claim that perfect maleficence would cause our concept of property and virtue of justice to disappear, but it would have an equal effect on many of the natural virtues, like all of those virtues under the heading of benevolence.<sup>19</sup>

Accordingly, I think that it is important to consider again the fact that, although interesting, both Hume's initial arguments, concerning greatly enlarged benevolence, maleficence, and my objection to his argument which utilizes greatly enlarged friendship do not give sufficient credit to the fact that these greatly enlarged virtues do not in actuality exist. Although, I understand that this appears to be a simple and hasty objection to Hume's argument concerning enlarged benevolence and maleficence, I do think it is important. I believe that many real natural instincts could be shown to be unnecessary, and thus disappear, if we allow ourselves the unchecked use of imaginary aids, as was shown above with the natural virtues of disinterestedness and fidelity, and benevolence as a whole. To consider another example of an unrealistic imaginary aid being used to dissolve a natural virtue which has arisen from an instinct, consider a society in which the vast majority of members have never had children. Although the need for an imaginary premise which closely resembles some dystopian science fiction would be needed to imagine such a society, I do not think that it is much more farfetched than imagining a society in which all members are perfectly benevolent or maleficent. For

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<sup>19</sup> It should be noted that Dr. Matthew Hickey, while commenting on this work, pointed out that a perfectly maleficent society may not necessarily exclude a concept of property when limited to "my external goods." Importantly though, I do hold that the second half of the concept of property which Hume presents, namely the "your external goods," when considering the "mine/yours" distinction, would not be present in such a perfectly maleficent society, as the conception of "your external goods" does not seem possible for members of such a society. Without this second half of the concept of property, an understanding of "your external goods," any virtue of justice would certainly be impossible.

example, consider a society in which only a small group of people are responsible for having and raising all offspring and all other members who make up the vast majority of the society are in no way apart of this process or even aware of the specifics of the process. In such a society would the natural virtue to care for one's offspring still be useful to the majority of the society's members? I think not, and I think such a virtue would appear to disappear, like that of the virtue of justice, and our concept of property, in Hume's perfectly benevolent or maleficent society. It is important to consider that Hume holds that like all the natural virtues, the natural virtue to care for one's offspring arises from a simple original instinct within human nature. So, it seems impossible to conclude that this inseparable part of human nature could disappear by merely changing the structure of a society. Thus, I think it is more appropriate to conclude that the use of unrealistic imaginary aids, in which fundamental facts of our existence are changed, should not be utilized as sufficient evidence to reject the natural origin of justice, or any virtue for that matter.

It should be noted that Hume holds that we can observe partial instances of this enlarged benevolence in married couples and families. Although I agree with Hume that these real life situations do, in some (or even most) cases embody instances of greater than normal or average benevolence, they do not, I think, come that close to the greatly enlarged benevolence (seeing others as a second self) Hume needs to completely dissolve our concept of property and virtue of justice. In my experience with family, I certainly have evidence to show that a concept of property did exist in my family home. Although I am speaking from a very limited prospective, I assume most members of a family household consider external goods like "my room" or "my bed" or even "my toy" to be their property. Likewise, I would imagine that married couples still utilize a concept of property between each other, concerning such external goods as "my car" or

even “my side of the bed.” Even allowing that the law, as Hume points out, diminishes the legal property distinction between married couples it is significant to note that a property concept seems to still exist in some form. Although, it is important to note that this last instance of property, “my side of the bed,” represents an external good and concept of property, which differs from Hume’s conception presented above, and must be argued for at length below. It is also important to note that Hume could argue that although I have pointed to instances of use of a concept of property at work within families and married couples that is merely a result of an artificial social convention which spills over, from the larger society, of which any particular family, or married couple is a part of. For this reason, to avoid this objection, I would like to next consider the happy state of overabundance Hume considers, in which Hume holds a concept of property and virtue of justice could have never arisen.

I hold that in this happy state of overabundance, there would still be a concept of property, and a virtue of justice. Although I believe that this concept of property is indeed fundamentally different than the one Hume introduces, I do not think that it abandons the major tenets of Hume’s concept of property. This meaning I will still consider external goods, as Hume does, as the sole object of property, and importantly will argue as Hume does that property does presuppose scarcity, albeit scarcity understood slightly differently than Hume understands it. I will attempt to present this concept of property within Hume’s happy state by presenting, what I hold to be, a realistic, and ultimately unavoidable, mine/your distinction within this fictional state of human existence. As was argued above concerning the fictional states of enlarge benevolence and maleficence, I believe one could claim that such a happy state of overabundance is another impossible state of human existence, and should thus be rejected as evidence against the natural origin of the virtue of justice, for similar reasons as the states of enlarge benevolence and

maleficence were. Although, this is one objection to Hume's claim concerning this happy state, I actually hold that this fictional state of human existence requires further contemplation.

Although a state of absolute overabundance is indeed impossible, it does not seem as far-fetched as a state of perfect benevolence or maleficence. Hume notes, and I agree, that there exists, concerning specific external goods in our current necessitous state, a similar scenario as his proposed state of overabundance.

Consider, again, the happy state of overabundance which Hume introduces. "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" (Enquiry 3.1.3). In this state Hume claims we would have no need to call some external object mine "when, upon the seizing of it by another, I need but stretch out my hand to possess myself of what is equally valuable" (Enquiry 3.1.3). Without any alteration to this fictional scenario, which Hume presents, I believe we can, if we consider this state in rather great detail, find a concept of property which is in use by the inhabitants of such a happy state, by showing the use of, and understanding of, a mine/your distinction. Although more work will need to be done to prove that this concept of property arises from a natural instinct and is embedded within human nature, the venture at present will be to show that even in such a happy state a concept of property, could, and I believe would, exist.

Consider a scenario in which Smith, a member of this society in such a happy state, sits under the same tree at the same time every day to read, and has done so for several years, and is known to do so by all other members of this society. Now imagine one day when Smith reaches his reading spot, he finds Jones sitting where he usually sits. It seems reasonable to me, and in no

way beyond the scope of what I would consider realistic, to suppose that Smith, finding himself in this scenario, would tell Jones, “you are in my reading spot” and possibly ask, or even tell Jones to move. It is also possible, and equally as effective for my purposes, if Smith merely thinks “Jones is in my reading spot.” Importantly, I am not claiming at this point that Jones, in this scenario, would move, or would even feel that he should move, but am instead trying to introduce what seems to me to be a rather realistic use of a mine/your distinction in this happy state of overabundance. Even if there were an unlimited amount of other trees under which Smith could read, I think that Smith would still feel that *his* reading spot had been taken by Jones. Of course my use of “his” is not an attempt to sneak a mine/your distinction into this scenario, but instead the only way I can think of to describe what I believe Smith would feel, upon finding Jones in the spot in which he regularly inhabits. If Smith feels this way, then it is a clear indication of an understanding of a mine/yours distinction in Hume’s happy state of overabundance. Importantly, even if Jones claimed: “this is not your reading spot” in response to Smith, this too would be a clear indication of a mine/your distinction.

It might be helpful to introduce a similar use of the mine/your distinction concerning the ownership of external goods which I believe is at play in our current necessitous state, if only to provide a real account as backing to what I am proposing would exist in Hume’s state of overabundance. I have often observed in small classrooms a similar mine/your distinction as the one above described with Smith and Jones. Consider a student who has sat at the same desk, or at least the same seating area, in a small classroom, which has more than enough desks for everyone, all semester, two or three days a week. Now imagine this student arrives to class on a particular day to find that another student has sat in *her* seat at *her* desk. I believe it is important that this is even a comprehensible situation, and that it would surprise very few if the first

student claimed or even thought: “someone took my seat.” This is significant because as in Hume’s happy state, there are other desks the first student could sit at, and these other desks are almost always the same make, model, and even quality as *her* desk. This relates to the happy state of overabundance because, Hume claims that even in our current necessitous state those external objects which are in an abundant supply, like desks in a classroom with more than enough seats for everyone, are objects that cannot be one’s property, and cannot be understood in relation to a mine/your distinction.

One might object to this mine/your distinction which I have presented as a possibility in Hume’s happy state, by claiming that this example of a mine/your distinction, concerning Smith and Jones and the ownership of an external good, has been imported from an observation from a society in which a concept of property already exists, and is in use<sup>20</sup> (as in the classroom example), and hold that in actuality Smith would never say or think “Jones is in my reading spot,” and would instead simply go sit under another tree. I would like to respond with a further example of such a distinction I believe would exist in such a happy state, and which I hold is much harder to dismiss by claiming it would not in actuality occur in such a state. Although I hold this next example is harder to completely dismiss, it is important to note that ultimately I am merely attempting to show that a mine/your distinction could be present in the fictional instantiation of human existence in which Hume believes such a distinction is impossible.

In this next scenario imagine that Smith is sitting in a particular location which is merely one of the many identical locations throughout this society in a state of overabundance, and one that Smith chose randomly which he has never before utilized. Smith has been sitting in this particular location for several hours, when Jones approaches Smith, and asks him to stand. Now

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<sup>20</sup> A much more entailed response to an objection to my general concept of property which includes a claim that I have confused a cause and effect will be provided in the third chapter of this work.

consider that Smith complies, for whatever reason, and stands, only to watch Jones sit in the particular location Smith was sitting in just before he stood. I believe that Smith would feel that Jones had taken *his* sitting spot. Meaning he would think: “Jones just took *my* sitting spot.” If for whatever reason, Jones asking Smith to stand seems unrealistic, I believe there would be no problem instead considering a similar scenario in which Jones physically moves Smith, and then sits where Smith had just been sitting.

As was presented above this mine/your distinction concerning the ownership of external goods, which I believe the above two examples have at least shown the possibility of in Hume’s happy state of overabundance, is only possible if there is an underlying concept of property at work, which is comprehended by those using or even understanding such a distinction. Hume supports this claim when presenting the impossibility of a concept of property in the happy state by using as a premise the claim that there would be no mine/your distinction, and thus concluding that no concept of property would exist in such a state (Enquiry 3.1.3). Thus, if in any of these examples, given above, in which Smith feels that Jones has taken *his* reading spot, or sitting spot, then Smith must have a working understanding of a mine/your distinction, and thus have a concept of property which is enabling him to make this distinction.<sup>21</sup>

Importantly, Hume’s concept of property cannot be the concept of property which Smith is utilizing. This is because as was presented above, Hume holds that a person’s property is some external good, which is lawful for that person, and that person alone to keep and use (Enquiry 3.2.35). The examples I have provided clearly show that if we accept that Smith has a concept of

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<sup>21</sup> Of course one objection which could be raised at this point would be to reject the claim that a mine/your distinction, concerning external goods, entails a concept of property. First, I am comfortable neglecting this objection, as I believe Hume does, and second, I agree with Hume that a mine/your distinction entails a concept of property. I do not think it is possible for one to have a mine/your distinction without a concept of property. Simply put I am unsure how it would be possible to use and understand such a distinction without a working concept of what that distinction ultimately entails, meaning what the object of such a distinction is.

property, then it cannot be equivalent to the concept Hume presents. The first major difference between Hume's concept of property, and the concept of property which I hold Smith understands rests in the fact that this new concept of property does not entail that Smith is the sole owner of the spot he is sitting in, and he is the only person who has a right<sup>22</sup> to or is permitted to use said spot. This should be rather obvious if we consider the last scenario I presented above. In this scenario, I believe, Smith would feel that his spot had been taken from him by Jones, when upon being asked to stand up by Jones, Jones sat in the exact spot Smith had been occupying. I believe that most would agree that Smith does not feel that Jones took his sitting spot, because he, Smith, is the only person who ever has a right to sit there.<sup>23</sup> Instead, I hold that the concept of property which Smith understands is much more temporally restricted. What I mean by 'temporally restricted' is that Smith's concept of property entails that he owns the spot he is sitting in, meaning he is the only person who has a right to use it, but only at the time he is sitting in it, and does not own the sitting spot at other unrelated times. For example, if later in the day Smith walks by the spot he was sitting in earlier that day, and sees that Jones is now sitting in that location, I do not think that Smith would feel that anything had been taken from him by Jones. Likewise, in the first scenario I presented Smith would only feel that something was taken from him, given specific temporal restrictions, such as the particular time Smith reads every day. Thus, Smith's concept of property entails that he only owns that spot every day, at the same time, the time he reads.

