



## LIBERTY MATTERS

### THE PLACE OF LIBERTY IN DAVID HUME'S PROJECT

*Nick Capaldi, the Legendre-Soulé Distinguished Chair of Business Ethics in the School of Business of Loyola University, New Orleans, outlines [David Hume's](#) ambitious "Project" with a list of 8 "theses", the last of which states that "Liberty is the Central Theme." Capaldi's gloss on this thesis is "The ultimate ontological reality is the individual human agent; there is no institution or practice that transcends the individual; the legitimacy of any practice is based on the acquiescence of individuals. Acquiescence is not consent. There is no philosophical argument for liberty: it is the default position. Given its unique history, England was able to preserve and elaborate this insight in large part because of its inherent disposition to distrust abstractions – this is the British Intellectual Inheritance, and Hume's philosophical practice as well as his History is the only meaningful kind of account that can be given." Capaldi is joined in this month's discussion by Daniel Klein who is professor of economics and JIN Chair at the Mercatus Center at George Mason University; Chandran Kukathas who holds the Chair of Political Theory in the Department of Government at the London School of Economics; Andrew Sabl who is Orrick Fellow and Visiting Professor in the Program on Ethics, Politics and Economics, Yale University; and Mark Yellin of Liberty Fund..*

## HUME'S PROJECT

by Nicholas Capaldi

Thought seems to have made little advance since David Hume and Immanuel Kant, and in several respects it will be at the point at which they left off that our analyses will have to resume. It was they who came nearer than anybody has done since to a clear recognition of the status of value as independent and guiding conditions of all rational construction. What I am ultimately concerned with here ... is that destruction of values by scientific error ... [this is] a tragedy, because the values which scientific error tends to dethrone are the indispensable foundation of all our civilization.... Science itself ... rests on a system of values which cannot be scientifically proved.

--Hayek, *Law, Legislation, and Liberty* (1972). [\[1\]](#)

### Hume's Historical Context

Hume's historical context was defined by clergy (Kirk) who (a) emphasized Christian self-denial and control of

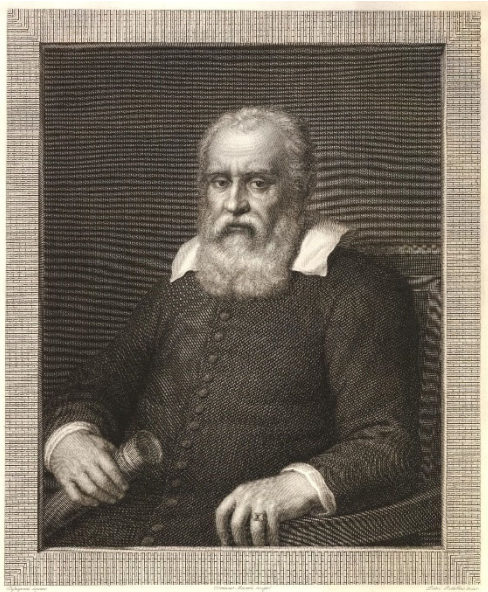
the passions, (b) justified this version of Christianity by appeal to transcendent classical philosophy (e.g., Cambridge Platonists) and (c) promoted a culture suspicious of, if not hostile to, commerce. Politically, Britain was divided between "Country" vs. "Court" political parties, each appealing to intellectual abstractions that made compromise difficult if not impossible. Hume's project was to undo everything for which the Kirk stood by undermining its intellectual foundations, to promote a commercial society by emphasizing its human origin and humane consequences, and to promote thereby a more productive politics.

### The Copernican Revolution in Philosophy[\[2\]](#)

*Thesis One: How we understand ourselves is more fundamental than how we understand the nonhuman world.* Our understanding of the nonhuman world is parasitic on our understanding of the human world. We cannot understand ourselves in the way in which we understand the sciences and the way in which the sciences explain the nonhuman world.[\[3\]](#) Epistemology is more fundamental than metaphysics (already implicit in all of modern philosophy if not late scholasticism). Kant was one of

the few who understood Hume's role in this revolution.[\[4\]](#)

*Thesis Two: Premodern philosophy distorted our understanding both of ourselves and of the nonhuman world.* The fundamental error of classical and medieval philosophy was the categorical error of trying to understand ourselves in the way in which we understood something else, like mathematics (Plato), non-evolutionary organic biology (Aristotle), and countless variations thereof. The fundamental error in classical and medieval thought consists in believing that truth, goodness, beauty (meaning, and all norms) exist in an objective structure independently of us, that those norms form a self-contained (holistic and *collective*) and hierarchical structure (telos) to which we must conform.



**Galileo**

The classical world's misconception is epitomized in Aristotle's physics: rest as natural; there needs to be a first cause; causal relations involve the identity of formal-final-and-efficient causes. Modern physics (Galileo→Newton) destroyed this Aristotelian vision. Motion is the natural state (a consequence of which is that human beings should be understood as moved by their passions); we do not need a first cause; there are no final causes (no all-encompassing telos). There are only efficient causes and hence no way to reason either forward to a final cause or backward from formal cause to efficient cause. Efficient

causes can only be established empirically. All of this is not the product of Humean phenomenology but the consequences of an understanding of Newtonian physics.

Classical philosophy fostered the intellectual hubris that this totality can be systematically represented and apprehended. The clearest form of intellectual totality for the ancients was geometry, and hence they were led to assert that all valid explanation had to be a deduction from first principle(s). Challenged to produce an outline of all this, classical philosophers (and their modern and contemporary descendants) cannot resist the temptation of fabricating ingenious hypotheses and appeals to abstractions (veils of ignorance). The absence of a teleological totality means the absence of a collective social good (hence the importance of individual liberty). We do not reason from wholes to parts; reason is instrumental, and we reason from parts to larger parts.

*Thesis Three: we cannot understand ourselves independent of human action*[\[5\]](#) *without falling into self-defeating skepticism.* It is not Hume who is the sceptic; rather skepticism is the logical outcome of classical philosophy. It is Hume who showed us how we avoided skepticism.[\[6\]](#)

The world does not understand itself; there is no stepping outside the world and viewing it from an Archimedean perspective. Our understanding of the physical world and the social world and our understanding of ourselves emerge midstream at the same time. Furthermore, human action cannot be explained by reference to an alleged human "nature" nor by appeal to social wholes. Within human action we discover that (a) we are agents interacting with others (inanimate objects, animals, and other agents) in order to satisfy wants (passions); (b) when reflecting on ourselves we do not start at rest with reason and then decide how to act; (c) within ongoing action (motion is the original condition) we discover the subordinate role of reason; and (d) there is no collective good; rather we *negotiate* and renegotiate with other agents. By the time we are conscious of our selves (individual identity) and our context of negotiation, there is already an implicit order complete with inherent norms (custom).

This is clearly an anticipation of or early expression of what Hayek termed spontaneous order. [7]

*Thesis Four: The Copernican Revolution explains the transition to the Technological Project (TP).*[8] The TP is the transformation of nature for human purposes; hence the importance of entrepreneurship and the transition from agriculture to industry – crucial for the creation of wealth, the redefinition of property, and social transformation. Classical philosophy encouraged us to "discover" an external structure and to conform to it. Copernican philosophy encourages us to manipulate (transform) the world to conform to our own internally generated models. This allows Hume to account for economic growth and be pro-commerce.

### Common Sense Epistemology

*Thesis Five: The imagination is more important than either deductive or instrumental reason.* It is the imagination that permits us to reason by analogy (e.g., common law) and to invent useful fictions (e.g., space, time, money). The usefulness cannot be explained relative to external structures but only by reference to the satisfaction of human wants (passions).

PRIOR PRACTICE REFLECTS  
SPONTANEOUS ORDER AND NOT  
PLANNED ORDER.”

### Practice as an Inductive Process

We come to understand ourselves through our cultural practices. The cultural context is not the product of an original plan (the Judeo-Christian God's or otherwise). Practice preceded theory. In Hume's famous example, two men in a boat start coordinating their rowing (T, 3-2-2). A practice has an embedded norm(s). There is no issue in Hume about the origin of norms.[9]

Prior practice reflects spontaneous order and not planned order. Since the original order was not planned, it does not contain self-conscious positive goals, and it is not expressible in a closed deductive system. Our awareness originates in the recognition of an alleged violation of

what we think is normal practice. Over time, we become conscious of the norms only because of conflicts, either conflicts over which norm applies in a given case or the realization that two or more norms which developed independently in different practices conflict in a novel situation.

All critique and the resolution of internal tensions is immanent. Resolution proceeds inductively by attempting to restate the norms in such a way as to achieve consistency and coherence.[10] This process is retrospective and does not determine all future permutations of practice or eliminate the need for further future conflict-resolution.

*Thesis Six: Moral Pluralism.* Since critique is immanent there will inevitably be conflicting understandings, that is, *moral pluralism (domestic political parties; international competition/conflict)*. There is no Archimedean position from which to resolve the disputes definitively or permanently. The notion that clergy or professional (applied) philosophers are experts or have access to special knowledge which will enable them to resolve all controversy is self-serving pretentious nonsense.

In response to the existence of such conflicts, societies develop another institution, namely, a legal system. Law functions to *minimize conflict not permanently resolve it*. Minimizing conflict as opposed to promoting a specific form of the good life in the face of moral pluralism has greater survival value. In the English common law, so-called negative rights (historical entities not ontological entities) as opposed to positive rights are consistent with this approach. It is not surprising that courts are reluctant to enforce positive duties. Despite the fact that Hume did not pursue a career in law, he did study law, and we know that he was familiar with Hale's work[11] and the Dutch legal theorists Voet and Vinnius.[12]

Spontaneous order is the awareness that practice always precedes theory. Theory is the explication of practice, most especially the inherent norms. There is therefore no mystery about the origin or justification of norms. There cannot be a theory (external or transcendent explanation) of how practice and theory are

related, i.e., no metatheory or super-theory that supersedes *all previous* practice. Total conceptualization or conceptualization (theory) of the preconceptual (practice) is impossible. Ongoing revision of practice is immanent. There is no final and definitive revision and reformulation.

When two or more independent spontaneous inheritances meet or confront one another, there is no theory or independent perspective from which to judge or predict future permutations. Adherents of each inheritance need to decide based on its own internal resources how to respond. There is no a priori limit on what form that response might take (annihilation, coexistence, or absorption, total or partial). No theory other than an explication can guide or determine future practice. Alternative explications of the same inheritance are not only possible, but deciding among them requires the addition of rhetoric and persuasion.

*Thesis Seven: Spontaneous order, so understood, is the foundation of the rest of Hume's philosophy.* Hume's project is to understand the human world (morality, politics, economics, policy, etc.) by rooting it in spontaneous order, history, and the evolution thereof understood inductively. The later evolution of economics as a formal (mathematical) social science has moved away from Hume's own project.[\[13\]](#)

### Moral Philosophy

Hume's moral theory is an extension of his epistemology and his understanding of human passions. This explains the order of the *Treatise* (Bk I on the Understanding, Bk II on the Passions, and Bk III on Morals).

1. Transcendent philosophy is mistaken; there is no external-objective framework apprehended by reason and to which humans must conform. Reason is the slave of the passions (instrumental, explicative, imaginative).
2. Norms are already embedded in prior practice: no is-ought problem.[\[14\]](#)
3. We are able to adopt the social perspective through imagination and *sympathy*, not

reason. More to the point, sympathy allows us to understand how others understand their personal interests and therefore aids in the *negotiation* of social endeavors.

4. Moral Pluralism: There is no guarantee that all conflicts can be resolved. Moral reasoning (like the common law) moves from parts to larger evolving parts but never to a final all-encompassing social whole (collectivism is false); hence there is no guarantee against the redefinition or the collapse of the social whole

### Political Philosophy

1. Hume makes clear in the *Dialogue* appended to the *Enquiries* that the level of universal truths is too thin to support policy; reference to historical context is necessary. Qualified generalization is the most we can achieve. One of the most important things that all human beings share is being born into a particular historical context subject to evolution. Given human passions (e.g., sex drive), the social world or some version of it is always a given.
2. There is no external-objective political/legal framework apprehended by reason and to which humans must conform; there is no ancient constitution (dangerous abstraction); simultaneously, there can be no "argument" for the "right" of revolution (Locke mistaken).
3. Britain's present legal and political system is a collection of norms that evolved over time (Hume's *History* is designed to establish and reinforce this).
4. We accept (acquiesce in) social authority as a system because it ultimately protects us as individuals and protects our loved ones; legitimacy is the product of acquiescence (public opinion). There are intimations of Mandeville and Smith's hidden hand (I, 3,2,7) in the view that the laws of justice were not originally intended for public benefit. Legitimacy is not

derived from origins or abstractions but accumulative (inductive, historical) experience.

5. Since there is no social whole, and given individual autonomy, our limited benevolence, and the necessity of acting in concert on occasions, human beings will form political parties (based on interest, principle, or personal loyalty); from a social perspective, political parties function as coalitions of interest groups or factions (hello, Madison).
6. Just as human beings create political parties, so they will create competing and cooperating nation-states.
7. Since there is no social whole, government as an institution is engaged in managing conflict. It follows that one-world government (a) is incompatible with Hume's understanding of moral pluralism and (b) invariably reflects another version of illusory transcendent philosophy.
8. Humean political "science" is a combination of (a) the recognition of the foregoing empirical and historical facts, (b) a reminder of the logical errors of transcendent political philosophy as opposed to his own, and (c) whatever highly qualified generalizations we can make (always subject to revision). As is the case for Hayek and Oakeshott, Hume's political theory is an attempt to transcend partisanship, and that is why it is a mistake to attribute to him either (a) a label or (b) the criticism that he fails to make a case for a label.
9. *Thesis Eight: Liberty is the Central Theme.* The ultimate ontological reality is the individual human agent; there is no institution or practice that transcends the individual; the legitimacy of any practice is based on the acquiescence of individuals. Acquiescence is not consent. There is no philosophical argument for liberty: it is the default position. Given its unique history, England was able to preserve and elaborate this

insight in large part because of its inherent disposition to distrust abstractions – this is the British Intellectual Inheritance, and Hume's philosophical practice as well as his *History* is the only meaningful kind of account that can be given.

### Political Economy

1. Since transcendent philosophy is mistaken, there can be no such thing as social "science" understood as explaining, predicting, and controlling the social world by means of a social technology. In this important respect, Hume differs from some British Enlightenment (Bentham) and most of the French Enlightenment thinkers.[\[15\]](#)
2. Hume cannot be classified as either a mercantilist or a doctrinaire libertarian or anything else because these categories are either (a) ultimately semantic or (b) presuppose a premeditated agenda-laden theory smacking of pretentious and illusory transcendence.
3. The critics of commerce (classical philosophers, Churches, advocates of civic republicanism) are wrong. Their conception of society goes against the "natural bent of the mind" (E, Com, 263); these critics reflect mistaken transcendent philosophy in which human beings are supposed to subordinate passion to reason and promote monkish virtues.
4. Hume looks favorably upon commerce because it is consistent with his understanding of human passions.[\[16\]](#)
  0. The passions seek and require growth. (T, 2.1.10.3, 10; E, RP 6, 113)
  1. Commerce spurs intellectual growth and communication. (E, RA 4-5, 271)
  2. Commerce improves agriculture by promoting "agriculture as a science." [TP] (E, Co 11, 261)

3. Commerce promotes liberty and the rule of law. (E, RA 277)
  4. Growth is preferable; it dampens conflict rather than exacerbating it.
  5. "Commerce and manufactures gradually introduced order and good government, and with them, the liberty and security of individuals ... who had before lived almost in a continual state of war with their neighbors, and of servile dependence upon their superiors. This, though it has been the least observed, is by far the most important of all their effects. Mr. Hume is the only writer who, so far as I know, has hitherto taken notice of it." (Smith, *Wealth of Nations*, 3.4.4 [1: 412]).
  6. Political-economy is policy- or norm-laden, focused on repairing conflicts in previous practice and extending practice to novel circumstances.
  7. Previous thinkers had conceptualized economics as being in the service of political agendas; Hume conceptualized legal and political institutions as now being in the service of economic growth.
  8. Hume's *History* is, in part, (a) an extended essay on how political-economic institutions developed in England, (b) the explication of the norms inherent in the spontaneous-order practices when not distorted by theory (philosophical, religious, political), (c) a qualified guide to future practice, and (d) a potential model for developing countries of how to proceed.
- transcendent economics, and therefore he is opposed to government *manipulation* of the economy as opposed to *maintaining* conditions for growth, enforcing contracts, and providing conflict resolution.
2. Liberty is the default position: "these matter ought always to be left free, and be entrusted to the common course of business and commerce." (H, 26,40, 3:78)
  3. Hume generally opposed restrictions including limits on interest (usury), wage controls, patent monopolies, and sumptuary laws.
  4. Economic stagnation is more likely in monarchies (statist societies) which emphasize status over growth.
  5. Critique of egalitarianism (*EPM* 3.26). Liberty is a product of English history; (Equality is the product of [Rousseauian] Continental history still under the spell of transcendent philosophy.)[\[17\]](#)
  6. Given Hume's understanding of the universality at some level of human passions, and given that there are nation-states, there is likely to be international commerce. Because these states are historical artifacts, their institutional structures (political, economic, etc.) might have evolved differently. Given the historical context, it will come as no surprise that there will be richer and poorer countries, and this creates economic policy challenges. By analogy, economic growth dampens conflict domestically and may do so internationally; by analogy, the division of labor spurs economic growth domestically and might do so internationally (Hume, Smith, Kant argument for *potential* world peace).[\[18\]](#)
  7. Free trade, in principle, is better than managed trade; *but*: protectionism is sometimes justified (E, Co 19, 265); role of government is to manage conflict in newly evolving circumstances.[\[19\]](#)

### Qualified generalizations about commerce

1. Hume is opposed in principle to social technology because the latter presupposes a

## The Perennial Importance of Hume

1. Hume changed our conception of philosophy (Copernican Revolution). He showed that alternative conceptions of philosophy are not only wrong but both retard intellectual development and distort legal-political-economic institutions and public policy.
2. Prior to Hayek and Oakeshott,<sup>[20]</sup> Hume gave the best philosophical foundation for modernity (understood by me to encompass the technological project, market economy, limited government, rule of law, and culture of personal autonomy).<sup>[21]</sup>
3. Hume identified the problematic transition from traditional cultures to modernity that has dogged the international context.
4. Hume moved public policy discussion from ideology to prudence.

### References

#### Abbreviations:

- **Treatise (T)** and **Enquiries (EHU, EPM)** (by section numbers)
- **History (H)** and **Essays (E)** are Liberty Fund editions.
- Smith's **Wealth of Nations** (Liberty Fund edition)

### Endnotes

[1.] Hayek, *Law, Legislation, and Liberty* (Chicago: University of Chicago Press, 1972), Introduction, vol. I, pp. 6-7; in all three volumes Hayek cites Hume a total of 43 times. As early as 1960, with the publication of *The Constitution of Liberty* (Chicago: University of Chicago Press, [1960], 2011) Hayek acknowledges that "Hume will be our constant companion and sage guide...." Introduction, n10. In that work, Hume is cited 28 times.

