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The Scope of Justice

When two normal adults put forth conflicting claims to goods or services in a society such as our own, it is natural and proper to seek a just resolution to the conflict. Such cases are paradigmatic of those in which considerations of justice are relevant. In contrast it would be perverse, semantically and morally, to view the conflict between white blood cells and an invading virus as raising problems of justice. Between these two extremes we encounter problems, some of them clearly moral in nature, raised by conflicts between parents and their children, between non-overlapping generations, between humans and animals, and between normal humans and defective humans. There are also problems that arise from conflicts between normal adults in highly abnormal situations such as the desert island or lifeboat cases familiar to philosophers. It is often unclear to what extent these sorts of conflicts are correctly seen as raising problems of justice.

In constructing and evaluating a theory of justice, it is important to consider the scope of justice—that is, the range of cases to which considerations of justice are appropriately applied. The importance of doing so is both theoretical and practical in nature. From the point of view of moral and political theory, defining the scope of justice is important because, failing a solution to this problem, it is impossible to evaluate a theory of justice properly. For example, the fact that a theory of justice yields unacceptable recommendations in cases where there is a severe scarcity of goods provides an objection to that theory *only* if considerations of justice apply in such circumstances. Our demands on a theory of justice are too stringent if we require that it

apply to all moral problems. Justice is but one aspect of morality. However, it is possible to err by construing the scope of justice too narrowly—by including only the typical and familiar cases in which considerations of justice are relevant. A theory of justice constructed in such a way will almost certainly fail to capture our concept of justice, for it will tend to confound the intension of “justice” with its typical and merely contingent extension.

The problem of defining the scope of justice is important from a practical point of view as well. If, for example, we define the scope of justice too narrowly, our theory of justice would leave us either with no guidance or with the wrong guidance when we consider how we ought to act in unusual situations. On reflection we may find that some cases which we initially excluded from the scope of justice ought to be included, and vice versa. When this occurs, it is reasonable to expect a change in our moral judgments regarding actions performed in such cases.

The most thorough and influential attempt to define the scope of justice with which I am acquainted is Hume’s historic discussion of the circumstances of justice. Hume discusses the circumstances of justice in both *A Treatise of Human Nature* (ed. L. A. Selby-Bigge, Oxford, 1888) and *An Enquiry Concerning the Principles of Morals* (London, 1777). His account in the *Enquiry* diverges from that in the *Treatise* in several ways which will not be of great concern to us here. In many respects the *Enquiry’s* account is, as one would expect, more refined. More importantly, though still not crucial to our present discussion, the points that Hume makes about the circumstances of justice are not the same in the two places—at least, there is a clear shift of emphasis. In the *Treatise*, Hume emphasizes the historical relation between the circumstances of justice and the rules of justice. That is, he is trying to show that, given the actual conditions in which mankind finds itself, we should expect societies to construct rules of justice and to employ the notion of property. That the human condition is characterized by the circumstances of justice in some sense *explains* the origin of justice and property.

In the *Enquiry*, Hume is primarily interested in the non-historical relations between the circumstances of justice and the rules of justice. Here, his endeavor is to show that the obligatory nature of rules of

justice rests entirely on utility. Toward this end, he argues that when the circumstances of justice do not obtain, rules of justice are neither socially useful nor morally obligatory. Put in a perhaps misleadingly abbreviated form, in the *Treatise* Hume is primarily concerned to show that the circumstances of justice are sufficient for rules of justice to arise and be morally obligatory, whereas in the *Enquiry* he emphasizes the claim that the circumstances of justice are necessary for rules of justice to arise and be morally obligatory.

Of primary importance here is Hume's thesis that there is an important theoretical relationship between the concept or practice of justice and the factual circumstances of human life. This claim is made in both the *Treatise* and the *Enquiry*, though in the latter it is more thoroughly examined and defended. As we shall see, the eloquence of Hume's discussion of this issue conceals a multitude of obscurities. As a result it is possible to interpret Hume's thesis in several very different ways. At least one of these is a direct answer to the central question posed here: What is the scope of justice? The others have an important bearing on the practical importance of asking this question.

Hume's discussion of the circumstances of justice is interesting in its own right, but it has also had an important influence on contemporary social and political theorists. (See J. R. Lucas, *The Principles of Politics*, Oxford: Clarendon Press, 1966, pp. 1-10; D.A.J. Richards, *A Theory of Reason for Action*, Oxford: Clarendon Press, 1971, pp. 108-109.) In *A Theory of Justice*, for example, John Rawls warmly applauds Hume's treatment of the circumstances of justice (Oxford: Harvard University Press, 1971, pp. 126-130). Furthermore, Rawls' acceptance of Hume's views about the scope of justice is crucial to his argument he gives for his own principles of justice.¹ Unfortunately, Hume's discussion has often been endorsed without great scrutiny. Thus we find Robert Paul Wolff saying that "all of this [regarding the circumstances of justice as Rawls characterizes them] is well-known and uncontroversial." (See Wolff, *Understanding Rawls*, Princeton, NJ: Princeton University Press, 1977, p. 36.)

