HUME ON VIRTUES AND RIGHTS[1]

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In this paper I explore how Hume's theory of justice brings "right" and "virtue" together, and point out some problems that his approach creates. First, I briefly describe Hume's general moral theory. I then take up the difference between "virtue" and "right" and, finally, Hume's attempt to harmonize these two terms by means of the notion of "artificial virtue".

Recent works on Hume have developed two central lines of interpretation of his moral and political philosophy: (a) that his moral theory is aptly described as a weak form of "realism"; (b) that his theory of justice may be helpfully understood in the light of the conceptual apparatus provided by the

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"modern" natural law tradition[2]. These interpretations have carefully considered Hume's thought within its intellectual context, especially its eighteenth-century Scottish context. In doing so they have revealed the shared concern of Scottish philosophers of this period with "moral realism" and a significant influence of the Continental natural law school in their writings. It has been acknowledged, however, that these features of their thought make use of two different "languages" – namely, the language of *virtue* and the juridic language of *right* and *law* – whose compatibility has been disputed[3].

In this paper I explore, first, how Hume's theory of justice brings "right" and "virtue" together. I then point out some problems that his approach creates. My focus is principally on Hume's discussion in *A Treatise of Human Nature*, with occasional references to *An Enquiry concerning the Principles of Morals*[4].

I begin by reviewing three important aspects of Hume's moral theory. I do not directly take up the question of his weak form of moral realism, a topic that goes far beyond my purpose here, but some of its features appear in my discussion of Hume's concept of virtue. I then take up the question of the difference between virtue and right. Finally, I consider Hume's

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[2] For the first line of interpretation, see D. F. Norton (1982); for the second, see D. Forbes (1975) and S. Buckle (1991).

[3] This problem has been found in, for instance, Francis Hutcheson's moral and political thought. See J. Moore (1990) and K. Haakonssen (1990). For a discussion of these "languages" in eighteenth-century social thought, see J. G. A. Pocock (1983).

[4] From now on I shall refer to these texts, respectively, as T and EPM, followed by the relevant page number, all references are to the Selby-Bigge/Nidditch editions (cf. Bibliography).

attempt to harmonize these two terms by means of the notion of "artificial virtues".

1. THREE FEATURES OF HUME'S MORAL THEORY

(A) Hume's is a theory of moral sentiments as well as of virtues. Although he is not always consistent in this matter[5], the theory of the *Treatise* suggests that there is a clear distinction between the viewpoint of the *agent* and the viewpoint of the *observer*. On this theory, virtue is found in agents, while moral sentiments are found in observers. This, however, is a difference of viewpoints, and not necessarily one of persons, for an agent may be his own observer. In such a case, the agent's own virtue (or vice) would stimulate his moral sentiments.

On one hand, then, virtues are "durable" qualities of the mind (T 575). They are character traits, or the motives to act which derive from the character traits, of the agent. They are not his or her actions in themselves, for Hume considers actions to be only the "signs" of these durable qualities (T 575). On the other hand, moral sentiments are features of observers' responses to such durable principles. Observers feel pleasure when they perceive (the signs of) a virtuous quality in an agent, and then "love" the agent. In contrast, observers feel pain when they perceive (the signs of) a vicious quality, and then "hate" the agent. As Hume puts it:

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[5] I am referring to passages such as T 469, in which Hume compares virtue and vice with "sounds, colours, heat and cold, which, according to modern philosophy, are not qualities in objects, but perceptions in the mind". This passage, I admit, is in sharp contrast with those treating virtues as objective qualities of the agents. But see C. G. Swain (1992).

these two particulars are to be consider'd as equivalent, with regard to our mental qualities, *virtue* and the power of producing love or pride, *vice* and the power of producing humility or hatred (T 575; Hume's emphasis).

