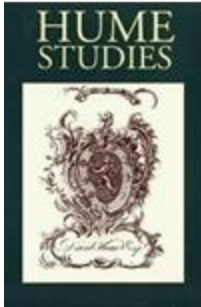

Mark G. Spencer

"Distant and Commonly Faint and Disfigured Originals": Hume's Magna Charta and Sabl's Fundamental Constitutional Conventions

Hume Studies vol. 41, no. 1 (2015), pp. 73–80.

Your use of the HUME STUDIES archive at http://www.humesociety.org/hs/ indicates your acceptance of HUME STUDIES' Terms and Conditions of Use, available at http://www.humesociety.org/hs/termsofuse.asp.

HUME STUDIES' Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of the journal, or multiple copies of articles, and you may use content in the HUME STUDIES archive only for your personal, non-commercial use.

For more information on HUME STUDIES contact: editors@humestudies.org

Hume Studies
Volume 41, Number 1, 2015, pp. 73–80

"Distant and Commonly Faint and Disfigured Originals": Hume's Magna Charta and Sabl's Fundamental Constitutional Conventions

MARK G. SPENCER

They say you can't judge a book by its cover. If that is right, it really is too bad in the case of Andrew Sabl's *Hume's Politics*. It is too bad because the reviewer's job would be exceedingly easy, and very pleasant. By any measure this book has a strikingly fine cover. Its image is drawn from John Byam Liston Shaw's (1872–1919) depiction of Queen Mary and Princess Elizabeth entering London in 1553. Hume's interpretation of Elizabeth I (in particular Elizabeth's "constitutional conventions") plays a prominent role in *Hume's Politics*, so I will come back to her. But first, looking beneath the cover, what else does Sabl's book yield?

The short answer is that it yields plenty. There are several important points being made in this artfully-conceived volume. One is that Hume's political thought continues to be of relevance today. As Sabl puts it, *Hume's Politics* "aims to clarify Hume, and shine light on his contributions. But it also aims to help us better understand the political world. It is a study not only in what Hume says but in what political theory can do."[1] Another important point relates to how we see the *History of England* (1754–1762) in Hume's corpus. An underlying premise of Sabl's book is that we ought to take Hume's *History* seriously as a work of political thought. That is something that some modern scholars may need to be reminded of, but Hume's contemporaries knew it very well.[2]

Mark G. Spencer, Department of History, Brock University, 1812 Sir Isaac Brock Way, St. Catharines, Ontario, L2S 3A1. E-mail: mspencer@brocku.ca.

Sabl argues that "Hume's great contribution to political thought is an account of dynamic coordination" (6). Others have recognized that Hume "understood, far ahead of his time, the ways in which the goods of human society stem largely from doing as others do, in certain limited but crucial matters, so that each person's purposes in all other matters will mutually further others' purposes instead of crossing them" (6). But Sabl's attention is on "politics and government," in particular, and he approaches Hume's *History* "as if it were a treatise on this one subject: how conventions of political authority arise, change, improve by various measures, and die" (7).

Hume's Politics is divided into an introduction, seven chapters, and a conclusion. The opening chapters "introduce the question of coordination" (18). Chapter 1, "Coordination and Convention," outlines the basic principles of dynamic coordination, sketching "the problem of coordination and the solution to it—convention—that is most relevant in the context of large-scale politics and government" (21). Chapter 2, "Coordinating Interests: The Liberalism of Enlargement," looks to some of the preconditions for solving coordination problems. A key precondition, as explained in the Introduction, is that "the actors involved must share a common interest in coordinating their actions that outweighs whatever interest they have . . . in not coordinating them" (18). Introducing Hume into that equation complicates things for, as Sabl wisely maintains, "Hume often deals in unintended consequences" (87). And some of those unintended consequences, especially when dealing with commerce and industry, spread widely. As Hume put it in a passage in the *Essays* that Sabl quotes: "We cannot reasonably expect, that a piece of woolen cloth will be wrought to perfection in a nation, which is ignorant of astronomy, or where ethics are neglected. The spirit of the age affects all the arts; and the minds of men, being once roused from their lethargy, and put into a fermentation, turn themselves on all sides, and carry improvements into every art and science" (quoted in Sabl, 88). Chapter 3, "Convention and Allegiance," outlines how political authority might be thought of as a matter of convention. For Sabl, Hume's *History* is largely "a book about conventions of authority—and the artificial virtue, namely allegiance, that describes adherence to that convention" (90).

