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JUSTICE, SYMPATHY AND THE COMMAND OF OUR ESTEEM

– Jacqueline Taylor –

Abstract. I have shown here the different roles that sympathy plays in the accounts of justice in the *Treatise* and *Enquiry*. In the former work, a redirected sympathy naturally extends our concern, and subsequently our moral approval or blame, to all those included within the scope of the rules of justice. In the *Enquiry*, we find this same progress of sentiments, but Hume’s introduction of the sentiment of humanity allows him to make a stronger case for the importance of those virtues that are useful, particularly the virtues of justice. The command of our esteem and our moral approval of justice secure a place for justice at the heart of Hume’s ethics. This does not entail, however, that other useful virtues are not also essential. Benevolence and the care of children, friendship, and gratitude not only help to sustain sociability, but they are essential for living a properly human life.

Keywords: regard for justice, common sense of interest, sympathy, humanity, esteem.

In his *Treatise of Human Nature*, Hume writes that “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.”¹ In Hume’s later work of moral philosophy, *An Enquiry concerning the Principles of Morals*, he claims that our sense of humanity leads us to approve of the public utility of justice; utility thus forms the “sole foundation” of the merit of justice.² I examine the arguments of these two works to establish the crucial role that sympathy and humanity play in our moral approval of justice and disapprobation of injustice. I argue that humanity, a kind of moral sentiment that Hume introduces in EPM, makes clearer than in the *Treatise* the connection between justice and public utility, and how sympathy with utility grounds the merit and our approval of justice. I shall argue that justice uniquely commands our esteem in a way that influences both the motivation to act justly and our moral approbation of that virtue. Hume’s *Enquiry* thus substantially clarifies and adds to his account of justice in the *Treatise*.

¹ Hume [2007] p. 320–321 (3.2.2.24).

² Hume [1998] p. 83 (3.1).

I

The *Treatise* devotes 12 Sections in Part 2 of Book 3 to justice and injustice, and some other artificial virtues. Hume begins his discussion by asking whether justice is a natural or artificial virtue. He argues that a virtuous action is an external sign of a virtuous motive, and it is the internal motive rather than the external performance of which we morally approve. The virtuous motive must thus precede the action, and a “mere regard” to the action as virtuous cannot itself serve as the motive for action.³ By considering someone’s reason or motive for repaying a loan, Hume then dismisses the possible natural motives as inadequate for justice. Self-love cannot serve as the motive for action, for “when it acts at its liberty,” it “is the source of all injustice and violence.”⁴ Public benevolence is limited, often expressed as our love of company, or of those who are like us in some respect; there is no “love of mankind, merely as such.”⁵ Private benevolence is also limited, directed towards those we care about, and fails to make us act justly towards our enemies or those we personally think undeserving.⁶ Moreover, it is not from private benevolence that we leave a proprietor in possession of his property.⁷ In addition to these natural motives, Hume considers several other possibilities. First, “the sense of morality or duty” may produce an action that is typically exercised from a natural motive, e.g., love of children. But acting from a sense of duty does not make the action virtuous; the person acts from duty *because* she lacks or is insufficiently moved by a natural virtue.⁸ Second, we do have “a regard to justice, and abhorrence of villainy and knavery,” as well as a “regard to public interest”; but none of these exist in mankind’s “rude and more *natural* condition.”⁹ Hume observes that the regard to public interest “is not naturally attach’d to the observation of the rules of justice; but is only connected with it, after an artificial convention for the establishment of these rules”; moreover, this particular regard is “too remote and too sublime to affect the generality of mankind.”¹⁰ And a regard to justice may indeed motivate an honest person or someone with a “sense of duty or

³ Hume [2007] p. 307 (T 3.2.1.2-4).

⁴ *Ibidem*, p. 309 (T 3.2.1.10).

⁵ *Ibidem*, p. 309 (T 3.2.1.12).

⁶ *Ibidem*, p. 310 (T 3.2.1.13).