The details of the psychological mechanism that gives rise to moral sentiments are not my concern here. It is clear from the above passage, however, that Hume is willing to connect the notion of moral sentiment with his theory of indirect passions (love and hatred, pride and humility). And this stresses the point that the mental quality (the virtue or vice) which causes the moral sentiment cannot be confounded with the sentiment itself (cf. T 294-6; see Árdal (1966), chap.6). It is true that without the approbation of the observers, no mental quality of the agents would be called "virtue". But this fact only shows that the feeling of the observer and the virtue of the agent are interdependent, not that they are identical.

(B) The observer's point of view is the detached perspective from which we impartially judge or value the durable qualities of agents' minds. It is a point of view that disregards the observer's interests and any particular affections he may have towards the agents judged (T 472, 581-2). That observers must be detached in this way does not mean that agents, in order to act virtuously, have always to act impartially. In fact, there are many virtuous motives which are naturally biased. A father who helps his son rather than a stranger is always praised. He would be blamed if he acted contrarily. The same is true of most of an agent's benevolent affections. These are not supposed to be equally distributed to everyone. Nor is it supposed that agents will act with universal or unlimited benevolence, for there is no such passion in human nature (T 481). The fact that observers *react* positively to an agent's good

deeds, regardless of their particular relationship with her, is not derived from a passion or *desire* to do good to others, but from sympathy (T 579, 586). And sympathy, as P. S. Árdal has pointed out, is only a principle of communication of feelings. The vice of an agent causes a distress in herself or others, and this is communicated to observers through sympathy. But it does not necessarily produce in them a desire to help the person(s) in distress (T 586).

It is equally important to distinguish sympathy from the moral sentiments. Through sympathy, another's pleasures and pains affect me. But there are many situations in which the mechanism of sympathy operates without producing moral sentiments. Because of sympathy, I may, for example, feel uneasy when someone is about to undergo an operation (T 576). It is only when pleasures and pains in others are seen to be causally dependent on qualities of the agent that the associated feelings produced in me by sympathy will trigger moral sentiments. Thus, if the agent produces pleasure or pain in someone else, but this does not happen to be the appropriate effect of a durable principle of the agent's mind, no feeling of approbation or disapprobation will arise in observers, and there will be no praise or blame bestowed on the agent (Árdal (1966), chap. 6).

Sympathy, it is true, is a principle that varies according to place and time, and this may affect the detached point of view from which we approve or disapprove of characters and motives. But Hume thinks that our feelings can be corrected by reflection, with the result that we are led to disregard our particular situation in the world, and thus to make impartial assessments of an agent.

(C) Hume divides the qualities of mind that are valued as virtuous into four types: those which tend to be immediately

right refers to "one's own" (the *suum*); and (b) that the virtue of justice has to do with *the sense of the duty* one has to respect the others' own (Grotius (1984), I.1.iii-viii). For reasons yet to be seen, Hume supposes there are two highly typical forms of *suum*: one's right of property over material goods (that is, the "real right", according to natural law terminology), and one's right of claiming another's promises to oneself (the "personal right").

On the other hand, Hume's scepticism regarding Grotius's moral thought appears precisely when he tries to understand why we say one has a duty to respect the rights of another – why, that is, we say it is "vicious" or "morally wrong" to violate them. Briefly, this is Hume's argument: If we consider *individual* acts of respect for the rights of another, we cannot know why this is found virtuous and the contrary behaviour vicious. According to Hume, action is not good or bad in itself. Action is good or bad only in so far as it refers to the motives or character of the agent. Yet, if we ask what motivates an agent to perform his duty of respecting the rights of others, we find that it is only the sense of duty itself. But this answer only begs the question, for "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 [that is, the sense of duty]" (T 479). Hume accepts that one may act from a sense of duty alone when he or she is already in a "civiliz'd state", sees others performing their duties, and then feels a social pressure to act in the same way. But this is not the issue. Rather, Hume wants to know how it has been possible for human beings to begin to think that they have a duty to respect the rights of their fellow humans. Since he does not find, distinct from the sense of duty itself, a motive for individual performances of this duty, Hume concludes that in a "rude and more natural

condition", human beings would have no notion of rights or of the duty to respect them. In such circumstances the morality of rights would be "unintelligible" (T 480).

