

*Hume's
Philosophical
Politics*

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CAMBRIDGE UNIVERSITY PRESS

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(Footnote on p. 89 continued)

society' are synonymous with the 'laws of justice', and justice is a human contrivance, it would seem to follow that if the State sanctioned a system of property rights which prevented a considerable section of its members from satisfying their minimal needs, one could not according to that view, find fault with it. The view of property which Hume favoured was one which obscured its social aspect (*op. cit.*, 100-1). The contrast in this respect between Hume and Stair and the Scottish institutional writers of the eighteenth century, for whom the owner of property was 'theoretically almost a trustee of his property on behalf of the community', is brought out by Peter Stein in 'Law and Society in Eighteenth-century Scottish thought' in *Scotland in the Age of Improvement*.

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Political obligation for 'moderate men'

If one tries to understand Hume's political philosophy as a response to the needs of his age and society, as he saw them, certain aspects of it emerge which were long obscured by the fame of the critique of the contract theory, which was the official Whig theory, by his alleged, or at least over-emphasized 'Tory' political sympathies, and by the view of his philosophy generally, which held sway for so long, as essentially negative and critical. The positive side, the application of experimental philosophy to morals, shows us not a demolition of natural law or the 'fashionable system of politics',¹ but an attempt to give them new foundations, designed for a new, secular age, an empirical, scientific, post-revolutionary age in which the challenges and opportunities, the needs and drives of men were predominantly economic, and the old conflicts and loyalties, political, religious and dynastic, outmoded and irrelevant. The appeal was to Shaftesbury's 'men of moderation',² for whom politics was above all the science of men united in society and dependent on one another. This science was modern in style, suited to the circumstances and interests of a modern, commercial society, informed by the new scientific method and the predominantly secular outlook. In some respects indeed the ruthless application of experimental method to moral subjects was dangerously avant-garde – Hume's friends seem always to have realized this better than Hume himself – yet it was at the same time a post-revolutionary, establishment political philosophy: its object was to give the established regime, the Revolution Settlement, the Hanoverian succession, the respectable intellectual foundation which, in the 'fashionable system' it had not got, for as Hume said on more than one occasion, government is founded on opinion, not on force (*First Principles of Government, Essays*, 29, *History*, VIII,

¹ *Treatise*, 542. The contract 'has become the foundation of our fashionable system of politics'. Shaftesbury called compact 'the fashionable language of our modern philosophy', *Characteristics*, I, 109.

² *Characteristics*, I, 115. 'Men of moderation' were men who were too secure of their temper and who possessed themselves too well 'to be in danger of entering warmly into any cause, or engaging deeply with any side or faction'.

143, IX, § 13: 'the great security for allegiance being merely opinion').

Contemporary political theory, of both Whigs and Tories, was out-of-date and backward-looking. Each of the rival systems, Contract and Passive Obedience, contained a kernel of truth, liberty and authority respectively, but exaggerated and distorted by party passion, and the result of both popular and hasty workmanship. (See the two essays on the *Original Contract* and on *Passive Obedience*, especially the opening paragraphs. Hume never seems to have realized, or refused to allow, that these systems had any pedigree, or European or classical ancestry. Both of them he regarded, or professed to regard, as British, parochial and recent.)¹ Since the belief in divine right and passive obedience had been undermined by a 'sudden and sensible change in the opinions of men within these last fifty years, by the progress of learning and liberty' (*Essays*, 51), and was an absurdity nullified by the practice of the Tories themselves in 1688, it was contract theory that bore the brunt of Hume's criticism. Its reasoning was faulty and its doctrine contradicted by the test of experience. The contract theorists 'intended to establish a principle which is perfectly just and reasonable' (*Treatise*, 549): that since government is set up in the interests of the governed, our submission to it must admit of exceptions, but, insisted Hume, since resistance was an extreme remedy that put everything in jeopardy, it could be justified only in cases of 'egregious' tyranny, like that of Nero. (*Treatise*, Book III, Part II, Section IX: the examples, Dionysius, Nero, Philip II (of Spain) are more useful than the rather vague phraseology: 'the more flagrant instances of tyranny and oppression', 'grievous tyranny and oppression', 'whenever the interest ceases in any great degree, and in a considerable number of instances', etc. Hume is more precise in the *Passive Obedience* essay, 'the last refuge in desperate cases, when the public is in the highest danger from violence and tyranny'.) Hume is stricter than Hutcheson, in so far as for Hutcheson resistance is not merely a last resort: he allows such violence 'as may occasion some temporary anarchy' where there is the hope of successfully altering a 'foolishly concerted plan of polity' for the better, or preventing it from getting worse (*System*, II, 220).² Hume also wished that Hutcheson's condemnation of

