

HUME'S ACCOUNT OF PROPERTY

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INTRODUCTION

The specific conclusions that Hume drew on the issues of the origin of property, the rules for determining the ownership of property, and the rules for the transference of property by consent are straightforwardly presented in the *Treatise*. What is not so obvious are the reasons or philosophical account behind his conclusions. Despite the vast amount of secondary literature that invokes his name, we believe that Hume's fundamental philosophical perspective is rarely understood. Failure to understand Hume's philosophical enterprise as a whole is responsible for the failure to grasp what we think are important and subtle insights about property and the implications of Hume's account of property for normative issues in public and legal policy making.

In what follows, we shall approach Hume's account of property at three levels. First, we shall summarize very briefly what Hume says in the section of the *Treatise* entitled "Of the Origin of Justice and Property." Second, we shall identify the main philosophical thesis that undergirds Hume's account of property and indicate the interlocking set of arguments Hume presents on behalf of his thesis. Third, we shall offer an expanded explanation of those arguments by indicating the philosophical controversies, ontological, epistemological, and axiological, that inform the arguments. Finally, we shall conclude with a brief indication of the continuing importance of Hume's account of property.

HUME ON THE ORIGIN OF JUSTICE AND PROPERTY

Hume raises two initial questions:

Q1. What is the *origin* of justice?

Q2. How do we explain the *normative* status of the rules of justice?

Since the title of the section mentions justice and property, there is a third question:

Q3. What is the relationship between justice and property?

Hume's answers are easily summarized and even italicized for the lazy and inattentive reader:

A1. The origin of justice is "from the selfishness and confined generosity of men, along with the scanty provision nature has made for his wants..." (*T*, p. 495).¹

A2. The normative status of the rules of justice is a sympathy *with public interest* (*T*, pp. 499-500).

A3. The relationship of property to justice is fourfold:

- a. property is a normative concept;
- b. normative concepts cannot be understood outside of civil society;
- c. property, therefore, only exists within civil society; i.e., property depends upon the prior existence of justice.
- d. if justice is artificial (i.e., conventional), then property is artificial (i.e., conventional).

Having said this, I have told you very little. Hume's discussion of property appears primarily in Book III of the *Treatise*. Any serious discussion of this section presupposes a familiarity with Hume's moral philosophy and with his overall philosophical project in the *Treatise*. In addition, Hume modified his view on the status of sympathy in the *Enquiry Concerning the Principles of Morals*, so any attempt to understand his position must also take that work into account.² In order to get at what he is really saying, we have to see the larger context in which his argument appears.

HUME'S SECULAR CONSERVATIVE THESIS

What Hume is doing is asserting the view that justice in general and property in particular emerge from and exist only

within civil society. This entire section of the *Treatise* is an explication of what that means. Philosophically, what Hume is contending is that any attempt to understand, to apply, or to extend our normative concepts must begin with an explication of our established practice. I shall call this the *secular conservative thesis*.

Hume supports the secular conservative thesis with four interlocking arguments. I shall identify these arguments as the biological argument, the socio-historical argument, the metaphysical argument, and the conceptual argument.

1. (biological): The original condition of humanity is social. It is meaningless, therefore, to speculate about the pre-social condition or what the human condition would be independent of some social context. What follows from this is that talk about a state of nature, if such a state is ever understood as a pre-social condition, is meaningless as well as false.

We are not only born into a social-familial setting but the relationship is also *generational*. That is, human beings do not come into the world all at once. This leads to Hume's second argument.

2. (socio-historical): We are born into a world that is not only social but also operates with an on-going system of rules.

a. Part of the socialization process consists of imparting a sense of moral obligation (internal sanction). When successful, the process leads us to see the rules as legitimate and to feel motivated to sustain and protect what we think is legitimate. The question of whether our self-interest is well served by the socialization process is meaningless because we do not possess a pre-social self-interest. For Hume, questions of utility are always restricted to the survival or preservation of society as a whole. Hence, within Hume's moral theory we cannot ask the question "Why should I be moral?" Given the socialized, malleable, and historically evolving sense of self-interest in his account, Hume does not need to appeal to utopian, metaphysical, teleological abstractions, either naturalistic (e.g., "hidden hand arguments") or supernaturalistic, to guarantee the convergence of self-interest and the public interest. What holds the society together is sympathy, not utility.

b. Any meaningful criticism of the on-going system would have to be from within the system. This leads to Hume's third argument.

3. (ontological or metaphysical): There are no external, objective, or timeless criteria for evaluating our system. This does not rule out other criteria of an intersubjective nature but rather is intended specifically to exclude:

a. natural law;

b. religious foundations;

c. utopian views of human nature, either past oriented or future oriented, including maximizing models based on contextless views of human rationality and optimality. Moreover, all of these suggested external models are, according to Hume, destabilizing of the order in civil society. This leads to Hume's fourth argument.

4. (conceptual or logical): Any attempt to account for justice and property must be an explication of on-going practice. The explication of practice presupposes (retrospectively) that efficient practice precedes theory and (prospectively) that a clear understanding of past practice generates norms for guiding future practice.

a. Retrospectively, we cannot question the legitimacy of past practice as a whole, although we can question specific practices. This part of Hume's argument is analogous to his treatment of scepticism. Scepticism is meaningful only with regard to specific beliefs and not to the totality of our beliefs precisely because the sceptic himself must make certain presuppositions in order to challenge specific beliefs.

We cannot meaningfully envisage the rise of civil society from the pre-civil but original social condition except as the confirmation of the status quo. In the pre-civil but social condition there is possession but not property. Civil society commences with the *normalization* of what we possess in the social condition prior to civil society. *This is the logical origin of justice and property.*³ It has to be a process of normalization because (1) there are no external standards, and because (2) no negotiation (i.e., no *promise*) would be morally or legally binding prior to the establishment of civil society itself.

It is important that you see this as a purely logical or conceptual argument on Hume's part. It has nothing to do with an abstract appeal to self-interest. Self-interest is already socialized and malleable in the social condition that precedes the formation of civil society, and Hume repeatedly insists that the social condition

is marked by limited benevolence as well.

b. Once civil society is established, all further negotiation or contracts must begin from the inherited status quo. It is at this point, and this point only, that recorded history serves as a guide.

