
From order to justice

Russell Hardin

New York University, USA

abstract

We can observe in the progression of the work of Thomas Hobbes through David Hume to John Rawls a development from a focus on severe disorder to order under law and then to concern with distribution. This striking development is not due simply to changes of normative views, but is in large part about the technical or virtually technological capacities of government. There are also non-normative theoretical and significant developments in their theories. Hence, much of the difference between these philosophers, who superficially appear to disagree deeply, is essentially social scientific. If so, they should all be willing to revise conclusions to fit better social science. This is not the whole story, perhaps, or if it is, then we have to conclude that all of them make big scientific mistakes that vitiate their theories. On this view, Hume comes closest to having the theory right in his time and his account is more compelling as a social scientific account of our issues than are the accounts of Hobbes or Rawls.

keywords

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I wish to discuss and to try to explain the development from Thomas Hobbes through David Hume to John Rawls, which is from severe disorder to order under law to concern with distribution. This striking development is not simply one of changes of normative views, but is in large part about the technical or virtually technological capacities of government. There are also non-normative theoretical changes in view that matter. Hence, much of the difference between these philosophers, who superficially sound very contrary, is essentially social scientific. If so, they should all be willing to revise conclusions to fit better social science. This is not the whole story, perhaps, or if it is, then we have to conclude that all of them make big scientific mistakes that vitiate their theories. On this view, Hume comes closest to having the theory right in his time and his account

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In an earlier article, 'From Power to Order, From Hobbes to Hume', I gave an account of the shift in thinking from Hobbes to Hume about how social order is secured.¹ Hobbes argues for draconian power to enable the sovereign to maintain order essentially by threat, but he cannot say how such power is created or maintained. Hume gives the first account of the rise of social conventions by more or less spontaneous interactions between people. It is testimony to Hume's insights that the issue of social order has fallen out of concern in political philosophy and is not at all central to contemporary philosophical debate in the advanced democracies. The idea that we behave in an orderly fashion because government threatens us with grievous harms is no part of the way most people in these societies face their days. The contrary idea that order derives from a normative consensus is almost as dead today as Hobbesian tyranny.

Hume's social scientific analysis seems by far the most compelling account of why we have order. Conventions, coordination, and the more or less spontaneous order that these enable is the best fit with our experience. With the establishment of general order and its consequent prosperity our focus has shifted almost entirely to the problems of increasing prosperity still further and of distributive justice. The latter is an issue that Hume thought beyond the capacities of government. Indeed, he thought that efforts to achieve distributive justice would be pernicious – but we will get to this issue later. When Hume speaks of justice he almost always means what Sidgwick somewhat derisively calls 'justice as order'.²

In essence, Hume shares Hobbes's view that universal egoism, which is merely welfarism at the individual level, can be channeled by government to produce universal welfare and that egoists, for their own benefit, would therefore want government. Hume says, 'The same self-love, therefore, which renders men so incommodious to each other, taking a new and more convenient direction, produces the rules of justice, and is the *first* motive of their observance'.³ Both philosophers also claim that most people are egoists, so that their prescription should apply to real societies. It would not apply if too few people were motivated by egoism, for example, if too many were concerned to promote particular religious views or to promote their honor or glory as defined by success in war-like endeavors. Hobbes supposes that it is such people who wrecked life in Great Britain during much of his century and that the mere egoists should be free to kill religious fanatics and honor-bound warriors (generally Catholic aristocrats) who cause disorder.

In his political theory, Hume follows in the line of intellectual succession from Hobbes to contemporary political economy. Hobbes says that, where there is no government and therefore no positive law, 'Notions of right and wrong, justice and injustice have no place – these are qualities that relate to men in society'.⁴ Hume partially disagrees, saying that justice can be prior to government.⁵ His dis-

agreement comes in part from his richer strategic understanding, which leads to the most important difference between the political theories of the two philosophers. Both are driven by what they think people actually want or value and they both think roughly the same things are of interest to people: prosperity, safety, pleasure, and the absence of pain. Hobbes, writing in one of the most dangerous centuries of England's long history, focuses especially on safety; Hume, writing in a society of relative stability and prosperity, focuses on pleasure and pain. Hume often speaks of utility, which, he says, pleases.⁶ In Hobbes's words, 'The Passions that encline men to Peace, are Feare of Death; Desire of such things as are necessary to commodious living; and a hope by their Industry to obtain them.'⁷ All too often commentators reduce this list to fear of death, thus severely distorting Hobbes's views. At certain times and in certain places perhaps fear of death does come first in our concern, but Hobbes's commodious living or Hume's sweets of society⁸ must be the main concern for most of us most of the time in moderately prosperous, peaceful societies. When this is true, utility is the dominant concern, and Hobbes and Hume are in close agreement.

Apart from differences in sociological thinking that depend on differences in the societies of their very different centuries, the chief differences between Hobbes and Hume are these. First, Hobbes presents only a political and not also a moral theory. Second, at the collective level, however, Hobbes fails to notice the import of iterated interactions. This lacuna leads him to recognize a major problem in his theory of the creation of a state that he cannot resolve, whereas Hume resolves it readily. That problem is how power gets created or transferred to the sovereign. Hobbes says, 'no man can transerre his power in a naturall manner'.⁹

Both theorists depend on an understanding of power in achieving political order, although power seems to be a more fraught issue in Hobbes, for whom it is necessarily pervasive. For Hume, it is often entirely in the background. Both have a conception of power that is largely founded in the coordination of large numbers of people. But Hume adds the effects of iteration to such coordination to yield an account of conventions that can govern individuals more or less spontaneously without the constant need of a Hobbesian sovereign threatening to wield a sword to keep us in line.

How does Hume think a collection of anarchically organized people can become a hierarchically organized society in which the sovereign or government has the requisite power to manage conflicts and even coordinations? To answer this central question, first note that power is often conceived as roughly a category of resources. A modern nation may own a vast collection of weapons in which it has invested, and therefore it has power. For example, the USA used its weaponry in two brutally efficient wars against Iraq. Such power is produced by skimming off some of what is produced in the nation's larger economy through exchange. We may call it exchange power, because it derives from value that is created by production and exchange and that can be taxed by the state.¹⁰ Clearly,

a sovereign newly appointed in an anarchic society may not acquire any such power. Indeed, in Hobbes's state of nature there was too little exchange to allow the amassment of wealth to be taxed, and the first power an initial sovereign would need in order to acquire exchange power is the power to tax.

