

*John Salter*

## **Hume without Spontaneous Order**

---

### **Abstract:**

The question whether it is possible to be both a Humean and a contractarian arises from the interpretation of Hume as a theorist of spontaneous order, a theory that is usually taken to be incompatible with contractarianism. I argue that this interpretation is unconvincing and anachronistic. The real reason why it is problematic to view Hume as a contractarian is not because he is proponent of spontaneous order, but because he is a virtue-ethicist. I argue that Hume adopted and elaborated on the natural law account of the origins of property as conventional, but provided a different and separate account of the obligation to respect property rights.

*Keywords:* Hume, convention, spontaneous order, contractarianism, natural law, property.

### **1. Introduction**

If I have understood them correctly, Robert Sugden and Anthony de Jasay both subscribe to the view that to be a genuine Humean is to be a proponent of the theory of spontaneous order, a theory that is usually taken to be incompatible with contractarianism. Sugden, however, claims that conventions of the kind that Hume is thought to have practically invented, are agreements that do not imply the constructivist outlook that typifies contractarian theories. Agreement can, therefore, be part of a theory in which individuals coordinate their actions by voluntarily entering into joint projects but without the kind of design and forethought that is required by constructivist theories. It is thus possible to be both a Humean and a contractarian. Sugden does not question that Hume was critical of Lockean contract theory, but nevertheless thinks that Hume's concept of convention "has significant features in common with social contract theory". In particular, he argues that "contractarianism in the Wicksell-Buchanan sense of voluntary exchange is conceptually independent of social contract theory, and compatible with Hume's theory of conventions" (Sugden 2009, 21).

My purpose in contributing to this special topic is to offer a different reading of Hume from the ones proposed by both Sugden and de Jasay. I do so with some trepidation in view of Sugden's claim to be one of Hume's representatives on earth. My principle disagreement is with the view that Hume's account of the origins of justice and property can be interpreted in terms of the idea of sponta-

neous order. This interpretation of Hume is surprisingly common, and seems to start with Hayek's reading of the eighteenth century enlightenment writers and the Scottish Enlightenment in particular, through the grid of his own concerns with rationalist constructivism that were born out of his opposition to socialism. Hayek saw a whole line of writers who 'contributed' to the development of this (his) theory of social order, including Mandeville, Hume, Ferguson, Smith and Menger. The sense of 'contributing' here, however, is obscure, and seems to mean that the future theory is somehow immanent in the earlier works even though the authors might not have recognized what they were doing. Mandeville, for instance, who, according to Hayek, made the breakthrough by inventing the twin notions of spontaneity and evolution, did not understand the theory he had, and his main achievement was to pass on this partially understood theory to Hume who improved it. By any standards this is a highly questionable approach to intellectual history. It is essentially writing history in reverse, understanding the past in terms of the present. This has the unfortunate consequence that we learn nothing from past writers; we merely project onto their writing, theories of our own.

If we do not adopt the position that Hume was a proponent or contributor to the theory of spontaneous order, the question whether it is possible to be a Humean and a contractarian appears in a different light. The reason it is difficult to think of Hume as a contractarian is that he is a virtue-ethicist. Morality is a quality of the fixed dispositions or characters of persons, not of acts or rules. And this seems to rule out the possibility that the legitimacy of the rules, or the reasons that people feel obligated to obey them, has anything to do with the fact that they were conventions or agreements.

Nevertheless, we should take seriously Hume's reference to the continental natural law tradition of contractarianism, where he tells us that his own account of the origins of justice is much the same as that of Grotius (EPM Appx. 3.7, fn. 63).<sup>1</sup> For Hume, as for the seventeenth century continental natural lawyers, private property was not an institution that was required by natural law; it was a conventional, adventitious institution underpinned by agreements. To the extent that Hume offered a distinctively different explanation from the natural lawyers it was to demonstrate, consistently with his virtue-ethics, that while agreements play a part in explaining the origins of property and justice, they have no normative significance. In other words, Hume completely separates his account of the origins of justice from his account of the reasons we regard it as a virtue and why we feel an obligation to be just. The fact that justice originated with a convention, therefore, has no bearing at all on our current practices or beliefs or moral commitments, or on the scope of our rights and duties. An implication of this is to distance Hume's account of convention quite