[2.] N. Capaldi, "The Copernican Revolution in Hume and Kant," *Proceedings of the Third International Kant Congress*,

ed. L. W. Beck (Dordrecht, Holland: Reidel, 1972), pp. 234-40.

[3.] There is a perennial temptation to confuse or to reduce philosophy to another discipline. It is reflected in counterfeit philosophers. See Donald Livingston, *Philosophical Melancholy and Delirium* (Chicago: University of Chicago Press: 1998).

[4.] "It is positively painful to see how utterly his opponents, Reid, Oswald, Beattie, and lastly Priestly, missed the point of the problem; for while they were ever taking for granted that which he doubted, and demonstrating with zeal and often impudence that which he never thought of doubting, they so misconstrued his valuable suggestion that everything remained in its old condition.... I should think that Hume might fairly have laid as much claim to common sense as Beattie and, in addition, to a critical reason (such as the latter did not possess)...." Immanuel Kant, *Prolegomena to any Future Metaphysics*, ed. L.W. Beck (Indianapolis, IN: Bobbs-Merrill, 1950), pp. 6-7.

[5.] See N. Capaldi, "The Historical and Philosophical Significance of Hume's Theory of the Self," in ed. A.J. Holland, *Philosophy, Its History and Historiography* (Dordrecht, Holland: Springer: 1985), pp. 271-85. The complex idea of the self emerges in action as the object of pride and humility. Hume's conception of personal identity (idea of the self) anticipates Oakeshott's conception: the self of which we are not immediately aware is free to use imagination to define itself as an individual and give meaning to its historical experience by making choices; this is how we learn about and make ourselves; this engagement is a self-enacted history ([adventure in self-definition).

[6.] N. Capaldi, *David Hume: The Newtonian Philosopher* (Boston: Twayne, 1975), chapter 8.

[7.] Hayek asserts that Hume was the first person to give cogent expression to what Hayek later called "spontaneous order." See *The Constitution of Liberty*, p. 115 n23.

[8.] N. Capaldi and G. Lloyd, *Liberty and Equality in Political Economy: From Locke vs. Rousseau to the Present* (London: Elgar, 2016).

[9.] There is no such thing as Hume's law or Hume's fork or a division between facts and values. See N. Capaldi, *Hume's Place in Moral Philosophy* (New York: Peter Lang, 1989).

[10.] Donald Livingston, *Hume's Philosophy of Common Life* (Chicago: University of Chicago Press, 1984). Oakeshott puts this as "political activity is the amendment of existing arrangements by exploring and pursuing what is intimated in them." "Political Education," in Fuller (ed.), *Rationalism in Politics and Other Essays* (Indianapolis, IN: Liberty Fund, 1991), p. 56.

[11.] Sir Matthew Hale, author of *The History of the Common Law of England*, is a crucial influence. He was the first person to attempt a general history of English law; he originated the metaphor of the *Ship of the Argonauts* (every part was ultimately replaced, but still it remained the same ship). This metaphor perfectly captures common-sense inductive reasoning that is fundamental for Hume and for explaining British history and its institutions. It also exemplified why historical narrative is fundamental to all explanation.

[12.] "My Own Life," in *Essays*, vol. 1, p. 2, Hume, *Essays: Moral, Political and Literary*, ed. Eugene F. Miller (Indianapolis, IN: Liberty Fund, revised edition 1987).

[13.] Dan Klein is an important and noteworthy exception.

[14.] N. Capaldi, "Hume's Rejection of 'Ought' as a Moral Category," *Journal of Philosophy* 63 (5):126-37 (1966).

[15.] See Hume's Letter to Turgot, *The Letters of David Hume*, ed. J.Y.T. Greig, Vol. II (Oxford: Oxford University Press, 2011), p. 180.

[16.] The best account of this is still Eugene Rotwein's introduction to his collection of *Hume's Writings on Economics* (Madison, WI: University of Wisconsin Press, 1955, reprinted in 2007). I had the good fortune to team-teach with Gene when I was a member of the faculty at Queens College, CUNY.

[17.] Capaldi and Lloyd, *Liberty and Equality in Political Economy*.

[18.] Hume, "The Rise and Progress of the Arts and Sciences," in *Essays*.

[19.] Joseph Schumpeter: "[Hume] was the one eighteenth-century economist who always insisted on the variability of man and of the relativity to time and place, of all policies; the one who was completely free from the paralyzing belief, that crept over the intellectual life of Europe, in practical principles that claim universal validity, who saw that a policy that was rational in France at a given time might be quite irrational at the same time in Naples." Joseph Schumpeter, *History of Economic Analysis* (Oxford: Oxford University Press, 1954), pp. 293-94.

[20.] Oakeshott acknowledged Hume as a proponent of the politics of skepticism. For an Oakeshottian reading of Hume see Shirley Robin Letwin, *The Pursuit of Certainty*, Part I (Indianapolis, IN: Liberty Fund, 1965/1998).

[21.] See Capaldi and Lloyd, *Liberty and Equality in Political Economy* for a discussion of the "Lockean Narrative."

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## HUME AND LIBERTY, SIMPLE AND COMPLICATED

by Daniel B. Klein

Like fireworks on New Year's Eve, the essay by Nicholas Capaldi launches a splendid cascade. The useful and agreeable essay runs along lines of Hume as pragmatist and non-foundationalist. I hope to remark on such in follow-up conversation. Here I hold forth on Hume on the theory and history of liberty, connecting to Nick at several points.





**Adam Smith**

As Donald Livingston (1984) says, "philosophical insight is gained by working through the contrarieties of thought which structure a drama of inquiry" (36). To study David Hume and Adam Smith is to study the contrarieties that figure centrally in their thought. By contrariety, I don't mean a stark double-doctrine, as for example when a word exoterically means X and esoterically a quite contrary Y. The idea, rather, is that the two meanings, X and Y, do differ, and the key is to see when the author means X and when Y—and, sometimes, when Z, and beyond—and how the author accommodates both X and Y.

A contrariety that looms large in *A Treatise of Human Nature* (THN) resides in the word *reason* (Matson 2017a). Another great contrariety in THN and other works by both Hume and Smith resides in *nature/natural*. In their moral and political thought, the big contrarieties reside in *justice, liberty, and freedom*.<sup>[22]</sup>

Smith makes a pathway to clarity in our understanding of Hume. A remarkable contrariety in Smith resides in *justice*. He seems to tell us that justice talk ought to be confined to "mere justice," or commutative justice. But read closer. Actually, he affirms not one but three senses of justice. He does not confine his justice talk to commutative; he practices the other two as well, and copiously.

But commutative is clearly very special. One aspect of its specialness is that, by virtue of its precise and accurate—or grammar-like—rules, it has a flipside that, too, is grammar-like. The virtue of commutative justice, that is, not messing with other people's stuff, has a flipside in *others not messing with one's stuff*. In equal-equal jural relationships Smith often calls that "security," but in superior-inferior jural relationships, "liberty" or "natural liberty."

That commutative justice and liberty are flip sides is signaled by Smith, for example, when he says of two restrictions: "Both laws were evident violations of natural liberty, and *therefore* unjust" (WN, 530, italics added). Liberty is others not messing with one's stuff.<sup>[23]</sup>

But Smith's "system of natural liberty" clearly entails the government messing with one's stuff. So liberty must also have a meaning aside from *others not messing with one's stuff*.

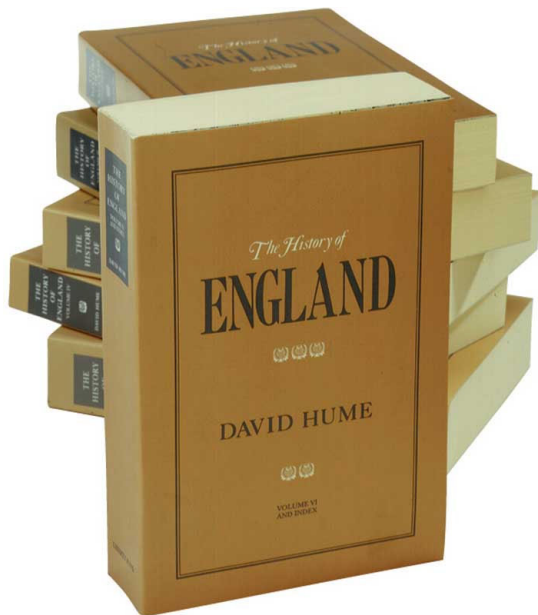
Likewise for Hume. He does not articulate the simple meaning of *liberty* as explicitly, but he too upheld it as a meaning of *liberty*. Yes, that general formulation—*others not messing with one's stuff*—has *inside of it* the evolved historicity of the grammar-like content of what functions as "stuff," of what makes it "one's," and what counts as "messing with" it. The injunction against messing is a necessary convention among jural equals, however, so, amidst a diversity of historicity, there obtains a uniformity in the general formulation.

And we likewise have a uniformity in applying the following crucial principle: a type of action in a superior-inferior jural relationship is an initiation of coercion if (and only if) such action in equal-equal jural relationships is an initiation of coercion. If your neighbor "taxed" you (i.e., extorted wealth from you) or "regulated" your freedom of association (i.e., stalked and assaulted you in private life), we darned-well would regard that as an initiation of coercion, and so we do call it an initiation of coercion when done by government (though not "extortion" or "assault").

Historicity pins down "stuff," "one's," and "messing with," yielding operative concepts of both commutative justice and liberty. The Hume-Smith formulations

maintain that taxation and government interventions are initiations of coercion, are violations of liberty; such semantics check their advocates by placing upon them a burden of proof.

The foregoing formulations presuppose jural dualism. But human experience has, arguably, found itself in conditions of jural monism, that is, only equal-equal, in the simple society of the ancestral band of the Paleolithic, giving us instincts to jural monism that die hard (Hayek's two-worlds hypothesis and atavism thesis about modern collectivist politics). In recent millennia, human experience has found itself in conditions of jural multiplicity *beyond dualism*: Families, clans, slave-masters, tribes, lords, ecclesiastical institutions, multiple governments, all grating against one another, a jural mishmash that defies the simple "jural superior" of the modern nation-state. Today, speaking of "the government" feels natural to us, because within the modern nation-state there is an integration of the, e.g., municipal, county, provincial, national authorities. As Robert Bucholz (2003) puts it, Britain saw the formation of *imperium*. The formation of such jural imperium, which underlies jural dualism, which underlies the formulation of liberty given here, is a chief theme of Hume's *History of England*. Thus, Nick: "Liberty is a product of English history."



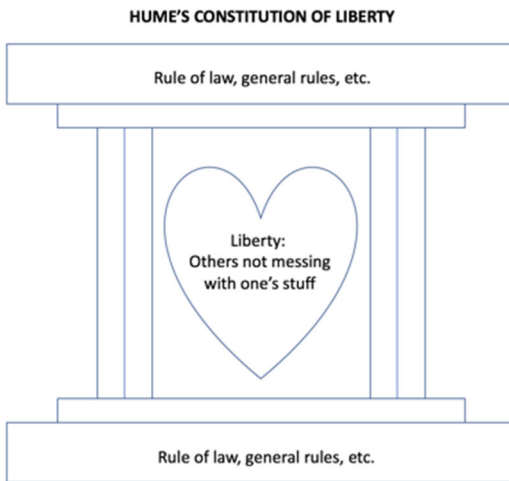
Britain was early to jural imperium (which does not preclude competing court systems). The accretion of jural integration occurred at the same time that the philosophy of governance shifted from social cohesion in the higher things to the emergent, post-Westphalia focus on the lower things that were worked out in natural jurisprudence, a refocusing that comported with growing toleration in high-things differences, with concomitant abstract ideas like *earnings* (honest income), increasingly sanctified in evolving Christianity and justified in the liberal theory of virtue (e.g., in Britain, Locke, Butler, Hutcheson, Hume, Smith), with concomitant results like innovation and what Nick calls the technological project, and with liberal economic theory and Smith's "liberal plan." What emerged was not just the nation-state, but inspiration and formulations for a *liberal* nation-state—a plan practical, virtuous, and lucrative to most, not least the Exchequer. Perhaps deliberately downplaying concomitants which tended toward social dis cohesion, Hume and Smith made such appeal to all honest gentlemen (Merrill 2015).

But the nation-state is the institutionalization of initiations of coercion. *Imperium* is the nation-state's supervening of all jural affairs. Resolution of the contrariety comes by way of judiciously incorporated distinctions, refinements, and qualifications—that is, by complications.

Liberty is used to formulate reforms and to compare them (including the no-reform option), thus keeping thought and discussion anchored in what we know and practice, the status quo. The liberty principle (if Reform 1 rates higher in liberty than Reform 2, then prefer it to Reform 2) is defeasible. Thus, as Nick points out, Hume is no "doctrinaire libertarian." But Hume and Smith propose to make a maxim of the liberty principle—Nick thus says that Hume maintains liberty as "the default position." Maintaining that presumption depends on properly theorizing the configuration of ownership (Klein 2011): Nick rightly emphasizes that for Hume political authority is based on *acquiescence*, not consent.

Hume and Smith considered the constitutive elements that conduce to relative liberty—rule of law, rules

certainty and generality, representative government, divided powers, checks and balances, and so on. The word *liberty* is often used by Hume as descriptive of such political-science elements. But, as quotations in Nick's essay evince, both meanings of liberty are at work, that is, both a constitutional notion of an institutional system of liberty and the jurisprudential-flipside notion: others not messing with one's stuff.



Excellent scholarship on Hume's politics—e.g., by Duncan Forbes (1975), Hayek (1967, 116ff), Andrew Sabl (2012)—has often been shy on the libertarian idea of liberty at the heart of Hume's outlook (Matson 2017b), a shyness that Nick's essay helps to correct.

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Endnotes

[22.] In Smith, another dramatic contrariety resides in *impartial spectator*.

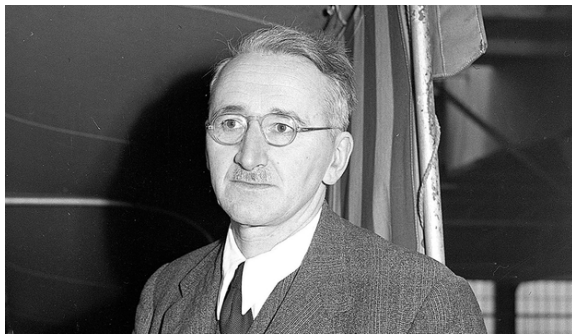
[23.] In Klein 2017 I exposit Smith's affirmation of the three senses of justice and the flipside relationship between commutative justice and liberty.

## POLITICS, METHOD, AND PLURALISM

by Andrew Sabl

In a Florentine age in which academics conceal ruthless factional competition under courtly *politesse*, a swashbuckling essay like Nicholas Capaldi's is rare and welcome. Many of his thrusts unquestionably hit home. He aptly names Hume's enemies (pretentious and bigoted clerics, vain partisans, enemies of commerce); rightly portrays Hume as teaching how norms and conventions rest neither on deductive foundations nor on origin stories; and brilliantly summarizes Hume's anti-superstitious, agent-centered philosophy thus: "the world does not understand itself."

My disagreements remain substantial. I take Capaldi's bold and admirably clear theses to slight Hume's insistence that a certain kind of politics, and in particular political authority, is an essential and independent precondition for human happiness. I am skeptical that methodological individualism and the rejection of a transcendent cosmic order need entail a liberal attitude towards society and politics. And I fear that Capaldi has avoided a problem that occupied Hume himself: the second-order pluralism arising from the likelihood that most people are not, and will not become, Humeans.



*Friedrich von Hayek*

Rather than holding forth at length about Hume's politics,<sup>[24]</sup> I will only note a few ways in which Capaldi's rather Hayekian reading of Hume sells (in my view) Hume's political ideas a bit short. First, it slights the fact that substantial levels of commerce require stable and

robust political authority. While Hume indeed thought that property and peaceful order could exist without government, he limited this possibility to a state of subsistence, as with the "[Native] American tribes" whom Hume regarded—quite wrongly but in accord with many in his time—as subsisting purely by hunting and gathering and relying only on political authority only episodically. "[Throw any considerable goods among men](#), they instantly fall a quarrelling" (T 3.2.8.1-2): thus Hume necessarily moves from his speculations regarding the origin of property to a story of how governments acquire *authority* and citizens come to feel a sense of *allegiance* to them. No authority, no "considerable" property—for although everyone can discover, through experience, the value of having a property convention, we cannot without government reliably settle disputes about property or ensure that the same conventions will operate on a large scale. Liberty in a prosperous society, then, cannot consist in an absence of authority; it must reflect a convention of authority that provides for its own limits.

Relatedly, it is quite misleading to portray Hume's *History of England* as an account of how "political-economic" institutions developed. Political order had primacy. Hume's story of historical development starts with Roman law on the one hand and the development of settled rules of monarchical and parliamentary authority on the other. Those who expect Hume to have written primarily social or economic history (either because they've read his *Essays* or because they think that's what all smart people write) are often surprised to find a book whose main topics are politics, constitutional law, and—in the absence of imperfection of these—civil and foreign war.<sup>[25]</sup> If this seems to make spontaneous order overly dependent on politics, there are compensations. While Capaldi rightly notes that a Humean can admit no *metaphysical* "guarantee against the redefinition or the collapse of the social whole," governmental authority, constitutionally limited, provides decent *de facto* prospects for avoiding such a collapse. Once again, liberty—"settled," reliably defined, and established liberty, to use Hume's favorite qualifier—is the gainer.

If politics is more crucial than Capaldi implies, political science is also more progressive, less frozen in the era of Hume's own insights. Hume portrayed his own political science as a young discipline given the paucity of political data: "[the world is still too young to fix many general truths in politics](#).... We have not as yet had experience of three thousand years...."[\[26\]](#) Thus Capaldi's suggestion that contemporary "statism" is merely a new form of "monarchism" seems to strain an analogy: since Hume did not experience (say) communism, his maxims cannot teach us much about it.[\[27\]](#)

More specifically, Capaldi slights the extent to which contemporary experience has shown that "modernity" requires not merely "limited government" and the "rule of law" but *representative democracy*. That is, Hume's mitigated relativism regarding forms of government may have been reasonable in his time but no longer.[\[28\]](#) Experience has taught that only representative assemblies, on a democratic basis, can reliably channel and secure the process of continuous conciliation—"we *negotiate* and renegotiate"—on which Capaldi rightly takes diverse modern societies, lacking a common good, to rely.[\[29\]](#) Put differently: the most Humean attitude towards politics is not to fear or disparage the whole enterprise (as Hayek was generally tempted to do) but to realize that politics, like law and economics, is a realm with its own methods of negotiating human interests, of ensuring that each of us has some chance of achieving what he or she values in the absence of guarantees that our values will be common ones.