Prior to the accumulation of exchange power there must typically first be something vaguely like the power to maintain order in a fairly productive society. Such power can come from mere coordination, and we may sensibly call it coordination power.¹¹ Such power can often be used in varied ways as though it spills over from one realm to others, but it commonly cannot be applied to just any purpose without undercutting the coordination of many.

Hume's quick philosophical history of the rise of states is as follows. In a primitive society, there are no property conflicts, although there may be conventions that define possession and justice. When there is war with outside groups, leadership arises; military camps lead to cities; republics arise to contend with despots.¹² Adam Smith's account of the stages of development of states is more expansive. In a pastoral society, Smith supposes that an individual shepherd will find it in his interest to be part of a group of shepherds because the group or tribe can better protect each individual against various depredations.¹³ In a competitive world of pastoralists, one benefits best from association with the most powerful tribe. Hence, if someone rises to capable leadership within the tribe, others will be attracted to join with it. The result eventually will be remarkable power in the control of the leader of the tribe. Combination for the sake of survival, then, makes it possible not merely to survive but to thrive and even to plunder.

This is essentially an argument from coordination. We coalesce because it is individually in our interest to do so, so long as others do so as well. What we need to guide us in coalescing with others is merely the evidence of sufficient leadership and sufficient numbers to make our joining them clearly beneficial. If others were coalescing around a different leader or group, we would be pleased to join with them. On this evolutionary account of the growth of power, fitness leads not merely to survival, but also to increasing fitness. Power may not simply be a resource that can be expended until it is gone; rather, it may derive from coordination that recreates itself and expands the power. Harold Lasswell's famous definition of politics is who gets what, when, and how.¹⁴ He saw politics as a matter of conflict. This is at best only half the truth. If we see social order as, rather, primarily a matter of coordination, then its definition is who does what, when, and why.

Social order

Let us turn now to Hume's more nearly formal argument for the rise of government by convention and his justification of the state as provider of social order. Social order can take two quite different forms. First, in a very small society,

such as that of a small Indian tribe of North America in Hume's time, order can follow from conventions that can govern behavior in conditions of the general transparency of everyone's actions to everyone else. Such a society can be organized by norms, although this is not Hume's term (the term with its modern force would apparently have been unavailable in his time).¹⁵ He speaks of conventions. In Hobbes's state of nature, there is neither justice nor property (nor right nor wrong). Hume says also that in a Hobbesian state of nature, 'or that imaginary state',¹⁶ there is no justice or injustice and there is no property. But for him, there is an intermediate position between this state of nature (which did not ever exist) and a large society that requires government. That intermediate state is a small society that is regulated by conventions, which must include justice. This difference in views turns on Hume's richer theoretical grasp of strategic possibilities in his theory of convention as applied to the iterated interactions of a small society. The change is in social scientific understanding; it is not a change in normative views. With Hume's social science, Hobbes's values would also lead him to suppose such stability is possible.

Instead of Hobbes's war of all against all in a state of nature, in a small society we face a substantially contrary condition: *the monitoring of all by all*. We are therefore all basically reliable in our dealings with each other and toward our collective interests. As we now know from many anthropological studies of small, relatively primitive societies, they can work without any heavy machinery of government and with relative spontaneity of action by everyone. They enjoy spontaneous order. But if our exchange relations are restricted to the small numbers with whom we can repeatedly interact, we face a serious loss of opportunities that we could enjoy if we could guarantee reciprocal fulfillment of even isolated exchanges. Moreover, even in ongoing relationships, we cannot trust one another to abide by exchanges that involve very large values, so that our relationships will still be restricted. For example, to whom would you sell your house on a legally unenforceable contract to pay you a large monthly sum for the next 20 years? Hence, even if we do not go all the way with Hobbes in thinking that unregulated social interactions would be constantly murderous, as in his state of nature, we must agree with him that they would be radically poorer than what we could have under a properly functioning government.

The second form of social order is that of a large and at least moderately complex society in which we are not all known to each other and in which monitoring and individual-level sanctioning of miscreants cannot be expected to guarantee generally good behavior by all. We need government to restrain us from harmful actions and probably even to compel us to beneficial collective actions.

In both these states, there must be some sense of justice that provides for social order. Under a regime of such justice, principles of property could arise, although in the conditions of the tribe the range of things that could come under the rubric of property might be extremely small and restricted. In a nomadic pastoral

society, our goats, sheep, or cattle might count as individual property. In a hunter-gatherer society, almost nothing might count as individual property. In neither case would land count as property, although my tent might describe an area onto which you should not encroach while we are in this particular area.

Note that the small primitive society could lack government and could be relatively anarchic, but nevertheless well ordered, with each of us free to do as we please much of the time, but with very clear expectations about behaviors in many contexts of importance to our group. As anarchists have long insisted, there can be order in anarchy. Hume says, 'An *Indian* is but little tempted to dispossess another of his hut, or to steal his bow, as being already provided of the same advantages; and as to any superior fortune, which may attend one above another in hunting and fishing, 'tis only casual and temporary, and will have but small tendency to disturb society.'¹⁷ Hence, despite its lack of government, the society need not descend into the violence and virtual war of Hobbes's state of nature. I have nothing to gain from attacking or stealing from my neighbor. Indeed, if I do steal, my theft would commonly be known to all in the society and I might suffer powerful sanctions.