Hume's answer to this puzzle resorts to a kind of "conjectural history" of the institution of justice[6]. Humans must have, somehow, invented and begun to use the notion of rights. Because of the social advantages this usage produced, they began to connect their natural idea of virtue, which already includes a notion of duty or obligation (cf. T 517-8), with that of respecting one's rights.

Why and in what circumstances did our ancestors, in their "rude and natural condition", begin to need the notion of rights? The human condition, Hume supposes, was originally one characterized by lack of material goods and security. To overcome this situation, human beings were compelled to look for a kind of society different from the circle of family and friends natural to them. They needed a social arrangement that could unite the natural powers and abilities of several families and individuals not connected by kinship. Some tendencies of our passions, however, must have significantly obstructed the creation of such an arrangement. Assuming that human nature has remained substantially unchanged, we can see that the benevolent affections of primitive men and women could not have gone much beyond that narrow circle of family and friends they naturally belonged to. Outside this circle, where they could not be checked by benevolence, the selfish passions must have been quite disruptive, given the circumstance of scarcity of material goods (T 484-8). Any effort to build up a larger society was constantly threatened by the striv-

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[6] On the concept of "conjectural history", see H. H. Hopfl (1978).

ing of families and individuals to grasp the best of those goods for themselves.

After many frustrated attempts, and regressions to their small, insecure, and poor groups, our ancestors must have learned a way of dealing with the opposition of private interests. First, they learned to restrain the immediate impulses of these passions, and to take a long-term (or at least longer-term) view of matters (T 492). Second, they learned an optimum way to distribute and secure material goods, bringing down to a tolerable level the conflicts which arose from this problem.

There are, of course, many ways of distributing those goods. But, for Hume, the families striving for union must have found out (after bitter and unsuccesful experiences with other ways) that the best one is to adopt the principle of private property. This principle comprises three fundamental rules (T 526):

(a) A rule guaranteeing to each an unlimited and unconditional possession of the goods each has obtained by "industry" and "good fortune".

(b) A rule establishing the possibility of voluntarily alienating and exchanging material goods.

(c) A rule establishing the twin institutions of "promise" and "contract" (a exchange of goods which demands a period of time to be completed).

Hume says that these rules are "artificial" or "conventional", for they would never arise spontaneously in the individuals' minds – as moral sentiments do –, nor would they

function effectively unless widely recognized and practiced by means of a social combination. Hume also uses the term "convention" in order to distinguish it from "promise" and "contract", which are the result of the convention rather than its foundation (T 490).

It is the adoption of private property that brings about the notions of rights and of their attendant obligations. As Hume says:

> After this convention, concerning abstinence from the posses-
> sions of others, is enter'd into, and every one has acquir'd a
> stability in his possessions, there immediately arise the ideas
> of justice and injustice; as also those of *property, right,* and *obli-*
> *gation.* (T 490-1; Hume's emphasis)

Property and right being inseparable from each other, and property meaning private, exclusive property, it should not be surprising to find in Hume's conception of right some of the individualistic features that some scholars attribute to Grotius's theory (see R. Tuck (1979), pp.60ff). But for all that, Hume does restrict the notion of rights to a much narrower role than that accorded by the Dutch jurist and other natural law theorists. For given that, on Hume's account, rights were born in conjunction with the invention of ownership of material goods, he could not admit that there is any sense in talking about rights that are not of human invention. As a matter of fact, most natural law theorists would agree with Hume that the right of property (over material goods) is not natural, but conventional. But they would also say that the notion of right is broader than, and antecedent to, this restricted right of material ownership, and then go on to affirm that there are cer-

tain rights – that is, properties[7] – which are "natural" (for instance, the rights to life and liberty). Hume on the contrary, consciously avoids this approach, confining himself to those rights that result from human deeds and artifice, or, to use the terminology of Pufendorf and Hutcheson, confining himself to "adventitious" rights. This explains why Hume's rights *par excellence* are the "real" and "personal" rights. Moreover, as alienation is a central feature of "adventious" rights, for Hume, no right is inalienable.