⁷ *Ibidem*, p. 310 (T 3.2.1.16).

⁸ *Ibidem*, p. 308 (T 3.2.1.8).

⁹ *Ibidem*, p. 308–309 (T 3.2.1.9, 11).

¹⁰ *Ibidem*, p. 309 (T 3.2.1.11).

obligation” precisely because she has been “train’d up according to a certain discipline and education.”¹¹

After providing these arguments, Hume concludes:

From all this it follows, that we have naturally no real or universal motive for observing the laws of equity, but the very equity and merit of that observance; [since this is not a matter of nature establishing a sophistry], we must allow that the sense of justice and injustice is not deriv’d from nature, but arises artificially, tho’ necessarily from education, and human conventions.¹²

Hume adds “as a corollary to this reasoning” a point about the relation between our natural partiality and our sense of duty:

Since no action can be laudable or blameable, without some motives or impelling passions, distinct from the sense of morals, these distinct passions must have a great influence on that sense. ... We always consider the *natural* and *usual* force of the passions, when we determine concerning vice and virtue; and if the passions depart very much from the common measures on either side, they are always disapprov’d as vicious. A man naturally loves his children better than his nephews, his nephews better than his cousins, his cousins better than strangers, where every thing else is equal. Hence arise our common measures of duty, in preferring the one to the other. Our sense of duty always follows the common and natural course of the passions.¹³

This corollary gives an important clue about why justice requires human convention and cooperation, and how its status as a virtue reflects the importance of developing a regard for justice.

Developing the point about the force of our natural passions, Hume urges that what he now calls “our first and most natural sentiment of morals,” that “founded on the nature of our passions,” will impel men “in contrary directions,” each driven by an avidity for acquiring goods for himself, his family and friends.¹⁴ So “our natural uncultivated ideas of morality, instead of providing a remedy for the partiality of our affections, do rather conform themselves to that partiality, and give it an additional force and influence.”¹⁵ When avidity “acts without any re-

¹¹ Ibidem, p. 308 (T 3.2.1.9).

¹² Ibidem, p. 310–311 (T3.2.1.17).

¹³ Ibidem, p. 311 (T 3.2.1.18).

¹⁴ Ibidem, p. 315 (T 3.2.2.11).

¹⁵ Ibidem, p. 314 (T 3.2.2.8).

straint," it is "insatiable, perpetual, universal, and directly destructive of society."¹⁶ But none of the natural affections has the "sufficient force and proper direction" needed to counterbalance avidity.¹⁷ While a general benevolence has the right direction, it lacks force, and the interested or partial passions, while forceful, reinforce rather than counter avidity. The remedy lies in "the interested affection" controlling itself by altering its direction, which will then have both sufficient force and the proper direction to counter an insatiable avidity. Interest acting entirely at its liberty is impetuous and blind, but "the least reflection" reveals to us that interest "is much better satisfy'd by its restraint, than by its liberty," for by establishing a rule to stabilize one another's goods, we make society more orderly. We can thus not only acquire but also safely keep (as well as exchange) possessions.¹⁸ The guidance of the understanding allows interest to reflect on the advantage of restraining itself. Our early experience of the advantages of rules within a family setting reflects the "first rudiments of justice"; we extend these rules to cover the stabilization of possessions in the larger community.¹⁹ Each of us has an interest in leaving another in possession of his goods so long as he does likewise. So we enter into a convention in which, over time, "this common sense of interest is mutually express'd, and is known" to all; a common sense of interest gives us confidence that others will follow the rules, for the convention is much like language or money as the means of economic exchange where everyone benefits from having an orderly and intelligible system in place.²⁰

This general sense of common interest also reflects each individual's redirected and reflective interest; this redirected interest serves as the first motive to justice.²¹ After establishing the convention, the ideas of justice and injustice immediately arise. Hume indicates that interest initially continues to be "sufficiently strong and forcible" to maintain justice and acceptance of restraint by its rules.²² Yet as society increases, that redirected interest becomes "more remote," so that we are tempted to "follow a lesser and more present interest." Despite this bias in favor of our own present interest, Hume observes that "we never fail to observe the prejudice we receive, either mediately or immediately, from the injustice of

¹⁶ *Ibidem*, p. 316 (T 3.2.2.12).