Though the Humean-Rawlsian account of the circumstances of jus-

1. At least I have argued that this is so in an essay entitled "Minimizing Maximin" presented at the Eastern Division of the American Philosophical Association, December 1978, and forthcoming in *Philosophical Studies*.

tice has been largely uncontroverted, it is far from incontrovertible; or so I shall argue. First, I shall discuss briefly the conditions that Hume takes to be the circumstances of justice. Then I shall consider what Hume might have meant by calling these conditions “the circumstances of justice,” and in which, if any, of these senses his claim is correct. Finally, I shall consider what Rawls means when *he* refers to these conditions as “the circumstances of justice,” and whether, given what he means, he is correct in so doing. I shall, throughout the discussion, restrict my attention to distributive justice since it is in the discussion of this issue that both Hume and Rawls introduce the controversial claims I shall examine. I believe that my criticisms will also apply, a fortiori, to a consideration of retributive justice.

HUME’S CONDITIONS

According to Hume, mankind typically finds itself in circumstances characterized by the following four conditions:

Moderate Scarcity of Goods. The actual conditions of mankind lie between two extremes. On the one hand, we do not find ourselves in such a state of scarcity that even the most judicious use of the resources at hand would still leave many or most without the requisite means to a decent life. (I shall refer to this condition as absolute scarcity—though this is an unhappy phrase in some respects.) But, on the other hand, we are not surrounded by such a plenitude that each can satisfy his every desire without hindering others in their own pursuits. (This condition I shall call “absolute abundance.”) Hume’s first condition requires, then, that society be faced with neither absolute abundance nor absolute scarcity.

Limited Generosity. Human beings are not the utterly selfish beings that we may think them to be in our most cynical and pessimistic moments. But neither are they the selfless and loving creatures that we might wish them to be. People are capable of direct concern for the well-being of others, of genuine altruism and self-sacrifice. Yet they have a clear tendency toward partiality in favor of themselves and those close to them. Hume’s second condition requires that society be composed of beings who are neither wholly selfish nor entirely selfless.

Rough Equality of Capacities and Aptitudes. Though there is great diversity in the intellectual and physical prowess of individuals—in their ability to control others and nature—there is, nonetheless, a rough measure of equality between the capacities of people in the following sense. Even the most powerful is not invulnerable to attacks by the weakest; or, if the weakest alone cannot threaten the strongest, he can at least do so in association with others. Hume’s third condition requires that no one be so powerful that his prowess alone can guarantee his security.

Interdependence. Human beings depend for their very existence on external objects. We do not carry within ourselves the means of satisfying all our wants and needs. We require from our environment not only the obvious physical necessities such as food, water, air, and shelter, but also such things as companionship, intellectual stimulation, and love. The final condition requires simply that the members of society not be entirely self-sufficient, that they be dependent upon each other for certain things.²

THE CIRCUMSTANCES OF JUSTICE: HUME’S VIEW

What does it mean to say that Hume sees these conditions as the circumstances of justice? I shall discuss several answers to this question—most of which are at least suggested by some of Hume’s claims. It is not at all obvious that Hume wishes to subscribe to all of the views to be discussed, however, and I shall not be primarily interested in textual interpretation. Rather, I am concerned with the relation be-

2. Hume is less clear about this condition than the others. Though the obscurity is not of central importance here, it is worth noting that there are various ways of interpreting Hume on this point. At times he appears to be requiring that the beings in question be dependent upon each other. However, he may intend a weaker requirement—that the beings be dependent either on each other or upon the external goods for which they must compete given the condition of scarcity. While the weaker requirement seems to be sufficient to generate problems of distributive justice, the stronger version is better supported by the text (especially in the *Treatise*, p. 485). For this reason, I use the term “interdependence,” while admitting that it is possible that all Hume really wants to require is dependence.

tween justice and Hume's conditions, and with Hume only insofar as his writings are rich with suggestions about its nature.

Discussion of this relation is obscured by the fact that it is not clear what the *relata* are. Is Hume relating his four conditions to the *concept* of justice or to *institutions* of justice? It is often unclear. We shall see that different models of the relation between Hume's conditions and justice will require different understandings of the ambiguous word "justice."

Let us begin by considering five possible interpretations of the relation between justice and Hume's conditions that might come to mind when reading Hume. To put the matter differently, we shall be considering five interpretations of the phrase "the circumstances of justice" in order to determine if there is any plausible sense in which Hume's conditions are *the circumstances of justice*. These five interpretations can (perhaps cryptically) be labeled:

1. the logical presuppositional interpretation,
2. the epistemic presuppositional interpretation,
3. the ontological presuppositional interpretation,
4. the deontic presuppositional interpretation,
5. the utility interpretation.

