



Annette C. Baier. *The Cautious, Jealous Virtue: Hume on Justice*

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Hume Studies Volume 37, Number 2 (2011), 280-284.

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Annette C. Baier. *The Cautious, Jealous Virtue: Hume on Justice*. Cambridge, MA: Harvard University Press, 2010. Pp. xii+261. ISBN 978-0-674-04976-5, Cloth. \$45.00.

Annette Baier was the dean of contemporary Hume studies and one of the most insightful and influential philosophers writing on Hume. Since the late 1970s, her writings and the example of her distinctive mode of scholarship have inspired generations of scholars to look with fresh eyes at Hume's work. The special turn of her philosophical mind and personal style of writing are especially well-suited to uncover, appreciate, and effectively communicate the rich, nuanced, and humane dimensions of Hume's moral philosophy. Her masterpiece, *A Progress of Sentiments* (Cambridge, MA: Harvard University Press, 1991), for example, taught us that Hume's moral psychology underwrites his moral and social philosophy. *The Cautious, Jealous Virtue* continues this lesson, but even more it argues that Hume's late *History of England* offers a wealth of insight into Hume's mature moral theory.

Baier's new book is divided into two parts. The first is an extended, newly-composed essay on a set of closely related themes, interwoven over five chapters. The movement through these chapters is not linear; later discussions of the themes fold back on earlier ones, sometimes qualifying or elaborating them, sometimes strictly building on them. The second part includes five previously-published classics of Baier's Hume scholarship on themes cognate to those in Part I. The style of writing is richly suggestive and provocative rather than analytic and demonstrative, yielding nuanced discussions of her main themes that are a pleasure to read.

Emerging from her pages is a portrait of Hume's subtle and supple mind, active on the ground floor as well as on the mezzanine. A keen observer of human psychology, human relations, and the effect of social and political forces on them, Baier's Hume is attuned to criticism and to his own maturing understanding and observations. Yet, at several points Baier leaves readers the task of relating Hume's evolving understanding of justice to the theory articulated in the *Treatise* and the *Enquiry*. She offers several provocative proposals, but sometimes it is unclear whether they are interpretive or revisionary.

We can get a sense of the richness, insight, and ambiguity of Baier's discussions from a brief look at four major themes addressed in Part I of the book. First, she offers a novel interpretation of Hume's view of the "natural motive to justice" approved from the general point of view, which he introduces in the puzzling "circle argument" of *Treatise* 3.2.1 (SBN 477–79). In a discussion extending over parts of four chapters, Baier finds wanting all the recent proposals on offer and argues, rather, that the motive is the "interested passion" at its most intelligent, inventive, and cooperative (36, 41, 44). This "reasonable cooperativeness" (76) is

expressed in a willingness to work with rather than against others, prompted by a sense of common interest (and recognition of one's share in it), in the coordinated scheme of rights and obligations defined by the rules of justice (65, 66). This is a worthy competitor to rival proposals, and, to my eye, it is very close to right.

Second, Baier argues that Hume's *History* offers a rich set of observations about the range, complexity, and interactions among all the virtues, as well as evidence of a substantially enlarged account of justice. Baier abundantly documents Hume's attention in the *History* to matters ignored in the *Enquiry's* account of virtue. In the *History*, for example, Hume offers an expanded catalogue of the virtues, including the capacity for friendship and, surprisingly, the virtue of piety (or at least its public practice). He also illustrates how virtues interact, combine, conflict, and temper each other and how virtuous dispositions can turn vicious. Hume even seems to have entertained the Platonic thought that some virtues play a foundational role in establishing and maintaining an individual's character, Baier argues. Yet, she admits ruefully that Hume "left the revised version" of his theory of virtue "in the form of stories and apologues" of the lives of monarchs and political figures (14).

Did Hume revise his theory but neglect to incorporate these revisions in his explicitly theoretical work (13, 17), or did his historical work merely change his moral outlook and perhaps deepen and enrich his already keen observations of human nature and relations, without thereby changing his theory of the virtues? What exactly do we learn about Hume's philosophical account of the virtues from Baier's mining of his *History*? What relevance does it have for the interpretation of Hume's explicitly theoretical work? These questions deserve systematic exploration, but Baier does not explore them in this book.

