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David Hume and Personal Status: A Philosophical Inquiry into the Nexus of Religion, Law, and the Family

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David Hume et le statut personnel: une enquête philosophique sur le lien entre religion, droit et famille

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Abstract:

This study presents a comprehensive philosophical examination of David Hume's critique of personal status, elucidating the dialectical nexus connecting religious metaphysics, positive civil legislation, and the domestic architecture of the family. While conventional Hume scholarship has predominantly centered on epistemology, the problem of induction, and meta-ethical sentimentalism, this research analyzes Hume's neglected contributions to family jurisprudence and domestic anthropology. Through a textual and historical interrogation of *A Treatise of Human Nature*, *An Enquiry Concerning the Principles of Morals*, *The Natural History of Religion*, and the seminal essay *Of Polygamy and Divorces*, the study reveals how Hume de-sacralizes domestic relations. He strips matrimonial bonds, filiation, and marital dissolution of scholastic and canonical transcendence, repositioning them as evolving artificial conventions designed to stabilize property, foster affective companionship, and discipline biological impulses. The research scrutinizes Hume's utilitarian critique of ecclesiastical courts, his comparative sociology of marriage models, and his structural defense of civil divorce. Ultimately, the paper demonstrates that Humean naturalism offers modern jurisprudence an empirical and secular methodology for the constitutional reform and legislative codification of personal status.

Keywords: David Hume; Personal Status; Philosophy of Law; Secularization; Family Conventions; Domestic Jurisprudence.

Résumé:

Cette étude propose un examen philosophique approfondi de la critique du statut personnel chez David Hume, mettant en lumière le lien dialectique unissant la métaphysique religieuse, la législation civile positive et l'architecture domestique de la famille. Alors que les études humiennes traditionnelles se sont principalement focalisées sur l'épistémologie, le problème de l'induction et le sentimentalisme méta-éthique, cette recherche analyse les contributions méconnues de Hume à la jurisprudence familiale et à l'anthropologie domestique. À travers une interrogation textuelle et historique du *Traité de la nature humaine*, de l'*Enquête sur les principes de la morale*, de l'*Histoire naturelle de la religion* et de l'essai fondateur *De la polygamie et des divorces*, l'étude révèle la manière dont Hume désacralise les relations domestiques. Il dépouille les liens matrimoniaux, la filiation et la dissolution du mariage de toute transcendance scolastique et canonique, pour les repositionner comme des conventions artificielles évolutives conçues pour stabiliser la propriété, favoriser la camaraderie affective et discipliner les pulsions biologiques. Ce travail examine rigoureusement la critique utilitariste humienne des tribunaux ecclésiastiques, sa sociologie comparative des modèles matrimoniaux ainsi que sa défense structurelle du divorce civil. En définitive, l'article démontre que le naturalisme humien offre à la jurisprudence moderne une méthodologie empirique et séculière pour la réforme constitutionnelle et la codification législative du statut personnel.

Mots-clés: David Hume ; statut personnel ; philosophie du droit ; sécularisation ; conventions familiales ; jurisprudence domestique.

Introduction:

In early modern European philosophy and legal history, personal status—the juridical nexus defining marriage, lineage, paternal authority, parental custody, marital dissolution, and the domestic legal personality of individuals—represented the most fiercely contested territory between sovereign secular states and ecclesiastical hierarchies. Throughout the scholastic tradition and the natural law formulations of the seventeenth century (e.g., Hugo Grotius, Samuel von Pufendorf, and John Locke), matrimonial ties and patriarchal authority were persistently grounded either in explicit theological positive commandments or in metaphysical deductions of *lex naturalis*. Within these systems, matrimonial vows were viewed not as mutable human agreements, but as ontologically sacred sacraments whose indissoluble character was established by divine ordinance.