Hume therefore specifically says that he disagrees so much with the Hobbesian vision of the state of nature that he supposes that government arose not in order to deal with disorder within society, but to allow for better organization of defense against those outside the society who might attack it.¹⁸ Hume says the 'state of society without government is one of the most natural states of men, and may subsist with the conjunction of many families, and long after the first generation'.¹⁹ The difference between Hobbes and Hume here might primarily be in the greater body of empirical evidence on the North American Indians when Hume wrote, almost exactly a century after Hobbes first wrote.²⁰ Hobbes presumably had no evidence for his speculative claim that the Indians lived in the brutish manner of a war of all against all.²¹

After prosperity

We have long had social order and that has led us to prosperity. Now we begin to be concerned with things other than prosperity, such as distributive justice, not merely the justice as order that has helped secure our prosperity. In contemporary writings, what is generally at issue in any argument for distributive justice is equalization of income, welfare, wealth, or resources.²² This would be simple if our task were merely to equalize shares of what exists, as in Bruce Ackerman's theory of justice in the distribution of manna from heaven.²³ But the real-world problem we actually face is to distribute what we produce. Possibly the only extensive theory that is concerned with production and that requires virtually pure equality is that of the Levellers of Hobbes's time, as represented in the writings of Gerard Winstanley.²⁴ Winstanley held that all should have equal holdings of land and all should spend their lives working the land for their own

sustenance. His concern was with a peculiar view of the requirements of Christianity: that all work diligently all their lives and that none consume other than what is necessary for health and survival. There should be no excess. With equal plots of land and equal industry, we should all have equal consumption.

No standard contemporary theory or principle of distributive justice values poverty as a positive good, as Winstanley did. They all build on the possibility that we are productive and that we can distribute our produce in a way that makes everyone relatively prosperous. The core problem is how to motivate people to be productive. The market motivates people by giving them profits or pay for their production. This essentially guarantees inequality. In principle, there are basically two ways to achieve substantially greater equality without abject poverty. The first is to reorganize production by putting productive assets under collective control. The second is to leave production up to the market, but to skim off as much as possible of the produce of those who are productive without severely reducing their productivity in order to distribute the excess to those who are less well rewarded by the market. Socialism is an attempt to do the former; Rawls's theory of justice is a proposal to do the latter.

In either case, what we do is turn the produce of the society into a vast collective good that is then distributed to citizens. If we cast the issue this way, then we can see the incentive problem as essentially the incentive to free ride on the collective effort to produce what will be distributed. Rawls addresses this problem by supposing we give individuals specific rewards for their own contribution to the collective effort, but that we tailor the rewards in such a way as to reduce inequalities according to the formula of his difference principle. That is, we allot greater rewards to the very productive if in doing so we can increase the welfare or resources of the least well off. We split the value of your greater production between you and the worst-off class of people in the society. We eliminate your incentive to free ride on our general collective action by splitting your production into two parts: a contribution to the collective produce available for redistribution and an individual reward to you as an incentive to get you to be more productive.

Before going back to Hume's criticisms of any such theory, let us first lay out Rawls's theory in terms that make it easy to address Hume's concerns. A surprising fact is how much of Hume Rawls adopts or is consistent with. He keeps the shell of Hume's arguments for a two-level justification: (1) institutions and (2) actions taken under those institutions. But for Hume, although morality is broad, distributive justice is not part of it; for Rawls, distributive justice is the central issue.

As an aside worthy of extended discussion, note that Rawls argues against utilitarianism that it cannot support a theory of justice. But he makes his case trivially easy by focusing on Benthamite utilitarianism with interpersonally comparable values. He notes that Hume's utilitarianism is different, but then ignores it. This is not a good or intellectually compelling move. He then says utilitarianism cannot have a theory of distributive justice. This claim depends on Rawls's

assumption of an essentially interpersonally additive utility. It might be hard for anyone after Bentham to keep from falling into thinking this way. But Hume was before Bentham and did not think this way at all. Hume had the better stance: ordinal utility and a collective principle of mutual advantage (which is substantially indeterminate). Rawls says that a utilitarian conception of justice must assimilate justice to benevolence and to justice as efficiency. The latter move is essentially Hume's mutual advantage at work. In choosing not to address Hume's utilitarianism, Rawls avoids serious discussion of any alternative to his justice as fairness.

Two-stage theory of legal justification

Although Rawls criticizes utilitarianism for lacking a theory of justice, he defends it with his two-stage argument against the claims of such critics of utilitarianism as E.F. Carritt. Consider the problem of the justification of an action, such as enforcing a legal rule, given the prior justification of the system for establishing such a rule. This is the inherent problem of institutions that are to serve particular purposes.²⁵ An especially important and suggestive example is punishment for crimes. Carritt says that a utilitarian must sometimes intervene in the system to cause better outcomes, even by intervening to allow an innocent to be lynched or punished, although this would, he thinks, clearly be unjust.²⁶ But, Rawls responds, we cannot do this; we can only do what an institution can be established to do, and it is that institution that must be utilitarian. It is hard even to imagine the institution that says its officers can regularly intervene to violate its rules in order to bring about better outcomes on the whole.

The *institution* of the law of punishment can be utilitarian while the *application* of the law is retributive or at least based on the nature of the crimes as stipulated in the law.²⁷ We have legislators for making rules and judges for applying them – a legislature cannot coherently establish a rule that says judges do what is best in each case. Rawls uses the neologism 'telishment' to label the intervention to inflict an undeserved punishment in order to bring about better outcomes.²⁸ Telishment is the obverse of what was done historically by equity courts, which intervened to reduce punishments that fit the law, but that the equity courts deemed too harsh in particular cases. Rawls supposes that justice as order at a societal level is inherently institutional and is not a matter of individuals acting for supposedly directly utilitarian results. In Hume's vocabulary, justice is an artificial virtue that is constructed by institutions. It is not a natural virtue that can be seen and acted upon by an individual.

In 'Justice as Fairness', Rawls gives a fairly complete preview of the normative arguments for his *Theory of Justice* (to come 13 years later).²⁹ The fundamental idea in his conception of distributive justice is fairness.³⁰ The theory has two parts: (1) each person has equal rights to the most extensive liberty compatible with a like liberty for all; and (2) inequalities are permitted only if they

benefit all. The second of these is an argument from mutual advantage – therefore, it is quasi-utilitarian and Humean.³¹ In the later book, Rawls speaks of mutually self-interested persons.³² This recalls Hume’s claim that people will want government because it is beneficial to them to have it.