Chapters 4 through 7 focus squarely on Hume's *History*. Chapter 4, "Crown and Charter," sets out to show that Hume "regards certain conventions as *fundamental*: immune to alteration (except in the extremely long term, at least generations and more likely centuries) by the usual methods of political power and social change" (121). Sabl maintains that "once one looks, it is not hard to determine what Hume regards as England's constitutional fundamentals: on the one hand, the codified and universally recognized rules of succession that constitute a 'regular' monarchy; on the other, Magna Charta with its various accretions (*habeas corpus*, the Bill of Rights)" (122). (Below I will argue that things may not be quite so straightforward,

especially when it comes to Hume's representation of the Magna Charta.[3]) Chapter 5, "Leadership and Constitutional Crisis," "is about what leadership can do to repair breaches in [fundamental political] conventions or to maintain them in the face of new configurations of power" (157). Here, Sabl argues convincingly that Hume "was determined to avoid blaming individual agents who failed to take actions outside their feasible set, or who failed to act on information they did not have" (158). For Sabl, leaders' choices are structured by fundamental conventions that also serve as resources for resolving crises. Chapter 6, "Vertical Inequality and the Extortion of Liberty," argues that Hume saw that to safeguard liberty we must start "with the imperative of strong and ordered government, in whose absence or weakness powerful actors, from barons to corporations, rule unchecked at the expense of the weak" (205). For Hume, we should ask, "as older, conservative defenders of authority did not, how such government can over time be made consistent with a liberty and equality that should be all the more prized because they are not natural" (205). Chapter 7, "What Touches All: Equality, Parliamentarism, and Contested Authority," looks for "a parliamentary solution to the problem of equality" (209). That solution is "Humean but not Hume's" as it "requires inventive construction from Humean materials" going beyond any "interpretation of what Hume himself intended or wanted" (209–10). Sabl sees in Hume the making of a political model for "a large, diverse society in which individuals and communities that differ in their opinions, interest, or sentiments must reach agreement, or at least acquiescence, in a common assembly in order to produce public goods and give all an equal and palpable stake in the process that produces them" (225).

I am in agreement with much that Sabl writes about Hume. Besides the general strengths mentioned above, Sabl's reading of the *History of England* is nuanced and contains many sections worthy of attention.[4] Of the two main prongs of his interpretation of the *History*, the first—the importance to Hume's story of the dynamics of establishing a "rule of succession"—is quite convincing.[5] But in the little space available to me, I would like to explore more fully the second, that is, Sabl's insistence that for Hume the Magna Charta is a "fundamental convention" of note, even a "turning point" on which the entire *History* hinges.[6] Here, it seems to me that *Hume's Politics* harbors some tensions that are worth exploring more fully.

On the Magna Charta, Sabl's point of departure is the nature of "fundamental conventions":

> Fundamental conventions begin as accident, persist through being recognized as useful, and become entrenched by becoming so necessary for political coordination that they are useful in a larger sense even if their current operation seems inconvenient. They have traveled so far from accident that they seem immemorial and inalterable, the kind of things

> that can render an existing practice illegitimate no matter how long (at least up to a few generations) it has persisted. (124)