***Sir Isaac Newton (circa 1726-1730)***

Leaving politics: Capaldi's linkage of epistemological modernism to political liberalism seems too quick. Any given approach to truth can coexist with a variety of social and political values. Newton dabbled in mysticism and alchemy; Hobbes adduced from a radically subjectivist and egotistical theory of value a political theory that demanded near-absolute state authority; an even more radical individualism led Sartre to embrace communism to stave off a sense of alienation and absurdity. The absence of a preexisting transcendent order may mean there is no preexisting reason why we may not lead our own life in our own way. But that ontological liberty includes the ability to wish the way *were* given to us: to lament a perceived excess of political and social liberty.

I don't deny that empiricism and methodological individualism have—as often noted—an *elective affinity* with liberalism. But in urging more than such affinity, by taking as a matter of course that "the absence of a teleological totality" entails both "the absence of a collective social good" and "the importance of individual liberty," Capaldi seems to me to be lapsing into metaphysics. He denies, in the name of what he takes to be the best abstract logic, the possibility of intellectual combinations that in fact appear as a matter of history and experience.

In all this, we do well to apply Humean pluralism to itself. We need to consider not only that human purposes

radically diverge, but that there is not, and will likely never be, a Humean (or Hayekian) consensus regarding what to do about this divergence. The market solution of letting each cultivate his or her own garden is not automatically more persuasive—in experience, as opposed to a certain logic—than the political solution of letting each try to persuade others of his or her own opinion. More generally: the least Humean thing in the world, the least consistent with Hume's own pluralism and relentless classification of observed causes and effects, is to hope that almost everyone will take Hume's own easygoing attitude towards pluralism and will adopt his inductive attitude towards causes and effects. Demonstrably, observably, Humeanism has always been, and continues to be, a minority taste. Most people want—though as Humeans know, they cannot have, can only imagine—a political sense of common purpose and a metaphysical assurance that the cosmos is not indifferent to their fate.<sup>[30]</sup> On the institutional level, we will only understand liberty's contemporary bases if we admit that modern institutions work in spite of the fact that many of their beneficiaries are, and will remain, alienated or resentful towards the benefits they bring.

#### Endnotes

<sup>[24.]</sup> As might be expected of someone who wrote a book called *Hume's Politics: Coordination and Crisis in the History of England* (Princeton: Princeton University Press, 2012).

<sup>[25.]</sup> See the citations in *ibid.*, 252n40—and as an example of irritation at Hume's "too narrowly political" history from a "social" historian, Duncan Forbes, *Hume's Philosophical Politics* (Cambridge: Cambridge University Press, 1975), 121.

<sup>[26.]</sup> David Hume, "Of Civil Liberty": *Essays Moral, Political, and Literary*, ed. Eugene F. Miller (Indianapolis, IN: Liberty Fund, 1987), 87.

<sup>[27.]</sup> While the Soviet Union practiced what Hume took to be a distinctly monarchical attitude towards "the polite arts" (Hume, "Of the Rise and Progress of the Arts and Sciences," *Essays*, 126; compare Yuri Slezkine, *The House of Government: A Saga of the Russian Revolution* [Princeton, NJ: Princeton University Press, 2017], Mao's China did

the opposite. The varieties of communism are not a topic on which Hume can provide much guidance—as is no shame to Hume, who knew that political maxims could rest only on experience.

<sup>[28.]</sup> In a 1764 letter to Catherine Macaulay, Hume called France's absolute monarchy and the direct democracy of some Swiss cantons "equally legal, if established by custom and authority" (*New Letters of David Hume*, ed. Raymond Kilbansky and Ernest C. Mossner [Oxford: Clarendon Press, 1954] 81).

<sup>[29.]</sup> On this see Jeremy Waldron, *Law and Disagreement* (Oxford: Oxford University Press, 1999).

<sup>[30.]</sup> Hume's *Natural History of Religion* can be seen as an ironic essay on these common human yearnings: our determination to give natural events a deeper meaning than they have leads us to animism, polytheism, or syncretism; our determination to posit an overall purpose to the cosmos leads us to deism or theism. That these two stances are, in Hume's view, both silly and contradictory does not mean that they will disappear, but merely that religious belief will predictably oscillate between them.

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## ON NICHOLAS CAPALDI'S DAVID HUME

by Chandran Kukathas

David Hume turned me into a skeptic. This is less because I became a philosophical skeptic—and I can see why Nicholas Capaldi views Hume as someone who showed why it is classical philosophy that leads to a debilitating philosophical skepticism—than because I became a political one. The more I read Hume the more difficult I found it to regard most efforts to reform political institutions, or set out the principles by which to do so, as guided by wit and wisdom rather than questionable motives and question-begging assumptions. Hume's genius as a philosopher came to be appreciated long after his merits as an historian were well established, but it is worth noting that his genius as a man was that this skepticism did not draw him either into contempt for

his fellow human beings or despair about the human condition. Perhaps this is why I so appreciate not only the deftness of Capaldi's summary of Hume's intellectual contribution but also the insight offered by his jaunty prose into the beautiful mind of *le bon David*. I take it as given that we are both Humeans in the broadest sense.



*David Hume*

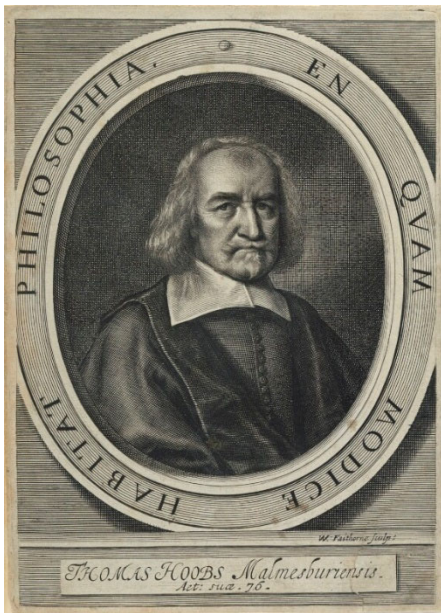
That said, however, there are matters with which to take issue—or at least about which to raise a few skeptical worries. In the most general terms, the worry is about whether Capaldi has been Humean enough or been carried away by a bout of enthusiasm, even while rightly eviscerating a variety of superstitions. Hume is not a philosophical or ideological "libertarian," as Capaldi acknowledges in as many words. If a philosophical libertarian is someone for whom claims of property, whether in one's person or in parts of the world, have some objective basis, such an advocate would find no comfort in Hume's deconstruction of this kind of ethical naturalism. If an ideological libertarian is someone with a program of reform, such an advocate would probably consider Hume's cautious and prudent approach too pragmatic and perhaps even insufficiently principled. As Capaldi observes, Hume cannot be "classified" in this way. This brings us to the puzzle, then, of *Thesis Eight: Liberty is the Central Theme*.

The problem here is not that Capaldi has somehow contradicted himself. He is, after all, trying to make a subtle point: that favoring liberty does not make one a libertarian (of either of the sorts noted above), and it would not do to accuse him of anything so clumsy. It is his elucidation of *Thesis Eight* that is the source of perplexity. Capaldi writes: "The ultimate ontological reality is the individual human agent; there is no institution or practice that transcends the individual; the legitimacy of any practice is based on the acquiescence of individuals. Acquiescence is not consent. There is no philosophical argument for liberty: it is the default position." There are four claims here that demand more careful scrutiny.

The first claim is that, according to Hume, the "ultimate ontological reality is the individual agent." Could Hume or any Humean make such an assertion? Hume's account of personal identity famously questions the possibility of offering a coherent account of any such thing as the self, since all that empirical (self-) examination yields is a bundle of impressions that can establish nothing definitive about any singular identity. Observation of the external world would undoubtedly reveal the existence of other people, but that would do nothing to warrant the conclusion that individual human agents are the "ultimate ontological reality," even if we read this to mean "ultimate ontological *social* reality" (as we clearly should, since the claim is not that Hume considers biological human individuals to be the ultimate units of physical reality). One might attribute such a view to Hume, but the evidence that he held it is scant—if any can be found at all.

The puzzle deepens when we turn to the second claim, that "there is no institution or practice that transcends the individual." It is not completely clear whether this claim follows from the first, or if each implies the other, or if the second is simply a further claim that clarifies the meaning of the first and contributes to the defense of the larger thesis about the centrality of liberty. Let us assume it is the latter. The most plausible interpretation of this statement is that Capaldi means that Hume holds that no institutions or practices could come into being or remain

except for the human agents that give them existence. A practice is not a practice unless human agents give it life by exercising their agency. An institution cannot exist unless it is populated by human agents: there can be no soldierless armies, judgeless judiciaries, teacherless schools, or spouseless marriages. All this seems commonsensical enough, and most people would accept the claim if this is what it means. Yet these institutions are not made up of generic "individual agents" but of "soldiers" and "judges" and "teachers" and "spouses": identities or roles that are socially created—which is to say, created by institutions and practices. If there are no "transcendent" institutions that have an existence except for the activity of individuals, the same holds true for individuals themselves, who could have no existence (save a biological one) except for the institutions that created them. Nor would it do to solve this chicken-and-egg-problem with an "origin" story, suggesting that it all started with (primitive) individuals, unless we want to risk falling into the trap of thinking we need to find a first cause—a trap, Capaldi reminds us, from which we were rescued by Hume.



**Thomas Hobbes (circa 1668)**

The point of scrutinizing these first two claims is to suggest that something is amiss in Capaldi's general contention that Hume's social ontology must begin with individual agents. I do not mean that Hume must believe

in the existence of transcendent institutions—only that he has no need to posit the social ontology Capaldi identifies. There are, to be sure, numerous passages (notably in Book III of the *Treatise*) in which Hume writes *as if* social institutions were created by pre-institutional or pre-social individuals, but these should surely be read with the "*as if*" firmly in mind. We clearly do the same with Hobbes: we do not take at face value his assertion in *Leviathan* that men in the state of nature sprang from the ground "like mushrooms": it is a methodological rather than an ontological assumption. Similarly, Hume's individualism is purely methodological.

The third claim in *Thesis Eight* is that the legitimacy of any practice is based on the acquiescence of individuals—and by "acquiescence" Hume does not mean "consent." The correctness of this claim depends very much on what we understand by the expression "the legitimacy of a practice." If Capaldi's point is that Hume tells us that when we say a practice is legitimate we are saying nothing other than that people have gone along with, or acquiesced in it, then he is perfectly correct. Hume's explanation is a semantic one: this is what legitimacy *means*—that people have acquiesced. It does not mean they have consented; it does not mean they like it; it does not even mean they prefer it to anything else. There is no further, deeper, normative claim—such as a claim that the practice in question *really is* legitimate. The same holds true for obligations: there are no ultimate obligations in some deeper, normative, sense. Somehow it came about that we "feign'd" obligations of all sorts, and before we knew it we believed such things had a real existence, though they never have.

All of this must be entirely familiar to a Hume scholar of Capaldi's distinction, so I bring the matter up not to teach him something new but to draw attention to the real source of my anxiety. This is the fourth claim in his *Thesis Eight*: that there is no philosophical argument for liberty, which is *the default claim*. It is perfectly correct to say that Hume offered no such thing as a philosophical argument for liberty, but it is quite another to suggest that he considered liberty to be the default claim. Now here much turns on what is meant by the expression "the



default claim." I take it that Capaldi could mean either of two things. On the one hand, he could mean that for Hume liberty was the natural condition of mankind and that departures from liberty were aberrations. This seems straightforwardly implausible since, as Capaldi makes amply clear in his remarks on Hume's *History of England*, Hume was all too conscious that the attainment and continued enjoyment of liberty in Britain was an historical achievement and not one replicated to any great degree in many places or for most of mankind's past. On the other hand, Capaldi could mean that for Hume liberty was the default *normative* position such that any departure from liberty had to be justified. There are philosophers who have held such a view, Immanuel Kant (at least in some interpretations) among the classical thinkers and John Rawls (in *A Theory of Justice*) and Stanley Benn (in *A Theory of Freedom*) among the moderns. But it is hard to see Hume as holding any claim of this sort.



***John Rawls***

It is true that Hume does not offer a philosophical defense of liberty. But neither does he say that any departure from liberty must be justified. He was, after all, as Capaldi is at some pains to remind us (in *Thesis Six*), a *moral pluralist*. How could a moral pluralist suggest the fundamental importance of one value above all others and assert that it is the default standard from which all

departures must be justified? Hume, as far as I can discern, made no such claim. He may have loved liberty. He certainly expressed the view that [liberty was the condition of human perfection](#),<sup>[31]</sup> though he insisted in the same sentence that *authority* was no less important because it brought the social stability that was equally necessary for human flourishing. Hume could no more assert that liberty was the default than he could say that stability was. In the Humean worldview, we hover uncertainly between these two extremes, and the danger comes when we are tempted to dart too hastily and enthusiastically towards one or the other.

Liberty is undoubtedly one of the most important themes in Hume's political thought. I am yet to be convinced that it is the central one. None of this is to disparage the man or deny his philosophical insight. Nor is it to question the insightfulness of Nicholas Capaldi's essay, against which I can raise only these few quibbles in an effort to be more Humean than he!

#### References

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Stanley Benn, *A Theory of Freedom* (Cambridge University Press, 1988).

#### Endnotes

[31.] Essay V "Of the Origin of Government" in David Hume, *Essays Moral, Political, Literary, edited and with a Foreword, Notes, and Glossary by Eugene F. Miller, with an appendix of variant readings from the 1889 edition by T.H. Green and T.H. Grose, revised edition* (Indianapolis: Liberty Fund 1987). <[/titles/704#Hume\\_0059\\_145](#)>:

In all governments, there is a perpetual intestine struggle, open or secret, between Authority and Liberty; and neither of them can ever absolutely prevail in the contest. A great sacrifice of liberty must necessarily be made in every government; yet even the authority, which confines liberty, can never, and perhaps ought never, in any constitution, to become quite entire and uncontrollable. The sultan is master of the life

and fortune of any individual; but will not be permitted to impose new taxes on his subjects: a French monarch can impose taxes at pleasure; but would find it dangerous to attempt the lives and fortunes of individuals. Religion also, in most countries, is commonly found to be a very intractable principle; and other principles or prejudices frequently resist all the authority of the civil magistrate; whose power, being founded on opinion, can never subvert other opinions, equally rooted with that of his title to dominion. The government, which, in common appellation, receives the appellation of free, is that which admits of a partition of power among several members, whose united authority is no less, or is commonly greater than that of any monarch; but who, in the usual course of administration, must act by general and equal laws, that are previously known to all the members and to all their subjects. In this sense, it must be owned, that liberty is the perfection of civil society; but still authority must be acknowledged essential to its very existence: and in those contests, which so often take place between the one and the other, the latter may, on that account, challenge the preference. Unless perhaps one may say (and it may be said with some reason) that a circumstance, which is essential to the existence of civil society, must always support itself, and needs be guarded with less jealousy, than one that contributes only to its perfection, which the indolence of men is so apt to neglect, or their ignorance to overlook.

## HUME A HAYEKIAN?

by Mark E. Yellin

There is much to praise and agree with in Nick Capaldi's overview of David Hume's thought, which, correctly in my view, connects his philosophy with his moral and political thought, his political economy, and his work as an historian. As someone who has been deeply influenced by Nick in my own thinking about Hume, it takes some effort to think about where I might have some minor disagreements with him. However, I have been able to come up with two. The first is his claim that the Hayekian notion of spontaneous order is foundational for Hume. The second is that I think Capaldi underestimates the degree to which Hume is setting the stage for probabilistic social science, which in turn can guide legislation and policy.



*David Hume (circa 1766/7)*

I am mostly in agreement with Nick's *Thesis Three*, in which he argues that for Hume, we cannot understand ourselves apart from human action, that there is no Archimedean point to step outside the world to understand it. Nick also argues that there is an implicit order in our inherent norms and customs that "is clearly an anticipation of or early expression of what Hayek termed spontaneous order." I have no objection to seeing Hume as part of the intellectual genealogy leading

to Hayek's conception of spontaneous order, along with Mandeville and Adam Ferguson. And Hayek, of course, has a splendid essay on Hume as the first true liberal thinker.<sup>[32]</sup> However, later on in *Thesis Seven*, Nick argues that spontaneous order is the foundation of the rest of Hume's philosophy, which I take to mean his moral and political philosophy and his political economy. While I would agree with Nick that custom, habit, and opinion are fundamental to Hume, I would hesitate to read Hayek back into Hume and describe this as spontaneous order. Hume is offering a description of social and political development that over time that involves intention, action, and reflection upon the effects of the intended acts. That is why I see Hume's political and economic thinking as primarily concerned with the unintended consequences of intentional human action. Sometimes things turn out the way we intend; sometimes they do not. We can reflect upon this and course-correct or leave things alone. Sometimes unintended consequences are harmful; sometimes they are beneficial, such as with commerce and free trade. If they are beneficial we do not want to interfere with them. I think unintended consequences are a better way to understand what Hume is up to than spontaneous order.

This also leads to a difference I have with Nick over seeing Hume as paving the way to modern social science. Hume was clearly concerned with using empirical evidence, which can be historical or quantitative (he used both), and engaging in probabilistic reasoning and making assessments about legislation and policy. Now there is real difference between Hume and Bentham, given Bentham's rationalism, but Bentham is part of the Humean legacy too, not just Hayek. And Hume did engage in what would now be termed rational choice political economy. His discussion of issues around [draining a meadow](#) in the *Treatise*<sup>[33]</sup> is typically seen as the one of first statements of collective action and free-rider problems. Finally, the American Founders' science of politics, which was used to construct a wholly new republic based on reflection and choice, was deeply influenced by Hume, at least in the cases of Hamilton and Madison. Madison's famous discussion of the problem of faction, as Nick mentions, is drawn from Hume's account

of faction and typology. However, Madison goes beyond Hume to argue that the solution to the problem of faction is to have a lot of them, something Hume, with his strong distaste for factional politics, could never bring himself to argue.

#### Endnotes

<sup>[32]</sup> F.A. Hayek, "The Legal and Political Philosophy of David Hume," in V.C. Chappell, *Hume* (Garden City, NY: Anchor Books, 1966).