He begins with the apparent conflict between equality and efficiency, two orthogonal values. The efficiency that concerns him is productive efficiency. That is to say, he is concerned with Hobbesian productive efficiency, not Paretian static efficiency. (The latter is strictly about the efficiency of bilateral trades to redistribute what goods we already have through market exchange. It is static because it involves no production.)³³ Hence, in Rawls’s account equality is about allocation, and efficiency is about production of what is to be allocated. His theory of justice is an effort to package these two considerations into a single decision rule. At the collective level, we want equality; at the individual level, each of us wants prosperity. Rawls wants to put our resources and incentives into producing the largest possible set of relevant goods for distribution in order to get prosperity. Conflict with equality arises if individual productivity depends heavily on incentives, as it will if the way to induce greater production is to let effective producers have larger than average shares of the society’s wealth, income, or consumption. Hence, the concern with productive efficiency already suggests the likelihood of indeterminacy in the trade-off between the production and allocation of goods.

Rawls proposes a way to bridge the apparent conflict by narrowing the range of possible efficient outcomes that we need to consider. To do this, he invokes his difference principle, which requires that all inequalities (political and economic) ‘are to the greatest benefit of the least advantaged members of society’.³⁴ Rawls’s focus is that of Hobbes on the general structure of political-legal order. He is concerned to construct government *ex ante*, even *ex nihilo*.

Part of the great appeal of Rawls’s theory for moral theorists is that it combines the two major streams of thought, one based on egalitarianism and one based on mutual advantage,³⁵ that are probably the dominant visions of modern political philosophy.³⁶ Egalitarianism has ready populist appeal, although, surprisingly, it may have had no articulate advocate with a substantially worked-out theory before Rawls. Mutual advantage is essentially the distributive justice of the Scottish Enlightenment philosophers Hume and Smith and it is the core of ordinal utilitarianism.³⁷ Indeed, it can reasonably be characterized as the theory of justice of Hobbes as well. Mutual advantage has a long history of articulate argument in its defense, while, strangely, egalitarianism hardly has any, perhaps because its supporters have taken its value or goodness for granted.

In very brief summary, the theory of justice as fairness has four main elements: (1) the set of basic or primary goods, (2) equality, (3) mutual advantage, and, to regulate the combination of the latter two, (4) the difference principle. Rawls’s solution to the problem of combining equality and efficiency (the economist’s big trade-off) is to resort to a particular claim of fairness. What a society pro-

duces is largely a result of the way that the society is organized; it is not merely the sum of what all individuals would do entirely on their own without social organization of their efforts. Because the total product is determined socially, the reward to individuals for the social product should therefore be determined socially. Rawls supposes that a determination that any rational person would accept *ex ante* is to allow all inequalities that produce better lives for those who are worst off. If a system that allows some very few to be billionaires produces enough to raise the well-being of the worst-off class to a higher level than any other system would, then the apparent inegalitarianism is fair.

Among his primary goods, Rawls includes certain political rights and a very vague concern with respect as well as standard welfare concerns. He treats all of these as resources or enablers rather than as direct contributions to welfare. In particular, they are resources for having a political role in the society. Unfortunately, his cluster of concerns seems to have several dimensions and it is not easy to define a notion of equality to cover all these dimensions, as though they could simply be added up. Rawls's fairness is therefore murky and possibly incoherent. Until I address the nature of the primary goods below, however, in order to focus here on the other elements of the theory, I will assume that his notion of equality of these primary-good resources is a simple one that can be applied straightforwardly.

Rawls's more general concern with the trade-off between equality and efficiency suggests a focus on resources as though these were the usual goods of a productive society. This is slightly odd, because a large fraction of what is actually produced is consumption goods and services, and it is difficult to conceive these as contributing to resources rather than welfare.

I will assume that it is not necessary to motivate a concern with equality in a theory of (distributive) justice. The problem, rather, is how to achieve it. Rawls recognizes and perhaps accepts the sociological claim of the classical economists that genuine equality can only be achieved by reducing the status of all to some common denominator.³⁸ The result would be a loss of incentive to be very productive, so that the egalitarian society would be generally impoverished. As Hume, Hayek, and many others suppose, we might make the poorest better off by letting the able go on to reap far better than equal rewards.³⁹ Rawls accepts this possibility and makes it his principle of mutual advantage.

Hume, writing in about 1740, saw distributive justice in the modern egalitarian sense as pernicious. The date is important for a social scientist – we should keep it in mind. He attributed concern with such an abstract principle as egalitarianism to writers who argued from pure reason with *no attention to the possibilities of their actual world* and to such religious fanatics as the 17th-century Levellers, who wanted to build a Christian, egalitarian, subsistence-farming society in England.⁴⁰ Although Hume may have had a lingering commitment to arguments from merit, his actual statement of the problems with egalitarian distribution could hardly be more modern in its arguments. He writes that:

ideas of perfect equality . . . are really, at bottom, impracticable; and were they not so, would be extremely *pernicious* to human society. Render possessions ever so equal, men's different degrees of art, care, and industry will immediately break that equality. Or if you check these virtues, you reduce society to the most extreme indigence; and instead of preventing want and beggary in a few, render it unavoidable to the whole community. The most rigorous inquisition too is requisite to watch every inequality on its first appearance; and the most severe jurisdiction, to punish and redress it. But besides, that so much authority must soon degenerate into tyranny, and be exerted with great partialities; who can possibly be possessed of it, in such a situation as here supposed?⁴¹

In this passage, Hume raises two of the standard arguments against equality, which can be stated in contemporary vocabulary as follows. First, equality entails reduced incentives to those who are especially productive and leads to a trade-off between equality and efficiency of production.⁴² Second, giving a potentially capricious government the power to achieve equality gives it the power to do much else, including very undesirable, tyrannous things.⁴³ There is a third issue that is partly only implicit in Hume's discussions of the actual nature of government and society in his time. It is also partly clearly stated in his account of the 'circumstances of justice'.⁴⁴ This issue is the incapacity of government (at least in Hume's time) to accomplish substantial redistribution. Let us address all three issues to see how they affect a move to Rawlsian distributive justice. Rawls substantially addresses only the first of these issues and says too little about the other two.