---

<sup>1</sup> Hume's works used and cited in this essay are: Hume, D. (1998), *An Enquiry Concerning the Principles of Morals*, ed. Tom L. Beauchamp, Oxford: Clarendon Press. Abbreviated as 'EPM' and cited by section, part and paragraph. Hume, D. (2007), *A Treatise on Human Nature* Volume 1, ed. David Fate Norton and Mary J. Norton, Oxford: Clarendon Press. Abbreviated as 'T' and cited by book, part, section and paragraph.

decisively from modern traditions of normative contractarianism such as James Buchanan's.

## 2. Spontaneous Order

Contemporary versions of invisible hand theories seem to have the following characteristics in common: 1. Unintended consequences: individuals neither intend nor foresee the social arrangements their combined actions create. 2. Limited rationality and forethought. 3. The explanandum is commonly perceived to be something that is designed: because it promotes the public interest, or because it displays a regularity that suggests some consciously coordinated action, or because it is traditionally or commonly perceived to be the result of a guiding hand, or because of its complexity as in the law. Theories of spontaneous order have two further characteristics 1. They apply invisible hand theories to the emergence of some kind of social order, defined as patterns of cooperation and coordination, or as the emergence of institutions such as property. 2. They provide a systematic theory of how order emerges from the spontaneous actions of individuals. Carl Mengers's organic explanation of order for example, identifies spontaneous innovations followed by imitation of the successful ones as the core process, while Hayek, in his later work, arrived at the idea of group selection. Sugden, along with a number of other economists is interested in evolutionary game theory, which looks at competition and selection between individual strategies.

To what extent does Hume's account of the origins of justice and property display features of invisible hand theories or of theories of spontaneous order? Any attempt to answer this question, must face squarely the fact that Hume gives a different explanation for the origins of the basic principles of justice from his explanation of the particular rules of justice. In other words, the reason why possessions must be stable and transferable by consent, involves different considerations from the rules governing "what particular goods are to be assign'd to each particular person". Hume's account of convention, which involves the key notions of mutual advantage and common interest, only explains the need for rules of some kind (T 3.2.2; EPM 3.1). In explaining the different rules—occupation, accession etc., Hume refers to the workings of the imagination and to considerations of utility (T 3.2.3; EPM 3.2, Appx. 3.10).

Hume argues that while the separation and constancy of possessions is "absolutely required by the interests of society" the question of the particular rules should be "is generally speaking, pretty indifferent; and is often determined by very frivolous views and considerations" (EPM Appx. 3.10, fn. 65). Hume is prepared to call the rules for the stability of possession and their transfer by consent *natural laws* because they are absolutely necessary for the existence of any society.

*The Stability of Possession*

If we examine the first part of Hume's story, there is very little, if anything, which suggests he was thinking in terms of spontaneous order or of some kind of invisible hand mechanism. The evidence that is most commonly cited in favour of such an interpretation is the passage where Hume says that the system of property and justice "comprehending the interest of each individual, is of course advantageous to the public; tho' it be not intended for that purpose by the inventors" (T 3.2.6.6). However, interpreters have been too quick to see the invisible hand at work in this famous passage. The point that Hume is making here is about limited benevolence rather than limited forethought. Self-interested people are primarily *motivated* to ensure their own safety and security. They are not motivated by, and perhaps have no conception of, anything as abstract and remote as 'the public interest'. Nor do they have any altruistic motives. But they are not blind to the future consequences of their actions. Moreover, they intend the *system* their actions bring about, even though they do not intend that it is advantageous to the public.

The crucial point in Hume's account is that people are aware of the fact that their security depends on the security of others. There is the common knowledge that each can only achieve their ends if others achieve theirs. The public interest here is nothing other than the common interest—everybody has the same end and they all know that the condition of achieving their ends is that others do as well. Thus Hume says "twas therefore a concern for our own, and the publick interest, which made us establish the laws of justice" (T 3.2.2.20). We primarily seek our own advantage, but the result "is of course advantageous to the public". Hume can here say 'of course' because our own interest is the same as the public interest.