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<sup>22</sup> I use the word "right" here to stand in for "is lawful," as the latter, being Hume's phrase, entails an artificial human convention.

<sup>23</sup> This is not to say that Hume does not allow for the transfer of property, but that too is a social convention, and only possible with the permission of the original owner. This topic will be discussed further below when Hume's argument concerning particular rules of property is presented. At the current point I hold that it does not pose a problem as long as we continue to imagine the scenario as presented (i.e. with no willing transfer of property between Smith and Jones).

The second major difference between Hume's concept of property and Smith's concept of property pertains to Hume's claim that one's property is some external good. Importantly I do not want to present a concept of property which no longer holds as its object external goods, because I am attempting to present a concept of property which holds the major tenets of Hume's concept of property. Presenting an entirely new concept of property could ultimately, I believe, lend an unfair advantage to my ultimate goal of presenting a possible instinctual origin of our concept of property, and thus a natural origin of the virtue of justice. Although initially remaining within this framework of external goods may seem problematic, I hold that the concept of property which Smith has can be shown to concern an external good.

The major obstacle Smith's concept of property faces on this front, is pointing to the specific external good itself. For example, when considering Smith's sitting spot, what is it that Smith owns, that is, what is his property, even considering that said property is temporally restricted? It can't be the actual ground he is sitting on, or we could imagine a scenario in which Smith is sitting in a particular location, Jones asks him to stand, and takes Smith's sitting spot, and upon Smith claiming "Jones, you took my sitting spot," Jones simply digs up the earth below him, hands it to Smith, and then sits back down in Smith's spot. I do not believe Smith would be satisfied with this response, and he would instead still feel that Jones took his spot. Likewise consider Smith's reading spot, which is, as earlier stated, always in the same location under a particular tree. Now imagine that one night Jones goes to Smith's reading spot, digs up the earth under the tree where Smith reads, and replaces it with earth from a different location. I believe that Smith, if he realized the earth in his reading spot had been replaced or not, would still consider the particular location he reads every day to be his reading spot. So, we know the external good is not simply the earth on which Smith is sitting on. Instead, I hold that Smith can

understand the object of his ownership as the space in which he was sitting or the space he reads every day. Thus, in the examples provided, concerning Smith's concept of property, the external good which is the object of Smith's concept of property is physical space,<sup>24</sup> or the physical area, of his spots.

Although initially including physical space under the heading of external goods may seem like a desperate attempt to include a concept of property within Hume's happy state, I would actually like to argue that it is already a present and active external good which is an object of our concept of property in our current necessitous state, but regularly ignored. Take for example the above presented scenario in which Student X feels that Student Y has taken her seat, by sitting at the desk she sits in every class period. Similarly to Smith's scenarios, Student X does not own the desk in the classroom that she claims as hers. Likewise she does not even own the physical part of the classroom upon which her desk sits, meaning the carpet or floorboards, or concrete etcetera. Like in the Smith examples, I also do not think that Student X would care if her desk was replaced by another identical desk, placed in the same location as the original desk, as often happens in classrooms. However, as was presented above, even with these considerations in mind, it surprises few, when Student X claims that Student Y took her seat. So, I believe that Student X is utilizing a concept of property which includes the ownership of temporally restricted physical space. That is, the space on which "*her*" desk sits, during the time her lecture meets.

I think that we can examine several other examples of this type of external good, as the object of property in our normal everyday lives. For example, when one purchases a ticket to see

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<sup>24</sup> Importantly, I am not attempting to make any significant claim, or any claim at all concerning the philosophy of space. I only use the word 'space' as I believe it best relates the meaning of what I am attempting to present. If terms 'region' or 'physical area' carry with them less problematic consequences then I believe those terms could work as well. In the third chapter of this work I will attempt to present a similar external good as the object of non-human animal's concept of property, which is often referred to as territory.

a movie they often refer to the seat they choose as ‘my seat’ representing a feeling of ownership of an external good which is itself temporally restricted, and at its core referring to a defined amount of space. In a theater friends are even often asked to “save my seat” when some member of their party needs to briefly leave the theater. Similarly, at many colloquiums, or like events in which there is open seating, and usually more than enough chairs for everyone, I have experienced scenarios in which someone will ask, before sitting down in a particular chair, if “anyone is sitting here?” in an attempt not to take someone else’s seat, full well knowing no person in the room owns any of the seats in the traditional sense. Correspondingly, most have experienced a scenario in which someone sits in a particular seat, gets up and vacates the seat and seating area for some period of time, and upon returning to find someone else in their seat, actually claims “you’re in my seat” or “you stole my seat” etcetera.<sup>25</sup> Lastly, although such actions are rarely encountered among adults, if someone is physically moved from their seat or tricked into standing, as Smith was in the second scenario presented above, I believe most would agree that the initial occupier’s seat was stolen.

If we understand temporally bound space as the external good, which is the object of the concept of property which could exist within Hume’s happy state, then we can also maintain Hume’s claim that property presupposes scarcity, even within Hume’s state of overabundance. Of course Hume presents this state of overabundance in an attempt to remove scarcity entirely, thus removing any concept of property, and ultimately the virtue of justice, but I believe that the above examples show that scarcity would still exist within Hume’s happy state. Importantly scarcity would also, like Hume holds concerning his concept of property, be necessary for the concept of property which I have argued could exist in Hume’s happy state. As can be

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<sup>25</sup> I would like to again point out that one simply thinking “he’s in my seat” or “he stole my seat” and not actually making a verbal claim is equally as effective for my current purpose.

understood from the above examples involving Smith, it is not that sitting spots or reading spots under trees are scarce, as we know instead that they are all overly abundant in this happy state, but that it is instead that Smith's sitting spot and Smith's reading spot are all scarce external goods. Randy Barnett presents the concept of scarcity as it pertains to relevant goods in his book *The Structure of Liberty Justice and the Rule of Law*. Although his project and the current project have different aims, Barnett's presentation of what he calls "defining the relevant good" is precisely what I believe would entail scarcity within Hume's happy state (38). Barnett explains that some good is a "relevant good" if "one or more persons seek to perform two actions that are physically impossible to perform simultaneously" with some good (38). So, just as an apple can be scarce because it would be impossible for two different people to eat the entire apple, Smith's space can be scarce because it is impossible for him and Jones to sit or read in it at the same time, just as a seat in a classroom or movie theater can be scarce because it would be impossible for more than one person to occupy it at any given time.

The third and most important difference between Hume's concept of property and the concept of property presented above concerns Hume's claim that the possession of property "is establish'd by the laws of society; that is, by the laws of justice" (Treatise 3.2.2.11). This means, as was presented above, that under Hume's view, some external good is one's property when it is lawful for them alone to use it. Of course this aspect of Hume's concept of property assumes that justice is an artificial virtue arising from a social convention, because, as was before presented, by "lawful" Hume means the artificially created laws sprouting from the artificial creation of the virtue of justice. This aspect of Hume's concept of property represents the biggest difference between Hume's concept of property, and the concept of property that I hope to show as a

possibility in Hume's happy state of overabundance.<sup>26</sup> Thus, I must outright reject this specific aspect of Hume's concept of property. However, this rejection is in no way an attempt to divorce our concept of property, and the virtue of justice. I believe doing this would be impossible. Instead I would like to present a simple original instinct which distinguishes property, and a corresponding natural sentiment of approbation towards just character traits, and a natural possession of said character traits, meaning character traits which motivate honesty with respect to external goods. Because I hope to present a convincing depiction of the possibility of a natural origin of justice, it may be helpful to quickly point out that Hume often uses the word "equity" alongside, or in place of "justice." I only wish to present this now, as to mitigate possible confusion about what "honesty" means (Cohon). I do not think Hume wishes to present justice as a specific kind of promise keeping, as he holds promise keeping is its own artificial virtue (Cohon).<sup>27</sup> This is a crucial aspect of the current project, because I believe that I can now present the first piece of evidence supporting a natural origin of our concept of property, and thus virtue of justice, and when presenting this natural virtue of justice I believe using both words "honestly" and "fairly" will be beneficial in lessening possible confusion.

Although there are still arguments Hume presents rejecting an instinctual origin of our concept of property, thus rejecting a natural origin of justice, which must be presented and responded to, at this point I believe I can present the first piece of evidence in favor of a natural foundation of our concept of property and virtue of justice. This first piece of evidence is the possibility to conclude that a concept of property, as described above, could be present within Hume's happy state of overabundance. This importantly means that Hume's claim that the virtue of justice could not exist in such a state, because no concept of property could exist in such a

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<sup>26</sup> This is why I have replaced "lawful for one to use" with "has a right to use." This "right" will be discussed below.

<sup>27</sup> See Chapter One, footnote eleven.

state, can be rejected. It is also important in claiming that we can instinctually distinguish property. Although more must be said on this topic, at the very least, it seems that Hume's argument concerning this happy state of overabundance supports an instinctual origin of our concept of property, in the same way that it supports an instinctual origin of the natural virtue of benevolence. As was presented above Hume claims that this change in the parameters of human existence, specifically imagining a state of overabundance, is unable to render the natural virtues unusable. This point now seems to support the instinctual origin of our concept of property in the same way, because our concept of property, as presented above, is also able to endure this change in the structure of human existence.