<sup>[33]</sup> David Hume, *A Treatise of Human Nature*, Book 3, Part 2, Section 8. The passage reads:

Two neighbours may agree to drain a meadow, which they possess in common; because 'tis easy for them to know each others mind; and each must perceive, that the immediate consequence of his failing in his part, is the abandoning the whole project. But 'tis very difficult, and indeed impossible, that a thousand persons shou'd agree in any such action; it being difficult for them to concert so complicated a design, and still more difficult for them to execute it; while each seeks a pretext to free himself of the trouble and expence, and wou'd lay the whole burden on others. Political society easily remedies both these inconveniences. Magistrates find an immediate interest in the interest of any considerable part of their [539]subjects. They need consult no body but themselves to form any scheme for the promoting of that interest. And as the failure of any one piece in the execution is connected, tho' not immediately, with the failure of the whole, they prevent that failure, because they find no interest in it, either immediate or remote. Thus bridges are built; harbours open'd; ramparts rais'd; canals form'd; fleets equip'd; and armies disciplin'd; every where, by the care of government, which, tho' compos'd of men subject to all human infirmities, becomes, by one of the finest and most subtle inventions imaginable, a composition, which is, in some measure, exempted from all these infirmities.

In David Hume, *A Treatise of Human Nature* by David Hume, reprinted from the Original Edition in three volumes and edited, with an analytical index, by L.A. Selby-Bigge, M.A. (Oxford: Clarendon Press, 1896). Book 3, Part 2, Section 8. <[titles/342#Hume\\_0213\\_1112](#)>.

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## DINE AT THE TABLE OF LIBERTY, WHINE, OR RESIGN

by Nicholas Capaldi

Dan Klein raises an important (perennial) and challenging question when he points out that we find in Hume and Smith "both a constitutional notion of an institutional system of liberty and the jurisprudential flipside notion: others not messing with one's stuff."



*David Hume and Adam Smith*

I translate this as follows: Can liberty be defined in such a way that the definition specifies (a) all necessary and sufficient conditions and (b) precisely identifies when illegitimate coercion has been instituted either by other individuals or by some level of government?

Short of an appeal either to a contestable theology (e.g., "...we are endowed by our creator...") or to a contestable metaphysics (e.g., state of nature, original contract, original position, etc.), the answer is NO.

Does this create intellectual or ideological problems for partisans of liberty? The answer is certainly yes. Critics of liberty will point out that there are no in-principle limits to government coercion. By itself, this does not license unlimited government coercion unless one subscribes to an equally contestable philosophical foundation (usually some version of egalitarianism). However, what this does do, seemingly, is establish that partisans of liberty do not have a knock-down foundation.

### **What is it then that partisans of liberty have on their side?**

Individual liberty is the default position. (More on this below.) Defenders of liberty do not have to prove that what they do is permissible or good or contributes to some other goal (although it might). Those who would seek to limit liberty have the *onus* of showing that (a) a particular action is harmful and (b) curtailing that action will not have even more harmful consequences. Liberty or liberties do not have to be defended; curtailments do. It is important to stress that there is a big difference between living in a society where liberty is the default position ("innocent until proven guilty") and living in a society where it is not. This default position is coherent with lots of other norms (prosperity, security, etc.).

Why is liberty the default position? It is the default position because it is a product of practices that evolved spontaneously out of English history (Tacitus on the mores of the Germanic tribes, MacFarlane on the rise of English individualism, the history of the common law, Hume on the *History of England*, etc.). Any critique or emendation of this inheritance has to be immanent (for all the reasons already explained in the original essay).

*There is an important connection here between law and liberty.* The Anglo-American legal system operates with liberty as its meta-norm. (Oakeshott's civil association is an expression of this.) Can a code be constructed that explicitly grants a priori legal protection to a specific liberty, e.g., a market order? That would require a transcendent (rationalist) intervention, something rejected by Hume, Hayek, and Oakeshott among others. More importantly, no legal system can operate by legislative intervention alone; the full meaning of

legislation is itself something that emerges (evolves) in subsequent legal challenges and decisions. The only protection is having liberty as the meta-norm or default position.

Having explained why liberty is the default position, we can ask whether we can predict and control all future permutations. The answer is no. This will not satisfy everyone for lots of different reasons, but no one can offer an alternative without appealing to a contestable theology or metaphysics. Your choices are dine at the table of liberty, whine, or resign.

There is an important rhetorical/dialectical element to be considered here. By trying to provide an unassailable principle that applies itself without qualification (academic and legal industry), partisans of liberty do two negative things: (a) legitimate the search for absolutes ("absolutes" reflect transcendent philosophy that Hume rejects) and (b) fail to achieve it and thereby provide ammunition to the liberty-limiters. This is crucial because I believe that liberty-limiters have no positive argument on their behalf (other than discredited theology and metaphysics) and survive only by attacking the failed transcendent hypotheses of the partisans of liberty. When partisans of liberty stop trying to provide knock-down arguments, the liberty limiters will have nothing but discredited philosophy and self-defeating spin. Muddling through is the most effective strategy.

Andrew Sabl, author of the excellent book *Hume's Politics: Coordination and Crisis in the History of England* (2012), raises three important points: (1) whether political order has primacy; (2) whether Humean metaphysics and epistemology entail or are the only supports for a liberal society; (3) whether Humeanism is and will continue to be a minority taste.

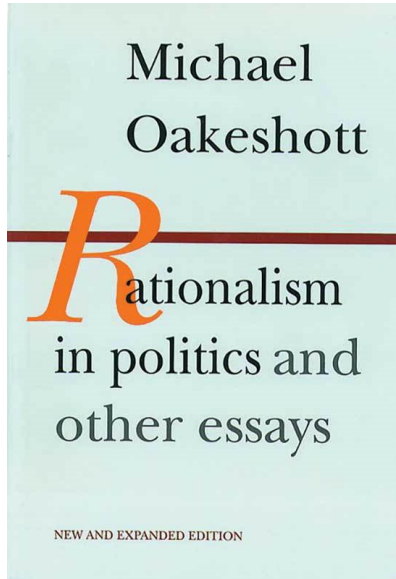


I heartily agree that Hume gave politics a prominent role. If I had more space, I would have elaborated Shirley Letwin's discussion of Hume's political disposition (chapters 8-10 in Part I of her book *The Pursuit of Certainty* 1965; Liberty Fund reprint in 1998), most especially because it is a version of Oakeshott's politics of skepticism. Where I would go further is to insist that the legal order is even more fundamental than the political order for a liberal society. One of the great under-discussed contemporary issues is whether law is an instrument of politics (what Hayek feared it had become as a consequence of positivism and is now reflected in the dominance of an anti-democratic administrative state) or whether it is a way of limiting government, including a democratically elected one. Hume's *History of England* alludes to this issue.

This leads to the second issue of the philosophical foundations of a liberal society. What I argue is that Hume provides (a) an historical account of how a liberal order arose in England and (b) how his epistemology (evolutionary inductivism) and metaphysics are compatible with that order. One never deduces the practice from the theory; all one can do is intellectually explicate the practice.

Projecting these two points (priority of law and role of explication) into contemporary discussion, I argue (in a forthcoming book) that individual freedom is essential to the meaning of the rule of law (Dicey, Hayek, Fuller, Oakeshott's civil association), that the rule of law developed only in Anglo-American societies, that the

continental legal tradition has "rule through law" not "rule of law," that a different historical tradition and the dominance of scientism, rejected by Hume, are responsible for this, and that Brexit is, in part, a consequence.



With regard to the third issue, I would agree, unhappily, that Humeanism will probably never be popular. I take consolation in Oakeshott's response to this kind of issue when he said, "The desire of the 'masses' to enjoy the products of individuality has modified their destructive urge" (p. 383 of Liberty Fund publication of "The Masses in Representative Democracy" in *Rationalism in Politics and Other Essays*, ed. Timothy Fuller, 1991).

As usual, the ever-perceptive Chandran Kukathas has put his finger on two crucial issues. The first is the status of liberty. The short response is that Hume (a) insists upon the existence of moral pluralism; (b) the rule of law evolved throughout English history as an institutional response for managing potential conflicts; and (c) the rule of law presupposes, among other things, individual liberty as the default position (Oakeshottian civil association). Hume's *History* commences with Tacitus's reference to the liberty-loving "Germans" and proceeds to show how liberty evolved and became more sophisticated – one could make a case that the whole of the *History* is the history of the evolution of the rule of law so understood. (See Siedentop on Ockham, *Inventing*

*the Individual*, and MacFarlane on the *Origin of English Individualism*).

The second issue is the epistemological (and metaphysical) basis of moral pluralism and its reflection of individualism. Hume is the inheritor of the British intellectual tradition of nominalism (Ockham, Bacon, Hobbes, Locke, etc.). (Even philosophy has to be understood historically.) Nominalists reject the rationalist (Cartesian) contention that discursive reason allows us to understand ourselves by isolating a disembodied mind or self. There is no apprehension of the self independent of what it does. There is no Aristotelian distinction between a thing and its properties; properties are revealed in action (Newtonian). The complex idea of the self emerges in action as the object of pride and humility. Hume's conception of personal identity (idea of the self) anticipates Oakeshott's conception: the self of which we are not immediately aware is free to use imagination to define itself as an individual and give meaning to its historical experience in the making of choices; this is how we learn about and make ourselves (idea of the self); this engagement is a self-enacted history (adventure in self-definition). "Almost all modern writing about moral conduct begins with the hypothesis of an individual human being choosing and pursuing his own directions of activity" (Oakeshott, "The Masses in Representative Democracy," p. 367).

"Moral philosophy," as opposed to "ethics," comes into being in the 17th century. It reflects the recognition that there is no natural teleology (as in Aristotle) so that the question of how the interests of the individual are related to the interests of others or to society as a whole (i.e., our moral obligations) becomes a real issue. Aristotle would never have raised such an issue because he saw a seamless web of the individual and society. Precisely because of the nominalist epistemology/metaphysics, Hume can explain (explicate) how we gradually discover how our understanding of the rule of law evolved and how a sophisticated notion of individual liberty emerges as the default position. Without the rule of law so understood, individualism will be superseded by the tyranny of the majority.

Finally, Mark Yellin astutely reminds us that an important case needs to be made for the contents of the qualified generalizations made by Hume with regard to public policy.

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## PRESUMPTIONS AND DEFAULT POSITIONS

by Daniel Klein

In that portion of his response directed toward me, Nick speaks of liberty as "the default position."

Liberty as default position might mean that it is important to understand that lawmaking always works upon a background configuration of ownership and open-ended voluntary association among such owners. In this sense, for example, employers are free to pay wages of one dollar an hour *until* a law says otherwise. Moreover, the formulation of such law is built upon such a background: that is, such a law specifies restriction, not liberty.

But liberty as default position might mean something quite different. Nick also seems to use "default position" for the idea of a presumption of liberty, by which I mean: in considering two policy reforms (one of which may be

to make no reform at all, leaving the status quo), the presumption should go in favor of the reform that rates higher in liberty—that is, the burden of proof should be placed on any such person who favors the lesser-liberty option.

Here, I think that talking "default position" is a bit confusing. Calling something "the default position" connotes that if nobody takes action regarding the matter, or even if nobody gives it any thought whatsoever, the position persists or prevails. But if an intervention like the minimum wage is the status quo, taking no action means that such restriction, not wage-rate freedom, is the default. For this reason I'd prefer to express the idea as *presumption of liberty*, meaning that, even though the minimum wage is the status quo, in the matter of estimating or evaluating that policy, one should approach the matter with a presumption of liberty; that is, approval of the minimum wage (which, let's assume, is the status quo), as compared to a liberalizing reform, should bear the burden of proof.

Hume and especially Smith clearly taught a presumption of liberty. It must be recognized, however, that that is not the only presumption they taught. They also accorded the status quo a significant presumption. (Note: virtually all of the exceptions to the liberty principle that they endorsed or countenanced were status-quo policies in their time and place.)

The two presumptions—of liberty and of the status-quo—stand shoulder to shoulder against reforms that would reduce liberty. But when it comes to a liberalizing reform, that is, a reform that would augment liberty (reducing or abolishing the minimum wage, say), the two conflict.

Out of such conflict, the attitude or posture exhibited by Hume and Smith varies. Sometimes the liberty presumption routs the status-quo presumption, as when Smith denounces, even fulminates against, long-standing interventions and calls for abolition. But sometimes the attitude is acquiescence toward status-quo restrictions, though often with a mind toward gradual liberalization. And, indeed, sometimes the posture is even apparent firm approval of the intervention.

Interpreting the exceptions and equivocations, and the reasons, justifications, and rhetorical strategies involved in them, in Hume and Smith brings us into fascinating fields of thought.

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## HUME AS NON- FOUNDATIONALIST

by Daniel B. Klein

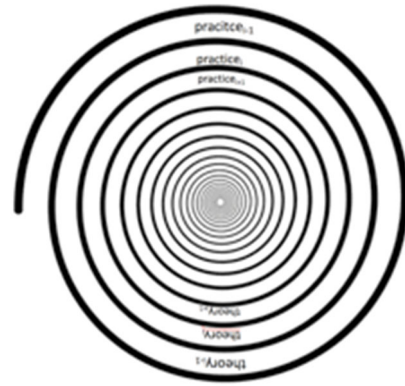
I'd like to remark on Hume as ethical non-foundationalist. Reading him that way works, I think.

Nick's presentation of Hume seems to be in line with such a reading. But in that regard, some statements might be tweaked. Indeed, the commentaries by Chandran and by Mark may be seen as suggesting tweaking along such lines.

Nick writes: "practice always precedes theory." But that is too unidirectional. Likewise: "we do not reason from wholes to parts; ... we reason from parts to larger parts."

Nick notes that our understandings "emerge midstream." Indeed. When the object of our understanding is human affairs, we must understand both those humans and ourselves as already involved in both practice and theory, in both parts and wholes. Already, understanding is working multidirectionally; it emerges amidst streams of practice/theory and part/whole.

Think spiral, with each loop of the spiral containing a "practice" and a "theory," each of which has a subscript corresponding to the particular loop, and likewise for "part" and "whole." The ends of the spiral trail off into ellipses.



Moving clockwise through the spiral, the looping path winds upward—that is, up from the page—or so we hope, and tend to presuppose.

Situated within the spiral, within one of the loops at the position of the 3 on a clock-face, and looking toward the center of the spiral, to our right we have "practice" and to our left "theory." Once we have moved clockwise along the loop, however, and now are at the 9 on the clock-face, to our right we have "theory" and to our left "practice." Talking in a non-contextualized way about "theory" and "practice," e.g., about the conflict between them, as for example Straussians sometimes do, is somewhat like talking in a non-contextualized way about "right" and "left." Such Straussian practice needs to graduate to a higher loop in their spiral (a.k.a., cave)!

It is likewise with facets of knowledge. As the saying goes, facts—those presumptive givens of *our* contextualized practice—are theory-laden:



What follows are some Hume passages with pragmatist flavor:



[If we believe, that fire warms](#), or water refreshes, 'tis only because it costs us too much pains to think otherwise. (THN, 270)

[Under what obligation do I lie](#) of making such an abuse of time? And to what end can it serve either for the service of mankind, or for my own private interest? No: If I must be a fool, as all those who reason or believe any thing certainly are, my follies shall at least be natural and agreeable. Where I strive against my inclination, I shall have a good reason for my resistance; and will no more be led a wandering into such dreary solitudes, and rough passages, as I have hitherto met with. (THN, 270)

[The truth we discover must also be of some importance](#). 'Tis easy to multiply algebraical problems to infinity, nor is there any end in the discovery of the proportions of conic sections; tho' few mathematicians take any pleasure in these researches, but turn their thoughts to what is more useful and important. Now the question is, after what manner this utility and importance operate upon us? (THN, 449-50)

[\[T\]he pleasure of study consists chiefly in the action of the mind](#), and the exercise of the genius and understanding in the discovery or comprehension of any truth. If the importance of the truth be requisite to compleat the pleasure, 'tis not on account of any considerable addition, which of itself it brings to our enjoyment, but only because 'tis, in some measure, requisite to fix our attention. (THN, 450-51)

[Those who have a propensity to philosophy](#), will still continue their researches; because they reflect, that, besides the immediate pleasure, attending such an occupation, philosophical decisions are nothing but the reflections of common life, methodized and corrected. (EHU, 162)

[For here is the chief and most confounding objection](#) to excessive scepticism, that no

durable good can ever result from it; while it remains in its full force and vigour. We need only ask such a sceptic, *What his meaning is? And what he proposes by all these curious researches?* He is immediately at a loss, and knows not what to answer. (EHU, 159-60)

Where Nick writes, "Hume gave the best philosophical foundation for modernity," again I would tweak, changing "foundation" to "outlook." It is true that Hume sometimes talks "foundation":

It appears, that there never was any quality recommended by any one, as a virtue or moral excellence, but on account of its being useful, or agreeable to a man himself, or to others. For what other reason can ever be assigned for praise or approbation? Or where would be the sense of extolling a good character or action, which, at the same time, is allowed to be good for nothing? All the differences, therefore, in morals, may be reduced to this one general **foundation**, and may be accounted for by the different views, which people take of these circumstances. [EPM, 336; boldface added.]

But here, in lieu of "foundation," we may see "framework." Hume teaches that his four-factor account of merit or virtue—four, as in Jim's conduct is (1) useful to Jim, (2) agreeable to Jim, (3) useful to others, (4) agreeable to others—is an account that lacks foundation for resolving important disputes over incidents of usefulness and agreeableness (Matson et al. 2017). Rather, the "different views" involve taste and propriety at each sympathy, in a swirl of images and reflections, and, as the swirl ascends upward, "['tis difficult to distinguish the images and reflexions, by reason of their faintness and confusion](#)" (THN 365).

It is reasonable to say, as Nick does, that Hume is a moral pluralist. But in a way Hume transcends the distinction between moral pluralism and moral monism (Brennan 2016). Hume's four-factor account might be said to constitute a moral monism, but inside of that account there is a rich pluralism as to the reckoning of usefulness and agreeableness.

Likewise, Smith may be reckoned a moral monist in the sense that he formulates virtue so as to have it correspond to serving the impartial spectator's universal benevolence; but reckoning such correspondence is a pluralistic and non-foundationalist affair (Klein 2016).

Hume and Smith inspire the transcending, or dissolving, of common distinctions, including consequentialism vs. deontology, utilitarianism vs. natural law, relativism vs. absolutism, nominalism vs. essentialism, positive vs. normative, and is vs. ought. I think Nick tends to agree, and, if so, he might consider a few tweaks at the next loop. As Nick says: "There is no final and definitive revision and reformulation."

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## COMMON SENSE METHODIZED

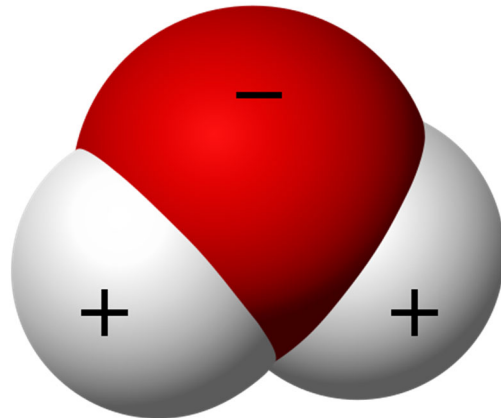
by Nicholas Capaldi

I am happy to acknowledge Dan's points – they are well taken.

