

David Hume against the contractualists of his time

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ABSTRACT

This paper puts forward an interpretation of Hume's work which suggests a new means of refuting contractualism. This interpretation differs from the 'official' refutation, in that it is based on a concept of artifice which is significantly different from the concept of artifice propounded by the contractualists. This difference is not generally noticed in traditional commentary on Humean political philosophy when it deals with the refutation of contractualism.

1. Introduction.

In his essay *Of Superstition and Enthusiasm*, Hume describes what he calls two “corruptions of true religion”¹, both equally pernicious, though opposed to each other. The first of these, superstition, is a state of mind subject to fears and ununderstood anxieties attributed to unknown agents. Its sources are weakness, fear, melancholy, together with weakness. To counter these invisible fears equally incomprehensible methods, “...ceremonies, observances, mortifications, sacrifices, presents, or in any practice, however absurd or frivolous, which either folly or Knavery recommends to a blind and terrified credulity”² are used. The second form of corrupt religion, enthusiasm, is a state of incomprehensible elevation and presumption. Its origins are success, prosperity, luxuriant health, a bold

1 *Essays. Moral, Political and Literary*. Indianápolis: Liberty Fund, 1992, p. 73.

2 *Essays...*, p. 74.

and confident character, together with hope, pride, presumption as well as ignorance. This state causes a series of raptures, and flights of fancy, much beyond the scope of our normal faculties³.

Thus, superstition makes men abject and docile, while enthusiasm is an infirmity characteristic of ambitious and bold temperaments. Hume then goes on to consider the effects of these evils on government and society, saying that in the first case, man sees himself "...in such despicable colors, that he appears unworthy, in his own eyes, of approaching the divine presence, and naturally has recourse to any other person..."⁴. In the second, pride and confidence make man consider himself "...sufficiently qualified to *approach* the Divinity, without any human mediator"⁵.

Provocatively, Hume says that the political theories of his time have strong links with these two false religions, and his task is to demonstrate that they are philosophically misconceived, empirically unsustainable and, in their extreme forms, politically dangerous⁶. It becomes apparent then that his purpose is to demonstrate the mistakes of these two ways of viewing politics. The Whigs and the Tories, who were disputing power in the 18th Century, and who in their more radical forms had their roots in enthusiasm and superstition, are targets of this Humean critique.

In another better-known essay (*On the Original Contract*), Hume comments on the basic characteristics of the most influential political parties of his time:

"The one party, by tracing up government to the DEITY, endeavor to render it so sacred and inviolate, that it must be little less than sacrilege, however tyrannical it may become, to touch or invade it, in the smallest article. The other party, by founding government altogether on the consent of the PEOPLE, suppose that there is a kind of original contract, by which the subjects have tacitly reserved the power of resisting their sovereign, whenever they find themselves aggrieved by that authority, with which they have, for certain purposes, voluntarily entrusted him."⁷

Some tendencies within the Tory party, a party which preached unlimited passive obedience, and which Hume sympathized more with⁸, represent superstition, for the superstitious man accepts the existence of powers inherent in the nature of things, including the existence of a natural

³ *Essays...*, p. 74.

⁴ *Essays...*, p. 75.

⁵ *Essays...*, p. 76.

⁶ HAAKONSEN, Knud. The structure of Hume's political theory. In: *The Cambridge Companion to Hume*. Ed. D.F. Norton. Cambridge: Cambridge University Press, 1993, p. 182.

⁷ *Essays...*, p. 466.

⁸ FORBES, Duncan. *Hume's Philosophical Politics*. Cambridge: Cambridge University Press, 1975, p. 91.

hierarchy, and accepts monarchical power as the only form of authority derived from divine right. Some factions of the Whig party represent enthusiasm, personified by contractualism. For the enthusiasts, self-government is the only government which is legitimate. They therefore defend contractualist theories as these depend on consent, and, to a greater or lesser extent, protect rights and individual liberties⁹.

It must be said that Hume is greatly concerned to refute the enthusiastic defenders of contractualism. And he devotes fewer lines to the superstitious Tories. Duncan Forbes says that it was contract theory that drew most of Hume's criticism, for the belief in divine right and passive obedience had lost ground with the onset of cultural progress and the growth of liberties¹⁰. It was therefore contract theory that was, as Hume himself says, the "fashionable system of politics"¹¹. In this context, this article examines Hume's critique of contractualism.

However, mention must be made of Hume's explicit refutation, which I shall term the "official" refutation, in which discussions as to the role of consent, of the existence of the state of nature, of an explicit or tacit pact, of the obligation incurred by promises, and of the origin of government and obedience all play their part. It is not this refutation this article deals with. Our purpose is to study the concept of artifice (and of justice) in Hume, a concept which is significantly different from the artifice created by the contractualists. This distinction is one which generally speaking is not made use of by commentators of Humean political philosophy with relation to his refutation of contractualism. In this way I hope to bring out a second manner of refuting contractualism, other than that expressed by Hume.

2) Justice in the Treatise: Is a half-virtue still a virtue?