Although an instinctual origin of property does not alone provide us with a sufficient reason to understand justice as a natural virtue it is certainly the most important piece of the puzzle. This is because with a concept of property within Hume's happy state it is not a far stretch to consider how we feel about possessors of character traits which concern property. As was presented in the first chapter of this work Hume holds that "to have a sense of virtue, is nothing but to *feel* a satisfaction of a particular kind from the contemplation of a character. The very *feeling* constitutes our praise or admiration" (Treatise 3.1.2.3). Thus, "an action, or sentiment, or character trait is virtuous or vicious; why? because its view causes a pleasure or uneasiness of a particular kind" (Treatise 3.1.2.3). Of course remembering that this particular kind of pleasure or pain is from a disinterested point of view like as the point of view from a "judicious spectator" would be (Treatise 3.3.1.14). So, I believe if we "turn [our] reflection into [our] own breast" when considering, for example, the scenario in which Smith is sitting, Jones asks him to stand, and then Jones takes Smith's spot, when he stands, we will "find a sentiment of disapprobation, which arises in [us], towards this action" (Treatise 3.1.1.26). Of course also

remembering that it is actually a sense of disapprobation towards the character trait of Jones which motivates him to take Smith's spot in this scenario. This sense of disapprobation is specifically a result of the contemplation of the character trait which Jones has which motivates him to act dishonestly, or unfairly, concerning Smith's property. Likewise if Jones tricked Smith and sat in Smith's spot, and upon Smith claiming "Jones you took my spot" Jones got up, allowing Smith to take his spot back, I think most would feel a sense of approbation towards the character trait which Jones possesses which motivates him to act honestly, or fairly, with respect to Smith's property. Thus, I hold that we can examine the virtue of justice also enduring this specific change in the structure of human existence, which, as was already presented, is evidence Hume utilizes for the origin of the natural virtues. So, we have gained the first piece of evidence to conclude that justice, and property, arise from inseparable parts of human nature, which a change in the structure of human existence (specifically a state of overabundance) cannot eliminate, even if it does limit those external goods we consider to be one's property.

In defense of my claims concerning what I think we would feel towards character traits of Jones I am, as Hume does, relying on my ability to turn my reflection inward, but I also hold that if one considers similar, real life examples, like the ones described above, I think one can see that such feelings are not in actuality implausible accounts. Consider again, a scenario in which in a movie theater, classroom, or like setting with open and abundant seating, a companion asks you to save his seat. If someone comes and sits in the seat you are saving, and upon you telling them "someone is sitting there" or "this seat is saved" etcetera, this new person ignores you and precedes to sit down in the seat you were attempting to save, I feel that most would have a feeling of disapprobation towards the character trait which motivated this new person to sit in what you considered to be your friend's seat. So, the feelings of approbation and disapprobation

Hume points out that we have toward honest actions concerning external goods like apples or wood, etcetera, seem to likewise be felt concerning an external good like temporally bound space, and thus seem possible within Hume's happy state of overabundance.

Although this first piece of evidence is important to the current project, it also exposes what could be a fundamental problem for the current project of offering a plausible account of the natural origin of property and justice. Simply put, what about the wide reaching property disagreements that would be possible in Hume's happy state, even with the concept of property, and virtue of justice which I hold could exist in such a state. What I mean by property disagreements is the problematic identification of what the parameters of Smith's "right" to any of the above spaces (sitting, or reading) are. I have claimed that Smith would feel that he had a right to these spaces, and ultimately I hold that this feeling would be the result of the virtue of justice, which holds as its object Smith's concept of temporally restricted property which holds space as its external good. Thus far I have, as Hume initially does as well, considered a general concept of property and virtue of justice, which I believe we could observe within Hume's happy state. The current problem concerns the particular rules or laws, resulting from our virtue of justice, which direct the ownership of property in specific cases. As when I presented the scenario in which Smith's reading spot, the one he uses every day at the same time, is taken by Jones, Jones may not feel that he should move, if he disagrees that Smith has a right to said spot every day at some specific time. The only way one can determine if Jones should move relies on the particular rules of the concept of property, by which we can distinguish property in specific cases.

With this in mind must it be a part of our instinct which enables one to know that whenever one uses the same reading spot every day at the same time one "owns" that spot,

within some temporal restriction? Likewise, would the number of days or amount of time before said spot was Smith's be included in our instinct? Additions like these would certainly be ridiculous to include into our instinctual understanding of a concept of property, and ultimately our natural virtue of justice. I have presented what I believe would be an instance of a mine/your distinction in Hume's happy state, and thus hold that a concept of property *must exist*. I also believe that claiming that we have a sense of disapprobation towards Jones's character trait which motivates him to take Smith's spot must mean that the virtue of justice must too exist, but seeing the parameters of this virtue, especially when considering its existence in our current necessitous state, as aspects of an instinct, seems like an impossible task. Thus it could be claimed that exposing the existence of a concept of property, and virtue of justice in Hume's happy state cannot be understood as evidence for understanding this concept and virtue as originating from simple original instincts, as it either neglects the fact that our concept of property has specific parameters, or forces one to accept that all of these parameters are included in our instinct, which seems unreasonable to propose. This potential problem must be carefully considered below.

#### *Section IV: On the Possibility of a Simple Original Instinctual Concept of Property*

One of the most important objections Hume presents to the possibility of an instinctual origin of property concerns precisely the problem discussed at the end of section three. At the core of this problem is Hume's claim that "instincts in men are all simple" (Enquiry 3.2.40). This meaning that the natural instincts one has entail no great complexities. Hume even supports this claim by arguing that nature only needs to embed simple instincts in humans, otherwise it would have "create[d] a rational creature, without trusting any thing to the operation of his reason" (Enquiry 3.2.42). I agree with Hume on this front. If we take, for example, the instinct of

hunger, which Hume presents as an example of a simple original instinct, I believe most would agree that this instinct is certainly simple. For one, to distinguish between being hungry or not hungry seems to entail no great complexity. Even considering that there are most likely an indefinite number of degrees of hunger, at its core there seems to be no real intricacy involved in the instinct. Likewise, at its core, the instinct to care for one's offspring seems to entail no great complexities. Essentially to care for one's offspring is to keep said offspring alive until the point at which the offspring can care for itself, and repeat the process. Hume utilizes an example concerning a non-human animal to further represent this point concerning the simplicity of instincts. "All birds of the same species, in every age and country, build their nests alike: In this we see the force of instinct" (Enquiry 3.2.44). Importantly this means that Hume also holds that the natural virtues which are the result of instincts, like those virtues under the heading of benevolence, are also uncomplicated. This is supported by Hume's claim that each of these virtues "sufficiently engage every heart, on the first apprehension of them" (Enquiry 2.1.5). Meaning these virtues necessitate little contemplation, and are instead understood quickly and easily like the instincts of hunger or the instinct to care for one's offspring.

Hume holds that a property instinct could not be simple, and thus does not exist. To present this Hume first examines the particular laws "by which justice is directed, and property determined" which exists in our current necessitous state (Enquiry 3.2.22). Hume holds that doing this will enable one to see that "we shall still be presented with the same conclusion" as he holds we were when presented with a general concept of property, as was discussed above, that justice and our concept of property are artificial human conventions and not the product of simple original instincts (Enquiry 3.2.22). Hume claims that when we examine these specific laws public utility explains their origin, as was the case when we examined the general concept

of property, and ultimately we will see that they are far too complicated to arise from simple original instincts which are embedded within human nature.

Who sees not, for instance, that whatever is produced or improved by a man's art of industry ought, for ever, to be secured to him, in order to give encouragement to such *useful* habits and accomplishments? That property ought also to descend to children and relations, for the same *useful* purpose? That it may be alienated by consent, in order to beget that commerce and intercourse, which is so *beneficial* to human society? And that all contracts and promises ought carefully to be fulfilled, in order to secure mutual trust and confidence, by which the general *interest* of mankind is so much promoted? (Enquiry 3.2.28).

Hume even includes in this claim that when "the interests of society may require a rule of justice in a particular case" but several are all "equally beneficial" we see that "possession alone, and first possession, is supposed to convey property, where no body else has any preceding claim and pretension" (Enquiry 3.2.31). Furthermore Hume claims that in some cases, concerning particular laws which determine property, it is "highly requisite, that prescription or long possession should convey property" although the exact amount of time "is impossible for reason alone to determine" (Enquiry 3.2.32). Ultimately, these ways of distinguishing property are aimed at public utility as well, in that they enable the laws which determine property, and thus the virtue of justice, to never appear arbitrary (Enquiry 3.2.31).

This enables Hume to claim that the particular rules we have to distinguish property, in our modern state, "must have recourse to statutes, customs, precedents, analogies, and a hundred other circumstances; some of which are constant and inflexible, some variable and arbitrary" (Enquiry 3.2.35). At this point Hume is able to claim that "though it seems a very simple proposition to say, that nature, by an instinctive sentiment, distinguishes property, yet in reality we shall find, that there are required for that purpose ten thousand different instincts, and these employed about objects of the greatest intricacy and nicest discernment" (Enquiry 3.2.41). Hume supports this claim by pointing out that when we consider a definition of property, which

represents the specific laws discussed above we find “any possession acquired by occupation, by industry, by prescription, by inheritance, by contract &c” as property (Enquiry 3.2.40). Hume next poses the question “can we think, that nature, by an original instinct, instructs us in all these methods of acquisition?” (Enquiry 3.2.41). Hume points out that even the words “*inheritance* and *contract*, stand for ideas infinitely complicated; and to define them exactly, a hundred volumes of laws, and a thousand volumes of commentators, have not been found sufficient” (Enquiry 3.2.42). Hume adds that we would need another original instinct which recognized the authority of kings of senates and enabled us to “mark all the boundaries of their jurisdiction,” and yet another instinct which recognized the authority of judges, praetors, chancellors, and juries (Enquiry 3.2.43) Thus Hume is able to conclude that our concept of property is in no way simple, and as all instincts are simple, our concept of property cannot arise from a simple original instinct embedded within human nature. This, of course, means that the virtue of justice cannot arise from a simple original instinct embedded within human nature.

Ultimately I agree with Hume that our current concept of property is complex and multifaceted, but hold that it is not in actuality problematic for my goal of showing that our concept of property and virtue of justice could arise from simple original instincts embedded within human nature. Although this may seem like a rather unreasonable position, I believe that with the consideration of one amendment to Hume’s claim concerning simple original instincts, we will find that it is in actuality completely cogent. This amendment is that simple original instincts often produce complex artificial human conventions. What I mean is that simple original instincts can act like seeds which humans over time grow into complex, multifaceted conventions which are the result of our function of sympathy, aimed, although not always accurately, at furthering public utility. This means that I agree with Hume’s claim that “all these

institutions arise merely from the necessities of human society,” with one exception, Hume’s use of “merely” (Enquiry 3.2.43). I believe that it is true that these conventions concerning property, as well as some other human conventions, arise due to the needs and necessities of human society, but they arise out of a simple original instinct. I believe that if we examine some of the simple original instincts, which Hume offers, we will find that they are responsible for, and are still at the core of, complex artificial human conventions.