These various conceptions of the circumstances of justice vary along two parameters: the nature of the relation envisaged and the nature of the *relata*. The logical and epistemic presuppositional interpretations relate the circumstances of justice to the concept of justice, while the remaining three interpretations relate the circumstances of justice to institutions (or rules) of justice. The logical interpretation differs from the epistemological in that the former holds that there is a conceptual relation between the circumstances of justice and the concept of justice, while the latter maintains that the relation is factual. The ontological interpretation asserts that the relation between the circumstances of justice and institutions (or rules) of justice is factual; the deontic interpretation asserts that it is normative. Finally, the utility interpretation is ambiguous because "utility" may be interpreted either as a factual or as a normative notion. If it is understood as a measure of desirability, as it is in contemporary decision theory, then the rela-

tion in question is normative. If, though, it is understood as signifying some state of affairs (say, pleasure), then it is factual.

That the various interpretations can be divided in this manner will become more apparent as I discuss them. It is to this task that I now turn.

Logical Presupposition. According to this view, circumstances of justice are a necessary (and perhaps sufficient) condition for rules of justice to be applicable. Statements about the justice or injustice of an act or practice logically presuppose that the circumstances of justice obtain.

In several places, Hume clearly suggests the logical presuppositional view. In the *Treatise*, for example, Hume says, “. . . any considerable alteration of temper and circumstances destroys equally justice and injustice” and that circumstances violating his conditions “wou’d destroy the very idea of justice” (Hume, *Treatise*, p. 496). Finally, there are suggestions of this view in the *Enquiry*. There, Hume claims that were there creatures in our midst to whom we were invulnerable, we would not “lie under any restraint of justice with regard to them, nor could they possess any right or property, exclusive of such arbitrary lords” (Hume, *Enquiry*, p. 23). This again suggests the logical presuppositional view of the circumstances of justice.

Whether or not Hume actually held this view, although historically interesting, is not my primary concern. The central interest here is whether or not Hume’s conditions are the circumstances of justice in *this*, the logical presuppositional sense of the phrase. If they are, then we have at least a partial answer to the question, What is the scope of justice? If Hume’s conditions are the circumstances of justice (in this sense), then it is simply a conceptual mistake to apply the concept of justice (and cognate concepts) to circumstances in which Hume’s conditions are known to be violated.

Do Hume’s conditions define the scope of justice? Imagine the following case. You find yourself in a lifeboat with ten others. Hoping to be able to survive for at least a week—the minimum time it will take to be rescued—you begin to read the information in the lifeboat. To your dismay, you find that even with the most judicious use of the supplies the lifeboat can sustain eleven people for no more than four

days. Your situation, being one of absolute scarcity, violates the first of four circumstances of justice.

This sort of case should lead us to wonder whether Hume's conditions are logical presuppositions of justice. To be sure, none of the alternatives that present themselves to you are very attractive; but, surely some are unjust and some are not. Waiting until several of your companions fall asleep so that you can cut them up for Sunday dinner seems to be an unjust way to resolve the problem that faces you. Voluntary and universal agreement to draw lots to determine who will throw himself into the shark-infested waters and who will remain in the lifeboat seems to be a just resolution.

Alternatively, consider a case in which, though there is no shortage of external goods, the people have no generosity or fellow-feeling whatsoever. Suppose that in such a "society of ruffians" many people nonetheless work hard to create valuable objects from the moderate store of raw materials that nature provides. I, at least, have no temptation to claim that considerations of justice in holdings are inapplicable to such cases. We shall consider later whether *institutions* of justice could exist in such a society, but regardless of the answer to that question, there seems to be no conceptual problem with the application of the concept of justice to conditions which violate Hume's requirement of limited generosity.

It seems, then, that we can make perfectly good sense of talk of justice in situations in which at least some of Hume's conditions are not met. His conditions seem not to be presuppositions of the applicability of the concepts of justice and, hence, not the circumstances of justice in *this sense*. But, we might ask, are they the necessary conditions for a society's developing the concepts of justice and injustice?

Epistemic Presupposition. One might hold that unless the circumstances of justice obtain, a society will not develop the concepts relating to justice. I shall call this the epistemic presuppositional model of the circumstances of justice. On this interpretation, Hume's claim that his conditions are the circumstances of justice asserts a factual relationship between the conditions of a society and the concepts accessible to members of that society.

The claim that Hume's conditions are the circumstances of justice in this sense would not delimit the range of applicability of the concept of justice. Nevertheless, it is highly relevant to the question we have posed regarding the scope of justice. For if Hume's conditions are epistemic presuppositions of justice there seems little point in asking what justice requires under other conditions. Those subject to such conditions could not consider, let alone act on, the answer to this question.

