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## The Public Interest vs. Old Rights

JOHN B. STEWART

Both Donald W. Livingston and I engage in retrospective labelling. I present David Hume as one of those who helped create the British political movement known initially as Reform Whig and later as Liberal. By his ardent advocacy of commerce, by his attack on protectionism, by his indifference to empire, by his debunking of the inherited constitution, by his efforts to make philosophers and politicians focus on the public interest, and by his denunciation of “religious Whiggery,” Hume, I submit, helped create the Liberal reform program.

Those who opposed that program, and called themselves Conservatives, saw it as starting yet another battle, perhaps the last great battle, in the long war between Old England, the England of squires and the Church, and the urban commercial interests, with their large nonconformist component. The reforms, some Conservatives said, really were reforms inspired by the kind of thinking behind the French Revolution. If in 1834—when Queen Adelaide expected to share the fate of Marie Antoinette—a philosopher had told a Conservative meeting that their opponents’ measures were conservative and ought to be supported, there would have been much shaking of heads and dark muttering. In terms of British political history, that program was liberal, not conservative.

But let us go higher, for Livingston’s distinction is between conservatism and “foundational liberalism.” Conservatives, he says, defer to inherited beliefs and customs; they see false philosophy as the enemy of such beliefs and

customs. Now, since “foundational liberalism” is a form of false philosophy, and since Hume was the first to expose false philosophy, we can call him the first conservative philosopher. Because conservatives defer to the inherited way of life, one can live the liberal way of life, Livingston tells us, and still be a conservative. How helpful is this distinction at the level of common politics and history? Who was conservative, Charles I or the revolutionaries who sought to restore “the ancient constitution”? Were those who defended the status quo with Divine Right arguments conservatives? Was the American Revolution tainted by metaphysical ideas popularized during the Puritan Revolution? Do the High Church electors of Oxford University who voted against Peel in 1829 on Catholic Emancipation qualify as conservatives? Did those who called themselves Conservatives in the 1830s merit that name? Does David Hume qualify?

Livingston states two criteria. The first is denial of the validity of moral rules emanating from sources outside common life. He tells us that all who make this denial are conservatives, and that Hume, unlike “foundational liberals,” made it, indeed was the first to make it. The second criterion, which Livingston presents, not as discrete, but as a consequence of the first, is recognition that the narrative order is the only legitimate order. This criterion has two branches. Of these the first is exclusive reliance on a certain process of change. Always the presumption favours the status quo: it is established; it is regarded as right by the people. Yet legitimate change is possible. This takes place by, only by, the evolutionary, case-by-case method. If a new requirement arises, the principles of the prevailing order are applied to it, and a statement of what is right relevant to that requirement is made. Step by step, incrementally, the society’s beliefs about what is right are modified. Thus a new status quo gradually takes shape on the loom of time. Implicit in this insistence on no change except by concatenation is the second branch of Livingston’s second criterion, namely that there is no best social order. Mislead by having transferred to property a statement made by Hume about right to govern, Livingston writes:

Conflict over particular claims to property or over established property rules are settled by reference to other established property rules. Grievances are settled by the established rules, and by virtue of retrospective narrative associations the settlement changes the interpretation of the rules. Such changes may lead to a gradual evolution of new rules and eventually to an entirely different narrative order. Evolutionary reform, then, is not only possible in Hume’s system, it is internal to the narrative imagination and, consequently, to the moral world which the imagination weaves into existence.<sup>1</sup>

Changes in rules, laws, and institutions made in this way are conservative

changes. The conservative believes that what is established as right is what is good, and that only those changes consistent with what is right at any particular time can be called legitimate.

This theory, the theory attributed to Hume by Livingston, is similar to the traditionalism used by Edmund Burke in his attempt to repulse French thinking, and which, as J.G.A. Pocock has shown, was the theory of the common-law lawyers. If Livingston is correct, Hume held a theory very much like that of the English lawyers.<sup>2</sup>

My submission is, first, that while Livingston's distinction between historical rights and "foundational rights" is formally valid—the sources of these two kinds of rights are different—that distinction has no necessary effect on the content (or substance) of rights. For example, does the rhetoric of a revolutionary determine the content of the "justice" he demands? In fact, Livingston's two kinds of arguments, the historical and the metaphysical, often were blended. The political Puritans, for example, sought to recover the ancient rights of Englishmen; in addition, some said that those rights were theirs by natural or divine law. The lawyers talked their own language, and the philosophers theirs; so too the divines. In sum, the fact that Hume holds metaphysicians in scorn may have no consequences for common life, as Livingston recognizes when he says that it is possible for those who formally are conservatives to be liberals in substance. This means that Livingston's second criterion is the one that counts. Hume, I submit, fails both branches of that criterion. He thinks like a philosopher, not like a lawyer. He is ready, eager, to put prejudices, precedents, and customs to the test. Are the old beliefs true? Are the old customs best?

## **The Knowledge of the Wise**

When Hume refutes the pretence of "reason alone" to prescribe moral rules, he is not dismissing reason; rather, he is restricting it to its proper role. Reason alone is insufficient because it neglects the passions. The advocates of reason alone, forgetting that reason is concerned with means, not ends, leave out love of families and friends, ambition, avarice, the effects of sympathy, the effects of habit and familiarity, even the sense of moral obligation. They present us with individuals, with units, but each of their individuals is a blank. They do not tell us what those individuals find good. Hume analyzes the nature of real individuals in "Of the Passions," and the shape of his ideal society follows directly from what he tells us therein. The great cause of conflict is the short supply of external goods. Reason provided the answer: private property. But often the external goods are not distributed in the most useful way compatible with private property. Again, reason showed the answer: trade by barter or contract. Similarly, in large societies, reason showed that government is the appropriate means for assuring that justice is respected. About the

institutions of civil society Hume is neither vague nor tentative. He calls those institutions "artificial," not because they are arbitrary, but because they are means (utilities) devised by reason; unlike the family, for example, they are not good *per se*.