Consider the instinct of hunger, which Hume presents as a clear example of a simple original instinct. Hunger, like justice, has a sole object, nourishment, or more simply food. Thus, the object of hunger is food, like the object of justice is property. However, Hume holds that our instinct of hunger is simple, thus the object of hunger must too be distinguished by a simple original instinct. This initially does not seem to entail a problem for Hume. By and large humans are able to distinguish food, due to what is undoubtedly a simple original instinct. We would even be able to observe this in the pre-societal human. Although this is certainly the case, I believe if we look we can see complex artificial human conventions which, although are the result of our instinct of hunger, and instinctual concept of food, are themselves multifaceted and are not included in our instinct themselves. Take for example Soufflé. Soufflé is food, it is an example of an object of hunger, but it would be ridiculous to claim that by simple original instinct one is able to create or in any way acquire Soufflé, as there is no way our concept of food includes Soufflé specifically. Even if one had the raw ingredients, in for example Hume’s happy state of overabundance, this complex dish would require many cookbooks and instructions, and most likely a lot of practice. Equally anything which is the product of complex baking or cooking is not included in our simple original instinct. I would go as far to say that the pre-societal human would not even be able to understand the notion of Soufflé or for that matter

distinguish it as food. So, I agree that a simple original instinct does not instruct us in all of the modern methods of acquiring property, but the same can be said for our simple original instinctual concept of food. It does not instruct us in all of the methods of acquiring food, naming complex baking or cooking. Similarly I have experienced on a number of occasions the following scenario: at a restaurant a dish comes out, and I am unsure if a specific part of said dish is supposed to be eaten, or is a decorative garnish. I believe most would agree the answer to this question is not embedded within our instinctual concept of food. Obviously we should still understand hunger and our concept of food to be based in simple original instincts, but I believe that our simple original instinct of hunger and instinctual concept of food are the fundamental bases for these complex human conventions which have created objects of hunger such as Soufflé, which are themselves the product of human conventions like culinary arts and baking.

So, inheritance and contracts are not a part of our instinctual concept of property, in the same way the production of Soufflé or the garnishing of a dish is not a part of our instinctual concept of food. Instead these are results of human conventions which grew out of simple original instincts embedded within human nature, but only did so over time due an attempt to meet the needs and desires of society. Thus, I can agree with Hume that nature has not, by simple original instinct, instructed us in all the methods of the acquisition of property, but that this claim does not rule out the possibility of an instinctual concept of property, from which complex, multifaceted human conventions have grown. The definition of property which entails that “any possession acquired by occupation, by industry, by prescription, by inheritance, by contract &c” is simply an artificial human convention, which has grown from a simple original instinct. (Enquiry 3.2.40). The fact that “*inheritance* and *contract*, stand for ideas infinitely complicated; and to define them exactly, a hundred volumes of laws, and a thousand volumes of

commentators, have not been found sufficient” is comparable to the many cookbooks and general culinary arts textbooks which currently exist, and are similarly not found as sufficient as many more are produced with new methods of cooking and baking, and even new dishes which before never existed (Enquiry 3.2.42).

I think we can observe many more examples of simple original instincts which have sprouted complex human conventions, meaning this is not a phenomenon which only occurs in our instinctual concept of food and instinct of hunger, which I have inappropriately claimed as a possibility for all instincts. Specifically consider the natural virtue to care for one’s offspring, and our instinctual concept of offspring, which is of course the object of this natural virtue. Adoption and foster care are two acts which I doubt are included in our instinctual concept of offspring, or our natural virtue of caring for our offspring, as they are complex conventions, much like inheritance and contracts. Although I hold this to be the case I doubt few would be willing to remove this virtue from the catalogue of natural virtues. Similarly I hold that if we examine the particular rules and laws which pertain to the care of offspring we will find that like our concept of property, they must have recourse to statutes, customs, precedents, analogies, and a hundred other circumstances “some of which are constant and inflexible, some variable and arbitrary” (Enquiry 3.2.35). I believe we can see this in the mere fact that all of these rules and laws are not exactly the same in every part of the world. For example the age you are no longer legally responsible for your offspring is certainly not included in our simple original instinct, as it is not the same everywhere and certainly to some degree seems arbitrary. It seems much more likely a result of human convention, which of course changes from society to society and over time.

Likewise I think we can see particular rules, laws, and conventions which have developed from the natural virtues under the heading of benevolence, and which also vary from culture to culture, further showing the possibility of social conventions to develop from the natural virtues. Take, for example, two of the natural virtues, under the heading of benevolence, humane, and merciful. In some cultures the natural virtues of humane and merciful have resulted in the legalization of euthanasia, and in others this specific rule is considered to be the opposite of humane or merciful. Similarly, albeit far less important, are the social conventions of pen pal relationships and social media friendships which I believe most likely arose from our natural virtue of friendship and instinctual concept of friends, but which are in no way included in the simple original instincts from which these concepts and virtues arose.

With this in mind it is not difficult to see Hume's claim, as presented above, that the specific rules we have to distinguish property "must have recourse to statutes, customs, precedents, analogies, and a hundred other circumstances; some of which are constant and inflexible, some variable and arbitrary" is not in actuality problematic for a instinctual concept of property and natural virtue of justice (Enquiry 3.2.35). This is because it can now be claimed that some of the specific rules, or conventions, resulting from the natural virtues, and even the natural instinct of hunger, are themselves artificial human conventions which of course are the result of statutes, customs, precedents, analogies, and a hundred other circumstances.

However, I do believe it is significant that Hume claims some of the aspects of the rules and laws which distinguish property would be "constant and inflexible," because it supports my claim that there is something grounded and permanent within these conventions which distinguish property. This would be necessary for all conventions which are founded on simple original instincts, as the simple original instincts themselves are constant and inflexible. For

example, as presented above, there may be artificial human conventions which have grown out of the natural virtue of caring for one's offspring, but keeping said offspring alive is going to be at the core of all of these conventions, and will be a constant and inflexible aspect of them, because it is the simple original instinct which is at the core of this natural virtue, and thus all conventions which have grown from this virtue. Likewise, when considering our instinct of hunger, and instinctual concept of food, no convention will arise which entails some inedible object, as attainment of nourishment is the constant and inflexible aspect of this instinct. So, I believe when Hume claims some of the aspects of the rules which distinguish property are constant and inflexible, he is pointing, of course not purposely, to aspects which are the seed of the entire human convention which, I hold, is a simple original instinct embedded in human nature, which initially enables such conventions to grow.

If we examine the inflexible and constant aspects of our rules of property, then I believe we will be able to uncover what an instinctual concept of property would entail, and thus be able to present the possibility of the natural virtue of justice. Interestingly, as was presented above, Hume claims that when public utility would be equally benefited by some particular rule or law, concerning property, we must look to "possession alone, and first possession... where no body else has any preceding claim and pretension" and "long possession" to convey property (Enquiry 3.2.31, Enquiry 3.2.32). Although Hume presents this point for very different reasons, I hold that it actually enables us to see the major constant and inflexible aspect of our conventions which distinguish property. I believe if we reverse Hume's reasoning here we will be able to present a possible instinctual concept of property. Simply put, we do not revert back to these simple rules of possession which distinguish property because two different conventions serve public utility equally, and we do not want arbitrary rules and laws, but we instead return to them because our

rules, laws, and conventions are based upon possession, and no current convention aids in the particular property dispute which is being encountered, so we revert back to what is embedded within our human nature.

Possession, in the simplest sense, comes down to having or holding some external good. With this in mind it must be the case that we know others do not have the specific external good we possess at the exact time we possess it, and I believe this enables a simple mine/your distinction, which concerns external goods (such as, but not limited to, space).<sup>28</sup> Specifically, concerning this understanding of possession, I think we could understand ‘my possession’ or ‘not my possession,’ which in turn leads to the identification of ‘your possession.’ Thus at its core our simple original instinct which distinguishes property could be a mine/your distinction concerning external goods. Importantly, what I mean by ‘the specific time we possess it,’ is the literal current possession of some good, meaning our instinctual concept of property involves a mine/your distinction concerning external goods one is currently in possession of. Consequently scarcity, as explained above in Hume’s happy state, would automatically be an aspect of our instinctual concept of property, as scarcity of the relevant good, meaning the good one is currently in possession of. Furthermore, as was also presented earlier in Hume’s happy state of overabundance, this instinctual concept of property would also automatically entail the ownership of temporally restricted external goods. The temporal restriction being the current possession of some good, or what may easily be thought of as a temporal restriction of ‘now,’ for example the spot in which Smith is currently sitting.

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<sup>28</sup> I am not convinced, or even persuaded, that possession, meaning our simple mine/your distinction only concerns external goods, but as was presented earlier in this work I am adopting Hume’s claim that property concerns external goods, and will thus attempt to provide an instinctual concept of property that is similarly concerned, as to not advantage my own arguments in an unfair way.

Now that a possible instinctual concept of property has been presented I believe we can consider how we feel about character traits which motivate others to take ‘my possessions’ or via our function of sympathy character traits which motivate others to take ‘your possessions,’ again considering only current possessions. When considering current possessions, I don’t think it is implausible to claim that we instinctually have a sense of disapprobation towards character traits which motivate others to take some external good we are currently in possession of. Likewise, I feel a sense of approbation towards character traits which motivate others to respect, or not take our current possessions, is more than feasible. I hold that this can be exemplified by considering how we feel about stealing, albeit, a very simple concept of stealing, in which we only consider the act of taking some external good from someone who is currently in possession of it, meaning taking some external good which is, under this instinctual concept of property, not ‘your possession.’ I would imagine that in this simplified state all would agree that we have a sense of disapprobation towards character traits which motivate others to steal. This is best represented by the above scenario in which Smith is sitting in a particular location and Jones asks him to stand, only so we can take his spot. Or the like scenario in which Smith is physically removed from his spot by Jones, so Jones can take his spot. I believe our sense of disapprobation towards Jones’s character trait which motivates him to act in these ways shows the possibility of a simple instinctual virtue of justice. Thus, I hold that our instinctual virtue of justice is actually represented by something Hume, as was earlier presented, calls “first possession,” which is possession of some external good “where no body else has any preceding claim and pretension” (Enquiry 3.2.31). Importantly, though, this preceding claim would simply be current possession. So, our simple instinctual concept of property needs only to concern a mine/your distinction concerning currently possessed external goods, and our natural virtue of justice is simply a

feeling of approbation towards character traits which motivate others to not take, or respect others' current possessions, meaning respect first possession (in this limited sense), and likewise a sense of disapprobation towards the opposite character traits.

This instinctual concept of property and natural virtue of justice would certainly avoid Hume's complexity objection, concerning simple original instincts, as both are far from complex. One way to support the simplicity of this concept and virtue is to show that, as understood above, I believe that we can now see that the virtue of justice does "sufficiently engage every heart, on the first apprehension of" it, just as Hume claims the other natural virtues do (Enquiry 2.1.5). I hold that this can be seen when considering the simple natural virtue of justice itself. If the feeling of disapprobation, described above, concerning the simple notion of stealing, meaning taking some possession that does not belong to you, does, as I think it would, exist, then I hold that the natural virtue of justice does sufficiently engage every heart, when understood as presented above. Importantly, I also believe that this can be imagined to be a possible occurrence in the pre-societal human, who Hume claims would in no way be able to understand any concept of property or virtue of justice. I believe if we consider a pre-societal human, meaning a human in a small familial group, we can imagine any number of scenarios in which if this pre-societal human had current first possession of some external good, and said external good was at some point taken from him, even if this good was merely a seat next to the fire (meaning a temporally restricted space), that this pre-societal human would have a sense of disapprobation towards the character trait which motivated some other member of his familial group to take his possession.