Six specific conclusions follow from this. (i) We can dissolve civil society as in revolution or anarchy, but (ii) we cannot refound our own community, for that is incoherent; (iii) we can found a new community but the founding can only begin from the status quo and cannot meaningfully embody reform, since reform presupposes norms that exist only within an established and legitimate on-going civil society; (iv) such a founding can only take place when two or more pre-existing polities merge subject to the status quo, (hence a possible model for international law); (v) we cannot have a symbolic renegotiation for that too is incoherent; and, finally, (vi) periodic renegotiation of the total community is indistinguishable from anarchy.

If all negotiations or contracts begin from the status quo in civil society, then *all schemes for the redistribution of property, understood as original possession, are invalid*. Such schemes are incoherent and therefore either rhetorical masks for greed, envy or oppression, or such schemes appeal to illicit metaphysical abstractions, or such schemes project back into the pre-civil social condition those normative concepts that only have meaning in a civil society.

Understanding this conceptual point reinforces the socialization process discussed above as part of the socio-historical argument in connection with the rise of a sense of moral obligation. A correct understanding of both the historical and *logical origins* of social institutions reinforces our sense of their legitimacy. There is an important role here for education.

All of this I believe makes clear Hume's conclusions that justice is artificial, that the basis of all property is present or long-standing possession, and that contracts within civil society are sacred. To this should be added two more things: (1) Hume's rejection of essences or universals, so that property is not just real-estate but the right to engage in a wide variety of activities; (2) Hume's contention that within commercial societies we witness both the expansion of property and that growth of our personal identity as free and responsible individuals ("pride" as he calls it) that is the hall mark of a liberal society. It is important

that we not restrict ourselves to an impoverished conception of what it means to be free and responsible. Hume's discussion of property is not a rationalization of the propertied class, as some have contended, but an attempt to provide a philosophical understanding of how emerging free market economies permit the growth of liberal societies with free and responsible individuals. It is not the autonomous individual who creates the liberal society, but vice versa. To think otherwise is to read back into an earlier state what is only true of the later state. Liberty is an achievement, not a natural condition.

THE ORIGIN, NATURE AND DEVELOPMENT OF PROPERTY

[1] *Property is created by and exists only within civil society.* Property is not a natural object, although natural objects can become someone's property. "A man's property is some object related to him: This relation is not natural, but moral, and founded on justice" (*T*, p. 491). Property is a concept that refers to a relationship among an owner, an entity (or process), and civil society. "...property may be defined...[as] a relation betwixt a person and an object as permits him, but forbids any other, the free use and possession of it, without violating the laws of justice and moral equity" (*T*, p. 310). Without civil society the relationship of property does not exist. There are no property rights prior to or outside of civil society. In order to explain further the origin of property one would have to explain the origin of civil society.

Civil society is not to be confused with society. All human life originates within a social setting, a simple biological fact often overlooked. Human beings cannot survive unless cared for by others over a long period of time. There can be no pre-social condition. Hence it is meaningless to talk about the origin of society. If a social setting, or society, is the "original" condition of mankind, i.e., the fundamental frame of reference from which we begin, and if this original condition is characterized by established practices (i.e., by spontaneous order or the unintended consequences of purposeful human "social" action), then civil society can be explained as emerging from those practices.

According to Hume, social practices invariably generate problems. The problems are of at least two kinds: the difficult and

novel circumstances of the natural world in which we carry on our social practices (e.g., "the scanty provision nature has made for [human] wants" [T, p. 495]), and the internal conflicts generated by the social practices (e.g., "the principal disturbance in society arises from those goods, which we call external, and from their looseness and easy transition from one person to another" [T, p. 489]). In other words, goods or possessions take on social functions that permit some members of the community to exercise power or control over others. The power of parents over children is the most obvious example.

Within the family unit itself problems are generated by conflicts among children with regard to possessions. "Every parent, in order to preserve peace among his children, must establish" (T, p. 493) some rule for stability of possession. So it comes as no surprise that when we move to larger social units, where we cannot count on limited benevolence, other formal mechanisms or artifices such as promise keeping must be employed to solve problems and resolve conflicts.⁴

It is in order to solve these problems that civil society comes into existence. Civil society emerges from the original social context with the establishment of conventions that (a) consciously recognize or make explicit the implicit norms of previous practice and (b) provide for additional or new, conventional or artificial practices to handle specific and immediately recognizable conflicts generated by the previously implicit practices. The new artifices (b) must be known or believed to be consistent with previous practice (a). To say that the new artifices (b) are consistent with previous practice (a) is not to say that they are entailed by previous practice. For reasons we shall discuss shortly, Hume would deny that this entailment relation is possible. Let us remind ourselves that in his general philosophy Hume distinguishes between matters of fact and relations of ideas in such a way that he is led to deny that matters of fact are demonstrable.

The relationship between self-interest (including limited benevolence) and the public interest is an important one. It has to be understood psychologically, historically, and logically. Conflicts in the social but pre-civil condition are not in any simplistic sense merely the result of self-interest and confined generosity. They arise from the foregoing only in conjunction with the scanty provision of nature. Self-interest has no universal content in this

context. Moreover, prior to the establishment of justice there is, logically speaking, no public or social interest. That is why it is impossible for us to be motivated by public interest to establish justice. Hence, Hume should not be understood to be denying that we have a capacity to look beyond self-interest narrowly construed. In this context, self-interest can only be understood negatively and tautologically as what we have prior to the public interest. Finally, once established, the public interest is neither static nor capable of being hypostatized. The public interest remains the mutual respect for the on-going dynamics of the normalization of essentially private interests.

Since it is impossible to anticipate every potential future conflict, the establishment of conventions is not a unique event but itself becomes an on-going social practice, known as government. As a social practice, government is to be understood as involving both implicit norms and evolving conventions or artifices. Once more, the evolving artifices of government must be consistent with previous implicit practice but cannot be definitively specified.

Hume is led to ask at this point, "Why do human beings try to solve the conflicts generated in the social context and why do they do so by creating civil society?" His answer is that three factors enter into the decision: our pursuit of our self-interest, our natural but limited benevolence towards our family and friends, and the process of socialization itself.

