

Accounts of Justice in the Scottish Enlightenment

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Justice is a complex concept connected with liberty and law, ethics and politics; it is conceived as being beneficial to others when compared to courage, temperance and wisdom, virtues which are thought of as ‘self-regarding’. The history of concepts of justice from Antiquity to the Middle Ages and from then to the present helps us to see how this concept developed over time. Justice, one fundamental virtue or ideal among several, is generally considered as the foundation of social and political ethics. In its links with law and jurisprudence and in legal usage, justice has always had an ethical tinge as lawyers, when appealing to principles of ‘natural justice’, acknowledge that their system of law is meant to serve an ethical purpose and to follow ethically acceptable methods. In law as in social ethics, the concept of justice is acknowledged to have both a conservative and a reforming role. Conservative justice is to maintain the established order of things, taken to be entitlements, and assumes that everyone benefits from a stable social order, however imperfect. Reformative justice tries to remove imperfections in the redistribution of rights redistributing rights in order to make the social order more just or fair. It is linked with changes to the existing pattern of entitlements by taking account of merit and of need and is connected with the ideas of distributive justice.¹ Historically, the concept of justice has had ‘Ancient roots’ found in the Bible, in ancient drama (especially in Aeschylus’ *Oresteia*), in philosophers such as Plato, (whose *Republic* is a treatise on justice, written as a dialogue between Socrates and some of his upper-class Athenian friends), or Aristotle (who in his *Nicomachean Ethics* gives an orderly account of the varieties of justice and analyzes justice as a virtue of character, in an effort to represent justice as “the disposition to give and receive neither too much nor too little”). At the same time, it is seen as a specific virtue. Justice has been widely discussed among jurists and theologians in the Middle Ages, and

¹Raphael, David Daiches (2001) *Concepts of Justice*. Oxford: Oxford University Press, pp. 1–7.

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among philosophers of more modern times from Thomas Hobbes to Rawls and Robert Nozick.²

In this chapter, I will focus on the concept of justice as it emerges during the Scottish Enlightenment in the social and political ethics developed by such Scottish philosophers of the eighteenth century as David Hume, Adam Smith, Lord Kames and Thomas Reid. As it has been noted by Knud Haakonssen, justice was treated mainly as a characteristic of the individual person within the various Scottish theories of natural jurisprudence.³ Justice was considered by Scottish philosophers as a personal virtue, virtue meaning “the propensity to a certain type of behaviour and also the ability to appreciate the moral worth of such behaviour both in oneself and in others”.⁴ In other words, the Scottish theorists dealt with justice as a characteristic of the individual and, paradoxically, they explained that concept as an institutionalized practice. Central to their theories was whether this virtue is an inherent part of human nature or whether it is artificial. Considered as a social or political virtue, bearing on the relations required by the very existence of community in a way that other virtues do not, the Scottish thinkers believed that their task was to explain why justice was distinguished from the other virtues by being the subject of the institutions of justice, namely adjudication, law and legislation.⁵ For Hume—whose account of justice was extensive but narrowly interpreted—justice is an artificial virtue in the sense that it is the product of human conventions. Considering selfishness and limited generosity as qualities of the human mind,⁶ Hume points out that “self-interest is the original motive to the establishment of justice” but “a sympathy with public interest is the source of the moral approbation which attends that virtue”,⁷ and observes that justice lies in its utility in maintaining property as a condition of a stable society, a view criticized by other notable Scottish philosophers such as Lord Kames and Thomas Reid. Reid in particular, in criticizing Hume’s theory of justice,⁸ is considered as developing a rights-based theory arguing that justice’s utility is insufficient to distinguish it from natural virtues such as benevolence. On the other hand, Adam Smith, who has accepted many of Hume’s ethical doctrines as well as the theories of the Ancients, mainly those of the Stoics and Cicero, developed in his *The Theory of Moral Sentiments* (1759) a richer theory of justice in an endeavor to connect it with the moral needs of individuals, relating

²For the developing role of justice, from antiquity till the present, see Raphael, David Daiches *Concepts of Justice*, *op.cit.*

³Haakonssen, Knud (2003) “Natural Jurisprudence and the Theory of Justice,” in *The Cambridge Companion to the Scottish Enlightenment*, ed. by Alexander Broadie. Cambridge: Cambridge University Press, pp. 205–221, especially p. 205.

⁴*Ibid.*

⁵*Ibid.*, p. 206.

⁶Hume, David (1978) *A Treatise of Human Nature*, ed., with an Analytical Index, by L. A. Selby-Bigge, revised edition by P. H. Nidditch, 2nd ed. Oxford: Clarendon Press, pp. 487ff., 586. All the following quotations will be from this edition.

