

Justice and the General Point of View in Hume

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Introduction

The objective of Hume's *Treatise*¹ lies in the elucidation of the whole range of morality, and the theory of justice is central in its theoretical composition and its practical significance. In this paper, I will try to illuminate Hume's theory of justice as based on his epistemological position, and to show how justice is founded on the principle of sympathy, while being established as an artificial virtue. Hume's theory of justice can be considered as a systematic succession and criticism of, most of all, the ideas of Hobbes and Locke. What is at issue is how to explain the moral principle that universally binds individuals beyond their individual preferences. Hobbes regards the will of the sovereign as the only possible substitute for the universal that binds individuals. Therefore, the will of the sovereign determines justice. Locke denied the idea of Hobbesian justice, and asserts that the dictates of reason represent justice. Locke's theory reflects his conceptualism wherein the discovery of reason determines the universal. This difference between Hobbes and Locke corresponds to their different pictures of human beings. Hobbes's picture of human beings is fundamentally hedonistic, while Locke views human beings as rational. However, Hobbes and Locke share the assumption of individualism, that is, a theory of presupposing independent individuals before society.

In his criticism of the theory of justice in Hobbes and Locke, Hume directs his fundamental criticism to their individualism. Hume attempts to replace their theory by proposing custom as the template of justice. Custom has been the constant theme throughout the whole of Hume's *Treatise*. This is true also in Hume's theory of justice. Most important, making custom the basis of justice illuminates Hume's unique way of realising mutuality. On the one hand, Hobbes's idea of mutuality is realised by the exchange of positions with others, i.e. by seeing oneself as one sees others. It is important to note that this is different from the Smithean exchange of positions that allows

people to see themselves from the point of view of others, which should be impossible in Hobbesian individualism. On the other hand, Lockean mutuality is attained by obeying the prescriptions of the Natural Law. Lockean mutuality is founded on a rational perspective. Hume rejects both theories as untrue to human nature, and founds mutuality on convention. Mutuality enables the pursuit of self-interests in a cooperative manner. The fundamental characteristic of Humean justice lies in showing the unity of society, self-interest, and morality. I attempt to argue that Hume's general point of view is the unifying concept behind those three concepts.

In section 1, I argue that justice appears as a cause that regulates human behaviour. Justice is artificial because it is a product of convention and is not found in nature. In section 2, I argue that Hume founded the necessity of justice on the natural circumstances, both material and psychological, of human beings. This explains why Humean justice is an artificial "virtue" centring primarily on the relationship of "property". In section 3, I discuss why Humean justice realises society without resorting to any quasi-universals as the Hobbesian or the Lockean theories do. In section 4, I argue that Humean justice consists in the general point of view that realises human mutuality and cooperation. In section 5, I argue that, unlike the common allegation, the Humean theory of justice comprises a full-fledged theory of rights, and I show that Hume's dealings with "rights" have a parallelism with his dealings with the concept of "power". In section 6, I show that the rule for determining property is far from arbitrary, but is founded on Hume's theory of human psychology as the principle of human nature. This paper clarifies that Hume's theory shows how public interest and private interest coincide in justice.

1 . Justice as Artificial Virtue

The most striking characteristic of Hume's philosophy is that, whichever topic he discusses, Hume always sets his eyes on "causation". So it is with his discussion of the law of natural science, and so it is with his discussion of moral judgement. Those kinds of actions that cause pleasant sentiments in observers signify a virtuous character, and those that cause painful sentiments, a vicious one. Moral judgement has as its object the motivation of the agent as the cause of virtuous or vicious action. Hume lays such

emphasis on the motivation of an agent precisely because it causes human action. When Hume considers justice, he regards it as a kind of virtue in the sense that it is concerned with the evaluation of human behaviour.

Hume begins his discussion of justice by highlighting seemingly incomprehensible phenomena. From the general observation of virtuous actions, he observes that justice is characteristically performed without being directed at any good effect other than morality; justice seems to be performed for no other reason than that it is a duty. This is an enigma because all human behaviour is motivated by some good effect as commonly recognisable in animals. Hume thinks that the most fundamental tenet of morality is the pleasant or painful effect of an action. He says,

It appears, therefore, that all virtuous actions derive their merit only from virtuous motives, and are consider'd merely as signs of those motives. From this principle I conclude, that the first virtuous motive, which bestows a merit on any action, can never be a regard to the virtue of that action, but must be some other natural motive or principle. ... We blame a father for neglecting his child. Why? because it shews a want of natural affection, which is the duty of every parent. Were not natural affection a duty, the care of children cou'd not be a duty; and 'twere impossible we cou'd have the duty in our eye in the attention we give to our offspring. ...

In short, it may be establish'd as 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.* (T 3.2.1.4-7; SBN 478-9)

It is noteworthy that Hume thinks that nature provides us with the paradigm of virtue. In other words, nature shows the example of moral behaviour by giving us motivation. Therefore, normativity is preceded by some natural motivation, which is why human beings have survived so far. This idea is a very radical transformation of the traditional theory of the natural law that resorts to reason for its prescription. Hume's thesis of the priority of passion over reason as a moral paradigm is related to this position. If virtuous action should be backed by some natural motive, the fact that not all types of virtuous actions can be explained by natural motive

signifies a breach of the rule of nature. Just actions are to be performed regardless of our natural tendencies and are often in conflict with them. Therefore, the moral value of justice has apparently nothing to do with the direct effects of the action. Artificial virtue means that it does not originate directly from nature. Hume's central task is to explain how this happens.

Hume titles the first section of the chapter on justice "Justice, whether a natural or artificial virtue?" This in fact is an alternative between the Hobbesian and Lockean positions regarding this matter. And Hume clearly stands with Hobbes. Hume demonstrates the artificiality of the virtue of justice by examining its three possible natural motivations: "private interest or reputation" (T 3.2.1.10; SBN 480), "the love of mankind" (T 3.2.1.12; SBN 481), and "*private benevolence, or a regard to the interests of the party concern'd*" (T 3.2.1.13; SBN 482). The first and the third of these are discarded for the similar reason that justice is often done in opposition to, not on behalf of, them. The second possibility is denied because there is no such thing as love of mankind. This indicates the evidence that Hume thinks about justice in reference to the psychological mechanism of human perception that is naturally influenced by one's close circle. As clarified in his theory of sympathy, human love as constituted of sentiments changes its strength in accordance with the psychological distance from the agent.

The artificiality of justice does not mean that justice is arbitrary, but that, as Hobbes argues, there is no such thing as justice in the state of nature. Obviously, civil society is not a state of nature, and therefore what distinguishes civil society from the state of nature has to be something artificial. Hume adopts an evolutionary explanation to clarify the nature and the significance of justice. Justice is a central concept for explaining the formation of society as an extension of human relationships. This essential character of society as a development from natural relationships necessitates a new principle that is not witnessed in nature. Sympathy functions as this central principle². But this does not mean that the artificiality of justice has nothing to do with natural principles. On the contrary, justice as artificial virtue must be understood as grafted on to the natural principle of sympathy³. Unlike Hobbes, Hume's theory of justice is an attempt to show this continuity.