...men, from their early education in society, have become sensible of the infinite advantages that result from it[namely, society], and have besides acquired a new affection to company and conversation... (*T*, p. 489)

Please note, that Hume is not answering the question of why we enter society. Anyone who asks that question is asking something meaningless, because there is no pre-social human state. The question Hume is answering is why do social individuals seek to preserve society through the creation of conventions that constitute civil society. It is also important to note that there are three factors and that self-interest is just one of them. Both in the *Treatise* and in the *Enquiry Concerning the Principles of Morals*, Hume stresses that a natural but limited benevolence is an integral part of human nature. In his discussion of property he

stresses the same point: "that 'tis only from the selfishness and confined generosity of men, along with the scanty provision nature has made for his wants, that justice derives its origin" (*T*, p. 495). Finally, it is especially important to note that both self-interest and benevolence are influenced and modified by the process of socialization. Hence, it makes no sense to talk about our self-interest independent of a social and historical context.

...the first and original principle of human society. This necessity is no other than the natural appetite betwixt the sexes, which unites them together, and preserves their union till a new tie takes place in their concern for their common offspring. This new concern becomes also a principle of union betwixt the parents and offspring, and forms a more numerous society; where the parents govern by the advantage of their superior strength and wisdom, and at the same time are restrained in the exercise of their authority by that natural affection, which they bear their children." (*T*, p. 486)⁵

Given what we have said above, it is pretty clear what Hume would reject. First, Hume would reject any attempt to make of property a *natural*⁶ state of affairs, that is, a state of affairs or relationship either independent of human beings or independent of human attitudes toward those affairs. Property is not a concept that refers to an objective state of affairs totally independent of our attitude toward it. In this respect, Hume's account of property is part of his overall treatment of moral distinctions, wherein he declared that moral distinctions are not discovered by reason as states of affairs independent of the observer.⁷ Both in his discussion of moral distinctions (*T*, p. 470), and in his discussion of justice Hume specifically criticized the "vulgar" for believing that "there are such things as right and property, independent of justice, and antecedent to it; and that they would have subsisted, tho' men had never dreamt of practicing such a virtue" (*T*, pp. 526-27).

For the same reasons, Hume would reject any attempt to found our understanding of property on supernatural or religious grounds. The traditional Christian view asserts (1) that there was an original common ownership derived from God, (2) that covetousness is a sin which led to the Fall, (3) that present ownership dates from the individual appropriation of what originally belonged to all before the Fall, and (4) that individual appropriation is justified only on the grounds that ownership carries the responsibility to administer

private property for the benefit of all.

Hume most certainly would deny original common ownership on the logical grounds that ownership is a meaningless concept prior to civil society. The concept of original common ownership is both oxymoronic and a reading back into a pre-civil social condition a concept that can only exist in a civil social condition. This same Humean argument would hold against other versions, that is non-religious versions, of the original common ownership thesis. The concept of original common ownership is descriptively vacuous. It is not, of course, normatively vacuous for those who believe in it, since it provides them with a set of criteria, which if accepted, help to answer questions about the determination of ownership and the transference of property. Hume did not accept these criteria in particular and he denied in general that religion could serve as an external framework for judging conventional morality. In the *Dialogues Concerning Natural Religion*, Hume has Cleanthes articulate the limits of religion:

The proper office of religion is to regulate the heart of men, humanize their conduct, infuse the spirit of temperance, order, and obedience; and as its operation is silent, and only enforces the motives of morality and justice, it is in danger of being overlooked, and confounded with these other motives. When it distinguishes itself, and acts as a separate principle over men, it has departed from its proper sphere, and has become only a cover to faction and ambition.⁸

In addition, Hume denied that the pursuit of luxury was in and of itself a sin. On the contrary, like Mandeville, Hume defended the beneficent social consequences of the pursuit of luxury, especially in his essay "Of Refinement in the Arts." Although he himself stressed the serious potential dangers of "the love of gain", "especially when it acts without any restraint" (*T*, pp. 491-92), Hume refused pointedly to discuss this danger by reference to speculations about whether human beings were innately good or evil. "The question, therefore, concerning the wickedness or goodness of human nature, enters not in the least into that other question concerning the origin of society" (*T*, p. 492). Hume's reason here is that to the reflective and socialized human being it is self-evident that the "love of gain" is better served by restraint. The only thing to be considered is the degree of human sagacity or folly.

With regard to the assertion that after the fall private individuals appropriated the common property, Hume would no doubt reject this as speculation about an historical event for which there is no serious historical evidence, just as he rejected the report of miracles. Such speculation would appear to him as mythical as that of the alleged original social contract. Finally, with regard to the notion that ownership is to be justified in terms of its serving the benefit of all, Hume will deny that it is meaningful to take this in any but a metaphorical sense. Analogous to his critique of schemes of equality, there is no way to calculate in any objective way what is in everyone's long term best interest. The social interest is something which can be given a more or less precise contextual and historical meaning, but it cannot be given an atemporal or futuristic utopian meaning.

It should be obvious, as well, that Hume would reject any attempt to account for property by reference to a pre-social human nature. "It is utterly impossible for men to remain any considerable time in that savage condition which precedes society; but that his very first state and situation must be esteemed social" (*T*, p. 493). In a remark that may have been aimed against Hobbes, Hume declared that "the representations of [selfishness] have been carried much too far" (*T*, p. 486).

Hume also called to our attention a peculiar philosophical error. In his *History of England*, Hume accused the Whigs of reading back into early British history the notion of a constitution and a form of liberty that were of a much more recent origin. It seems to be part of Hume's position that certain normative concepts, including property and liberty, have to be understood in terms of historical evolution and that it is a mistake to read back the later meaning of a concept into an earlier stage of development. We shall refer to this error exposed by Hume as *normative anachronism*. For the same reason, Hume is critical of Hobbes because the conventions that establish justice are "not of the nature of a *promise*" (*T*, p. 490). That too is a reading back into an earlier period a concept that could only make sense in a later period. For the same reason, it is a serious distortion to say that "law and justice have as their distinctive function the protection of the propertied."⁹ This kind of metaphorical anachronism is either a confusion about the nature and origin of property or a mask for a privately expressed grievance about the present

distribution of property. What Hume says is that the idea of justice arises after we have stabilized possession, not property (*T*, pp. 490-91). Prior to the establishment of justice there is no property. It is the earlier stages that explain the later stage by noting how practices are qualitatively transformed through time. There are no atemporal conceptual analyses in Hume so that any concept is understood by Hume through noting its historical transformations. Finally, as we shall see, this argument will permit Hume to rebut redistribution proposals based on appeals to alleged norms independent of the history of one's civil society.