¹ In the *Original Contract* essay he was surprised to find the doctrine being used in France (by the legitimate princes protesting against provisions in the will of Louis XIV) (*Essays*, 471n).

² In the essay on *Passive Obedience* (1748), Hume 'confessed' that he would 'always incline to their side, who draw the bond of allegiance the closest possible'. In the edition of 1770, this was changed to 'very close' (*Essays*, 475).

Locke's theory of consent had been 'more express', it 'being the received one'.¹

On the other hand in the essay on *Passive Obedience*, Hume finds two excuses for 'that party among us who have, with so much industry, propagated the maxims of resistance... which it must be confessed, are in general so pernicious, and so destructive of civil society', in that (1) they had to insist on the extraordinary exceptions which their opponents played down or excluded altogether, and (2) 'perhaps' the 'better reason', owing to the peculiar nature of the British constitution, where resistance 'must, of course, become more frequent' than in less complex forms of government, because the prince is both limited and at the same time, in his person, above the laws. He is more likely to be tempted to abuse his powers, and in such a case there must be a remedy, which is the extraordinary one of resistance 'when affairs come to that extremity, that the constitution can be defended by it alone'. It will be noticed that in his second 'excuse', Hume uses the present tense, and is not talking history, as in the first. Nevertheless one gets the impression that Hume's stress on the exceptional nature of resistance to establish government in *Treatise* Book III, Part II, Section X and in the second § of the *Passive Obedience* essay – government is entirely useless without an exact obedience etc. – is an implicit criticism of the 'fashionable system', as well as being directed against the Jacobites, because that is in itself and as such an insurrection-inviting theory. The resumé in the first § of the *Original Contract* essay suggests as much.²

What commentators watching Hume demolish the foundations of the 'fashionable system' in contract theory are likely to forget, is that this critique, and in particular Hume's doctrine of resistance, bears down not only on Whig theory but on Jacobite practice: one might say that it bears down on Whig theory because of the possibility of Jacobite practice, or at least, the actuality

¹ *Letters*, I, 48. (Hume to Hutcheson, January, 1743.) The reference is to Hutcheson's *Philosophiae Moralis Institutio Compendiaria* (Glasgow, 1742), 266, line 18 *et seq.* Hutcheson says that those who made the original contract stipulated protection and all the other advantages of a civilized life not only for themselves, but for their posterity, who are therefore bound, whether they consent or not, to perform everything which could reasonably be demanded of them for such important benefits received. (Technically they are bound by an obligation *quasi ex contractu*.) Hume says this 'implies' a condemnation of Locke.

² 'The other party, by founding government altogether on the consent of the people, suppose that there is a kind of *original contract*, by which the subjects have reserved ('tacitly reserved' as from 1777) the power of resisting their sovereign, whenever they find themselves aggrieved by that authority with which they have, for certain purposes, voluntarily entrusted him.'