Therefore, Hume's theory of justice explains the development of civil

society as a product of human interaction. More specifically, it means that civil society has been formulated from the given natural conditions surrounding human beings. The Humean state of nature comprises 1) individual human beings, 2) families as the primitive union of both sexes driven by natural instinct which subsequently results in reproduction, and 3) natural environments. Justice is at once the decisive factor that distinguishes between the hypothetical state of nature and society, and the driving force which transforms a natural human group into a civil society. In other words, justice is the missing link between a natural human group and a civil society.

There is no doubt that people notice the advantages of human cooperation in their experiences in a family group. Human beings, therefore, desire society. However, there is a hindrance that prevents the family group from developing into a society. Hume is unequivocal about the specific cause that hinders the development of society from the family unit. It is, according to Hume, man's self interest which tends to focus on the conveniences of himself or his family members. Therefore, justice has to work as an opposing force to this natural interest. The artificiality of justice explains why Hume regards the virtue of justice in connection with duty. Duty and causation have an important feature in common that they are both perceived with the feeling of something imposed from outside.⁴ The apparent strictness of justice is reflected in the fact that justice is based on a different principle from natural virtue. The indifference to natural reactions explains the inflexible appearance of the artificial virtue of justice.

On the other hand, the strict application of justice does not mean that justice corrects the selfishness of man.⁵ First, the natural tendency of human nature cannot be corrected. And second, justice does not deny selfishness; instead, it liberates and, in a crucial sense, develops it. Hume clearly sees that the natural tendency of selfishness is not a vice, and more fundamentally there would be no need of justice without "selfishness" as a natural attribute of the human condition. This is another sense in which justice is not a matter of right or wrong. It is important to remember that artificiality is only possible where human behaviour is freed from physical determination, or from an automatic response to the immediately preceding condition. In this respect, the artificiality of justice presupposes the development of human perceptions. Because of the formative nature of perceptions, selfish

sentiments gained through experience can manifest themselves differently in a society.

There is a deceptive tendency in human nature that confuses the final product with an independent entity as can be seen in Hume's arguments regarding causation, or external objects. Justice is another subject explained by this tendency. Most natural law thinkers typically insist that justice is absolute and has its authority in the eternity or absoluteness of reason. In order to reveal the fallacy of this notion, it is necessary for Hume to clarify the evolution of justice. Hume tries to naturalise the notion of justice by showing its connection with natural conditions and human psychology.

2 . Preceding Conditions for Justice

While Hobbes's theory of justice centres on life, and Locke on liberty, they aim to present a theory for deciding and securing property. Hume agrees with neither of them because their theories do not match the principal working of custom and imagination. However, Hume's theory of justice shares the common feature with Hobbes and Locke in that he focuses on property; Hobbes demands the absolute necessity of establishing a single sovereign so that the allocation of property is decided singularly, and Locke replaces Hobbesian theory of property with his "labour theory" that property ownership should be given to those who laboured to produce the property. The most significant characteristic of Hume's theory of justice is that he deals with property *per se* prior to dealing with life or liberty. It is necessary to understand why Hume focuses on property directly. Some commentators criticise Hume for his "bias" on property. Typically, Lawrence Scaff agrees with A. Wozzley and says,

The error of identifying the whole of justice with the rules governing property seems all too obvious: all those cases in which our considered moral duties contravene formal legal requirements must be excluded by Hume, as must those cases, far from uncommon nowadays, in which our sense of justice can only be satisfied through the exercise of human rights. Why, then, should Hume have thought that "perfect harmony" in society could be achieved by securing property and property rights? No doubt one should partly blame his classification of human 'goods' and the consequent

belief that of these only "such possessions as we have acquir'd by our industry and good fortune" [T 3.2.2.7; SBN 487] present any serious problems for political philosophy. I can only agree that Hume's analysis here is woefully shortsighted and unconvincing. (Scaff, 1978: 102)

In fact, this criticism reflects a prevailing approach to understanding Hume.⁶ Understanding the full scope of the discussion of property is the key to understanding Hume's theory of justice. Like Hobbes and Locke, Hume begins his discussion of the formation of justice by considering the natural conditions of human beings. He maintains that there are two conditions that describe the natural circumstances of human beings: "*the selfishness and confin'd generosity of man, along with the scanty provision nature has made for his wants*" (T 3.2.2.18; SBN 495). Justice is contingent on these natural conditions. This means that were these conditions different, there would be no justice; with unlimited natural resources, or with divinely inspired benevolence toward other people, there is no need for justice. Also, if people's possessions could not be transferred from one person to another, justice is purposeless. Therefore, Humean justice is neither logical nor absolute.

These initial conditions prior to civil society already reveal the fundamental function that justice should fulfil. The contents of justice are determined by the initial conditions of the natural circumstances of mankind. First, the limited amount of natural resources means that people cannot take as much as they wish. Therefore, it will be necessary to set a limit on their possessions, and this containment of desire is the basis of the system of property as rules of possessions. Thus, in light of the first condition, Hume's theory of justice comes to be concerned with the problem of distribution of goods. Second, in order to cope with the limited benevolence of people, justice has to be considered in reference to the moral dispositions of people. Thus, in light of the second condition, Humean justice is to function as a virtue.

In this way, the basic nature of Humean justice is broadly based on the historical condition in which people are placed preceding society. For Hobbes, justice has its roots in anti-reality in the sense that justice is a means to prevent falling into a condition without justice; and for Locke, justice has

its roots in a trans-reality (an ideal) that ought ideally to be realised by people. For Hume, justice is a means of coping with human circumstances which are a result of our natural environment and human psychology.