Since property does not exist prior to civil society and comes into existence only with civil society, we need a word to signify the social relationships of what we now call property in a pre-civil social context. That word for Hume is *possession*. Possession only becomes property after the formation of civil society. Civil society in Hume's account, as we have contended, emerges from previous social practices. Are there other practices besides those concerning possession? One would have to think there are many social practices besides those associated with possession. Hence, the emergence of civil society, or "the establishment of justice," in Hume's phrase, is wider in scope than conventions establishing the stability of possession. Although Hume asserts that the instability of possession is both the principal source of disturbance in society (*T*, p. 489) and that the elimination of that instability "the chief advantage of society" (*T*, p. 488), he nowhere asserts that stability of possession is the only reason for establishing justice or that justice is identical with property. On the contrary, property requires the previous logical existence of justice.

After this convention, concerning abstinence from the possessions of others, is entered into...there immediately arises the ideas of justice and injustice; as also those of property, right, and obligation. The latter are unintelligible without first understanding the former....the origin of justice explains that of property. The same artifice gives rise to both. (*T*, pp. 490-41)

Recall, as well, that in defining property Hume qualified property by reference to "...the laws of justice and moral equity" (*T*, p. 310).¹⁰

[2] *Property is a normative concept*. Earlier we defined property as a relationship among an owner, an entity (or process), and civil society. In the previous section we also saw that Hume

construes the relationship as causal. We must now add to the definition that property is a normative relationship.¹¹ To say that the relationship of property is normative is to say that (1) we attribute to the rules or artifices of property a sense of legitimacy and (2) we feel internally bound to uphold these rules. In Hume's words, we "attribute to the observance or neglect of these rules a moral beauty and deformity" (*T*, p. 484).

We may well ask: "What legitimates property?" Hume's answer, as we have already seen above, is unequivocal: civil society legitimates property. That is, there is no frame of reference, natural or supernatural, external to civil society that legitimates or delegitimizes property.

I assert not, that it was allowable, in...[*the state of nature*]...to violate the property [i.e., possessions] of others. I only maintain, that there was no such thing as property; and consequently cou'd be no such thing as justice or injustice. (*T*, p. 501)

This kind of claim is analogous to Hume's contention that there cannot be a "theory" of justified revolution even though there may be reasons to engage in revolutionary activity. Legitimacy or justification presupposes an authoritative framework, but there is no such framework independent of present civil society. We cannot, on Hume's system, raise the question "What legitimates civil society?"

If we are led to ask how does civil society itself come about, we shall be reminded of Hume's answer that civil society normalizes pre-existing social practices and that normalization reflects the historically and socially conditioned motives of self-interest and limited benevolence. At the same time, Hume insists that these motives which account for the establishment of civil society do not account for why we feel internally bound to honor the rules of property. At the very beginning of his discussion of property he insisted that "these questions will appear afterwards to be distinct" (*T*, p. 484).

To the question: "How and why do individuals come to recognize and internalize the normative order?", Hume responds that "a sympathy with public interest is the source of the moral approbation, which attends that virtue" (*T*, pp. 499-500).¹² Unlike Hobbes,¹³ Locke, and Mandeville, Hume recognizes an internal moral sanction or motive. "The matter has been carried too far by

certain writers on morals, who seem to have employed their utmost efforts to extirpate all sense of virtue from among mankind" (*T*, p. 500). But unlike other moral theorists of his time who did recognize the internal moral sanction, Hume offered a purely naturalistic *and* historical-social account of the growth and development of that motive. "In a little time, custom, and habit operating on the tender minds of the children, make them sensible of the advantages, which they may reap from society, as well as fashions them by degrees for it, by rubbing off those rough corners and untoward affections, which prevent their coalition." (*T*, p. 486). The fact that this motive can only be explained historically or temporally reinforces Hume's insistence that we must not engage in normative anachronism in either trying to justify or trying to delegitimize a social practice of any kind. It is precisely because property is a normative concept and because normative concepts can come into existence only within civil society that it is a fallacy, according to Hume, to project such normative concepts back into the pre-civil condition.

It is important that we not confuse the Humean answer to three different questions. (1) What causes (or motivates) us to establish a social context? Hume denies the meaningfulness of this question. (2) What causes (or motivates) us to sustain the social context, that is, turning it into civil society? Hume's answer is self-interest and limited benevolence, both of which are already socially conditioned. (3) What causes us to feel morally obligated to obey the rules of civil society? Hume's answer is the growth of a new motive, an internal sanction, brought about through sympathy within an on-going social context. Here, we would do well to reiterate the importance of Hume's denial of natural law, that is, Hume denies that there is a pre-civil context either for explaining or judging our decision to sustain the social context or the particular way in which we choose to sustain it. Nor can the moral obligation we feel to obey the rules be either explained or justified by reference to such natural law. In addition to the ontological and epistemological reasons he has for denying the existence of natural law, Hume would point out that the alleged existence of such natural law as an abstract theoretical structure would create a gap between what we "ought" to do and what we might be actually motivated to do. Previous moral theorists had attempted to close that gap by invoking special "moral relations."¹⁴ Hume, in his

moral theory, denied the intelligibility of those relations. Rather than asserting a gap between "is" and "ought," which is what conventional Hume scholarship has maintained, Hume denied the very intelligibility of such a gap.¹⁵

Just as Hume's socialized view of human nature helped him to avoid raising the question whether we are better off in civil society, so his view of human nature as capable through sympathy of internalizing norms and coming to feel those norms as morally obligatory, allows him to avoid having to ask if our moral motivation is consistent with our non-moral motivation. There is no actual or potential gap in Hume's moral theory between "is" and "ought," no unbridgeable theoretical gap between moral apprehension and moral motivation, no in-principle conflict between non-moral motivation and moral motivation.

There is something unique and important about normative concepts. Trying to capture and to express that uniqueness is a difficult task. A good deal of Hume's moral philosophy is a critique of previous attempts to do so. Again, conventional Hume scholarship has maintained that Hume himself established an unbridgeable gap between normative and descriptive discourse. On the contrary,¹⁶ rather than denying the cognitive status of normative discourse, Hume sought to explain how normative discourse was factual, in what sense it was factual, and how this special sense connected directly with motivation.