⁷*Ibid.*, pp. 500, 533.

⁸For an extensive presentation and examination of Hume’s theory of justice, see Harrison, Jonathan (1981) *Hume’s Theory of Justice*. Oxford: Clarendon Press.

justice to merit and injustice to demerit that consists in good or ill desert. In criticizing Hume's view that justice depends on utility, Smith coupled justice with beneficence as the two virtues directly concerned with our relationship to other people. He also rejected Hume's doctrine of the artificiality of justice, as he believed that justice is a natural virtue, based on the natural feeling of sympathy for the injured party, and it is the duty of man to make it perfect.⁹ Although Smith has taken the characteristics of sympathy from Hume (who in the *Treatise* calls Sympathy, and in the *Enquiry* Benevolence, that which leads us to approve or disapprove of moral excellences and defects), he distances himself from him as he calls the sympathy for the person performing the action 'direct sympathy' and that for the person who is acted upon 'indirect'.¹⁰ Hume and Smith differ in a fundamental respect, as it has been noted, because "for Hume placing the observer in an imaginary position in another's situation means sharing the pleasures or advantages of the agent or the recipient of the action, while for Smith it means feeling the passions of the agent or recipient of the action in order to carry out a comparison with the passions that they really display".¹¹ The above-mentioned Scottish philosophers connect justice with liberty and equality as well as with law, rights, duties and obligations, and develop theories of justice that reflect their concern with moral and political problems of their age, and with empirical studies of human nature and of natural jurisprudence.¹² My purpose in what follows is to approach Hume's and Reid's views on justice in the main as developed in their moral, social and political theories in order to show, explore and explain their differences.

The Scots' moral theory is perhaps the most studied aspect of their thought, and is connected with recent interest in their political and social theory. As empiricists, the Scots thought it necessary to consult experience in order to know about society.¹³ Their debate on the foundations of morals started with Francis Hutcheson, David Hume and Adam Smith, while Thomas Reid continued the discussion in a critical way by reflecting on their theories.¹⁴

Hume's basic claim is that all our knowledge is based on what we experience through the senses, and his ethical theory as a whole can be considered the 'most important example of empiricist moral philosophy'. He exposes his moral theory in the third book of the *Treatise* and the *Enquiry concerning the Principles of Morals*, examining historically and critically moral theories, from antiquity till his age, dealing mainly with the moral philosophy of his predecessors: Hobbes, Locke,

⁹Smith, Adam (1976) *The Theory of Moral Sentiments*, ed. by D. D. Raphael & A. L. Macfie. Oxford: Clarendon Press, pp. 75–78.

¹⁰*Ibid.*, p. 74.

¹¹*Ibid.*, pp. 16–23, as noted by Luigi Turco, "Moral Sense and the Foundations of Morals," in *The Cambridge Companion to the Scottish Enlightenment*, p. 147.

¹²Raphael, David Daiches *Concepts of Justice*, *op.cit.*, pp. 87–103.

¹³Berry, Christopher J. (reprinted 2001) *Social Theory of the Scottish Enlightenment* (1997). Edinburgh: Edinburgh University Press, pp. 156ff.

¹⁴Turco, Luigi "Moral Sense and the Foundations of Morals," in *The Cambridge Companion to the Scottish Enlightenment*, pp. 136–156.

Grotius, Pufendorf, Mandeville and Hutcheson.¹⁵ In the *Treatise*, Hume approaches in a psychological way the problem of ‘how morality is constituted, that is, what forces are capable of forming morality’, while in the *Enquiry* he approaches morality ‘as a given social fact’.¹⁶ As in his epistemology so in his moral philosophy, Hume tries to explain how a common world is created out of private and subjective elements; for that reason, examining the foundations of morality, he holds that they are, on the one hand, private and subjective, connecting with the principle of ‘oughts’, which by nature activates forces in our life, such as passions, and on the other hand, public and objective, as they bind people together and make a society possible. In this sense, the latter has a function that is dependent upon the existence of a common moral language, as every language includes, according to him, a set of terms by which we express praise or blame.¹⁷ Hume was critical of the existing ‘foundation-theories’ of morality and law according to which moral and legal evaluation had an ultimate source in either the reasoning faculty or the moral sense. With his emotivist moral theory, and relying on the experience of sense and feeling, which was the key idea of Hutcheson’s ethical theory,¹⁸ Hume was concerned with the origin of evaluation and with trying to show how solid are the moral distinctions ‘derived from sentiment’: “All morality depends upon our sentiments; and when any action or quality of the mind, pleases us after a certain manner, we say it is virtuous; and when the neglect, or non-performance of it, displeases us after a like manner, we say that we lie under an obligation to perform it”.¹⁹ Hutcheson’s influence on Hume seems undeniable. Nevertheless, although he seems to argue in the *Treatise* that moral distinctions are derived from a moral sense, he uses in his discussions of Book III the terms ‘sentiment’ and ‘feeling’ instead of ‘moral sense’. As we know, Hume and Smith were hostile to the idea of a special sense of justice, and both analyzed the moral sentiments in general in terms of the operations of sympathy. Hume explicitly acknowledges the special character of the feeling of approval, and thinks that Hutcheson’s description of the moral sense as disinterested approval of the disinterested motive of benevolence, being recognized by him as the whole virtue, is simple and mistaken.²⁰ Trying to explain the moral sentiments, Hume pursued a historical examination of justice, which Smith did not follow. Hume tried to stress the validity of the evaluations we make within social and historical contexts, especially in his theory of justice which is considered of great importance as it helped Adam Smith to develop a number of proposals included in

