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NEIL McARTHUR

1. Introduction

Hume uses the adjectives “civilized” and “barbarous” in a variety of ways, and in a variety of contexts. He employs them to describe individuals, societies, historical eras, and forms of government. These various uses are closely related. Hume thinks that cultural and political development are intimately connected, and are mutually dependent. Civilized government goes together with civilized society. A wise ruler cannot emerge before “refinements have taken place” in the society at large and “science [becomes] known in the world.” At the same time, the policy of a monarch who is “ignorant and uninstructed . . . for ever prevents all improvements.”¹

This intimate connection, however, is not an identification. A civilized government is not simply that which produces, or results from, a civilized society. When discussing forms of government, Hume uses the terms “barbarous” and “civilized” consistently and somewhat narrowly, to describe governments that possess certain specific characteristics. It is striking that these characteristics are explicitly divorced from the abilities or characters of the rulers. While a nation requires wise and refined leadership to achieve its civilized status, Hume thinks it is a crucial feature of civilized government that, once established, it depends

entirely on its institutional structure, and not on the talents or intentions of any individual or group.

To understand Hume's distinction between these two kinds of government, it is useful to abstract away from his discussion of more general issues of cultural development, and to lay temporarily aside the causal question of what social and economic conditions are necessary to produce a civilized government. I propose to explain Hume's concepts of barbarous and civilized government just in terms of the institutional characteristics possessed by each. Hume's choice of adjectives is not, of course, accidental. The complex causal questions of how a civilized government comes about, and what is its relation to civilized society, are large and important ones. However, I do not propose to take them up here.²

The crucial feature dividing civilized and barbarous government is their relation to law. In his essay "Of Civil Liberty" Hume says: "It may now be affirmed of civilized monarchies, what was formerly said in praise of republics alone, that they are a government of Laws, not of Men."³ "Barbarous government" are thus "governments of men"—he also calls them governments "of will."⁴ Scholars of Hume's political theory have noted the importance of the rule of law in defining "civilized government."⁵ However, they have not made clear precisely what Hume thinks precisely defines a "government of laws." I submit that such a government must (for Hume) possess three characteristics. It must have:

1. A clear separation between the legislative and magisterial "powers" of the state;
2. A rigid subordination of the magisterial to the legislative power, such that the "discretion" of magistrates is restricted by "general laws";
3. Self-sufficient laws and institutions, such that they are able to operate regardless of the intentions or abilities of individual rulers or office-holders. To this end, a government of laws must possess fixed rules governing the succession of officers, including (in a civilized monarchy) succession to the throne.

Hume thinks specific governments may meet these criteria to varying degrees through time (with regression also possible). His use of the term "civilized government" nevertheless implies that it exists as a distinct, and achievable, ideal. An examination of Hume's theory of civilized government shows his understanding of the rule of law to be more subtle and complex than has previously been acknowledged. Hume moves beyond traditional Whig panegyrics on the rule of law to show how the law must operate if it is to protect people from oppression in the local theatres in which it is most acute. He articulates a theory of "civilized monarchy" that provides a middle path between republican and absolutist theories of government, and that is consistent with his philosophy as a whole.

2. Barbarous Government

In the *Treatise of Human Nature* Hume gives an account of humanity's emergence from the state of nature, and its establishment of government. There he describes "the persons whom we call civil magistrates, kings and their ministers, our governors and rulers" as people who "being indifferent persons to the greatest part of the state, have no interest, or but a remote one, in any act of injustice; and, being satisfied with their present condition, and with their part in society, have an immediate interest in every execution of justice, which is so necessary to the upholding of society."⁶ They are thus empowered to enforce the conventions for the protection of property that people have developed for their collective benefit. Thanks to these people, "men acquire a security against each other's weakness and passion, as well as against their own, and, under the shelter of their governors, begin to taste at ease the sweets of society and mutual assistance."⁷

Hume offers another account of the emergence of government in his essay "Of the Rise and Progress of the Arts and Sciences." This second account, while following the same general lines as the first, is much darker in tone. There he describes the emergence of a ruler he describes as a "barbarous monarch." "In the first ages of the world," he says,

when men are as yet barbarous and ignorant, they seek no farther security against mutual violence and injustice, than the choice of some rulers, few or many, in whom they place an implicit confidence, without providing any security, by laws or political institutions, against the violence and injustice of these rulers.⁸

In the *Treatise*, Hume suggests that such security from the rulers themselves should not be necessary. There he says that because the "observance of justice" becomes "the immediate interest" of the magistrates, "and its violation their more remote[,] These persons, then, are . . . induced to observe those rules in their own conduct."⁹ In "The Rise and Progress," however, Hume takes a markedly different view. As society grows, he says there, the sovereign finds it necessary to "delegate his authority to inferior magistrates, who preserve peace and order in their respective districts."¹⁰ (When Hume speaks of "lesser" or "inferior" magistrates, he has in mind primarily judges of the law courts, though he also considers tax collectors, military generals and "governors of provinces."¹¹) Because the monarch is (at this stage) not a "legislator," he leaves the magistrates to make what Hume calls "summary decisions of causes."¹² "As experience and education have not yet refined the judgments of men to any considerable degree," he says, "the prince, who is himself unrestrained, never dreams of restraining his ministers, but delegates his full authority to every one, whom he sets over any portion of the people."¹³

This delegation of the monarch's "full authority" entails that the people have no more security from the "violence and injustice" of these magistrates than they do from the sovereign himself. Hume gives no indication in this text that the observance of justice is inevitably in the immediate interest of these lesser magistrates, as (according to the *Treatise*) it is supposed to be in that of the sovereign. On the contrary, he suggests that violence and injustice at their hands is not only possible, but inevitable, where they are left without restraint. He uses imperial Russia as an example of a barbarous monarchy "where the judges are not restrained by any methods, forms or laws." He says:

Arbitrary power, in all cases, is somewhat oppressive and debasing; but it is altogether ruinous and intolerable, when contracted into a small compass; and becomes still worse, when the person, who possesses it, knows that the time of his authority is limited and uncertain. *Habet subjectos tanquam suos; viles, ut alienos.* He governs the subjects with full authority, as if they were his own; and with negligence or tyranny, as belonging to another. A people, governed after such a manner, are slaves in the full and proper sense of the word; and it is impossible they can ever aspire to any refinements of taste or reason. They dare not so much as pretend to enjoy the necessaries of life in plenty or security.¹⁴

In discussing barbarous monarchies, Hume focuses consistently on the unbounded authority given to the public officials charged with enforcing justice. For him, this delegation of authority is clearly an important characteristic in defining such a monarchy. He says: "An absolute prince, who is barbarous, renders all his ministers and magistrates as absolute as himself."¹⁵ "Such a form of government," he says of monarchy, "ere [i.e. before it becomes] civilized, knows no other secret or policy, than that of entrusting unlimited powers to every governor or magistrate, and subdividing the people into so many classes and orders of slavery."¹⁶ The results of this barbarous policy are invariably dire. Hume says that "a scene of oppression and slavery . . . 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."¹⁷

Hume's comment that people living under barbarous regimes are "slaves in the full and proper sense of the word" may leave us to wonder if he thinks such regimes are legitimate at all. Let us recall what Hume says in the *Treatise* about the right of resistance. There he says that "in the case of enormous tyranny and oppression, it is lawful to take arms even against supreme power; and that, as government is a mere human invention, for mutual advantage and security, it no longer imposes any obligation, either natural or moral, when once it ceases to have that tendency."¹⁸ If the test of legitimacy is the absence of "enormous tyranny and

oppression,” a barbarous government, which always creates “a scene of oppression and slavery,” does not seem to pass. Does Hume think we are therefore justified in rebelling against it?

He cannot believe that we are. He thinks that over the course of history, nearly all governments have qualified as barbarous. He notes that republics have been rare, and have been confined to small states. And he thinks civilized monarchy is by and large a modern invention.¹⁹ If we read Hume’s description of barbarous government as providing legitimate grounds for resistance, we would attribute to him a radicalism that is supported by no other passages in his writings.

When Hume describes barbarous regimes as scenes of “oppression and slavery,” he must be indulging in rhetorical exaggeration. His purpose in “Progress” is to show that barbarous government is fatal to cultural development. He says that the “barbarous policy” of “delegat[ing] full power to all inferior magistrates . . . debases the people, and for ever prevents all improvements.”²⁰ It therefore serves his polemical purpose to portray barbarous monarchies in the harshest possible terms. But such governments nevertheless seem to serve the most basic purpose for which government is founded. Hume’s explanation for why people established the barbarous monarch in the first place, to give themselves “security against mutual violence and injustice,” clearly echoes the passage in the *Treatise*, where he says people establish government to give them “security against each other’s weakness and passion, as well as against their own.”²¹ And he never suggests that the unbounded power of the magistrates, however dire the threat it presents, leaves the people without protection from one another. Justice is still enforced, after a fashion—through the “summary decisions of causes.” Barbarous regimes are therefore not anarchies.

We can, I believe, make the best sense of Hume’s texts if we conclude that there are two levels of security that a government can provide. First of all, it can give the people “security against mutual violence and injustice”—its most basic task, as defined by men in the “first ages of the world.” A government that could not guarantee its people such security would not be legitimate at all. Second, it can offer them “security, by laws or political institutions, against the violence and injustice of [the] rulers.” Without the second, it seems, the people “dare not so much as pretend to enjoy the necessaries of life in plenty or security.” Given Hume’s view that “men’s happiness consists not so much in an abundance of [the commodities and enjoyments of life], as in the peace and security with which they possess them,” blessings which he says “can only be derived from good government,” a government that provides no security against the magistrates themselves is clearly not the best possible.²² It is this second level of security that marks a civilized government (though, as we shall see, Hume allows that, under certain conditions, the people may be left without security from the monarch herself, without being rendered slaves). But a barbarous government is not, as I have said, an anarchy, and therefore it does not give us grounds to “resist supreme power.”

Hume's insistence that the people living under a barbarous monarchy are "slaves, in the full and proper sense of the word" should thus be taken as a polemical rather than analytic claim—albeit one he repeats several times in his writings. His considered view seems to be that such subjects are actually slaves in a lesser, secondary sense of the word. Elsewhere in his writings he distinguishes two forms of slavery: "public" or "civil slavery," on the one hand, versus "real" or "domestic slavery" on the other.²³ "Real slavery" renders the people "incapable of all property."²⁴ If a barbarous government reached the point of leaving its people in such a state, it would presumably merit rebellion. But while civil slavery is less than civilized, it does not sink to this level, and therefore does not justify resistance.

3. The Perils of Discretion

Another question immediately arises, however. Why should the second, greater level of protection afforded by civilized government be necessary at all? In the *Treatise*, Hume argues that "civil magistrates" are able to act impartially as judges because they, "being indifferent persons to the greatest part of the state, have no interest, or but a remote one, in any act of injustice; and, being satisfied with their present condition, and with their part in society, have an immediate interest in every execution of justice, which is so necessary to the upholding of society."²⁵ Why is this satisfaction not protection enough?

Let us recall the nature of the threat presented by the magistrates in a barbarous monarchy. The problem, according to Hume, is that the sovereign grants "full discretionary powers [to] every magistrate," rather than establishing "general laws."²⁶ Judges are left to make "summary decisions of causes."²⁷ Hume's contrast between discretionary power and general laws echoes his treatment of the need for conventions of justice in section 3.2.6 of the *Treatise*, which immediately precedes his discussion of the foundation of government. In this section, Hume argues that "general and universal rules" are necessary to regulate property. He says that a person's motives—"let [them]," he says, "be what they will"—are "a very improper foundation for . . . the laws of justice."²⁸ The very principles of human nature lead people to make iniquitous judgments, so long as they allow these judgments to be guided by their own discretion. "If we consider the ordinary course of human actions," he says,

we shall find that the mind restrains not itself by any general and universal rules, but acts on most occasions as it is determined by its present motives and inclination. As each action is a particular individual event, it must proceed from particular principles, and from our immediate situation within ourselves, and with respect to the rest of the universe. If on some

occasions we extend our motives beyond those very circumstances which gave rise to them, and form something like general rules for our conduct, it is easy to observe that these rules are not perfectly inflexible, but allow of many exceptions.²⁹