Let us to begin with consider the *Treatise*, Hume's first work. Once it has been established that man is a "family being", because he is born, at the very least, within a "family-society" (in its turn a consequence of the sexual instinct), Hume goes on to state that human nature has, amongst others, two passions, selfishness and limited generosity¹², which can make it impossible for men to co-

⁹ HAAKONSEN, Knud. *Op. Cit.*, p. 183.

¹⁰ *Hume's Philosophical...*, p. 92.

¹¹ TNH, III,II, VII, p. 347.

¹² TNH, III, II, II, p. 312-313.

exist. And this partiality, by which generosity is limited because restricted to those who are nearest to us, is a danger to the very existence of society, owing to the frailty of the hold each person has over his own possessions.

So the first idea of morality is partial to the extent that the act of anyone who neglects his family in favor of a stranger is subject to disapproval. This primitive idea of morality, therefore, instead of remedying the partiality of our spirit, merely conforms to it¹³. It follows that the solution to this partiality of our spirit is not natural, but artificial. As men are at the very least born into a family-society and brought up there, they soon become aware, through the effect of habit, of the benefits of the communal life and of conversation, and to preserve it they must provide stability to the institution of property. The artifice that supplies this stability has, says Hume, its origin in convention, which in its turn derives from the inventiveness of men and the effect of habit. And this convention refers to the rules of justice, which derive from a common interest and imply in the definition of rules of conduct. This interest arises when it is mutually formulated and known, producing behavior which is compatible to it.

In this way it can be seen that the sexual instinct is enough to explain family life. To further explain life in society it is necessary to have the effect of habit, the existence of those external factors already mentioned, concerning the scarcity of goods the possession of which is desired, and also an artifice: the convention which determines the rules of justice.

Justice is therefore what Hume terms “an artificial virtue”, because it arises on the adoption of a system of conduct. It is not like benevolence and moderation, for example, natural virtues which are independent of any artifice. Only after it has been established does justice become “naturally” approved¹⁴. Thus one difference between natural and artificial virtues is that the good resultant on the former arises from isolated acts, while an act of justice can be contrary to the good of the agent or even the public good if considered in isolation; “and ‘tis only the concurrence of mankind, in a general scheme or

13 THN, III, II, II, p. 314.

14 THN, III, III, VI, p. 395.

system of action, which is advantageous.”¹⁵ Justice therefore depends on social practice. Hence the close relationship between the explanation of artifice and the formation of social ties.

It is interesting to note that acts of justice can be contrary to the interest of those involved, and even to the public interest. This makes it more difficult to ascertain why we should continue to approve and practice them. To discuss the theme, let us consider the following hypothesis: If I borrow money from someone, why pay it back? One reason could be a personal interest in preserving my good name in order, for example, to be able to make future loans. Hume in fact does draw attention to a personal concern for good reputation as a means towards the strengthening of acts of justice¹⁶. But without this concern, whatever the reason for our not having it, we would not return the loan. In this hypothesis, the “most promising candidate as a motive towards justice is a concern for public interest, but even that cannot be seen to be straightforwardly operative in each particular case”¹⁷. The reason for this is that the public interest itself can be harmed by an act of justice. This is what happens, says Hume, when a worthy man returns a large fortune to a seditious bigot¹⁸. In this case the man has acted justly, but against the public interest. This interest therefore does not always explain the return of a loan. In any case, Hume says that even so “this momentary ill is amply compensated for by all those advantages that justice brings us.”¹⁹ And so the institution of justice has unwelcome side-effects. As Stroud says, these side-effects are like the pain after a surgery: “Although it is inevitable, ..., we can still be motivated to undergo surgery because we believe that the ultimate benefits compensate for the pain.”²⁰ These considerations illustrate the dependence of the concept of justice on social practice, and also the fact that acts considered in isolation can appear to be both absurd and yet just.

Let us go on, then, to seek the motive for our acting according to human convention with regard to the rules of justice, which are a consequence of the inconveniences deriving from the opposition of attributes of our spirit to the situation of external objects. As justice is for Hume a virtue, and as such has its origin in the passions, it is certain that it does not derive from a relation of ideas, but

15 THN, III, III, I, p. 370.

16 THN, III, II, II, p. 321.

17 STROUD, Barry. *Hume*. London: Routledge, 1995., p. 200.

18 THN, III, II, II, p. 319.

19 STROUD, Barry. *Op. cit.*, p. 207.

20 STROUD, Barry. *Op. cit.*, p. 207.

founds itself on impressions. Furthermore, men do not seek the public interest naturally. On the contrary, they often seek their own private interests, without due thought. Yet interest, and consequently desired pleasures, are always present in human action, according to the Humean theory of the passions, so justice must be founded on them in some way.