Hume canvassed these problems after first granting a view, later developed by F.Y. Edgeworth and other utilitarians,⁴⁵ that, with typical inequality, we must 'rob the poor of more satisfaction than we add to the rich, and that the slight gratification of a frivolous vanity, in one individual, frequently costs more than bread to many families, and even provinces'. He did not imagine the vastness of the fortune of Bill Gates, whose wealth (at this writing, in the tens of billions of dollars) exceeds that of many of the poorest nations in the world taken together. Despite this clear, essentially utilitarian appeal of equality, however, Hume thought it a bad idea because impracticable to achieve.

Hume's argument against redistribution in general terms would block both the resolutions mentioned above: socialist equality and Rawlsian distributive justice. He sees distributive justice in the egalitarian sense as pernicious. However we decide the merits of redistribution, we finally have to contend with the contingent facts of human nature and the conditions of our world, as noted in Hume's discussion of the circumstances of justice. The moment we suppose, as Hume insists we must, that justice is contingent, we are in the world of social science and not only of political philosophy. No simple theory of equality of welfare or resources can stand against human nature if all or most or even very many of us would substantially slacken our efforts if our rewards were not related to those efforts. Rawls's difference principle pays deference to this apparent fact of our nature.

In addition, the conditions of Hume's world would have blocked any substantial program of redistribution. Before and still during Hume's time, Great Britain was very loosely organized. The Elizabethan poor laws were national laws to require towns to take care of their own poor. That was the only sensible way to organize such a program because only localities could have much knowledge about poverty. Moreover, at that time, the tax base of the national government was very small. A large fraction of the taxes raised was on malt and beer, because, as Hume remarks, malting and brewing cannot easily be concealed.⁴⁶ It is hard to imagine running any significant part of a contemporary national budget on the taxes on whiskey and beer. Added to these considerations, Hume supposed that 'giving alms to common beggars', as under the poor laws, leads to 'idleness and debauchery'.⁴⁷ One might disagree with Hume on this point, but the nearest thing to social scientists in his time and soon thereafter and other articulate observers often support his view.⁴⁸

Still, Hume's rejection of distributive justice is too strong, even for him. As John Mackie says, if Hume's arguments against perfect equality are compelling, 'it is by no means the only alternative'. We could at least reduce poverty and its ills. Among the circumstances that Hume supposes would not allow us to insist on justice, he notes that in a besieged city the strict rules of justice may give way to concern with survival: 'if a city besieged were perishing with hunger; can we imagine, that men will see any means of preservation before them, and lose their lives, from a scrupulous regard to what, in other situations, would be the rules of equity and justice?'⁴⁹ Mackie supposes that a city in these straits would suspend the normal laws and would require that everyone make known what food and other supplies they have for the benefit of everyone.⁵⁰ One could suppose similarly that the indigent in a society with institutions of justice would not think the institutions were beneficial to themselves and their hungry children, and many others might agree. Hence, we might expect to see citizens choosing to adopt principles of at least modest distributive justice.

From many remarks one can infer that Hume had kinder views of attempting to alleviate poverty. For example, in his historical account of Wat Tyler's rebellion, Hume comments, 'There were two verses at that time in the mouths of all the common people, which, in spite of prejudice, one cannot but regard with some degree of approbation:

When Adam delv'd and Eve span,
Where was then the gentleman?'⁵¹

Hume was too generous a person to feel completely happy with his own strictures on perfect equality. That does not mean he did not believe what he wrote, but only that he seemingly would wish the case were otherwise. Of course, mere approbation does not impel one to work for a policy change.⁵²

Let us spell out the central problem of redistribution for greater equality in simple terms consistent with Hume's account. Begin with the extreme limit of

equality. Complete equality of income (and wealth, but let us briefly assume away wealth) is tantamount to *making total production a collectively provided good to be shared equally among all the producers*. My contribution to that good makes no difference to me, because in the USA, for example, I would get from my own contribution about one two-hundred-millionth part of what I produce. If per worker income is about US\$20,000, I will get a hundredth of a cent from my own effort, and the rest of my US\$20,000 from the efforts of others. There is no coin small enough to pay me my share of what I produce. Let us round it off to nothing. This system would entail essentially zero incentive to anyone to work for the sake of income. Some might work for other reasons, such as the pleasures of the work or, as in the theory of the new socialist person, the good of the society. With Rawls, however, we should rule out the likelihood of 'strong and lasting benevolent impulses'.⁵³

In sum, *we cannot expect a purely egalitarian system to work at all*. It will not merely be inferior in productivity to a system with inequalities that are used to motivate contributions, it will be destitute. Equality as a goal must therefore be compromised in favor of at least some productivity. A sound compromise would be mutually advantageous to all of us.

In general, if we are to say that some way of organizing society is mutually advantageous, we must say advantageous with respect to which other way of organizing it. This means that, in effect, a mutual advantage theory is likely to be almost static, because moving from any actual or presumptive state of affairs to any other is likely to make some worse off even though it might make most people better off. A mutual advantage theory might therefore prescribe stasis. Rawls attempts to avoid this debility by stipulating the particular initial state to which any other state is to be compared. The initial state is that in which everyone is equally well off with respect to the limited set of goods in his primary goods.⁵⁴ (Let us continue to simplify the category of primary goods and refer to these goods as a resource, of which an individual could command more or less.)