Limited benevolence does not mean that human beings are totally self-regarding, but that human benevolence can extend only as far as the reach of sympathy. Hume thinks that "all the kind affections, taken together ... over-balance all the selfishness" (T 3.2.2.5; SBN 487). Because of this, people are capable of abiding by the rules of justice spontaneously, not based on selfish motivation, in other words, without being enforced by an external power. Though a spontaneous rule of justice is unthinkable in Hobbes, Hume's theory of sympathy prepares the psychological mechanism that enables just that.⁷ As Hume says,

By this means [N.B. convention], every one knows what he may safely possess; and the passions are restrain'd in their partial and contradictory motions. Nor is such a restraint contrary to these passions; for if so, it cou'd never be enter'd into, nor maintain'd; but it is only contrary to their heedless and impetuous movement. (T 3.2.2.9; SBN 489)

This moderate picture of human psychology is the necessary condition for human beings to adapt themselves to the new order that places them in a compatible relationship with other people in general. This contrasts sharply with the Hobbesian people who cannot alter their fundamentally ego-centred psychology. Therefore, Hume's theory of justice is linked to the psychological characteristic of human beings, which enables men to form a society without an external force acting upon them. Practicability which is implied in convention is a key notion in the Humean theory of justice. Because society is a product of causal interactions, society is rightly construed as originating in human nature. Hume's basic understanding of society ascribes the origin to convention in opposition to the idea of a product of design either by people or by nature.⁸

Hume thinks that human beings must have fully experienced the disadvantages of their natural conditions and the advantages of human cooperation before they obtain the virtue of justice. In other words, it is impossible that human beings come to notice the necessity of justice by

abstract reasoning. In contrast, Hobbes asserts that the absolute necessity of justice is appreciated by thought experiment. For Hume, family life provides not only the fruit of co-operation but also the necessary training for co-operating with other people. However, the family unit as the first and most primitive form of society itself poses a problem as man tries to develop it into a larger unit in order to enhance the advantages of human cooperation. A different principle is required to form society than the natural principle at work in the family. At this point, Hume recognises the occasion of the emergence of justice; justice is required in order to develop society by breaking the natural tie of the family. This requires a contradicting force to human psychology that tends to focus on one's proximate relations. Justice consists in overcoming this contradiction between the natural tendencies of human nature and society. And society consists in human relationships that are beyond direct perception.

3 . The Stability of Property

With the explanation of natural conditions, neither as an unrealistic hypothesis nor as an ideal, Hume clarifies the concrete step needed for creating society. It is to coordinate the property relationship among human beings. Justice as the principle of society emerges as a process of adjusting the relationship between people and objects, rather than between people as in Hobbes, or between government and people as in Locke. The primary model of the connection between human beings and property is already illustrated in Hume's theory of sympathy. In this sense, Hume's theory of justice compensates his theory of sympathy which explains how natural things are transformed into property that is backed by mutual recognition. Possession of material goods contributes to the creation of an evaluation of the self. And people are naturally inclined to possess external goods for the sake of improving their self-image, via the evaluation of other people. Here, in a different manner from Hobbes or Locke, is the source of people's quest for external goods. Clearly, unrestricted self-interests and avarice bring disorder to social relationships. Therefore, in order to attain stability, it is necessary to redirect the sentiment of self-interest properly so that it is not destructive to society.

Hume classifies human goods into three categories: "the internal

satisfaction of our mind, the external advantages of our body, and the enjoyment of such possessions as we have acquir'd by our industry and good fortune" (T 3.2.2.6; SBN 487). Hume concludes that the third kind of good is the only object with which justice is concerned. First, inner peace of mind cannot be an object of justice, for it is not an object of possession, and thus it is safe from any robbery. It is appropriate to take this as his defence of the freedom of faiths. Second, "the external advantages of our body" is excluded, for as Hume says, they "may be ravish'd for us, but can be of no advantage to him who deprives us of them" (T 3.2.2.7; SBN 487). This implies a criticism of the Lockean theory, which is based on the fundamental property of one's body.⁹ Hume does not count the body as one of one's possessions, because it is not an object of artificial arrangement, nor is it transferable.¹⁰ If the body is recognised as one's property, it presents a problem to the ontological status of the "self". If the owner of the body must be different from the body itself, then where is the owner of the body? The situation would be further complicated if, for example, parents claimed the body of their child as their possession.¹¹ Thus, in order to recognise one's body as a property, one has to subscribe to the metaphysical assumption of the Cartesian self or the Lockean mind as substance (Cf. *Essay* 2.23.5)¹².

However, unlike mind and body, the situation is completely different with external goods in that they are at once very easily transferable, and vulnerable to the violence of other people. External goods can be useful to any person, and can cause disputes among people regarding their ownership. Most of all, they are the object of people's avarice and self interest. Not only do disputes regarding ownership ignite the fiercest kind of struggle, they are totally destructive to society itself. Therefore, ownership is a social construction, and must be recognised by people in general.

The fundamental threat for the stability of a society is the general tendency of people to violate the possessions of others, rather than a specific threat from specific people, precisely because society itself consists in the generality, and cannot cope with a general tendency to disorder. For example, if likely "burglars" can be specified in advance, and the number is relatively small, justice will not be necessary; people have only to remove those dangerous causes to resolve the problem once and for all. On the other hand, if people in general are convincingly determined to violate the

possessions of others, i.e., when the whole society is swarming with ruffians, or in a state of emergency, to protect people's possessions from others would be too much a burden to carry, "the suspension of all laws of justice" would be the result (EPM¹³ 3.16; SBN 190). In order for justice to obtain, society should be more or less dominated by a general tendency to justice, though possibly accompanied by some exceptions.

Therefore, it is not arbitrary that Hume's theory of justice centres on property. Hume even emphasises that once the system of property is introduced, "there remains little or nothing to be done towards settling a perfect harmony and concord" (T 3.2.2.12; SBN 491). Hume understands that it is not correct that the main threat to society comes from violence toward other people (cf. Baier, 1991: 221; Postema, 1986: 103-4). Even if violence destroys society, it is only a proximate cause, and there is a further root cause for it.¹⁴ His theory of sympathy supplies the ground for his position; human beings have no natural desire to injure other people. Human beings are naturally disinclined to cause pain under normal circumstances because of the mechanism of sympathy. In the case of sporadic breaches, people can cope with them by natural principles. However, the situation is totally different in the case of property. Human avarice toward external goods knows no satisfaction. And it is the main cause of people inflicting violence on others. People conflict with each other, often resorting to violence as a means to obtain external goods.

If people come to notice the benefit of society and recognise the cause that tends to disturb it, it should be only natural for them to search for a way to escape from the trouble. Social disorder is nothing but the lack of stability. Therefore, people look for stability. In Hume, the convention of not violating the possessions of others represents a moderate awareness of the preference for peace. This can be seen as a moderate version of the Hobbesian turn from war to "peace" in the "Fundamental Law of Nature" (*Leviathan*, 1.14)¹⁵. Therefore, people in Hume naturally try to attain stability just as people in Hobbes seek peace to escape from the fear of a war of all against all. Now the problem is how to attain the stability of possessions. Hobbesian people hastily jump to the solution of the mutual covenant and the establishment of a common and absolute authority by relinquishing one's natural rights. People in Hume, on the other hand, have

no "rights" to renounce prior to society. The Humean artificial virtue of justice has to be developed not instantly but in a gradual process, so that Hume's explanation is not a hypothesis to be justified but an explanation of human nature.