What thrills me is his SPIRAL representation (not theory) of the interrelation between "theory" and practice. I see the widening of the spiral as encompassing our growing

experience (funded wisdom of the past) applied to novel circumstances. This might also be useful in an account of markets.

What I want to focus on is the expression "theory." This needs to be elucidated, and I am happy to expand on this. There are at least three types of "theory": elimination, exploration, and explication. In real physical science, eliminative "theory" takes the form of eliminating one theory in favor of another. (Copernicus eliminates Ptolemy.)



Exploration saves the surface phenomena (seeing colors) by constructing an elaborate account of underlying structure (light rays, nervous system, etc.). Molecules are colorless, but we can explain why we see the world in technicolor. The hidden structure can be empirically confirmed.

Explication is a mode of understanding social practices. It presupposes that all social practices function with implicit norms and that to explicate a practice is to make explicit the inherent norms. In explication we try to clarify that which is routinely taken for granted, namely, our ordinary understanding of our practices, in the hope of extracting from our previous practice a set of norms that can be used reflectively to guide future practice. Explication attempts to specify the sense we have of ourselves when we act and to clarify that which serves to guide us. We do not change our ordinary understanding but rather come to know it in a new and better way. Explication is a way of arriving at a kind of practical

knowledge that takes human agency as primary. It seeks to mediate practice from within practice itself.

Explication is a form of practical knowledge and presupposes that practical knowledge is more fundamental than theoretical knowledge. Explication presupposes that efficient practice precedes the theory of it. All reflection is ultimately reflection on primordial practices that existed prior to our theorizing about them. Language is a good example. Natural languages were and are spoken prior to the explication of their grammar.



***Michael Oakeshott***

What transcendent philosophy (and bad social science) try to do is offer a hidden structural (exploratory) account of social practice (Rawls). Unfortunately, there is potentially an infinite number of such accounts (great for clever dissertations and publications) with no way to choose among them – they are masks for a private political agenda. In any case, in order to engage in exploration we must presuppose agreement on what is being explained. Exploration always presupposes explication and can never go beyond it (Wittgenstein, Hayek, and Oakeshott).

It would be a mistake to try to understand this process of norm articulation from either a natural scientific or social scientific perspective. The objection to viewing this process as, say, *simply* organic is that it fails to do justice

to the historical, or temporal, dimension. We might be mistakenly tempted to think in terms of adaptation to the environment, but such adaptation will be restricted to individuals or, when viewed socially, mistakenly construed as a form of progressive social development. Real historical development is much more precarious and in no sense unilinear.

Explication is an intrinsically historical activity precisely because a practice is an ongoing historical event. To explicate is to explain what we have been doing, specifically, what we have been trying to do or aiming to do. Explication, then, sees the present as a development out of the past; explication does not see the present as an imperfect vision of the future and the past as an imperfect vision of the present. Another way of putting this is to say that explication sees the evolution of practices, not the progress of practices; or, alternatively, it is a progress "from" not a progress "to." To believe in "progress to" is to be concerned with the alleged existence of how the world "really" is independent of us, whereas to believe in progress from" is to be concerned with how the world is relative to ourselves. How the world *is* relative to us cannot be understood independent of our interaction with it and how along the way we have acquired our way of thinking and acting.

I suggest that Hume was an early articulator of explication and that we should use "explication" instead of "theory" in the spiral. It is common sense methodized and corrected.

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## FINDING FAULT WITH THE DEFAULT THEORY

by Chandran Kukathas

Nicholas Capaldi quite correctly observes that, short of appealing to a highly contestable theology or metaphysics, we cannot establish a definition of liberty that tells us when liberty has been honored or breached, or when individuals or governments have acted coercively. And he notes very candidly that this creates certain problems for the partisans of liberty, for there is no foundational view

or theory to which they can appeal in defending liberty. So far, so good.

But he then goes on to say that the proponents of liberty do nonetheless have a resource up their sleeve: liberty is "the default position," and the onus is on those who would curtail liberty to justify their actions—for example, by showing that not curtailing liberty would be harmful. I do not think this claim is defensible. Nor do I think it is a claim that is within the spirit (or the letter) of Hume's writings.

Given the assumption that liberty cannot be defined in a way that is not contestable (or, I assume Capaldi would acknowledge, question-begging), it is hard to see how any proponent of liberty could put the onus of justifying a curtailment of liberty on anyone without first claiming that the act of curtailment in question is a curtailment of *liberty*. Should the alleged curtailer simply deny that the act in question is a *curtailment*, or deny that it is a curtailment of *liberty*, what is the proponent of liberty to do other than to assert a particular definition of liberty? What the proponent of liberty cannot do, however, is tell the person alleged to be curtailing liberty that the definitions with which he is working, in demanding the other respect "liberty," is a definition the other must accept. After all, that definition, as we have agreed, will be contestable. Liberty cannot be the default consideration when there is no default definition of liberty — or of curtailment, for that matter.

But even if the definition were agreed on — let's say because in the background is a set of common understandings of what are the most important liberties in the society — there is no reason why anyone who would curtail liberty in some way must accept that it is the default. Why not say that stability or peace is the default? Or justice? Hobbes took the view that peace was more important than anything else and that its preservation required the upholding of the absolute authority of the law. Obedience to the law was the default and liberty something to be enjoyed when the law was silent, such that some actions were not forbidden. In this accounting, certain liberties might exist, but there is no

reason to believe that their status must be that of default entitlements.

Now it may be that Capaldi is saying that in certain societies liberty is the default. In some societies, for example, he says, there is a "presumption of innocence." I'm not sure this helps. I do not think there are any societies in which liberty is the default, though there are some where liberty understood in certain terms, or liberties defined in particular ways, have very strong presumptions in their favor. Even then, they are often violated. In the United States, government authorities routinely confiscate property and place the onus on the dispossessed to prove the absence of a tax liability. Nor is it the case that the in-principle existence of a presumption of innocence illustrates that some societies make liberty the default. The presumption of innocence is a doctrine to be found in numerous traditions and is explicitly endorsed in the constitutions and legal systems of countries as diverse as Japan, Iran, Turkey, India, Indonesia, and Cambodia, as well as the nations of the modern West.

There is nothing in Hume, in my reading, to suggest that he thought liberty was the default position or that the onus was always on those who would curtail liberty to justify doing so. Though he was surely no Hobbesian, he was far from sanguine about the idea that liberty was the foundation stone of a good society. The foundation was authority.

Capaldi's reading of Hume, and presentation of the issue at hand, to my mind, reflects a certain Oakeshottian style of thinking at which Capaldi has hinted on several occasions in his original essay and the subsequent intervention. Much as I admire Oakeshott as a thinker, however, I do not think this illuminates Hume. I am not even sure if it offers us the understanding of modernity Capaldi wants to defend. But this is a matter for another post.

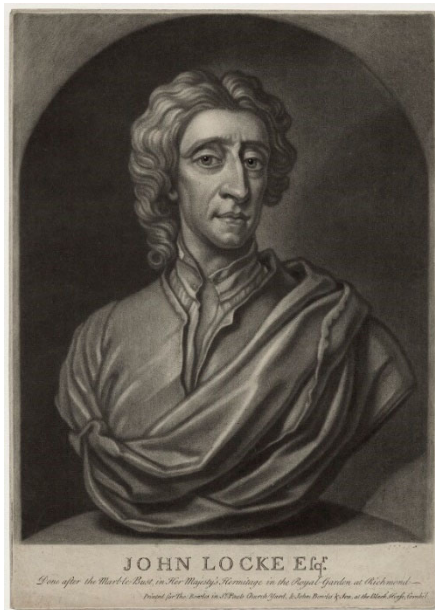
## HUME REALLY DIDN'T SAY EVERYTHING HE "SAID"

by Andrew Sabl

Nichols Capaldi's and Dan Klein's compliments of my work are much appreciated; the sentiment is assuredly mutual.

My first comment amounts to something like skeptical fact-checking. I contest the premise that Hume ever in fact defined liberty in the more-or-less Millian sense Capaldi attributes to him (to cite his comment above: "Those who would seek to limit liberty have the *onus* of showing that [a] a particular action is harmful and [b] curtailing that action will not have even more harmful consequences"; emphasis Capaldi's) and sought to vindicate a general presumption against limiting liberty in that sense.

Hume was quite a clear writer. If he had wanted to call unwarranted restrictions on trade, choice of occupation, and the like violations of "natural liberty," he could have done so (as his friend Adam Smith repeatedly did); or, if he preferred, he could have left out "natural" (as Smith, no Lockean, probably should have). But he didn't.



*John Locke*

Capaldi had a strong interest in finding passages where Hume defined liberty as above and stated a presumption against infringing upon it. Yet Capaldi's initial contribution was able to adduce in support of the claim that "liberty is the default position" for Hume only one passage from the *History of England*. There Hume wrote, in the course of mocking some particularly foolish wage, price, and export regulations under Henry VII, "[that these matters ought always to be left free](#), and be entrusted to the common course of business and commerce." This offhand line, absent from Hume's economic essays, which Hume revised and added to throughout his life and in which he could have developed this sentiment, seems inadequate to bear the weight Capaldi places on it—especially since, as Capaldi concedes, Hume elsewhere did not think trade restrictions "always" inadvisable but conceded their necessity in some circumstances.

There is, in fact, another passage from the *History* that seems even more Millian (at least in economic matters) but in other ways cuts decisively against Capaldi's portrayal of Humean liberty. Regarding a parliament under James I in 1624, Hume wrote:

[Advantage was also taken of the present good agreement between the king and parliament](#), in order to pass the bill against monopolies, which had formerly been encouraged by the king, but which had failed by the rupture between him and the last house of commons. This bill was conceived in such terms as to render it merely declaratory; and all monopolies were condemned, as contrary to law and to the known liberties of the people. It was there supposed, that every subject of England had entire power to dispose of his own actions, provided he did no injury to any of his fellow-subjects; and that no prerogative of the king, no power of any magistrate, nothing but the authority alone of laws, could restrain that unlimited freedom. The full prosecution of this noble principle into all its natural consequences, has at last, through many

contests, produced that singular and happy government, which we enjoy at present.<sup>[35]</sup>

This might seem promising, but in fact it undermines Capaldi's position rather than supporting it. First, the passage, and the event it described, concerned not how much liberty could be violated or on what grounds, but on whose authority: henceforth "the authority alone of laws," not royal prerogative, could lawfully do so. Second, it's worth noting that Hume—who again, revised his works obsessively and until his death in 1776—in that passage called Britain in his time "singular and happy" with respect to liberty as a result of the "*full prosecution of this noble principle into all its natural consequences*" (emphasis added). (Elsewhere Hume famously writes, in his own voice rather than as part of the narrative stream, that Britain in his time has, "if not the best system of government, at least the most entire system of liberty, that ever was known amongst mankind."<sup>[36]</sup>) But 1776 was the same year in which the first volume of Smith's *Wealth of Nations* portrayed England as fairly honeycombed not, to be sure, with royal-chartered Elizabethan monopolies on the production and sale of many goods but with mercantilism, export monopolies, occupational licensing, and other outrageous and unwarranted restraints on economic choice and therefore on natural liberty. Clearly, Hume did not—as Smith did—regard such regulations and interventions as fundamental threats to liberty. Finally, the above passage does not in fact contain the word "liberty" (nor, in fact, does the passage Capaldi cites). Hume speaks of monopolies as infringing not liberty but the English subject's "power to dispose of his own actions"; "law"; the "known liberties of the people"<sup>[37]</sup> This is the language of conventional civil liberties, not "liberty" as a free-standing criterion.

So the common tendency to assimilate Hume to Smith on these matters rests on low and eroding ground. Hume seems to have been both far less exercised by economic regulation than Smith was and demonstrably disinclined to call such regulation a limitation of *liberty*—even in the passages that seem most favorable to a Smithian reading.

Thus I must agree with Chandran (writing in the spirit of Capaldi's co-editor Donald Livingston<sup>[38]</sup>) that "Liberty cannot be the default consideration when there is no default definition of liberty—or of curtailment, for that matter." I further believe that Capaldi's suggestions to the contrary result from a tendency to think about "liberty," "individualism," and other concepts in a decidedly non-nominalist fashion. But more on that later.

#### Endnotes

<sup>[34.]</sup> With apologies to Yogi Berra: see [Garson O'Toole,] "I Really Didn't Say Everything I Said," Web blogpost, *Quote Investigator*, 30 December 2012. <<https://quoteinvestigator.com/2012/12/30/yogi-didnt-say/>>.

<sup>[35.]</sup> Hume, *The History of England* (Liberty Fund edition): Volume 5, p. 114. That passage is followed by a long footnote (Note N) in which Hume notes how much more favorable to liberty James I's reign was than Elizabeth I's had been—a constant theme in Hume, opposed to people who idealized "Good Queen Bess." The passage continues to define liberty in the commercial terms alluded to above, though free speech in the Commons is also mentioned:

How little this principle had prevailed, during any former period of the English government, particularly during the last reign, which was certainly not so perfect a model of liberty as most writers would represent it, will easily appear from many passages in the history of that reign. But the ideas of men were much changed, during about twenty years of a gentle and peaceful administration. The commons, though James, of himself, had recalled all patents of monopolies, were not contented without a law against them, and a declaratory law too; which was gaining a great point, and establishing principles very favourable to liberty: But they were extremely grateful, when Elizabeth, upon petition (after having once refused their requests) recalled a few of the most oppressive patents; and employed some soothing expressions towards them.

The parliament had surely reason, when they confessed, in the seventh of James, that he allowed them more freedom of debate, than ever was indulged by any of his predecessors. His indulgence in this particular, joined to his easy temper, was probably one cause of the great power assumed by the commons. Monsieur de la Boderie, in his dispatches, vol. i. p. 449. mentions the liberty of speech in the house of commons as a new practice.

[36.] *History of England* 6.531.

[37.] This accords with Hume's constitutional argument, which I explicate further in *Hume's Politics*, that 'Tudor tyranny could temporarily place aside English subjects' fundamental liberties but could not permanently obliterate them.

[38.] "Hume's concept of liberty is not framed in a speculative theory of liberty. There is, for instance, nothing in Hume comparable to Mill's discussion in *Of Liberty* [sic] of a 'simple' theoretical principle which can distinguish the liberty of the individual from the liberty of the state. Liberty is mentioned often in Hume's philosophical and historical writings but the remarks are usually brief and in the context of discussing something else such as the nature of government or the process of civilization. When Hume does discuss liberty directly, it is not to define and fix its limits but to make historical, causal observations about the conditions that produce, sustain, and threaten the existence of liberty and the values it makes possible." Donald Livingston, "Hume's Historical Conception of Liberty," in Nicholas Capaldi and Donald Livingston, eds., *Liberty in Hume's History of England* (Dordrecht, the Netherlands: Kluwer Academic, 1990), p. 105.

## NOT READING HUME THROUGH CAPALDI'S OAKESHOTT

by Chandran Kukathas

In my previous post I raised some doubts about Nicholas Capaldi's claims about the nature of liberty as the default position. I suggested some of his thinking might be explained by the influence of Michael Oakeshott. Let me elaborate on this before going on to say why I have my doubts about Capaldi's thinking. In the end, I prefer my Humean critique of Oakeshott to Capaldi's Oakeshottian reading of Hume.



*Michael Oakeshott*

It is from Oakeshott, I think, that Capaldi derives his reading of modernity as a condition in which liberty is the default assumption. In the third essay of his masterpiece, *On Human Conduct*, Oakeshott offers an account of the modern European state as a form of association in which human beings have learned to live together largely, but not entirely, as members of voluntary and self-governing communities. To the extent that the states in question were civil associations, rather than enterprise associations (and all states were mixtures of the two forms, oscillating uncertainly between extremes), they were forms in which individuals related to one another as free persons, and the structures under which they lived were ones best understood as the products of their wills. At least in the European context, modernity

was distinguishable from the pre-modern world by this understanding of the nature of political association. Oakeshott suggested that if the thinking of the ancient (European) world were to be characterized, the key concepts would be *reason* and *nature*. In the modern world, by contrast, the key concepts were *will* and *artifice*. In the modern world, if we describe it in the terminology of modern philosophers, we live under institutions we have created — and we have created them through our interactions with one another as separate, independent, agents.

It is this thought, I think, that lies behind Capaldi's view that liberty is the default position in the modern world. That world is best understood as Oakeshott would have us do so: as the product or the outcome of our independent, autonomous choices as separate (free) agents. This is why Hobbes is so important in Oakeshott's thinking. Hobbes offers us the most powerful and compelling account of the idea of the modern world as the artifice that arises out of the freely contracting wills of human agents. Hobbes may not have cared too much about our freedom under the state, but he insisted that that "[mortal God](#)" was nothing other than the product of our free and rational wills.



*Georg Wilhelm Friedrich Hegel*

But Hume is not Hobbes. As much as Oakeshott admired Hume and may well have assimilated the Humean worldview to that of his illustrious 17th-century predecessor, Hume breaks decisively from Hobbes. Not only does he reject theological foundations for political authority, but he also pours scorn on social-contract theories suggesting that legitimate authority derives from the consent of the governed. As Capaldi rightly noted at the outset, Hume thought that legitimacy meant nothing more than that the populace acquiesced in the workings of authority — not that they consented to it. But this did not mean that authority was the construction of individual wills in the way that Hobbes (and later, Locke, Rousseau, Kant, and Hegel) would suggest, but the accidental and unintended outcome of *interested* conduct. Human institutions are not the product of will—not God's will, as the Tories would have it, nor human will as the Whigs proposed. There is nothing about the *will* that is capable of binding or obligating. What induces people to acquiesce in anything is that their *interests* are served thereby.

Now, with the development of society usually comes some kind of juridical order—a context in which notions like contract and agreement are meaningful—but that juridical edifice rests on a foundation of interest. The modern theorist who has most clearly appreciated Hume's insight is Michel Foucault. For Hume, Foucault notes, "it is not because we have contracted that we respect the contract, but because it is in our interest that there is a contract. That is to say, the appearance and the emergence of the contract have not replaced a subject of interest with a subject of right."<sup>[39]</sup> The subject shaped and motivated by interest never goes away, and if interest is not placated, obligation or compliance cannot be expected. "So juridical will does not take over from interest."<sup>[40]</sup> Foucault elaborates on this point when he writes:

The subject of right does not find a place for itself in the subject of interest. The subject of interest remains, subsists, and continues up to the time a juridical structure, a contract exists. For as long as the law exists, the subject of



interest also continues to exist. The subject of interest constantly overflows the subject of right. He is therefore irreducible to the subject of right. He is not absorbed by him. He overflows him, surrounds him, and is the permanent condition of him functioning. So interest constitutes something irreducible in relation to the juridical will.<sup>[41]</sup>

What the theorists of the social contract, no less than those who have looked for theological foundations for political society, have imagined is a condition in which all human relations are governed fundamentally by right. Interest, if it has not been banished altogether, has been so tamed as to have no place in any account of the basis of political society. The state can then be understood as the product of the uninterested and disinterested wills of its subjects.