The first reason for the institution of justice is self-interest, expressed in the desire to enjoy a determinate object, and in the benevolence limited to family and friends. It can therefore be said that self-interest underlies what Hume terms in the *Treatise* the natural obligation of justice²¹. But the attempt to satisfy this self-interest often prevents peaceful co-existence. For in men there does not exist any inclination to defend the public interest, but only to defend self-interest. As the striving for this would lead to generalized violence, the rules of justice must be “artificially” established. So the Humean theory of the passions affirms that the dominant passion is self-interest, stimulated by the desire for something that provides immediate and especially future pleasure. For there to be a natural defense of the public interest, a new passion would be necessary, one for the public good, a rarity, according to Hume, *for men characteristically prefer immediate to distant satisfaction*. Thus public interest requires more careful study, for it is not the stability of society itself that is pleasurable and self-sufficient. The object of the passion are the consequences of this stability. In other words, the situation of the social group in which the calm and safe enjoyment of objects that produce pleasure can be enjoyed.

It is important to note that the observance of the rules of justice is stronger in a family-society than in larger societies²². After realizing that society is necessary for the satisfaction of their passions, men begin naturally to respect certain rules. However, in larger societies the harm caused by acts contrary to convention, that is to say the rules of justice, is more difficult to verify, for “they disappear in a more complex experiential field”²³. So there is less interest in respecting the rules of justice. Thus, to begin with, the convention relating to the rules of justice is convenient to all, so that they can live in society and reap the benefits of so doing. When the harm caused by breaking the rules which determine the possession of property becomes more difficult to verify, self-interest loses its force as the determining

21 THN, III, II, II, p. 320.

22 THN, III, II, II, p. 320.

23 MONTEIRO, João Paulo. *Teoria, Retórica, Ideologia*. São Paulo: Ática, 1975, p. 67.

passion of justice. As every action is caused by an impression, when this impression loses force it loses its quality of belief, allowing other interests and sentiments, which are more immediate and vivid, and opposed to the rules of justice, to appear as motives for action. So in larger societies the interest which induces us to follow these rules can be lost to view.

Sympathy, which we would more properly call empathy today, therefore allows the sentiment of disapprobation in situations that do not affect self-interest. So “a *sympathy* with *public* interest is the source of the *moral* approbation, which attends that virtue”²⁴. However, sympathy “is too weak to controul our passions; but has sufficient force to influence our taste, and give us the sentiments of approbation or blame”²⁵. The following passage from John Rawls’s *A Theory of Justice* illustrates what this *sympathy* for the public interest is:

“For simplicity we may assume, as Hume sometimes does, that approval is a special kind of pleasure which arises more or less intensely in contemplating the workings of institutions and their consequences for the happiness of those engaged in them. This special pleasure is the result of sympathy. In Hume’s account it is quite literally a reproduction in our experience of the satisfactions and pleasures which we recognize to be felt by others.”²⁶

In short, there is a natural obligation of justice, by which men generally act in accordance with their own interests (selfishness) and with those of people who are close to them (partial benevolence). This interest prevents acts harmful to the immediate social group and to the individual himself from being practiced. As there is no public interest or humanity in human nature which is a motive for action, the existence of societies larger than that of the immediate social group is endangered. These larger societies therefore depend on artifice, that is to say the human convention of the laws of justice.

This strategy or artifice we have invented completes the so-called “two stages of development”: The first, described above, being that of natural obligation which is sufficient in the society of the family, and the second, that of moral obligation which is necessary in larger societies. In this system of justice, which arises because we are not benevolent enough to refrain from seizing the possessions of

24 THN, III, II, II, p. 321.

25 *Idem*.

26 RAWLS, John. *A Theory of Justice*. Revised Edition. Oxford: Oxford University Press, 1999, p. 162.

others, there would be an alteration of direction of our self interest.²⁷ (*enlightened self-interest*). We abstain from acts which are harmful to others because this favors us in so far as this allows life in society and the preservation of our own possessions. Forbes says that “justice and hence human society was possible because the socially destructive passion was redirected by the understanding”²⁸. Thus the same interest that endangers society contributes, with the help of our understanding, to its preservation.

Therefore the distinction between natural and moral obligation opposes the former, which is natural because it does not depend on the subject’s being aware of it, and the latter, which is moral because it presupposes that the subject is aware of it, a fact that Hume makes an effort to explain.

João Paulo Monteiro, in a recent work, clarifies the distinction:

“Everything leads one to believe that this second type of obligation receives the designation ‘moral’ owing to its link with ‘morality’, but it is important to see that this is yet another case of appearances misleading. In Hume’s philosophical vocabulary, as indeed in the spoken and written English of the 18th Century, when ‘moral’ is opposed to ‘natural’, as in the present case, what is natural is so independently of passing through the *mind* of the subject, and what is moral is thus designated only because it depends on something *mental* ... Each one of us has a natural obligation to look after our own interest, whether we know it or not, but there can only be a moral obligation when we become aware of this same obligation.”²⁹

When Hume says that we act in conformity to a general system of actions on account of our sympathy for the “public interest”³⁰, which is the source of moral approbation of justice, we can detect an inconsistency. Sympathy, in Hume’s conceit of it, refers to the acts or sentiments of others, and not directly to the public interest, or to any other idea. “Sympathy consists in the empathic capacity to *detect* the mental states of other persons, and, as a result, to undergo an experience similar to that of the person being considered.”³¹ Therefore, as what is at issue is the detection of mental states, there can only be sympathy between people, and not also between people and ideas, or sympathy “for the public interest”. This mental state is, more precisely, an operation of the imagination which presupposes a first impression, related to the experience we have of the observation of the situation of other people, which is

27 THN, III, II, I, p. 316.

28 *Hume’s Philosophical...*, p. 69.