¹⁵ Hume, David (1998) *An Enquiry concerning the Principles of Morals*, ed. by Tom L. Beauchamp, with an Introduction. Oxford/New York: Oxford University Press.

¹⁶ Haakonssen, Knud (1989) *The Science of a Legislator. The Natural Jurisprudence of David Hume and Adam Smith* (1981). Cambridge: Cambridge University Press, p. 5.

¹⁷ *Ibid.*, pp. 4 and 12.

¹⁸ Raphael, David Daiches *Concepts of Justice*, p. 92.

¹⁹ *Treatise*, p. 517.

²⁰ David Daiches Raphael in his *Concepts of Justice* (pp. 91ff.) notes the impact of Hutcheson’s *An Inquiry into our Ideas of Beauty and Virtue* (1725) and *An Essay on the Passions and Affections. With Illustrations on the Moral Sense* (1728) on Hume’s moral thought.

his own theory of justice and jurisprudence, which in turn gave a new and original answer to the philosophical question of how legal criticism is possible.²¹

Hume developed his ethical theory in Book III of *A Treatise of Human Nature*, published in 1739–1740, addressed to specialists in philosophy, and then in his *An Enquiry concerning the Principles of Morals*, first published in 1751, a book written for an educated general public. His account of justice has a fundamental role in both books, as in the *Treatise* he gives priority to the doctrine that justice is an artificial virtue, while in the *Enquiry* he concentrates on the utility of justice. He makes a distinction between nature and artifice in Book III of the *Treatise*, and in Part III of this Book, he includes his claim that some virtues, such as love of one's children, beneficence, generosity, clemency, moderation, temperance and fragility, are natural, embedded as fundamental propensities of human nature itself, and points out that as individuals we respond to these virtues with approbation. In Part II of this Book, he quotes the traditional definition of justice as “a constant and perpetual will of giving every one his due”²² and contrasts these natural virtues to the artificial virtues, such as justice, fidelity and allegiance. He distinguishes nature and artifice, and divides natural from artificial causes, which are instituted by men conventionally, clarifying as far as justice is concerned that both, nature and artifice, coexist. This aspect of his thought is more apparent when he tries to answer the question, ‘Whether justice is a Natural or Artificial Virtue?’²³ He is convinced that the sense of justice arises artificially and necessarily from education and human conventions.²⁴ Nevertheless, when discussing the moral character of justice, Hume clarifies in the *Treatise* that it is an artificial invention to a certain purpose, but also a natural tendency to protect the good of mankind.²⁵

Hume has been criticized because in his system the ideas of justice and of injustice are connected mostly with the idea of property and concern property arrangements.²⁶ He describes then how the notions of property, promises and governments were

²¹ Haakonssen, Knud *The Science of a Legislator: The Natural Jurisprudence of David Hume and Adam Smith*, *op.cit.*

²² *Treatise*, p. 526. As Mackie observes, Hume interprets this definition “as protecting everyone in the possession and use of what belongs to him and in the right to transfer his property voluntarily to someone else”. Mackie, J. L. (2001) *Hume's Moral Theory* (1980). New York: Routledge, p. 77.

²³ In the *Treatise*, p. 484, the clarification of natural and artificial regarding justice is as follows: “I must here observe, that when I deny justice to be a natural virtue, I make use of the word, *natural*, only as oppos'd to *artificial*. In another sense of the word; as no principle of the human mind is more natural than a sense of justice; so no virtue is more natural than justice. Mankind is an inventive species; and where an invention is obvious and absolutely necessary, it may as properly be said to be natural as anything that proceeds immediately from original principles, without the intervention of thought or reflexion. Tho' the rules of justice be *artificial*, they are not *arbitrary*. Nor is the expression improper to call them *Laws of Nature*; if by natural we understand what is common to any species, or even if we confine it to mean what is inseparable from the species.”