The eighteenth-century Scottish Enlightenment initiated a foundational rupture with this metaphysical jurisprudence. At the core of this intellectual transformation stood David Hume (1711–1776), whose overarching philosophical ambition was to introduce the experimental method of reasoning into moral, legal, and political subjects. For Hume, the foundational unit of moral and political order is neither the isolated, rational agent of Cartesian metaphysics nor the atomized warrior of Hobbesian theory. Instead, civil society traces its developmental origin directly to the domestic family unit.

Significance of the Study:

The significance of this investigation operates across theoretical, jurisprudential, and contemporary levels:

- **Philosophical Significance:** It addresses a critical lacuna in Humean scholarship, demonstrating that Hume's moral sentiment theory and convention-based account of justice in Book III of the *Treatise* remain incomplete without understanding his domestic anthropology and his theory of the passions within the household.
- **Jurisprudential Significance:** It excavates the philosophical foundations of secular family law. By historicizing Hume's engagement with marriage and divorce, this research illustrates the philosophical mechanisms through which civil law emancipated itself from ecclesiastical courts.
- **Contemporary Socio-Legal Relevance:** In modern legal systems currently confronting ideological conflicts between religious personal status codes, civil liberties, and gender equity, Hume's framework provides a coherent analytical model for balancing institutional stability with individual flourishing.

Problem Statement:

Despite extensive scholarship analyzing Hume's skepticism and secular politics, his explicit conceptualization of personal status remains fractured across disparate treatises and essays. This raises fundamental theoretical questions:

How does David Hume philosophically deconstruct the theological and ecclesiastical sacralization of personal status, and to what extent does his naturalistic and conventionalist theory of justice provide an empirical, utilitarian blueprint for regulating marriage, filiation, and marital dissolution through positive civil law?

Subordinate questions emerge:

1. What psychological and biological mechanisms transform raw sexual appetite into an artificial, rule-governed domestic convention?
2. By what philosophical criteria does Hume critique ecclesiastical jurisdiction over marital indissolubility and comparative marriage models (polygamy versus monogamy)?
3. How does Hume negotiate the structural tension between absolute individual liberty (unrestricted divorce) and systemic social utility (domestic and property stability)?

Hypotheses:

- **Primary Hypothesis:** David Hume's treatment of personal status de-sacralizes domestic law by conceptualizing the family as a hybrid institution—originating in natural instinct but stabilized exclusively through artificial social conventions and utilitarian legal frameworks designed to secure property transmission and domestic peace.
- **Secondary Hypotheses:**

1. Hume identifies ecclesiastical jurisdiction over marriage as a source of domestic tyranny that enforces legal fictions contrary to human psychological nature.
2. Hume's defense of regulated monogamy with equitable civil divorce anticipates modern secular family jurisprudence by replacing clerical dogmatism with empirical standards of child welfare and mutual spousal dignity.

Research Objectives:

1. To articulate Hume's naturalistic genesis of domestic society, establishing how parental affection and natural appetite serve as the historical bridge toward political conventions.
2. To reconstruct Hume's sentimentalist critique of clerical and theological authority over marriage and divorce.
3. To conduct a comparative philosophical assessment of Hume's arguments regarding monogamy, polygamy, and voluntary marital dissolution in *Of Polygamy and Divorces.*
4. To evaluate the legacy of Humean convention for contemporary legislative reforms and the civil codification of personal status.

Methodological Framework:

This study employs a multi-layered methodological approach:

- **The Analytical-Textual Method:** Conducting close textual readings of primary sources, notably *A Treatise of Human Nature* (1739–1740), *An Enquiry Concerning the Principles of Morals* (1751), *The Natural History of Religion* (1757), and the *Essays, Moral, Political, and Literary* (1777).
- **The Conceptual-Reconstructive Method:** Synthesizing Hume's epistemological tenets (sentiments, custom, sympathy, and utility) with his specific legal claims regarding marital contracts and female chastity.
- **The Comparative-Historical Method:** Juxtaposing Hume's empirical jurisprudence against the prevailing ecclesiastical canon law of the eighteenth century and the natural law traditions of Hobbes, Locke, and Pufendorf.