The initial state of equal resources might be one in which everyone is impoverished, because, as argued above and by Hume, Hayek, and many others, without differential incentives for productivity, the society of equals might be severely unproductive. Those who might be more productive, because they have greater talent or otherwise, might not be motivated to make great effort that redounds almost entirely to the benefit of others. Indeed, *no one* will have an incentive to produce things that will primarily benefit others through an egalitarian allocation of what is produced, so that pure equality might mean abject poverty. Using differential incentives, however, is likely to lead not only to greater productivity, but also, of course, to inequality – perhaps massive inequality.⁵⁵

Let us restate Rawls's argument in a simple way that separates the incentive effects for production from the egalitarian urge. Much of what we produce can be thought of either as consumption goods or as resources. For the moment,

however, let us consider it as merely additions to the resources that are to be divided. We can increase the total mass of resources to be divided by allowing side payments for productivity. If these payments are less than the additional resources that they lead to, then there is a net gain of resources to be divided in the society.⁵⁶ If this net gain is divided equally, everyone is therefore better off than in the initial state. But those who are stimulated to be more productive by side payments are now better off than those who receive merely an equal share of the excess production.

We therefore have *two parallel allocation systems*: the allocation of side payments to stimulate productivity and the allocation of equal shares to all from the total pool of production net of the side payments that have been paid. Even those who get only an equal share of the production net of side payments, however, are better off than they would have been in a purely egalitarian system. Hence, it is in the interest of those who are poorest in this system to have the inequalities that lead to their greater prosperity from the system. If we assume that the two allocation systems allocate essentially the same kind of thing, then there is only a causal and not additionally a conceptual problem in relating the two.

Now let us go back to Hume's brief against distributive justice through redistribution. Hume's main objection is about the issue that drives Rawls's analysis: incentive effects in the trade-off between equality and productive efficiency. How could we possibly know enough to run the two allocation systems that are necessary, even if we assume away all issues of measurement of what is distributed to establish that it is done equally? One need not be a Hayekist to think this is very nearly absurd. One proposed solution (a lump sum tax or subsidy at birth to correct for one's expected lifetime earning capacity) addresses the whole distribution without breaking it into separate streams. But this sounds like an economist's joke. Hayek at least would laugh – so long as he did not think anyone was actually going to try to implement the scheme.

Now add the complications of comparing across individuals and across categories of what is being distributed: resources of a single kind or of many kinds, consumption goods of many kinds with many different valuations by different individuals, welfare, or income as a simple resource. An Austrian economist would argue that this is deeply foolish. We have to let the market run to find out what the values of various things are. Hume seems to have agreed. If so, we cannot 'redistribute' consumption goods without grievous distortion because their very production and their value depend on their distribution. They are not available for redistribution wholesale independently of the market; they can only be redistributed at the margin, once the larger market has produced them and determined their value.

It should not be necessary to spend much time on Hume's concern with tyranny from any government capable of enforcing equality (the second of his issues noted above). Life under Stalin is probably lesson enough for us to shun

giving the state that much power. But this raises an issue for how we are to implement a system of Rawlsian justice. We cannot do it by putting philosophers in control and we cannot do it by putting non-philosophers in control. Either it happens more or less spontaneously or it does not happen. There is no further story in Rawls or his followers on how to do this. They are making recommendations to the clouds, not to citizens.

We are left with Hume's third issue, which is the practicality of any device here. On this issue, social science is even meaner than in the valuation issues above. In his time, Hume could readily say government could not handle substantial redistribution at all. In our time, government can do much more. Until about 1910 the share of US national government in the GDP was about 6 percent; today, it is several times that.⁵⁷ The typical British citizen had almost no contact with government before 1914, other than in the persons of postal clerks and the occasional policeman.⁵⁸ The world's first income tax was apparently in Great Britain in 1799 – some 60 years after Hume wrote his *Treatise*.⁵⁹ The US Constitution spoke only of a head tax on citizens because that was the nearest thing to taxing people as was possible then, not merely because of federalism. The Elizabethan poor laws were poorly designed out of necessity – there was no simple and maybe no better way for government to take care of the poor. Assigning the responsibility to local governments answered the Hayekist complaint that central government could not know enough to do the job.

National government in 1740 bore almost no resemblance to the national governments in advanced societies today. In 1740, no discussion of the idea of distributive justice could have been anything other than normative. We can finally talk about distributive justice today, even if we cannot yet imagine how to accomplish it; in his time, Hume was basically right to say that the idea was pernicious. Those, including Sidgwick and Rawls, who criticize Hume for his lack of concern with redistribution should take into account the extreme difficulty of doing it under the conditions of his time – indeed, under any conditions that have obtained before the 20th century. It is they who fail as social scientists and Hume who stands out as a great social scientist, many of whose insights are still applicable today.

Social science blocks any serious program of distributive justice before recent times, and possibly still today. Even if we could motivate a large chunk of the population to favor some redistribution, we could not yet do a very good job of handling it – beyond raising the floor below which we do not allow individuals and families to fall. The chief problems in promulgating any such program are not those of normative theory, but those of pragmatic social science. Rawls's own theory requires that the person behind the veil has a full grasp of all the relevant social science to be able to decide how to order society to achieve distributive justice. Anyone from Hume's time could not have met this requirement and probably no one from our time can either.⁶⁰