In the place of the Hobbesian natural right, Hume observes that there is an alternative mechanism equipped in human nature that serves to procure the stability of property, which is the psychological tendency of attachment to one's possessions. This is what Hume explains as the second definition of being "natural" "as oppos'd to what is unusual" (T 3.1.2.10; SBN 474). Unlike the once and for all determination of reason, custom can be formed only gradually, which makes abiding by the rules of justice appear natural which is the hallmark of the stability of a society. Hume is obviously critical of the idea of people resorting to authorities to acquire peace, because this is too abstract and complicated an idea to be embraced naturally.¹⁶ Human beings feel attached to the possessions with which they engage in their daily activities. Habitual actions give people the occasion of improvement of skills, and eventually lead to the increase of the material conditions of the society. All these are impossible where there is no stability, since without stability people cannot habitually repeat their daily activities; without practice, there is no improvement.

Once stability is recognised as the *sine qua non* of the good life, the most effective way to secure stability is easily found; concentrate on one's own while letting others work in the same manner. It is noteworthy that by concentrating on one's own, one naturally leaves the possession of others to themselves. And the latter is subordinate to the former. Sympathy is involved in this process in a double sense; a person's concentration on his own possession is motivated by the evaluation of others, which is conveyed by sympathy, and people refrain from violating the possessions of others because sympathy urges them not to do so. As this practice is precisely in accordance with the psychological mechanism, justice can prevail naturally among ordinary people without resort to "fear" or "reason". Furthermore, with the formation of this convention, any breach of the convention appears unnatural. There is only one more step before the convention is proclaimed as a conventional law, which becomes the initial law of justice. Because of convention, people are naturally initiated into the practice of following the

rules of justice, which will expand as necessary. Also, the practice implies the initial idea of rule by law.

This convention proves to be a significant solution to the problem of how to form a society. It brings an unintended and very significant consequence with it. Society is based on a crucially different principle from the family. And this is that the latter is constituted by anonymous people or people in general while the former is constituted by members all of whom are known to each other. Therefore, to form a social union, there has to be a principle that serves to unite people who are unknown to each other. Convention meets this requirement because it is a principle of generality; convention, like language or money, serves to no specific person or no specific purpose. The scope that is determined by the same convention demarcates a society. By resorting to convention, people can relate with each other beyond the natural reach of their physical and psychological contact. And the convention not to violate other people's property can prevail because it is in accordance with human nature. It is practicable for all the members of a society to participate in the formation of justice without any prior arrangement, because everyone always and already has "what is the most proximate to him". Therefore, there is no inconsistency in Hume between the creation of convention and the stability of society. Without intending the overall effect, the convention of adhering to one's own possession naturally brings stability to the whole society. In other words, there is no contradiction between the means and the end in attaining peace in Hume. Because individual activity realises the unintended stability of society, it is no wonder that the final appearance of justice gives birth to the vulgar notion of providence.

4 . Mutuality and the General Point of View

The formation of the concept of justice is the most significant point in Hume's theory of justice. This is different from the explanation of why we approve the act of justice. This problem is misleading because it presupposes the separation of the reason for our obeying the rules of justice from their formation and existence.¹⁷ Hume's theory of justice as based on convention purports to avoid this dichotomy. For Hume, justice exists only as a functioning norm of virtue that binds people. Hume compares justice to a

religious rite:

'tis one of the most mysterious and incomprehensible operations that can possibly be imagin'd, and may even be compar'd to *transubstantiation*, or *holy orders*, where a certain form of words, along with a certain intention, changes entirely the nature of an external object, and even of a human creature. (T 3.2.5.14; SBN 524)

This means that natural objects acquire an entirely different meaning in accordance with the instruction of the system of justice to society. Accordingly, people behave in a totally different manner toward the same object when subscribing to the principle of justice. In this sense, justice is compared to a religious rite, money, or language where the significances are detached from their physical materials.

In the psychological sense justice consists of necessity for controlling people's behaviour in general. In other words, justice exists as our convention of behaving on the supposition of justice. Here is the parallelism between causation and justice.¹⁸ The concept of justice is solid because it is deeply interwoven into our social conventions which come prior to our personal consciousness. Therefore, justice is not a dictate of reason. It is also mistaken to identify the explanation of the concept of justice with a justification of the current system of property.¹⁹ Hume's theory of justice is the story of how the concept of justice emerges in an empirical manner. Only the application of justice can be the subject of justification, but the justification is first possible on the basis of the notion of justice itself. Thus, it is possible to ask whether something is just, but it is impossible to justify the concept of justice itself²⁰. It is to the latter that Hume supplies a naturalistic explanation.

The conventional stability of property does not simply mean the restriction of the blind pursuit of self-interest. More significantly, convention introduces a new dimension to the notion of self-interest; it is an interest not directly pursued, but realised through mutuality. In the first place, Hume's theory of sympathy reveals that the purely individual benefit that is independent of social recognition is a deception precisely because individuals are a social creation.²¹ Even seemingly purely physical desires

appear and are fulfilled only in a social manner. One cannot even understand "thirsty" or "hungry" until one learns how to deal with them; that babies feel "thirstier" or "hungrier" only as uncomfortable situations is evidence of this.

In a similar sense, the idea of individual interests without sound community is only a deception. For something to be valuable it has to be recognised by others. Most notably, money is only a piece of paper without social recognition.²² Therefore, justice serves to create and coordinate interests in the social dimension of life. No human being can work exclusively for himself, or even by himself. Human activities have influence upon others in a manner that is beyond direct perceptions, and human lives are supported by the works of others beyond identification. For example, clothes, food, and houses are goods resulting from the activities of numerous others. In this sense, individuals are related to all of society. Therefore, Humean justice is fundamentally a principle of human mutuality. Hobbesian mutuality lies in the recognition of the equality of others with oneself, which occurs prior to the establishment of a sovereign. Lockean individuals realise mutuality by the equal application of the prescription of the natural law to all. For Hume, however, mutuality is realised through convention in which people seek self-interest in a cooperative scheme with others. This is possible when one is expected to behave in the same manner he expects others to behave toward him. Hume explains,

Taking any single act, my justice may be pernicious in every respect; and 'tis only upon the supposition, that others are to imitate my example, that I can be induc'd to embrace that virtue; since nothing but this combination can render justice advantageous, or afford me any motives to conform myself to its rules. (T 3.2.2.22; SBN 498)

This shows that justice implies mutuality of the self and others. And mutuality factually implies the equality of the people. Because the rule of justice already prevails the rule of justice, people can rely on it, even abandoning seemingly immediate interests. This is first possible when people are freed from the direct pursuit of self-interest. People depart from their immediate, self-centred reactions by correcting initial perceptions. In this sense, justice is founded on the generality of perceptions, rather than on

overtly normative principles such as impartiality, rationality, or fairness.