Literature Review & Critical Assessment:

Academic engagement with Hume's legal and political philosophy broadly falls into three interpretive clusters, each leaving critical gaps regarding personal status:

1. **The Contractarian and Political Order School:** Scholars such as Duncan Forbes (*Hume's Philosophical Politics*, 1975)[1] and David Gauthier (*David Hume, Contractarian*, 1979)[2] focused almost exclusively on Hume's critique of the social contract, the origins of government, and allegiance to sovereign power. *Critique:* This body of literature treats the state as emerging directly from adult male property owners, routinely overlooking Hume's explicit insistence that political society is historically and psychologically impossible without the prior domestic training ground of the family.
2. **The Sentimentalist and Natural Jurisprudence School:** Knud Haakonssen (*The Science of a Legislator*, 1981) and Annette Baier (*A Progress of Sentiments*, 1991) made monumental strides

[1] - Duncan Forbes, *Hume's Philosophical Politics* (Cambridge: Cambridge University Press, 1975), pp. 78–86. https://doi.org/10.1017/CBO9780511560064

[2] - David Gauthier, "David Hume, Contractarian," *The Philosophical Review* 88, no. 1 (1979): pp. 14–22. https://doi.org/10.2307/2184777

by taking Hume's ethics and concepts of justice seriously. Baier highlighted Hume's attention to interpersonal affections and trust. *Critique:* While Baier recognized the importance of family sentiments, she stopped short of mapping these insights systematically onto the technical domain of positive personal status law, property adjudication, and the jurisdiction of divorce courts.

3. **The Secularization and Irreligion School:** Paul Russell (*The Riddle of Hume's Treatise*, 2008) demonstrated that Hume's overarching agenda was profoundly anti-Christian and secular. *Critique:* Russell concentrated primarily on metaphysics, freewill, and historical religion, leaving unexamined how Hume applied this secular crusade directly to dismantle the ecclesiastical monopoly over marriage, filiation, and domestic inheritance.

The present study bridges these disparate strands, unifying Hume's theory of the passions, his secular jurisprudence, and his domestic sociology into a single coherent critique of personal status.

Structural Division of the Study:

To systematically address the research problem, this study is divided into three comprehensive, numbered sections:

1. **The Naturalistic and Conventional Genesis of Domestic Society:** Explores natural appetite, the family as the nursery of sociability, and the mechanics of artificial domestic conventions (chastity and paternity).
2. **Deconstructing Ecclesiastical Hegemony: Religion, Law, and Conjugal Governance:** Analyzes the secularization of marriage, clerical power, and Hume's comparative philosophy of marital models (monogamy, polygamy, and divorce).
3. **The Jurisprudence of Personal Status: From Customary Norms to Positive Law:** Details property transmission, the codification of domestic rights, and Hume's enduring legacy for contemporary secular family jurisprudence.

1. The Naturalistic and Conventional Genesis of Domestic Society

Before codifying legal constraints, domestic association emerges as an evolutionary threshold where innate biological passion is systematically transformed into rule-governed social convention.

1.1. Natural Appetite and the Family as the Nursery of Sociability

In Book III, Part II, Section II of *A Treatise of Human Nature*, David Hume directly challenges the atomistic anthropology characteristic of Thomas Hobbes's state of nature[3]. Hobbes posited an original condition of radically isolated, fearful individuals locked in a war of all against all (*bellum omnium contra omnes*), from which humanity could only escape through a terrifying,

[3] - David Hume, *A Treatise of Human Nature*, ed. L. A. Selby-Bigge and P. H. Nidditch (Oxford: Clarendon Press, 1978), Book III, Part II, Section II ("Of the Origin of Justice and Property"), pp. 484–489. https://davidhume.org/texts/t/3/2/2

calculated surrender to an absolute sovereign Leviathan. Hume rejects this narrative as an ahistorical and psychological fiction. For Hume, man was never entirely solitary:

Natural Biological Conjunction ⟶ Parental Concern ⟶ Domestic Habituation ⟶ Capacity for Justice ⟶ Political Society

Hume observes that while human individuals are physically weak, lacking the claws of the lion or the thick hide of the ox, their primary preservation is achieved through society. Yet, humanity could not have grasped the complex, abstract advantages of large-scale social cooperation from an original state of wild individualism. What first drew human beings together was not rational calculation, but a blind biological impulse: the natural appetite between the sexes:

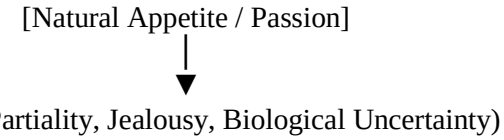
"This necessity is no other than that natural appetite betwixt the sexes, which unites them together, and preserves their union, till a new tie takes place in their concern for their common offspring. This new concern becomes also a principle of union betwixt the parents and offspring, and forms a more numerous society; where the parents govern by the advantage of their superior strength and wisdom, and at the same time are restrained in the exercise of their authority by that natural affection, which they bear their children.[4]*"*

Within this intimate circle, the rudimentary seeds of moral governance are planted. The natural authority of parents is restrained by love (*storge*), while the children are conditioned into habits of forbearance, mutual deference, and linguistic coordination[5]. The family functions as an affective educational academy where the wild egoism of human nature is gradually tamed. Without this domestic training, the abstract artificial virtues—justice, property, and fidelity to covenants—could never take psychological root[6].

1.2. The Shift from Natural Instinct to Artificial Convention

Although biological desire and parental love form the initial domestic bond, Hume insists that natural sentiment alone is utterly insufficient to govern an enduring family structure or a broader social commonwealth. Natural affections are intrinsically partial, limited, and unequal. Parents favor their own children above strangers, and unrestrained passion is volatile:

Figure (1): Transition from Biological Passions to Artificial Conventions in Hume's Family Theory.



[4] - David Hume, Op. Cit, pp. 186.

[5] - Annette C. Baier, *A Progress of Sentiments: Reflections on Hume's Treatise* (Cambridge: Harvard University Press, 1991), Chapter 5, pp. 102–110. https://doi.org/10.2307/j.ctv1g247vd

[6] - Livingston, D. W. (1984). *Hume's philosophy of common life*. University of Chicago Press.



Source: Elaborated by the authors based on Hume's philosophical works.

To preserve the peace of the family and secure the intergenerational transfer of resources, human society invents artificial conventions[7]. An artificial virtue, in Humean terminology, is not "unnatural" in the sense of being perverse; rather, it is an invention of human design and intellect to solve structural problems caused by the junction of external scarcity and limited human benevolence[8]. Personal status—the formalization of marriage into legally recognized obligations, custodial duties, and inheritance boundaries—is the quintessential artificial convention. It translates unstable biological passions into predictable civil duties.

1.3. Paternity, Chastity, and the Socio-Economic Utility of Fidelity

Nowhere is Hume's utilitarian analysis of personal status more vivid and analytically rigorous than in his celebrated discussion "Of Chastity and Modesty" (Treatise, Book III, Part II, Section XII)[9]. Hume interrogates why human societies universally impose a dramatically more rigorous moral and legal standard of conjugal fidelity and modesty upon women than upon men.

Rejecting the prevailing theological justifications—which explained chastity through metaphysical purity, sin, or divine commands directed specifically to the female soul—Hume provides an unyielding materialist and functionalist explanation based on biological asymmetry[10]:

1. **The Biological Premise:** The propagation of the human species requires an exceptionally prolonged period of infant and child care, demanding years of sustained economic, protective, and emotional investment from both parents.
2. **The Epistemic Asymmetry of Paternity:** While maternity is an undeniable physical fact (*mater semper certa est*), paternity is an epistemic probability, subject to fundamental biological uncertainty (*pater est quem nuptiae demonstrant*).