Livingston says that the main discovery of Hume's critique of philosophy is that philosophy is parasitic upon "an unreflective order variously described as habit, custom, convention, prejudice, and common life." Here Livingston tells only half the story. It is true that mankind did not wait for philosophers to prescribe property, contract, and government any more than peasants waited for agronomists to tell them how to plant corn, or shipbuilders for Huygens. But it is also true that many of the beliefs on which the "bulk of mankind," the vulgar, base their practices and customs are erroneous; those beliefs do not conform to the "authentic operations of the understanding" (T 150). Error is far commoner in some subjects than in others. For example, knowledge of what works best in hunting is far easier to achieve than knowledge of what works best in agriculture, "a profession, which, of all mechanical employments, requires the most reflection and experience."<sup>3</sup> Again, it is far easier for rulers to learn how to maintain domestic peace than to discover the best economic policy:

The more simple ideas of order and equity are sufficient to guide a legislator in every thing that regards the internal administration of justice: But the principles of commerce are much more complicated, and require long experience and deep reflection to be well understood in any state. (HE III 74)

The function of moral philosophy, Hume tells us, is to improve our understanding of moral subjects, thus entertaining, instructing and reforming mankind.<sup>4</sup> Let us recall what Hume means by the experimental method. When we say that we understand some physical or moral reality, we mean, says Hume, that we know its causes and/or its effects. If we say that some result or outcome came about by chance we are admitting our ignorance as to the cause(s) of that result or outcome. All understanding has its origin in experience and reflection; even young children and animals use the experimental method. It is the only source of valid beliefs and opinions. How then do we explain the many false beliefs which bedevil subjects such as agriculture, economics, and politics? Some errors have their origin in "metaphysical" thinking. But others have their origin in carelessness, as when we jump to conclusions, permit our thinking to be corrupted by prejudices, or are misformed by bad education. Still others originate in indolence, in a lazy or complacent reliance on conventional wisdom, or in contempt for abstruse thought. Hume contends that the experimental method ought to be used to screen out old errors and to achieve new knowledge.

One reason for trying to understand the moral subjects is to be able to predict the consequences of policies, laws, and institutions, and thus to be able to adopt the best. But here, Hume tells us, we must not be unrealistic. As long as we stick to subjects in which one person or a few do not determine or distort the results we can predict with confidence if we really understand the subject. For example, we can predict the effects of a trade monopoly or an oligarchic constitution. But we cannot expect to predict with any great accuracy about battles or diplomacy, matters in which particular causes—the ability, humour, or attitude of one person or a few—can be decisive. Introducing his explanation of the rise of the arts and sciences, Hume writes:

What depends upon a few persons is, in a great measure, to be ascribed to chance, or secret and unknown causes: What arises from a great number, may often be accounted for by determinate and known causes.<sup>5</sup>

While lawyers are chiefly concerned with rights, the moral philosopher is chiefly concerned to discover what policies, laws, and institutions will be in the public interest. In "Of Commerce" we are told:

[I]t is certain, that general principles, if just and sound, must always prevail in the general course of things, though they may fail in particular cases; and it is the chief business of philosophers to regard the general course of things. I may add, that it is also the chief business of politicians; especially in the domestic government of the state, where the public good, which is, or ought to be their object, depends on the concurrence of a multitude of causes; not, as in foreign politics, on accidents and chances, and the caprices of a few persons. (*Essays* 254, 255)

Hume's philosophers do not aspire to be kings; rather, they try to teach the legislators. They try to improve the thinking of the great and powerful. Their abstruse reasoning

may frequently be of use in the conduct of public affairs. At least, it must be owned, that nothing can be of more use than to improve, by practice, the method of reasoning on these [economic and political] subjects, which of all others are the most important; though they are commonly treated in the loosest and most careless manner. (*Essays* 304)

## The Artificiality of Rights

Hume is primarily a political philosopher. His analysis of morality deals mainly with the artificial virtues, those virtues that maintain civil society. He sees property and government as the two great public institutions. In "Of the First Principles of Government" he asks why the few who rule are obeyed by the many. All governments, he answers, are founded ultimately upon opinion. There is opinion of *right to property*. Do the rich inevitably control all non-violent governments, as Harrington said? Then there is opinion of *right to power*. That this is a major cause of obedience can easily be seen by

observing the attachment which all nations have to their ancient government, and even to those names, which have had the sanction of antiquity. Antiquity always begets the opinion of right; and whatever disadvantageous sentiments we may entertain of mankind, they are always found to be prodigal both of blood and treasure in the maintenance of public justice. (*Essays* 33)

In other words, they will fight to maintain the established regime. The third cause of obedience is opinion of interest, by which Hume means "the sense of the general advantage which is reaped from government; together with the persuasion, that the particular government, which is established, is equally advantageous with any other that could easily be settled" (*Essays* 33). By "opinion of interest" Hume means, not opinion of self interest, but opinion that the government is good for the public. These three—property, legitimacy, and public interest—are the main elements of Hume's political philosophy.

Property, as we have noticed, has its origin in utility. Reason shows that it is good (useful); then, through the operation of the judicious spectator, who represents the public, the rule that property is to be respected becomes a moral rule. The same is true of governmental authority. The passionate side of human nature comes into play in fixing the rules by which particular persons acquire title (right) to particular external goods, and also the rules that appoint kings; thus the great importance of antiquity (or long possession).

Rights to property and rights to power alike rest ultimately on public utility. Hume is explicit:

[I]t is evident, that, when the execution of justice would be attended with very pernicious consequences, that virtue [justice] must be suspended, and give place to public utility, in such extraordinary and such pressing emergencies. The maxim, *fiat Justitia & ruat Coelum*, let justice be performed, though the universe be destroyed, is apparently [obviously] false, and by sacrificing the end to the means, shews a preposterous idea of the subordination of duties....The case is the same with the duty of allegiance; and common sense teaches us, that,

as government binds us to obedience only on account of its tendency to public utility, that duty must always, in extraordinary cases, when public ruin would evidently attend obedience, yield to the primary and original obligation. *Salus populi suprema Lex*, the safety of the people is the supreme law. (*Essays* 489)

Hume assumes (on the basis of high probability) that instances when property rights will have to be set aside in the name of public interest will rarely arise. In contrast, kings who do grave harm to the public are to be sacked regardless of their title. Why the difference? First, there are many proprietors, but only one king. Second, proprietors do not even have to try to understand the public interest; only let each strive for his self-interest within the rules and the public will benefit. In contrast, the king's interest and the public's are the same, even although kings often forget that they are servants of the public.