For Hume, mutuality does not mean that people must engage in a joint enterprise. On the contrary, in Humean convention, each person has only to do his duty, and to leave the rest to other people. Behind this lies a realisation that self-interest can be realised most efficiently by taking care of one's own possessions, while leaving the possessions of others to other people. In fact, when one is to relate with others, all one can do is to work on his own possessions in a socially recognised manner. This is a paradoxical way of actualising self-interest, and can never be invented by any abstract reasoning. The emergence of this convention can only originate from experience, but the final figure appears like a product of design or providence because it is beyond individual intention. This is best illustrated by a commercial society based on the "partition of employments" that Hume had anticipated both in theory and in his personal experience²³. Hume illustrates the convention of mutual expectation in the well-known example of the people rowing a boat together.

I observe that it will be for my interest to leave another in the possession of his goods, *provided* he will act in the same manner with regard to me. He is sensible of a like interest in the regulation of his conduct. When this common sense of interest is mutually express'd, and is known to both, it produces a suitable resolution and behaviour. ... Two men, who pull the oar of a boat, do it by an agreement or convention, tho' they have never given promises to each other. (T 3.2.2.10; SBN 490)

Hume compares the British Isles to the boat. The boatmen do not pull the oars independently, for each pulls the oar counting on the other doing the same thing. Through convention, people begin to act counting on the action of unknown people in pursuit of their self-interest. People rely upon other people who behave in the same manner. Thus, the Humean mutuality is fundamentally neither moral, nor rational, but conventional. This represents the most fundamental basis of the solid interdependence among people.²⁴ If the mutuality were to depend on the will of others, it would be as fragile as the arbitrary will of others. But as it depends on custom, the mutuality has all the advantages and solidity of custom. Hume illustrates the difference

between benevolence and justice in an example from architecture.

The happiness and prosperity of mankind, arising from the social virtue of benevolence and its subdivisions, may be compared to a wall, built by many hands, which still rises by each stone that is heaped upon it, and receives increase proportional to the diligence and care of each workman. The same happiness, raised by the social virtue of justice and its subdivisions, may be compared to the building of a vault, where each individual stone would, of itself, fall to the ground; nor is the whole fabric supported but by the mutual assistance and combination of its corresponding parts. (EPM Appendix 3.5; SBN 305)

This clearly suggests that the essence of justice consists in mutual dependency; people support each other by being placed in a situation of connecting with and supporting each other. A vault would collapse, were the individual stones that comprise it separated from each other. They are not arranged by an organiser from outside. Likewise justice creates the mutual relationship in which each individual depends on others. Though each member directly connects only with his neighbours, they contribute to, and obtain benefit from the whole construction of society. Justice guarantees the point of view that sees one's interests from the common perspective of other people in general. Thus, justice represents the general point of view.²⁵

The primary function of justice is to enable people to concentrate on their own work, without worrying too much about the behaviour of others, in the understanding that others do the same. Thus Hume rewrites the Lockean concept of labour. Humean individuals work with their possession, while Lockean individuals are supposed to act on nature. In this sense, Hume's theory is more tuned to describing industrialised society. Once justice is established, it defines the meaning of interest as well as the way of realising personal interest. This is because justice requires abandoning the direct pursuit of particular interests. As Hume says,

A single act of justice is frequently contrary to *public interest*; and were it to stand alone, without being follow'd by other acts, may, in itself, be very prejudicial to society. When a man of merit, of a beneficent disposition,

restores a great fortune to a miser, or a seditious bigot, he has acted justly and laudably, but the public is a real sufferer. ... But however single acts of justice may be contrary, either to public or private interest, 'tis certain, that the whole plan or scheme is highly conducive, or indeed absolutely requisite, both to the support of society, and the well-being of every individual. (T 3.2.2.22; SBN 497)

Hume emphasises that justice gives a meaning to "a single act" different from its direct effect. The full meaning of a single action is not determined only by its direct effect.²⁶ In this way, Hume's theory is thoroughly associative. This is clearly explained in his theory of abstract ideas; what confers meaning to a particular is the general effect of its similar kind as is shown in his theory of "abstract ideas". In the same manner, a single action does not have general meaning until it is evaluated as a particular of its general kind, which is realised through the creation of a new convention. The meaning of interest between the pre-social state and social state is totally different; individual interest is possible only in the social state. In fact, Hume is no less uncompromising about the necessity of justice than Hobbes. Hume says in a Hobbesian tone:

And even every individual person must find himself a gainer, on balancing the account; since, without justice, society must immediately dissolve, and every one must fall into that savage and solitary condition, which is infinitely worse than the worst situation that can possibly be suppos'd in society. (T 3.2.22; SBN 497)

Justice is necessary for sustaining society, and without society Hume understands human life is as bad as the Hobbesian description of the state of nature. Fundamentally, justice has more to do with the framework in which the interest is produced. The Humean sense of justice as personal interest does not make sense without supposing a point of view that represents particular action in its generality. Just as in custom particulars are regarded as instances of the generality the convention of justice enables people to see their behaviour in the general scheme of justice.

5 . Rights as Causation

While Locke certainly does not mean to surprise us by the concept of property when he refers to our body as the first thing we have as property, Hume induces us to be surprised by the mysterious power of property, as he compares it to "superstitions" (EMP 3.36; SBN 198)²⁷. However, property is indeed quite mysterious if we view it from a causal perspective. Hume says,

The same species of reasoning it may be thought, which so successfully exposes superstition, is also applicable to justice; nor is it possible, in the one case more than in the other, to point out, in the object, that precise quality or circumstance, which is the foundation of the sentiment.

But there is this material difference between *superstition* and *justice*, that the former is frivolous, useless, and burdensome; the latter is absolutely requisite to the well-being of mankind and existence of society. (EPM 3.37-8; SBN 199)

Property consists in the mysterious power to prevent all people except the owner from using it. Why is it that the same physical object can exert such different causal influences on people's behaviour? There is no such thing as property in nature; all we perceive in nature are particular objects. And none of them bears any sign that presents itself as a property of a particular person. Still, property exerts a power to regulate and control people's behaviour. Once justice is established, people will be forced to respect the property of others by a morality that is endorsed by a political authority. No individual is more strongly obliged to refrain from using another's property than any other person.²⁸ Therefore, property means nothing but this unnatural power which reaches each and every member of the society with an equally binding force.

It is clear that the power of property does not derive from any inherent quality of the object. Thus, the power can only derive from a relation, which is represented by the general point of view. Property consists in a causal power that in a sense parallels the psychological sense of necessity. There is no essential difference between the power of a physical object and that of property in that both compel a certain type of behaviour based on acquired beliefs. Through convention, people feel compelled to refrain from violating

the domain of others. The power of property is in reality nothing but those collective negative commitments of individuals. In this way, Hume explains the rule of justice without resorting to any external force.