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[7] - Rachel Cohon, *Hume's Morality: Feeling and Fabrication* (Oxford: Oxford University Press, 2008), Chapter 6, pp. 161–168. https://doi.org/10.1093/acprof:oso/9780199268443.001.0001

[8] - Garrett, D. (1997). *Cognition and commitment in Hume's philosophy*. Oxford University Press. https://doi.org/10.1093/0195105658.001.0001

[9] - David Hume, Op. Cit, pp. 570–573.

[10] - Rachel Cohon, Op. Cit, pp. 161–168.

3. **The Economic Consequence:** No rational male would endure years of labor, self-denial, and material expenditure to maintain, educate, and endow children with property if he harbored persistent doubts regarding their biological filiation.
4. **The Artifice of Modesty:** Because legal sanctions and physical surveillance alone cannot police private domestic fidelity, society constructs deep psychological conventions, inculcating a profound sense of honor and shame around female chastity through early education and social esteem.

Hume demystifies the moral virtue of modesty: it is an artificial social device calibrated to assure fathers of paternity, thereby ensuring that property passes smoothly to legitimate offspring and that children are reared in secure domestic environments. The law of personal status, in Hume's estimation, is fundamentally oriented toward stabilizing the transmission of property and preventing domestic anarchy.

2. Deconstructing Ecclesiastical Hegemony: Religion, Law, and Conjugal Governance

Subordinating domestic life to theological dogma distorts human flourishing, necessitating a critical dismantling of clerical jurisdiction in favor of secular, utility-based matrimonial governance.

2.1. The Critique of Ecclesiastical Jurisdiction over Domestic Life

Throughout the Middle Ages and into the eighteenth century, personal status was largely monopolized by ecclesiastical authorities. The Roman Catholic Church had elevated marriage to the status of a holy sacrament, rendering it metaphysically indissoluble (*quod Deus coniunxit, homo non separet*), while the Anglican Church retained canon-law-based consistory courts that governed probate, annulment, and separation.

In *The Natural History of Religion* (1757)[11] and various historical chapters of *The History of England*, Hume dissects the origins of religious belief, demonstrating that theological dogmas arise not from serene rational inquiry, but from existential anxiety, dread of the unknown, and the psychological vulnerability of mortals. Ecclesiastical institutions, Hume argues, historically exploited these irrational fears to construct an autonomous jurisdictional empire that actively rivaled the civil magistrate[12]:

Table (1): Structural Comparison: Canonical vs. Humean Civil Governance of Personal Status

[11] - David Hume, *The Natural History of Religion*, ed. T. L. Beauchamp (Oxford: Clarendon Press, 2007), Sections III & IX, pp. 42–58. https://doi.org/10.1093/actrade/9780199279111.book.1

[12] - Paul Russell, *The Riddle of Hume's Treatise: Skepticism, Naturalism, and Irreligion* (New York: Oxford University Press, 2008), pp. 189–195. https://doi.org/10.1093/acprof:oso/9780195110333.001.0001

Structural Dimension	Ecclesiastical / Canonical Jurisprudence	Humean Civil Jurisprudence
Philosophical Grounding	Transcendent sacrament; divine natural law; sin	Empirical utility; psychological sentiments; social convention
Primary Institutional Goal	Spiritual compliance; maintenance of clerical authority	Domestic tranquility; property security; child welfare
Matrimonial Nature	Ontologically indelible; eternal spiritual union	Bilateral civil contract; mutual conventional association
Approach to Marital Failure	Compulsory lifelong cohabitation; punitive separation	Judicial divorce upon structural failure; secular arbitration
Jurisdictional Seat	Bishops' consistory courts; canon law tribunals	Civil magistrates; public legislative assemblies

Source: Elaborated by the authors based on Hume's philosophical works.