Let us focus on the special sense in which normative discourse, specifically about property, is factual discourse. To be sure, property is not a natural object. That is, no collection of facts about objects, entities, or human social relationships independent of human attitudes toward those objects, entities, or relationships can explain property or allow us to understand and criticize property. "The property of an object, when taken for something real, without any reference to morality, or the sentiments of the mind, is a quality perfectly insensible, and even inconceivable; nor can we form any distinct notion, either of its stability or translation" (*T*, p. 515). Once the attitudes are factored in, and once those attitudes are seen to reflect a pre-existing social condition, then we can more clearly recognize the peculiar cognitive status of normative discourse about property. The historical and social framework establish the conditions that account for the uniformity of intersubjective attitudes. This reinforces why it is

so important for Hume to deny that we can begin our understanding by adopting the perspective of the isolated or atomic thinker.

It was part of Hume's Copernican Revolution in philosophy that he stressed both the contribution of the responsible *social agent* in the knowing process and the primacy of practical knowledge over theoretical knowledge. Given Hume's basic philosophical orientation, it becomes obvious in what sense justice and property must be artificial. Given his beliefs about human nature, it becomes obvious how Hume thought that we could come to feel a moral obligation to obey the rules concerning property. It should be easy to understand why Hume would reject natural law or any teleological account of human nature, for such views are not only impossible to establish empirically in a non-question begging way but try to smuggle in the very normativity they are supposed to be explaining.

If we require a special set of attitudes, if those attitudes reflect a pre-existing social condition of shared practices, and if some of those attitudes are temporally posterior to others, that is, require an historical context as well, then we can understand Hume's criticism of attempts to explain the normative dimension of property that appeal to timelessly abstract notions of human nature, or to mythical and unsubstantiated accounts of the pre-existing social condition, or that fail to take the temporal dimension into account. As Hume put it, "...there is nothing real, that is produced by time; it follows, that property being produced by time, is not anything real in the objects, but is the offspring of the sentiments, on which alone time is found to have an influence." (*T*, p. 509). The kind of error Hume has in mind is reflected in accounts of property or justice that project back into the pre-civil state the very normative dimension that can only exist in a civil state. Such accounts try to smuggle in the very notion they are attempting to explain. That is why Hume is so vehemently critical of accounts based on promising.

Some of the important consequences of Hume's understanding of the normative dimension should be noted. First, to the extent that any adequate account of the normative must be a conceptual explication of the social and historical dimensions of human life, any attempt to reduce the normative dimension to contextless analyses of personal self-interest are doomed to failure. This means that Hume cannot be construed as any kind of utilitarian.¹⁷

So far from thinking, that men have no affection for any thing beyond themselves, I am of opinion, that though it be rare to meet with one, who loves any single person better than himself; yet 'tis as rare to meet with one, in whom all the kind affections taken together, do not over-balance all the selfish. Consult common experience: Do you not see, that though the whole expense of the family be generally under the direction of the master of it, yet there are few that do not bestow the largest part of their fortunes on the pleasures of their wives, and the education of their children... (*T*, p. 487)

Nor is it possible for the same reasons to interpret Hume without serious misrepresentation as a contractarian.¹⁸

The second and most important consequence of Hume's understanding of the normative dimension is that although conventions are human artifices they cannot be changed at will. We feel bound by our conventions in a way that seems to make them at odds with the idea that they are mere human creations. However, the creation is not the result of a single human will or a mere collection of wills. Conventions are social, but they are also historical. It is both the social and the temporal dimensions that account in large part for the internal sanction. Moreover, the historical dimension is part of how we see and understand ourselves.

As Hume came increasingly to see,¹⁹ the greatest threat to social stability originated in economic, political, and social doctrines which appealed to timeless metaphysical absolutes. Hume's objection to pure and unfettered democracy, his stress on the positive importance of checks and balances, and his objection to economic egalitarianism have nothing to do with aristocratic elitism or meritocracy or alleged extra-communal values. His objection is that in the absence of past practice there is no objective way to resolve disputes on these matters. There is, in short, no content to timeless metaphysical absolutes. The notion of a contextless atomic individual will is itself one of those timeless metaphysical myths. Moreover, since human beings can only and must understand themselves historically, any speculative account of why these allegedly timeless norms were not previously honored will eventually produce a normatively anachronistic and historically mythological sense of "past injustice" and terminate in a fanatical repudiation of our present social context. Such a repudiation, if believed, undermines all normativity and

eventually the very civil society that makes civilized life possible. There is an urgency to Hume's account that goes way beyond seeing itself as a mere intellectual exercise.

[3] *Property begins with the status quo.* The explication of any normative concept begins with the status quo, "the accepted practice of the age" in Hume's words. Property is a normative concept, and therefore any explication of the concept of property begins with the status quo.

The explication of normative concepts requires us to adopt the perspective of the socially engaged and responsible agent. The perspective cannot be external because Hume denies the existence of norms that are not the result of artifice or convention. The perspective cannot be purely theoretical because norms are intended to and actually do influence our action, whereas theoretical reason by itself is inert. The perspective cannot be that of an isolated or atomic individual because normative concepts by their very nature bind us in several ways to other members of a community. Hence, the proper perspective for the explication of normative concepts must be internal, rooted in action or practice, and socio-historical.

The clearest example is given by Hume himself when he speaks of two men who find themselves rowing a boat together and who subsequently come to synchronize their movements and thereby establish a rule-governed practice. "Two men, who pull the oars of a boat, do it by an agreement or convention, though they have never given promises to each other. Nor is the rule concerning the stability of possession the less derived from human conventions, that it arises gradually, and acquires force by a slow progression, and by our repeated experience of the inconveniences of transgressing it" (*T*, p. 490). This example illustrates what is meant by the claim that efficient practice precedes the theory of it. It is as well an example which proceeds from the perspective of what "we do" (as opposed to the perspective of what "I think"). It is a perspective that is both social and rooted in action.

Finally, the example shows the extent to which the common interest is discovered not simply by positive accounts of benefit but more often by negative accounts of what Hume calls "the inconveniences of" transgression.