Hume applies this insight to judgments concerning property. As an example, he imagines himself contemplating the sort of situation a judge would face every day: “two persons who dispute for an estate; of whom one is rich, a fool, and a bachelor; the other poor, a man of sense, and has a numerous family: the first is my enemy; the second my friend.” Even, he says, were my natural motives determined entirely by public interest, “I must be induced to do my utmost to procure the estate to the latter,” regardless of “any consideration of the right and property of the persons.” He concludes: “Were men, therefore, to take the liberty of acting with regard to the laws of society, as they do in every other affair, they would conduct themselves, on most occasions, by particular judgments, and would take into consideration the characters and circumstances of the persons, as well as the general nature of the question.”³⁰ Such considerations are the basis for his conclusion, stated earlier in the *Treatise*: “It follows, therefore, that the general rule, that possession must be stable, is not applied by particular judgments, but by other general rules, which must extend to the whole society, and be inflexible either by spite or favour.”³¹

It is easy to see the implication for civil magistrates. No matter how well-intentioned the judge, no matter how thoroughly his natural motives conform to public interest, any attempt to decide cases on a discretionary basis, “by particular judgments,” must lead to injustice, since it is of her very nature to consider “the characters and circumstances of the person.” In the *Essays*, speaking of laws, Hume uses precisely the same adjectives—“general and inflexible”—as he does in the *Treatise*, speaking of the rules for property, except that in the *Essays* he makes the contrast with magisterial discretion explicit. He says the British government “is obliged, for its own preservation, to maintain a watchful jealousy over the magistrates, to remove all discretionary powers, and to secure every one’s life and fortune by general and inflexible laws.”³²

We should therefore see Hume’s account (in *Treatise* 3.2.7) of the magistrates’ indifferent position as implicitly qualified by the argument of the preceding section. The magistrates can act from a position of impartiality just so long as “general, inflexible laws” exist to restrict their discretion. In his political essays, he shifts the emphasis of the argument, to the dangers presented where such laws are absent. This shift in emphasis becomes important because the essays deal more concretely with actual existing societies, and Hume now tells us that, in the real world, the process of establishing these laws is a long and difficult one. “To balance a large state or society,” Hume says,

whether monarchical or republican, on general laws, is a work of so great difficulty, that no human genius, however comprehensive, is able, by the mere dint of reason and reflection, to effect it. The judgments of many must unite in this work: Experience must guide their labour: Time must bring it to perfection: And the feeling of inconveniencies must correct the mistakes, which they inevitably fall into, in their first trials and experiments.³³

A barbarous monarchy represents the stage in a society's development when such general laws either do not exist, or are not imposed on judging magistrates. Hume emphasizes at several points in his writings that a barbarous state is distinguished from a civilized one by the absence or presence of general laws. (I have added emphasis to all the following passages.) He says of a monarch who is "ignorant and uninstructed": "not having knowledge sufficient to make him sensible of the necessity of balancing his government upon *general laws*, he delegates his full power to all inferior magistrates."³⁴ In a republic, by contrast, "the necessity of restraining the magistrates, in order to preserve liberty, must at last appear, and give rise to *general laws* and statutes."³⁵ Similarly, in a civilized monarchy, "every minister or magistrate, however eminent, must submit to the *general laws*, which govern the whole society, and must exert the authority delegated to him after the manner, which is prescribed."³⁶

4. General Laws and the Civilized Society

It thus becomes of crucial importance what Hume means by "general laws," as well as how he thinks they are established by a civilized government and imposed on its magistrates.³⁷ I have already argued they seem to be equivalent to the kind of "general inflexible rules" that, in the *Treatise*, he says must govern property. He gives a more detailed description of general laws in the *Enquiry concerning the Principles of Morals*, where he says that such laws "regard alone some essential circumstances of the case, without taking into consideration the characters, situations, and connexions of the person concerned, or any particular consequences which may result from the determination of these laws, in any particular case which offers."³⁸ This passage explicitly echoes the passage in the *Treatise* that (I have argued) identifies one of the key perils of discretion, our natural tendency to "take into consideration the characters and circumstances of the persons" rather than "the general nature of the question."³⁹

General laws, then, are formalized versions of the general rules that allow—indeed, force—magistrates to escape what I have called the perils of discretion. Thus, if a civilized government is able to "balance" its state on such laws, its people will be free from these perils. Such a government will fit Hume's description of

a monarch who acquires a new territory: “all his subjects are to him the same, except the few friends and favourites, with whom he is personally acquainted. He does not, therefore, make any distinction between them in his *general laws*.”⁴⁰ General laws are thus general in their *formulation*—they pick out classes of people, without regard to individuals or to specific circumstances. In modern terms, they contain no indexicals.

One of the quotations I cited above provides two further senses in which the laws of a civilized society are general. First, they “govern the whole society”—“every minister or magistrate, however eminent, must submit” to them. In A. V Dicey’s famous formulation: “Every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen.”⁴¹ This makes the laws general in their *application*. (As we shall see, in a civilized monarchy, the monarch herself constitutes a unique exception.)