¹⁷ *Ibidem*, p. 316 (T 3.2.2.13).

¹⁸ *Ibidem*.

¹⁹ *Ibidem*, p. 316 (T 3.2.2.14).

²⁰ *Ibidem*, p. 315 (T 3.2.2.10).

²¹ See also Baier [2010] and Cohon [2008].

²² Hume [2007] p. 320 (T 3.2.2.24).

others"; even when their injustice does not affect our own individual interest, we nevertheless now consider it pernicious to those who are affected as well as to the public interest and society.²³

The rules of justice have in effect created a public interest with which we sympathize, and in which we take a concern. This public interest reflects not only the interest we each have in both receiving the protections of justice and being obliged to observe its rules, but our recognition of the interests of all others who are members of the community to which the rules apply. Thus we sympathize with those affected by the injustice of rule violators, and with the public interest when injustice adversely affects the common good. We should note that justice also redirects sympathy, away from a natural partiality for family and friends. Sympathy thus becomes impartial, a sympathetic approval or uneasiness from a *general survey*, such that instances of justice may earn our approval, while injustice always elicits our blame and disapprobation. This general survey is a shared point of view, what Hume later in Book 3 calls a *general_or common point of view*. The general survey makes us aware that others will disapprove of our acting unjustly to satisfy a more immediate interest, and our sympathy with their sympathetic uneasiness directed towards those affected by our injustice helps to reinforce our regard for justice. As Hume is now positioned to point out, our sense of moral good and evil, with regard to justice and injustice, follows upon the establishment of justice. He writes: "Thus *self-interest* is the original motive to the *establishment* of justice: But a *sympathy* with *public interest* is the source of the *moral* approbation, which attends that virtue."²⁴ Our natural impartial sympathetic uneasiness with the effects of injustice wherever it occurs, and our subsequent blame, exhibit a natural and necessary "progress of the sentiments." The more progressive moral sentiments thus contrast with the first natural moral sentiments and uncultivated ideas of morality. Politicians have a role in furthering this progress of the moral sentiments by seeking, through the artifice of civic education and public praise and blame, "to produce an esteem for justice, and an abhorrence of injustice; the private instruction of parents aims at the same, and indeed, this early inculcation makes the sentiments of honor and probity "take root" with "such firmness and solidity" in the "tender minds" of children that they become part of the internal constitution and character."²⁵ Finally, given the necessity of justice for so-

²³ Ibidem.

²⁴ Ibidem, p. 320–321 (T 3.2.2.24).

²⁵ Ibidem, p. 321 (T 3.2.2.25–26).

ciety's existence, our reputation becomes closely tied to our regard or disregard for justice, a point Hume emphasizes in EPM. As he writes,

For this reason, every one, who has any regard to his character, or who intends to live on good terms with mankind, must fix an inviolable law to himself, never, by any temptation, to be induc'd to violate those principles, which are essential to a man of probity and honour.²⁶

II

Hume's discussion of justice and sympathy in EPM is more nuanced, better organized, and more concise than the *Treatise* account. To be sure, EPM leaves out much of the important details of the *Treatise*, for example, concerning promises and the origin of and allegiance to government. Yet Hume displays a sharper sense of the key points he wants to establish regarding justice and its merit, and in particular, that "the necessity of justice to the support of society is the sole foundation" of its merit and standing as a virtue.²⁷ He had highlighted, in the *Treatise*, that our necessitous condition and scarcity of goods, along with interest and limited benevolence, were the background conditions that gave rise to the convention of justice. Yet EPM presents a more systematic and more fully developed account of the circumstances that make justice both necessary and possible for us.