²⁴ *Treatise*, p. 483. Mackie believes that Hume's argument that justice is an artificial virtue is complicated and difficult, and gives an outline of it in eight steps. J. L. Mackie, *Hume's Moral Theory*, pp. 76ff.

²⁵ *Treatise*, pp. 532–533.

²⁶ *Ibid.*, pp. 490–491.

instituted as social artifices and tries to show why these are taken to have a moral dimension. He takes the approach that justice is not established as a moral virtue by means of a natural motive, as it comes into existence as a social practice or institution: “No virtue is more esteem’d than justice, and no vice more detested than injustice; nor are there any qualities, which go father to the fixing the character, either as amiable or odious. Now justice is a moral virtue, merely because it has that tendency to the good of mankind; and, indeed, is nothing but an artificial invention to that purpose. The same may be said of allegiance, of the laws of nations, of modesty, and of good-manners”.²⁷ Hume, discussing the origin of justice and property, is eager to show how we acquire the proper passion, and thus the moral obligation, to adhere to it and tries to answer to two questions, viz., “concerning the manner, in which the rules of justice are establish’d by the artifice of men; and concerning the reasons, which determine us to attribute to the observance or neglect of these rules a moral beauty and deformity”.²⁸ According to him, justice is an absolutely necessary ingredient in any kind of social life, it is a remedy to some and connected with the possession of external goods, and applies primarily to property. To the question ‘how the artifices of justice come into being as means for the promotion of our interests, and how our giving moral approbation to those who follow the artifices’ restraints’, Hume gives the answer that the “moral obligation” is a natural sentiment, and has to be just as a consequence of our sympathizing with the “public interest”,²⁹ or the “interest of the society”,³⁰ the “good of society”,³¹ the “public good” or ‘the good of society’³² or the “good of mankind”.³³ In concluding, he remarks that the artifices of justice are useful to society, like all useful things,³⁴ and beneficial to the members of society we sympathize with, especially with the fellow-citizens of our nation.³⁵

Hume acknowledges the existence of natural moral sentiments that operate through sympathy, an involuntary, physiological reaction towards the joys and sufferings of others. At the same time, he recognizes that sympathy is a partial and unreliable mechanism as it gives way to self-interest or to other emotions, although in his *Enquiry* he agrees with Hutcheson, in this differing from Hobbes, in holding that man is capable of a disinterested regard for others and he seems to describe “the evolution of the artifices of justice as depending on their serving the interests of each person who participates in them”.³⁶ Hume had also discriminated in ethical

²⁷ *Ibid.*, p. 577.

²⁸ *Ibid.*, p. 484.

²⁹ *Ibid.*, p. 500.

³⁰ *Ibid.*, p. 579.

³¹ *Ibid.*, p. 578.

³² *Ibid.*, pp. 580, 618, 577.

³³ *Ibid.*, p. 577.

³⁴ *Ibid.*

³⁵ Ainslie, Donald C. (1995) “The Problem of the National Self in Hume’s Theory of Justice,” in *Hume Studies*, v. XXI, N° 2, pp. 289–313.

³⁶ *Ibid.*, p. 289.

experiences between the functions of reason and sentiment, in this making an important advance upon Hutcheson, who did not assign to reason a distinct and special office. Adam Smith agrees with Hume that morality is a matter of sentiment and traces the moral sentiments to an origin in sympathy, but whereas Hume stresses our sympathy with people in general, Smith stresses our sympathy with the person or persons principally involved. For him, to sympathize with the real or supposed sentiments of our fellow-men is to approve them.

Hume's account of justice is characterized as complicated and inconsistent, and it is developed not only in the *Treatise* or the second *Enquiry*, but also in his *Essays*, such as "Of the Original Contract" or "On National Characters", as well as in his *History of England*. It has been noted that he has a narrow idea of justice, as he applies justice primarily to the rights of property; although in the *Treatise* he uses the term 'fidelity' for respecting and keeping promises and contracts, sometimes including this in justice, treating a promise as a voluntary transfer of the right to future goods or services. Hume was certain that justice's artificiality lies in its dependence on the man-made conventions which create property rights; his goal was to defend the stability of property and society as he thought that individual rights are essential to that goal. So he focused his attention on property rights, and his moral theory is classified as rights-based in contrast to theories based on need or some sort of merit or desert,³⁷ as he disagrees with the common view that restricts 'merit or moral worth' to moral virtues as contrasted with natural abilities.³⁸ Baier, examining Hume's theory of justice as a whole in all his works, points out that in the *Treatise* he has a narrow notion of justice "as comprising merely honesty in property matters, and fidelity to promises and contracts", while in his *Essays* and *History of England* he treats justice as a subject matter of jurisprudence and expands the concept beyond considerations of property.³⁹ Hume insists that there is no natural affection for or love of mankind in general, and that self-interest can run against the common interest as our partiality affects not only our actions but also our conceptions of virtue. Nevertheless, he believes that in small or large societies, such as nations, especially "as members of a political society, with which we have a common interest", we can have a concern for the public interest by means of sympathy for those who are harmed by unjust actions, and that we come in this way "to a moral approbation of justice and a disapprobation of injustice".⁴⁰ That opinion coincides with his view that justice and fidelity are social virtues, highly useful and absolutely necessary to the well being of mankind.⁴¹