Hume suggests this interpretation in the following passage: ". . . if men were supplied with everything in the same abundance [as air and water—in Hume's day], or *every one* had the same affection and tender regard for *every one* as for himself; justice and injustice would be equally unknown among mankind" (Hume, *Treatise*, p. 495). In speaking of the golden age, he says, "Even the distinction of *mine* and *thine* was banish'd from that happy race of mortals, and carry'd with them the very notions of property and obligation, justice and injustice" (Hume, *Treatise*, p. 494). We shall see later that these passages might also be read as supporting the ontological presuppositional view.

There is further, less equivocal evidence that Hume sometimes had in mind the epistemic presuppositional model of the circumstances of justice. With typical eloquence, he says, "It seems evident that, in such a happy state [absolute abundance], every other virtue would flourish, and receive tenfold increase; but the cautious, jealous virtue of justice would never once have been dreamed of" (Hume, *Enquiry*, p. 16). It is not *entirely* clear from this passage that Hume is endorsing an epistemic presuppositional view of the circumstances of justice, for he goes on to suggest that the notion of justice may have developed in other circumstances but it would be "an idle ceremonial, and could never possibly have a place in the catalogue of virtues" (Hume, *Enquiry*, p. 16). So perhaps Hume's only point is that while the virtue of justice may be known under other conditions, it is only under the circumstances of justice that it could be known *as* a virtue.

Several paragraphs later, though, we find Hume claiming that, were men so generous that each cared as much for the welfare of others as of himself, "the divisions of property and obligation" would never have

been thought of (Hume, *Enquiry*, p. 17). This seems to be as clear a statement of the epistemic presuppositional model of the circumstances of justice as we could hope for.

Is the claim that Hume's conditions are the circumstances of justice true if we understand that phrase to refer to the epistemic presuppositions of justice? If what I have said about his conditions as logical presuppositions of justice is accepted, there should be little temptation to view his conditions as epistemic presuppositions of justice. "Justice" and "injustice" may apply even where Hume's conditions are not met. If so, why couldn't intelligent beings have these concepts?

But even if Hume's conditions are logical presuppositions of justice, there is little reason to suppose that they are epistemic presuppositions. Suppose, with Hume, that people were filled with generosity and cared as much for others as for themselves. Even if the concepts of justice and injustice could not properly be applied to their dealings with one another, they might very well have the idea of justice. After all, if Hume can have the concept of "justice" and "injustice" being *inapplicable* simply by imagining bizarre conditions such as unlimited generosity or absolute abundance, why could not beings living under such conditions have the concept of "justice" by imagining living under the unfortunate conditions all too familiar to us. Philosophers, science fiction writers, and other purveyors of fantasy will see to it that we do not allow our concepts to be chained to our actual circumstances.

Ontological Presupposition. Though we could have the concepts of justice and injustice, and these could apply even if Hume's conditions fail to obtain, it may be that in such conditions no institutions or practices of justice could develop or survive. It could be that *institutions* of justice require, for their existence, that Hume's conditions obtain (or once did obtain).

This claim, like the claim that Hume's conditions are epistemic presuppositions of justice, does not delimit the applicability of the concept of justice, and so does not provide an answer to the central question we have posed. However, like the epistemic claim just discussed, it has an important bearing on the practical point of determining the scope of justice. If, failing Hume's conditions, institutions of justice could

not exist, there seems to be little practical benefit in determining what justice requires under non-Humean conditions.

There are two versions of this model of the circumstances of justice that deserve to be distinguished. We might label one the *genetic presupposition model*. According to this view, institutions of justice will originate only where the circumstances of justice obtain. Once established, these institutions may, by the sheer inertia we know such things to have, continue to exist—perhaps as an “idle ceremonial.” In contrast, there is a more rigorous ontological presuppositional model one might adopt—the *sustaining presuppositional model*. On this view, institutions and practices of justice can exist only when the circumstances of justice obtain.³

There is some evidence that Hume might have held the ontological presuppositional view in some form. Were men utterly unselfish, he claims, “it seems evident, that the use of justice would, in this case, be suspended” (Hume, *Enquiry*, p. 17). Elsewhere, he makes similar points (Hume, *Enquiry*, p. 18), but his clearest statement of this position occurs slightly later: “Thus, the rules of equity or justice depend entirely on the particular state and condition in which men are placed, and owe their origin and existence to that utility, which results to the public from their strict and regular observance” (Hume, *Enquiry*, p. 20). He makes it clear (p. 25) that he does not simply mean that the specific sorts of acts which justice requires will vary depending on the circumstances—a claim so modest one could hardly deny it. Hume seems to believe that the existence of rules of justice depends on their utility and that the utility of such rules depends upon his conditions arising. We shall take up the latter claim when we consider the utility interpretation of the conditions of justice. Here I want

3. Hume also wants to maintain that his conditions *explain* why we have institutions of justice as well as why we have the particular ones we do. For this, he is not interested in the claim that his conditions are presupposed by the existence of institutions of justice. Rather he is claiming that they are sufficient (or sufficient given some background assumptions) for institutions of justice to exist. The same distinction between the genetic and sustaining views can be drawn in this regard. The former would take the circumstances of justice to be the cause *in fieri* of institutions of justice; the latter would see these as the cause *in esse* of such institutions. We shall not be interested in the sufficiency claim in either of its interpretations.

to consider whether institutions of justice depend for their existence on Hume's conditions.