It is also sometimes claimed that Hume's strictures against reason's ability to distinguish between virtue and vice, indicates a general distrust of reason's ability to guide us in our conscious attempts to construct the societies in which we live. However, this is a misconception, which confuses Hume's account of the origins of justice, from his explanation of why we regard justice as a virtue. Reason can only play a subsidiary role in connection with the second question because reason is inert and cannot distinguish virtue from vice. But in explaining the first question, Hume says that justice and property "suppose reason, forethought, design" (EPM Appx. 3.10, fn. 64). He rejects the standard natural law device of the state of nature, but he retains the idea that without laws of justice to restrain our natural instincts, our lives would be insecure and perpetually subject to the violence and avarice of others. The remedy to this situation comes from the "judgement and understanding"; from artifice and convention, which restrain our natural instincts. Thus Hume says that "the blind motions" of our natural affections, "without the direction of the understanding, incapacitate us for society" (T 3.2.2.14).

Just how much faith Hume had in the reasoning powers of people and their ability to learn from experience, is indicated by his comment that: "When there-

fore men have had experience enough to observe, that whatever may be the consequence of any single act of justice, performed by a single person, yet the whole system of actions, concurred in by the whole society, is infinitely advantageous to the whole, and to every part; it is not long before justice and property take place.” (T 3.2.2.22) And it is evident from the comments that follow this passage, that Hume was thinking about the point at which we enter the convention, that is to say that it is about the very foundations of justice—Every one is sensible of this interest and every one expresses it to his fellows

The whole point of Hume’s distinction between the natural and the artificial virtues is that the former are natural dispositions that express themselves spontaneously, while the latter require reason and forethought. If we compare Hume with Adam Ferguson, a member of the Scottish Enlightenment who followed closely on the heels of Hume and Smith, and who is often taken to have provided the classic formulation of the invisible hand, it is apparent that they are offering *different* explanations of social progress. Ferguson writes:

“[T]he forms of society are derived from an obscure and distant origin; they arise, long before the date of philosophy, from the instincts, not from the speculations of men. [...] Every step and every movement of the multitude, even in what are termed enlightened ages, are made with equal blindness to the future; and nations stumble upon establishments, which are indeed the result of human action, but not the execution of any human design.” (Ferguson 1995, 119)

Ferguson emphasizes the ‘instincts’ rather than the ‘speculations of men’ while Hume argues that reason and forethought must control the instincts. Justice and property do not arise from the natural, spontaneous instincts and motivations but from the understanding, combined with reason and forethought, which *redirect* our self-love.

Nor is there any evidence that Hume was thinking in terms of some kind of evolutionary process, unless the term ‘evolution’ is simply being used as a synonym for ‘gradual change’. The process by which the idea of property becomes generally adopted is slow and gradual, and the rule for the stability of possession “arises gradually, and acquires force by a slow progression, and by our repeated experiences of transgressing it” (T 3.2.2.10). This phrase is translated by Sugden as the claim that property is a “convention that has evolved spontaneously” (Sugden 1986, 55). However, I can see no basis for translating the phrase in this way. The laws of nature are spontaneous only in the sense that they emerge from individual behaviour rather than being imposed as laws from above. But they are not spontaneous in the sense required by theories of evolution. “Every step and every movement” of the whole process is driven by rational responses to circumstances. There is no stumbling blindly. Moreover, consider the following:

“Now as it is by establishing the rule for the stability of possession, that this passion [self-interest] restrains itself; if that rule be very abstruse, and of difficult invention; society must be esteemed, in a

manner, accidental, and the effect of many ages. But if it be found, that nothing can be more simple and obvious than that rule; that every parent, in order to preserve peace among his children, must establish it; and that these first rudiments of justice must every day be improved, as the society enlarges: If all this appear evident, as it certainly must, we may conclude, that it is utterly impossible for men to remain any considerable time in that savage condition, which precedes society; but that his very first state and situation may justly be esteemed social.” (T 3.2.2.14)

The rule for the stability of possession then is simple and obvious. Its remotest origins are in natural society, that is to say, the family, or some other small social group bound by sympathy, where it is an obvious remedy to ensure peace amongst its members. The enlargement of society beyond the family unit results from the application and modification of a principle that people have learned from living in families. We come to the enlarged society ready equipped with the idea of the stability of possessions and of the need to restrain our self-interest. There is nothing accidental or spontaneous about this. It is explained by constant and universal aspects of human nature, combined with the common circumstances in which we find ourselves. Just as with the rule for the transference of property by consent, it is determined by “plain utility and interest” (T 3.2.4.2).