It is important to notice that present possession does not give title to economic goods in an established society; if it did, property would have no meaning. In the case of governmental power, however, no title (e.g., right by inheritance) is sufficient to warrant resistance to the present possessor of the throne even if he came to it by violence. This fundamental difference—between thrones and armchairs, for example—makes it clear that morally all rulers are basically servants of the people. It really doesn't matter all that much who occupies the throne provided he/she is doing a tolerably good job.

No king's title is indefeasible. In fact, on resistance there is little substantive difference between Hume and Locke. While Locke's revolutionary is a lawyer arguing that the king has broken his contract, Hume's revolutionary thinks that the conditional nature of the king's employment is obvious to any wise person. Locke and Hume are alike also in that both insist that only serious and continuing abuse of power warrants resistance. (The main difference is over dissemination of the idea that resistance sometimes is desirable.)

Hume's doctrine that all governmental authority comes from below and has its ultimate basis in public utility must have seemed dangerously republican to Burke. Hume had stripped kings, the nobility, even the clergy, of their magnificent clothes. Surely, the age of calculators and economists had supplanted the age of chivalry and religion!

But for Hume there is more to right than utility. The way the human imagination operates has to be taken into account when we seek to explain either the rules for the allotment of external goods or the rules that designate legitimate rulers. The imagination is conservative; it is most comfortable with the usual, the customary, the familiar, the established, the old. Somehow it seems natural to obey the man or family long in power. It seems natural for the king's son to follow him on the throne. After a few years even a usurper or conqueror comes to be regarded as the rightful ruler. And it seems natural for

the children to inherit their parents' estates. That to which the imagination has become accustomed is found legitimate. Clearly, all is well as long as opinion of right coincides with opinion of public interest.

At this point we must focus on Hume's distinction between the vulgar and the wise. The vulgar are enslaved to old beliefs and customs. In contrast, the wise know how the understanding works, and strive for accurate knowledge about causes and effects. They know how prejudices, national presuppositions, superficial judgements, and the like give rise to false beliefs. They know that all the institutions and laws of civil society have their ultimate basis in utility. They see that rights make for order and tranquillity. Also, they appreciate that "the bulk of mankind," the vulgar, respect rights, not because they understand their purpose, but chiefly because of custom and education. But at the same time the wise may see that particular old laws, institutions, and policies are far from the most efficient means to promote the public interest. When considering reforms—to bring the right closer to the good—the wise remember, with Justinian, that because custom avails much to assure observance of law, reforms should not be undertaken unless the good to be achieved compensates for the erosion of obedience entailed by change.

### Reforming the Inherited Constitution

Hume believed that in his own day the time was ripe for the assiduous application of the experimental method to moral subjects. The principles of civil society could be discovered and enunciated. In addition, the major deficiencies in existing institutions, laws, and policies could be indicated. Accordingly, as soon as he had completed the *Treatise*, he plunged into the waters of political controversy, then boiling furiously. For upwards of 15 years the Patriots had been attacking the Prime Minister, Sir Robert Walpole. Their main charge was that by bribery and corruption he was robbing Parliament of its independence, thus subverting the best constitution in the world.

In 1739 John Campbell, the second Duke of Argyll, broke with Walpole and with his own brother, Archibald Campbell, Earl of Islay, a loyal supporter of Walpole, thus dividing the Argathelians, the dominant party in Scotland. This division was crucial; it was highly probable that the Scottish constituencies would determine Walpole's fate. The battle was hard fought during the period leading up to the elections, in May and June, 1741, and was continued at Westminster when the new Parliament met late in the autumn. After weeks of parliamentary strife, Walpole was forced to resign, early in February, 1742. Two of Hume's closest friends, Archibald Stewart and James Oswald, belonged to "the Duke of Argyll's Gang."

In June or July 1741, Hume published at Edinburgh his first volume of essays; seven of those essays dealt with contemporary politics. The second volume, published a few months later, contained one political essay, "A

Character of Sir Robert Walpole." All those eight essays deal with the Patriotic (or Country) charge against Walpole, and with the Walpolean defence, but do so indirectly, in the context of general political science. Hume agreed with Argyll, Bolingbroke, et al. that things were far from healthy at Westminster, but unlike them he did not see Walpole as the villain. He wasn't blinded by English boasting about "the matchless constitution"; in fact, the root cause of the trouble, he found, was the constitution, not Walpole. The product of incremental change over many centuries, the English constitution was seriously defective. Probably it contained the seeds of its own destruction.

The need for a constitution, Hume found, was not appreciated in barbarous monarchies because enlightening experience was not afforded there; rather, that truth was learned in the republics, where the citizens had the political power in their own hands. Because of conflicting interests among groups of citizens, it became obvious that standing rules governing the exercise of political power were required. Consequently, the citizens created constitutions.

The establishment of constitutions led the republics to a second major advance in civilization. Because power could be exercised only by the established process, the republican governments found it necessary to govern by general laws. Thus the rule of men was replaced by the rule of law. No early monarchy was capable of this innovation, an advance without which further civilization would have been impossible. Where there are standing laws to protect "the lives and properties of the citizens, to exempt one man from the dominion of another; and to protect every one against the violence and tyranny of his fellow-citizens" it is possible for advances to be made in the arts and sciences. There

the sciences may raise their heads and flourish: But never can have being amidst such a scene of oppression and slavery, as always results from barbarous monarchies, where the people alone are restrained by the authority of the magistrates, and the magistrates are not restrained by any law or statute. (*Essays* 118)

Incidentally, Englishmen should not see this as confirmation of their inveterate belief that because France is an absolute monarchy all Frenchmen are slaves. Once the rule-of-law technique had been discovered in republics, many monarchies, including France, adopted it.

By instituting a good constitution a people deliberately makes provision for its future; the more chance, *Fortuna*, the unpredictable, can be reduced, the better.

Legislators, therefore, ought not to trust the future government of a state entirely to chance, but ought to provide a system of laws to

regulate the administration of public affairs to the latest posterity. Effects will always correspond to causes; and wise regulations in any commonwealth are the most valuable legacy that can be left to future ages. (*Essays* 24)

In addition, a constitution ought to be so contrived as to make all the knaves serve the public. It is a maxim of political science that in politics “every man ought to be supposed a *knave*, and to have no other end, in all his actions, than private interest.” In a good constitution the separate interest of each “order of men,” by the skilful division of power, is made to concur with the public interest (*Essays* 42–43). Absolute monarchy has the merit that the king, who occupies a place high above the competing orders of men, is not one of the knaves: his true interest and that of the public are the same. But what of the succession? If the kings of a country are elected, selfish interests will try to capture the throne at every election; consequently, it is a truth “eternal and immutable” that an hereditary monarchy is superior to an elective monarchy. Yet hereditary monarchy has its own typical defect: the competence and good character of the heirs to the throne cannot be guaranteed; thus chance is inherent in a hereditary monarchy. So we turn to republics.