I hold that it is not until the artificial human conventions which distinguish property are created, which grow out of this simple instinct and natural virtue, that we see specific just acts

not engaging every heart. At their core these conventions will concern new, sometimes arbitrary, rules of possession, which I think actually enable more disagreement, requiring new conventions. At this point it may be hard to see how any property disagreement could arise, if we do have the above described instinctual concept of property, and natural virtue of justice, but I believe the formation of society can explain this. Although current first possession remains as our instinctual concept of property, once a part of a society I believe we quickly see that we will need some sort of agreement as to not be forced to spend all of our time maintaining our possession of necessary and desired external goods, this meaning, some agreement which allows us to maintain our property, without physically being in possession of it. Thus the concept of some sort of retroactive first possession is born. This being something along the lines of: “I was in possession of X first, although I am not currently in possession of X, I still have some temporally restricted ownership of it.” Along with this comes the inclusion of what Hume calls long possession, as presented above, which begins to specify the extent of the retroactive first possession. Such as: “I was in possession of X first, *and for an extended period of time*, and although I am not currently in possession of X, I have some temporally restricted ownership of it.”

From these two, quite possibly necessary, artificial developments I believe property disputes are inevitable, and human conventions which aid in such disputes are created. For example consider the scenario which was presented in the third section of this chapter, in which Smith has a reading spot that he uses at the same time every day, and feels he has a temporally restricted ownership of said spot. This I believe would be Smith utilizing some sort of retroactive first and long possession of this temporally restricted space. Importantly, when I presented this example as a possible piece of evidence for the existence of a concept of property within Hume’s happy state, I pointed out that when Smith claims “Jones you’re in my reading spot,” Jones may

not feel that he should move, meaning he may not feel that Smith has any right to that specific reading spot. Jones might feel this because he is in current first possession of said reading spot. Unlike in the other presented scenario in which Jones take Smith's current spot, in which I hold that Jones should feel that he should move given the sense of disapprobation I believe he would feel towards the character trait which motivated him to take Smith's spot, and the shame of possessing such a trait. Likewise when a student arrives to class, and claims that some other student took her seat, the current occupier may not feel that he should move, for the same reason Jones might feel this way, if they hold that the former regular occupier has no right to the seat at the current time. Thus, a disagreement concerning property would likely arise, because both Smith and Jones could claim that they had a right to use the same space at the same time. At this point, which is likely inevitable in any society, additional artificial human conventions would need to be created to resolve and prevent such disputes.

Notably, concerning some of the artificial human conventions which we currently have to distinguish property, I hold that the simple instinctual concept of property presented above can be seen as a realistic starting point. Considering contracts, I think we can see a kind of conditional possession at the core of this convention, and likewise when considering inheritance I believe some kind of future possession is being utilized. Also, I do not think that it is problematic that we do not have conventions for all possible disputes. Even including some of the possible disputes presented in this work, concerning desks or seats at the movies. Importantly though, we do sometimes see different understood conventions, even if said conventions are sometimes ignored by some, and not reflected in any societies official conventions or laws. For example, putting a coat or some other item on a chair in an attempt to save 'your seat' seems like a realistic result from our instinctual concept of property, which entails current possession, and

the artificial development, resulting from being in a society, concerning retroactive first possession. Significantly though, the current work is only concerned with presenting a possible instinctual concept of property and natural virtue of justice, from which it is possible human conventions could have grown and developed, within Hume's moral framework, thus the particular conventions need not be presented in detail here.

Ultimately, I hold that it should be unsurprising that these conventions do not always sufficiently engage every heart on first apprehension of them. If at some point Smith and Jones sign a contract which specifies when either party can use some particular reading spot, it would be unlikely that either party's heart would be sufficiently engaged at first apprehension. I hold this would be the case because these conventions are created to meet and mitigate property disputes which at their core include two people who think some external good is both 'my possession' at the same time. Even though contracts would ultimately be founded on our natural sentiment of justice, and I hold that this means that on further contemplation the violation of many contracts would result in the same sense of disapprobation as the simple notion of stealing results in, I believe it stands that any complex human conventions will likely not sufficiently engage the heart on first apprehension. Take for example the human conventions of adoption and foster care. A number of people do not seem to have their hearts sufficiently engaged when considering the conventions of adoption and foster care on first apprehension, even though such conventions are based on the natural virtue of caring for one's offspring, which Hume holds does engage every heart at first apprehension. Likewise, a pen pal friendship would likely not engage every heart at first apprehension, even though such a human convention is founded on the natural virtue of friendship. Thus, I do not believe it any different to point out the possibility of the fulfillment of some contract not sufficiently engaging every heart at first apprehension.

*Section V: A Further Argument against the Possibility of a Natural Virtue of Justice*

One substantial objection to the possibility of the above presented natural virtue of justice can be seen in the third fictional instantiation of human existence, which Hume presents in a further attempt to reject the possibility of an instinctual concept of property in general. This fictional instantiation is certainly the most realistic situation, of the three Hume offers, that the human race could find itself in. We know this to be the case, because like in the state of great scarcity and need that Hume presents, at different points in history, considering specific global locations and groups of people, there have been scenarios in which a society falls into extreme “want of all common necessities, that the utmost frugality and industry cannot preserve the greater number from perishing, and the whole from extreme misery” (Enquiry 3.1.8). As presented above, Hume claims that in this kind of dire situation “the strict laws of justice are suspended” and likewise our concept of property would dissolve (Enquiry 3.1.8). Hume offers two specific examples of such situations by considering the aftermath of a shipwreck, and a person falling into a society of ruffians, who have no “protection of laws and government” (Enquiry 3.1.9).

Although Hume presents this instantiation of human existence to further his claim that alterations to the structure of society can be used to show that our concept of property and virtue of justice are not inseparable aspects of our human nature, and can thus disappear given the right scenario, I hold that it also provides an important specific objection to the above presented natural virtue of justice. Specifically, if Hume is correct that dire situations such as these could cause a disregard for any form of justice, including the simple sentiment above described, in which I claimed that we have a sense of disapprobation towards character traits which motivate others to take external goods that are not theirs, meaning we have a sense of disapprobation

towards character traits which motivate others to steal, then it seems unlikely that this sentiment arises from an inseparable aspect of human nature. This would follow for the same reason Hume claims we cannot have an instinctual concept of property if it can be shown to disappear given the right structure of human existence.

Before I offer a response to such an objection to the natural virtue of justice, I would like to first claim that this instantiation of human existence which Hume offers does not threaten the instinctual concept of property I offered in the last section, and thus fails on at least one account. When specifically considering the example of a shipwreck, Hume poses the question “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?” (Enquiry 3.1.8). Thus Hume is claiming that with the disappearance of the virtue of justice, there would be no concern for the former limitations of property, meaning our concept of property would too vanish. With the above presented, simple instinctual concept of property, I do not think that a shipwreck, or any similarly dire situation can be shown to eliminate a simple mine/your distinction concerning currently possessed external goods. If, after a shipwreck, I find some necessary or desired external goods washed up upon the shore with me, once in my possession, I think I will inevitably return to my simple original instinctual concept of property, as I will know my possession is whatever this external good that washed up on shore is, and it is not the possession of any other shipwreck survivor, as I currently possess it. So, I can agree that the former limitations of property would in fact disappear; if that means the artificial human conventions which have grown from our instinctual concept of property would disappear. Likewise if one were to fall into a society of ruffians, as Hume proposes, I still hold that when this new member of this lawless society sat is some particular spot, or found some external good which no one

currently possessed, he could have and could be utilizing this instinctual concept of property. Of course the new member in the society of ruffians would be unable to make reference to the artificial human conventions concerning property which were in place wherever he was originally from, but this does not entail a necessary loss of the simple instinctual concept of property.

The problematic objection embedded within Hume's presentation of a state of dire need, for my view regarding a natural origin of justice, concerns how we feel about the character traits which motivate others to respect or conversely steal property, in these dire situations. As presented above, Hume claims that after a shipwreck it would be no crime to seize "whatever means or instrument of safety one can lay hold of" (Enquiry 3.1.8). Although I do understand that by "crime" Hume is literally referring to one violating the laws which our artificial human convention of justice has created, I do not think it is unfair to understand this claim as also entailing the elimination of any sense of disapprobation we have towards injustice, or for my purposes, the elimination of the simple sentiment of disapprobation we have towards the notion of stealing presented above. This is an important clarification concerning the present objection, because as my above presented natural virtue of justice entails, the elimination of the artificial human conventions which have grown out of our natural virtue would not be problematic for my view to accommodate. Similarly it would be problematic if Hume is correct in claiming that, once dropped in a society of ruffians we would similarly lose any sense of disapprobation towards stealing, and approbation towards honest treatment of our property. Thus Hume's objection to the current work would be that in any state of great need there would be no virtue of justice present, even the simple sentiment described above, and this shows that justice cannot arise from a simple original instinct embedded within human nature.

Ultimately I hold that this objection can be defeated, meaning we would still have a sense of disapprobation towards character traits which motivated acts of stealing in a state of such great need, and a sense of approbation towards the opposite. I believe this can most easily be seen if we consider ourselves in such a scenario. If in a state of great need we possessed some external good, and it was forcibly taken from us, I feel confident claiming that we would have a sense of disapprobation towards the character trait which motivated the thief. Importantly though, I hold that in such a state we would be much less likely to work towards the goal of “judicious spectator” which Hume claims we must, to assure we do not have variations in our function of sympathy (Treatise 3.3.1.14). More specifically this meaning, we would most likely not be making our moral distinctions from a completely disinterested point of view. This would in turn limit the ability of our function of sympathy to enable us to have a sense of disapprobation towards character traits which motivated others to steal external goods from those far removed from us, and most importantly I hold this would also enable many to have less of a sense of disapprobation, or to ignore such a sense, toward their own character traits which motivated them to steal from others. I believe that this explains the mindset many seem to have in such scenarios. In that they will readily steal from those far removed from them to assure the survival of those close to them. Of course, as disinterestedness is a natural virtue, meaning it too arises from a simple original instinct, I am not claiming that such a state of great need would cause such a virtue to disappear, but instead it would be underdeveloped or be ignored in an attempt to better the chances of survival for individuals, and close-knit groups.

Therefore, I can agree with Hume that in a state of great need, such as after a shipwreck, or after being placed in a society of ruffians, the human conventions we currently have concerning property would indeed disappear, and become useless, as he claims. However I believe that we

have evidence to believe there would still be a simple instinctual concept of property in such a state. I also hold that the virtue of justice could also be present in such a state, but the extreme life and death situation would cause many to ignore the sense of disapprobation we have towards stealing by lessening the extent we work towards acting as a judicious spectator. However, when considering ourselves and those close to us, I hold, we can clearly see the possibility of having a sense of disapprobation towards character traits which motivated others to steal from us and those close to us. Ultimately I believe this shows that even with this specific alteration to the structure of human existence our concept of property and virtue of justice would not in fact, as Hume claims, disappear.