Unlike the allegation of some commentators, Hume's theory of justice comprises a theory of rights. Hume's understanding of property as a socially constructed power explains the crucial moral and political notion of rights. It is Hume's conscious strategy to replace the Lockean understanding of rights as an inherent quality of a person with his causal explanation. This indicates Hume's different perspective; his Copernican turn from a substance-centred to a relation-centred notion of property. Hume explains the mechanism through which human beings can be regarded as having rights, and why the rights command other people to behave in a certain way. Therefore, he uses a similar strategy to explain rights as in his discussion of causation. He clearly understands rights as the product of convention,

After this convention, concerning abstinence from the possessions of others, is enter'd into, and every one has acquir'd stability in his possessions, there immediately arise the ideas of justice and injustice; as also those of *property*, *right*, and *obligation*. The latter are altogether unintelligible without first understanding the former. Our property is nothing but those goods, whose constant possession is establish'd by the laws of society; that is, by the laws of justice. Those, therefore, who make use of the words *property*, or *right*, or *obligation*, before they have explain'd the origin of justice, or even make use of them in that explication, are guilty of a very gross fallacy, and can never reason upon any solid foundation. A man's property is some object related to him. This relation is not natural, but moral, and founded on justice (T 3.2.2.11; SBN 491).

Once the concept of right is established in the instance of a property right, this concept can be extended to cover other more abstract kinds of rights such as human rights, and social rights. As property is nothing but the moral relationship of people in reference to a certain object, rights are also the creation of moral relationships. What are called rights are in the first instance someone's exclusive use of his possession, which is empty unless people in general protect them. Thus the notion of rights emerges with the

system of property.

It is important to note that right does not mean that people in general are obliged to take some positive action with regard to the right. For example, the right to life does not entail giving life to the person who asserts it.²⁹ In general the most people can do to respect the right to life of other people is to partake in the general practice of not taking life, in the same manner that they do not violate the possessions of others. One individual's rights are the obligation of others. Rights and obligations are two sides of the same coin. To other people, the assertion of rights appears only as prohibitions. In this way, people are associated with one another through rights and obligations. Only if self and others are interchangeable with regard to right and obligation; one is treated as the subject of right by others. Thus justice consists more in a negative commitment, because this is the only way the multitude of people support a particular person. Just as causation is a product of imagination, so rights are products of the imagination. The concept of rights produces the concept of liberty as free access to one's property. Therefore, the Humean theory of justice explains the realistic condition necessary for the emergence of liberty.

6 . The Rules for Determining Property

Some commentators criticise Hume because he cares so much about the existence and rigid observance of the rules of property, and yet cares so little about which rules in particular are adopted.³⁰ Admittedly, Hume says,

That there be a separation or distinction of possessions, and that this separation be steady and constant; this is absolutely required by interests of society, and hence the origin of justice and property. What possessions are assigned to particular persons; that is, generally speaking, pretty indifferent; and is often determined by frivolous views and considerations. (EPM Appendix 3 footnote 65; SBN 309 footnote)³¹

Therefore, John Plamenatz criticises Hume that:

We are seriously invited to believe that, though it matters enormously that there should be some rules of property and that they should not change, it

does not much matter what they are ... that argument is not illogical, but it is odd and unrealistic. I am less moved to refute it than to wonder how it ever comes to be made. I feel about it as I should do if someone were to say: "I am against divorce, because, while it does not much matter whom we marry, it matters enormously that we should marry and stay married".³²

The ghost of Locke is hard to get rid of. Hume is certainly indifferent about who owns what, but he is by no means indifferent about the "rules" of property. These two ideas are crucially different, because this is what the rule of law means. Hume opposes Aristotle, Hobbes, Pufendorf, and Locke, who imagine they decide ownership not by "frivolous views and considerations", but by the unshakable reasoning of the justificatory ground of approbation. This is because Hume's theory of justice is based on the interchangeability of self and others, and because he is critical of the possibility that by serious views and considerations property can be allocated to the most appropriate person who really deserves it. Most of all, it is crucial to understand the Humean ground for the five rules.

Hume stipulates the following five rules for determining property: "present possession", "occupation", "prescription", "accession" and "succession". Here as elsewhere, his argument is a challenge to the traditional theory of justice. First, Hume's target is clearly the Aristotelian tradition, which considers justice as a distribution in accordance with desert. Hume thinks that it is virtually impossible to decide individually "who deserves what", because,

so great is the uncertainty of merit, both from its natural obscurity, and from the self-conceit of each individual, that no determinate rule of conduct would ever result from it; and the total dissolution of society must be the immediate consequence. (EPM 3.23; SBN 193)

No one is willing to admit that he deserves less than his fellows. It is certainly impossible to find the most appropriate owner for each item that can be regarded as property. Hume emphatically warns that "Fanatics may suppose, *that dominion is founded on grace, and that saints alone inherit the earth*" (EPM 3.23; SBN 193). On the other hand, the equal distribution of

property is not effective either, because it will soon result in an inequality given the difference of people's ability and industry. Hume says,

But historians, and even common sense, may inform us, that, however specious these ideas of *perfect* equality may seem, they are really, at bottom, *impracticable*; and were they not so would be extremely *pernicious* to human society. (EPM 3.26; SBN 194)

As property is always particular, it is theoretically impossible to divide property in equal proportion. Hume's argument about the rules deciding property endorses his fundamental view of justice: justice should not be founded by any moral concept, such as right, desert, equality, and fairness. These are first understood once justice is established. To use these concepts for explaining justice not only constitutes a vicious circle, but also is dangerously misleading, which is indicated in Hume's criticism of rationalistic moral theory.³³ Thus, Hume avoids the difficulty of the rationalist theory of justice and develops his theory in a manner that is in accord with human nature.³⁴

Hume's five basic rules for deciding property allocation is not arbitrary. On the contrary it is very consistent with his theory of convention and sympathy that he has so elaborately argued so far. On the whole, Hume seems to adopt the basic framework of the natural modes of acquisition in Roman law with a very significant difference that he places "present possession (T 3.2.3.4; SBN 503-5)" as the first rule. Hume's choice of the five rules is based on the consideration that they should be acknowledged and accepted by "the population at large". As convention produces the only viable system of justice, the rule to determine property must be in congruence with the principles of human nature. It is significant to note that the Humean criterion for all five rules consists in the psychological attachment to the object by the possessor. The sense of attachment is the only natural bond that connects humans and objects beyond direct physical grasp. It is based on his associationist psychology according to which the sense of attachment increases or decreases in accordance with the distance from the object. In terms of human psychology, to possess something means to feel stronger attachment to the thing than any other person does. This

psychological reality should be reflected in the legal relationship for the system of property to function among people in general.

Hume says, "Men generally fix their affections more on what they are possess'd of, than on what they never enjoy'd" (T 3.2.1.14; SBN 482). All of the five rules can be derived from this principle that realises the stability of the system of property because a psychological cohesive power is a principle of stability. This should be seen as a strong justification for Hume's rules of determining property.