Second, general laws govern the way in which officials may execute their official duties. Hume says that under general laws, every magistrate “must exert the authority delegated to him after the manner, which is prescribed.” This makes the laws general—that is, uniform—in their *execution*, for instance by pre-determining the sentence judges must pass in punishing a given class of offenses. This aspect of the laws is crucial in ensuring that the perils of discretion are avoided. As Hume says in the second *Enquiry*: “Among all civilized nations, it has been the constant endeavour to remove every thing arbitrary and partial from the decision of property, and to fix the sentence of judges by such general views and considerations, as may be equal to every member of the society.”⁴² A comment Hume makes in another context suggests that the body of such laws should also include regulations, what he calls “stated forms and methods,” specifically designed to govern the conduct of magistrates in performing all of their duties, beyond just the final judgment rendered in courts of law. “In the smallest court or office,” he says, “the stated forms and methods, by which business must be conducted, are found to be a considerable check on the natural depravity of mankind.”⁴³

5. Civilized Government

As we have seen, Hume thinks the presence or absence of general laws in a particular society will be closely tied to its form of government. Civilized government comes in two forms: republics, and civilized monarchies. Hume thinks that republics necessarily establish general laws that limit the powers of their rulers. He defines a republican government as one “where the authority is distributed among several assemblies or senates.” In such a government, there exist “checks and controuls” that create a “balance or counterpoise” between different branches of state power. He says: “a republican and free government would be an obvious absurdity, if

the particular checks and controuls, provided by the constitution, had really no influence.”⁴⁴ This need not rule out the existence of a monarch; it is required only that his authority be limited by some kind of balance of power. Hume says: “It is possible so to constitute a free government, as that a single person, call him doge, prince, or king, shall possess a large share of power, and shall form a proper balance or counterpoise to the other parts of the legislature.”⁴⁵

Hume thinks that, in a republic, the “checks and controuls” placed on the central authority will, over time, necessarily be extended to the lesser magistrates as well. “It may happen,” he says, “that a republic, in its infant state, may be supported by as few laws as a barbarous monarchy, and may entrust as unlimited an authority to its magistrates or judges. But . . . it is impossible, but, in time, the necessity of restraining the magistrates, in order to preserve liberty, must at last appear, and give rise to general laws and statutes.”⁴⁶ If a republic does not restrain its magistrates, it loses its liberty, and thereby ceases to be a republic.

Hume never explicitly explains why a republic cannot survive without such restrictions on its magistrates—though one passage points towards at least a partial explanation. He thinks that the legislative power simply cannot operate unless legislators are free to propose laws, without fear of prosecution by the magistrates. “No political maxim can, at first sight,” he says, “appear more undisputable, than that he [the member who proposes a particular motion] must, at least, be secured from all inferior jurisdiction; and that nothing less than the same supreme legislative assembly, in their subsequent meetings, could make him accountable for those motions and harangues, to which they had before given their approbation.”⁴⁷ He says Athens provides a counter-example to this maxim, but it is the exception that proves the rule—Athenian democracy failed because of just these sorts of imbalances of power. Thus, Hume thinks that a republican government must have a specific and regulated jurisdictional division of powers in order to safeguard its legislators.

Whatever the full explanation, the term “civilized republic,” which Hume never uses, would effectively be a redundancy for him, at least if we exclude those republics that are doomed and fleeting. “Though a republic should be barbarous,” he says, “it necessarily, by an infallible operation, gives rise to LAW. . . . A republic without laws can never have any duration.”⁴⁸

A civilized monarchy is distinct from a republic that happens to give “a single person . . . a large share of power.” In such a government, rather, the “doge, prince, or king” possesses *all* the power. Hume’s conception of civilized monarchy appears on its face to be an extremely curious one. In a republic, as we have seen, there is a balance between the various “powers” of government, such that none is left without restraint. In a civilized monarchy, on the other hand, it is only the lesser magistrates whose power is restrained. The monarch himself is (uniquely) exempt from such limitations. Hume says:

In a civilized monarchy, the prince alone is unrestrained in the exercise of his authority, and possesses alone a power, which is not bounded by any thing but custom, example, and the sense of his own interest. Every minister or magistrate, however eminent, must submit to the general laws, which govern the whole society, and must exert the authority delegated to him after the manner, which is prescribed.⁴⁹

We might think, as many people in Hume's day did think, that matters are more simple than this. According to most republican theorists, there is a basic opposition between two kinds of government: those that possess some form of checks and balances, and those that do not. On this view, if the sovereign's power is restricted by nothing except "custom, example, and the sense of his own interest," such a sovereign becomes a tyrant. (This is the view of those writers Hume refers to as "passionate admirers of the ancients, and zealous partizans of civil liberty" who "brand all submission to the government of a single person with the harsh denomination of slavery."⁵⁰) And if we accept the need to constrain the power of public officials, why should we except the monarch—who, being human, is surely as fallible and power-hungry as any of his ministers?

Hume justifies this exception by claiming that in a civilized government, the sovereign "is so far removed from [the people], and is so much exempt from private jealousies or interests, that [their dependence on him] is scarcely felt."⁵¹ This is in line with what he says in the *Treatise* about magistrates in general, that they, "being indifferent persons to the greatest part of the state, have no interest, or but a remote one, in any act of injustice; and, being satisfied with their present condition, and with their part in society, have an immediate interest in every execution of justice, which is so necessary to the upholding of society."⁵² But there, it is meant to distinguish the position of all magistrates, not just the sovereign. And indeed in this very section of the *Treatise* Hume says without apparent concern that "if it be necessary, [the rulers] may also interest others more immediately in the execution of justice, and create a number of officers, civil and military, to assist them in their government." Surely, we might think, it is the case that unfettered power is either benign (as the *Treatise* suggests) or pernicious (as Hume says in his essays)—and whichever it is, it is so for *all* magistrates, the sovereign included. On what grounds can Hume now try to single out the sovereign alone as being immune to what I have called the perils of discretion? And, worse yet, how can he single out the *civilized* sovereign alone? He tells us that the civilized monarch is "far removed" from the people. But he surely cannot be suggesting there is some uniquely great distance between such monarchs and their subjects, that distinguishes their position from that of history's catalogue of tyrants, many of whom make starring appearances in Hume's *History of England*.