Political science shows us that there are both bad and good republics. In the bad ones power is lodged with one parcel of knaves, or perhaps a coalition, thus assuring that public interest will be sacrificed to private. For this reason, a poorly contrived republic is even worse than an absolute monarchy. In contrast, a good constitution prevents such an abuse of authority. A good republican constitution is best of all: it excludes both chance and abuse of power.

All absolute governments must very much depend on the administration; and this is one of the great inconveniences attending that form of government. But a republican and free government would be an obvious absurdity, if the particular checks and controuls, provided by the constitution, had really no influence, and made it not the interest, even of bad men, to act for the public good. Such is the intention of these forms of government, and such is their real effect, where they are wisely constituted: As on the other hand, they are the source of all disorder, and the blackest crimes, where either skill or honesty has been wanting in their original frame and instruction.

So great is the force of laws, and of particular forms of government, and so little dependence have they on the humours and tempers of men, that consequences almost as general and certain may sometimes be deduced from them, as any which the mathematical sciences afford us. (*Essays* 15–16)

By reflecting on history (experience) Hume had worked out his political science. He had equipped himself with standards, rules, and axioms by which to evaluate the constitution (EHU 83–84).<sup>6</sup> Far from having to rely upon what he found established and revered, he was able to examine the British political scene with a critical eye.

How well does the English constitution, a traditional constitution, measure up? Because the Crown does not have the power to raise revenue, but depends on Parliament for money, the strictest attention is given to the rule of law. With Parliament's protection and blessing, the press watches the government for unlawful acts like so many cats. The result is great liberty of speech and action for the population, far more than in most republics, where the legislatures have no reason to regard the executive government with suspicion.

However, the constitution has serious, perhaps fatal, defects. First, the system can be made to work only by bribery, at election time and in Parliament. Given the fact that the Crown cannot pay its bills without the cooperation of both Houses, the ministers must subvert the independence of Parliament with places, pensions, and secret payments. Don't blame Walpole; he's only trying to make the system work.

Second, because it is a mixed constitution—partly monarchical and partly republican—it fosters parties of principle: on the one hand is the Crown; on the other, the House of Commons, a body which the Opposition avers would be the champion of liberty if not suborned. By casting authority as the enemy of liberty, the constitution makes for division and strife.

Finally, and even worse, the constitution probably lacks permanence. It is highly susceptible to incremental change brought on by shifts in wealth, by changes in the attitude of the people to kings, and by alterations in the nature of government activity. Neither a monarchy nor a republic, it teeters precariously on the saddleboard, and probably will slide down one side or the other, ending up initially with all power in the hands of an oligarchical group, the House of Commons, or those of the king. Of the alternatives, both very bad, the latter would be the better, for under an absolute monarchy there would be at least a possibility that the government would serve the public. In contrast, an absolute House of Commons, which very well might decide that elections are a nuisance, would be sure to govern in its own interest. In fact such a regime would be so "violent" that it soon would be overthrown, with absolute monarchy the ultimate outcome.

Although he saw these great defects, Hume, writing in 1741, did not propose reforms. Instead he hoped that, now that he had shown that the real trouble was the customary constitution, not Walpole, the adversaries would cool down, let Walpole depart in peace, and agree not to put too much stress on the highly defective system.

Walpole's retirement did not inaugurate the great Patriotic era promised by his enemies. On the contrary, it had the effect of liberating the king, George II, who, with Carteret as his favourite minister, proceeded to establish his own foreign policy, a Hanoverian, not a British, "blue water" foreign policy. Hume's friends, especially Oswald and William Mure, the latter elected to the House of Commons in a by-election in 1742, were among the outraged Members. In 1744 the Old Corps ministers, Walpole's former colleagues, bearded the king, forcing him to dismiss Carteret and to take in "New Ally" ministers. That, however, was not enough: the king continued to turn to Carteret for advice, and to ignore Newcastle, Pelham, Islay, and the other ministers. Consequently, the government was in disarray when the 'Forty-five took place. Finally, in February, 1746, the ministers, by mass resignation, drove home to the king the fact that Carteret really had to go; unless the king relied exclusively on his ministers, he would have none. With all this and more as background, it isn't surprising that Hume continued to fret about the constitution.

In 1752 he published "Idea of a Perfect Commonwealth." This essay reveals the tension between his conviction that a well-contrived republican constitution would be best and his recognition that the existing constitution had widespread and strong support. He reconciles the two as follows:

[W]ho knows, if this controversy [about the best form of government] were fixed by the universal consent of the wise and learned, but, in some future age, an opportunity might be afforded of reducing the theory to practice, either by a dissolution of some old government, or by the combination of men to form a new one, in some distant part of the world? In all cases, it must be advantageous to know what is most perfect in the kind, that we may be able to bring any real constitution or form of government as near it as possible, by such gentle alterations and innovations as may not give too great disturbance to society. (*Essays* 513–514)

Hume's political essays are full of general reasoning as well as examples drawn from classical history; yet almost always, often after much circling and hovering, he makes observations or recommendations of immediate practical relevance. The essay, "Idea of a Perfect Commonwealth," shows his technique. After taking us through the details of his well-contrived republic, and having propounded various truths of political science, he concludes by accepting the fact that it would be imprudent to try to transform the British constitution into a perfect republic. He then asks how it can be made as good a limited monarchy as possible.