One overarching aim of the *Treatise* was to establish that the origin of certain kinds of perception, especially belief, the indirect passions, and the moral sentiments, all of which are central to our moral identity, can be explained in terms of efficient causation (namely, other perceptions), thereby eliminating any need to appeal to final causes to explain our moral life. Hume thus gave an important role to the principles of association, mainly causation, but also resemblance and contiguity, in explaining how sympathy gives rise to the moral sentiments and reinforces a self-regarding passion such as pride. In EPM, Hume gives an account of the virtues and moral sentiments with the aims of establishing the respective necessary roles of reason and sentiment in moral evaluation, the broad scope of the virtues or what is better termed *personal merit*, and attention to the historical and cultural variability of the virtues. Notably, and in contrast to the earlier work, Hume details (at least) three distinct kinds of moral sentiment, which I will term *humanity*, *sublimity*, and *charm* or *kindly feeling*. Humanity, which reflects the importance to us of utility, also makes justice distinctive in relation to the other vir-

²⁶ Ibidme, p. 321 (T 3.2.2.27).

²⁷ Hume [1998] p. 98 (3.48).

tues or meritorious qualities, not because justice is artificial, but because, and as we shall see in more detail further on, justice commands our esteem more than any other virtue.

Hume's starting point in EPM is with examining the catalogue of virtues in a systematic fashion in order to establish the offices of reason and sentiment. He begins with the social virtues, benevolence and justice, since their status as virtues seems obvious, and they are less likely to be contested than the self-regarding virtues. On the other hand, in Section 6, Hume thinks it obvious we condemn those vices disadvantageous to their possessor, and he uses the fact that we cannot resolve into self-love our admiration of others' self-regarding qualities to show that we are not indifferent to others' happiness and misery; these points tell against the selfish school of philosophers. The terms we use to describe the person with qualities that fall under benevolence "universally express the highest merit, which *human nature* is capable of attaining."²⁸ Through various historical examples and different benevolent actions or practices, Hume shows that we are in broad agreement that the benevolent person, depending on her fortune and situation, positively influences the lives of others. Thus, he concludes, "the utility, resulting from the social virtues, forms, at least, a *part* of their merit, and is one source of that approbation and regard universally paid to them."²⁹ In EPM, Hume emphasizes, more so than he did in the *Treatise*, the crucial role of public utility in our determinations of meritorious characters:

In all determinations of morality, this circumstance of public utility is ever principally in view; and wherever disputes arise, either in philosophy or common life, concerning the bounds of duty, the question cannot, by any means, be decided with greater certainty, than by ascertaining, on any side, the true interests of mankind. If any false opinion, embraced from appearances, has been found to prevail; as soon as farther experience and sounder reasoning have given us juster notions of human affairs; we retract our first sentiment, and adjust anew the boundaries of good and evil.³⁰

History and experience have shown the moderns that tyrannicide is no longer the best way to depose of oppressive leaders; similarly, we now see that the refinements afforded by luxuries produce progress in industry, the arts, manners and

²⁸ *Ibidem*, p. 78 (2.1).

²⁹ *Ibidem*, p. 80 (2.8).

³⁰ *Ibidem*, p. 81 (2.17).

civility. Hume concludes Section 2 by indicating that he will examine in Section 5 “why this circumstance” of public utility “has such a command over our esteem and approbation.”³¹

III

Hume divides EPM Section 3 into two parts. The first concerns the hypothetical or possible circumstances that would make justice unnecessary, useless or impossible; a series of points comprise a corollary about how justice is possible and necessary for us. The second part considers generally how particular rules are determined, emphasizing their public utility; Hume also takes up the question of whether we have an instinct for justice or we become just through education and acquired habits.