³⁷ Miller, D. (1976) *Social Justice*. Oxford: Oxford University Press. For recent discussions on the concept of desert, see Sher, George (1989) *Desert*, Studies in Moral, Political, and Legal Philosophy. Princeton: Princeton University Press.

³⁸ Raphael, David Daiches *Concepts of Justice, op.cit.*, pp. 88–89.

³⁹ Baier, Annette C. (2010) *The Cautious Jealous Virtue. Hume on Justice*. Cambridge, Mass./London: Harvard University Press.

⁴⁰ *Treatise*, p. 499.

⁴¹ *Enquiry*, Appendix III, pp. 304–306. Rawls, John (1972) *A Theory of Justice*. Oxford: Clarendon Press, pp. 3ff.

Hume's general theory of morals concerns the morally good and bad, virtue and vice. His account of justice is considered as part of a larger account of the moral and political virtues in general. Actually, in the *Treatise*, in the Section "Of the Origin of Justice and Property", he discusses the moral quality of justice and raises the question, "Why we annex the idea of virtue to justice, and of vice to injustice".⁴² Nevertheless, his chief concern is to secure social order by the establishment of stable principles, (that is, a reliable legal system) for dealing with property relations and social cooperation in the organization of commerce. Additionally, in his theory of justice, Hume deals with the origin of justice and the moral value of justice, and although he wants to be precise sometimes he is not clear or consistent. According to Haakonssen, regarding the latter part of Hume's theory, that is the moral value and obligation of justice, which was criticized by Smith, his view can be formulated in the following way, including two solutions: "Either moral value and obligation have to be accounted for in terms of sympathy (*Treatise* solution), though that requires a concreteness of object which is just not present in the case of justice in the 'anonymous' society, that is the society beyond the family group; or they are accounted for by means of 'fellow-feeling' (*Enquiry* solution), which avoids this difficulty, but which is so optimistically forward looking, and in that sense rationalistic, that it is not to be found in ordinary men, but is rather a philosophers' speculation".⁴³ It has been observed that Hume wrote as a philosophical anthropologist, and not as a reformer, unlike Bentham and Mill. Both of the latter wanted to reform our moral outlook rather than merely to explain it. An ethical naturalist, like Hume, was looking to the function of the rules of justice in social life, although he went beyond an analysis of the emotions expressed in judgments of justice.⁴⁴

Hume's theory of justice was criticized by three other eminent Scottish philosophers, Lord Kames and Thomas Reid, both of whom attacked Hume's view that justice is artificial, and by Adam Smith, who having Hume in mind generally criticizes the view that justice depends on utility.⁴⁵ In what follows I shall focus on Reid's account of justice, as he was the immediate and most important critic of Hume's philosophy. It is well known that Reid, the "fit representative of the Scottish philosophy",⁴⁶ was aroused to philosophical activity by the speculations of Berkeley and Hume, as both had assumed and carried to their logical conclusions the scholastic doctrine of representative perception, that is, perception by means of intermediate ideas. Reid protested in the name of Common Sense against the special principles and inferences of Berkeley and Hume, and against the pronounced skepticism of the latter. He criticized Hume's theory of ideas, first set out by Locke, and insisted that it is not ideas but objects which are immediately present to the mind. Reid therefore tried to examine and undermine the ideal theory of sense-perception and to establish

⁴² *Treatise*, p. 498.

⁴³ Haakonssen, Knud *The Science of a Legislator*, p. 36.

⁴⁴ Ryan, Alan (ed.) (1993) *Oxford Readings in Politics and Government*. Oxford: Oxford University Press, *Introduction*, pp. 10–11.

⁴⁵ Raphael, David Daiches *Concepts of Justice, op.cit.*, pp. 104ff.