There is a solution to the problem available to Hume, which I believe he has in mind though he fails to spell it out clearly. Hume thinks we may divide the two functions of a governor, as he does when comparing God to an earthly ruler. There he contrasts the Deity “considered as a legislator” with His actions in his “magisterial capacity.”⁵³ Hume applies this distinction to terrestrial government as well. He says: “Among a people, who lived in so simple a manner as the Anglo-Saxons, the judicial power is always of greater importance than the legislative.”⁵⁴ I submit that in a civilized government, by contrast, the legislative power is both separate from and superior to the magisterial or judicial power. Hume complains, for instance, that, during the reign of Richard II, “the house of lords seem not at that time to have known or acknowledged the principle, that they themselves were bound, in their judicial capacity, to follow the rules, which they, in conjunction with the king and commons, had established in their legislative.”⁵⁵ In a civilized monarchy, where the king holds the entire legislative power, this means that there is an essential difference between the monarch and the lesser magistrates: in such a government the monarch acts solely as a legislator, whereas the magistrates act as judges.

Left to rule on particular, concrete cases, the mind of even a distant and disinterested sovereign will be guided by its “particular judgments” rather than general rules. And of course any monarch left to exercise magisterial power will rarely be disinterested. But the perils of discretion do not carry over into the exercise of his legislative capacity. Historically, cases of royal oppression arise precisely when the monarch uses instruments such as the Court of Star Chamber to act *as a magistrate*, passing judgment in particular cases. It is, Hume suggests, “a high exerted prerogative” that “render[s] property sensibly insecure.”⁵⁶ But the civilized monarch never lowers himself to intervene in such mundane matters. In a civilized government, the ruler recognizes that his task is to craft laws, not to execute them. He occupies himself with formulating and implementing general laws, and in doing so he distances himself sufficiently from specific cases that he is able to act equitably. So long as he confines himself to this function, then, the danger of oppression is remote. When Hume says a civilized monarch “is so far removed” from the people as to be “exempt from private jealousies or interests,” he is not speaking of mere physical distance, or difference in station. Rather, he is saying that such a ruler is, as it were, functionally removed—the distance is created by the nature of his office itself, which does not allow him to take any part in particular disputes. It is in this sense that a civilized monarchy is a “government of laws”—Hume means not merely, as his readers often assume, that it is a government subject to the rule of law. He is also telling us that such a monarchy governs entirely by means of law-making.

Hume’s texts support the view that a barbarous monarch owes his uncivilized status to his unwillingness, or inability, to act as a law-maker. Hume laments the

impossibility “before science were known in the world” that “a monarch could possess so much wisdom as to become a legislator, and govern his people by law, not by the arbitrary will of their fellow-subjects.”⁵⁷ “It is not . . . to be supposed,” he says elsewhere, “that a barbarous monarch, unrestrained and uninstructed, will ever become a legislator.”⁵⁸ This interpretation is also confirmed by many concrete examples Hume provides of royal tyranny, which can be explained as instances of the king stepping from the legislative to the magisterial role. For instance, he condemns “the barbarous policy of Edward” in ordering the Scottish rebel William Wallace “to be carried in chains to London; to be tried as a rebel and traitor, though he had never made submissions or sworn fealty to England; and to be executed on Tower-hill.”⁵⁹ Hume has sharp words for the discretionary magisterial power that the monarchy assumed during the Tudor period:

One of the most ancient and most established instruments of power was the court of Star-chamber, which possessed an unlimited discretionary authority of fining, imprisoning, and inflicting corporal punishment, and whose jurisdiction extended to all sorts of offences, contempts, and disorders, that lay not within reach of the common law. The members of this court consisted of the privy council and the judges; men, who all of them enjoyed their offices during pleasure: And when the prince himself was present, he was the sole judge, and all the others could only interpose with their advice. There needed but this one court in any government, to put an end to all regular, legal, and exact plans of liberty. For who durst set himself in opposition to the crown and ministry, or aspire to the character of being a patron of freedom, while exposed to so arbitrary a jurisdiction?⁶⁰

The absence of such discretionary instruments in the continental governments seems to ground Hume’s hope that such governments are on their way to becoming civilized monarchies. “I much question,” he says, “whether any of the absolute monarchies in Europe contain, at present, so illegal and despotic a tribunal.”⁶¹ He praises the Long Parliament for finally abolishing the Star Chamber. “The parliament justly thought,” he says,

that the king was too eminent a magistrate to be trusted with discretionary power, which he might so easily turn to the destruction of liberty. And in the event it has hitherto been found, that, though some sensible inconveniences arise from the maxim of adhering strictly to law, yet the advantages overbalance them, and should render the English grateful to the memory of their ancestors, who, after repeated contests, at last established that noble, though dangerous, principle.⁶²

6. The Autonomy of Law in the Civilized Society

There is a further sense in which a civilized government is a government of laws not men. For a state to be truly civilized, according to Hume, the government, and its laws, must be self-supporting and self-perpetuating. This means that a civilized monarchy is *not* simply a state ruled by a wise and equitable monarch. On the contrary, its legal system must not depend for its execution on the abilities or intentions of the sovereign. Hume says in his *History*: “The kingdom of Scotland had not yet attained that state, which distinguishes a civilized monarchy, and which enables the government, by the force of its laws and institutions alone, without any extraordinary capacity in the sovereign, to maintain itself in order and tranquillity.”⁶³ He says elsewhere that the peaceful accession of William I’s son Richard was “a sure proof, that the Normans were already somewhat advanced in civility, and that their government could now rest secure on its laws and civil institutions, and was not wholly sustained by the abilities of the Sovereign.”⁶⁴

A barbarous nation, dependent on the “abilities of the Sovereign,” perpetually faces a dual threat, of despotism and anarchy. Where general laws are absent and the monarchy is weak, the higher aristocrats—as Hume calls them, in one of his favourite phrases, the “haughty barons”—who are wealthy possessed of armies of retainers, can ignore the law at will, and make themselves rivals to the crown. “There is,” says Hume,

another power still more important than either the judicial or legislative; to wit, the power of injuring or serving by immediate force and violence, for which it is difficult to obtain redress in courts of justice. In all extensive governments, where the execution of the laws is feeble, this power naturally falls into the hands of the principal nobility.”⁶⁵