Third, Baier more explicitly insists that Hume's later work, including the *History*, decidedly "enlarged" the *Treatise's* conception of justice. I take this claim to be that Hume did not just enlarge the range of phenomena for that conception to consider but rather abandoned its narrow focus and embraced a significantly wider theory. Yet as we proceed through the various discussions of this theme in Part I, her view of this interpretive question becomes somewhat less clear, and in the concluding pages of the book, she concedes that Hume "did not give us a revised theory of justice after writing his *History of England* . . . [but] left for us to speculate about what he might have said" (256). This is surprising in view of Baier's announcement in her introduction that "in [Hume's] *History* we find his 'farther reflections' both on justice . . . and on its fellow-virtues" (17). Baier here invokes the language of Hume's title to Appendix III of his *Enquiry* in which his "farther reflections on justice" elaborate and deepen the theory set out in its chapter on justice. One might, then, have expected such reflections to yield the same kind of elaboration and deepening, but this is what she later denies.

Drawing mainly on the *Treatise*, Baier presents Humean justice as that virtue or disposition of individuals willingly to conform to cooperative schemes defined by general rules calling for self-restraint on behalf of all those subject to them (41, 44, 227). Complying with the rules in the “circumstances of justice” (moderate scarcity and limited benevolence) promises advantages to the whole and to each part of the society, but only if each individual has a reasonable expectation that others will also accept the restraints of the rules. (Call this the “necessary mutual-ity” of justice.) Justice is “cautious,” because one’s cooperation is conditioned on the cooperation of others (ix, 227), and “jealous,” because the rules define what is one’s due, and we tend to be jealous of getting what is due to us (viii, 227). Notoriously, Hume gives this virtue a very narrow scope in the *Treatise*, limiting it to rules defining possession and transfer of external goods, promises, and allegiance to law and government. In a kind of “conjectural history” (Baier’s term), Hume insists that the conventions of justice develop in a definite sequence, first stabilizing possession, then enabling promise-making, and finally establishing government and the administration of justice.

Hume enlarges this conception of justice in two ways, Baier argues: (1) he broadens the scope of justice, and (2) he enhances his account of its content, pre-conditions, and moral cognates. To support the first thesis, Baier points out that in the *Enquiry* justice includes respect for individuals’ persons as well as their goods. It is also “less dogmatic” about the sequence of development of the conventions of justice (229–30), although Baier notes that Hume still insists that law and the institutions of government presuppose and build on informal conventions of property, contract, and personal security. In his *History*, Hume includes a far greater range of rights and protections in the domain of justice (86–98). Baier observes that he chronicles denials of rights of personal security, rights not to be seized, imprisoned, or assaulted, rights of fair and impartial trials and equality before the law, welfare rights of unmarried women and dispossessed nuns, rights to a fair return on labor, to a fair chance at some station in life, and to a fair account of one’s character. Moreover, Hume abandons the *Treatise*’s “conjectural history . . . once he look[s] at the real history of his own society” (18, 256), recognizing, for example, that military rule or other forms of governance and enforcement of basic rules of criminal justice can precede established arrangements for stable possession and transfer of land.

We might hesitate to accept this part of Baier’s enlargement thesis. It is not clear that Hume, in the *Treatise*, means to restrict the concept of justice in all kinds of societies to property, promises, and allegiance. What is clear is that he means to articulate the explanatory thesis that establishing rules of possession and promising is fundamental to securing social order. Thus, the *Treatise*’s sequence of development may better be viewed not as conjectural (i.e., imagined) history—one

might wonder whether it is meant as history at all—but rather as an explanatory heuristic. Seen in this light it is not surprising that the *Enquiry* is silent about the *Treatise* sequence and that the *History* gives examples of other historical sequences, since these works are engaged in projects quite different from that of the *Treatise*.