Hume then, is describing a long process of development from the family unit to commercial society and the process by which the convention takes hold in society at large takes time. The avarice of human beings, as Hume depicts it, is a powerful force that is not easily overcome and there will be many failures and ‘transgressions’. But this is not a process of evolution. A better description is “enlargement and proliferation” (Baier 2010, 139). The idea that society requires a distinction and separation of possessions is simple and obvious: it is learned in the family and carried into society. It is the application that takes time.

#### *The Rules of Property*

When we turn to Hume’s discussion of the particular rules that determine the distribution of property we encounter a different set of considerations. While the need for the stability of possessions is simple and obvious, the same is not true of the particular rules governing who is to own what. In the *Treatise* Hume says that there “seldom is any very precise argument to fix our choice” of the rules (T 3.2.3.4, fn. 71). Public interest can account for most of them, but Hume thinks that they are “principally fix’d by the imagination, or the more frivolous properties of our thought and conception” (T 3.2.3.4, fn. 71). This does not mean that the rules themselves are imaginary or frivolous, but that the imagination forms a connection between the relationship of property and some pre-existing relationship: “as property forms a relationship between a person and an object, ‘tis natural to found it on some preceding relation” (T 3.2.3.4, fn. 71).

It is natural, for instance, to add or annexe the idea of property to present possession “which is a relation that resembles it” (T 3.2.3.4, fn. 71) and to first occupation, which “always engages the attention most” and to labour, which makes an alteration to physical objects (T 3.2.3.6). Hume is here making use of his principle of the association of ideas, whereby the imagination naturally connects ideas on the basis of resemblance, contiguity and causation. Hume also offers an alternative explanation for the rule of present possession, emphasizing again that there may be a number of different and equally compelling reasons for some of his rules. He says that this rule would immediately occur to people because custom “not only reconciles us to any thing we have long enjoy’d, but even gives us an affection for it, and makes us prefer it to other objects, which may be more valuable, but are less known to us” (T 3.2.3.4).

Now it might seem, in so far as the imagination plays a part in shaping the rules of property, that judgement and understanding must take a backseat. But it is important to understand what Hume is doing here. He is trying to discover what reasons people/societies/lawyers have for choosing the rules they do. In particular, he wants to explain why the standard Roman laws of property ownership: first occupation, accession, prescription and succession, are the ones commonly encountered. Why, to take a modern example, do we have a rule that allocates the ownership of oil wells in the North Sea to surrounding countries according to rules such as the median line rule? Hume would say that there is no particularly good reason for this, if by ‘good reason’ we mean something like merit or desert or need. We need a clear rule that is unambiguous and non contentious, and for that reason useful. Hume would say that the median line rule has these qualities and that it simply strikes the imagination in a unique way.

One way of looking at this is to say that Hume is explaining what lies behind the legal reasoning of judges and lawyers who are called upon to resolve disputes. Or in the case of international property rights, of countries that negotiate the allocation of rights between them. In the *Treatise* Hume seems to be more interested in his novel account of the rules in terms of the imagination, but in the *Enquiry* it is utility that is to the fore:

“Examine the writers on the laws of nature; and you will always find, that, whatever principles they set out with, they are sure to terminate here at last, and to assign, as the ultimate reason for every rule which they establish, the convenience and necessities of mankind. [...] What other reason, indeed, could writers ever give, why this must be mine and that yours.” (EPM 3.2.29)

The role of the imagination now seems to be confined to those cases where two or more rules are equally beneficial. Moreover, “all questions of property are subordinate to the authority of civil laws, which extend, refrain, modify, and alter the rules of natural justice, according to the particular *convenience* of each community” (EPM 3.3.34).