29 *Novos Estudos Humeanos*. São Paulo: Discurso, 2003, p. 166-167.

30 TNH, III, II, II, p. 321.

31 BAILLIE, James. *Routledge Philosophy Guidebook to Hume on Morality*. London: Routledge, 2000, p. 56.

painful or pleasurable, and which is associated with an idea of a previous impression, which in turn, on account of its force, is transformed into another, new impression, of pleasure or displeasure, approbation or disapprobation, corresponding to that first impression. In virtue of this mechanism, Rawls says that sympathy acts like an infection, not because it can establish the mental states of others, but because it makes inferences as a result of their behavior and external actions³².

Baillie says that “Sympathy is not something we ‘do’ intentionally, but takes place involuntarily on the natural unreflective level. It is not a product of reason..., nor the deliberate manipulation of the imagination to put oneself in others’ shoes.”³³ Hume speaks of a “principle of sympathy or communication”³⁴, that is, he means that sympathy is not itself a passion, like pity or compassion, for example, but a sentiment with specific characteristics, involving the knowledge and absorption of the sentiments of other people, in other words a channel of communication of mental states, and not properly speaking a passion. “It is not itself a passion, since it has no distinct quale of its own. So, as mentioned above, it cannot be confuse with pity.”³⁵ So it is not a benevolent passion that moves us, for there is no passion for the good of others that is strong enough to move us. In another passage Hume says:

“Here is a man, that does many benevolent actions; relieves the distress’d, comforts the afflicted, and extends his bounty even to the greatest strangers. No character can be more amiable and virtuous. We regard these actions as proofs of the greatest humanity. This humanity bestows a merit on the actions. A regard to this merit is, therefore, a secondary consideration, and deriv’d from the antecedent principle of humanity, which is meritorious and laudable.”³⁶

According to this passage the term humanity (more commonly used in the second *Enquiry*), a concept that sometimes Hume suggests is similar to sympathy for the public interest, could be seen as a motive for just action. However, in various passages of the *Treatise* Hume states that this type of sentiment is not strong enough to move us: “In general, it may be affirm’d, that there is no such passion in human minds, as the love of mankind, merely as such, independent of personal qualities, of services, or of relation to ourself.”³⁷; or: “If public benevolence, therefore, or a regard to the interests of mankind, cannot

32 *Lectures on the History of Moral Philosophy*. Cambridge: Harvard University Press, 2000, p. 86.

33 *Op. Cit.*, p. 57.

34 TNH, II, III, VII, p.273.

35 BAILLIE, James . *Op. Cit.*, p. 59. Likewise: STROUD, Barry. *Op. Cit.*, p. 197.

36 THN, III, II, I, p. 308.

37 THN, III, II, I, p. 309.

be the original motive to justice, much less can *private benevolence*, or a *regard to the interests of the party concern'd*, be this motive”³⁸. We live in society, then for our own benefit, or in other words because our reason judges this to be the case, attending to our desire to keep our possessions.

So we can conclude from the *Treatise* that the virtue of justice has its origin, in the last analysis, in our self-interest (the reason for this is our selfishness and limited benevolence) artifice being a means of satisfying it, in order to preserve the stability of ownership, and this meets the public interest because it promotes peaceful co-existence.

We can thus see that Hume’s moral theory is a theory of the moral sentiments and simultaneously a theory of virtue, for there is clearly a difference in points of view: that of the agent and that of the observer³⁹. Virtue is to be found in the agent, moral sentiment in the observer. Although there do exist different points of view, the agent can obviously be his own observer. At any rate justice, considered from the agent’s point of view, derives from self-interest and limited benevolence. From the point of view of the observer who approves of the action, it is virtue, because it identifies a supposed morally praiseworthy sentiment (*humanity* or concern for others) in a third party. But this identification is made as a result of the effects of an act (a sign) and not of a motive. In this way we act in our own self-interest. When this coincides with the public good, our action is virtuous, because whoever ponders its effects sees it as such. Public utility is just an effect of an observed action, although it looks like shared design⁴⁰. As Cícero Araújo says, “this fact only shows that the feeling of the observer and the virtue of the agent are interdependent, not that they are identical”⁴¹. The problem is that if this is the case Hume cannot affirm that the motives of an act of justice are virtuous in any strong sense. He therefore cannot affirm that justice is an (artificial) virtue.

Seen in this light, justice becomes a less noble virtue, or equivalent to some of the natural virtues, because derived from self-interest, and not from feelings far removed from self-satisfaction. Only someone who observes the action, as a sign of a motive, supposes, because the common

³⁸ THN, III, II, I, p. 310.

³⁹ ARAÚJO, Cícero Romão R. Hume on virtues and rights. In: *Manuscrito*, vol. XIX, n° 2, Campinas, out. 1996, p. 147.