The Magna Charta is presented as a "fundamental convention" that gains more and more importance over time for Hume: "Contrary to the old-Whig claim that ancient rights were once unquestioned but had since decayed, Magna Charta was initially weak and became stronger with repeated assertion" (142). But one might argue that it is not at all certain that Hume saw the Magna Charta as a "constitutional fundamental" in the way that Sabl argues he did. It is true that Hume referred to the Magna Charta as "a kind of epoch in the constitution," as Sabl says (see 143); but one might stress "*kind of*," and even then, that assessment must be put in the context of other things that Hume wrote. And that wider context, it seems to me, casts considerable doubt on Sabl's assertions that, for Hume, the Magna Charta was a "constitutional fundamental" and a "turning point" in England's constitutional development.

An important passage here is Hume's discussion of Elizabeth I in the appendix to volume 4 of the *History*.[7] Parts of that passage, Sabl quotes. He writes:

> It is with respect to *constitutional* conventions, and in particular those inherited and adhered to by Queen Elizabeth, that Hume famously says: "In the *particular exertions* of power, the question ought never to be forgotten, *What is best?* But in the general distribution of power among the several members of a constitution, there can seldom be admitted any other question, than *What is established?*" (33)

Hume further explained that "[i]f any other rule than established practice be followed, factions and dissentions must multiply without end: And though many constitutions, and none more than the British, have been improved even by violent innovations, the praise, bestowed on those patriots, to whom the nation has been indebted for its privileges, ought to be given with some reserve, and surely without the least rancour against those who adhered to the ancient constitution" (H 4:355). But what did Hume mean by "the ancient constitution"? The Magna Charta? Hume explained in an important footnote:

> By the ancient constitution, is here meant that which prevailed before the settlement of our present plan of liberty. There was a more ancient constitution, where, though the people had perhaps less liberty than under the Tudors, yet the king had also less authority: The power of the barons was a great check upon him, and exercised great tyranny over them. But there was still a more ancient constitution, viz. that before the signing of the charters, when neither the people nor the barons had any regular

> privileges; and the power of the government, during the reign of an able prince, was almost wholly in the king. The English constitution, like all others, has been in a state of continual fluctuation. (H 4:355)

It is hard to see in any of that Hume's endorsement of the Magna Charta (or any other "ancient constitution") as a "fundamental constitutional convention" that became "cemented" in England's constitutional history, except as a loose set of changing rules that can only be rightly understood in the context of their own times.[8] Many years ago, in 1963, John B. Stewart (1924–2015) argued something quite close to that reading of Hume.[9]

One must also be careful about how one reads Hume's sometimes seeming-praise of the Magna Charta in the *History*. Often his tone is one of irony. One such passage (and one to which Sabl refers) has Hume's "partizans of the commons" remark that any privileges found in "the GREAT CHARTER, must always remain in force, because derived from a source of never-failing authority; regarded in all ages, as the most sacred contract between king and people" (H 5:192–93). "Such attention was paid to this charter by our generous ancestors," Hume remarked in a passage dripping with irony, "that they got the confirmation of it re-iterated thirty several times; and even secured it by a rule, which, though vulgarly received, seems in the execution impracticable. They have established it as a maxim. *That even a statute, which should be enacted in contradiction to any article of that charter, cannot have force or validity*" (H 5:193).[10] Where Hume did have real praise associated with the Magna Charta was in his unreserved admiration for Edward I, the magnanimous king Hume called the "English Justinian" (H 2:141). Edward, an exceedingly "wise legislator" (H 2:141), played a memorable role in making the Magna Charta "an effective part of English law—by forcing the barons to follow it with regard to their own inferiors—rather than an empty symbol of the endless, destructive contest between self-serving nobility and a despotic crown."[11] In other words, by changing the Magna Charta's purpose and not doing precisely what it was understood to demand while saying he was.[12]

There are other passages to take into account. Sabl directs us towards one, at the beginning of volume 2 of the *History* (H 2:6–7), where Hume appears to praise aspects of the Magna Charta using his own voice. Sabl argues that Hume's discussion there "solves several interpretive puzzles" (148), but it also provided Hume with an opportunity to cast doubt on the Magna Charta's lasting importance. Interestingly, Hume remarked there that, immediately after King John granted the Magna Charta (in 1215), in 1216 the earl of "Pembroke, that he might reconcile all men to the government of his pupil [i.e., the young Henry III], made him grant a new charter of liberties, which, though mostly copied from the former concessions extorted from John, contains some alterations, which may be deemed remarkable" (H 2:5). In other words, it did not take long to move beyond the Magna Charta.