When Hume considers people in their savage and solitary condition, before judges and lawyers he says that after the general convention for the establishment of society and the constancy of possession “it must immediately occur, as the most natural expedient, that every one continue to enjoy what he is at present master of” (T 3.2.3.4). Custom creates affection for what we already possess and for this reason people would “easily acquiesce” and “naturally agree in preferring it” (T 3.2.3.4). This is not an account of how a rule emerges spontaneously and becomes gradually adopted. It is an account of how people make decisions. People in this state are obviously capable of making collective decisions in some way, and Hume thinks that their first decision is an obvious one. But again the point is that Hume is explaining what lies behind conscious decisions to establish the rules of property distribution.

There is nothing in Hume’s discussion of the particular rules that could be called spontaneous evolution. Moreover, they are not conventions—at least not in the way Hume uses the term to explain the fundamental rules for the stability of possession and transfer by consent and promises. There is some similarity with the idea of convention as used by David Lewis in his book *Convention* (1969), in that there is a certain arbitrariness in the choice of some of the rules. But Hume’s explanations for these rules do not have reference to mutual advantage, common interest or any kind of bargain, exchange or strategic behaviour by individuals.

What is particularly enlightening in this respect is Hume’s discussion in the *Enquiry* of different rules advocated by different kinds of fanatics. Distribution of property according to virtue, or complete equality, are ideas that have the appearance of great merit and utility but are completely impracticable. With respect to equality he says:

“Historians, and even common sense, may inform us, that, however specious these ideas of perfect equality may seem, they are really, at bottom, impracticable [. . .]. We may conclude, therefore, that in order to establish laws for the regulation of property, we must be acquainted with the nature and situation of man; must reject appearances, which may be false, though specious; and must search for those rules, which are, on the whole, most *useful* and *beneficial*. Vulgar sense and slight experience are sufficient for this purpose; where men give not way to too selfish avidity, or too extensive enthusiasm.” (EPM 3.2.26–27)

People should, and typically do, choose rules that are useful and beneficial as judged from a general and impartial point of view. But some societies go astray when they allow enthusiasm or partiality to influence their choice. Hume’s discussion here is entirely consistent with the constructivist outlook of top down legislation or of collective decision making of small groups. Rules of property are consciously chosen; they do not evolve spontaneously. Hume is at the same time explaining how societies choose the rules they do and judging and evaluating those choices. Generally, human beings have been successful in establishing



secure and prosperous societies and clearly there is progress and refinement in social institutions. But this is not the result of some kind of evolution through group selection. Rather, vulgar sense and slight experience are enough to ensure that most peoples get it right most of the time.

### 3. Contractarianism

According to Sugden:

“When Hume says that the rule of stability of possession may properly enough be called a convention, he seems to be acknowledging that, in its linguistically proper sense, ‘convention’ implies agreement. In calling the rule a convention he is claiming that, in significant respects, it is like an agreement. At the same time, he is stressing that it is not an agreement in the usual sense of an exchange of promises. To the contrary, the practice of promise-keeping is itself a convention.” (Sugden 2009, 14)

De Jasay bases his challenge to Sugden on the distinction he makes between “spontaneous convention” and “consciously agreed obligation”. Conventions, such as Hume’s, are spontaneous in the sense that they do not depend on agreements, even implicit ones, although they do “depend on the expectations of the responses of the others to our own strategies” (de Jasay 2013, 56). An agreement, by definition, entails the voluntary mutual creation of obligations, which restrains those entering the agreement from doing what they would otherwise do. A convention in the proper sense, by contrast, is a unilateral choice and: “The supposition that people need to agree to do what they want to do is redundant.” (de Jasay 2013, 56)

There are three features of Hume’s convention that seem to me to be decisive in supporting Sugden’s interpretation over de Jasay’s. First, in entering into a convention, “the actions of each of us have a reference to that of the other, and are perform’d on the supposition, that something is to be perform’d on the other part” (T 3.2.2.10). Second, our actions do not merely depend on the expectations of the responses of the others to our own strategies. Rather, individuals somehow *express to one another* their common sense of interest, in the hope and expectation of altering their behaviour, “when this common sense of interest is mutually express’d, and is known to both, it produces a suitable resolution of behaviour. And this may properly enough be called a convention.” (T 2.2.10) The third feature is that while it is of course true that people are “doing what they want to do” (de Jasay 2013, 56) they are also restraining themselves from doing what they would otherwise do if it were not for the “resolution of behaviour”.