of the malcontent conscience. The relevant background is not 1689, but 1715, 1719 and 1745, and in this perspective Hume is to be seen as the honest friend of the Whigs and the established regime, the sort of friend who does not hesitate to point out faults and weaknesses. How serious a menace the Jacobites were or were thought to be need not come into question: the fact is that there was in Hume's words a 'very considerable' minority who believed that they had no moral obligation to recognize the Hanoverians as their legitimate rulers, indeed a moral obligation not to.¹ This considerable minority, Hume argued in a section of the essay on the *Parties of Great Britain* which was, for obvious reasons, withdrawn in the first edition of the essays to be published after the '45, was to be mostly found in England, because in Scotland 'the Jacobite party is almost entirely vanished from among us'. This 'sudden and visible alteration in this part of Britain' was due (1) to the clear-cut division between Presbyterian Whigs and Episcopalian Jacobites, so that Jacobitism in Scotland was more violent, and violent things do not last, and (2) the fact that Scotland lacked 'that middling rank of men' which is so numerous in England, both in cities and in the country, and which consists of men who, unlike the 'slaving poor', have curiosity and knowledge enough to form principles, but who, unlike 'gentlemen', have not enough to form true ones or correct any prejudices they may have imbibed. That is why Tory principles prevail most among the middling rank in England. (Hume's change of view about the middling rank is one of the most clear and indisputable and significant changes in his political and social theory.) This brief foray into the sociology of parties, which was also, at least until the autumn of 1745, good pro-Scottish propaganda, always badly needed south of the Border (it was not long since the Porteous affair), enhanced the importance of the Jacobites, if anything. When Hume writes, in the *Treatise* (554) that 'we ought always to weigh the advantages which we reap from authority against the disadvantages; and by this means we shall become more scrupulous of putting in practice the doctrine of resistance' etc., or 'no maxim is more conformable, both to prudence and to morals, than to submit quietly to the government which we find establish'd in the country where we happen to live, without enquiring too curiously into its origin and first establishment' (558), it is difficult to believe that he is not

¹ Some of Hume's close friends were Jacobites. See Mossner's *Life*, 180-2. Kames professed Jacobite principles until some time in the early 1730s. See I. S. Ross, *Lord Kames and the Scotland of his Day*, 44-5, and W. C. Lehmann, *Henry Home, Lord Kames and the Scottish Enlightenment* (1971).

appealing to the 'malcontents'; an appeal which at the end of the essay on the *Protestant Succession*, written in 1748 but not published until 1752, is repeated quite openly. In the *Treatise* he tells the Jacobites in effect that their scruples are not only inexpedient, but immoral. This was in accordance with the teaching of Grotius and the natural law writers: Hume says that any one who denies the right of the present possessor 'absolutely' and on moral grounds, 'would be justly thought to maintain a very extravagant paradox, and to shock the common sense and judgement of mankind' (558), but Hume grounds this right, as has been seen, on the 'imagination'. The question as to the legitimacy or otherwise of particular governments and forms of government (by no means, in 1740, a merely academic question) differs from the problem of political obligation and submission to government as such, in that it is not determined by any considerations of interest. As for the distribution of private property (who is to possess what?), so here: the question is determined not by rational consideration of the general interest but by more 'frivolous' considerations: the commonly accepted rules – long possession, present possession, conquest, succession, positive laws – are to a great extent the work of the 'imagination'. This is because men differ in their private interests and in their notion of what is best for the public interest, which becomes the source of endless dissensions. 'The same interest, therefore, which causes us to submit to magistracy, makes us renounce itself in the choice of our magistrates, and binds us down to a certain form of government, and to particular persons, without allowing us to aspire to the utmost perfection in either.' If men were to regulate their conduct in this question of allegiance to particular governments by their views of interest, the result would be endless confusion, and government would be rendered largely ineffectual (*Treatise*, 555).

An appeal to history completes the discomfiture of the Jacobites: it teaches us to regard the contest between the various titles to government as 'incapable of any decision in most cases, and entirely subordinate to the interests of peace and liberty'. 'Whoever considers the history of the several nations of the world, their revolutions, conquests, increase and diminution, the manner in which their particular governments are established, and the successive right transmitted from one person to another, will soon learn to treat very lightly all disputes concerning the rights of princes, and will be convinced that a strict adherence to any general rules, and the rigid loyalty to particular persons and families, on which

ome people set so high a value, are virtues that hold less of reason than of bigotry and superstition' (562).

'Entirely subordinate to the interests of peace and liberty' (which for Hume are virtually the same thing: viz the maintenance of the rules of justice); Whig theory and the conscientious scruples of Jacobites are both condemned by a political philosophy fashioned to meet the needs of forward-looking 'moderate men' in a modern progressive society.