⁴⁶ McCosh, James (1966) *The Scottish Philosophy*. Hildesheim: Geog Olms, p. 192.

the doctrine of common sense. In his theory of perception, judgment plays an important role, as it is immanent in every perception, and one could say it is the basis of the Common Sense philosophy. Reid distinguishes between necessary judgments and contingent judgments, and calls the latter natural. Contingent judgments are always connected with perception; for that reason, their subject is not an idea but the external object. For Reid, as well as James Oswald, James Beattie and Dugald Stewart, morality has been understood as a power of judgment, not inherently different from other forms of reasoning.⁴⁷ Reid emphatically rejects the doctrines of Hutcheson, Hume and Smith on the nature of virtue as we can understand from the following passage: “The formal nature and essence of that virtue which is the object of moral approbation consists neither in a prudent prosecution of our private interest, nor in benevolent affections towards others, nor in qualities useful or agreeable to ourselves or to others, nor in sympathizing with the passions and affections of others, and in attuning our own conduct to the tone of other men’s passions; but it consists in living in all good conscience—that is, in using the best means in our power to know our duty, and acting accordingly”.⁴⁸ Reid constructs his moral theory according to his theory of knowledge, acknowledging that “by our moral faculty, we have both the original conceptions of right and wrong in conduct, of merit and demerit, and the original judgments that this conduct is right, that is wrong; that this character has worth, that demerit”.⁴⁹ In his *Essays on the Active Powers of Man*, which appeared in 1788, Reid enlarged on his moral theory which is connected to his epistemology and to his account of will and action as well as to virtue in general. In his moral theory Reid distinguishes the will, which is appropriate to the power and act of determining, from sensations, affections and desires; he states principles of morals connected (a) to virtue in general and (b) to the different branches of virtue. Taking will as the power that affects the acts of the understanding in attention, deliberation, and resolution or purpose, he points out that some acts of will are transient and others permanent and that all acts, virtuous or immoral, are always voluntary. Reid considers that some things in human conduct merit approbation and praise, others blame and punishment, and thinks that involuntary acts deserve neither. According to him, what is necessary cannot be the object of praise or blame, as men are culpable for omitting as well as for performing acts; for that reason we ought to use the best means to learn our duty. It is our duty to fortify ourselves against temptation, to prefer a greater to a lesser good, to follow the intuitions of nature and to act towards another as we should wish him to act towards us; an act that deserves moral approbation must be believed by the agent to be morally good. His ethical theory has a rational basis as it implies judgment as perception does, but in a different way, because in the case of the external senses sensations

⁴⁷Haakonssen, Knud “Natural Jurisprudence and the Theory of Justice,” in *The Cambridge Companion to the Scottish Enlightenment*, p. 208.

⁴⁸Reid, Thomas (1967) *Essays on the Active Powers of Man*, in *The Works of Thomas Reid*, ed. by Sir William Hamilton. Hildesheim: Georg Olms Verlagsbuchhandlung, II, p. 650b. All quotations are from this edition.

⁴⁹*Ibid.*, p. 590a–b.

precede judgment, while in moral perception “the feeling is the consequence of the judgment, and is regulated by it”. Thus, he adds, “an account of the good conduct of a friend at a distance gives me a very agreeable feeling, and a contrary account would give me a very uneasy feeling; but these feelings depend entirely upon my belief of the report”.⁵⁰

Reid was a close friend of Henry Home, Lord Kames, and his criticism on justice is similar to that of Kames. Henry Home, a judge and jurist who had a reputation as a moral philosopher, included in his *Essays on the Principles of Morality and Natural Religion* (1751) a chapter (Essay II, ch. 7) on justice and injustice. He refutes Hume’s view that justice is an artificial virtue and shows that man has a variety of principles, such as self-love, benevolence, sympathy and utility, consonant to the divine will; he has also as a separate principle, in his nature and constitution, a moral feeling or conscience by which he judges all his motives to action. Additionally, examining Hume’s theory, he shows that it annihilates all real distinction between right and wrong in human actions.⁵¹ Reid describes justice in terms of a distinction between a favour and an injury. Favour and injury are benefits or hurts done intentionally to some other person or persons, and produce naturally gratitude or resentment, respectively. He defines justice and injustice in terms of rights and the violation of rights, and thinks that justice is a positive respect for the rights of others that is connected with charity or favour.⁵² Whatever one thinks of Reid’s theory of justice as a whole, his classification of rights is helpful in pinpointing the deficiencies of Hume’s account. Answering Hume’s original question about the nature of this fundamental virtue, he believes that justice is a natural rather than an artificial virtue, and admittedly, consistent with his philosophy, a complex one, involving judgment as well as sentiment: “When a man’s natural rights are violated, he perceives intuitively, and he feels that he is injured. The feeling of his heart arises from the judgment of his understanding; for if he did not believe that the hurt was intended, and unjustly intended, he would not have that feeling. He perceives that injury is done to himself, and that he has a right to redress. The natural principle of resentment is roused by the view of its proper object, and excites him to defend his right [...]. These sentiments spring up in the mind of man as naturally as his body grows to its proper stature”.⁵³ By arguing that the utility of justice is insufficient to distinguish it from natural virtues, such as benevolence, which also have utility, Reid produces an alternative to Hume’s theory of justice as an artificial virtue.⁵⁴ Criticizing Hume’s conception of justice as restricted to property and fidelity to contracts, he tried to provide an alternative account through an examination of a more generally accepted notion of justice.⁵⁵

⁵⁰ *Ibid.*, p. 672b.