Why would someone think that institutions of justice could not arise if Hume's conditions fail to obtain? The reason cannot be simply that they would not be socially useful—for even if this were true, it would not be an adequate explanation; many institutions both originate and are sustained under the conditions which render them detrimental to human well-being. Perhaps Hume's reasoning is that institutions of justice would not work to *anyone's* advantage under the unusual conditions we are considering. Aside from the fact that the same objection can be made here—namely, that institutions which work to no one's advantage may develop and persist—this claim is simply false. Effective institutions of justice would, rather clearly, work to the advantage of the weaker members of the society even if there were conditions of severe adversity or extreme inequality of abilities.

What Hume probably has in mind (if, indeed, he endorses this view) is that rules of justice could not be *effective* except where the circumstances of justice obtain. If this is so, then we have a powerful argument to show that institutions of justice could not exist except under such conditions. When we are speaking of entire institutions—practices defined by rules—the proper criterion of existence seems to be effectiveness. It makes little sense to say that some institution exists, though the rules which define it play no role in people's practical reasoning or in their judgments of praise and blame. For basic institutions, to be is to be effective.

It may be thought that institutions of justice could not be effective under conditions of extreme adversity or great inequality of abilities because under such conditions the stronger would simply take everything they could hold without regard for the niceties of justice. When discussing the problem of great inequality of abilities, Hume says:

Our intercourse with them (creatures with very inferior abilities) could not be called society, which supposes a degree of equality; but absolute command on the one side, and servile obedience on the other. Whatever we covet, they must instantly resign: Our permission is the only tenure, by which they hold their possessions: Our

compassion and kindness the only check, by which they curb our lawless will: And as no inconvenience ever results from the exercise of power, so firmly established in nature, the restraints of justice and property, being totally *useless*, would never have a place in so unequal a confederacy. [Hume, *Enquiry*, p. 23]

Why should we think that this is correct? Granted, if the members of the society were *entirely* egoistic and some were able to dominate others without fear of reprisal, institutions requiring sacrifices by the dominant members of the society would not get a toehold. This is just a special case of the problem of reconciling psychological egoism with the possibility of morality (as traditionally conceived). But this is not our problem here. Hume is not considering a society of pure egoists.

If we imagine a society of people such as ourselves—people who are neither wholly selfish nor wholly selfless—institutions of justice could persist even if some were invulnerable to the rest. Of course, these institutions would require the support of the stronger members of society and this support may be motivated only by altruistic considerations, but since the members of the society are not purely egoistic, we cannot rule out this support a priori.

Perhaps Hume would say that in such a case the institutions are not institutions of *justice* but of *benevolence*. After all, they are maintained only by the generosity of the stronger. But this misses the point. An institution is not generally categorized in virtue of the motives people have for compliance but in virtue of the justification for the rules which define the institution. If we classified institutions of justice in terms of the motive for compliance, most of the institutions we think of as institutions of justice (and perhaps what Hume is thinking of as institutions of justice) would turn out to be institutions of fear and prudence.

There seems to be no reason why scarcity or inequality should ensure that institutions of justice will not be effective. Nor would utter selfishness alone guarantee this. Indeed, traditional social contract theories have attempted to show that it would be in each individual's interest to adopt rules of justice provided the other conditions of justice obtain. Much has been said of this—much of it wrong, no doubt.

Still, there seems to be no reason why institutions of justice could not exist among egoists, though the explanation of their existence among egoists might differ from that which accounts for their existence among altruistically motivated people.

I see no reason to believe that rules of justice could not be effective under conditions other than those listed by Hume. Surely, there are conditions which would render any rules of justice ineffective, but the four conditions listed by Hume do not seem to be necessary for the effectiveness of rules of justice. If not, then they are not necessary for the existence of institutions of justice either.

Deontic Presupposition and Utility. The last two interpretations of the relation between the circumstances of justice and rules of justice are best treated together. According to the deontic presuppositional view, rules of justice are morally obligatory only if the circumstances of justice obtain. The utility interpretation, on the other hand, holds that adherence to the rules of justice is socially useful only in the circumstances of justice. It follows that it is only in these conditions that institutions of justice are enjoined by the principle of utility.

We need not sift through textual tidbits to determine whether Hume held either of these two views. His endorsement of them is explicit.