The circumstances of mankind render the rules of justice useful for us. Hume argues that for the most part, we find ourselves between two extremes. On the one hand, if we lived with an abundance of external resources, we would have no need for property or for “the cautious, jealous virtue of justice.”³² Similarly, if we were possessed of such a generous temper that we naturally regarded one another as “a second self,” always ready to perform good offices on behalf of others, we would have no need for justice.³³ On the other hand, while finding ourselves in conditions of extreme scarcity, such that not all can survive, or falling in with ruthless ruffians, are certainly possibilities for us, these are rare with respect to the majority of mankind; but if these circumstances come about, self-preservation leads us to suspend the rules of justice. The facts of our actual circumstances show us to be partial towards family and friends, but with the capacity to reflect on the advantages of more equitable conduct towards others. We also see that our labor and industry can yield more of life’s goods as long as we establish rules regarding property and stable possession. These rules, and the particular laws embodying them, may be thought of as extensions of the rules that take place in the family setting into which all are born.

While Hume had discussed the poet’s Golden Age and the Hobbesian state of nature in the Treatise, in EPM he introduces two other hypothetical circumstances, intended as analogues to demonstrate further the origin of justice. The first concerns a species of rational creatures that nevertheless are inferior to us in both mental and physical ability to the extent that they cannot resist us, and can-

³¹ Ibidem, p. 82 (2.23).

³² Ibidem, p. 82 (3.3).

³³ Ibidem, p. 84 (3.6).

not “make us feel the effects of their resentment.” Hume does not deny that such creatures may feel anger or misery, but in claiming that they cannot make us feel the effects of their resentment he indicates that this is so with respect to rights or property. We may assign such rights or property to them, but they cannot themselves make a claim to such rights or property. I take it Hume means that they cannot articulate any grievance, infringement of or a claim to rights. If we do establish rights to such beings or entities, it is we, not they, who must make a claim about any alleged violations of their rights. They are not part of human society, “which supposes a degree of equality”; justice is thus “*useless... in so unequal a confederacy.*”³⁴ Hume’s claim here is about the equality of human beings in terms of their capacity to recognize and effectively resent violations of rights or a lack of legal protections.³⁵ The second hypothetical circumstance concerns supposing that members of the human species are entirely self-sufficient, bound to no other. Such “a being would be as much incapable of justice, as of social discourse and conversation.”³⁶ Here Hume again emphasizes that our actual circumstances find us interdependent, beginning life in a family that follows rules for mutual advantage and subsistence, and that over time merges with other families extending the rules “for mutual convenience and advantage,” so that “the boundaries of justice still grow larger,” again with a “natural progress of human sentiments, and... the gradual enlargement of our regards to justice, in proportion as we become acquainted with the extensive utility of that virtue.”³⁷

That the gradual enlargement of our regard for justice reflects a natural progress of human sentiments does not entail that we have a sense of justice due to natural instinct. The details of justice are too complex and variable to be traced simply to instinct. Hume instances, for example, the various ways in which property may be acquired, and the variable boundaries for those with the authority to legislate or to execute justice. As in his *Treatise* account, Hume emphasizes the importance of education and acquired habits in coming to have a sense of or regard for justice. Whilst that early process of education and inculcation may obscure the origin of the sense of justice, we still “even in common life” can recall the principle of public utility and the absolute necessity of the rules of justice to the mainte-

³⁴ *Ibidem*, p. 88 (3.18).

³⁵ While Hume instances women’s charm as one way of securing rights and protections, some arguably more empowering ways include expressions of anger, violence, theft, or at the extreme, suicide. For more on how even people subject to extreme oppression may nevertheless effectively express resentment, see Taylor [2015]; see also Baier [1980/2010] and Hope [2010].

³⁶ Hume [1998] p. 89 (3.20).

³⁷ *Ibidem*, p. 89 (3.21).

nance of society.³⁸ Where other animals may be guided by instinct, human beings rely on their sagacity, reason, reflection, forethought and design. In EPM Hume avoids using the term *artificial* with respect to justice, and in Section 4, he enumerates in addition to government various conventions, including marriage and the chastity of women, good manners and gallantry, games, and the rules of the road, which we adopt with ease.