But there was, it seems, a somewhat embarrassing price to be paid. Precisely because they met the needs of moderate men of both parties or of none, these experimentally established, modern principles were not able to justify resistance to James II and the revolution of 1688, except retrospectively. From Hume's account of the foundations of society, could James II be said to have threatened them? These foundations are established without the aid of religion; they are entirely secular, so that religion is not involved in any way. The object of government is to maintain 'peace and liberty', 'justice', security and property. The form of government is indifferent, provided it carries out its basic task; obedience to particular governments, as seen, rests on such things as long possession, present possession etc., not on the answer to such questions as: is this the best form of government? does it best promote freedom and welfare? The common rule therefore requires submission; resistance can be justified only in cases of 'egregious' tyranny. To describe James II as a Nero was simply bad rhetoric: Hume scorns to do so. And the fact that James II was aiming at absolute government does not in itself, on Hume's general principles, justify resistance. Absolute government is a perfectly legitimate form of government; it answers the end of society as well as any other.¹ What James attempted was successfully achieved in France. 'The kings of France have not been possessed of absolute power for above two reigns; and yet nothing will appear more extravagant to Frenchmen than to talk of their liberties.' And even if James II was a tyrant like Nero, on what grounds can one justify the exclusion of his innocent and rightful heir?

There was only one way in which Hume could, on his own general principles, justify the revolution of 1688, and this is put forward at the end of the Section in Book III of the *Treatise* (Section X) which deals with the 'objects of allegiance', where he says that the title of the Prince of Orange may have been dis-

¹ See below.

putable in 1688, but time and custom have given those princes who succeeded on the same title sufficient authority. 'Time and custom give authority to all forms of government, and all successions of princes; and that power, which at first was founded only on injustice and violence, becomes in time legal and obligatory'. Hume wanted to avoid giving unnecessary offence to either party: and to raise the question of the rights and wrongs of 1688 was only to unnecessarily exacerbate the animosities which he wanted to allay. And the same argument was used in the essay on the *Protestant Succession*: 'the settlement in the House of Hanover has actually taken place'; and long possession must have given it a title 'in the apprehension of a great part of the nation', independent of present possession, so that a revolution now would not end the dispute about a contested title. Publication of this essay, written in 1748, was delayed till 1752, because it was thought to be a bit too cool and sceptical. In the *Treatise*, too, Hume seems to have regarded this line of reasoning as rather bold; at any rate, he put forward a justification of the Revolution which was bound to contradict his general principles. Englishmen, he says, will naturally want to hear how we apply our principles to 'that famous revolution'. Resistance is justified in extreme cases, but it is impossible for the laws, or even philosophy, to lay down precisely and particularly when such resistance is justified. Even in a limited monarchy it will not be prudent to do so. But not only do the people retain their right of resistance in such mixed governments, but the cases of rightful resistance will be more frequent than in arbitrary governments; resistance will be justified whenever the chief magistrate 'Would encroach on the other parts of the constitution and extend his power beyond the legal bounds... For besides that nothing is more essential to public interest than the preservation of public liberty', every single part of a mixed constitution must be deemed to have a right of self-defence to maintain its 'ancient bounds' against encroachment. Hume is here falling back on a part of the Whig canon which stemmed ultimately from Grotius, (*De Jure*, Book I, Ch. IV, § 13) a passage which was quoted by Sidney in *Discourses concerning Government* (*Works*, London, 1772, 256), by Stanhope in the Sacheverell Trial,¹ and Richard Steele in his Preface to the *Crisis* (January, 1714), quotes Stanhope citing 'this memorable passage from Grotius'.²

¹ *An Impartial Account* [of the Trial of Dr Sacheverell], (London, 1710), 107.

² *Tracts and Pamphlets* by Richard Steele (ed. Rae Blanchard. Johns Hopkins Press, 1944) 135. 'If the King hath one part of the Supreme Power and the other part is in

It is a gross absurdity, says Hume, to suppose in any government a right without a remedy, or allow that the supreme power is shared with the people without allowing that it is lawful for them to defend their share against every invader. 'Those therefore who would seem to respect our free government, and yet deny the right of resistance, have renounced all pretensions to common sense...' (*Treatise*, 564).

But can Hume make use of this piece of Whig lore consistently with his view expressed earlier (555) that our allegiance to particular governments, as opposed to government as such, is not based on considerations of interest, whether public or private, at all, which means that the question of the advantages or disadvantages of a particular type of government, mixed or absolute, is not relevant, provided the object of government in general is maintained? This is the sort of consideration we expressly renounce when we bind ourselves to a particular magistrate or form of magistracy. Thus the 'common sense' Hume refers to in this context cannot be the common sense which approves of resistance as the last resort, when government is seen not to function *qua* government (that is, maintaining the rules of 'justice'), not *qua* a particular type of government, and which is a property even of the high monarchical party, however much some of them may profess a strict doctrine of passive obedience. In the case of a mixed monarchy, the last resort, 'egregious' tyranny, have a meaning different to that in the general theory.