If the perspective from which we explicate normative concepts

such as property is that of the socially engaged and responsible agent, then the explication must of necessity begin with the status quo or present property relationships. Of course, if we begin with the status quo then present property relationships cannot be judged to be unjust except if they violate the inherent norms of the on-going system to which we belong. This might require judicial adjudication of specific claims but it cannot involve the delegitimation of the framework of the status quo. It follows, as well, that present property relations may be modified by contractual agreement so that those relations are extended, contracted, and developed in ways that are too numerous for us even to anticipate or imagine fully. Contractual agreements within this framework of the status quo are legitimate and binding.

It is important to see that there are two provisions in Hume's account of property as beginning with the status quo. The first part concerns how we establish present ownership, hence the title of the next section of the *Treatise*, "Of the rules that determine property" (*T*, pp. 501-13), and the second part concerns how we provide for the future elaboration of property relationships, "Of the transference of property by consent" (*T*, pp. 514-16). This double provision is already spelled out in the original philosophical discussion of property:

...a convention entered into by all the members of the society [1] to bestow stability on the possession of those external goods, and [2] leave every one in the peaceable enjoyment of what he may acquire by his fortune and industry. (*T*, p. 489)

It should not be necessary to say this, but, in maintaining that property begins with the status quo, Hume is still leaving provision for future changes in property relationships, for the growth and evolution of property in ways that are not foreseeable: "...the improvement, therefore, of these goods is the chief advantage of society, [just as]...the *instability* of their possession, along with their *scarcity*, is the chief impediment" (*T*, p. 488). What Hume did foresee is the growth of a market economy, and a market economy presupposes a prior distribution of goods. The status quo functionally provides the prior distribution upon which the market can begin to operate.

Given the foregoing, it comes as no surprise how Hume enumerates the rules which determine the ownership of property and

the acquisition of property. There are five considerations: (1) possession; (2) occupation; (3) prescription (time); (4) accession; and (5) succession (inheritance). Several commentators have astutely pointed out that this list reflects the position embedded in Roman Law as reflected in Scottish jurisprudence.²⁰ However, what is important is not that these rules were accepted in Hume's own historical context or that they could be traced to more classical origins. What is important is the philosophical underpinning to these rules. To be sure, the historical context and classical origins confirm Hume's views by showing that what Hume would consider intelligent commentary reflected long standing practice. But the confirmation is not to be confused with a philosophical foundation. Hume accepted and agreed with these rules because they reflected how he thought normative concepts were grounded. On this issue, articulated Roman law and Scottish jurisprudence accurately captured established practice. To that extent, and to that extent only, they were correct. Once more we want to deflect the suggestion that Hume was "merely" an apologist for the status quo. Finally, it should be stressed that in his account Hume focuses on the artificiality of all systems of rules as a way of emphasizing the point that property is not a natural state of affairs.

Two questions, internal to Hume's own account, can be raised here. First, "Is Hume's own account time bound?"²¹ Second, "What if Hume is wrong about his understanding of the original practices?"

In answer to the first question, it is clear that Hume's account is time bound. Not only is it generally true that we are time bound or limited to present contexts and what we know or believe about past contexts, but according to Hume's own philosophical position we are necessarily time bound. Hume's accounts are always "*natural-historical*" accounts. Being time bound does not prevent us epistemologically from making generalizations based upon past experience understood socially and historically. Hume believes that the very structure of the mind, the natural relations of the imagination, is such that we instinctively make such generalizations and that these generalizations are reinforced by constant conjunction.²² Moreover, according to Hume's understanding of the explication of normative concepts the only legitimate approach is the attempt to make explicit the norms embedded in

inherited practice. The emphasis here should be on "practice." The object of explication is not to comment on previous commentaries but to get at the practices. Previous commentaries become important only insofar as and to the extent that they accurately capture previous practice. If Hume is correct, then no matter how much the practices evolve, his understanding of how we are to understand normative concepts remains valid, and his explication then becomes an important historical document as well as a philosophical document. Part of Hume's wisdom is that he never lost sight of the limits of his own account: "no prudent man, however sure of his principles, dares prophesy concerning any event, or foretell the remote consequences of things."²³

Moreover, Hume's understanding of the limits of normative analysis might allow him to respond to critics who would delight in pointing out how some of his 18th-century views would no longer be acceptable today. The obvious answer on Hume's part would be that social and economic conditions have evolved through the twentieth-century in ways that could not have been anticipated in the eighteenth-century and that Hume's own account allows for such evolution in economic roles. This is not to say that we are forever barred from criticizing practices in our own time. Obviously such criticism is always possible and has to be considered on a case by case basis and always with reference to the implicit norms of inherited practices in the light of then present circumstances. Historians are usually more sensitive to this point. However, to project back into the eighteenth-century the norms of twentieth-century practices is to engage in normative anachronism. Not only is normative anachronism a fallacy, but like all claims to universal and timeless wisdom it is a destabilizing social force. It is pointless and mindlessly self-destructive to condemn the very historical contexts and traditions from which our present cherished values have emerged. Our present cherished values are also artifices, specifically analogical transformations of inherited norms in the light of new circumstances, and as such are subject to further articulation in ways we cannot predict. One of the advantages of Hume's approach is that it encourages a constructive scepticism about the finality of any practice, including our own present ones.

Just as there is no timeless framework for understanding individual human beings or whole societies, so there is no timeless

framework for any set of historical circumstances. It is Hume, and not his critics, who avoids being merely a product of his time. Hume refused to elevate one set of historical circumstances onto a level where it can freeze into a dogma. Trying to protect a practice or a norm by claiming that it is a metaphysical absolute is to reveal oneself as a dogmatist, and it also runs the risk denying to practices and traditions their capacity to be fertile sources of adaptation and reconstruction. Traditions have a past that must be taken seriously in that the history of past transformations become an integral part of what a practice is. A tradition or practice, in other words, cannot be transcended. On the other hand, a tradition or practice cannot have a closure. Failure to balance both of these dimensions of tradition is to risk falling into an abyss.

Let us turn to the second question, namely, whether Hume's understanding of the original practices is correct. On the one hand, we can contemplate correcting Hume's account with newly found *historical* evidence, but while this would require a change in detail the very process of correcting Hume would confirm the general correctness of his account. On the other hand, Hume stressed the importance of long possession as opposed to original possession. Borrowing from this distinction, we could analogically distinguish between long tradition as opposed to original practice. Once human beings have become accustomed to certain practices and have generated expectations as a consequence, and assuming that these expectations are not in fundamental conflict with other deeply entrenched expectations, it would be "unreasonable" and destabilizing of the social order to go back on those expectations. That is why, among other things, we have a statute of limitations. Given the malleable and socialized nature of our self interest and given that there is no social interest above and beyond the historically evolving interests of the members of the community, it would be irrelevant beyond a certain point to correct the account of the original practice. Social practices and the normative concepts embedded therein do not have an existence independent of our attitude toward them. This is why it is so important to recognize the Copernican Revolution in Hume's moral theory and what it means to say that justice and property are *artificial virtues*.