Sabl argues that, for Hume, the Magna Charta is a "turning point" in England's constitutional development.[13] But Hume rarely saw historical developments in that way. Hume was clear that, when it came to "the constitution of the English government," over time "the balance of power has extremely shifted among the several orders of the state; and this fabric has experienced the same mutability, that has attended all human institutions" (H 2:524). Hume's account of the Magna Charta must be read against his assessment rendered at the conclusion of the final volume of the *History* to be written (what we now read as volume 2 in the Liberty Fund edition). There, in the final sentences of his entire 6-volume endeavor, Hume summarized:

> Above all, a civilized nation, like the English, who have happily established the most perfect and most accurate system of liberty that was every found compatible with government, ought to be cautious in appealing to the practice of their ancestors, or regarding the maxims of uncultivated ages as certain rules for their present conduct. An acquaintance with the ancient periods of their government is chiefly *useful* by instructing them to cherish their present constitution, from a comparison or contrast with the condition of those distant and commonly faint and disfigured originals of the most finished and most noble institutions, and by instructing them in the great mixture of accident, which commonly concurs with a small ingredient of wisdom and foresight, in erecting the complicated fabric of the most perfect government. (H 2:525)

If, for Hume, the Magna Charta was a "fundamental constitutional convention," it was so only in so far as a distant, faint, and disfigured original could be.

Of course, I am not the first to put stress on the passage quoted above for our understanding of the political message of Hume's *History*. Among others, Duncan Forbes (1922–1994) did so, in *Hume's Philosophical Politics* in 1975. In his "Introductory Preface" to that book, Forbes also put clearly what many readers of Hume often lament: "Hume is terrible campaign country, rugged, broken, cross-grained, complex, remorseless in its demands. One has to fight every inch of the way, and can never feel really secure. No interpretation ever seems to get going before it is pulled up almost immediately by some difficulty."[14] Andrew Sabl is to be warmly thanked for asking us to "read Hume seriously as a political theorist" (4). In *Hume's Politics* he has certainly done so. The book he has produced will surely spark considerable debate and take forward, in important and lasting ways, the campaign to interpret Hume. In short, perhaps you *can* judge a book by its cover after all.

NOTES

1 Andrew Sabl, *Hume's Politics*, 6, hereafter cited in text by page number.

2 Sabl writes that "students of Hume can learn that there are systematic lessons in Hume's *History of England*, a work that until recently everyone but historians ignored altogether, and that many Hume scholars still prefer to dip into selectively rather than take on as a whole" (3). But one might argue that it is only recently that everyone but historians began to ignore Hume's *History*. Everywhere in the British Atlantic World in the eighteenth century, historical writing was seen as a forum for politics. Hume's *History* was no different and its popularity (and even it notoriety) was as much rooted in its perceived importance to the world of politics as it was in Hume's fine prose and abilities as historical narrator.

3 Like Sabl, I will use Hume's preferred spelling; "Magna Charta" not "Magna Carta."

4 Even his notes might be mined for gems, such as the claim that the "first two volumes of Hume's *History* are in many ways the most theoretically instructive" (252n37), or the aside that Hume "readily acknowledged, though some readers miss it, that the account in the *Treatise* telescoped and simplified a historical process in order to highlight a theory of origin" (250n9).