⁴⁰ HAAKONSEN, Knud. *Op. Cit.*, p. 190.

⁴¹ *Op. cit.*, p. 148.

good is also served, that this motive is not self-interested, although in fact it is. Sentiments are morally good or bad only in general, not in reference to self-interest. Hume distinguishes between self-interested sentiments and moral sentiments. The former, according to the *Treatise*, are what determine action. Therefore justice, in this light, would lose its most elementary characteristic, that of virtue. The obligation to act rationally in our own interest cannot be considered a virtue. Neither in Hume nor the 18th Century in general. The notion of ‘intellectual virtue’ as opposed to artificial virtue is a more recent notion. Justice, as we are dealing with it now, only makes sense as a virtue if it is respected in reason of an obligation which is independent of self-interest.

It is worth emphasizing that Hume states that there are qualities that constitute virtues, but which relate to self-interest, like industry, perseverance, and patience. However, this ambiguity in the theory cannot override other more important and emphatic passages, like those mentioned above, which say, for example, “If public benevolence, therefore, or a regard to the interests of mankind, cannot be the original motive to justice, much less can *private benevolence*, or a *regard to the interests of the party concern’d*, be this motive”.

We therefore act in benefit of the public good out of duty, that is to say out of a sense of morality, which for Hume does not constitute a reason for a just act. This is because the observer who approves a just act as if it derived from a praiseworthy cause, on realising that this cause is absent, feels himself to be burdened by a moral deficit, and feels disapproval of himself. So the internalization of a “social will”⁴² would supply, by means of a sense of morality, the missing cause, thus correcting our character. But the broader motive for this sense remains absent, which exposes a serious flaw in Humean theory as developed in the *Treatise*. So although an explanation for how we acquire the Idea of justice or a sense of justice can be formulated, the problem of motive remains.

Rawls interprets this problem in a highly original fashion. To begin with he transcribes the famous passage from the *Treatise* about the motive for virtuous action and its distinctiveness from a sense of morality (“In short, it may be establish’d as an undoubted maxim, *that no action can be virtuous, or morally good, unless there be in human nature some motive to produce it, distinct from the sense of its*

42 HAAKONSEN, Knud. *Op. Cit.*, p. 191.

morality.”⁴³), saying that it is hard to interpret. He states that the passages that follow this excerpt contradict it, as they state that when we are educated according to the practices of a civilized society, we are able to return a sum of money out of a sense of morality. Therefore Hume’s italics (in the passage above in brackets) refer only to the origin of the convention of the rules of justice, and not to its continuation. Originally we act from motives different from a sense of morality (selfishness and limited benevolence). Later, contradicting Hume, he says our motive is a sense of justice

To justify his interpretation, Rawls presumes that Hume would have said the following in relation to man in a “civilized society”: “It may be established as an undoubted maxim, that no action can be virtuous, or morally good, unless there is in human nature some motive to produce it, distinct from a motive arising from its being sanctioned as a divine command.”⁴⁴ In this way Hume would differentiate himself from other exponents of natural law theories, such as the contractualists Grotius, Pufendorf and Locke, for whom moral obligation depends on a law of nature of divine origin, which must be obeyed not because it is good for society, but first because it derives from God. For Hume it is the utility of these rules, together with an innate mechanism, which makes us internalize a social practice which relates to them, and not a higher command.

Rawls’s interpretation not only unduly stretches the text in the *Treatise*, but also does not eliminate the problem that virtue continues to be of doubtful origin (a problem he does not attempt to remove), for from the point of view of the observer our judgment of others depends on two factors: first, that a person with a good motive should be successful in their action, as we only have access to its signs; secondly, and inversely, that if the action is successful, that the signs do really derive from a good motive, which is something we cannot affirm. So justice remains a half virtue.

Stroud, in his turn, says that justice cannot be considered a second class virtue, for although the rules of justice are artificial, or the outcome of convention, the approbation we give is natural⁴⁵. In other words, from the observer’s point of view, we acquire a sense of morality naturally, through sympathy. I must insist, however, that the problem remains, as the naturalness of the mechanism

⁴³ TNH, III, II, I, p. 308.

⁴⁴ *Lectures on the History...*, p. 56.

⁴⁵ *Op. cit.*, p. 204.

for acquisition of the sense of justice does not determine the virtuous character of a motive for action. But perhaps a reading of the second *Enquiry* might clarify this character, providing another interpretation of the concept of artifice, capable not only of differentiating it more easily from the concept supplied by the contractualists (which can obviously already be done by the text of the *Treatise*), but, more importantly, of better refuting the theses of contractualism.

3) Justice in the second *Enquiry*: a whole virtue.

The eloquent advertisement at the beginning of the *Enquiries*, which disowns the *Treatise* and announces the correction of some *negligences* to be found there, is well known. One of these corrected negligences relates to the role of sympathy which “perhaps Hume felt that in the *Treatise* he had pushed... too far”⁴⁶. For this reason, some modifications were necessary. Nevertheless, despite Hume having made corrections in his new texts, the standard interpretation of his moral theory continues to be the one we examined above, which states that justice is an artificial virtue also based on long-term self-interest, an interpretation we believe to have a better foundation in the *Treatise*. This standard line is taken by Forbes, Stroud and Mackie⁴⁷. I believe, as I have said, that a different interpretation is possible, in order, amongst other reasons, to meet Hume’s own requirements, as stated in the advertisement.