notes

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1. Russell Hardin, 'From Power to Order, From Hobbes to Hume', *Journal of Political Philosophy* 1 (1993): 195–207.
2. Henry Sidgwick, *The Methods of Ethics*, 7th edn. (London: Macmillan, 1907), p. 440.
3. David Hume, *A Treatise of Human Nature*, 2nd edn., edited by L.A. Selby-Bigge and P.H. Nidditch (Oxford: Oxford University Press, 1978 [1739–40]), Book 3, Part 2, Section 8, p. 543. Hereafter, citation of Book, Part, and Section will be as follows: 3.2.8.
4. Thomas Hobbes, *Leviathan*, edited by C.B. Macpherson (London: Penguin, 1968 [1651]), Ch. 13, [p. 63], p. 188. Here and hereafter references to Hobbes's *Leviathan* are cited in the following format: chapter number, pagination of the original edition in square brackets, followed by pagination in Macpherson's 1968 Penguin edition.
5. Hume, *A Treatise of Human Nature*, T3.2.8, p. 541.
6. David Hume, *An Enquiry Concerning the Principles of Morals*, in *Enquiries*, 3rd edn., edited by L.A. Selby-Bigge and P.H. Nidditch (Oxford: Oxford University Press, 1975 [1751]), pp. 212–33.
7. Hobbes, *Leviathan*, Ch. 13, [p. 63], p. 188.
8. Hume, *A Treatise of Human Nature*, T3.2.7, p. 538.
9. Thomas Hobbes, *De Cive*, edited by Howard Warrender (Oxford: Oxford University Press, 1983 [1642]). See further, Russell Hardin, 'Hobbesian Political Order', *Political Theory* 19 (1991): 156–80, 170–1.
10. See Russell Hardin, *One for All: The Logic of Group Conflict* (Princeton, NJ: Princeton University Press, 1995), Ch. 2.
11. *Ibid.*
12. Hume, *A Treatise of Human Nature*, T3.2.8, p. 539–41. See also David Hume, 'Of the Origin of Government', in *David Hume: Essays Moral, Political, and Literary*, edited by Eugene F. Miller (Indianapolis: Liberty Classics, 1985 [1748]), p. 39.
13. Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Oxford: Oxford University Press, 1976 [1776]), Book 5, Ch. 1, Part 2, pp. 711–5.
14. Harold D. Lasswell, *Politics: Who Gets What, When, How* (New York: McGraw-Hill, 1936).
15. The first use of 'norm' cited in the *Oxford English Dictionary* is in 1821 and the term is used in the sense of a standard, model, pattern, or type. The next use, in 1828, is in the relevant normative sense.
16. Hume, *A Treatise of Human Nature*, T3.2.2, p. 501.
17. *Ibid.*, T3.2.8, p. 539.
18. *Ibid.*, T3.2.8, pp. 539–40.
19. *Ibid.*, T3.2.8, p. 541.

20. We now have extensive evidence on various forms of societal development. See, for example, Allen W. Johnson and Timothy Earle, *The Evolution of Human Societies: From Foraging Group to Agrarian State*, 2nd edn. (Stanford, CA: Stanford University Press, 2000).
21. Hobbes, *Leviathan*, Ch. 13, [p. 63], p. 187.
22. In some accounts of distributive justice, there is some notion of what a person ought to get from the larger society or how the person ought to fit into the society. For example, Aristotle proposed distribution according to merit.
23. See Bruce Ackerman, *Social Justice in the Liberal State* (New Haven, CT: Yale University Press, 1980).
24. Gerrard Winstanley, *The Law of Freedom in a Platform or, True Magistracy Restored*, edited by Robert W. Kenny (New York: Schocken Books, 1973 [1652]).
25. Rawls broadens this claim to include practices such as moral practices and the rules of a game. See John Rawls, 'Two Concepts of Rules', *Philosophical Review* 64 (1955): 3–32.
26. E.F. Carritt, *Ethical and Political Thinking* (Oxford: Oxford University Press, 1947), p. 65.
27. See also, Russell Hardin, *Morality Within the Limits of Reason* (Chicago, IL: University of Chicago Press, 1988), pp. 100–5.
28. Rawls, 'Two Concepts of Rules', p. 27.
29. John Rawls, 'Justice as Fairness', *Philosophical Review* 67 (1958): 164–94.
30. *Ibid.*, p. 47.
31. That is why Rawls should have canvassed Hume's views, not Bentham's, in comparing his theory to that of utilitarianism.
32. Rawls, 'Justice as Fairness', p. 52; John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1999 [1971]), p. 12. Here he suggests what Thomas M. Scanlon later developed: a notion of reasonable agreement as a variant of contractarianism, which Scanlon calls contractualism. See Thomas M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1999); Rawls, 'Justice as Fairness', pp. 54, 56, 58, 71. Rawls says his theory is not strictly that of the social contract because it avoids the fictional quality of the social contract, a move that harks back to Hume's devastating essay on the original contract. See *ibid.*, pp. 57, 59, 71 note; David Hume, 'Of the Original Contract', in *David Hume: Essays Moral, Political, and Literary*, edited by Eugene F. Miller (Indianapolis: Liberty Classics, 1985 [1748]), pp. 465–87. But he invokes H.L.A. Hart's contractualist claim: when any number of people engage in a practice or conduct a joint undertaking according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have the right to a similar acquiescence on the part of those who have benefited by their submission. See H.L.A. Hart, 'Are There Any Natural Rights?' *Philosophical Review* 64 (1955): 175–91; Rawls, 'Justice as Fairness', p. 60. Interestingly, Hart rejected his own claim in response to critics such as Nozick, but Rawls has not revised his views.
33. A static theory of justice in this sense is that of Ackerman, *Social Justice in the Liberal State*, whose concern is solely to allocate manna from heaven.
34. Rawls, *A Theory of Justice*, pp. 65–8; Rawls, *Political Liberalism* (New York: Columbia University Press, 1996 [1993]), pp. 6–7.