5 See, especially, 121–42.

6 See, especially, 142–56.

7 See Hume, *History of England*, "Appendix III," 4:354–86. All of my quotations from Hume's *History* are from Todd's edition, hereafter abbreviated "H" followed by volume and page numbers.

8 Along with the passage from Hume's *History* cited above in this paragraph, one might look to Hume's essay, "Of the Coalition of Parties": "Under what pretence can the popular party now speak of recovering the ancient constitution? The former control over the kings was not placed in the commons, but in the barons: The people had no authority, and even little or no liberty; till the crown, by suppressing these factious tyrants, enforced the execution of the laws, and obliged all the subjects equally to respect each others rights, privileges, and properties." That was a time of an "ancient barbarous and feudal constitution. . . . But how far back must we go, in having recourse to ancient constitutions and governments?" (497–98). It was that narrative in the *History* which led many in the eighteenth century to see him as a Tory historian. As Frits van Holthoon put it in the "Introduction" to his variorum edition on CD-ROM, "Reading Hume's *History* those of his contemporaries with pro-whig sympathies would find much proof in it that he was a tory. Did he not accept Brady's point of view that the Magna Charta strengthened baronial privileges and did nothing to define the rights of the people?"

9 In *The Moral and Political Philosophy of David Hume*, Stewart wrote that, for Hume, the Magna Charta "did not prescribe a constitution; rather, in an age when there was little settled public law, it served merely as a statement of aspirations; the number of times it had to be renewed and reconfirmed shows the limited effect it had on the changeable practice of the age" (225).

10 See Sabl, *Hume's Politics*, 148. There also appears to be an ironic tone to Hume's discussion a few pages earlier (H 5:178–79). See also H 2:122–23. In a note, Sabl explains

that "one should hesitate to use irony as the explanation of difficult passages (a shame, since Hume's irony is so delicious: see Price 1965)" (286n54).

11 The quoted passage is from Jeffrey Suderman, "Medieval Kingship," 133.

12 At times, it is almost as if Hume was saying that the Magna Charta is praiseworthy for its principles but that it did not really matter in practice. In another passage in the *History*, he wrote: "The truth is, the great charter and the old statues were sufficiently clear in favour of personal liberty: But as all kings of England had ever, in cases of necessity or expediency, been accustomed, at intervals, to elude them, and as Charles, in a complication of instances, had lately violated them; the commons judged it requisite to enact a new law, which might not be eluded or violated, by any interpretation, construction, or contrary precedent" (H 5:196–97).

13 "Hume gives two different accounts of England's constitutional development. One describes the progression of liberty, the other the measures of power. But the two stories have their chronological divisions in more or less the same places, and Magna Charta is a turning point in both" (Sabl, 152).

14 Duncan Forbes, *Hume's Philosophical Politics*, viii.

WORKS CITED

Forbes, Duncan. *Hume's Philosophical Politics*. Cambridge: Cambridge University Press, 1975.

Hume, David. *The History of England from the Invasion of Julius Caesar to The Revolution in 1688*. Edited by William B. Todd, 6 vols. Indianapolis: LibertyClassics, 1983.

Hume, David. "Of the Coalition of Parties," in *Essays Moral, Political, and Literary*. Edited by Eugene F. Miller, 493–501. Revised Edition. Indianapolis: LibertyClassics, 1987.

Price, John Valdimir. *The Ironic Hume*. Austin: University of Texas Press, 1965.

Sabl, Andrew. *Hume's Politics: Coordination and Crisis in the* History of England. Princeton: Princeton University Press, 2012.

Stewart, John B. *The Moral and Political Philosophy of David Hume*. Westport: Greenwood, 1963.

Suderman, Jeffrey M. "Medieval Kingship and the Making of Modern Civility: Hume's Assessment of Governance in *The History of England*." In *David Hume: Historical Thinker, Historical Writer*, edited by Mark G. Spencer, 121–42. University Park: The Pennsylvania State University Press, 2013.