One might also wonder how much the various examples of injustice chronicled by Hume in his story of England's political evolution tell us about his philosophical account of justice. Simply to dismiss Hume's historical discussion would be cavalier, but it is equally cavalier to regard the *History* as the visible record of a revised but unarticulated theory of justice. Again, we face the methodological question of the relevance of the *History* for understanding Hume's theory of justice.

Baier argues also that Hume enhances his account of the content, pre-conditions, and moral cognates of justice. Already in the *Enquiry*, she maintains, Hume gives some consideration to basic equality in the shape and focus of justice (84–85, 149, 227). For example, he adds to the basic circumstances of justice a condition of rough equality among the subjects and agents of justice, addressing there for the first time the question of the scope of the protections offered by the rules of justice (84–85). Baier is right, but it is easy to make too much of the point. It is too much to say that in the *Enquiry*, Hume acknowledges an egalitarian dimension of justice, regarding “justice as a matter of fair distribution of goods and of benefits and burdens” (254). The rough equality that Hume insists on in the *Enquiry* is not a demand of justice protecting those falling within the scope of its protections but rather a pre-condition of the bearing of justice on the actions and relations of agents.

Fourth, Baier argues that an enhanced account of Humean justice must recognize that equity plays a critical role as cognate, corrective, and underwriter of justice (73, 76–77, 79, 106, 252). This is the most interesting and potentially revolutionary of Baier's main themes in this book. She notes that Hume lists equity among the natural virtues (T 3.3.1.11; SBN 578); thus, equity is distinct from justice. It is, she argues, the sympathy-rooted virtue of fair-mindedness (57–58, 69) that protests excluding individuals from the benefits of formal or informal cooperative practices or taking advantage of other's conscientious participation in them. It is at home wherever the good-will and cooperative behavior expose people to exploitation by free-riders. As a concern for oneself amongst others (58), it is no more self-regarding than other-regarding, protesting attempts to take advantage of participants in cooperative schemes regardless of who they are. Thus, it is less cautious and jealous than justice, less conditioned on the compliance of others, and less dependent on artificial structures to define what is one's due (79). Standing outside of schemes of property-justice, it offers a vantage from which to challenge and correct them (78, 81), a resource for recognizing claims of individuals when the rules of justice go silent (as in extreme circumstances), and a viable candidate for the morally

approved motive to justice (77–78), with its roots in the natural family (74, 76–77). This important component of Hume’s theory of justice is largely overlooked by Hume’s readers and, regrettably, inadequately utilized by Hume himself.

Baier concedes that Hume “left it for his readers to work out the precise relations of natural equity to artificial virtue” (99) and, as her discussion proceeds, it unclear where her novel interpretation Hume’s “enlarged” account of justice leaves off and her proposed development of an improved account takes up. A sympathetic reader might take most of her discussion in the latter vein because the textual evidence for a distinct conception of equity in Hume’s works, early or late, is rather thin. Hume uses the word “equity” in two incompatible ways in the *Treatise* and subsequent writings. Most frequently he uses it as a synonym or stylistic variant of “justice,” often joining the two words in the phrase “the law [or the rules] of equity and justice.” Sometimes, however, he uses “equity” in conjunction with or closely related to “natural reason” (in the seventeenth-century jurisprudential sense of conscience-guided practical judgment), impartiality, or even simply “merit.” Never to my eye does he use it in the rich sense that Baier appears to attribute to him. In the crucial passage of the *Enquiry* (3.1.8–12) in which Hume argues that the rules of justice fall silent *in extremis*, he associates equity with rules of justice and authority, and not (as Baier suggests) with “natural” humane considerations that motivate opening the granaries without consent of their owners. There is some reason, then, to wonder whether Hume had a nascent conception of natural equity; however, the matter deserves further close analysis and discussion.

We can conclude confidently that, at the very least, Baier has laid down a serious challenge to standard readings of Hume’s theory of justice, and even more that she has offered a rich, nuanced, and humane Humean account of justice. For the fresh view of Hume’s theory she offers and the humaneness of her vision, scholars and students alike will long be grateful.

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