Hume maintains that when clerical institutions govern personal status, domestic law becomes perverse. Marital legislation is severed from human happiness and subordinated to arbitrary ascetic dogmas. Marriages are forced to endure under conditions of mutual hatred, domestic violence, and emotional desolation simply to satisfy an abstract theological dogma of indissolubility. Hume insists that the entire domain of personal status must be reclaimed by the secular state. The civil magistrate must evaluate family law not by consulting ancient scripture or theological metaphysics, but through the empirical lens of temporal human welfare, public tranquility, and economic utility[13].

2.2. The Comparative Sociology of Domestic Regimes: Of Polygamy and Divorces

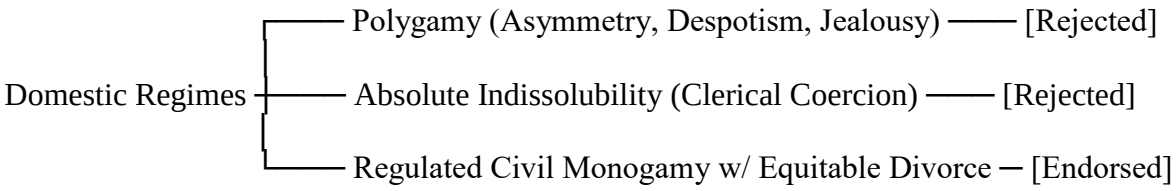
In his 1742 essay *Of Polygamy and Divorces*, Hume delivers one of the earliest modern comparative analyses of marriage laws[14]. Rather than dismissing foreign marital systems through ethnocentric prejudice, Hume subjects three distinct matrimonial structures to rigorous utilitarian

[13] - Knud Haakonssen, *The Science of a Legislator: The Natural Jurisprudence of David Hume and Adam Smith* (Cambridge: Cambridge University Press, 1981), Chapter 2, pp. 24–35. https://doi.org/10.1017/CBO9780511628283

[14] - David Hume, "Of Polygamy and Divorces," in *Essays, Moral, Political, and Literary*, ed. Eugene F. Miller (Indianapolis: Liberty Fund, 1987), Part I, Essay XIX, pp. 181–185. https://oll.libertyfund.org/titles/hume-essays-moral-political-literary-lf-ed

and psychological evaluation: polygamy, absolute indissoluble monogamy, and free consensual divorce.

Figure(2): Hume's Dialectical Triage of Marital Regimes



Source: Elaborated by the authors based on Hume's philosophical works.

2.2.1. The Rejection of Polygamy

Hume examines the institution of polygamy (specifically polygyny) as practiced historically in non-European civilizations. He systematically critiques it on psychological and political grounds[15]:

- **Destruction of Reciprocal Sympathy:** True friendship and affection require equality. A husband possessing multiple wives cannot distribute genuine emotional sympathy equally. He ceases to be a companion and becomes an arbitrary sovereign.
- **Domestic Factionalism:** Polygamy transforms the domestic home from an academy of virtue into a prison of jealousy. Wives compete viciously for favor, and the half-siblings of rival mothers inherit these bitter animosities, destroying the foundational peace of the household.
- **Political Implications:** Hume perceptively links domestic structures to state governance. The tyrannical household of the polygamous despot mirrors the arbitrary despotism of absolute monarchies. Men who rule their households through fear and confinement are psychologically habituated to submit to political tyranny in the public square.

2.2.2. The Dialectic of Indissolubility versus Voluntary Divorce

Turning to the European context, Hume confronts the philosophical dilemma between lifelong indissoluble marriage and free, immediate divorce[16]. Here, Hume displays his trademark balance between liberty and social stability:

- **The Problem of Easy Divorce:** Hume acknowledges the romantic argument that unlimited liberty to dissolve marriage at will preserves passion. However, he warns that making divorce effortless destabilizes the family. When spouses know they can easily part, minor disagreements escalate into irreconcilable conflicts. Furthermore, the welfare of children is critically compromised when parental units are perpetually fractured and reconstructed. Hume observes

[15] - David Hume, Op. Cit, pp. 181–185.