⁵¹ Raphael, David Daiches *Concepts of Justice*, *op.cit.*, pp. 104–106.

⁵² *Active Powers*, p. 654b.

⁵³ *Ibid.*, p. 656b.

⁵⁴ *Ibid.*, pp. 652–653.

⁵⁵ *Ibid.*, p. 643ff.

In his *Essays on the Active Powers of Man*, he calls on his knowledge of jurisprudence to list the six respects in which a man may be injured, and indicates six branches of justice or rights: namely, safety of one's person, safety of one's family, liberty, reputation, property and fidelity to engagements. He notes that, "A man may be injured, *first*, in his person, by wounding, maiming or killing him; *secondly*, in his family, by robbing him of his children, or any way injuring those he is bound to protect; *thirdly*, in his liberty, by confinement; *fourthly*, in his reputation; *fifthly*, in his goods or property; and, *lastly*, in the violation of contracts or engagements made with him".⁵⁶ He claims that man has natural rights, in the sense of being "innate" to life, family, friends, liberty and reputation, which, in contrast to property and contractual rights, are "founded upon the constitution of man, and antecedent to all deeds and conventions of society".⁵⁷ Of all the rights cited above, the last two are acquired "not grounded upon the constitution of man, but upon his actions". Reid notes that Hume deals in his *Treatise* with property and fidelity to engagements; these are called acquired rights, as they are the result of a preceding act; occupation, labour or transfer, in the case of property; promise, in the case of engagements. In his critique, Reid maintains that these acquired rights depend on natural rights and so are not wholly artificial or conventional.⁵⁸ He also argues that distributive justice is absent from Hume's account, and thinks that the right to the acquisition of property of one individual can be restricted by the right to subsistence of another individual, "as justice, as well as charity, requires, that the necessities of those who, by the providence of God, are disabled from supplying themselves, should be supplied from what might otherwise be stored for future wants".⁵⁹ Connecting the conception of justice with the sense of duty or obligation,⁶⁰ he regards "injustice as the violation of rights and justice as yielding to every man what is his right".⁶¹ Believing that "the direct intention of Morals is to teach the duty of men: that of Natural Jurisprudence to teach the rights of men", he gives the above-mentioned list of rights⁶² that are natural in contrast to Hume's property rights that are acquired. Additionally, Reid points out that rights can exist before or outside political society, and he extends justice beyond a concern for property rights linking justice as a fundamental virtue with man's natural rights. In his discussion of property, although he admits that the right of property generally is "not innate, but acquired" and grounded

⁵⁶ *Ibid.*, p. 656a.

⁵⁷ *Ibid.*, p. 657a.

⁵⁸ Raphael, David Daiches *Concepts of Justice*, *op.cit.*, p. 108.

⁵⁹ *Active Powers*, p. 659a.

⁶⁰ *Ibid.*, p. 655b: "This very conception of justice implies its obligation. The morality of justice is included in the very idea of it: nor is it possible that the conception of justice can enter into the human mind, without carrying along with it the conception of duty and moral obligation. Its obligation, therefore, is inseparable from its nature, and is not derived solely from its utility, either to ourselves or to society."

⁶¹ *Ibid.*, p. 656b.

⁶² *Ibid.*

“not upon the constitution but upon man’s actions”⁶³; he insists that property can be acquired initially through occupation and labour, in a state of nature, prior to political convention; in another sense, the right of property it is natural as it flows from man’s natural right of liberty,⁶⁴ which is a freedom “to act in gratifying desires, a positive rather a negative liberty, as it is restricted not simply by what would hurt others but also by the duties of an individual to God and to self”.⁶⁵ Reid wanted to criticize Hume’s neglect of the “natural rights” in his theory of justice and make a distinction between innate or natural rights and adventitious or acquired rights, claiming that the former do not presuppose any human action, whereas acquired rights do.⁶⁶