Reverse, in any considerable circumstance the condition of men: Produce extreme abundance or extreme necessity: Implant in the human breast perfect moderation and humanity, or perfect rapaciousness and malice: By rendering justice totally *useless*, you thereby totally destroy its essence, and suspend its obligation upon mankind. [Hume, *Enquiry*, p. 20]

It is important to note that this is not just a comment made in passing. The deontic presuppositional interpretation and the utility interpretation of the relation between Hume's conditions and the rules of justice are absolutely essential to Hume's strategy. He is trying to show that duties of justice rest solely on considerations of utility. His intuition is that if rules of justice are obligatory only when they are generally useful, there is a good (or conclusive) reason for thinking that the duty of justice is *founded* on utility. Accordingly, he argues that

when his conditions are not fulfilled, justice is neither socially useful nor morally obligatory.

Hume's strategy is open to several criticisms. For example, it must be noted that his method for showing that rules of justice are obligatory only if general adherence to them serves utility is inconclusive to say the least. What Hume has claimed is that where the circumstances of justice do not obtain, institutions of justice are neither socially useful nor morally obligatory. But this does not establish the conclusion that he wants—namely, that whenever institutions of justice are morally obligatory, they are socially useful as well. But, more importantly, even if he were successful in showing this, it would demonstrate only that the existence of duties of justice logically implies that rules of justice are socially useful. It would not show, in any theoretically interesting sense, that utility grounds or justifies the obligation to act justly. To infer the latter from the former is to commit a fallacy akin to a *post hoc ergo propter hoc* fallacy. To do so is to assume that because two concepts are logically related (via implication) the implicandum must explain the truth of the implicans.

I shall not discuss in any detail either the truth of Hume's claim that duties of justice are grounded on utility or the method by which he attempts to demonstrate this. Even if Hume's strategy is ill-conceived, it is a clear indication that he is committed to the view that the existence of his conditions is a necessary condition for rules of justice to be morally obligatory and for the general adherence to such rules to be optimific.

Since I am not concerned with Hume's general thesis here, I shall not attempt to drive a wedge between the obligation to act justly and the utility which generally results from doing so. My strategy will be to argue that, contrary to Hume's claim, his conditions are *not* necessary for institutions of justice to be socially useful. As a result, the assertion that they are deontic presuppositions of institutions of justice will be highly dubious. If the institutions which Hume has in mind—those we normally think of as institutions of justice—are socially useful, then most would agree that there is at least a *prima facie* obligation to adhere to them when they exist. For those who see utility as being utterly irrelevant to moral obligation, there will be little tempta-

tion to view Hume's conditions as deontic presuppositions of justice in the first place.

In a society not characterized by Hume's conditions, can rules of justice be useful and morally obligatory? Why not? Imagine again a situation of absolute scarcity. In such a case, there are no distributive rules that will allow all (or perhaps even most) to get the minimum amount of goods required for a decent life. But there may be rules or practices which would increase the number of persons who can have the minimum. Imagine our unfortunate shipwreck survivors again. Suppose they agree to a plan of drawing lots to determine who will be dinner for the sharks and who will stay on board. Presumably, such a plan, if voluntary and unanimous, is just—that is, it would be allowed by the rules of justice. If one has agreed to such a plan, one has a duty of justice to comply with the outcome. (Of course, it must be pointed out that an act of noncompliance would be accompanied by mitigating circumstances—presumably duress. But we must not confuse having an excuse for not fulfilling one's obligation with not having the obligation in the first place.) Depending on other conditions, of course, each person adhering to his commitment may well be socially useful, for the alternative may be a slow and painful death for all. In such a miserable situation, even a rule that does not accord to each a minimally decent life may maximize utility. There is no reason to think that rules of justice do not generally do so.

Furthermore, if adherence to rules of justice is productive of human well-being when we are all roughly equal in our abilities, it can only be *more* important for this end when some are able to totally dominate others. If institutions of justice are socially useful when we have some fellow-feeling, how much more useful they must be when we have none.

It is clear that justice and utility pull apart—that they are not co-extensive. But this is true whether or not the circumstances of justice, *as Hume enumerates them*, are met. It is also clear that the existence of institutions of justice is often optimific. This seems as likely to be true when Hume's conditions do not obtain as when they do.

We have, then, some reason for rejecting the utility interpretation of the relationship between Hume's conditions and rules of justice. We

also have reason for rejecting the deontic presupposition. A promise (to take just one example) creates a duty of justice whether it is made in harsh circumstances, or by an egoist, or by one who is invulnerable to the attack of others.

Though I have criticized each of the five suggested relations between rules of justice and Hume's conditions, I do not mean to suggest that these conditions have no interesting relation to rules of justice. First, Hume's conditions of justice clearly define the standard cases in which problems of justice arise. Second, they state some of the circumstances that influence what particular actions are required by justice. Surely justice requires different things of us if we are in conditions of plenty than if we are living under less ideal conditions. Finally, *some* of the conditions of justice are related to rules of justice in one or more of the ways that I have just been discussing. For example, interdependence may well be a logical presupposition of the applicability of rules of justice and it is certainly an ontological presupposition of institutions of justice. For as Hume expresses this requirement, it is violated only if "all society and intercourse [were] cut off between man and man" (Hume, *Enquiry*, p. 24). Nevertheless, I have argued that it is not correct in any of the above discussed senses to say of Hume's conditions generally that they are the circumstances of justice.