We may conclude, therefore, that, in order to establish laws for the regulation of property, we must be acquainted with the nature and situation of man; must reject appearances, which may be false, though specious; and must search for those rules, which are, on the whole, most *useful* and *beneficial*. Vulgar sense and slight experience are sufficient for this purpose; where men give not way to too selfish avidity, or too extensive enthusiasm. (EPM 3.27; SBN 194-195)

Hume tries to remove the cause of disturbance by leaving the problem of deciding property to natural principle. In this way, Hume gives a psychological foundation to the Hobbesian law that "those things that cannot be enjoyed in common, nor divided, ought to be adjudged to the First Possessor; and in some cases to the First-Born, as acquired by Lot" (*Leviathan* 108). Certainly in preparation for this argument Hume explains the importance of the principle of imagination, of his associationist psychology in Book 2 of the *Treatise*. This is another example of the consistency between each Book of the *Treatise*. Therefore, it is a mistake to dismiss Hume's rules as arbitrary. The rules to decide property are as consistent with the theory of human nature offered in Hume as these are in Hobbes and Locke. If property does not derive from those rules, the system of property cannot prevail spontaneously. Humean justice is necessitated for the overall objective of attaining the stability of human relationships. Society is most stable when it is ruled by that principle that constitutes stability itself.

The five Humean rules show that property ownership does not depend on the inherent quality of the object at all. Property is determined exclusively

by social convention. Objects have no claim on their possessors, precisely because this is a unilateral way of fixing property relations. On the contrary, because justice is based on the principle of the mutuality of people, property circulates in society. In this way, anyone can become an owner of property, and property is transferable in society. Unlike Locke, Hume does not have in mind primarily "estate" as property. Rather, Hume's property signifies movable property. Society is unified as an arena for the circulation of property. All people can be equally qualified as owners of property, which is the precondition for a commercial society. Free commerce presupposes and strengthens the equality of people *qua* owners of property, which in turn develops the condition for a free and equal commercial society.³⁵ Based on this foundation of the basic law of justice as the stability of property, Hume's second law of justice stipulates the transference of property by consent. Thus, the first law of justice forms the foundational idea of justice.

7. Concluding Remarks

We have seen the basic structure of Hume's theory of justice as the development of his theory of perception. He criticises Hobbesian rational consideration and Lockean abstraction as the ground for justice, and replaces it with his theory of convention. Hume finds the only feasible way for individuals to relate in society is through a negative commitment; by not violating the property of others, people enter into a relationship with society, from which a new type of human interaction develops in accordance with the rule of justice. A morality of proximate human relationships can still be maintained by sympathy. Hobbesian covenants and Humean conventions serve the same fundamental function: to control the wills of others by morality. Based on human sentiments, Hume's theory of justice reveals a striking parallelism with his theory of causation; Hume denies objectivity to both laws, and alleges them to be products of human psychology. The normative minimal aim of Humean theory is to vouchsafe stability; custom is at once stability's driving force and its realisation. His theory connects personal and public interest in the system of justice. Hume shows how general interest and self-interest are naturally reinforced in the development of society through justice.

Because of the constructive nature of human perceptions, they create the

stable public world as the stage that enables human communication, on the bases of which, society is created, pivoting on property. Humean justice is founded on the general point of view that sees oneself and others as particulars in the same convention. In this way, the general point of view represents the comprehensive principle of Humean justice and morality.³⁶

Notes

- 1 David Hume, *A Treatise of Human Nature*, David Fate Norton, David Fate, and Norton, Mary J. (eds.), Oxford: Oxford University Press, 2000, hereafter abbreviated as "T" with Book, part, section, and paragraph number. Followed by page references to Hume, *A Treatise of Human Nature*, 2nd edn., Selby-Bigge, L. A., and Nidditch, P. H. (eds.), Oxford: Clarendon Press, 1975, as SBN.
- 2 Naoki Yajima, "Sympathy and Communication in Hume", *Bulletin of Keiwa College* 13, 2004, pp.33-49.
- 3 This is a point often misunderstood, or mistakenly criticised by Hume commentators. See, e.g., Frederick G. Whelan, *Order and Artifice in Hume's Political Philosophy*, Princeton, N.J.: Princeton University Press, 1985, pp. 255-57.
- 4 Naoki Yajima, "Hume's Theory of Causation: A Moral Reading", *Bulletin of Keiwa College* 11, 2002, pp.17-51.
- 5 Charles Cottle maintains that the strict application of justice is to "correct the selfishness of man as he finds himself confronted by the scarcity of external goods". Cottle, C. E., "Justice as Artificial Virtue in Hume's *Treatise*" in D. Livingston and M. Marie (eds.), *Hume as Philosopher of Society, Politics and History*, Rochester, N.Y.: Rochester University Press, 1991, p. 24.
- 6 Scaff even criticises Hume because his concept of justice "is severed from the idea of rights", forgetting Hume's central thesis is to repudiate once and for all the moral theories based on reason, the supposed human faculty for telling "right from wrong". Hume's criticism of reason is meant as an attack on the moral and political theories based on rights. However, as we shall see further on, it is wrong to believe that Hume's theory has nothing to say about rights. Scaff, L. A., "Hume on Justice and the Original Contract", *Philosophical Studies*, vol. 33, 1978, p. 103.
- 7 Hume's theory of sympathy signifies a preparation to maintain this.
- 8 Needless to say, the criticism of the design argument is Hume's consistent theme.
- 9 Locke shares this idea with Grotius, and Pufendorf. cf., e. g., Haakonssen, K, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment*, Cambridge: Cambridge University Press, 1996, Ch. 1; Schneewind, J. B., *The Invention of Autonomy*, Cambridge: Cambridge University Press, 1998, Ch. 8.
- 10 Bodily harm is a matter of commutative justice. Hume thinks that it can be dealt with by the natural virtues.
- 11 Locke, consistent with this assumption, argues that parents should dominate their children until they acquire reason (*Two Treatises*, sects. 54-6, 61). The Lockean criterion