IV

Hume has established that we approve of the social virtues of benevolence and justice, and blame their vicious forms, due at least in part to their utility. We approve of utility because of our capacity for sympathy and our sense of humanity. Hume is not precise in his terminology, and he sometimes speaks of *sympathy* and *humanity* (he also uses the terms *fellow-feeling* and *natural sentiment of benevolence*) as if they were synonymous. Yet the text suggests that *humanity* has a special meaning and reflects the general concern we feel, through sympathy, for the happiness or misery of mankind as that is affected by useful or pernicious character traits. Sympathy, generally speaking, is the capacity we have to take an interest in others, in their feelings, sentiments and opinions, and to feel as they do or in response to them. Sympathy gives rise to our moral sentiments when we choose a common point of view, one we share with others and from which we use moral terms expressing our approbation or blame for those mental qualities that comprise personal merit. "Personal merit," Hume writes, "consists altogether in the possession of mental qualities, *useful or agreeable to the person himself or to others.*"³⁹ After his examination of the social virtues valued for their utility, Hume proceeds to examine qualities, such as frugality, industriousness and prudence, that are useful for the individual possessed of them. He then looks at qualities or aspects of qualities that are agreeable either to the person possessed of them or to others. For example, while a due sense of pride is useful to its possessor because it allows her to have an understanding of and appreciate her good qualities, as well as giving her a sense of competence, it also gives her an immediately pleasing "elevation of sentiment."⁴⁰ Similarly, while courage is useful to the person possessed of it as well as to the public, it too is immediately agreeable to its possessor, felt as "a sublimity and daring confidence."⁴¹ Yet another set of qualities are found to be imme-

³⁸ Ibidem, p. 97 (3.47).

³⁹ Ibidem, p. 145 (9.1).

⁴⁰ Ibidem, p. 132 (7.4).

⁴¹ Ibidem, p. 134 (7.11).

diately agreeable to others, including good manners, wit, eloquence, modesty, and even cleanliness. Through sympathy, we approve of both sorts of qualities, those immediately agreeable to their possessor and those that give an immediate pleasure to others.

Yet our moral responses to the immediately agreeable aspect of qualities are not the same as those that reflect our sense of humanity. For example, the “sublimity and daring confidence” of the courageous person engages our affections immediately “and diffuses, by sympathy, a like sublimity of sentiment over every spectator.”⁴² And a quality such as modesty, which is agreeable to others, elicits a “charm” in spectators. Those qualities that the agent or others find immediately agreeable have merit, but it is “a merit distinct from their usefulness.”⁴³ We approve of the courageous and the witty, and when our approval is for the immediately agreeable aspect of those qualities, the approval itself is immediate, requiring no reflection on the tendencies of the qualities. Hume writes that although we can explain to some extent why we approve of immediately agreeable qualities – the courageous person, for example, has an admirable confidence that stands her in good stead when encountering danger – “there still remains something mysterious and inexplicable, which conveys an immediate satisfaction to the spectator, but how, or why, or for what reason, he cannot pretend to determine.” Thus,

... this class of accomplishments... must be trusted entirely to the blind, but sure testimony of taste and sentiment; and must be considered as a part of ethics, left by nature to baffle all the pride of philosophy, and make her sensible of her narrow boundaries and slender acquisitions.⁴⁴

On the one hand, by including the immediately agreeable qualities among those that contribute to personal merit, Hume shows that his “philosophical truths... represent virtue in all her genuine and most engaging charms,” thereby showing that virtue contributes to our own happiness as well as the happiness of others.⁴⁵

On the other hand, our approbation for useful qualities that touch our sense of humanity contrasts with the sympathy-based responses of sublimity and charm precisely because the former require our reflection on and reasoning about those qualities’ useful tendencies. Despite the importance of including those virtues with engaging charms, Hume clearly thinks that both the useful qualities and the

⁴² *Ibidem*, p. 134 (7.11).