In the second *Enquiry* Hume begins to utilize the concept of *humanity* more, and the concept of sympathy less. He also eliminates the references to the distinction between natural and moral obligations of justice. Let us examine the consequences of this.

Hume says that there are no qualities that deserve our approbation more than “... beneficence and humanity, friendship and gratitude, natural affection and public spirit, or whatever proceeds from a tender sympathy with others, and a generous concern for our kind and species”⁴⁸. Therefore, virtue distances itself from self-interest, and draws closer to unselfish acts and those that are in the public interest. It must be emphasized that here too the same ambiguity as in the *Treatise* can be found,

46 RAWLS, John. *Lectures on the History...*, p. 102.

47 FORBES, Duncan. *Hume’s Philosophical Politics*. Cambridge: Cambridge University Press, 1975, chap. II; STROUD, Barry. *Hume*. London: Routledge, 1995, chap. IX; MACKIE, J. L. *Hume’s Moral Theory*. London: Routledge, 1995, chap. IV, sec. 1 a 3.

48 EPM, II, I, p. 79.

for Hume divides the mental qualities of a virtuous character into four categories (the division into natural and artificial virtues loses ground): those that are socially useful, those useful to the agent himself, those immediately pleasurable to others, and those immediately pleasurable to the agent himself. We can also extract from this scheme several “interested virtues”. Nonetheless, there still exists a strong suggestion of the classification of virtues as noble, to a greater or lesser extent, a social virtue like justice continuing to be more important, precisely because disinterested.

Hume also says that the merit of the virtue of justice lies in its social benefits, in other words in its public utility. Repeating what he stated in the *Treatise*, he mentions that in situations of extreme abundance or penury in relation to goods, or of extreme humanity or malice, in relation to character, justice would be unnecessary. Our condition is somewhere in between these extremes, for we are naturally partial to ourselves, and to our friends; but are capable of learning the advantage resulting from a more equitable conduct”⁴⁹. That is, we are partial, but equitable.

What does it mean to be partial and equitable simultaneously? Is it to be moved by selfishness and humanity simultaneously? Would humanity also become a decisive motive for action? In the *Treatise*, as we saw, the sentiment that moved us was predominantly self-interest, guided by the understanding and changed into a sense of morality, despite a few passages that suggest the opposite. However, in the second *Enquiry*, among several other passages that broaden the role of humanity, Hume states that “The most obvious objection to the selfish hypothesis, is, that, as it is contrary to common feeling and our most unprejudiced notions, there is required the highest stretch of philosophy to establish so extraordinary a paradox”⁵⁰. He goes on to say that it is clear that in man there exist dispositions such as benevolence, generosity, friendship, and compassion, amongst others.

So Hume is now correcting a negligence in the *Treatise*, present in the passage referred to above, when he stated that humanity is a modification of self-interest⁵¹, that is, changed by external circumstances and the action of the understanding.

49 EPM, III, II, p. 86.

50 EPM, Apêndice II, p. 166.

51 THN, III, II, I, p. 316.

This correction is most obvious in one of the appendices of the second *Enquiry*, where two common philosophical positions on the theme are mentioned⁵²: the first claims that all benevolence is mere hypocrisy, that we always seek our own interest, and that our demonstrations of friendship, public spirit and faithfulness are only contrivances; the second states that whatever feeling a person might feel or imagine they feel for others, no passion is unselfish. It is all a modification of love for oneself. Our imagination and reflection make us imagine we are free of selfish considerations. It is to be noted that Hume's position in the *Treatise* was similar to this last conception, in relation to the virtue of justice, as the motive for a just act is self-interest guided by the understanding. In the end, however, says Hume, both positions are mistaken. Now, then, his position takes the following shape:

“If it is a fact that men can feel the joys and misfortunes of others, and so come to have a regard for the welfare of others which is not simply a function of self-interest, then it is an important fact for moral philosophy, and especially for a moral philosophy, like Hume's, which is based on an account of the nature of man. (This is only one of a number of respects in which the optimistic attitude of the *Treatise* did not long survive its publication; and the two *Enquiries* are much modest in their claims.)”⁵³

When Hume's negligence has been corrected, it can be seen that *humanity* is as natural as our selfish instincts, in that the virtue of justice is no longer only an obligation to act in our own interests. *Humanity* is also a general principle of human nature, just like selfishness and limited benevolence, and neither can have nor needs an explanation of its cause:

““When he came to write the *Enquiry*, Hume treated the existence of sympathy (or humanity, as he now preferred to call it) as a basic and unexplained fact. ‘It is needless to push our researches so far as to ask, why we have humanity or a fellow-feeling with others. It is sufficient that this is experienced to be a principle in causes; and there are, in every science, some general principles beyond which we cannot hope to find any principle more general’”⁵⁴.