   In sum, I do not think that Hume would, had he written a text on jurisprudence, have granted that human beings have a "natural and inalienable" right to life and liberty, as J.B. Stewart ((1992), p.186) suggests. This does not mean that he takes morality to be indifferent to murder and slavery. For Hume, murder is "morally wrong" or "vicious" not because it represents a violation of a natural right, but because it reveals a vicious character trait or motive of the agent. The violation of a right does not in itself – that is, apart from the agent's qualities of mind – constitute a vicious act. This does not mean, at the same time, that Hume would never allow us to speak, in practical terms, of one's right to life and liberty. In fact, he does more than once speak in these terms. But, on a theoretical level, he would explain such talk as an extension of the notion of right from its original and well-founded application to material goods, and not the other way round. In other words,

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[7] What J. Barbeyrac – in his introduction to the French translation of Pufendorf's *De iure naturae et gentium* – says about Locke's concept of right is true also of Grotius's and his followers: "Mr. Locke means by the word 'property' not only the right which one has to his goods and possessions, but even with respect to his actions, liberty, his life, his body; and, in a word, all sorts of right" (J. Barbeyrac (1987), p. xx n.(b)).

Hume would say that, once human beings started to think they have a right of material ownership, they must also have conceived the possibility of analogically applying the same notion to life and liberty.

3. THE VIRTUE OF JUSTICE

I turn, in conclusion, to Hume's explanation of the virtue of justice, that is, to his explanation of the morality of respecting the rights of others. I shall point out, at the end of my analysis, some problems in his argument.

Let us first look closer at why Hume says the virtue of justice is *artificial*. We have already seen that, for the concepts of right and property, "artificial" means essentially "a human invention resulting from convention". In itself, one's exercise of his rights is morally indifferent, neither virtuous nor vicious. At the same time, however, Hume says that our tendency to associate the ideas of virtue and vice, with *respect for* and *violation of* one's rights is natural (T 500 and 533). Still, he sees two chief differences between natural virtues and the virtue of justice. First, there is not that sort of gradation between the virtue of the justice and the vice of injustice which characterizes natural virtues:

> If you assent, therefore, to this last proposition, and assert, that justice and injustice are not susceptible of degrees, you in effect assert, that they are not naturally either vicious or virtuous; since vice and virtue, moral good and evil, and indeed all *natural* qualities, run insensibly into each other, and are, on many occasions, undistinguishable. (T 530; Hume's emphasis).

Second, for Hume, as I have noted, virtues are either agreeable or useful to one's self (the agent) or others. The virtue of justice is no exception; in so far as it produces public good, it is simultaneously useful to one's self and others (T 579). But justice is different in this: its usefulness is not to be found in each single instance of its practice. Although an inflexible, systematic, and universal respect for the rules of property and right is beneficial, any individual act of justice may be – in fact, is likely to be – detrimental either to the just agent or to others. Justice is beneficial only if the *whole* system remains intact:

> The only difference betwixt the natural virtues and justice[8] lies in this, that the good, which results from the former, arises from every single act, and is the object of some natural passion: Whereas a single act of justice, consider'd in itself, may often be contrary to the public good; and 'tis only the concurrence of mankind, in a general scheme or system of action, which is advantageous. (T 579).

Despite these two differences between the natural and the artificial virtues, Hume tries to keep the basic features of his system uniform. In particular, he appeals to his theory of sympathy to explain why it is that we never fail to feel approbation toward those who comply with the rules of justice. We, as *observers,* approve of an agent who maintains the rules of right and property because we sympathize with the advantages that we suppose will accrue to others, and to the agent himself, as a result of this just behaviour. In our role of observer we also disapprove of a failure to maintain the rules of justice. For we consider such a failure to be:

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[8] In fact, as we can see, this is not the only difference.

prejudicial to human society, and pernicious to every one that approaches the person guilty of it. We partake of [these others'] uneasiness by *sympathy*; and as every thing, which gives uneasiness in human actions, upon the general survey, is call'd Vice, and whatever produces satisfaction, in the same manner, is denominated Virtue; this is the reason why the sense of moral good and evil follows upon justice and injustice. (T 499; Hume's emphasis).