What Hume's way of looking at matters suggests is that this thought is neither plausible nor necessary nor even particularly welcome. It is not plausible because it is not true in fact—not merely because there was never an original contract or that there are no communities founded by explicit agreement—but because states have been established either by violence or by the struggles of political elites to create, promote, and sustain institutions of their own devising, regardless of the wills (though mindful of the interests) of the populace affected. It is not necessary because constructing a narrative that presents the state as the product of the will of the people—as a juridical structure embodying the understanding and ethical commitments of those who live within it—does nothing to secure the stability of that order, or to ensure that it is more just, or to make its members more free. To see the state as the embodiment of the will of its members is unwelcome because it perpetuates a fiction which, in denying the significance of interest, works only to serve the interests of particular parts of society whose advantages are not thereby reduced but simply more elaborately concealed.

If we are to appreciate Hume as the preeminent theorist of modernity, we must leave Oakeshott—and Hobbes and Hegel—behind.

Endnotes

[39.] Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France 1978-1979* (New York: Macmillan, 2008), p. 274.

[40.] Ibid.

[41.] Ibid.

## SITUATING HUME

by Nicholas Capaldi

Rather than reading Hume through the eyes of Hayek and Oakeshott, I suggest reading Hayek and Oakeshott through the eyes of Hume. Put more accurately, I would argue that there is a British intellectual inheritance stretching from Ockham to Oakeshott, and Hume is best situated within it. Given what I have said earlier about explication, restating that tradition gives us a deeper insight into what earlier thinkers in that tradition were doing. What is important is that there is a continuous inheritance of thinking that is exemplified in almost all of the most famous and influential British thinkers, a way of thinking and acting that clearly differentiates them from thinkers in other cultures.

The English language is distinguished by its etymological impurity, the relatively large size of its vocabulary, the large number of its idioms, and the relative simplicity of its grammar. English philosophers have always emphasized the conventional character of language. It should come as no surprise that the English language reflects a world composed of a multiplicity of entities identified by what English philosophers insisted upon as the conventional character of language.



The seminal figure is William of Ockham. Classical objective thought as exemplified by Plato and Aristotle reached its zenith in the 13th century; it then cracked with the rise of nominalism as expressed in Ockham. Ockham articulated the three major features of the British intellectual inheritance: **nominalism, induction, and individualism**. Fast forward to the Copernican Revolution in which the freedom of the individual is the basic presupposition and in which the projection of order by the imagination of human beings is foundational and the result is the autonomous individual of liberalism and the imaginative reconstruction of spontaneous order.

All real knowledge is inductive and not deductive (Bacon, Newton, Hume, Mill). Logical or necessary truths are purely verbal. Hence we cannot use them to prove God's existence. Neither can we use the concept of causation to prove God's existence, for, as an abstraction, causation is nothing but regular succession (Hume). The Aristotelian contention that there are final causes (teleology) in nature fosters the illusion that there are natural hierarchies in the social world. Belief in God is a matter of revelation and faith. "[A] corporate conception of society was giving way to the image of society as an association of individuals" (Locke).[\[42\]](#)

In Ockham, Thomistic natural law gives way to Franciscan natural rights (Hobbes and Locke). Among these are the right to consent to rules and rulers, the right to self-preservation (Hobbes), the right to private property (which can be renounced but only voluntarily), and the right to a private conscience, including the capacity for conscientious mistakes of judgment as long as they are consistent with equality and reciprocity (Mill).



*James Mill*

Newton's physics embraced atomism (individual atoms moving in empty space), not a Cartesian (Continental) notion of a plenum where there is no empty space and everything moves within one whole system. That is, Newton favored explanation that focused on individuals as opposed to explanation that focused on wholes.

Hobbes's social philosophy is rooted in the civil (social) condition. "The creation of language and the establishment of the state are, for Hobbes, inventions of the same character and serve the same end.... [T]he necessity of an absolute sovereign in the community ... is a necessity exactly paralleled by the necessity of fixing the meanings of names if language is to serve any useful purpose at all.... [A] language which is understood by only a single person and a way of behavior which is pursued by one man independently of all other men are, for Hobbes, examples of the same kind of anarchy."[\[43\]](#) Language is constituted by rules, but the rules do not tell you what to say only how to say it. Language can serve the ends of specific users but has no purpose of its own. The rule of law, in which the rules do not tell you what to do but only how to do it, is the perfect analogue. Neither language, nor the rule of law, nor the civil condition, nor the state may have an overall goal of its own. It is in this space that we locate human freedom. The social world is not the product of individual selfishness but of spontaneous order.

What thinkers in this intellectual tradition find is not a world of abstractions but an indefinite multitude of particulars individuated by human beings for human purposes in their language. Its mode of explanation is inductive, not deductive, and cheerfully accepts the possibility of future reorientations. Its inductive conclusions are remediable recipes for future use. The language has no authoritative grammar but relies on a social consensus to which individuals must consent. This is where we locate the British Mind.

#### Endnotes

[42.] Larry Siedentop, *Inventing the Individual: The Origins of Western Liberalism* [Cambridge, MA: Belknap Press of Harvard University Press, 2014], p. 311.

[43.] M. Oakeshott, "Thomas Hobbes," *Scrutiny* 4 [1935-36] p. 276.

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## MIND THE GAP

by Chandran Kukathas

"Hence the ENGLISH, of any people in the universe, have the least of a national character; unless this very singularity may pass for such" — Hume, "Of National Characters," *Essays, Moral, Political and Literary*.

Nicholas Capaldi thinks that we should situate Hume in a British philosophical lineage that stretches from William of Ockham (1288-1348) through to Michael Oakeshott (1900-1990), suggesting that an appreciation of the character of this tradition will give us a grasp of what he calls the British mind. I cannot, however, break from my Humean skepticism when it comes to talk of this kind. Are there any such singularities spanning 700 years? Hume doubted the existence of a national character even among his contemporaries—people of the same generation. A quick review of his essay "[Of National Characters](#)" reveals how much fun he has with the idea of generalizing about the Irish, or the Danes, or the Scots, or the English. I cannot help thinking that the idea of a British mind is something which Hume could

not take seriously. What commonalities are found tell us more about the observer making the generalization than about the subject.

*An Englishman in Italy is a friend: A European in China; and perhaps a man would be belov'd as such, were we to meet him in the moon. But this proceeds only from the relation to ourselves; which in these cases gathers force by being confined to a few persons.*[44]

I am with Hume on this: we find the continuities we seek, and they conform to the views we already hold. Gaps in the narrative are filled with speculations, and contradictory evidence is passed over in haste or dismissed as exceptions to the rule.

But even if we elect to play the game of historical continuities, there is a problem with the narrative inasmuch as it might not only be questioned for some heroic imaginative leaps but also challenged on the grounds that it does not support the philosophical conclusions in play. Take, for example, the idea that William of Ockham should be viewed as a British thinker and one whose influence should be considered noteworthy for its shaping of the British philosophical tradition. Ockham left Britain for Avignon when he was 37 and never returned from Europe, where he penned his most important and influential works. As a leading figure in the emerging nominalist tradition, Ockham's influence is undoubtedly significant, but not only in Britain. If Hobbes and Hume were among his descendants, so was Luther.



*Aristotle*

But neither is it so evident that the nominalist tradition was a benign one from the perspective of liberty in the way that Capaldi's narrative intimates. He is quite right to note that this development in medieval philosophy was destructive of much in the ancient—and particularly the Aristotelian—worldview, and gave rise to a kind of individualism. But the emergence of nominalism and voluntarism also brought about a shift in the view of God, who ceased to be the Logos or the Divine Being in whose order humans participated through their use of reason and became the sovereign who governed through his omnipotent, unbounded, absolute, and indivisible *will*. Human authority became delegated authority, but this gave rise to the question of how to account for the diversity of existing authorities—political and ecclesiastical. In the pre-nominalist Christian view, there was no problem, and it found in Aristotle's constitutional pluralism ample support for a world of overlapping jurisdictions, with power shared among popes, emperors, kings, bishops, abbots, dukes, doges, and all kinds of self-governing corporations that ruled in their own spaces. The emergence of the nominalist and voluntarist outlook brought into question this idea of a complex political space with multiple and overlapping jurisdictions governed by competing wills, and it was not long before it was challenged by the conception of the ideal state as one of undivided sovereignty. Nominalism gave us Bodin and Hobbes<sup>[45]</sup> and the idea of a unitary state that related to its subjects not indirectly through the various forms of

association found within its purview but directly—as *individuals*.

Yet even this narrative is inadequate and simplistic. My purpose in relating it is to supply a counterpoint to Capaldi's to say that the effort to make sense of Hume by "situating" him in a 700-year tradition is a misguided one. It might tell us a little about the narrator, but cannot help us understand the situated subject.

In the end, the trouble (or the irony) may be that I am simply too much a nominalist myself to buy the story. I believe there are many particular nominalists but am reluctant to concede that there is a nominalism exercising the singular influence that has been claimed for it.

#### Endnotes

[44.] Hume, *A Treatise of Human Nature*, Book III, Part II, Section 1. Online: David Hume, *A Treatise of Human Nature by David Hume, reprinted from the Original Edition in three volumes and edited, with an analytical index, by L.A. Selby-Bigge, M.A.* (Oxford: Clarendon Press, 1896). <[/titles/342](#)>. See also Hume's Essay XXI "Of National Characters" in David Hume, *Essays Moral, Political, Literary, edited and with a Foreword, Notes, and Glossary by Eugene F. Miller, with an appendix of variant readings from the 1889 edition by T.H. Green and T.H. Grose, revised edition* (Indianapolis: Liberty Fund 1987). <[/titles/704#Hume\\_0059\\_430](#)>.

[45.] This is a point that Oakeshott recognizes in his famous Introduction to the Blackwell edition of Hobbes's *Leviathan* (1946). Online: Oakeshott, "Introduction" to Hobbes's *Leviathan* (Oxford: Blackwell, 1946). Republished in Michael Oakeshott, *Hobbes on Civil Association, foreword by Paul Franco* (Indianapolis: Liberty Fund, 2000). <[/titles/668#lf0091\\_label\\_009](#)>.

## OPEROSE MACHINES 'R' US

by Daniel B. Klein

Andrew's contribution "Hume Really Didn't Say Everything He 'Said'" and Chandran's "Finding Fault with the Default Theory" call for response, indeed, extended treatment of Hume texts. I understand both to be rejecting the idea that Hume held as central to his moral and political outlook a notion of liberty in a "mere" sense.



*David Hume*

By "a 'mere' sense" I mean, again (see my first Response Essay above), something like *others (here, notably governors) not messing with one's stuff*. Andrew seems to be saying that Hume does not hold some such idea as central—a Hume-reading that I came to suspect while reading Andrew's excellent book about Hume's conventionalist view of government and other institutions (Sabl 2012). Chandran's comments, too, seem to be saying that, but, also, that he himself does not hold some such idea of liberty as central in his own outlook—which would surprise me. Maybe I am misapprehending the drift of Chandran's remarks, in particular the use he makes of such words as "establish," "contestable," "default," and "must accept." But the impression I get is that Chandran is saying that because any mere-liberty concept must

suffer from certain philosophical embarrassments, it fails and should be avoided.

Again (see my first Response Essay above), mere-liberty (or, the liberty principle) is deceptive in its apparent simplicity. I find it insufficient as a bare principle for estimating governmental reform. The insufficiencies correspond to the following problems or limitations: (1) defeasibility, (2) incompleteness (holes, silence) of the liberty principle as a guide, and (3) sometimes ambiguity, grey areas, in the distinctions used in reckoning liberty. And, furthermore, (4) any allegiance or attachment to the idea as maxim (or presumption) lacks a foundational sort of justification.<sup>[46]</sup>

But the big question is whether, in the face of the at least four sorts of limitations, one should discard the whole notion, dismiss it as illusory, by reason of the combined troubles—here I think of John Gray. The troubles are just too embarrassing, perhaps.

I think it is a misreading of Hume to say that he decided the troubles were too great and discarded the notion. Hume held on to it, and in a central way, in spite of all the troubles. He did not throw mere-liberty under the bus.

If one chooses to hold on to mere-liberty and in doing so avoids being simplistic, foolish, and group-thinkish, one must develop complications that qualify and hedge one's appreciation of and attachment to the liberty principle—think enthymeme ("by and large," etc.), not axiom. One must see that there is justice *above* any such allegiance, that liberty and desirability are distinct operators. But developing such complications does not amount to discarding the liberty principle. The plexus (of political philosophy) still has the liberty principle at (or near) its center.

Maybe embarrassment in overall outlook is our fate, and our responsibility is to choose the least-bad embarrassment, even with all its operoseness, work with it, and strive to improve it. Does such an attitude toward our intellectual life not sound Humean? Is that not the spirit of the great dramatic moment in Hume?<sup>[47]</sup> Not skeptical eschewal of any operose project, but judicious

embrace, affirmation, and dedication, in spite of the philosophical limitations.

Andrew writes, "I contest the premise that Hume ever in fact defined liberty in the more-or-less Millian sense" ("Millian sense" corresponds, I think, to what I'm calling *mere-liberty*). One may concede the claim, but that does not settle the larger issue of whether some such notion was central to Hume and indeed was often signified by *liberty*, *freedom*, and the like.

Andrew says: "Hume was quite a clear writer. If he had wanted to call unwarranted restrictions on trade, choice of occupation, and the like violations of 'natural liberty,' he could have done so.... But he didn't."

Although the "unwarranted" confuses the matter, Andrew's challenge is good: Hume had the perspicacity to spoon-feed his readers. If mere-liberty were central to him, why didn't he define the idea clearly and express his attachment to it more explicitly?

That is a worthy question. Meanwhile, this entry is approaching the word limit.

Regarding Andrew's remark that "Hume was quite a clear writer": yes and no.

Here is how Norman Kemp Smith put it, as regards the philosophical works:

All who have more than a merely casual acquaintance with Hume's philosophical works will probably agree that, contrary to first impressions, he is an extremely difficult writer. The difficulty is not so much in regard to his arguments taken singly, which are in the main admirably lucid, but in regard to their bearing upon one another, and upon the central positions which they are intended to support. With repeated reading, and the collation of widely separate sections, questions by no means easy of answer multiply on our hands. [Kemp Smith 1941, 79]

Again, Donald Livingston (1984) says likewise, particularly in his "Hume as a Dialectical Thinker" chapter.

But Duncan Forbes suggests something similar in reading Hume's works generally, including the *History* and the *Essays*:

Hume is uniquely difficult to interpret because no other thinker probably covers so much ground and says so much with such economy. Since one cannot be sure at any given moment just what he is saying, it is necessary to cast the net as widely as possible, and this is one reason for carefully studying all the variants in the different editions. [Forbes 1975, ix]

In Arthur Melzer's tremendous book *Philosophy between the Lines: The Lost Art of Esoteric Writing* (2014), he explains four purposes in writing indirectly, enigmatically, or esoterically, and all four—defensive, protective, pedagogical, and political—might be pertinent in considering why a mere-liberty-embracing Hume might have refrained from defining mere-liberty, and from expressing his attachment to it, more clearly and directly than he did.

And Melzer explains that practically all great writers before 1800 engaged in esoteric writing to a degree that most people today find hard to fathom.

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- Melzer, Arthur M. 2014. *Philosophy between the Lines: The Lost Art of Esoteric Writing*. Princeton: Princeton University Press.

## Endnotes

[46.] Incidentally, I elaborate the four limitations in Klein (2004), which was written with minimal acquaintance with Hume.

[47.] And, likewise, the great dramatic moment in Smith; see Matson and Doran (2017).

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## LIBERTY: A DESTINATION, NOT STARTING A POINT

by Mark E. Yellin

In this excellent discussion of the place of liberty in David Hume's philosophy and political thinking, there is more to agree with than to disagree with, but a number of puzzles have been raised. I will try my hand at one of them: the question of the presumption of liberty for Hume. While I find this assumption of the presumption of liberty in Hume most appealing, I am afraid I must side with Chandran and Andy over whether or not it is Hume's view. So if there is no presumption of liberty in Hume, where is liberty, given that it is very, very important to him? (I think we can all at least agree on that minimal claim). For me, the place to go to is Hume's essay "Of the Origin of Government," where he says "[that liberty is the perfection of civil society.](#)"[48] Taken most simply, this implies that liberty is something that is accomplished, not something that is taken as given or presumed. Liberty is not a starting point; it is a destination.



So what are the prerequisites of liberty in a civil society? Hume does not have a state of nature the way Hobbes and Locke do, but he does have a conception of

rudimentary society without government. However, he is not all that interested in this, except as an anthropological "fact" and certainly not as a source of legitimacy for government. Hume's account argues that even this rudimentary society requires justice, which for him means what most people mean by rule of law: property rights, contract, freedom of exchange. So it probably makes more sense to talk about a presumption of justice for Hume, which is a necessary but not sufficient condition for liberty.

But that is not all. Hume says liberty is the perfection of civil society, meaning society under government and the rule of law. This suggests that liberty cannot be perfected in the rude state of society prior to government. So justice and government, primarily as the necessary instrument for enforcing the rules of justice, are the prerequisites for liberty. But what makes for a free government and a civil society, and what is the role of liberty as a test for government legitimacy? We know from reading Hume elsewhere[49] that he does not accept the Lockean view that consent is the sole the source of government legitimacy. All government is grounded on opinion, and people obey a government through a mixture of force and consent based on their opinion of the might and right of the given government, along with their opinion of their own interests. In this sense, all governments that exist are "legitimate," including despotic regimes and certainly monarchical ones. Hume has no patience for the view that only regimes based on a social contract or that have a republican political structure are legitimate. However, he does offer a criterion for a free government, one that has a "[partition of power among several members](#)" who are bound by "general and equal laws, that are previously known to all the members and to all their subjects." [50] This is the regime, with its division of powers, which will best enable individual liberty. However, it also seems to recognize that liberty needs to be jealously guarded once established or it can be lost.

In conclusion, a couple of words on the relevance of this argument for Hume's *History of England*: Hume regards 18th-century Britain as a particular and contingent

institutional accomplishment of the ideal and practice of liberty in civil society. The account given in his multi-volume *History* offers a complicated, chaotic, and violent history of how these institutions emerged, frequently through the unintended consequences of the actions of the different historical figures. It is not a simple story of the recovery of ancient liberty that was somehow inevitable. While Hume's *History* is a story of the emergence of liberty, its outcome is not a necessary one, and there is nothing to say that it cannot be reversed.

#### Endnotes

[48.] Essay V "Of the Origin of Government" (Liberty Fund edition), p. 41.