⁴³ *Ibidem*, p. 140 (8.7).

⁴⁴ *Ibidem*, p. 143 (8.14).

⁴⁵ *Ibidem*, p. 153 (9.15).

sense of humanity that approves of them lie at the heart of morality. He also makes clear that justice in particular typically requires greater reasoning and reflection.

V

The social virtues of benevolence and justice have a tendency to the public good and promote peace and order in society, and the self-regarding useful virtues help an individual to flourish. As sympathetic spectators, our humanity turns our view to the interests of society, so that we direct our moral approbation to the characters of persons with these virtues. We form our views about which qualities are useful and which pernicious through public discourse and debate:

The more we converse with mankind, and the greater social intercourse we maintain, the more shall we be familiarized to these general preferences and distinctions, without which our conversation and discourse could scarcely be rendered intelligible to each other. ... The intercourse of sentiments, therefore, in society and conversation, makes us form some general unalterable standard, by which we may approve or disapprove of characters and manners.⁴⁶

We also employ our reason, so that “*reason* and *sentiment* concur in almost all moral determinations and conclusions.” “In order to pave the way” for moral approbation directed towards useful qualities and characters, “it is often necessary, we find, that much reasoning should precede, that nice distinctions be made, just conclusions drawn, distant comparisons formed, complicated relations examined, and general facts fixed and ascertained.” A “false relish” with regard to moral merit may also “frequently be corrected by argument and reflection,” and “the assistance of our intellectual faculties” will give real merit “a suitable influence” on the approving mind.⁴⁷

Reasoning is especially crucial to decisions concerning justice, where lawmakers need to predict which rules will have most utility in the long term. Hume draws a contrast between benevolence and justice. Every benevolent action produces some good, so that the society flourishing from the exercise of it “may be compared to a wall, built by many hands” (EPM App. 3.5). In contrast, justice, understood as a “scheme or system” of rules, is like a vault insofar as the rules must be inflexibly followed by all to retain its beneficial effects, even though particular

⁴⁶ Ibidem, p. 115–116 (5.42).

⁴⁷ Ibidem, p. 76 (1.10).

outcomes considered individually lack any benefit or even seem pernicious (EPM, App. 3.3). In questions regarding justice, “doubts may arise; opposite interests may occur,” so that a preference may turn on “very nice views, and a small over-balance of utility” (EPM, App. 1.2). Unlike benevolence, each instance of justice may not be useful to society, and “are often pernicious in their first and immediate tendency” since “the advantage to society results only from” the constant observance of the rules. With decisions of justice, the situation is “more intricate and involved”:

The various circumstances of society; the various consequences of any practice; the various interests, which may be proposed: These, on many occasions, are doubtful, and subject to great discussion and enquiry. The object of municipal laws is to fix all the questions with regard to justice: The debates of civilians; the reflections of politicians; the precedents of history and public records, are all directed to the same purpose. And a very accurate *reason* or *judgment* is often requisite, to give the true determination, amidst such intricate doubts arising from obscure or opposite utilities.⁴⁸

After reason discerns the useful or pernicious tendencies of mental qualities, our sense of humanity favors with approval those that have utility. In EPM §3, Hume had made the point repeatedly about the need for reasoning and reflection to assess which laws will have most utility: “we must have recourse to statutes, custom, precedents, analogies, and a hundred other circumstances,” all with the aim of promoting “the interest and happiness of human society.”⁴⁹

VI

At the end of EPM §2, Hume had told us that he would explain why public utility commands our esteem and approbation. The virtues of benevolence, the subject of §2, are valued in part because of their utility; but they are also valued because their possessor feels them as “sweet, smooth, tender, and agreeable.”⁵⁰ In contrast, justice is absolutely necessary to sustain society, and its utility to the public is the sole foundation of it as a virtue, and the sole source of the moral approval we direct towards it (EPM 3.48). (It is, however, worth noting that as Hume points out in his discussion of the sensible knave, a sense of honor can be the source of in-

⁴⁸ Ibidem, p. 157–158 (App. 1.2).