- of the "*Age to be free*" must be seen as too vague for Hume.
- 12 John Locke, *An Essay Concerning Human Understanding*, P. H. Nidditch (ed.), Oxford: Clarendon Press, 1975. Hereafter abbreviated as "Essay", followed by Book, chapter, and section, or by page references as appropriate.
 - 13 David Hume, *An Enquiry Concerning the Principles of Morals*, Beauchamp, T. L. (ed.), Oxford: Oxford University Press, 1999, with section and paragraph number. Followed by page references to Hume, "*Enquiries*", Selby-Bigge, L. A., and Nidditch, P. H. (eds.), Oxford: Clarendon Press, 1978, as SBN.
 - 14 Bentham shares the same idea that the main cause of social disturbance lies in material scarcity. cf. Postema, G. J., *Bentham and the Common Law Tradition*, Oxford: Clarendon Press, 1986, p. 104.
 - 15 Thomas Hobbes, *Leviathan*, Richard Tuck (ed.), Cambridge: Cambridge University Press, 1996, with section and paragraph number.
 - 16 Stephen Buckle argues that the Humean argument of justice can be understood as a theory of natural law that is determining the dictates of reason. Buckle is relying on Hume's passing statement that artificial virtue is not a matter of human morality, but it is a problem of "the degree of men's sagacity or folly" (T 3.2.2.13 ; SBN 492). However, he does not grasp the real thrust of Hume's idea. It is obvious for Hume that there is no such a thing as natural law to be discovered by reason. Buckle, S., *Property and Natural Law Theories*, Oxford: Clarendon Press, 1991, p. 296.
 - 17 Jacqueline Taylor understands Hume's theory of justice as explaining why we approve the act of justice (Taylor, J., "Justice and the Foundations of Social Morality in Hume's Treatise", *Hume Studies*, vol. 24, no. 1, pp. 5-30). John Rawls maintains that the motivation for justice is "the desire for a character" (Rawls, J., *Lectures on the History of Moral Philosophy*, B. Herman (ed.), Cambridge, Mass.: Harvard University Press. Rawls, 2000, p. 68). This relates to our rational consideration of justice, which applies only to a part of Hume's theory of justice. The gist of Hume's theory of justice in the *Treatise* lies in its connection to perceptions in general. As we will see below, the normative argument of justice can properly be understood only on the basis of the theory of custom.
 - 18 Frederick Whelan observes that "In form it parallels his treatment of the understanding, beginning with an analysis of the passions of the individual and gradually extending its observations into the realm of collective behavior." However, in my opinion, the parallelism of Book 1 and Book 2 of the *Treatise* lies not so much in Hume's objects of consideration as in the process of the generalization of the perceptions. See Whelan 1985, p. 118.
 - 19 Hume is a conservative neither of his time nor of today. He was a most radical critic of the convention of his time. It is a mistake to say that he insists on the fixation of the present property system. His theory is to explain how the notion of justice and society is created based on property.
 - 20 Recall Hume's similar explanation regarding external object.
 - 21 This relates to the thesis that "taste" is the fundamental concept for the Scottish Enlightenment. In this regard, Hume's "Of the Standard of Taste" is especially important

- Cf. Broadie, A. (ed.), *The Cambridge Companion to Scottish Enlightenment*, Cambridge: Cambridge University Press, 2003, Ch. 14. David Hume, *Essays Moral, Political, and Literary*, ed. E. F. Miller, Indianapolis: Liberty Classics, 1985. Hereafter abbreviated as "Essays".
- 22 Hobbes regards money as a "measure" of all commodities, and compares it to the "Bloud (*sic.*)" of the commonwealth (*Leviathan* 174), while Locke considers money as a means for preserving goods. Though Hume does not discuss money thematically in the *Treatise*, the idea of "interest" as socially constructed is indicative of his idea of money as an "interest". Hume asserts that industry and refinement of all kinds promote universal diffusion and circulation of money, which strengthens the kingdom (*Essay*, "Of money").
 - 23 This is later to be rephrased by Adam Smith as the "division of labour". Cf. Whelan, 1985, p.235.
 - 24 This form of interdependency anticipates Hume's theory of promise. Promise is based on interdependence in a more and more explicit manner. In this sense Hume's theory of property underlies his theory of promise.
 - 25 In the *Enquiry*, Hume emphasises that the purpose of justice is "the general *interest* of mankind" (EPM 3.28; SBN 195). This clearly suggests that justice consists in generality. It is very conspicuous that Hume explains justice referring to the notion of "generality" in *Enquiry*.
 - 26 This is different from the long-term effect of the single action as long as it is still seen as a single action. Therefore, justice has nothing to do with the term of interest, long or short. John Stewart asserts that "Hume's position is that human nature remaining constant and the economic circumstances remaining about the same, both justice and obedience to a good government always are in the long-term interest of a person as an individual". Cf. Stewart, J., *Opinion and Reform in Hume's Political Philosophy*, Princeton, N.J.: Princeton University Press. Stewart, 1992, p. 177.
 - 27 This corresponds to his calling custom a "magical power of mind".
 - 28 It is impossible for a sovereign to exert physical power to make people obey the law when a significant number of people disobey the authority. On the other hand, it would be a contradiction to the empiricist tenet to assume that an eternal "natural law" that binds all the people exists.
 - 29 To be more exact, positive obligation is a derivative form of negative obligation. For example, modern states are obliged to provide basic human needs. This is because not to do so can be interpreted as robbing man of his basic human needs. This is based on the fundamental idea of nature as the supplier of human necessity. This is the Humean rephrasing of Locke's dictum that God had given the earth to mankind in common. The implication is that where people can no longer survive without taking from others, justice can no longer obtain.
 - 30 David Miller says, Hume "might argue that it was a matter of comparative indifference which principles of acquisition, transfer, etc. were adopted, provided that these principles were generally acknowledged by the population at large. It is, in other words, a mistake to look for a justification of the principles which fill out the property theory; what can be justified is the system of property as a whole, not its detailed rules. In this way questions

about desert never enter the picture; the Lockean principle of acquisition can be accepted, not as an ethically justified principle, but as a convention whose value is that it assigns property rights somehow and that it commands general recognition. ... Although these rules (five rules of acquisition plus a rule of transfer) would naturally suggest themselves to anyone who had to decide on the allocation of property rights, they were neither capable of, nor stood in need of, justification in the strict sense". See Miller, D., "Justice and Property", *Ratio*, vol. 22, p. 9.

- 31 See also EMP Appendix 3.10; SBN 308-9.
- 32 Plamenatz, J., *Man and Society*, London: Longman, vol. 1, 1963, pp. 309-10.
- 33 Hume denies equality as the primary requirement for justice. Most of all, there is no impression corresponding to "equality". The notion of equality is first understood with the establishment of the concept of "identity".
- 34 David Miller criticises Lockean labour theory in that "it is then no longer possible to separate questions about the original acquisition of property from questions about the distributive pattern that later results from these acquisitions". See Miller, D., "Justice and Property", *Ratio*, vol. 22, 1980, p. 9.
- 35 This idea seems to lie behind Hume's optimism that commerce promotes art and morality in society (*Essays*, "Of the Progress of Art").
- 36 This paper is an amendment of my "Justice and the Stability of Property in Hume" (*Bulletin of Keiwa College*, No.9, 2000, pp.29-64). I am grateful to Prof. Allan Blondé for numerous editorial suggestions. This study is partially assisted by the "Grant-in-Aid for Scientific Research" of *Japan Society for the Promotion of Science* (Assignment No. 1820028).