Hume recommends two fundamental changes, both highly republican. The House of Commons should cease to be a body which represents corporate

entities such as the City of London, the universities of Oxford and Cambridge, the English boroughs, the Scottish burghs, and the counties, with their various franchises and great differences in population. It should be a body which represents the people. For electoral purposes the country should be divided into constituencies, each containing roughly the same number of citizens. All men who have attained the age of majority should be entitled to vote if they passed a high property test. (This reform, based on "the republican constitution" of 1653, would have made the House of Commons a body which represented the people, as does the United States House of Representatives, rather than the member bodies, as does the United States Senate.<sup>7</sup>) One result of this change would have been to reduce the capacity of "the great" to bribe and intimidate the electors. Hume's second reform was equally shocking to conservatives. The English nobility were to lose their right to sit as peers of Parliament. The sixteen Scottish representative peers were to go. Even the bishops were to go! (The Scots peers had come to be regarded as ministerial lackeys. Writing in 1733, James Erskine, found that "our peerage had...fallen into universal Contempt for their low and slavish Compliance to whatever was in power, and even a B[ishop] was not now a Name of more Reproach than a Scotch Lord.") All were to be replaced by peers selected on the basis of something like merit. Such a House would be strong and energetic enough to rein in the government, and to moderate the impetuosity of the Commons.

Hume does not advocate anything like a democracy. Participatory democracy is tumultuous. As for the suffrage, there is nothing to be gained, and much to be lost, by giving the vote to the labouring poor. Busy making a living, they know nothing about governance; they are susceptible to the sway of "the great," of demagogues, and of the press. Moreover, there is no need for a wide suffrage. The function of "the people" in a good constitution is to prevent the politicians, be they kings, lords, members of the House of Commons, or senators in the perfect commonwealth, from acting as the knaves they are; and this can be done by a House that represents a relatively small "people."

Hume saw the British constitution as fundamentally defective; yet he did not propose that it be razed to make way for a well-contrived republic. Instead, he recommended reforms, leaving the monarchy as the one element not replaced. He believed that an entirely new constitution would be far better if it could be achieved, but he opted for reform. He did so, not because he lacked confidence in his knowledge, but because of the conservatism of the multitude. Incidentally, recognition of the conservatism of the multitude was not new: Aristotle (*Politics*, 1296a) warns reformers of it, as does Machiavelli (*The Prince*, chap. 6).

For Hume, moral philosophy is not only for entertainment; it is to instruct and reform mankind. Where it is possible and prudent to do so, a wise legislator reaches forth to control the future by establishing a sound

constitution. Otherwise, he or she undertakes reforms, perhaps radical reforms, if to do so is both desirable and prudent.

### Sound Economic Policy

Much of what Hume writes about the British constitution is intertwined with his political science. In contrast, what he writes about economic policy rests on the institutions of property and contract as a house upon a foundation. Why this difference? The rights of proprietors and rulers alike are conditional, but while there is much to be said about forms of government and about rules of succession, there is relatively little to be said about the rights of property. Hume states that property rights are not absolute, but assumes that those rights will be set aside only in extraordinary circumstances, for example, during a siege or a famine.

He begins the *Political Discourses* with a justification. Although the multitude dismiss general reasoning about economics as “metaphysics,” this is a subject in which sound understanding is attainable. For here our goal is true generalizations, not forecasts about particular transactions. Moreover, not only is accurate economic theory possible, but such theory bears directly upon the public interest. After this preamble, Hume proceeds to show how mistaken are most of the prevailing beliefs about economics. The pursuit of private gain and luxury, made possible by manufacturing and commerce, does not weaken the public; rather, it strengthens and improves it in many ways. The squirely notion than an old-fashioned rural economy—plain living, fox hunting, and on Sunday a good sermon on divinely-ordained social subordination—is but romance. The pursuit of private gain and luxury within limits is good: it fosters the mechanical and liberal arts; it promotes the sciences; it increases the humanity of the populace; it makes them happier; it spreads the fruits of labour so that every person may be able to acquire “all the necessaries, and many of the conveniences of life”; it makes for the rule of law; it reduces the sway of grandees; it strengthens the nation.

Consider the conventional wisdom about the nature of money, the causes of high interest rates, the need for a favourable balance of trade, and taxation. On every major topic the old beliefs are wrong. Consider, also, the mercantile article of faith that wars should be waged to acquire colonies. The result of that policy is a crushing debt on the public, a debt contracted for the benefit of monopolists, purveyors, and navy towns. As early as 1752, shortly after the government had been denounced for the Peace of Aix-la-Chapelle, Hume laid down the anti-imperialist principles which later led him to advocate abandonment of the war against the American revolutionaries. He wrote in 1775,

[If I had been in the Cabinet] I should have said, that this Measure only anticipates the necessary Course of Events a Few Years; that a

forced and every day more precarious Monopoly of about 6 or 700,000 Pounds a year of Manufactures, was not worth contending for; that we should preserve the greater part of this Trade even if the Ports of America were open to all Nations; that it was very likely, in our method of proceeding, that we should be disappointed in our Scheme of conquering the Colonies; and that we ought to think beforehand how we were to govern them, after they were conquer'd.<sup>8</sup>

Livingston's interpretation, if I read him correctly, leaves the wise, who apply the experimental method to politics, out of the picture. He emphasizes process at the expense of content; moreover, his process is more judicial than legislative. "We must not depart from tradition," says his conservative reformer. "What precedents can be adduced to legitimize this decision?" But as we have seen, Hume emphasizes content. Moreover, the Parliament has the constitutional right to make major changes. It should do so in the light of a sound understanding of what the public interest requires, bearing in mind, of course, that changes should not be so radical as to destabilize the multitude. In the case of France, the king has similar power, and he should use it. It is revealing to remember that as early as 1741 Hume saw the need for financial reform in France:

If a prince or minister...should arise, endowed with sufficient discernment to know his own and the public interest, and with sufficient force of mind to break through ancient customs, we might expect to see these [revenue] abuses remedied;... (*Essays* 95)

### The Wilkes Affair

In all governments, even "free governments," Hume explains in the late essay, "Of the Origin of Government," there is "a perpetual intestine struggle, open or secret, between AUTHORITY and LIBERTY." Because liberty is a matter of degree while authority is essential to liberty, the latter has the better *prima facie* case for preference. Yet, he allows, we must recognize that while authority always will support itself, there is a real danger that liberty will be lost by reason of public apathy or ignorance. In 1768–1770 Hume had had occasion to ponder the danger ignorance and apathy can pose to liberty.