THE CIRCUMSTANCES OF JUSTICE: RAWLS' VIEW

It might be thought that, having discussed Hume's views on the circumstances of justice, there is nothing new that needs to be said about Rawls' views. After all, Rawls himself says that his discussion "adds nothing essential to [Hume's] much fuller discussion" (Rawls, pp. 127-128). But this is misleading, for while Rawls largely adopts Hume's conditions as being the circumstances of justice (though even here there are changes), Rawls' understanding of what it *means* to be the circumstances of justice is distinct from any that is clearly suggested by Hume.

It is rather surprising to find Rawls endorsing so uncritically Hume's account of the circumstances of justice. Rawls' project is, after all, fundamentally different from, and inconsistent with, Hume's. Hume is attempting to show that duties of justice are based on utility. Rawls

does not believe that the moral requirement to act justly is grounded on the utility which results from so doing. The fact that Rawls is overtly antipathetic to Hume's project suggests that the circumstances of justice are not cast in the same role by Rawls as they are by Hume. What does Rawls have to say about Hume's conditions and why does he consider them *circumstances of justice*?

Rawls claims that the circumstances of justice—roughly Hume's conditions—are “the normal conditions under which human cooperation is both possible and necessary” (Rawls, p. 126). This phrase is ambiguous. It could mean, first, that they are the conditions which usually make human cooperation possible and necessary, though other conditions might do so as well. Alternatively, it could mean that these are the normal conditions of mankind, and they are *the* conditions which make human cooperation possible and necessary. Though the first is the easier reading, Rawls must mean the second. Otherwise, Rawls' theory of justice loses its claim to universality, for it no longer yields principles of justice for all cooperative endeavors.

Before assessing Rawls' claims about the effect of Hume's conditions on the possibility and necessity of human cooperation, let us take a look at Rawls' characterization of these conditions. Whether he is aware of it or not, Rawls adds to Hume's list. It seems to me that the primary effect of Rawls' alterations is to produce a less elegant, not to mention less plausible, theory.⁴

4. For example, Rawls requires that “individuals coexist together at the same time in a definite geographic territory” (Rawls, p. 126). It is a mystery to me why Rawls should add the spatial requirement. I cannot imagine a plausible interpretation of the phrase “definite geographic territory” that would make Rawls' requirement relevant to the possibility of human cooperation. My suspicion is that Rawls means to require individuals to live close enough together that they must interact and cooperate with one another. Aside from the fact that the phrase “coexist in a definite geographical territory” does not get at this meaning, there is another problem with Rawls' account here. Human beings have cooperated from as far apart as this planet allows—further, considering recent space travels. It takes little imagination to conceive of humans cooperating with beings thousands of light-years away. Given this, it is quite unclear what is supposed to be ruled out by the requirement that people coexist in a definite geographical territory. Further, we might ask why Rawls believes that the fact that men “suffer from various shortcomings of knowledge, thought and judg-

We need not consider all the details upon which Rawls diverges from Hume, though there is one which must be mentioned. Following Hume, Rawls wants to include a “moderate scarcity” requirement. But in his explication of it, he renders the requirement trivial. Rawls claims that one of the circumstances of justice is that “natural resources are not so abundant that schemes of cooperation become superfluous, nor are conditions so harsh that fruitful ventures must inevitably break down” (Rawls, p. 127). In other words, human cooperation is impossible or unnecessary whenever conditions are such that it is impossible or unnecessary.

I do not think that Rawls meant to be endorsing a tautology; therefore, I shall interpret him as holding a moderate scarcity view similar to Hume’s. That is, I will view Rawls as requiring that resources not be so abundant that each person can satisfy his every whim without hindering others in attaining similar satisfaction, and that they not be so scarce that no distributions can accord to all (or most) the essentials of a minimally decent life.

I shall not address the question of whether principles of justice can apply only when human cooperation is both possible and necessary. I do not think that this is self-evident (even when we restrict our attention to distributive justice), and Rawls gives no argument for it. Still, Rawls is only interested in justice as it applies to institutions of human cooperation. The question we must ask is, Are such institutions possible and necessary only under the conditions he lists?

From what has been said before, it should be clear that the answer to this question is no. I argued earlier that institutions of justice could exist even if the conditions listed by Hume (and Rawls) were not met. But an institution of this sort just *is* a system of rule-governed activity. Such a system, itself, constitutes a cooperative endeavor. If institutions of justice can exist even where Rawls’ conditions do not obtain, then *ipso facto*, human cooperation is possible under these conditions.