The threat from these aristocrats in turn creates a countervailing one: the monarch can maintain order only by asserting himself to the point of tyranny. Hume says that, at the time of Henry II, because the country had “no regular idea of a constitution”:

the sovereigns, in some instances, approached [very near] to despotism, though in others they seemed scarcely to possess any authority. If a prince, much dreaded and revered like Henry, obtained but the appearance of general consent to an ordinance, which was equitable and just, it became immediately an established law, and all his subjects acquiesced in it. If the princes was hated or despised . . . the fullest and most authentic assembly had no authority. Thus all was confusion and disorder.”⁶⁶

He says that this “strange mixture of regal tyranny . . . and of aristocratical liberty or rather licentiousness . . . is observable in all the ancient feudal governments; and both of them proved equally hurtful to the people.”⁶⁷

Hume’s texts suggest that the development from barbarous to civilized government takes place in two parts. First, a monarch of sufficient abilities must appear to become a “legislator”—that is, to formulate and implement general laws, and thereby suppress this “aristocratical licentiousness.” In the English case, we see this process happening (not surprisingly) by fits and starts, according to the talents of particular kings. Hume says of Edward I: “He considered the great barons both as the immediate rivals of the crown, and oppressors of the people; and he purposed, by an exact distribution of justice, and a rigid execution of the laws, to give at once protection to the inferior orders of the state, and to diminish the arbitrary power of the great, on which their dangerous authority was chiefly founded.”⁶⁸ Hume says that during Norman times “the lesser barons, finding that the annihilation of royal authority left them exposed without protection to the insults and injuries of more potent neighbours, naturally adhered to the crown, and promoted the execution of general and equal laws.”⁶⁹ He says that the people were grateful for the “rigour” with which Henry I “executed justice,” being “more attentive to present advantages, than jealous of general laws.”⁷⁰ (The jealousy seems to have come from the fact that his punishments were harsh.)

Only once such general laws have been imposed on the society and acquired a hold on people’s imagination—and the reasons they acquire this hold are not mysterious, given their evident tendency towards public utility—do they become self-sustaining. Hume says of England between the accession of Edward I and the death of Richard III:

It required the authority almost absolute of the sovereigns, which took place in the subsequent period, to pull down those disorderly and licentious tyrants [i.e. the aristocracy], who were equally averse from peace and from freedom, and to establish that regular execution of the laws, which, in a following age, enabled the people to erect a regular and equitable plan of liberty.⁷¹

Hume associates this notion of “regular liberty” or a “regular plan of liberty” with the self-sufficiency of the laws. Speaking of the Tudor era, Hume says: “After the power of alienations, as well as the encrease of commerce had thrown the balance of property into the hands of the commons, the situation of affairs and the dispositions of men became susceptible of a more regular plan of liberty; and the laws were not supported singly by the authority of the sovereign.”⁷²

Hume suggests that England’s gradual progression, with a series of strong monarchs gradually building up the structure of the laws before this structure

ultimately becomes self-sufficient, is only to be expected. He says that “any true or regular liberty . . . must grow to perfection during several ages of settled and established government.”⁷³ The English case is nevertheless anomalous in certain important respects. Hume thinks the self-sufficiency of the laws in England only came about when the government became a mixed one, with liberty finally assured by the emergence of the commons as a genuine political force. He says that while it “is ridiculous to consider the English constitution before [the Stuart] period as a regular plan of liberty,”⁷⁴ finally, during Charles I’s hapless reign, “the incapacity of Buckingham encouraged the free spirit of the commons to establish in England a regular system of liberty.”⁷⁵

England’s complex development illustrates another point about civilized government: the two-stage progression towards it that I have outlined need not be (and will probably rarely be) steady or uni-directional, nor will the achievement of it necessarily happen at a single stroke across an entire state. For instance, a republic may be civilized at its core, yet leave barbarous governors in charge of its provinces.⁷⁶ And a state that has begun its progress may find itself regressing.⁷⁷ But while it would thus not be inaccurate to speak of barbarous and civilized tendencies within a state, this should not lead us to deny what I believe Hume’s texts show, that for him civilized government is nevertheless a distinct and achievable ideal, not just a relative description. We might think of an analogy to democracy. While there are clearly states in the world today that are only imperfectly democratic, or democratic only in certain of their parts, we can nevertheless imagine a set of criteria that, if met, would lead us to declare a state to be a democracy in the fullest sense of the term, and we could still hold up the ideal of such a state before those who have not yet achieved it.

7. Succession

For the laws to be truly self-sufficient, they must possess one final characteristic: they must contain provisions to govern the succession of officers. In the passage I quoted above, Hume says the fact that “on the death of William, his son, Richard, though a minor, inherited his dominions” was “a sure proof, that the Normans were already somewhat advanced in civility.”⁷⁸ Hume thinks that a failure to solve the problem of succession accounts for much of the turmoil incident to barbarous monarchies. He says, in his survey of Anglo-Saxon government:

It is easy to imagine, that an independant people, so little restrained by law, and cultivated by science, would not be very strict in maintaining a regular succession of their princes. Though they paid great regard to the royal family, and ascribed to it an undisputed superiority, they either had no rule, or none that was steadily observed, in filling the vacant throne;

and present convenience, in that emergency, was more attended to than general principles. . . . [P]ossession, however obtained, was extremely apt to secure their obedience, and the idea of any right, which was once excluded, was but feeble and imperfect. This is so much the case in all barbarous monarchies, and occurs so often in the history of the Anglo-Saxons, that we cannot consistently entertain any other notion of their government.⁷⁹

Hume praises the sixth century Saxon king Hermenric, who “performed nothing memorable during a reign of thirty-two years; except associating with him his son, Ethelbert, in the government, that he might secure the succession in his family, and prevent such revolutions as are incident to a turbulent and barbarous monarchy.”⁸⁰

In a republic, because there is no natural principle of the imagination to govern the succession of officers, it must be determined by what Bacon, in a speech Hume quotes, calls a “law precedent”:

It is evident . . . that all other commonwealths, monarchies only excepted, do subsist by a law precedent. For where authority is divided amongst many officers, and they not perpetual, but annual or temporary, and not to receive their authority but by election, and certain persons to have voices only in that election, and the like; these are busy and curious frames, which of necessity do presuppose a law precedent, written or unwritten, to guide and direct them.⁸¹