⁴⁹ Ibidem, p. 93 (3.35).

⁵⁰ Ibidem, p. 155 (9.21).

ward satisfaction and peace of mind.) As we have seen, our sentiment of humanity leads us to approve of public utility. Hume now indicates that utility is the most important aspect of virtue, and the circumstance we find most valuable: “no moral excellence is more highly esteemed” than justice, so “we may conclude, that this circumstance of usefulness has, in general, the strongest energy, and the most entire command over our sentiments.”⁵¹ I suggest that the necessity of justice, given our circumstances, and our capacity to cultivate our reasoning and reflection about what is most useful give this energy to utility so that it commands our esteem. Humanity and utility thus contrast appreciably with sublimity, which Hume describes as overpowering sympathy, and charm or kindly feeling.

Yet Hume has indicated that even when we act as justice requires, we often do not do so out of a concern for the public interest; in the *Treatise*, he had described that motive as too remote and sublime to move most of us. And in his EPM description of justice as like a vault, he notes that our natural benevolence would, if it had entire command over our sentiments, lead us to condemn those single acts of justice that may hurt individuals or society.⁵² So it may be difficult for us in certain cases to approve of what justice requires. Following James Harris, I think we can separate the question of approval from that of motivation.⁵³ In EPM, as we saw, Hume does not pose a puzzle about the motivation to justice. While we initially establish the conventions of justice out of a common sense of interest, I think Harris is right that different people may have different motivations, or the same person may be variously motivated depending on the situation. Acting from a regard for justice may reflect a concern with reputation, a fear of punishment, a sense of honor, or a deep concern for the interests of society. (Justice commands the most esteem, yet Hume states that benevolence expresses “the highest merit, that *human nature* is capable of attaining.”⁵⁴) What matters for Hume is that our actions conform to the rules of justice, signaling an expression of our regard for justice, where that regard is an acknowledgement of the necessity of the rules to public safety and order. Although governors, magistrates and lawmakers may engage in more reasoning and reflection with respect to justice, Hume insists that everyone is aware of the public utility of having the rules in place.

The necessity of justice and its utility may command our esteem the most when we reflect on the viciousness of injustice. Just as we habitually follow the

⁵¹ Ibidem, p. 98 (3.48).

⁵² Ibidem, p. 170–172 (App. 3.3–6).

⁵³ Harris [2010].

⁵⁴ Hume [1998] p. 78 (2.1).

rules of the road, we may value their importance only when the violation of them has adverse consequences. Hume suggests just this by arguing that “the regard to general good is much enforced by the respect to the particular”; that is, our attention to and blame of particular violations of the rules helps to sustain a regard to the public interest.⁵⁵ Once the laws are in place and known to all, then “the injury, the hardship, the harm, which result to any individual from a violation” of these rules are, when we sympathize with the violated individual, a source of our blame of injustice. The individual suffers a private harm, but the violation of the rules is public wrong condemned by moral spectators, and thus “the highest disapprobation attends” injustice.

I have shown here the different roles that sympathy plays in the accounts of justice in the *Treatise* and *Enquiry*. In the former work, a redirected sympathy naturally extends our concern, and subsequently our moral approval or blame, to all those included within the scope of the rules of justice. In the *Enquiry*, we find this same progress of sentiments, but Hume’s introduction of the sentiment of humanity allows him to make a stronger case for the importance of those virtues that are useful, particularly the virtues of justice. The command of our esteem and our moral approval of justice secure a place for justice at the heart of Hume’s ethics. This does not entail, however, that other useful virtues are not also essential. Benevolence and the care of children, friendship, and gratitude not only help to sustain sociability, but they are essential for living a properly human life. The relation between justice and the other virtues, particularly the other useful virtues, deserves further examination and analysis.

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⁵⁵ Ibidem, p. 86 (App. 3.11).

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