The turmoil of the first decade of George III's reign was caused in large part by chance and faction, both explicable in terms of the customary constitution: at the start of his reign the young king clung to Bute, a personal favourite and a Scot; Pitt was incapable of serving long in a cabinet he did not control; Walpole's Old Corps, the backbone of ministries since 1725, was gone. In 1763 the Bute government made the Treaty of Paris, a peace which angered those who sought the complete destruction of France and Spain as oceanic trading powers. Subsequently, the scandalous wrong done by the new

king in elevating Bute and his Scotch tail to offices which by right belonged to Pitt and Englishmen—a wrong which never would have been perpetrated if the king's mother had not been far too close to Bute—was fully exposed by John Wilkes, M.P., whose journal, the *North Briton*, was financed by Pitt's brother-in-law, Lord Temple. The Scots had robbed Pitt of his rightful place, and England of the fruits of the great Patriot's victories. When, in issue Number 45, the king was attacked for uttering falsehoods, the Grenville government, which two weeks earlier had taken over from Bute, obtained a general warrant for the arrest of unnamed persons, the author and the publishers of Number 45. Wilkes was taken into custody, but was released by the court because of his parliamentary immunity. Mr. Justice Pratt, a friend of Pitt, declared general warrants illegal. Late in 1763, with complex legal questions pending, it was revealed that Wilkes had written a salacious piece, "An Essay of Woman," thus exposing himself to prosecution. He fled to the continent.

In 1768, bored and threatened with imprisonment for debt, Wilkes returned to England and sought election in the City of London. Unsuccessful there, he presented himself, the paladin of English liberty, to the electors of Middlesex, an electorate suffering from recession and unemployment, and thoroughly angry with a government still controlled, it was said, by Bute and the king's mother.<sup>9</sup> He was elected. Immediately thereafter, expecting a pardon, he waived his parliamentary immunity and submitted himself to trial on the old charge of obscene libel. But after he had been sentenced, no pardon was proffered. Thereupon he began an anti-government campaign, conducted from prison. Early in 1769 the House of Commons expelled him. Middlesex reelected him; the House expelled him; Middlesex reelected him; the House expelled him. He headed the poll in the third by-election, but the House awarded the seat to his opponent on the ground that Wilkes had been ineligible for election. Clearly, the Grafton government had a tar baby on its hands. Delighted, the Pittites and Rockinghams roared with indignation. Pitt (now Earl of Chatham) rumbled; a major eruption was anticipated. Burke traced the discontents of the times to the secret influence of royal favourites. Finally, in 1770 a weak but adroit politician, Lord North, succeeded in forming a stable government. In the aftermath of the Affair the courts decided that the Houses could not arrest journalists for violating the ancient right of Parliament to sit in secret.

Historian turned cook, Hume wrote sardonically about the failure of "the best constitution in the world" to protect the liberty of Britons from knaves, demagogues, journalists, factions, and mobs. He wrote to Gilbert Elliot in October 1769:

I am delighted to see the daily and hourly Progress of Madness and Folly and Wickedness in England. The Consummation of these

Qualities are the true Ingredients for making a fine Narrative in History; especially if followed by some signal and ruinous Convulsion, as I hope will soon be the Case with that pernicious People. He must be a very bad Cook indeed, that cannot make a palatable Dish from the whole. (HL II 208–209)

A few days later he reported to William Strahan that he foresaw a truly glorious future:

a public Bankruptcy, the total Revolt of America, the Expulsion of the English from the East Indies, the Diminution of London to less than a half, and the Restoration of the Government to the King, Nobility, and Gentry of this Realm. (HL II 210)<sup>10</sup>

To top off these great blessings, English rhetoric would be wonderfully enriched by the declamations on liberty uttered by Patriots departing by way of Tyburn.

Livingston says that Hume's reaction to the Wilkes Affair shows that he would have joined Burke in exposing the French Revolution for what it was, the product of "metaphysics." Confronted by a choice between "the narrative order" and "foundational liberalism"—Livingston's argument excludes any other choice—Hume would have stood forth a conservative. Although Wilkes pleaded the rights of an Englishman, the process by which historic rights became "the rights of man" was underway, and Hume detected the intrusion of rationalistic metaphysics into British politics (HPCL 270, 308).

In contrast, I see Hume's reaction as that of a disappointed Scot and a neglected reformer. He branded "the mad and wicked rage against the Scots" as barbarism. Why barbarism? Years earlier Hume had shown that the English constitution fosters systematic hostility to the government, no specific grievances being required. Behind a screen of Patriotism, one expression of that hostility, Pitt had gained power, a pension, and an earldom. Now Wilkes was on the ramparts defending English liberty against the king and the Scots. Years earlier Hume had shown that inherited monarchy leaves chance unfettered; now the obstinate young king was providing a surfeit of evidence. It came as no surprise to Hume that the unreformed Parliament gave power to packs of grantees, some far greater adepts at Newmarket than at Westminster. The debt Pitt (Chatham) had run up executing an imperialist policy would imperil the nation long after the ministers had lost America. All this Hume traced to the factiousness, the prejudices, the shallow understanding of the English—in a word, their barbarism. That Wilkes, Chatham, Burke, and many others blamed all the troubles of the reign on the king's friends, who included Oswald and Gilbert Elliot as well as William Mure's friend, Bute's brother, James Stuart Mackenzie, was disheartening, but predictable: Hume was

thoroughly familiar with the vulgar Whig strategy of blaming villains, but never “the matchless English constitution,” for every botch and disaster.

Paradoxically, Wilkes showed how right Hume was. His antics revealed dramatically the deficiencies of the constitution, thus starting the long march to reform. The Society of Supporters of the Bill of Rights developed an extensive reform program in 1769–1770. (Burke showed that their reforms were unnecessary; all England needed was a Rockingham government!) Then in 1779–1780 came the Yorkshire Congress and the Associations, to be followed ten years later by the Society for Constitutional Information. (Burke dismissed the Society; their ideas were foreign to the true, old English policy of relying on inheritance.)