[49.] Essay IV "[Of the First Principles of Government](#)" and [Essay XII "Of the Original Contract"](#).

[50.] "Of the Origin of Government," Liberty Fund edition, p. 41.

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## HUME ON LIBERTY

by Nicholas Capaldi

### 1. The order and coherence of Hume's Thought

The passion (the love of gain) is much better satisfy'd by its restraint, than by its liberty, and that in preserving society, we make much greater advances in the acquiring possessions, than in the solitary and forlorn condition. [\[THN 3.2.2\]](#)

1. *Treatise, Enquiries, Essays, History*
2. Science of man is the basis for all others (including social thought) – we explain the individual first and then the social world ([I, Intro, 4](#)).
  0. Newtonian (second law -- everything interacts with everything else -- does not eliminate but presupposes the first law of motion – the motion of the individual entity).

1. The liberty of the individual (Dan Klein's "mere" liberty) (like first law of motion) never disappears from the equation.
2. Newtonian and Baconian – inductive evidence; anti-hidden structure-abstractions.
3. *Treatise* Part I explains the limits of discursive reason; Part II, passions, explain our action; Part III explains the social world as product of Parts I and II; "[passion \[for stable possession of property\] is much better satisfied by its restraint](#) than by its liberty" (I, 3-2-2); reason serves passion – it does not undermine it.
4. Individual good: "[internal satisfaction of our mind](#), the external advantages of our body [anticipates Mill] and the enjoyment of such possessions as we have acquired by our industry [Locke] and good fortune"(I, 3-2-2); "[in the original frame of our mind](#), our strongest attention is confined to ourselves" (I, 3,2,2).
5. *Enquiries*: EPM contains the classic and most precise refutation of egalitarianism ([§155 or p. 194 of Selby-Bigge edition](#)); it is most especially destructive of commerce.
6. *Essays* – explains liberty and liberties.
7. *History* exemplifies historically how liberty evolved; it does not trump the other works but presupposes them.

### 2. Hume starts with the presupposition of the individual (nominalism) and individual liberty.

1. He was not the first to formulate this idea – Ockham did (along with many other ideas Hume shared). There is a huge scholarly literature on this.
2. All of modern moral philosophy begins with the idea of the individual – Hobbes was the first to clearly enunciate it; British modern moral philosophy must account for the individual because the Aristotelian telos disappears from both physics and the social world.



3. British Moral Philosophy is a response to the perceived limitations of the egoistic conception that Hobbes attributes to the individual. (There is a huge scholarly literature on this.)
4. Hobbes, Locke, Mandeville, etc. have the right idea or same insight but explain it inadequately according to Hume – Hobbes's and Mandeville's views foster public and intellectual resistance to individual liberty; Locke overstates the case in a way that could destabilize the social fabric.

3. Moral philosophy in (Hobbes, Locke, etc.) Hume and Smith is an account of how individuals can acquire a social perspective (sympathy). Hume develops his account in the *Treatise*. 4. The social perspective, even in Hume, does not hold a trump card over the individual (EHU, Capaldi). Sympathy explains how one can take the social perspective; it does not compel one to take the perspective. 5. There are occasions when individuals can understandably revolt (even in Hume); support of American Revolution. 6. Hume's conception of liberty(ies) is derivative from his conception of the individual. Hume develops this conception (alluded to by Mark Yellin) primarily in the *Essays*. 7. Individualism and liberty have a special place in English history. There is a huge literature on this. 8. The jurisprudential element (as Dan stresses) is key: Hume's knowledge of law is already apparent in the *Treatise* discussion of Justice; the original purpose for the laws of justice was self-interest (T 3.2.6).

Those rules, by which properties, rights, and obligations are determin'd, have in them no marks of a natural origin, but many of artifice and contrivance. They are too numerous to have proceeded from nature: They are changeable by human laws: And have all of them a direct and evident tendency to public good, and the support of civil society. This last circumstance is remarkable upon two accounts. First, because, tho' the cause of the establishment of these laws had been a regard for the public good, as much as the public good is their natural tendency, they wou'd still have been artificial, as being purposely contriv'd and directed to a certain end. Secondly, because, if men had been endow'd with such a strong regard for public good, they wou'd never have restrain'd themselves by these rules; so that the laws of justice arise from natural principles in a manner still

more oblique and artificial. 'Tis self-love which is their real origin; and as the self-love of one person is naturally contrary to that of another, these several interested passions are oblig'd to adjust themselves after such a manner as to concur in some system of conduct and behaviour. This system, therefore, comprehending the interest of each individual, is of course advantageous to the public; tho' it be not intended for that purpose by the inventors.

#### 9. Liberty and Liberties in the *Essays*.

But where luxury nourishes commerce and industry, the peasants, by a proper cultivation of the land, become rich and independent; while the tradesmen and merchants acquire a share of the property, and draw authority and consideration to that middling rank of men, who are the best and firmest basis of public liberty. [[Essays "Refinement in Arts"](#)]

The explanation for the destination of liberty (Mark's point) is the natural desire to engage in trade for maximizing individual well-being.

1. Whigs and Tories still stuck in old dynastic and religious frameworks; the key to the development of liberty is commerce;
2. Part II. Essay XII "[Original Contract](#)"(1748) rebutted;
3. Part II. Essay XIII "[Passive Obedience](#)" rebutted;
4. Part II. Essay I "[Of Commerce](#)" (1752) desire "[of a more splendid way of life](#)" (p. 264); the critics of luxury are contrary to the "[natural bent of the mind](#)" (p. 263);
5. Part II. Essay II "[Refinement in the Arts](#)" (1752) -- Commerce is favorable to liberty and the establishment of the rule of law (277); business people are the "[best and firmest basis of public liberty](#)" precisely because they "[covet equal laws](#)" (pp. 277-78);
6. Part I. Essay XII "[Of Civil Liberty](#)" (1741) identifies the rule of law as "[a government of Laws, not of Men](#)" (p. 94); rule of law equals "[to act by](#)

[general and equitable laws](#) that are previously known to all the members and to all their subjects." *Part I. Essay V "Of the Origin of Government"* (1777) (E, pp.40-41) (repeated in Dicey, Fuller, Hayek, Oakeshott); the *History* repeats this and identifies in context the precise economic restrictions as violations of this principle.

The government, which, in common appellation, receives the appellation of free, is that which admits of a partition of power among several members, whose united authority is no less, or is commonly greater than that of any monarch; but who, in the usual course of administration, must act by general and equal laws, that are previously known to all the members and to all their subjects. In this sense, it must be owned, that liberty is the perfection of civil society ... [[Essays "Refinement in Arts"](#)]

10. Social perspective mediates between liberty and (liberties and authority). 11. Liberty in the British Constitution evolves into a legal concept: jury, habeas corpus, end of star chamber, independent judiciary.

1. Hume's Politics: Anti-democratic and

12. Anti-egalitarian: Hume's History

1. England as a social entity has an identity in the same way an individual has an identity – through historical memory and the interpretation of that memory; this underlies the importance of national histories; the social entity dissolves when individuals cannot agree on the memory and therefore on further action; the social entity is a creation of individuals.
2. The utility calculation is made by individual agents; there is no overall social utility calculation as in Bentham (social utility is an abstraction that deifies democracy – something to which Hume would object).
3. Hume writes in a manner that suggests what Dan Klein calls "mere" liberty: "...before the end of [Queen] Elizabeth, the distinction of villain and freeman was totally ... abolished.... Thus personal freedom became almost general in Europe; an advantage which paved the way for the increase of political or civil liberty" (H,II, LF edition, p. 525; italics in the original).

4. Presupposes individual liberty.
5. It gives an historical account of the institutional structure that developed over time to protect that liberty; this is what a spontaneous order (Saxons) inductivist account looks like as opposed to the conceptual fiction of the "Ancient" Constitution; the constitution is a product of specific individual events (cases).
6. It is a critique of previous histories that distorted the role of the institutions.
7. It is as much about law as it is about politics.
8. The History cannot be understood independent of the Treatise, Enquiries, Essays, or read back into them.
9. Not about Equality or Democracy; reading the History independent of the earlier works runs the risk of reintroducing collectivism (community) by the back door – there is a revisionist literature on Hume, similar to such a literature on Smith, that tries to paint them as patrons of equality rather than of liberty.

[A commutation was therefore made of rents for services](#), and of money-rents for those in kind; and as men, in a subsequent age, discovered, that farms were better cultivated where the farmer enjoyed a security in his possession, the practice of granting leases to the peasant began to prevail, which entirely broke the bonds of servitude, already much relaxed from the former practices. After this manner, villenage went gradually into disuse throughout the more civilized parts of Europe: The interest of the master, as well as that of the slave, concurred in this alteration. The latest laws which we find in England for enforcing or regulating this species of servitude, were enacted in the reign of Henry VII. And though the ancient statutes on this subject remain still unrepealed by parliament, it appears, that, before the end of Elizabeth, the distinction of villain and freeman was totally, though insensibly abolished, and that no person remained in the state, to whom the former laws could be applied.

Thus personal freedom became almost general in Europe; an advantage which paved the way for the increase of political or civil liberty, and which, even where it was not attended with this salutary effect,

served to give the members of the community some of the most considerable advantages of it.

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## ON HUME ON LIBERTY, AND ON LIBERTY

by Chandran Kukathas

Dan Klein has come to the defense of Nicholas Capaldi's claim that liberty was central to Hume's thinking as a political philosopher. Though Capaldi has welcomed much of what Klein has said, I am not sure precisely how much. I think Klein is quite mistaken in his reading of Hume and is operating with an implausible understanding of liberty. The remarks that follow may not, however, apply to Capaldi.

Klein is mistaken in attributing to Hume a view about the *centrality* of "mere liberty," whatever that might mean (and I return to this below), first and most obviously because there is no evidence that Hume thought any such thing. Certainly, Klein has adduced no textual evidence in support of the claim that Hume does. Listing passages in which Hume counsels against government meddling in the affairs of merchants and professionals tells us he was in favor of liberty in many circumstances, but says nothing to suggest that liberty was *central* to his thinking. Hume's general concern for liberty is not at issue.

D I A L O G U E S

C O N C E R N I N G

N A T U R A L R E L I G I O N .

B Y

D A V I D H U M E , E S Q .

T H E S E C O N D E D I T I O N .

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L O N D O N :  
M . D C C . L X X I X .

Here it will not do to appeal to the prevalence of esoteric writing before 1800. I do not doubt that esoteric writing was practiced. It is clear that Hume engaged in it when he wrote the posthumously published *Dialogues concerning natural religion*, since the surface text gives the victory to the proponent of the argument from design, while the critique in the *Dialogue* itself tears that argument to shreds. But there is no evidence of Hume writing esoterically about liberty—or at least none has been supplied in Klein's intervention—and it is hard to imagine what motive he might have had for doing so. Hume said enough about liberty throughout his *Essays* and in his *History* to suggest that it is unlikely that he was afraid of revealing his appreciation of freedom. It does not seem likely either that he was wary of provoking the politically powerful. After all, in his essay "Of the Original Contract," he was most explicit in advising his readers to be wary of both Whigs and Tories—the former for trying to found authority in consent and the latter for claiming to be able to trace it up the the Deity. I cannot see in Klein's analysis any evidence for the contention that Hume wrote esoterically about liberty, though it may be that I have to read more carefully between the lines.

My deeper concern, however, is with Klein's conception of liberty as "others not messing with one's stuff." I see nothing in Hume that comes remotely close to conceiving of liberty in this way. This may be because I do not find this to be a readily intelligible account of the concept of liberty. If the contention here is that liberty *means* security of property, this seems, at best, quite incomplete. It would mean someone placed under house arrest with access to all his "stuff" suffers no loss of liberty. Or that someone denied a passport to travel abroad remains free. Or that a slave who has no property is not unfree. It would mean that laws forbidding miscegenation or intermarriage or worshipping the wrong god do not limit liberty. There is surely more to liberty than security of one's property. If, however, the contention is that every violation of liberty, including restrictions placed on one's person, necessarily involves "messing with one's stuff," it would be hard to see what work such an account is doing to clarify anything: the definition would become unhelpfully circular.

The definition of liberty on offer is clearly not a neutral but a "moralized" one—and therefore dependent on certain ethical commitments. Though the search for a nonmoralized account of liberty continues, it may be that such a thing is not there to be found. If so, we had better give up the search for a nonmoralized concept and get on with the business of arguing for the ethical convictions that underpin our particular views about freedom. That would, however, mean abandoning all talk of such things as "mere liberty," as though there were some baseline understanding on which all are agreed or could be brought to see. What Dan Klein offers as a definition of "mere liberty" is an understanding that, alas, would be viewed by every nonlibertarian as not only *not* an agreeable starting point but also one that is highly tendentious. Even among libertarians, I suspect that few, save perhaps some sympathetic to Murray Rothbard's notion of liberty, would find it agreeable either.



*The Tree of Liberty*

Does this mean that liberty is not something that should be viewed as of "central" importance, or that the search for a universal or baseline definition of liberty should be abandoned? In my reading of the history of political philosophy, liberty has rarely, and only relatively recently (perhaps the past 250 years), been held up by any thinker as the central or fundamental value. It is certainly *not* the core of political philosophy as such. Speaking for myself, as a Humean pluralist, I am unwilling to weigh any value so heavily that it trumps all others at all times—so there

will be times when liberty must give way to the demands of justice, or safety, or simple humanity. I think that is not incompatible with prizing liberty very highly—and more highly than most others do. How I am to be understood here depends, of course, on what I mean by liberty. Though I don't hold out much hope of our finding a usable nonmoralized definition of liberty, I am reluctant to counsel giving up the search. But my guess is that any argument for liberty will, in the end, have to deploy a concept whose persuasiveness and utility rest less on its immediate intuitive (or philosophical) appeal than on the deeper understanding of history and social theory in which it is embedded and upon which it relies.

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## HUME REALLY DID MAKE MERE-LIBERTY CENTRAL

by Daniel B. Klein

No one can doubt, that the convention for the distinction of property, and for the stability of possession, is of all circumstances the most necessary to the establishment of human society, and that after the agreement for the fixing and observing of this rule, **there remains little or nothing to be done** towards settling a perfect harmony and concord.  
 -- David Hume, *A Treatise of Human Nature* (491; boldface added)

Andrew's contribution "Hume Really Didn't Say Everything He 'Said'" treats two passages from Hume's *History*. The first is as follows:

Hume wrote, in the course of mocking some particularly foolish wage, price, and export regulations under Henry VII, "that these matters ought always to be left free" and be entrusted to the common course of business and commerce."

Andrew diminishes the Hume passage by referring to it as an "offhand line." But it is not offhand. On the previous page, Hume reports approvingly that "the nobility and gentry acquired a power of breaking the

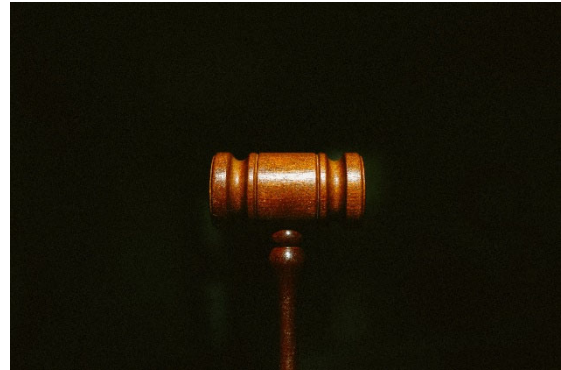
[ancient entails](#)," and disapprovingly ("[how unreasonable and iniquitous](#)") that "[Severe laws were made](#) against taking interest for money"; "[Even the profits](#) of exchange were prohibited"; "[Laws were made against the exportation of money](#), plate, or bullion" (H 3:77); "[It was prohibited to export horses](#)"; "[no bows](#) were to be sold at a higher price than six shillings and four-pence"; "[Prices were affixed](#) to woollen cloth, to caps and hats"; and "[the wages of labourers were regulated by law](#)" (78). It is at that point that Hume says: "[these matters ought always to be left free](#), and be entrusted to the common course of business and commerce." And our seeming free-marketeer is not finished: "[One great cause of the low state of industry](#) during this period, was the restraints put upon it"; "[These absurd limitations](#) proceeded from a desire of promoting husbandry"; "[All methods of supporting populousness](#), except by the interest of the proprietors, are violent and ineffectual"; "and [One check to industry in England was the erecting of corporations](#); an abuse which is not yet entirely corrected" (79). The line that Andrew refers to as "offhand" is in the midst of a several-page cataloging of policy developments, and Hume's drift is clearly and consistently against the governmentalization of social affairs.

Such drift is hardly unique to that patch in the *History*. To introduce another: about 55 pages later, Hume once again issues a general (by-and-large) endorsement of economic liberty:

[T]he [constant rule of the magistrate](#), except, perhaps, on the first introduction of any art, is, **to leave the profession to itself**, and trust its encouragement to those who reap the benefit of it. The artizans, finding their profits to rise by the favour of their customers, encrease, as much as possible, their skill and industry; and as matters are **not disturbed by any injudicious tampering**, the commodity is always sure to be at all times nearly proportioned to the demand. [H 3: 135; boldface added.]

Yes, Hume made exceptions, and in fact here the next thing Hume says is that in the 16th century, there was good reason for the "[wise legislator](#)" to prevent "[the](#)

[interested diligence of the clergy](#)," by bribing "their indulgence," through a "fixed establishment for the priests" (136). Still, Hume's favor for liberty—including free markets—is less obscure than Andrew suggests. The drift of Hume's essays about commerce and the jealousy of trade are clearly and consistently opposed to the governmentalization of social affairs. As Russell Hardin (2007) put it: "he thinks that government should be kept small and not intrusive, as he argues in his varied essays on economics" (200).



The second quotation that Andrew treats is one that he himself introduces. The quotation begins: "[Advantage was also taken](#)" (H 5:114). If the reader reviews the matter, she might scratch her head. The "full prosecution" (I'm quoting Hume, not Andrew) of the "noble principle" that "the authority alone of laws [as opposed, that is, to merely royal prerogative], could restrain that unlimited freedom" does not imply that the government that fully prosecutes such principle will necessarily liberalize as thoroughly as Hume thinks desirable. Meanwhile, it remains perfectly sensible that Hume would applaud the full prosecution of the principle, and believe such full prosecution essential to producing "[that singular and happy government](#), which we enjoy at present."

Something else about the quotation that Andrew introduces: in Hume's note to the passage (Note N, 560), Hume speaks of the law recalling patents of monopolies as "[establishing principles very favourable to liberty](#)." Hume is using *liberty* in the mere-liberty sense.

Here I've remarked on two passages that Andrew treated. But there are oodles of passages in the *History* where

Hume communicates a mere-liberty notion, and, in many, with warm positive valence in his own voice.

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## SOME BEARINGS IN THE HUME LITERATURE

by Daniel B. Klein

This post marks some bearings of the liberty issue in literature on Hume.