There is, however, a problem in this argument. Although Hume appears to make consistent use of sympathy, I suggest that he fails to display here one fundamental feature of his general moral theory. As I have pointed out, Hume says that virtue and vice are not the *sentiments* of the observer. They are, rather, something distinct from this sentiment, and something that refers to a particular *agent*'s quality of mind – to, that is, his character traits or motives. But in his discussion of sympathy and justice, Hume simply avoids this issue. In fact, a few lines later, he goes so far as to contrast the *motive* for the origin of justice with the *public interest* it happens to promote, and suggests that the morality of justice has to do only with the public interest. "Thus", he says, "self-interest is the original motive to the establishment of justice: but a sympathy with public interest is the source of the moral approbation, which attends that virtue" (T 499-500).

Now, it is clear that public interest is only the *effect* of just acts, and that such an effect in itself cannot make observers morally approve the agent's behaviour, unless it is a "sign" of a durable quality of his mind. But, if Hume cannot say that the *motives* – and not simply the effects – of acts of justice, are virtuous, then neither can he consistently go on to say that these

acts are virtuous[9]. He himself emphasizes this point at the very beginning of his discussion of justice:

> Tis evident, that when we praise any actions, we regard *only* the motives that produced them, and consider the actions as signs or indications of certain principles in the mind and temper. The external performance has no merit. We must look within to find the moral quality. (T 477; my emphasis)

What does Hume intend for us to think when he opposes self-interest and public interest, and then treats the latter as the cause of the moral approval we give to acts of justice? Given that it is not public interest, but private interest, that is the original motive for the invention of the rules of justice, he seems to suggest that we approve of acts of justice without approving of this original motive. But such a conclusion clashes with Hume's own assumption that the moral sentiments have to do with motives and character traits, and not merely with the external appearances of them in actions.

Here it might be objected that public interest, although not the original motive of justice, can now, after a long period of civilized life, become the leading motive for an individual to be just. Hume appears to grant that such a refined motive could now be effective, but he also argues that such public spiritedness is relatively rare, and cannot be considered a general cause of just behaviour:

> experience sufficiently proves, that men, in the ordinary conduct of life, look not so far as the public interest, when they pay their creditors, perform their promises, and abstain from

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[9] In different ways, Árdal ((1966), p.184) and Haakonssen ((1978), pp. 7-17) have already pointed out the same problem.

> theft, and robbery, and injustice of every kind. That is a mo-
> tive too remote and too sublime to affect the generality of
> mankind. (T 481)

Moreover, observers themselves generally suppose that agents'
motives are naturally biased (T 602), but still never fail to
praise those who act justly.

I conclude by suggesting that, in order to give Hume's
position greater consistency, we need to reconsider his views
about the morality of the original motive to justice. We need to
ask – as J.B. Schneewind (1990) and D. Gauthier (1992) have
tried to do – if, consistently with Hume's view on morality, the
long-term self-interest that leads to the invention of justice and
property might be seen as a virtuous motive. To be sure, Hume
seems to rule out this possibility when, for example, he op-
poses the "natural obligation of interest" to the "moral obliga-
tion" to follow the rules of justice (T 498). Still, as far as I can
see, there is nothing in his general moral theory that explains
why this should be so. But this is a question for another article.

Abstract: *Neste artigo, eu analiso como a teoria da justiça de Hume
conecta "direito" e "virtude", e aponto alguns problemas que sua abor-
dagem cria. Primeiro, descrevo sinteticamente a teoria moral humea-
na. Em seguida, considero a diferença entre "virtude" e "direito" e,
finalmente, a tentativa humeana de harmonizar esses dois termos
através da noção de "virtude artificial".*

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