But what is the significance of this for the question of the relationship between Hume’s theory and the different traditions of contractarianism? There is a big difference between acknowledging that agreements play a part, even

an important part, in Hume's theory and interpreting his theory as a form of contractarianism. The best way to approach this question, I think, is through the relationship between Hume and the continental natural law accounts of the origins of property, according to which property is founded on an agreement. Duncan Forbes was possibly the first interpreter of Hume to take this natural law connection seriously:

“What Grotius and Pufendorf wanted to stress was that property in its very nature implies agreement between men [...] and Hume, as usual on the side of any theory that stresses the social context of human ‘inventions’, found himself in agreement.” (Forbes 1975, 27)

When Hume observes in the *Enquiry* that his own theory of the origins of justice and property is “in the main, the same with that hinted at and adopted by Grotius” (EPM Appx. 3.7, fn. 63), he quotes the passage from *De Jure Belli ac Pacis* where Grotius says that the transition from the primitive state of common ownership to private ownership happened “by a kind of agreement, either expressed, as by a division, or implied, as by occupation” (Grotius 1925, II.II.II.5). The significance of this footnote, and the reason Hume refers to Grotius in particular, seems to be the similarity between Hume's convention and the agreement that Grotius says accompanies the introduction of private ownership. In neither case is there a universal agreement amongst the commoners, that is, the kind of agreement that Filmer and Locke ridiculed. The impression is given in the accounts of Hume and Grotius of local, tacit agreements between neighbours, who need to settle on some practical arrangements for what counts as a successful occupation, and who require each other's forbearance from interfering in whatever each has taken for themselves.

Moreover, Hume's denial that the rules of justice are eternal and immutable, but rather depend on moderate scarcity and limited benevolence, is entirely consistent with Grotius's discussion of the circumstances that led to the introduction of private ownership in *De Jure Belli ac Pacis*. And Hume's remark that the natural lawyers would agree that utility is ultimately the reason for any rule or law of property is plausible if we are thinking of the accounts given by Grotius and Pufendorf, who had also emphasized that the introduction of private property was a gradual process, whereby privatization took place according to the development of human needs and the growth of population.

What Hume did not and could not accept from the natural lawyers, however, was their contention that the *obligation* to respect other peoples' property rights was part of the natural law—a superior law that preceded any particular property arrangements. From the point of view of Hume's virtue-ethics, obligation or duty was a type of motivation that was operative when a person desired to act virtuously, but lacked the motive or mental quality that made the action in question a virtue. To explain why there is an obligation to be just, it was therefore necessary to explain the motive or mental quality that makes justice a virtue.

There is no doubt that Hume's discussion becomes somewhat obscure at this point, but what is clear enough is that the motive or disposition in question, ap-

pears fairly late on in the development of societies, and is not the motive which first induced people to enter the convention. It was reflecting on this that led Hume to the conclusion that there are two distinct questions to be answered, the first “concerning the manner, in which the rules of justice are establish’d by the artifice of men” and second, “concerning the reasons, which determine us to attribute to the observance of these rules a moral beauty and deformity” (T 3.2.2.1). And he goes on to explain that while reciprocity and mutual advantage explain the origins of justice, they play no part in explaining our duty to be just. Justice, considered as a particular kind of durable mental quality that provides the motive to be just in the case of individual actions, is a moral virtue because it has a “tendency to the good of society of mankind”. Reflecting on this tendency pleases us through sympathy with everyone who benefits from justice, and so Hume concludes that “sympathy is the source of the esteem, which we pay all the artificial virtues” (T 3.3.1.9).

This, I suggest, is where Sugden’s reading of Hume goes astray. According to Sugden:

“Conventions are rules that govern recurrent practices that are perceived by the participants as mutually advantageous; because of that perception, individuals take themselves to be morally obligated to follow these rules, provided others do so too. Whereas social contract theory legitimates social institutions by showing them to be the actual or potential products of explicit agreement, Hume’s analysis legitimates them (or, at least, shows how they come to be seen as legitimate) by showing them to be conventions.” (Sugden 2009, 18)

In other words, Hume’s theory of convention is, in addition to being an explanation of the origins of justice, a theory that explains why the rules are legitimate and why people have an obligation to follow them. It is for this reason that Sugden says that Hume is part of a contractarian tradition.