### *Conclusion*

My goal in this chapter was to present the major arguments Hume offers to reject an instinctual origin of our concept of property and thus a natural origin of our virtue of justice, and respond to each with what I hold are at least feasible possibilities. Even if this instinctual concept of property and natural virtue of justice presented in this chapter are not convincing beyond any doubt, I believe it still presents a problem for Hume's view, which would need to be addressed. I hold it shows at the very least that an instinctual concept of property and natural virtue of justice are possible, in the three alternate instantiations of human existence, in which Hume claims they are not. Furthermore, if Hume's claim that a virtue's ability to survive such changes to the structure of human existence is evidence for its placement among the natural virtues, then the virtue of justice which I have presented seems to have made steps in the direction of a re-categorization. Likewise if we understand the simple concept of property and virtue of justice presented above, I hold the virtue of justice is also able to escape Hume's complexity objection.

## CHAPTER THREE

### *Introduction*

The goal of the previous chapter was to present the major arguments Hume provides rejecting an instinctual concept of property and natural origin of justice, and attempt to respond with objections to each of these arguments. I believe that, collectively, these objections to Hume's arguments are able to, at the very least, provide a compelling case to revisit and challenge Hume's claims concerning the impossibility of an instinctual concept of property, and thus natural virtue of justice within his moral framework. Although the current project is certainly vulnerable to any broad objections to Hume's moral theory in general (such as, but not limited to, any objections to the foundational aspects of Hume's theory, for example, the moral sentiments, or the psychological function of sympathy, or more specifically Hume's definitional understanding of property and or justice), no responses to any of these possible general objections will be offered in the current work, as the goal of this work is to present a convincing argument in favor of considering an instinctual concept of property and ultimately a natural virtue of justice within Hume's moral framework.

There is however an important comprehensive objection I think Hume, remaining entirely within his own moral framework, could offer in an attempt to reject my specific claims concerning the possibility of an instinctual concept of property and natural virtue of justice. That is a possible rebuttal Hume could offer to my objections to his original arguments. This chapter will discuss this possible objection to my arguments made in the previous chapter, and then offer what I hold is a promising response. After this objection is presented and responded to I will offer what I hold is an advantage my argumentation, in favor of an instinctual concept of

property and natural virtue of justice, could actually provide to Hume's moral theory and more specifically his observations about the social pervasiveness of a conceptual understanding of property, and virtue of justice.

### *Section I: A Possible Comprehensive Objection*

I believe one of the strongest comprehensive objections Hume could offer to my specific arguments which attempt to propose the possibility of an instinctual concept of property and natural virtue of justice within his moral framework concerns the prospect of the perceived possibility of this instinct and natural virtue as a result of accidentally inserting a human convention into these possible situations during retrospective consideration. If one unknowingly inserts what is actually a current human convention into any of Hume's possible instantiations of human existence while considering them, then upon reflection one could mistakenly observe these insertions as a fundamental aspect of human nature. For example, Hume could claim that of course it seems reasonable to accept that within his state of overabundance physical space could be seen as an external good the current possession of which would entail a mine/your distinction which comprised a property concept. Furthermore, Hume might admit, it does not seem problematic to assume that this property concept could ultimately open the door for a virtue of justice, which itself would be the approbation or disapprobation one has towards character traits concerning the respect of the current first possession of property. However, Hume could claim that the problem with imagining this as an occurrence in his happy state of overabundance, or the pre-societal familial group, is not its feasibility to us, but instead the possibility of this concept of property and virtue of justice as the accidental result of implanting what is actually a human convention that we are currently intimately acquainted with into a scenario in which no aspects of said convention would ever be present. Hume could claim that I have simply taken the

human convention that is our concept of property and attempted to strip it down to a skeletal form, and insert it into possible human scenarios in which it would not exist. Once this is done I was able to do the same with the artificial virtue of justice. This, Hume could argue, is what ultimately enabled my argumentation to conclude that there would be a simple original instinctual concept of property and ultimately a natural virtue of justice present within his happy state of overabundance and the pre-societal familial group.<sup>29</sup>

Simply put, Hume could claim that my arguments have made the mistake of misidentifying the actual cause of what I presented as a possible instance of an instinctual concept of property and natural virtue of justice. Hume might claim that my inability to distance myself from a human convention I have always been acquainted with has resulted in assuming others would have the same conceptual understandings I have, and ultimately feel and act in the same way that I, and others acquainted with this specific human convention, would, even when said others are not acquainted with any such convention. This would falsely promote me to claim that instinct was the cause of the perceived possible instinctual concept of property and natural virtue of justice when in reality this opinion was caused by my unknowing projection of such a concept and virtue into specific states of human existence in which neither would actually exist. Hume could argue, for example, that when I claim Smith would feel that Jones, by forcing him out of his current sitting spot and sitting down in said spot, had taken his, Smith's, sitting spot, I am mistakenly importing an aspect of my concept of property, and ultimately a sense of disapprobation I have towards acts which are the result of a character trait which motivates one to act dishonestly with respect to another's property. The aspects I am importing, Hume could claim, are solely the result of the human conventions I have always been immersed in (namely

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<sup>29</sup> Of course my argumentation also entails the existence of this instinctual concept of property and natural virtue of justice present within any possible instantiation of human existence which does not specifically rule out any or all of the natural virtues.

our artificial concept of property and artificial virtue of justice). Hume might claim that if there is an unlimited amount of other equal sittings spots, as there would be in his state of overabundance, then Smith, upon being forced out of the spot he is sitting in by Jones, would simply go sit somewhere else as he would have no property concept or virtue of justice.

Ultimately, Hume could claim that my argument that our instinctual concept of property is a simple mine/your distinction concerning currently possessed external goods, and that our sense of disapprobation toward character traits which motivate one to take currently possessed external goods from others and approbation towards the opposite character traits, is not an inseparable aspect of human nature, but rather it appears to be an inseparable aspect of the current society in which I exist, as it is an aspect of a convention with which I have always been well acquainted. Thus, I have projected this human convention into Hume's happy state of overabundance, and the pre-societal familial group, when in reality in these scenarios no aspect of it would have ever existed. So Hume could return to his claim that there would be no human convention, in such a state of human existence, leading to a concept of property, and that "without such a convention, no one wou'd ever have dream'd, that there was such a virtue as justice" (Treatise 3.2.2.22). This would allow Hume to further support his original position concerning his state of overabundance, and all other instantiations of human existence in which our concept of property and virtue of justice are useless. Namely that within these scenarios there would be no mine/your distinction, thus no concept of property, and ultimately no virtue of justice. This would, as presented earlier, allow Hume to advance his position that our concept of property and virtue of justice are the result of artificial human conventions as a change in the structure of human existence could cause both to vanish.<sup>30</sup>

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<sup>30</sup> Although I believe this is a strong objection Hume could make to my argument, it should be noted that it would force Hume to modify one aspect of his view. Specifically, Hume's earlier presented claim that "we see, even in the

I believe this is one of the strongest objections Hume could offer in an attempt to reject the arguments I have made supporting the possibility of an instinctual concept of property and ultimately a natural virtue of justice, because any further argumentation I give will necessarily fall victim to these same criticisms. This is due to the fact that Hume could point out that any argument I make concerning a property concept and virtue of justice will unavoidably be, like all of my former argumentation, from my point of view which is certainly tainted by the fact that I have always been well acquainted with human conventions concerning property and justice. Although I believe this does potentially present a problem for my argumentation, I do not think it is devastating. First, if Hume were to offer this criticism, I could quickly respond that this objection could potentially be raised concerning any of the natural virtues. For example, a concept of offspring and virtue of caring for offspring is something with which I have always been acquainted with in the same way as my acquaintance with a concept of property and virtue of justice. With this in mind, I could claim that it seems as if one could bring forward a similar objection, as Hume's possible objection presented above, and so conclude that we may have made a similar error in placing our concept of offspring, and ultimately our virtue of caring for offspring, within the realm of instinct. I could claim similarly to Hume's possible objection concerning our concept of property and virtue of justice that our concept of offspring and virtue to care for offspring only appears to be based in human nature as a result of forcing a current

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present necessitous condition of mankind, that, wherever any benefit is bestowed by nature in an unlimited abundance, we leave it always in common among the whole human race, and make no subdivisions of right and property" (Enquiry 3.1.4). I believe Hume would need to modify this specific claim, if he utilized the above objection to my argument, because I believe that examples such as those concerning classroom desks, saved seats in open seating situations, and other like scenarios as were presented in the second chapter of this work, give one a good reason to accept that we do make subdivisions of right and property, in at least some situations of overabundance. Although this specific claim of Hume's would need to be altered, it would allow Hume to fully support his objection to my argument, as these instances of property in situations of overabundance could, as Hume could claim, simply be the result of the artificial human conventions that are our concept of property and virtue of justice.

human convention into other possible instantiations of human existence where in reality it would not exist. This, in turn, would allow me to reply to Hume's objection by forcing him into a kind of stalemate, as all of the natural virtues could be called in to question in the same way Hume could call justice into question.

Although I hold that with this in mind we can understand Hume's objection as one which could affect any of the natural virtues in the same way, and thus not, at first blush, as an objection specifically to the placement of the earlier presented concept of property and virtue of justice within the realm of human nature, I do however understand it does invite one rather obvious reply. Simply put, we have evidence to believe that at the very least our concept of offspring and virtue of caring for offspring is firmly placed within human nature, but can we say the same about our concept of property and virtue of justice?<sup>31</sup> If we merely consider the impossibility of the continuation of our species without a concept of offspring and virtue of caring for offspring, we will quickly see that human convention itself would not be possible without said continuation. Hume, if offering this reply, could even point to the fact that we can see evidence for an instinctual concept of offspring, and some sort of drive which motivates actions of caring for said offspring within non-human animals. "The affection of parents to their young proceeds from a peculiar instinct in animals, as well as in our species" (Treatise 2.2.12.5). Importantly this is not to claim that Hume holds that animals have a sense of virtue and vice like humans, as he surely does not believe this to be the case, "animals have little or no sense of

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<sup>31</sup> It should be noted that I am merely using the word "evidence" to mean reason in favor of accepting. Although as Mackie points out, the questions Hume is attempting to answer "demand... an explanation of the sort typically given by the empirical sciences," I do not wish to appear, especially in this section of the current work, to be recklessly attempting to make scientific claims.

virtue or vice” (Treatise 2.1.12.5).<sup>32</sup> Instead this claim is able to provide further evidence for the placement of our concept of offspring and even virtue to care for offspring within human nature as opposed to human convention. This is because if non-human animals have a concept of offspring and drive to care for said offspring, then we are provided with a very good reason to reject the claim that our concept of offspring and virtue to care for said offspring is the sole result of human convention as we can see fundamental aspects of this concept and virtue at work completely outside the realm of human convention.<sup>33</sup>

Although I hold that it would be difficult for Hume to provide a similar case as the one provided above concerning our concept of offspring and virtue to care for offspring for all of the natural virtues, it does, at the very least, weaken my reply to his possible objection, as not all of the natural virtues would be affected in the same way, and thus there would be no forced stalemate. So, if I wish to give the strongest possible reason to believe that an instinctual concept of property and natural virtue of justice is possible within Hume’s moral framework, then I must also provide some kind of evidence, at least similar in kind to the evidence Hume could potentially provide concerning an instinctual concept of offspring and the accompanying natural virtue.