[16] - David Hume, "Of Polygamy and Divorces," *Essays, Moral, Political, and Literary*, pp. 186–190. https://oll.libertyfund.org/titles/hume-essays-moral-political-literary-lf-ed

that human beings naturally adapt to necessities: when marriage is legally binding and difficult to dissolve, spouses cultivate patience, mutual compromise, and forgiveness.

- **The Cruelty of Absolute Indissolubility:** Conversely, Hume harshly condemns the ecclesiastical doctrine that renders marriage absolutely permanent under all circumstances. Forcing two human beings who have developed an intense, incurable mutual antipathy to remain chained together until death is a form of legal torture that breeds deception, adultery, and psychological devastation.
- **Hume's Utilitarian Synthesis:** Hume advocates for a secular, balanced middle path: a legal framework where monogamous marriage is recognized as a profound and durable commitment, protected by the state, but where **civil divorce is legally accessible** under clear statutory grounds—such as sustained cruelty, desertion, adultery, or fundamental marital breakdown.

3. The Jurisprudence of Personal Status: From Customary Norms to Positive Law

Translating familial sentiments into institutional durability requires positive legal mechanisms that secure property continuity, child welfare, and equitable contractual rights within the civil sphere.

3.1. Property Transmission, Filiation, and the Rule of Law

In Hume's legal theory, property is not a natural entity existing prior to human convention; it is a product of law and social agreement (*"Property must be considered as a relation betwixt a person and an object"*)[17]. The primary motivation for humanity to exit the volatile state of nature was to secure the possession of external goods[18]. Consequently, the family and property are inextricably intertwined:

Table (2): The Interdependent Triad of Personal Status Jurisprudence

Functional Category	Legal Mechanism	Psychological Sentiment Involved	Societal Utility
Conjugal Contract	Civil marriage registry; legal rights of spousal support	Reciprocal sympathy, erotic attachment, mutual benevolence	Regulates passion; establishes clear domestic division of labor

[17] - David Hume, *An Enquiry Concerning the Principles of Morals*, ed. T. L. Beauchamp (Oxford: Oxford University Press, 1998), Section III, Part II, pp. 83–91. https://davidhume.org/texts/m/full

[18] - Frederick G. Whelan, *Order and Artifice in Hume's Political Philosophy* (Princeton: Princeton University Press, 1985), Chapter 6, pp. 215–224. https://doi.org/10.1515/9781400857500

Legitimacy & Filiation	Presumption of paternity; biological certainty laws	Parental affection (*storge*); parental vanity	Incentivizes long-term investment in child education and rearing
Hereditary Succession	Testamentary freedom; laws of intestate inheritance	Sympathetic identification with one's posterity	Ensures uninterrupted maintenance of capital and social order

Source: Elaborated by the authors based on Hume's philosophical works.

Hume highlights that human industry would rapidly decay if individuals were forbidden from passing the fruits of their labor to those they hold dearest: their children[19]. Therefore, personal status laws regarding filiation and hereditary succession are the fundamental gears that drive the engine of economic productivity and intergenerational continuity[20]. When personal status laws are stable and clear, civil society flourishes; when they are arbitrary or corrupted by clerical interference, economic incentives collapse.

3.2. Hume's Secularized Legacy for Modern Family Law

Hume's philosophical reconstruction of personal status anticipates the core structural developments of modern secular family jurisprudence[21]:

1. **Contractualization:** Modern law views marriage primarily as a civil status derived from mutual consent, completely distinct from sacramental or ecclesiastical prerequisites.
2. **Equitable Dissolution:** Contemporary divorce laws, moving from fault-based ecclesiastical litigation to "no-fault" civil dissolution, reflect Hume's psychological insight that forcing incompatible individuals to remain legally united generates negative social externalities.
3. **The Paramount Welfare of the Child:** Hume's insistence that the primary purpose of domestic conventions is the secure upbringing of the next generation directly prefigures the modern legal standard of "the best interests of the child" in custody adjudications.
4. **Legislative Evolution:** By categorizing family laws as artificial conventions rather than eternal divine decrees, Hume provides legal theorists with the philosophical justification to reform domestic codes to accommodate changing economic realities, gender equality, and modern concepts of individual rights.