Here is another passage in which Hume emphasizes the role of *humanity* in influencing our actions and our approbation of the acts of others:

“We surely take into consideration the happiness and misery of others, in weighing the several motives of action, and incline to the former, where no private regards draw us to seek our own promotion or advantage by the injury of our fellow-creatures. And if the principles of humanity are capable, in many instances, of influencing our actions, they must, at all times, have some authority over our sentiments, and give us a general

52 EPM, Apêndice II, p. 164-166.

53 KEMP, J. *Ethical Naturalism: Hobbes and Hume*. London: MacMillan, 1970, p. 36.

54 KEMP, J. *Op. cit.*, p. 36.

approbation of what is useful to society, and blame of what is dangerous or pernicious. The degrees of these sentiments may be the subject of controversy; but the reality of their existence, one should think, must be admitted, in every theory or system.”⁵⁵

If the theory is interpreted this way, the distinction between natural and moral obligation of justice, as explained in the *Treatise*, ceases to exist for it is this same humanity that determines action and approbation. To explain justice as a “true” virtue founded on a sentiment of this type, it was necessary to reject some of the affirmations of the *Treatise* about the dichotomy of the concept of justice and the ineffectiveness of humanity as a motive for virtuous action. In other words, this significant reformulation of the theory can be seen as recognition of one of the negligences of the *Treatise*, reformulated, in this case, in the second *Enquiry*, so that humanity could also be accepted as a motive for action, and further to recognize the impossibility of attributing a cause to it, for which reason it was raised to the condition of a principle of human nature.

If humanity were not a possible motive for action, there would not be, properly speaking, any virtuous action, in the strong sense already referred to (unselfish action). In this situation all actions would be selfish. As the morality of an action is determined by its motive, approbation of this type of action would be self-contradictory, and have a role only as a mistaken appreciation of its signs.

Such conclusions might suggest that justice had come to be a natural virtue, as an emphasis on humanity might indicate a predisposition to put it into practice. But this is not what occurs. Artifice continues to be necessary, for justice derives from reflection on the tendency we have to act according to public utility.⁵⁶ In fact, it is this reflection on advantages provided by life in society that “... command over our sentiments.”⁵⁷ In one of his appendices, Hume repeats the *Treatise* when he discusses the naturalness of justice, saying that the understanding is natural to man, and that in “so sagacious an animal, what necessarily arises from the exertion of his intellectual faculties, may justly be esteemed natural.”⁵⁸ Therefore, the role of reason is of great significance in bringing our humanity to light. I believe it is possible to say that Hume replaces “*enlightened* self-interest” of the *Treatise*, understood as the

55 EPM, V, II, p. 114.

56 EPM, III, II, p. 97.

57 EPM, III, II, p. 98.

58 EPM, Apêndice III, p. 173.

correspondence between private and public interest, in so far as the former gives rise to the latter, with the “*enlightened* humanity” of the second *Enquiry*, which although unselfish is also artificial, and therefore depends on the understanding to play its role. The former was modified by the understanding, while the second is only underlined or revigorated by it.

It is interesting to note that the same problem continues to be discussed, which shows its relevance today. Amartya Sen, in his *Development as Freedom*, on commenting the phrase “rational choice” and Adam Smith’s concept of sympathy, says that it is important to distinguish between sympathy and commitment⁵⁹. It states that in the case of sympathy, our self-interest takes consideration for others into account, in a broader notion of what constitutes an individual’s well-being. Commitment, on the other hand, goes further, for it is a disposition to “make sacrifices in pursuit of other values, such as social justice or nationalism or communal welfare...”:

“If you help a destitute person because his destitution makes you very unhappy, that would be sympathy-based action. If, however, the presence of the destitute does not make you particularly unhappy, but does fill you with the determination to change a system that you think is unjust (or more generally, your determination is not fully explainable by the unhappiness that the presence of the destitute creates), then this would be commitment-based action”⁶⁰

Hume in the *Treatise* is closer, when considering justice and its motives, to Sen’s description of sympathy, while in the second *Enquiry* Hume is closer to Sen’s description of commitment. However, Sen’s “rational choice” is very different from Hume’s. So let us further consider the role of the understanding in what I have termed “*enlightened* humanity”, in order to see why the virtue of justice continues to be artificial.

As we have known since the *Treatise*, despite statements like “reason is slave of the passions”, Hume does not refuse an important role to the understanding. He only says that reason alone is not capable of determining our moral beliefs and our actions. Its role is to influence our conduct when a passion arises and to inform us of the existence of an appropriate object for it, or to reveal a relationship of cause and effect in order to establish the means for the exercise of a particular passion⁶¹.

⁵⁹ *Desenvolvimento como liberdade*. São Paulo: Companhia das Letras, 2002, p. 306-307.

⁶⁰ *Op. cit.*, p. 307.

⁶¹ TNH, III, I, I, p. 295.