In the very next paragraph however (564), Hume says that it is not his present purpose to show that what he has just said about the right of resistance in mixed governments is 'applicable to the late *revolution*; and that all the rights and privileges, which ought to be sacred to a free nation, were at that time threatened with the utmost danger'. (It would not matter if they were, according to Hume's own general principles.) He will leave this 'controverted subject, if it really admits of controversy', and 'indulge... in some philosophical reflections which naturally arise from that important event'. By this he means the application of the experimental science of human nature, showing how the right of the regime established by the revolution can be traced to the working of the 'imagination', and thereby by-pass all the legal complexities involved in the

the Senate or People when such a king shall invade that part that doth not belong to him, it shall be lawful to oppose a just force to him, because his power doth not extend so far... it is impossible for any to have a share of the supreme power and not likewise a right to defend that share.' T. Rutherford, *Institutes of Natural Law*, quotes the same passage (II, 426).

question of the exclusion of James II's innocent heir.¹ Our approval of this 'is founded on a very singular quality of our thought and imagination'. It does not seem reasonable to exclude an heir who bears no blame for his father's actions, but 'when the public good is so great and so evident as to justify' the deposition of the father, 'the mind naturally runs on with any train of action which it has begun', and the 'ancient bounds of the laws being once transgressed with approbation, we are not apt to be so strict in confining ourselves precisely within their limits... As the slightest properties of the imagination have an effect on the judgements of the people, it shows the wisdom of the laws and of the parliament to take advantage of such properties, and to choose the magistrates either in or out of a line, according as the vulgar will most naturally attribute authority and right to them' (565-6). (In Hume's account in the *History* (IX, 513-14) of the conferences between the Lords and the Commons anent the settlement of the succession, this justification by psychology is still present, though in attenuated form, as part of the argument which the managers of the Commons might have used to combat the Lords' contention that the next heir by lineal succession could not rightfully be excluded.)² This argument rests on the assumption that James did justly forfeit his right, or at least that the 'vulgar' thought so. But it was not everyone's mind that worked in this way, because we are next told that the accession of the Prince of Orange to the

¹ This, according to the doctrine of Grotius, was not legal, in so far as for Grotius the immediate heir of a kingdom in lineal succession has possession of it in law, if not in fact, as soon as he is born, and his father's abdication cannot disinherit him, though it does so in the case of simple succession. Rutherford argued at length that in this Grotius is not true to his own principles: that an abdication dissolves a monarchical constitution altogether, that a man cannot have an heir as opposed to a successor until he is dead, that there is no difference between the two types of succession, etc. There is no need to go into all the legal subtleties. See T. Rutherford, *Institutes of Natural Law*, II, 635-62. For Hutcheson's opinion, see *System of Moral Philosophy*, II, 302-4, *Short Introduction*, 314-15. Forfeiture which applies to descendants may be contrary to humanity in the case of private inheritances, but the regal office is a public trust. Those in remainder have only a legal claim, 'from the old deed or law', and the true intent of it is presumed to exclude all descendants, and sometimes the whole family, of such as forfeited. The intention of the old laws is clear enough in countries where all inheritances were anciently held as fiefs. Prudence may dictate that the Crown be transferred to a member of the royal family, but this is left to the prudence of the nation. A forfeiture is a legal bar to the claims of all descendants, and in the case of the royal office there is no argument from humanity.

² 'They might have said, that the great security for allegiance being merely opinion, any scheme of settlement should be adopted, in which it was most probable the people would acquiesce... that the recent use of one extraordinary remedy reconciled the people to the practice of another, and more familiarised their minds to such licences, than if the government had run on in its usual tenor...'

throne at first gave occasion to many disputes, but time and custom give authority to all forms of government etc.