4. Conclusion

[19] - Gerald J. Postema, *Bentham and the Common Law Tradition* (Oxford: Clarendon Press, 1986), pp. 93–108. https://doi.org/10.1093/acprof:oso/9780198255055.001.0001

[20] - J. L. Mackie, *Hume's Moral Theory* (London: Routledge & Kegan Paul, 1980), pp. 76–84. https://doi.org/10.4324/9780203005880

[21] - Frederick G. Whelan, Op. Cit, pp. 215–224.

David Hume's philosophical interrogation of personal status marks a decisive transformation in the history of legal and moral philosophy. By applying his empirical and sentimentalist methodology to the domestic sphere, Hume successfully dismantled the theological architecture that had long subjected marriage, paternity, and divorce to clerical hegemony and metaphysical abstractions.

Hume establishes that the family is the foundational wellspring of human sociability—a unique institution born of biological appetite and parental instinct, but elevated and sustained through artificial conventions of justice, property, and marital stability. His comparative analysis in *Of Polygamy and Divorces* cuts through both theological authoritarianism and hedonistic individualism, advancing a secular, utilitarian defense of monogamy balanced with equitable, civil divorce. In doing so, Hume transformed the domestic household from a spiritual battleground into a civil sanctuary of mutual friendship, child protection, and property transmission. His naturalistic jurisprudence remains an indispensable guide for modern societies seeking to cultivate personal status laws that harmonize individual liberty, domestic peace, and the rule of law.

4.1. Findings

1. Hume proves that political and civil society did not emerge from abstract rational contracts among isolated adults, but evolved directly from the domestic household, where parental love and domestic custom train human nature in social restraint and justice.
2. While conjugal desire and parental affection are natural passions, the laws of personal status—marriage formalities, female modesty conventions, paternity rules, and inheritance laws—are artificial contrivances calculated to solve the biological problem of paternal uncertainty and secure property transmission.
3. Hume demonstrates that ecclesiastical jurisdiction over family affairs produces domestic tyranny and emotional misery by enforcing an unnatural doctrine of absolute indissolubility. He argues for transferring all authority over personal status to the secular civil magistrate.
4. Through empirical comparative analysis, Hume establishes that while unrestricted divorce causes domestic instability, regulated civil divorce based on severe incompatibility or cruelty is essential to safeguard human dignity and mental tranquility.

4.2. Recommendations

1. Modern states should ensure that family law is entirely codified under uniform, civil statutes, liberating domestic rights from sectarian, theological, or customary courts.
2. Family judiciaries should structure custody and divorce proceedings around empirical assessments of emotional well-being and child welfare, rather than rigid procedural dogmas.
3. Legislative bodies must maintain personal status laws that encourage deep marital commitment to protect children, while ensuring accessible, fair, and humane civil divorce mechanisms to resolve dysfunctional unions.
4. In line with Hume's evolutionary view of conventions, personal status legislation must continually be updated to eliminate historic patriarchal biases in filiation, guardianship, and testamentary distribution.

4.3. Future Research Horizons

Future scholarship in this domain should explore the comparative application of Humean conventionalism to modern pluralistic legal orders where religious and secular family codes operate simultaneously. A fertile avenue of research lies in examining how developing societies, particularly in post-colonial contexts, can utilize Hume's utilitarian philosophy to reform deeply entrenched, religiously dominated personal status laws without causing abrupt cultural dislocations. Furthermore, scholars should interrogate the critical friction between Hume's defense of female chastity conventions and contemporary feminist philosophy, evaluating whether his functionalist insights can be repurposed to dismantle historical gender inequalities within modern family jurisprudence.

5. References

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