Although initially this may seem like a difficult task, I actually believe that it may be as simple and obvious as Hume’s possible evidence for the above concept and virtue concerning offspring. It should be noted that Hume actually clearly claims that animals do not have a concept of property as they are “incapable of that of right and property” (Treatise 2.1.12.5).

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<sup>32</sup> Importantly Hume asserts that animals do feel the passions of pride, humility, love, and hatred, but “the range of animal responses is more limited than that of humans” meaning as presented above “animals have little or no sense of virtue or vice” (Norton 503, Treatise 2.1.12.5).

<sup>33</sup> More specifically this allows us to conclude that we can observe these aspects of this concept and virtue outside of any convention remotely similar to that of the artificial virtues, as Hume holds that animals are unable to form abstract notions which conventions, as understood in relation to the artificial virtues, require. For more on this topic see Treatise 1.3.16.8 (Norton 504).

Importantly though, Hume is considering his definition of property, which is itself a concept resulting from a human convention. So, claiming that animals have no concept of property, when considering Hume's definition of property seems trivially true. However, when considering the possible instinctual concept of property I presented in the second chapter of this work I believe this is no longer the case. Significantly, as Norton points out when considering Hume's claim that animals have no concept of property "Hume might well grant that animals show a territorial instinct" (504). I hold that assuming Hume would grant this makes it no longer outlandish to claim that animals likely do have a concept of property similar to the concept presented earlier in this work, and further more may even have some kind of drive to, at the very least, retain and protect said property. (Importantly, this is, of course, not to say animals have a virtue of justice, just as Hume's evidence for the instinctual origin of our concept of offspring and virtue to care for said offspring is not evidence that animals have a virtue to care for offspring, but instead that similar instincts as the instincts necessary for some of our natural virtues can be observed completely outside of the realm of human convention.) A territorial instinct, at its core, seems to differ little from a simple original instinctual concept of property (as presented in this work), and ultimately, in humans, a virtue of justice. A territorial instinct which entails a simple mine/your distinction concerning currently possessed external goods, such as space and a drive which motivates actions to keep said space while in current possession of it seems to actually represent what I hold is a very similar occurrence within humans, as discussed above. I think the observation of birds in a nest or wolves which have marked their territory are prime examples of such an instinctual concept and drive. Thus, I hold we are able to observe fundamental aspects of the earlier presented concept of property and virtue of justice at work within non-human animals, meaning the same level of evidence for basing a concept and virtue in instinct, which Hume

could provide for our concept of offspring and virtue to care for offspring, can be provided in the case of our concept of property and virtue of justice (as considered in this work).

### *Section II: Consequences of the Categorization of Justice as a Natural Virtue*

I want to devote the last section of this work to an important question which lies at the heart of this project. This question being: what difference, if any, does the possibility of the categorization of justice as a natural virtue make to Hume's moral theory? Obviously, one difference is this new possibility itself, meaning the possibility of the categorization of justice as a natural virtue. Simply meaning if the arguments supplied in this work are successful, then the possibility of the re-categorization of justice as a natural virtue, within Hume's moral framework, is conceivable. I believe that this is a worthwhile result. Hume's ultimate goal, as presented by Mackie, is to explain "this curious phenomenon, human morality, a cluster of attitudes, dispositions, practices, behavioral tendencies, and so on that we find almost universally among men" and endeavor to answer the question "why is it there, and how did it develop?" (Mackie 6). Accepting the possibility of the natural virtue of justice is certainly important to a project which is in part an endeavor to explore why certain virtues exist, and how they developed, because it exposes an alternate explanatory path, and one that I hope this work has presented as feasible.

There is however another important consequence which would result from the actual re-categorization of justice as a natural virtue. I believe this result could actually provide an advantage to Hume's moral theory by helping to better explain Hume's observations about the social pervasiveness of a conceptual understanding of property and virtue of justice. Hume claims that "the convenience, or rather necessity, which leads to justice, is so universal, and every where points so much to the same rules, that the habit takes place in all societies; and it is

not without some scrutiny, that we are able to ascertain its true origin” (Enquiry 3.2.47). Of course by “true origin” Hume is referring to his proposed artificial origin of justice. So, Hume is claiming that a property concept and virtue of justice are the result of necessity, which of course aligns with his claim that artificial virtues are human conventions which are created to meet the needs and necessities of mankind. Significantly though, this passage seems to also commit Hume to the stance that our concept of property and virtue of justice are universally held and utilized among all of mankind. He claims that the necessity which leads to a property concept and virtue of justice is universal, and this results in this concept and virtue taking place in all societies and interestingly in all societies it even points toward the same rules<sup>34</sup> (Enquiry 3.2.47). This, Hume admits, makes it difficult to see this concept and virtue’s true artificial origin, as a natural origin is a tempting explanation.

Although I do not wish to claim that it is impossible for an artificial human convention which is the result of a universally encountered necessity of mankind, to become a universally utilized solution to said necessity, I certainly do think it adds a dubious element, albeit a small one, to Hume’s claims concerning virtue. At its core this uncertain element of Hume’s position requires us to accept that no group of people separated from all other groups created some alternative human convention as a solution to the problem the limited and uncertain supply of material goods presents. With this in mind, I hold that I can confidently propose that especially when considering Hume’s suggested universality of our concept of property and virtue of justice that the simple original instinctual concept of property and natural virtue of justice offered in this work would enable Hume to better explain this element of universality. If our concept of property and virtue of justice arises from an instinct embedded within human nature, then it

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<sup>34</sup> I am assuming Hume is referring to the more general rules of justice, as he certainly holds that the particular rules and laws of justice must make reference to particular customs and practices of any given society.

would make perfect sense that we see all societies with a concept of property and virtue of justice. It would even, since the instinctual concept and natural virtue offered in this work are merely seeds from which artificial human conventions can grow and develop explain the differences in the particular rules and laws concerning property that we see from society to society. Ultimately I wish to propose that when considering Hume's claim concerning universality, the instinctual concept of property and natural virtue of justice offered in this work provide a simpler and much more cogent explanation than the artificial concept of property and artificial virtue of justice which Hume offers. Although this not a reason in and of itself to accept the claims made in this work, it does offer one result of the re-categorization of the virtue of justice, which I think could actually strengthen Hume's position by eliminating a claim which seems under supported and vulnerable to criticism.

## CONCLUSION

The goal of this work was twofold. First, I presented Hume's major arguments in which he concludes that an instinctual concept of property and ultimately a natural virtue of justice are impossible. Second, I responded to each of these arguments in an attempt to show that Hume was mistaken to assert the impossibility of an instinctual concept of property and natural virtue of justice within his moral framework. This enabled me to conclude that the possibility of an instinctual concept of property and the re-categorization of justice as a natural virtue are viable possibilities within Hume's moral framework, and that these may also be commitments which offer a better explanation of the virtue of justice itself, then does Hume's explanation concerning an artificial origin, specifically when considering the pervasive nature of this virtue which Hume himself prominently notes. Ultimately, I hope this work has shown that the existence of an instinctual concept of property and natural virtue of justice are not only conceivable within Hume's moral framework, but are also possibilities which should be taken seriously as an explanation of this kind offers a clear, concise, and in some ways improved description of the origin of the virtue of justice.

Although I must acknowledge that no reason or reasons have been presented which necessarily force the re-categorization of justice as a natural virtue within Hume's moral framework, I do believe that this work as a whole is important to Hume's moral theory in general. First, as presented earlier in this work, Hume claims that for justice to be categorized as a natural virtue, meaning it is itself the result of a simple original instinct embedded within human nature, then a concept of property must too be the result of some simple original instinct also embedded within human nature. Hume dismisses this possibility with the claim: "But who is

there that ever heard of such an instinct? Or is this a subject, in which new discoveries can be made? We may as well expect to discover, in the body, new senses, which had before escaped the observation of all mankind” (Enquiry 3.2.40). At this point I hold that I can confidently assert that it does in fact appear to be the case that this is a subject in which new<sup>35</sup> discoveries can be made, and importantly that the discovery of an instinctual concept of property and natural virtue of justice is far less outlandish than the incredibly implausible discovery of a new human sense which no member of the human race has yet to notice. So, I hold that Hume has made an important error in claiming that the discovery of an instinctual concept of property and natural virtue of justice is impossible, as seen in his attempt to assign the same level of doubt to the discovery of an instinctual concept of property and natural virtue of justice as to the discovery of a new human sense. I believe this is significant to Hume’s moral theory in general because it introduces an error in Hume’s assumption that the categorization of justice as an artificial virtue is nearly self-evident, and instead offers strong reasons to believe the opposite (the categorization of justice as a natural virtue) is certainly possible, and may be true. Accordingly, the presentation of this possible natural explanation of the virtue of justice impacts Hume’s moral theory in general, by offering a feasible explanation of the natural origin of the virtue of justice, which Hume clearly held to be an impossible task.

Furthermore, I hold that the arguments presented in this work may also be able to offer an explanation as to why, from specific perspectives, the virtue of justice seems obviously artificial.

As was presented above, Hume compares the discovery of an instinctual concept of property and

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<sup>35</sup> It should be noted that by “new” I mean only to refer to the possible evidence for an instinctual concept of property and natural virtue of justice which is ‘new to Hume’ or ‘new within Hume’s moral framework.’ As was pointed out by Dr. Mathew Hickey, while commenting on this work, Aristotle among others note the placement of private property within human nature, meaning the discoveries necessary to present the possibility of an instinctual concept of property and natural virtue of justice, within Hume’s moral framework, are not new to philosophical enquiry as whole by any means.

ultimately a natural virtue of justice to the discovery of a new human sense (Enquiry 3.2.40). From Hume's perspective, that is the perspective of examining the complex and multifaceted rules and laws surrounding property and ultimately the virtue of justice, this comparison is certainly cohesive. As was presented in the second chapter of this work I undoubtedly agree with Hume that there is clearly no instinct or instincts which inform us in all of the current culturally accepted methods of the acquisition of property. Thus, due to the fact that Hume is examining the complex rules and laws which surround our current concept of property, it seems clear that he would hold that the discovery of an instinct from which these rules and laws originated was absurd. However, I believe the claim of an instinctual origin of our concept of property and ultimately a natural origin of our virtue of justice becomes far less outlandish when considering, as this work did, the possibility of a simple original instinctual concept of property, and natural sense of disapprobation towards character traits which motivate some to take other's property, from which these complex rules and laws have grown and developed.

I hold that it is even possible that in some cases the simple original instincts may be heavily cloaked by the human conventions which they have enabled to grow and develop. To exemplify this point consider the instincts of hunger and thirst. As was argued in the second chapter of this work, we can find some clear examples of human conventions which have grown from these instincts, but I would now like to argue that we may even be able to imagine specific scenarios in which human conventions actually conceal their instinctual origin. Take for example a fictional instantiation of human existence in which a community comes together so often to eat and drink that no individual members of said community ever feels hungry or thirsty. This meaning that no member of this community could ever feel the instincts of hunger or thirst, because of this human convention of coming together to eat and drink numerous times

throughout the day and night. I believe it is uncontroversial to point out that the simple original instincts of hunger and thirst would still be fundamental aspects of the human nature of each member of this community, even though this complex human convention was in place. I believe this can be supported by simply imagining some member of this community missing the scheduled eating or drinking time and becoming hungry or thirsty. I likewise hold that these two instincts would also be at the core of this rather outlandish human convention. Even though on any initial examination of the motive of members of this community to eat and drink one might be tempted to claim human convention as the source, I believe we, with a scrupulous eye, can confidently understand this human convention to be nothing but a rather complex development of the simple original instincts of hunger and thirst. With this in mind, I believe we can see that in some cases convoluted and complex human conventions can nearly conceal their true instinctual origin, even while this instinctual origin is actually acting as the fundamental and unchanging core of such conventions.