In all this twisting and turning, the plain fact seems to be that although Hume can defend, quite unambiguously and consistently with his general principles, the present establishment, he cannot unambiguously and consistently defend those who brought it about. At the end of the essay on *Passive Obedience*, the caution and hesitation of the treatment of the revolution of 1688 in the *Treatise*, are absent. It seems that they are no longer required; now that 'animosities are ceased', the truth may now be spoken that the reign of James II constituted 'such enormous tyranny as may justly provoke rebellion' (for this is what Hume says, in effect).¹ But this form of words merely covers Hume's difficulty. James II was not a Nero or Domitian. In the *History* (ix, 488) Hume says that it is 'indeed singular, that a prince whose chief blame consisted in imprudences and misguided principles, should be exposed, from religious antipathy, to such treatment as even Nero, Domitian or the most enormous tyrants that have disgraced the records of history, never met with from their friends and family'. The only thing wanting to make him an excellent sovereign was a due regard to the religion and constitution of his country; because this was lacking, the people were justified in their resistance (*History*, ix, 500). James' religion is a new consideration: his conduct, says Hume, serves to show how dangerous it is to allow any prince 'infected with the catholic superstition, to wear the crown of these kingdoms' (iv, 501). This is not catered for in Hume's theory of political obligation. Religion apart, it is clear that resistance to James II can be justified only on the special mixed monarchy theory – this is what the 'enormous tyranny' of the *Passive Obedience* essay amounts to: Hume says that in a constitution like that of England, resistance will be more frequent because the king is likely to break through the limits imposed on his authority. But this clashes with Hume's general doctrine of resistance: his insistence that any infringement of the bond of allegiance must be 'the last refuge in desperate cases, when the public is in the highest danger, from violence and tyranny' (*Passive Obedience*, 475). In such cases, what constitutes the exception to the general rule of obedience will be so obvious and undisputed as to remove all doubt: that is why there is no need to theorize about resistance; a general

¹ And in the *Original Contract* essay, Hume says that we blame the Jacobites for adhering to a family which forfeited all title to authority 'from the moment the new settlement took place' (*Essays*, 466).

doctrine is uncalled-for and dangerous, and it is impossible to be precise, so that theoretical disputes are meaningless, and resistance cannot be written into any law (*Passive Obedience*, 475–6, *History*, viii, 143–4, x, 105–6, x, 144–5). This is to say that resistance is justified when and because it is automatic. But can it be automatic in a mixed monarchy in a way that is different, because not so obviously a question of life and death for everybody? The 'extremity' here is when the constitution cannot be defended in any other way (*Passive Obedience*, 477). This surely clashes with Hume's psychology of the force and relative lack of force with which things contiguous and remote respectively affect the imagination, as used to explain the origin of government: what is an 'extremity' for some (those in authority or some of them) will not be an 'extremity' for all; that is in accordance with the psychological explanation of the need for government. His general, 'Nero', theory of resistance on the other hand, is in accord with his psychology. The tyranny of a Nero is very much more contiguous than the 'imprudences and misguided principles' of a James II, who in many ways would have made an excellent king. Hume's ambivalence is carried on into his account of who made the revolution. In the *Original Contract* essay it is said to be a tiny minority who decided the matter (459), those presumably for whom James II's conduct (religion apart) was an 'extremity': the majority however willingly, 'acquiesced'. In the *History* (ix, 515) Hume deliberately contradicts what he had written in the *Original Contract* essay. 'It happens unluckily for those who maintain an original contract between the magistrate and people, that great revolutions of government, and new settlements of civil constitutions, are commonly conducted with such violence, tumult and disorder, that the public voice can scarcely ever be heard, and that the opinions of the citizens are at that time less attended to than even in the common course of administration. The present transactions in England, [1689] it must be confessed, are a singular exception to this observation.' From being a proof of it in the *Original Contract* essay, the revolution has become an exception to it: 'a great and civilized nation deliberately vindicating its established privileges' (*History*, iii, 297).¹

¹ Blackstone thought it best to consider the revolutionary settlement 'upon the solid footing of authority' rather 'than to reason in its favour from its justice, moderation and expedience', because that might imply a right of dissenting or revolting from it in case we should think it unjust, oppressive or inexpedient. Our ancestors having in fact decided the question, it is now 'become our duty at this distance of time to acquiesce' (*Commentaries* (1765), I, 205).