It takes very little imagination to conceive of a situation in which

ment” (p. 127) is supposed to be one of the circumstances of justice in Rawls’ sense. If we did not have these failings, would cooperation be impossible, or unnecessary? And why?

people would cooperate with one another despite the fact that resources were extremely scarce. Of course, one might argue that in this case, individuals would not be acting as mutually disinterested persons. There are several problems with this response. First, it may be in a person's interest to agree to a practice of mutual cooperation even when conditions are such that cooperation would not result in satisfying the basic needs of the majority. Secondly, Rawls is not entirely clear about what the assumption of mutual disinterest means. At times, it sounds very much like a requirement of psychological egoism. Elsewhere, though, he says such things as, "although the interests advanced by these (life) plans are not assumed to be interests in the self, they are interests of a self that regards its conception of the good as worthy of recognition and that advances claims in its behalf as deserving satisfaction" (Rawls, p. 127). This is, of course, much different from psychological egoism and there is no reason why persons who are mutually disinterested in *this* sense could not engage in cooperative endeavors even if so doing could be expected to be to their *disadvantage*.

Human cooperation seems *possible* under conditions of extreme adversity, utter selflessness, or great inequality of abilities. Rawls has given no reason to doubt this. But let us look at the other side of Rawls' claim. Violation of the conditions he enumerates can have the effect of making human cooperation unnecessary according to Rawls. There is some problem here in interpreting the sense of "necessary." When "necessary" is used without qualification, it is often understood as meaning "logically necessary." This cannot be what Rawls means. Violation of the Humean conditions cannot *make* human cooperation unnecessary in this sense because human cooperation is not *logically* necessitated by the fulfillment of these conditions. Rawls clearly means that when the Humean conditions obtain, individuals must cooperate in order to maximize the satisfaction of their desires. If there were a great abundance of desired goods, each individual would not find it necessary to cooperate with others in order to get what he wants—at least this is Rawls' intuition.

The view that cooperation is not necessary (in order for us to reach our goals) when there is great abundance of resources has the serious

defect of assuming that the sole goal of human cooperation is the acquisition of wealth. This assumption places Rawls squarely in what has sometimes been called the possessive individualist tradition. The view that humans cooperate solely for the purpose of attaining a greater share of material wealth is dubious, to say the least. We often cooperate with one another in order to achieve something that is definitionally tied to the process of cooperation—for example, when we play games. No abundance of resources could render human cooperation unnecessary for those who achieve satisfaction from playing a game of chess with a friend. Rawls seems to forget that there are pleasures that are intrinsic to cooperative endeavors (or logically related to them in other ways) and that, for some of us, experiencing these pleasures is an essential part of our life plan. How, we might ask, are friendship, intellectual exchange, and love possible without human cooperation; and are these aspects of human life rendered unnecessary by the abundance of material wealth.

I believe that this criticism suggests an important caveat for those inclined to take a Rawlsian line on these matters, but it may be unfair to suggest that it is a definitive objection to Rawls. He is, after all, developing a theory of *distributive* justice as it applies to basic social institutions. Perhaps it is reasonable, then, to interpret Rawls as claiming that human cooperation *for material goods* is impossible or unnecessary when Hume's conditions are not met. I have already argued that cooperation in distributing material goods may be possible and even desirable despite extreme scarcity. Would such cooperation be unnecessary under conditions of extreme plenitude?

Given the kind of plenitude Hume supposes, cooperation for the acquisition of material goods may well be unnecessary—at least if we assume that this sort of abundance obtains for goods in their consumable form. (Unlimited natural resources such as crude oil would do us little good in the absence of cooperative efforts to refine and distribute them.) But, it should be noted, this seems to be the only condition mentioned by Rawls that has the property of being required for human cooperation to be necessary. (Interdependence also seems to be such a condition, but Rawls does not explicitly mention it.) Unlimited generosity would certainly not have the effect of making hu-

man cooperation unnecessary. Hume's plausible, though I think false, idea was that rules of justice would be unnecessary if human generosity were unlimited because people would naturally cooperate to their mutual advantage. But unlimited generosity seems to have no effect on the possibility or necessity of human cooperation—though, of course, it would have great effect on the character.

The question which has been central to this discussion is, What is the scope of justice? Though I have not offered a positive answer to this question, I have argued that Hume's conditions do not delimit the scope of justice. Neither the application of the concept of justice nor the existence of institutions of justice is restricted by Hume's conditions. Having admitted this we are free to consider what is required by justice under conditions other than those Hume lists. I believe it important, both for theoretical and practical reasons, that we do so.

It is certainly a mistake to attempt to view all moral problems as problems of justice. Hume and Rawls, though, make the opposite mistake. They unduly restrict the application of considerations of justice. Hume's conditions are not broad enough to define the scope of justice.

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