Consequently, I believe that this work can offer an explanation as to why Hume may have held the discovery of an instinctual concept of property and natural virtue of justice to be as unlikely as the discovery of a new human sense. Hume was looking at the present point of the extended timeline of the development of our concept of property and virtue of justice, so from his perspective any simple original instinctual concept of property would need to encompass a great number of complexities. With the arguments presented in this work I hold one can feasibly understand the current complex human conventions surrounding property and justice to be growths from the simple original instinctual concept of property and natural virtue of justice. So, much like in the above example concerning a community with strictly ritualized eating and drinking habits, it is understandable that one may mistake complex human conventions as

evidence in favor of dismissing an instinctual origin, but I hope this work has shown that doing so, within Hume's moral framework, is an mistake.

The second reason I believe this work is important to Hume's moral theory in general concerns Hume's distinction between natural and artificial virtues itself. This work has presented the possibility of the re-categorization of justice as a natural virtue, but I hold that it has also, albeit in an indirect manner, shown a possible method which could be utilized in arguing for the re-categorization of many, if not all, of Hume's artificial virtues as natural virtues. Although I understand this is a topic which would need to be explored in its own dedicated work, I would still like to briefly consider it here. Specifically, if the argument in this work concerning the possibility of simple original instincts acting as seeds from which complex human conventions can grow and develop is accepted, then it seems possible that other virtues which Hume presents as artificial may be forced into the realm of possible re-categorization.<sup>36</sup> Although further argumentation would be necessary to explore the possibility of the re-categorization of each artificial virtue, I hold that this could have a potentially significant impact on Hume's moral theory in general, as it offers a strong starting point from which arguments for the re-categorization of all Hume's artificial virtues as natural virtues could take hold. This possible re-categorization of all of Hume's artificial virtues as natural virtues would, of course, have a significant impact on Hume's moral theory in general, as it could call into question the distinction between natural and artificial virtues, and could lead to the disbanding of this distinction altogether.

Although it is not possible to go into detail, without the development of an additional work, concerning each of the virtues Hume names as artificial when contemplating the

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<sup>36</sup> It is likewise important to note that I am also assuming the argumentation which rejects Hume's claims concerning the enlargement of natural virtues in an attempt to eliminate artificial virtues is also accepted.

possibility of the success of this work acting as a foundation for claims concerning the re-categorization of other, or all, artificial virtues as natural virtues, I do think offering one brief but concrete example could be helpful. Take, for instance, the virtue of allegiance to one's government, which Hume firmly places within the category of artificial virtues. By utilizing the methods and arguments provided in this work concerning the virtue of justice I hold that one could make a strong case for the possible re-categorization of this virtue of allegiance to one's government from artificial to natural. As was shown above one could circumvent the problems associated with the complexity of a virtue, like allegiance to one's government, by simply arguing that within human nature there exists a simple original instinctual concept of a leader, and a corresponding instinctual, or natural, sense of approbation towards character traits which motivate oneself and others to abide by some current leader's requests. From this, as was done above concerning the virtue of justice, one could argue that our concept of government and virtue of allegiance to one's government are founded in simple original instincts embedded within the human breast, and over time complex human conventions have grown and developed from said instincts, and formed the concept and virtue we are familiar with today. This would enable, as was done concerning the virtue of justice, one to search for this simple original instinctual concept of a leader and instinctual sense of approbation towards character traits which motivate oneself and others to abide by a current leader's requests within human nature, instead of a complex multifaceted concept and virtue, which could, as Hume points out, never be the sole result of instinct, and must instead be the result of human convention, aimed at public utility. This would also aide in explaining, as was done in the case of justice, the widespread and pervasive nature of the virtue of allegiance to one's government that can be observed throughout time and among cultures, while allowing one to also explain the specific differences we see in

the rules and laws surrounding different communities' concept of a leader or government and virtue of allegiance to one's leader or government.

I believe I could even provide similar evidence for the instinctual origin of the virtue of allegiance to one's government as Hume provided for the instinctual origin of the virtue of caring for one's offspring, and as I provided for the instinctual origin of the virtue of justice. If we again look to non-human animals, as was done in the third chapter of this work, and take, for example, the existence of an alpha within any group of social animals, I think we can see at work an instinctual concept of a leader, and some kind of motivation to abide or comply with said leader's demands. At its core, as was the case with the virtue of caring for one's offspring and justice, this instinct within non-human animals seems to embody fundamental aspects of our concept of government, and virtue of allegiance to one's government. Thus, as was done when considering the virtue of justice, I believe we could likely show that a concept of a leader or government, and a virtue of allegiance to one's leader or government could be shown to exist, in some simple form, in nearly any instantiation of human existence (which, of course, does not explicitly rule it out)<sup>37</sup>. Even when considering the pre-societal family most would likely agree that some member of said family would act as a leader and assume a similar role and set of responsibilities as would the alpha of any group of social animals. So, we very well may be able to point to a simple original instinctual concept of a leader, and consequently a natural virtue to abide by said leader's demands, from which our artificial human conventions of government and many rules and laws related to the virtue of allegiance to one's government could have grown and developed.

With this example in mind, I hope it is clear why I hold that the argumentation in this work could be utilized as a starting point for other arguments which attempt to propose the

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<sup>37</sup> See Footnote 36.

possible re-categorization of artificial virtues as natural virtues. Again, it is important to point out that this was not the goal of the current work, but is instead, I believe, a possible significant consequence of the potential success of this work to Hume's moral theory in general. In short, if there appears to be relatively strong argumentation in favor of the re-categorization of each of the artificial virtues as natural virtues, then Hume's distinction, as presented in this work, would dissolve. That is, if one is able to argue that we can, as was done in the case of justice in this work, and briefly considered in the case of allegiance to one's government, discover simple original instincts at the core of all of our artificial virtues, which have, in time, enabled the growth and development of human conventions we understand today as any given artificial virtue, then Hume's distinction between artificial virtues and natural virtues would vanish.<sup>38</sup> This, of course, does not entail that pure human convention is impossible, but rather that the arguments in this work could be utilized as a possible starting point for considerations concerning the possible re-categorization of other, or even possibly all, virtues Hume labeled as artificial.

Finally, although I hold that providing evidence for the possible re-categorization of the virtue of justice from an artificial virtue to a natural virtue within Hume's moral framework is important, and the arguments involved may even have a significant consequence for Hume's

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<sup>38</sup> It should be noted that J.L Mackie does consider this same topic in his work *Hume's Moral Theory*, and even concludes that Hume's distinction between natural and artificial virtues should be dissolved. Mackie argues that the variations in our sympathy necessitate human conventions to be corrected. From this Mackie is able to conclude that all virtues are artificial, as "natural virtues are, after all, a further set of artificial virtues" as they too result from human convention (123). Although this is an interesting point at which to attack Hume's distinction, I hold that it ultimately fails in dissolving Hume's distinction altogether as one could argue that we need only to imagine the pre-societal family to unearth the true natural artificial distinction, because in that instantiation of human existence the variations in our sympathy would be minimal to none. It also fails to eliminate the possibility of natural virtues which are the result of simple original instincts embedded within Human nature, but which in time can sprout complex human conventions, as was argued in this work is the case concerning justice, and possibly other virtues. This is not ruled out because even if variations in our sympathy do necessitate human convention to be corrected that does not rule out the possibility of some virtues resulting from instincts which existed within Human nature before any variations within our sympathy were ever corrected, and which now lay at the core of these human conventions.

moral theory in general, I would like to end this work by presenting something Hume points out in his first enquiry, *An Enquiry Concerning Human Understanding*.<sup>39</sup> Hume claims that “moral philosophy, or the science of human nature, may be treated after two different manners” (An Enquiry Concerning Human Understanding 1.1). Hume presents the first of these two different manners is the easy and obvious and humane philosophy which has its foundation in common sense, meaning our tastes and sentiments, and is thus able to “make us feel the difference between vice and virtue” (An Enquiry Concerning Human Understanding 1.1). The second manner of philosophy is the accurate and abstruse philosophy. This philosophy “regard[s] human nature as a subject of speculation; and with a narrow scrutiny examine it, in order to find those principles, which regulate our understanding, excite our sentiments, and make us approve or blame any particular object, action or behaviour” (An Enquiry Concerning Human Understanding 1.2).

The reason I believe this to be an important distinction to note is that that current work appears to fall within the second manner of moral philosophy, which Hume presents as important and necessary, and having merit, but ultimately subservient to the humane philosophy, and something which on its own would be of little interest. Significantly though, Hume argues that the abstruse philosophy is subservient to the humane philosophy in the important role of aiding the humane philosophy in “attain[ing] a sufficient degree of exactness” (An Enquiry Concerning Human Understanding 1.5). Hume ultimately asserts that one ought to “be a philosopher; but amidst all your philosophy, be still a man” (An Enquiry Concerning Human Understanding 1.4). This meaning, I believe, do not get lost in ventures of accurate and abstruse philosophy without considering the importance and dominance of humane philosophy. When considering this work,

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<sup>39</sup> It is important to note, as was done in the first chapter of this work, that Hume’s second enquiry, *An Enquiry Concerning the Principle of Morals* is the work which was referred to as “The Enquiry” throughout the current work.

then, I hold that although it is a work of abstruse philosophy it is able to aid humane philosophy in providing exactness to our sentiments of approbation towards character traits which motivate our self and others to act honestly with respect to another's property.

## REFERENCES

- Baillie, James. *Hume on Morality*. New York: Routledge, 2000. Print.
- Barnett, Randy E. *The Structure of Liberty: Justice and The Rule of Law*. New York: Oxford University Press, 1988. Print.
- Beauchamp, Tom L., ed. *David Hume: An Enquiry concerning the Principles of Morals*. 1998. New York: Oxford University Press, 2006. Print.
- Cohon, Rachel, "Hume's Moral Philosophy." *The Stanford Encyclopedia of Philosophy*. Fall 2010 ed. Ed. Edward N. Zalta. Web. 3 Sept. 2013.
- Fieser, James. "Hume's Motivational Distinction Between Natural and Artificial Virtue." *British Journal of The History of Philosophy* 5 (1997): 373-388. Web. 6 March 2014.
- Mackie, J.L. *Hume's Moral Theory*. Boston: Routledge & Kegan Paul, 1980. Print.
- Norton, David Fate, and Mary J. Norton, eds. *David Hume: A Treatise of Human Nature*. 2000. New York: Oxford University Press, 2005. Print.