### **Managing Popular Religion**

In eighteenth century Scotland the question of how to cope with religion was far from academic. In addition to the battles between fundamentalism and moderation, there was the problem of controlling the Episcopalian clergy. The latter had been expelled from their livings after the Episcopalian structure was supplanted by the Presbyterian in 1690; thereafter, as Hume says, Episcopalian chapels were seats of Jacobitism. Laws were enacted after the 'Fifteen to restrain them; after the 'Forty-five these were made far more stringent. Moreover, Hume saw in Ireland the diabolic effects of sectarian animosity:

The country in EUROPE in which I have observed the factions to be most violent, and party-hatred the strongest, is IRELAND. This goes so far as to cut off even the most common intercourse of civilities between the Protestants and Catholics. Their cruel insurrections and the severe revenges which they have taken of each other, are the causes of this mutual ill will, which is the chief source of disorder, poverty, and depopulation of that country. (*Essays* 640)

As analyzed by Hume, civil society is primarily an economic relationship, and the domestic task of government is to maintain the institutions fundamental to a healthy market economy. Alas, bad religion can wreck civil society. Superstition makes priests a power in the land. Enthusiasm is madness epidemic. What can be done? Hume has two basic answers. First, the government ought to establish a church, as Harrington had recommended. He found the Church of England far superior in its rites to the Church of Scotland; yet for his perfect commonwealth he recommends county churches supervised by the local civil authorities; this is consistent with the localized republicanism of the commonwealth. Second, the government ought to practice toleration. To persecute or penalize nonconformists in the old way is to reveal a profound

misunderstanding, for penalties and persecution cause such sects to flourish.

Conservative political theories usually had a strong religious component. Burke, for example, says: "We know, and, what is better, we feel inwardly, that religion is the basis of civil society,...." When David Miller labels Hume a conservative he finds it necessary to ward off misapprehension by telling us that in Hume "a revolutionary philosophy is combined with an establishment ideology to yield what is probably the best example we have of a secular and sceptical conservative political theory." My submission is that Hume regards superstition and enthusiasm as characteristics of the vulgar mind, characteristics which he wants to see controlled by an appropriate religious establishment and by the sound education of youth.

### The Prudence of the Wise

Hume tells us that reason cannot reach beyond nature. Also, he tells us that the necessity to which we refer when we talk about physical or moral causes is not to be mistaken for demonstrative necessity. Having thus defined both the bounds and the method of human understanding, he urges us to test our beliefs assiduously. We are to be sceptical. Contrary to Livingston, the scepticism recommended by Hume requires, not deference to prevailing prejudices and customs, but a highly critical attitude to them. We are not to try to adopt Cartesian scepticism, which, if it were possible, as it is not, would prevent any reasoning from bringing us to "a state of assurance and conviction upon any subject." Rather, we are to question prevailing beliefs, for prejudice is destructive of sound judgment, and perverts all operations of the intellectual faculties (*Essays* 240). Such a sceptical attitude is

a necessary preparative to the study of philosophy, by preserving a proper impartiality in our judgements, and weaning our mind from all those prejudices, which we may have imbibed from education or rash opinion. (EHU 150)

Newton had it right:

Cautious in admitting no principles but such as were founded on experiment; but resolute to adopt every such principle, however new or unusual. (HE VI 542)

Hume's philosophers strive to acquire knowledge, thus enabling legislators to provide for the future. Unlike Minerva's owl, they are up at daybreak helping in the struggle against *Fortuna*. But they know that the multitude accept the prejudices and customs in which they have been steeped. Should the wise advocate that established right be changed whenever the public interest would be better served by different laws and institutions or new

policies? Very early Hume saw that conflicts between the right and the good are inevitable. His wise man weighs several things: the status (authority) of the potential innovator; the merits of the status quo; how much better the reformed order would be; the damage the change would do to social stability; the strength of the vested interests; the danger of strife. In "Of the Original Contract" Hume makes the point that subjects should take the maxim, "Obey the government," as their prime rule; if they do not, only force will command obedience. By definition, positive rights can be changed legitimately only by the legislature. Moreover, even the legislature ought to take great care to avoid shattering the cake of custom.

Some innovations must necessarily have place in every human institution, and it is happy where the enlightened genius of the age give these a direction to the side of reason, liberty, and justice: but violent innovations no individual is entitled to make: they are even dangerous to be attempted by the Legislature....<sup>10</sup>

Hume's warning to the legislature against violent innovation does not follow from scepticism: the principles of economics and governance can be known. Rather, his warning follows from the fact that the credulous multitude, lacking the science for which scepticism is a necessary preparative, is governed "by authority, not reason, and never attributing authority to any thing that has not the recommendation of antiquity" (*Essays* 512). For the multitude the old and familiar is right, a truth Hume recognizes in his comment on education in the *Treatise* (116–117), a truth he hammers home repeatedly in his later writings. *The History of England* is replete with recognition of the power of prejudice and custom over the multitude; for example, Hume reports that duelling, part of "the ancient barbarous jurisprudence," was still practiced in his own day "notwithstanding the severity of law and authority of reason, such is the prevailing force of custom ..." (HE III 169).

The view that Hume's epistemology entails conservatism may arise in part from the fact that he uses the word "custom" with different meanings in different contexts. In one passage in the *Enquiry Concerning Human Understanding* he concludes that, 'Custom, then, is the great guide of human life' (EHU 44). And in the *Abstract*: "Tis not, therefore, reason, which is the guide of life, but custom" (T 652). In another passage in the *Enquiry* our attention is directed to the differences between the several national characters and cultures:

We learn thence the great force of custom and education, which mould the human mind from its infancy and form it into a fixed and established character. (EHU 85–86)

It is precisely because of the power of custom that Hume deplors thoughtless reliance on prejudice and habit and wants legislators to make provision for the future. Philosophers are not to forget

that general virtue and good morals in a state...can never arise from the most refined precepts of philosophy, or even the severest injunctions of religion; but must proceed entirely from the virtuous education of youth, the effect of wise laws and institutions. (*Essays* 55)

Deeply entrenched ranks or orders always have some positive or customary law on their side; consequently, they can argue that they are in the right.<sup>11</sup> And argument from right is wonderfully persuasive, especially with the multitude: it preempts the assumption, thus imposing the burden of proof on the opposition. Accordingly, reformers and protesters often dress their complaints in cloaks of higher right. Even Hume does this when he wishes to emphasize the great importance of good government. He tells us that certain articles of Magna Carta provide for "the equal distribution of justice, and free enjoyment of property; the great objects for which political society was at first founded by men, which the people have a perpetual and unalienable right to recal, and which no time, nor precedent, nor statute, nor positive institution, ought to deter them from keeping ever uppermost in their thoughts and attention" (HE I 445). Again, he says:

Where a civil law is so perverse as to cross all the interests of society, it loses all its authority, and men judge by the ideas of natural justice, which are conformable to those interests. (EPM 197n)

In the *Treatise* (563–564) we are told that the people have an inalienable right of resistance. In yet another place we are told that the system of liberty creates mutual checks on both masters and servants "suitably to the inviolable and eternal laws of reason and equity" (*Essays* 384). And we are told that barriers to international trade are contrary to the will of "the Author of the world" (*Essays* 324).