We are moved by passion. We are usually most affected by violent passions, but the calm passions “when corroborated by reflection, and seconded by resolution, are able to control them in their most furious movements”⁶². A person with greater strength of character is able to control these moments of fury more frequently. So humanity, a calm passion, is also able to overcome self-interest, which is usually composed of violent passions, (hunger, thirst, hope and fear, love and hate, envy, desire...) as long as it is “corroborated by reflection, and seconded by resolution”.

For Rawls, Humean reason cannot create or eliminate passions that do not exist, but can alter their influence or make us realize we have a passion we were unaware of, which can significantly affect our conduct⁶³. Resolution is a virtue created by custom and by habit, for we learn to use it and on exercising this capacity we see that this exercise gives us pleasure. Those with strength of character are more inclined to act in this way, for the calm passions can exercise greater control over us. But to a greater or lesser degree all people, on exercising their determination, find pleasure in doing so and exercise their growing capacity to make calm passions overrule violent ones.

In this way *enlightened* humanity is “corroborated by reflection, and seconded by resolution”, which can control our more self-interested and violent passions. This is the artifice that allows the prevalence of the rules of justice and the existence of social life. The artifice of justice thus ceases to be something predominantly self-interested (short or long-term self-interest), in other words a half virtue, to become a whole virtue.

4) Humean justice and contractualist artifice.

I believe that the arguments above, concerning the construction of the artifice of justice in Hume, represents an unusual manner of opposing the concept of artifice as created by the contractualists, and one that is no less efficient.

62 TNH, II,III,VIII, p. 280.

63 *Lectures on the History...*, p. 40.

There are two main points of disagreement as to the concept of artifice between Hume and contractualist theories in general: the role of reason in forming the pact, and principally the process artifice is constructed by, both of which are linked. In Hume, as we have seen, reason helps us to ensure that our calmer passions, like humanity, triumph and guide our actions. The process in which the construction of artifice has a place is that of social practice, that of the repeated use of reason, with the sole purpose of determining the degree of influence our passions have over us, by the increase of some and the reduction of others.

But in the case of artifice as elaborated by the contractualists, reason satisfies desires, whether derived from the fear of death in the state of war of all against all (Hobbes), or whether the participants live less perilously and belligerently, but are still anxious enough to seek the greater comfort and stability provided by contract (Locke). As for the origin and development of the process, artifice in the contractualists is not a result of practice or social evolution, but as Forbes says, of arbitrariness⁶⁴. The pact arises from a self-interested calculation, which the Hume of the second *Enquiry* denies most strenuously, as discussed above. It is in this way that I believe that an interpretation distinct from what we can consider the standard or official interpretation, can lead to a unique way to refute contractualism, one not mentioned by commentators on Hume.

For Hobbes the law of nature, which is necessary and stands in opposition to natural law, which in turn represents the freedom that reigns in the state of nature, is an eminently rational creation, being neither consensual nor socially constructed⁶⁵.

Hume himself, in the second *Enquiry*, places Hobbes amongst those who think our passions are always self-interested, even those that are most benevolent. So enlightened self-interest, which supplied artifice in the *Treatise*, has a similar purpose, despite their differences, to Hobbes's arbitrary reason, that is, to define artifice as calculated self-interest, although for Hume this calculation is a result of a social practice that influences our passions, while for Hobbes it is the result of the prevalence of reason:

“An Epicurean or a Hobbist readily allows, that there is such a thing as friendship in the world, without hypocrisy or disguise; though he may attempt, by a philosophical

⁶⁴ *Op. cit.*, p. 70.

⁶⁵ *Do Cid.*, I, II, § 1°, p. 38. *Leviathan* has a similar definition.: *Lev.*, chap. XVI, § 2°, p 85.

chymistry, to resolve the elements of this passion, if I may so speak, into those of another, and explain every affection to be self-love, twisted and moulded, by a particular turn of imagination, into a variety of appearances.”⁶⁶

For Locke the law of nature is reason itself, given to us by God⁶⁷ (as in Hobbes). The pact stems from this, and the institution of a government is a part of the convention not because we live in a situation of war, but because it is better to give up private justice and place it in the hands of a single magistrate. Here too artifice has no need of a social practice, for reason forestalls it and supposedly solves the problem. This likewise conflicts with Hume’s theory:

“They are artificial because they are human creations. At the same time, Hume has deprived himself of the simple contractualist account of these institutions as expressions of will. On his account, property and contract must exist as social practices prior to any acts of will relating to them.”⁶⁸

So for Hume contractualist enthusiasm is arbitrary because charged with exaltation and presumption, giving man more power than he in fact has. Thus, because in Hume we do not have this potential, the explanation of a mechanism for the production of a social will, derived from previous practice, becomes necessary, unlike in Hobbes and Locke. Further, and more importantly, the reduction of artifice to a self-interested calculus is contested by Hume, according to the interpretation here suggested, which I believe can be included among Hume’s arguments designed to refute contractualist enthusiasm.

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⁶⁶ EPM, Appendix II, p. 165.

⁶⁷ *Two treatises...*, II, II, §§ 6º e 8º, p. 84-85.

⁶⁸ HAAKONSEN, Knud. *Op. Cit.*, p. 188.

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