We have come a long way from our primary focus on property.

Nevertheless, Hume presented his original analysis of property conjoined with a discussion of the origin of justice. I believe now that we can see why. Crucial to his understanding of property is the notion that we begin from the status quo. This understanding does not reflect any hidden commitment to the propertied interests of eighteenth-century Britain, rather beginning with the status quo is a consistent application of the Humean argument that norms only exist within civil society, or, in his terminology, that justice is an artificial virtue.

THE MEANING OF PROPERTY IN MODERN COMMERCIAL REPUBLICS

So far we have stressed that any understanding of property must begin with the status quo. At the same time we have indicated that all practices, including the acquisition and transference of property, are fertile sources of adaptation. It is now time to indicate how Hume perceived the changing circumstances of property in the eighteenth-century. Let us keep in mind that since Hume denies the existence of universals, he is at liberty in his account of property to indicate how that normative concept is being transformed.

It is well known that Hume was a great advocate and defender of the then rising commercial and industrial societies, that he opposed mercantilism, monopoly, price-fixing, inflation, and spiraling national debt, that he favored credit, savings, and international free trade. In these respects, Hume had an enormous influence on Adam Smith. Crucial to Hume's case is the contention that industry and commerce in republics and mixed monarchies encourage economic growth and consumption. Such growth and consumption in turn make human beings more civilized, more cooperative, more free and more responsible. In short, *liberal societies as we have come to know them create autonomous individuals*. This overall thesis is articulated in several of Hume's famous essays and is articulated in excruciating detail in his *History of England*.²⁴ Economic development in free market societies based upon the institution of private property increases opportunities for material independence and moral autonomy and thereby increases the capacity for responsible citizenship.

Earlier in this paper we insisted upon the importance for

Hume of distinguishing between questions of origin and questions of normative justification. Hume's own normative justification for the institution of private property is that private property is a precondition of autonomy as well as independence. Any systematic exclusion of large classes of individuals from the benefits of property ownership creates an underclass incapable of understanding and therefore unwilling to defend or to participate in the institution of private property. Therefore, the survival of the institution of private property and its attendant values requires that there be means for increasing the number of those who have independent resources or private property. That is why Hume does not treat the existing distribution of property as final. Rather, as we have already seen, Hume provided for the transformation of present property relationships in the form of a free market economy.²⁵

Throughout his economic writings, Hume asserted that commercial and industrial societies as opposed to feudal ones provide much greater opportunities for constructive action. Hence, it is in commercial societies which encourage action through growth and consumption that the institution and practice of private property expand opportunities for individuals to achieve self-esteem through the creative use of private property. As Hume put it in the *History of England*, the tradesman is a better man and a better citizen than an idle retainer, for the growth of civilization and commerce produce that "middling rank" no longer willing to tolerate either anomalies in the Constitution or an overly broad discretionary power on the part of the government.

1. All references are to the Selby-Bigge/Nidditch editions of *A Treatise of Human Nature*, 2nd ed. (Oxford: Clarendon Press, 1967), and the *Enquiries*, 3rd ed. (Oxford: Clarendon Press, 1972).

2. See for example, James T. King, "The Place of the Language of Morals in Hume's Second *Enquiry*," in D. Livingston and J. T. King, eds., *Hume: A Re-evaluation* (New York: Fordham University Press, 1976), pp. 343-361.

3. Hume concedes that the historical origin, as opposed to the logical origin, of existent states is most likely conquest.

4. In the *Treatise*, Hume stresses that limited benevolence is not a sufficient basis for morality precisely because it can become through its partiality a destabilizing social factor. In that same work, Hume denied the existence of an extensive benevolence. As a result, Hume concluded that sympathy was the general principle of morals. However, as Hume progressed in his

writing of the *Treatise*, he came increasingly to recognize difficulties in his own account of the sympathy mechanism. When he wrote the *Enquiry Concerning the Principles of Morals*, Hume replaced sympathy as the general principle of morals with the sentiment of humanity, not exactly extended benevolence. As I have argued elsewhere, this actually strengthens Hume's overall case in his account of morality. See N. Capaldi, *Hume's Place in Moral Philosophy* (New York: Peter Lang, 1989).

I think it is interesting to point out here that even within family units held together with benevolence conflicts can arise that ultimately require resolution by appeal to "historical" principles like long possession. Here we have a microcosm of Hume's moral theory in that some sort of concern for others is necessary to hold society together, but such concern by itself can also destabilize society. Hence, it is also necessary to appeal to some principle or criterion beyond concern. The concern, whether in the form of limited benevolence or the sentiment of humanity, explains in part why we will eventually embrace or are capable of coming to embrace the other criterion, but the other criterion cannot be reduced to that concern anymore than it can be reduced to self-love. Adopting the perspective of the responsible social agent avoids any potential irresolvable conflict between concern and the socio-historical criterion. In this way, Hume solved the major internal problem in his account of morality.

5. Notice as well that when Hume identifies the destabilizing effect of avidity, it is an avidity that is already directed beyond the self: "...this avidity alone, of acquiring goods and possessions for ourselves and our nearest friends..." (*T*, pp. 491-92).

6. Hume used the word "natural" in many different senses. For some indication of this see the Selby-Bigge index in the *Treatise*, pp. 715-16. In the ontological or metaphysical sense, something is "natural" if it exists "independent of our thought and reasoning" (*T*, p. 168), or has "no dependence on the artifice and contrivance of man" (*T*, p. 574).

7. See N. Capaldi, *Hume's Place in Moral Philosophy*.

8. David Hume, *Dialogues Concerning Natural Religion*, ed. Norman Kemp Smith (Indianapolis, Ind.: Bobbs-Merrill, 1947), p. 220.

9. Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, Ind.: Notre Dame University Press, 1988) p. 295.