Without such a precedent, no republic could long survive without descending into civil war, set off by clashes over the legitimacy of officers. It is possible that a monarchy may also require such a formal “law precedent” governing the succession, in particular where the rule of primogeniture is not followed. Hume does not think a stable monarchy requires any particular type of succession—he says simply that it “should be fixed one way or other.”⁸² However, primogeniture has such a particular hold on our imaginations that, in those states where the eldest son does *not* automatically succeed, an established precedent will often be necessary to ensure a stable transition. This is particularly true in the case of an elective monarchy, where Hume emphasizes that each succession can easily lead to civil war.⁸³

8. Conclusion

Hume’s doctrine of civilized government qualifies the dichotomy he presents in his essay “That Politics May Be Reduced to a Science.” There he takes issues with the thesis that “that the goodness of all government consists in the goodness

of the administration.” According to the view he rejects, “all governments are alike, and that the only difference consists in the character and conduct of the governors.” Hume is paraphrasing Pope here, who says in the *Essay on Man*: “For forms of government let fools contest;/ whate’er is best administered is best.”⁸⁴ Hume argues that there is an essential difference between “absolute governments” and republics, with Pope having been right only about the former. “All absolute governments must very much depend on the administration;” he says, “and this is one of the great inconveniences attending that form of government.”⁸⁵

This apparently leaves no room for civilized monarchy. It is hard to deny such a government is an absolute one—its sovereign is, as we have seen, “not bounded by any thing but custom, example, and the sense of his own interest.” Yet, I have argued, its laws are general and self-sufficient—they thus do not depend on “the character and conduct of the governors.” It is not possible to know why Hume does not mention his distinction between civilized and barbarous monarchs here. (The essay where he first discusses these concepts was published only a year after this one.) I suspect he may simply not have wanted to complicate a short and elegant argument with so complex a distinction. In any case, the qualification is easily added: a civilized monarchy, like a republic, depends on the “force of laws” rather than “on the humours and tempers of men.”⁸⁶

I have argued that, in a civilized monarchy, the sovereign becomes a legislator. The link between law-making and civilized government explains why Hume says: “Of all men, that distinguish themselves by memorable achievements, the first place of honour seems due to LEGISLATORS and founders of states, who transmit a system of laws and institutions to secure the peace, happiness, and liberty of future generations.”⁸⁷ A similar place would seem to be due to those who, while not founding a state from scratch, are able to transform a barbarous into a civilized monarchy. However, such a process will not normally be traceable to a single person. Credit will be due rather to a long succession of rulers who instituted effective general laws and ensured their enforcement.

I have described Hume’s use of the terms “barbarous” and “civilized” with reference to government as if they were technical terms that he uses in no other contexts. But of course, this is not true, and as I have said, his choice of these terms is not accidental. Hume’s interest in the differences between “barbarism” and “civilization” is one he shared with numerous other Enlightenment-era historians, including his friends Henry Home (Lord Kames) and Adam Ferguson, as well as Montesquieu. However, by turning his attention away from the centre of power and towards the more local sites of oppression, Hume makes an original contribution to the discussion. His analysis of the dangers of judicial discretion may well have helped informed the thought of his friend Adam Smith, and further research may yet uncover other important lines of influence.⁸⁸

NOTES

1 David Hume, *Essays Moral, Political, and Literary*, ed. Eugene F. Miller (Indianapolis: Liberty Fund, 1985), 117. (Hereafter “Essays.”)

2 The most extensive treatment of this question can be found in Donald Livingston, *Philosophical Melancholy and Delirium: Hume’s Pathology of Philosophy* (Chicago: University of Chicago Press, 1998). See, for instance, 217 for a discussion of barbarism and civilization as Hume understands these concepts in general. While I do not think my own account contradicts Livingston’s analysis, I believe it adds an important nuance to it. Livingston does not provide an elaboration of what characterizes civilized government *per se*, beyond noting the importance of the rule of law. Claudia M. Schmidt also discusses Hume’s general views on civilization and barbarism in *David Hume: Reason in History* (University Park: Pennsylvania State University Press, 2003). See for instance 405–8.

3 Essays, 94.

4 His contrast between government of will and government of law is at David Hume, *The History of England*, ed. William B. Todd, 6 vols. (Indianapolis: Liberty Fund, 1982), 2: 174. (Hereafter “History.”)

5 See for instance Frederick G. Whelan, *Order and Artifice in Hume’s Political Philosophy* (Princeton: Princeton University Press, 1985), 349–54; Duncan Forbes, *Hume’s Philosophical Politics* (Cambridge: Cambridge University Press, 1975), 152–60; Livingston, *Philosophical Melancholy*, 181–2; David Miller, *Philosophy and Ideology in Hume’s Political Thought* (Oxford: Clarendon Press, 1981), 142–62.

6 T 3.2.7.6; SBN 537.

7 T 3.2.7.8; SBN 538.

8 Essays, 115.

9 T 3.2.7.3; SBN 535.

10 Essays, 178.

11 Essays, 122 n 13. In speaking of the various public officials, Hume often seems to imply a modern style of government, where such people are officers of the crown. However, he is well aware that historically, duties such as justice-keeping and revenue-raising have very often been the province of powerful aristocrats. Where these people retain such powers, they and their retainers present a greater threat than any officeholder whose position is dependent on the monarch. See, for instance, History 1: 485. I discuss the more general problem presented by such high aristocrats below.