Livingston attributes to Hume the conservative mentality of "the ignorant multitude." But Hume is a philosopher, a writer of instructive essays and revisionist history. He has concluded that a society based on the system of liberty is best. He thinks that Parliament, the agency of the public interest, ought to realize that system by reforming the constitution, by replacing an imperialist policy with a free-trade policy, by repealing the disabilities of non-conformists, and by recognizing the legislative requirements of manufacturing and commerce. Parliament would do well to bear in mind that Rome's disasters proceeded from "an ill modelled government, and the unlimited extent of conquests" (*Essays* 276). In making those changes it

should always be mindful of the fact that violent innovation is dangerous, even for a legislature.

### Summation

Now that the evidence has been adduced, we can sum up and conclude. Livingston contends that “foundational liberalism” is a form of “metaphysical rebellion” against the narrative order of common life, and labels “conservative” all not guilty of such a “metaphysical rebellion.” This, I submit, spreads the conservative net far too wide, so wide indeed that it is likely to mislead the reader about the history of British social and political thought and about Hume’s role in that history. Hume, I suggest, believed that, assuming sufficient evidence was available, “the experimental method of reasoning” could produce scientific principles, and as a result was quite ready to attack many prevailing notions and customs, notably in economics and politics. Simply to muddle along was to leave the future in the hands of *Fortuna*—as the French were to show. His concern was to reform institutions, law, and policies. True, he did not advocate a new, republican constitution for Great Britain, but this was not because he was sceptical about the validity of his idea; rather it was because he saw the conservatism of the vulgar as an obstacle to the achievement of such a constitution. “Metaphysics” is not the only enemy of wisdom. Another is prejudice, the control of the mind, private or public, by beliefs transmitted unexamined from one generation to another by custom and education.

In “Of the Coalition of Parties” we are told that although the royalists of the early seventeenth century were right “according to the established maxims of lawyers and politicians,” those who sought the good at the expense of the right were justified by the outcome. To the success of the revolutionaries

the kingdom owes its liberty; perhaps its learning, its industry, commerce, and naval power: By them chiefly the ENGLISH name is distinguished among the society of nations, and aspires to a rivalship with that of the freest and most illustrious commonwealths of antiquity. (*Essays* 495)

The revolutionaries challenged the old order of right; they took on all its defenders. It was a near run thing, but with the help of the religious Puritans, they did achieved a new and better order.

Certainly Hume was not a “foundational liberal.” But does this mean that he deferred to the inherited and customary, and so was a conservative? Recognizing that Livingston’s alternatives—“foundational liberalism” and conservatism—fail to accommodate Hume, we fall back to lower but more complex ground, to history. In that context we find that Hume’s multifaceted

effort to change the British mind—on philosophy, religion, ethics, economics, foreign policy, and the constitution—marks him as a leading reformer. Moderate scepticism, that great enemy of deference, had led him to test old beliefs and customs by the experimental method. As a result he pronounced many of those beliefs and customs wanting. The liberal tradition, the tradition in which I enroll Hume, arose as criticism of the old European order: the inherited monarchy, the hereditary nobility, the great entailed estates, the trade and manufacturing monopolies. I have called him a liberal because he anticipated much of the program of the Reform Whigs, later called Liberals, a program which was resisted by the Conservatives.

## NOTES

1 Donald W. Livingston, *Hume's Philosophy of Common Life* (Chicago: The University of Chicago Press, 1984), 339, 340; cited in the text as HPCL.

2 J. G. A. Pocock, *Politics, Language and Time: Essays on Political Thought* (London: Methuen, 1971), 202–232.

3 David Hume, *The History of England from the Invasion of Julius Caesar to The Revolution in 1688* (Indianapolis: Liberty Fund, 1983), III 369; cited in the text as HE.

4 David Hume, *Enquiries Concerning Human Understanding and Concerning the Principles of Morals*, edited by L. A. Selby-Bigge, 3rd ed. revised by P. H. Nidditch (Oxford: Clarendon Press, 1975); cited in the text as EHU or EPM.

5 David Hume, *Essays: Moral, Political, and Literary* (Indianapolis: Liberty Fund, 1985), 112; cited in the text as *Essays*.

6 Hume's insistence on the importance of experience (history) as the basis of political science allies him with Harrington against Hobbes. See Felix Raab, *The English Face of Machiavelli* (London: Routledge & Kegan Paul, 1964), 192–198.

7 *Essays*, 526, 647. In fact Hume's proposal went further towards voter equality than the Instrument of Government of 1653, which has been described as "the most ambitious reform of the electoral system undertaken before 1832." See John Cannon, *Parliamentary Reform, 1640–1832* (Cambridge: Cambridge University Press, 1972), 13–19.

8 *Letters of David Hume*, edited by J. Y. T. Grieg (Oxford: Clarendon Press, 1932), II 300; cited in the text as HL.

9 Wilkes attracted a great deal of support because of general anti-Court hostility. See John Brewer, "English Radicalism in the Age of George III," in *Three British Revolutions: 1641, 1688, 1776*, edited by J. G. A. Pocock (Princeton: Princeton University Press, 1980), 323–367.

10 *Essays*, 477. On natural and violent political causes Hume seems to have been reading Harrington. The latter had written: "Natural force consists in the vigour of principles, and their natural necessary operations." Also: "Unnatural force is an external or adventitious opposition to the vigour of principles and their necessary working, which, from a violation of nature, is called violence"

(*The Political Works of James Harrington*, edited by J. G. A. Pocock [Cambridge: Cambridge University Press, 1977], 164, 834).

11 Livingston tells us (HPCL 310) that the first conservatives in France after the Revolution took the *History of England* and the *Essays* as "founding documents of the Counter-Revolution." Why they misread Hume is evident. In the *History*, Hume had shown that, contrary to bad Whig history, the first two Stuart kings of England had constitutional right on their side.