10. In the interests of space, I have eliminated a long discussion of Hume's critique of Locke's conception of property. The gist of that discussion was that (a) it exemplified the point made in the text that property does not exist prior to civil society, and (b) that Locke's view that we have a natural right to property through labor is founded on Aristotelian realist metaphysics and Aristotle's analysis of causation, both of which Hume rejects. The discussion also stressed the extent to which substantive theses in moral, social, and political philosophy turn on fundamental philosophical disputes. Hence, Hume's discussion of property cannot be divorced from his overall philosophy.

11. If property is a causal relationship, and if property is a normative

concept, then clearly causal relationships can become normative under certain circumstances. If causal relationships can become normative, then Hume does not make a sharp distinction between certain kinds of factual states of affairs, including causal ones, and normative states of affairs. The widely held contention that Hume was the first to distinguish between the factual and the normative is not only false but the opposite of what Hume actually held. For a discussion of this issue see N. Capaldi, *Hume's Place in Moral Philosophy*.

12. In the *Enquiry Concerning the Principles of Morals*, Hume substitutes the sentiment of humanity for sympathy as the general principle of morals. This does not substantively change any issues we have discussed so far or will discuss in this paper. For a further elaboration of this change and its importance, see N. Capaldi, *Hume's Place in Moral Philosophy*.

13. It has been suggested to me that something like an internal sanction can be found in Hobbes. This is a controversial point in contemporary Hobbes scholarship. However, it remains the case that Hume and many of his contemporaries took Hobbes to be denying the existence of an internal sanction, and a great deal of debate in seventeenth- and eighteenth-century British moral philosophy centered on the existence of an internal sanction.

14. In the *Enquiry Concerning the Principles of Morals*, Hume specifically mentions the issue of "relations" in his discussion of property. Referring to Montesquieu, Hume says: "The author of *L'esprit des Loix*. This illustrious writer, however, sets out with a different theory, and supposes all right to be founded on certain *rappports* or relations; which is a system, that, in my opinion, never will be reconciled with true philosophy. Father Malebranche, as far as I can learn, was the first that started this abstract theory of morals, which was afterwards adopted by Cudworth, Clarke, and others; and as it excludes all sentiment, and pretends to found everything on reason, it has not wanted followers in this philosophic age." (*EM*, p. 197n).

15. N. Capaldi, "Hume's Rejection of 'Ought' as a Moral Category," *Journal of Philosophy* (1966): 126-37; see also N. Capaldi, *Hume's Place in Moral Philosophy*.

16. See N. Capaldi, *Hume's Place in Moral Philosophy*.

17. Areyh Botwinick, "A Case for Hume's Nonutilitarianism," *Journal of the History of Philosophy* (1977): 423-35.

18. The contractarian misrepresentation of Hume is most noticeable in the work of D. Gauthier, "David Hume: Contractarian," *Philosophical Review* (1979): 3-38; "Three Against Justice," *Midwest Studies in Philosophy VII*, eds. P. A. French, T. E. Uehling, and H. F. Wettstein (1982): 11-29; *Morals By Agreement* (1986).

19. A point stressed in Donald Livingston's book *Hume's Philosophy of Common Life* (Chicago: Chicago University Press, 1984).

20. See J. Moore, "Hume's Theory of Justice and Property," *Political Studies* (1976): 103-19. See also, David Miller, *Philosophy and Ideology in Hume's*

Political Thought (Oxford: Clarendon Press, 1981), chap. 3. It must also be kept in mind that where Hume rejected Roman law concepts he tended to substitute common law practices.

21. Various versions of this charge can be found in: Frederick G. Whelan, "Property as Artifice: Hume and Blackstone" in *Property*, J. Roland Pennock and John W. Chapman, eds. (New York: New York University Press, 1980), pp. 101-129; John B. Stewart, *The Moral and Political Philosophy of David Hume* (New York: Columbia University Press, 1963), pp. 114-15; John Plamenatz, *The English Utilitarians* (Oxford: Basil Blackwell, 1958), pp. 29-30.

22. See N. Capaldi, "The Preservation of Liberty," in N. Capaldi and D. Livingston, eds., *Liberty in Hume's "History of England"* (Dordrecht: Kluwer, 1990) for a discussion of how Hume construed the operation of historical thinking.

23. David Hume, *Essays*, Eugene Miller, ed. (Indianapolis: Liberty Classics, 1985), p. 47.

24. See Capaldi and Livingston, eds., *Liberty in Hume's "History of England."*

25. In the interests of space, I have eliminated a discussion of how Hume's account of human nature grounds his discussion of property. Specifically, property produces pride and pride produces the idea of the self. This underscores the extent to which property is peculiarly human, social, moral and not reducible to the desire for gain. Historically, both Kant and Hegel recognized the importance of property as a means by which an individual could "translate his freedom into an external sphere in order that he may achieve his ideal existence" (Hegel, *Philosophy of Right*, Sec. 4).

**Abbreviations for David Hume's Works
Used Throughout This Volume**

E *Essays, Moral, Political, and Literary*, ed. Eugene F. Miller. Indianapolis: Liberty Classics, 1985.

EU *David Hume's Enquiries Concerning Human Understanding*, ed. L. A. Selby-Bigge, 3rd ed. revised P. H. Nidditch. Oxford: Clarendon Press, 1975.

I *An Inquiry Concerning Human Understanding*, ed. C. W. Hendel. Indianapolis, Ind.: Bobbs-Merrill, 1955; *EM* *Enquiries Concerning the Principles of Morals*, ed. L. A. Selby-Bigge, 3rd ed. revised P. H. Nidditch. Oxford: Clarendon Press, 1975.

H *The History of England, From the Invasion of Julius Caesar to the Abdication of James the Second, 1688*, based on the edition of 1778 with the author's last corrections and improvements. 6 vols. Indianapolis: Liberty Classics, 1983.

L *The Letters of David Hume*, J. Y. T. Grieg. 2 Vols. Oxford: Clarendon Press, 1932.

NHR *The Natural History of Religion*, ed. A. Wayne Colver and *DHR* *Dialogues Concerning Natural Religion*, ed. John Valdimir Price. Oxford: Clarendon Press, 1976.

T *A Treatise of Human Nature*, ed. L. A. Selby-Bigge, 2nd edition with text revised and variant readings by P. H. Nidditch. Oxford: Clarendon Press, 1978.

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