35. See, For example, Rawls, *A Theory of Justice*, pp. 13, 66.
36. See Brian Barry, *Theories of Justice* (Berkeley, CA: University of California Press, 1989). In comparison to fairness and utilitarian theories, libertarianism, communitarianism, and various religious theories are sideshows in contemporary western political philosophy. Of these, libertarianism has been worked out most extensively, especially by Nozick. See Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974). Perhaps this is because it has liberal roots in Locke and the Scottish Enlightenment. Nozick's articulation of the theory, however, is almost entirely normative and is irrelevant to our messy, real world.
37. Hardin, *Morality Within the Limits of Reason*, Chs 2, 3. In an astonishing statement, Rawls says 'that the principle of utility [meaning utilitarianism] is incompatible with the conception of social cooperation among equals for mutual advantage'. See Rawls, *A Theory of Justice*, p. 13. Here, he means classical Benthamite utilitarianism in which utilities to all are added to reach a maximum sum. *Mutual advantage is the central utilitarian principle of Hume*. It is absurd to say that this principle is incompatible with utilitarianism. Unfortunately, under 'mutual advantage' in Rawls's index, one is referred to 'reciprocity', which is not the meaning of mutual advantage in his theory, although it is a way to achieve mutual advantage.
38. See Hume, *An Enquiry Concerning the Principles of Morals*, p. 194, quoted below; Tibor Scitovsky, *Welfare and Competition* (London: George Allen and Unwin, 1952); Arthur M. Okun, *Equality and Efficiency: The Big Tradeoff* (Washington, DC: Brookings Institution, 1975).
39. F.A. Hayek, *The Constitution of Liberty* (Chicago, IL: University of Chicago Press, 1960), p. 44. See more generally Hardin, *Morality Within the Limits of Reason*, pp. 126–37.
40. Winstanley, *The Law of Freedom in a Platform*. Hume may not have read Winstanley. He is very tentative in his statement of the views and program of the Levellers, whose religious fanaticism he detested. See David Hume, 'Of Superstition and Enthusiasm', in *David Hume: Essays Moral, Political, and Literary*, edited by Eugene F. Miller (Indianapolis: Liberty Classics, 1985 [1748]), p. 77.
41. Hume, *An Enquiry Concerning the Principles of Morals*, p. 194. Hume also argued that, 'Perfect equality of possessions, destroying all subordination, weakens extremely the authority of the magistracy, and must reduce all power nearly to a level, as well as property'. This sounds like an aristocratic concern, implying that hierarchy, and hence material inequality, is virtually necessary for achieving many desirable social goals, including governance. Many of the views of Hume cited here were first expressed in Hume's *Treatise of Human Nature* (published in 1739–40), but they are more accessibly and often more clearly stated in his *Enquiry Concerning the Principles of Morals* (published in 1751).
42. Scitovsky, *Welfare and Competition*; Okun, *Equality and Efficiency*.
43. One might add that such a powerful government might make its major office holders essentially wealthy, as happened in many communist and other autocracies, in some of which the office of autocrat has become an inherited right.
44. If our conditions were dramatically different, we would have no concern with justice. This would be true if, for example, there were such plenty that nothing was

- in short supply or, contrariwise, that there were extreme indigence; it would also be true if we were universally beneficent or universally vicious. See Hume, *An Enquiry Concerning the Principles of Morals*, pp. 183–9.
45. F.Y. Edgeworth, *Mathematical Psychics: An Essay on the Application of Mathematics to the Moral Sciences* (London: Kegan Paul, 1881).
 46. Hume, 'Of Public Credit', in *David Hume: Essays Moral, Political, and Literary*, edited by Eugene F. Miller (Indianapolis: Liberty Classics, 1985 [1748]) p. 356.
 47. Hume, *An Enquiry Concerning the Principles of Morals*, p. 180.
 48. See, among many commentaries, Samuel Johnson, as quoted in Boswell, *Life of Johnson*, pp. 947–8; Mill, *Principles of Political Economy*, Book 5, Ch. 11, Section 13, p. 960; Tocqueville, 'Memoir on Pauperism'; Townsend, *A Dissertation on the Poor Laws, By a Well-Wisher to Mankind*. Also see Hardin, 'Altruism and Mutual Advantage'.
 49. Hume, *An Enquiry Concerning the Principles of Morals*, p. 186.
 50. J.L. Mackie, *Hume's Moral Theory* (London: Routledge and Kegan Paul, 1980), pp. 93–4.
 51. David Hume, *The History of England* (Indianapolis: Liberty Classics, 1983 [1778]), Ch. 2, p. 290 note.
 52. Even the supposedly more thoroughly self-interested Hobbes assumed that the commonwealth must be responsible for charity toward the very needy: 'And whereas many men, by accident inevitable, become unable to maintain themselves by their labour; they ought not to be left to the Charity of private persons; but to be provided for . . . by the Lawes of the Common-wealth'. See Hobbes, *Leviathan*, Ch. 30, [p. 181], p. 387. Under his fifth law of nature, Compleasance, 'a man that by asperity of Nature, will strive to retain those things which to himselfe are superfluous, and to others necessary; and for the stubbornness of his Passions, cannot be corrected, is to be left, or cast out of Society, as combersome thereto'. See *ibid.*, Ch. 15, [p. 76], p. 209. Scrooges should be dispossessed and exiled. Few modern egalitarians would be so tough. If Hobbes's rule were suddenly imposed in the USA, many corporate boards and executive offices would be depopulated. Such generosity fits Hobbes's character more generally. For example, he is not inherently anti-democratic in the sense of wanting to block or override the interests of the masses. Indeed, he is among the most egalitarian of all political philosophers. In the great Anglo-Saxon tradition, he is arguably more egalitarian than Mill, and surely more egalitarian than Locke or Hume. He is anti-chaos. He thinks, perhaps wrongly as it turns out, that participation is likely to be chaotic. Hence, he is anti-participation and in that sense anti-democratic.
 53. Rawls, *A Theory of Justice*, p. 13. Add the complication (a bit of overkill) that a large percentage of all workers in any extant nation probably do not like their jobs and could not be motivated to work very hard by love of the work. Nor is this an aberration of the present organization of economies as Marxists have sometimes claimed (when there were Marxists). Genuine egalitarianism in small-group anthropological societies can probably be made to work relatively well, but to do so it may often have required massive sanctioning power from the group against genuine shirkers. Norms of exclusion in small groups can be extremely powerful. See further, Hardin, *One for All*, Ch. 4. But these are not a workable device for a very large society of joint producers, where motivating people would require a

universalistic norm of commitment to the larger society. Such a norm is very difficult to sustain. See *ibid.*, Ch. 5.

54. Alternatively, among all of those states in which everyone is equally well off, Rawls's initial state is that state in which they are best off.
55. Rawls, *Political Liberalism*, pp. 281–2; Okun, *Equality and Efficiency*.
56. If the side payments are not less than (or at most equal to) the additional resources they lead to, there is no reason to make them.
57. John Mark Hansen, 'Taxation and the Political Economy of the Tariff', *International Organization* 44 (1990): 527–51.
58. A.J.P. Taylor, *English History 1914–1945* (Oxford: Oxford University Press, 1965), p. 1.
59. Margaret Levi, *Of Rule and Revenue* (Berkeley, CA: University of California Press, 1988), Ch. 6.
60. I owe this observation to Andrea Pozas-Loyo.