12 Essays, 178.

13 Ibid.

14 Essays, 117.

15 Essays, 623 fn. B (appears in editions C to P).

16 Essays, 124.

17 Essays, 118.

18 T 3.2.10.16; SBN 563

- 19 Essays, 94; emphasis added.
- 20 Essays, 117.
- 21 T 3.2.7.8; SBN 538.
- 22 Essays, 54–5.
- 23 Essays, 383; see Essays, 62 for an apparent contrast between public liberty and public slavery.
- 24 Essays, 191.
- 25 T 3.2.7.6; SBN 537.
- 26 Essays, 16.
- 27 Essays, 179.
- 28 T 3.2.6; SBN 538.
- 29 T 3.2.6.9; SBN 531–2.
- 30 T 3.2.6.9; SBN 532.
- 31 T 3.2.3.3; SBN 502.
- 32 Essays, 96; cf. EPM Appendix 3.6; SBN 305.
- 33 Essays, 124.
- 34 Essays, 179.
- 35 Essays, 117.
- 36 Essays, 125.
- 37 I examine Hume’s doctrine of general laws in greater detail in my article “David Hume’s Legal Theory: The Significance of General Laws,” *History of European Ideas* 30 (2004): 149–66.
- 38 EPM Appendix. 3.6; SBN 305. This is a puzzling passage, as Hume says that “all the laws of nature, which regulate property, as well as all civil laws, are general.” This seems hard to square with his belief, which I cited above, that states “balanced on general laws” are rare, and require “great penetration and experience” on the part of their rulers. I attempt to resolve this issue in my article “David Hume’s Legal Theory,” cited above.
- 39 T 3.2.6.9; SBN 532.
- 40 Essays, 18; original emphasis.
- 41 A. V. Dicey, *Law of the Constitution*, 9th ed. (London: MacMillan, 1950), 194.
- 42 EPM Appendix 3.10; SBN 308.
- 43 Essays, 24.
- 44 Essays, 99.
- 45 Essays, 17.
- 46 Essays, 117.
- 47 Essays, 366–7.

- 48 Essays, 180.
- 49 Essays, 125.
- 50 Essays, 383.
- 51 Essays, 125.
- 52 T 3.2.7.6; SBN 537.
- 53 T 2.3.2.6; SBN 410.
- 54 History 1: 173.
- 55 History 2: 302–3.
- 56 History 4: 370.
- 57 Essays, 117
- 58 Essays, 116
- 59 History 2: 135.
- 60 History 4: 356.
- 61 History 4: 356. In a less than civilized state, the monarch may indeed need to retain certain discretionary powers merely to maintain the social order. But Hume is clear that such a state of affairs is less than ideal, and we should seek (as a society) to get beyond the need to grant such powers. See History 3: 469 note B; History 2: 330ff.)
- 62 History 5: 329–30.
- 63 History 3: 24.
- 64 History 1: 115.
- 65 History 1:173. The threat presented by the “turbulent barons” is noted by Eugene F. Miller, “Hume on Liberty in the Successive English Constitutions,” in *Liberty in Hume’s History of England*, ed. Nicholas Capaldi and Donald W. Livingston (Boston: Kluwer, 1990), 53–104, 75.
- 66 History 1: 361–2.
- 67 History 2: 31. Hume seems to use the term “feudal” as a chronological one, to designate a particular historical era, whereas “barbarous” is his analytical term to describe a form of government. He here asserts that, as an empirical matter, all feudal governments are barbarous. All barbarous governments, however, are not feudal.
- 68 History 2: 75.
- 69 History 1: 464.
- 70 History 1: 278.
- 71 History 2: 525.
- 72 History 5: 40. The association of liberty with the regularity of law is noted in Miller, 149. This notion of regularity bears an obvious affinity to the “order, method and constancy” that Hume praises in civilized monarchies (Essays, 94)—characteristics that, as Richard H. Dees notes, themselves bear an obvious affinity to Hume’s favoured epistemic principles. See “Hume and the Contexts of Politics,” *Journal of the History of Philosophy* 30 (1992), 233, note 39. Perhaps the most thorough discussion of Hume’s

concept of liberty is Donald Livingston, “Hume’s Historical Conception of Liberty,” in Capaldi and Livingston, 105–54. I take my understanding of this concept to be consistent with Livingston’s treatment, which argues that liberty is compatible with strong central authority so long as this authority rules according to law. See also, in this same volume, Nicholas Capaldi, “The Preservation of Liberty,” 195–224, and Eugene F. Miller, “Hume on Liberty,” 53–104, esp. 75.

73 History 1: 254.

74 David Hume, “My Own Life,” in *Philosophical Works*, ed. T. H. Green and T. H. Grose, 4 vols. (London: Longmans, Green, 1874–75), 1: 5.

75 History 5: 182. Hume thinks England’s government has ended up a sort of hybrid between a republic and a civilized monarch. See, for instance, his essay “Whether the British Government inclines more to Absolute Monarchy, or to a Republic.” (Essays, 47–53.)

76 See Essays, 18–21.

77 We may compare Hume’s comment at History 1: 115, about the Norman government being “somewhat advanced in civility” (quoted above), to an observation on the English government only a century later. Hume says that Henry IV “by his valour, prudence, and address, . . . obtained a greater ascendancy over his haughty barons, than the law alone, not supported by these active qualities, was ever able to confer.” (History 2: 344.)

78 History 1: 115.

79 History 1: 161.

80 History 1: 25.

81 History 5: 35.

82 T 3.2.6.8; SBN 530.

83 It has been suggested to me that the laws governing succession do not, because they single out particular persons, meet Hume’s criteria for general laws. I think it is safe to conclude that such laws are merely *sui generis* in this respect, without presenting a threat to the equity of the legal system as a whole. However, Hume certainly thinks these laws can be strengthened if they are seen as applications of a more general rule, as primogeniture can be. See History 1: 486. I would like to thank Kenneth Winkler and Elizabeth Radcliffe for raising this point.

84 Alexander Pope, *An Essay on Man*, ed. Maynard Mack (London: Methuen, 1950), 123–4.

85 Essays, 15.

86 Essays, 16.

87 Essays, 54.

88 In her book *Economic Sentiments*, Emma Rothschild analyses the importance of Smith’s term “vexation.” She says: “Vexation is the sort of oppression which flourishes in the circumstances of an uncertain jurisprudence, in which men use the power of their offices to pursue their personal grievances. It is the oppression in which one’s oppressor knows one’s name, and one’s weaknesses, and where one lives” (*Economic Sentiments* [Cambridge: Harvard University Press, 2001], 27). As we have seen, this is just the sort of oppression Hume thinks defines barbarous regimes.