As I see it, there are two problems with this interpretation. First, in Hume’s theory, the rules of justice are not the objects of judgement concerning legitimacy or illegitimacy. This is true whether we consider the fundamental rule for the stability of possession or the particular rules of property distribution. Behaviour in obedience to the rules is virtuous, and is approved of. But that is not the same as saying that the rules are legitimate. Second, Hume shows that behaviour in accordance with the rules is approved of, by showing them to be *useful*, not by showing them to be conventions. And, moreover, our obligation to obey the rules follows from utility, not from the fact that they are conventions.

It is worth noting that Sugden’s interpretation points to an immediate difficulty in Hume’s account. At what point do people see that the rules/conventions are mutually advantageous? It seems clear from what Hume says that it must be when they originally enter into the convention because it is this perception of mutual advantage or common interest that motives people to behave in the way they do: “I observe, that it will be for my interest to leave another in possession of his goods, *provided* he will act in the same manner with regard to me.”

(T 3.2.2.10). But if this is the case then Hume is in trouble on Sugden's reading, because he would have to admit that we have a duty to enter such agreements. And this is precisely what Hume is trying to avoid. If we have a duty to enter the agreements, then justice is a natural virtue.

Hume's view then is that:

“Justice is a moral virtue, merely because it has that tendency to the good of mankind; and indeed, is nothing but an artificial invention for that purpose. The same may be said of allegiance, of the laws of nations, of modesty, and of good manners. All these are mere human contrivances for the interest of society. The inventors of them had chiefly in view their own interest. But we carry our approbation of them into the most distant countries and ages, and much beyond our own interest.” (T 3.3.1.9)

Justice is a virtue, because it has that tendency to the good of mankind, not because it is mutually advantageous to its inventors. Mutual advantage explains the origins of justice, but our sense of its morality and the associated obligation come later, when we can see the bigger picture.

#### **4. Conclusion**

I have argued in this paper that Hume's account of the origins of justice in terms of human conventions can be understood as a refinement of the natural law theories of Grotius and Pufendorf, according to which private ownership originated with an agreement. To this extent we can say that Hume was a contractarian with respect to the origins of property. However, this falls short of what is normally entailed by the term contractarian. The contract or convention that established property had no bearing on the legitimacy of the rules of property or on the moral obligation to respect them. The justification for the rules of property, according to Hume, is their utility, which is ultimately the foundation for the obligation: “For what stronger foundation can be desired or conceived for any duty, than to observe, that human society, or even human nature could not subsist, without the establishment of it.” (EPM 3.2.39)

#### **References**

- Baier, A. (2010), *The Cautious Jealous Motive: Hume on Justice*, Cambridge/MA: Harvard University Press.
- Ferguson, A. (1995), *An Essay on the History of Civil Society*, Cambridge: University Press.
- Forbes, D. (1975), *Hume's Philosophical Politics*, Cambridge: CUP.

- 
- Grotius, H. (1925), *De Jure Belli ac Pacis Libri Tres*, vol. 2, trans. F. W. Kelsey, Oxford: The Clarendon Press.
- Hume, D. (1998), *An Enquiry Concerning the Principles of Morals*, ed. T. L. Beauchamp, Oxford: Clarendon Press.
- (2007), *A Treatise on Human Nature*, vol. 1, ed. D. F. Norton and M. J. Norton, Oxford: Clarendon Press.
- De Jasay, A. (2013), Conduct and Contract, *Rationality, Markets and Morals* 4, 53–60.
- Lewis, D. (1969), *Convention. A Philosophical Study*, Cambridge/MA: Harvard University Press.
- Sugden, R. (1986), *The Economics of Rights, Cooperation and Welfare*, Oxford: Blackwell.
- (2009), Can a Humean Be a Contractarian?, *Rationality, Markets and Morals* 0, 11–23.