Reid wanted to refute Hume’s view that justice, meaning property rights, is artificial and in his manuscript notes of his lectures on jurisprudence he focus more on the topic of specific rights than on the concept of justice. In his lectures, which clarify his own social, moral and political thought, he defines justice as abstaining from injury and distinguishes between commutative and distributive justice. Dealing briefly with commutative justice that is described in terms of rights and defined as “fair dealing, honesty, integrity”, he then turns to a definition of distributive justice, in its strict and proper sense, as “the Justice of a Judge in executing the Laws and distributing Rewards and Punishments”.⁶⁷ Reid, in his *Lectures on jurisprudence*⁶⁸ as in his *Active Powers*, was more preoccupied with Hume’s account of property rights than with a general analysis of justice. His central question of whether justice is artificial or natural in his practical ethics was mostly a critique of Hume’s attack on the natural law tradition. Reid propounded in the eighteenth century an account of justice stressing the obligation to help the needy as a requirement of justice that was based on theology. Connecting religion and politics, he draws an analogy between a family and mankind as the family of God, and maintains that ‘justice as well as charity’ makes the same requirement for ‘the family of God’ as for a conventional family with regard to the necessities of those members who cannot fend for themselves, making this a duty of strict obligation. Reid acknowledges the strict obligations of special relationship to family, friends and close associates, as well as other obligations of keeping faith in promises, contracts and shunning deceit.⁶⁹

⁶³ *Ibid.*, p. 657.

⁶⁴ *Active Powers*, p. 658b: “Every man, as a reasonable creature, has a right to gratify his natural and innocent desires, without hurt to others. No desire is more natural, or more reasonable, than that of supplying his wants. When this is done without hurt to any man, to hinder or frustrate his innocent labour, is an unjust violation of his natural liberty.”

⁶⁵ Cf. Mackinnon, K. (1989) “Thomas Reid on Justice ‘a Rights-Based Theory’,” in Dalgarno, M. & Matthews, E. (eds.) *The Philosophy of Thomas Reid*. Dordrecht/Boston/London: Kluwer Academic Publishers, “Philosophical Studies Series 42”, pp. 355–367, especially p. 360.

⁶⁶ Reid, Thomas (1990) *Practical Ethics*, ed. by Knud Haakonssen. Princeton: Princeton University Press, p. 61.

⁶⁷ Reid, Thomas *Practical Ethics*, ed. Knud Haakonssen, p. 139, as cited by Raphael, David *Daiches Concepts of Justice*, *op.cit.*, p. 112.

⁶⁸ Reid, Thomas *Practical Ethics*, ed. Knud Haakonssen, p. 204ff.

⁶⁹ *Active Powers*, V.5, pp. 651a–663a, and Raphael, David *Daiches Concepts of Justice*, p. 236.

D. D. Raphael, in his valuable book *Concepts of Justice*, when referring to Reid's claim that there is an essential connection between justice and rights, and to Hume's view of justice in terms of property rights, believes that both were mistaken, because there can be justice in the absence of rights and rights in the absence of justice. Raphael himself has accepted a distinction between rights of action and rights of reciprocity, that nowadays are described by theorists as liberty-rights and claim-rights, pointing out that both are more closely connected with obligation than with justice. Nevertheless, he concludes that the association of justice with rights chiefly concerns claim-rights, that is, the right to receive equality of opportunity in the sense of moral rights.⁷⁰

It is worth noting that a common factor in the moral theories of both Hume and Reid is linked to the word improvement. Hume concluded his *Treatise* by claiming that as human beings we have a capacity for sharing good and ills through sympathy, acting for the common good, and he believes that a better understanding of our nature can serve to improve our understanding of human morality.⁷¹ Reid, conversely, by focusing on men's rights and mainly on their duties, acknowledges the positive role of the teaching of morals through a system of natural jurisprudence, and accords to the government a role in the improvement of the moral character of the individual.⁷² In conclusion, I would like to add that all the Scottish thinkers of the Enlightenment, since the Act of Union with England in 1707, were concerned with the moral dimensions of modernization and the economic improvement of their commercial or civil society; institutions, such as justice, law, rights and obligations were highly valued by them since they wanted a stable society and government in order to secure the future. It is not surprising then that rights and justice were crucial to them and a matter of wide discussion.

⁷⁰ *Ibid.*, p. 244.

⁷¹ Baier, Annette C. (2011) *The Pursuits of Philosophy. An Introduction to the Life and Thought of David Hume*. Harvard, Mass./London: Harvard University Press, p. 49.

⁷² Diamond, Peter J. (1998) *Common Sense and Improvement: Thomas Reid as a Social Theorist*. Gernersheim/Frankfurt am Main: Publications of the Scottish Studies of the Johannes Gutenberg Universität Mainz/Peter Lang, "Scottish Studies International, Vol. 24", p. 335.