Some scholars say that for Hume liberty meant established, certain, predictable governmental rules, rule of law, clear general rules, etc.:

*What is highlighted as central in Hume's meaning of liberty*

- Friedrich Hayek (1967) "general and inflexible laws" (117f)
- Duncan Forbes (1975) "the security of the individual under the rule of law" (87, also 88, 153); "general and equal laws" (154f)
- Donald Livingston (1998) "uncoerced by the arbitrary will of another," "a government of Laws, not of Men," "Law must be known, regular, and predictable", "the rule of law" (182f)
- Andrew Sabl (2012) "general and inflexible laws" (206)

But they also go shy on the mere-liberty idea. My aim is to break down such shyness.

As I said in my response essay, "Hume and Liberty, Simple and Complicated," Hume does often mean certainty, predictability, etc., as well as poli-sci things for stable and liberal government. But he also often means mere-liberty. The meanings interrelate conceptually and

correlate empirically—no wonder they get jumbled together.

Aren't tax laws, minimum-wage laws, etc. amenable to being known, regular, predictable, non-arbitrary, equally and impartially applied, and so on? But don't they initiate coercion? Suppose an employer pays someone \$5 an hour (below the minimum wage): whose stuff has he messed with? No one's. Yet the government threatens such employer, at nudging gunpoint. The minimum-wage law, however generally and predictably written and enforced, messes with people's stuff.

Mere-liberty is a concept in the natural jurisprudence tradition of Grotius, Pufendorf, Barbeyrac, etc., who formulated the components of "one's own" – *suum* – and rubrics of messing with it. Hume brilliantly advances that tradition, particularly in Book III of the *Treatise*. In the discussion of justice (Part II), he uses *abstain* and its cognates nine times,<sup>[51]</sup> as in: "Wherein consists this honesty and justice, which you find in restoring a loan, and **abstaining** from the property of others?" (480; boldface added). This idea of abstaining from others' property and promises due them ("stuff" in my formulation) gets expressed by Adam Smith—following a long tradition—as definition of *commutative justice*: "abstaining from what is another's" (TMS, 269). That formulation fits exactly my formulation:

<i>abstaining from</i>	=	<i>not messing with</i>
<i>what</i>	=	<i>stuff</i>
<i>another's</i>	=	<i>other people's</i>

The inverting of "not messing with other people's stuff" to get "others not messing with one's stuff" is natural and obvious: the flipside of commutative justice is liberty (when we are treating governor-governed relationships).

Thomas Merrill (2015) quotes the *Treatise*: "the principal object of government is to constrain men to observe the laws of nature" (T 543), and Merrill says, "[Hume's] political teaching is an early articulation of what we have

come to call commercial republicanism or classical liberalism" (118), and "The object or purpose of political institutions, Hume suggests, is individual liberty" (137). In Smith, the flipside relationship between commutative justice and liberty becomes clearer and more explicit, but it is also in Hume.

A number of scholars have seen Hume in the natural jurisprudence tradition. Consider the following from Knud Haakonssen:

In order to keep people equal in their possessions, these 'virtues' would have to be controlled. To do so, would require a 'most rigorous inquisition', would impoverish society, and would break down social subordination and order (second Enquiry III.2:194). These remarks make it clear that Hume's notion of justice is not purely formal and procedural. The rule that everyone should have the same quantity of external possessions is as universal in form as Hume's rules concerning the allocation of property. But he rejects such a rule, because it would require tyrannical interference with individuals' natural qualities—with their virtues and with their **personal freedom**. The object of just laws is thus **individual liberty**, and, since the most obvious and most endangered expression of **such liberty** is the acquisition and use of property, justice is centrally concerned with property and, it follows, with contracts. [Haakonssen 1996, 117; boldface added.]

Haakonssen adds: "Hume was in agreement with the popular natural law systems of morals, but ... Hume could not use the concept of rights because both of the rights traditions were unpalatable to him" (118).

Stephen Buckle writes in his book *Natural Law and the Theory of Property: Grotius to Hume*:

[M]oral sense theory is taken up ... in order to resolve some problems in natural law theory, and, no less importantly, to flesh out its account of human nature.... Hume can be recognized to be an important contributor to the natural law tradition. [Buckle 1991, vii, ix]

Hume observes that his theory of property is much the same as Grotius's.... [T]here is no bar,

and substantial support, for accepting his claim, and therefore for recognizing his theory as a contribution to the modern theory of natural law. [295]

Hume, with his uncanny insight into mutual coordination and convention, prefiguring Thomas C. Schelling (1960) and David K. Lewis (1969), is a very crucial part of the arc from natural jurisprudence to classical liberalism—Smith expresses it as "[the liberal plan of equality, liberty, and justice](#)" (WN 664).

J.G.A. Pocock (1983) acknowledges that arc when he writes: "The child of jurisprudence is liberalism" (249). Likewise, Dugald Stewart (1854) wrote of "the systems of *natural jurisprudence* compiled by Grotius and his successors" as "the first rudiments of pure ethics and of liberal politics taught in modern times" (26).

Natural jurisprudence formulated the components and operating system of the lower things, and that kind of social grammar was then transferred to thinking about superior-inferior jural relationships—that is, to political philosophy.

Hume highlights jurisprudence in the emergence of the "[most accurate system of liberty](#) that was ever found compatible with government" (H 2: 525):

[But perhaps there was no event](#), which tended farther to the improvement of the age, than ... the accidental finding of a copy of Justinian's Pandects, about the year 1130.... The ecclesiastics ... immediately adopted with zeal this excellent system of jurisprudence, and spread the knowledge of it throughout every part of Europe. [H 2: 520]

#### Endnotes

[51.] Hume uses the word "abstain" 6 times in THN:

1. Wherein consists this honesty and justice, which you find in restoring a loan, and abstaining from the property of others? <[/titles/342#Hume\\_0213\\_1027](#)>
2. Thirdly, experience sufficiently proves, that men, in the ordinary conduct of life, look not so

far as the public interest, when they pay their creditors, perform their promises, and abstain from theft, and robbery, and injustice of every kind. </titles/342#Hume 0213 1029>

3. Instead of departing from our own interest, or from that of our nearest friends, by abstaining from the possessions of others, we cannot better consult both these interests, than by such a convention; because it is by that means we maintain society, which is so necessary to their well-being and subsistence, as well as to our own. </titles/342#Hume 0213 1046>

4. 'Tis certain, that no affection of the human mind has both a sufficient force, and a proper direction to counter-balance the love of gain, and render men fit members of society, by making them abstain from the possessions of others. </titles/342#Hume 0213 1050>

5. Thus the external relation, which we call occupation or first possession, is not of itself imagin'd to be the property of the object, but only to cause its property. Now 'tis evident, this external relation causes nothing in external objects, and has only an influence on the mind, by giving us a sense of duty in abstaining from that object, and in restoring it to the first possessor. These actions are properly what we call justice; and consequently 'tis on that virtue that the nature of property depends, and not the virtue on the property. </titles/342#Hume 0213 1096>

6. We might as well resolve the obligation to abstain from the possessions of others, into the obligation of a promise, as that of allegiance. </titles/342#Hume 0213 1118>.

He uses the word "abstinence" 3 times:

1. Nor is the rule concerning the stability of possession the less deriv'd from human conventions, that it arises gradually, and acquires force by a slow progression, and by our repeated experience of the inconveniences of

transgressing it. On the contrary, this experience assures us still more, that the sense of interest has become common to all our fellows, and gives us a confidence of the future regularity of their conduct: And 'tis only on the expectation of this, that our moderation and abstinence are founded. </titles/342#Hume 0213 1047>

2. After this convention, concerning abstinence from the possessions of others, is enter'd into, and every one has acquir'd a stability in his possessions, there immediately arise the ideas of justice and injustice; as also those of property, right, and obligation. </titles/342#Hume 0213 1048>

3. Afterwards a sentiment of morals concurs with interest, and becomes a new obligation upon mankind. This sentiment of morality, in the performance of promises, arises from the same principles as that in the abstinence from the property of others. </titles/342#Hume 0213 1090>.

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## LIBERTY IS AN ACHIEVEMENT, NOT A THOUGHT

by Andrew Sabl

Both an imposed word count and the likely state of readers' patience require brevity. I'll make one point by way of rebuttal and then two larger points—drawing on Mark's undeservedly neglected contributions—that will probably constitute my conclusion.

**(1) Liberty and commerce in the *History*.** Dan rightly protests that Hume's remark on free commerce in the *History* is not "offhand" in a literal sense. It is, as he notes, preceded by extended mockery of early Tudor economic policy and is consistent with Hume's favorable attitude, throughout his work, towards commerce and trade.

But we are not supposed to be arguing about whether Hume generally favored markets and commerce in preference to command and control (he did) or whether the property convention was central to his account of society and politics (it was). The thesis before us is that liberty in a sense of pervasive aversion towards any interference with personal choices—Chandran rightly argues that Dan's "mere liberty" must mean something like this, and Dan in his attacks on policies that "initiate coercion" confirms it—is something that Hume consistently advocated and that this advocacy is central to his work.

In the context of *that* thesis, Hume's apparently anti-interventionist maxim in the *History* is indeed offhand, *qua*: (a) unsystematic: Hume's systematic works contain no global, sweeping principle opposing interference in commerce (if they had, Hume might have taken the occasion to qualify it); (b) trivial with respect to Hume's *History* as a whole: Hume's mockery of Tudor

foolishness covers *only* a few pages of the *History* and matters of commerce generally no more than a hundred or two pages out of three thousand. Liberty in the sense at hand is simply, palpably, far less central to Hume's narrative of English constitutional development than is the political/legal sense of liberty to which Mark draws our attention.

Finally—I apologize for repeating the point—Hume nowhere describes these foolish commercial regulations as threats *to liberty*. This omission remains noteworthy. And I endorse Chandran's rebuttal of the claim, resting on no apparent evidence, that it reflects esoteric caution.

**(2) The priority of constitutional liberty.** In describing Humean liberty as a combination of a government operating through general, impartial rules and (roughly what we now call) checks and balances, Mark in effect portrays Hume as having adopted a concept of liberty similar to Montesquieu's.<sup>[52]</sup> Now, if anything deserves to be called "mere liberty"—though I dislike the phrase—Montesquieu's liberty has at least as good a claim as Klein's. The opposite of Klein-liberty is the coercive regulation that prohibits me from scrubbing the street for 10 cents an hour. The opposite of Montesquieu-liberty is the secret police force that seizes victims at night without charge and without recourse. Some in this forum seem to regard it as slanderous to portray Hume as caring much more about the latter kind of liberty than the former. I dissent.



**(3) Experiments in liberty.** Mark is right to portray accident—unintended consequences—as a fundamental theme of Hume's work.<sup>[53]</sup> As Fred Whelan has shown, accident in Hume goes both ways. Apparently wise or

well-meaning actions can redound badly; apparently blameworthy acts or motives can turn out for the best (as when the Puritans, opposing Charles I because their religious fanaticism gave them courage and a sense of mission, accidentally furthered constitutional liberty).<sup>[54]</sup>

My own work has stressed some further instances directly relevant to liberty. Much of liberty's progress, on Hume's portrayal, resulted from policies that were, *ex ante*, stupid. Religious freedom seemed at the time an obvious threat to social order; allowing sedition seemed obviously fatal to political authority. It is only after these policies were tried for the wrong reasons by people with non-admirable agendas (one government that innovated in religious liberty was Cromwell's) that they could be judged, through experience, to be viable.<sup>[55]</sup>



***Thomas Cromwell***

The question before us, then, is not whether liberty is presumptively good but how much liberty is compatible with government and whether and how particular kinds of liberty may be secured. Precisely because (Capaldi is right) the cosmos lacks purpose and direction, while our political and social experience remains limited and our knowledge of human nature remains imperfect, we cannot know *a priori* which limitations on liberty are necessary—perhaps "obviously" necessary—and which not. Particular proposals to increase liberty may in retrospect seem unwise: Shulamith Firestone's conviction that children would be happier rearing themselves, in the streets, did not seem radical at a time when all previous

assumptions regarding gender and family roles suddenly seemed unfounded and unjust, but does now.<sup>[56]</sup> Or, conversely, as with freedom of speech and religion, some limitations may seem fanatical and dangerous at one time and no more than common sense once their worth has been demonstrated. Finally, innovations, whether technological (media) or political (ethnically charged populism) may make an existing pro-liberty policy seem double-edged later—as Hume concluded regarding the free press after the "Wilkes and Liberty" movement took aim at Scots.<sup>[57]</sup>

As Mark wisely glosses Hume's view, none of these matters is "necessary" or "inevitable." We have erred in the past. We shall err in the future. And we should mistrust conceptual or historical schemas that seduce us into imagining we can judge easily in the present.

#### Endnotes

<sup>[52.]</sup> Notably, though space limitations prevent me from documenting the point, Hume tended to fault Montesquieu more for his casual attitude towards causal inference than for his normative positions.

<sup>[53.]</sup> The valediction of the *History of England*—at the end of Book II, which Hume wrote last—speaks famously of 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."

In each of these successive alterations, the only rule of government, which is intelligible or carries any authority with it, is the established practice of the age, and the maxims of administration, which are at that time prevalent, and universally assented to. Those who, from a pretended respect to antiquity, appeal at every turn to an original plan of the constitution, only cover their turbulent spirit and their private ambition under the appearance of venerable forms; and whatever period they pitch on for their model, they may still be carried back to a more ancient period, where they will find the measures of power entirely different, and where

every circumstance, by reason of the greater barbarity of the times, will appear still less worthy of imitation. Above all, a civilized nation, like the English, who have happily established the most perfect and most accurate system of liberty that was ever 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 times. And it is also curious, by shewing them the remote, 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.

[54.] Frederick G. Whelan, "'Contrary Effects' and the Reverse Invisible Hand in Hume and Smith," in idem, *The Political Thought of Hume and His Contemporaries*, vol. 2 (New York: Routledge, 2015), 84-147. Or sometimes the effects are merely ironic. Cromwell's Protectorate defended the realm and pursued his policies because the navy had been rebuilt with—ship money.

[55.] Andrew Sabl, "When Bad Things Happen From Good People: Hume's Political Ethics of Revolution," *Polity* 35, No. 1 (2002): 73-92.

[56.] Shulamith Firestone, *The Dialectic of Sex* (New York: Farrar, Straus and Giroux, 1970).

[57.] J.G.A. Pocock, "Hume and the American Revolution: The Dying Thoughts of a North Briton," in idem, *Virtue, Commerce and History* (Cambridge: Cambridge University Press, 1985), 137-41. Hume revised his essay "[Of the Liberty of the Press](#)" in a conservative direction as a result of his Wilkes-inspired second thoughts.

## HUME'S PHILOSOPHICAL NARRATIVE OF LIBERTY

by Nicholas Capaldi

What follows is a response to Chandran and Mark and reinforces, I think, Dan's point about mere liberty and natural jurisprudence.

Following the collapse of the medieval Aristotelian teleological worldview, the word "nature" no longer described the fully developed but primitive condition of mankind. This is what subsequent thinkers, including the natural jurisprudence tradition, recognized. In Hobbes and in Hume this became the extra-political condition. The extra-political condition is one of individual liberty (or "mere" liberty in Dan's sense).



*An Answer to the Whigs (satire)*

This *extra-political condition never disappears*. The state of nature in Hobbes is not an historical event but a description of what happens following the collapse of authority in a revolution, hence the need to avoid revolution. Hume also acknowledges an extra-political condition in several ways. Since legitimacy is always a matter of acquiescence and opinion, legitimacy can disappear. Hume was as much concerned to avoid revolution as was Hobbes. In addition, governments

should always assume that men might do bad things (Tory view).

Revolutions, understandably, may sometimes be okay. However, there cannot be an authoritative revolution or theory of revolution – this merely changes the locus to something else that might be contestable. Besides, such an account (as in Locke) is dangerous because it can foment revolution.

There is, thus, more continuity between Hobbes and Hume than is generally acknowledged. Hume criticized Hobbes because of the perceived inadequacy of Hobbes's account. Hobbes's account is potentially destabilizing in Hume's view because of its psychological egoism. That is why limited benevolence and sympathy become important for Hume as well as Smith.

The extra-political condition consists of our interests (individual liberty) but more precisely of how we understand our interests: "[though men be much governed by interest](#); yet even interest itself, and all human affairs are entirely governed by opinion" (E-BG 51). Opinion is our passions subtended by reason. Opinion is not a theory (which is why traditional political theorizing is bogus if not dangerous [Hayek and Oakeshott?]) but a narrative. My conception of my interest is a function of my conception of my personal identity, which is the product not only of a train of memories but the story I tell of myself. Analogously, what governs society is a narrative of how we understand our society and its history; hence the importance of getting the narrative correct – this is why Hume writes the *History*.

Given the extra-political condition and the need to remind people about the destructiveness of revolution, a correct narrative does not follow a carefully laid-out script. The narrative needs to show the "bad" as well as the "good."

What is the "good"? Within the narrative we can extract norms from previous practice even in the face of the persistent violation of those norms; we ask, do certain norms persist over time and even evolve (conservative element)? Hume's *History* is just such a narrative, without denying the warts, of how specific constitutional

arrangements (balance the executive and legislative branches; legal safeguards in particular are a special part of the history of England in anybody's retelling) developed over time. This is the destination that Mark identifies (civil and political liberty, rule of law). It also becomes important to contest rival narratives (both Whig and Tory): Hume focuses on how they misrepresent specific events to fit a present preferred policy. The narrative only makes sense if the legal safeguards of individual ("mere" or extra-political) liberty explain why we do not (yet) need to revert to the extra-political condition.

The test of the adequacy of Hume's narrative is whether it rings more or less true: (a) like a legal brief, we ask if it gives a consistent and coherent account of the precedents; (b) we ask if it will keep the polity going; (c) in retrospect, we note that England somehow managed to muddle through, as opposed to serial revolutions in France provoked by erasing the past in favor of misguided theory.

Hume does not pretend that his narrative can produce an algorithm or predict future permutations. Individual liberty will always have to be defended. The case for liberty will always have to be restated in the face of new circumstances. One of the strengths of the English intellectual inheritance (from Ockham to Oakeshott) is that it keeps individual liberty (the extra-political is always subtly in the background) front and center; that same inheritance is always skeptical of abstractions. That inheritance attracts like-minded people from Montesquieu to Polanyi and Hayek.

The greatest intellectual threat to continuity in the present is the Enlightenment Project belief (blame the French and Bentham) in a social technology (rationalism); it too, ironically, has an anti-historical dismissive narrative of why we should ignore pre-positivist thought – begin with an alleged clean slate; all the more reason for us to give a narrative account of previous intellectual traditions while engaging (for us) polite rival versions.

## SOME MORE MERE-LIBERTY MOMENTS IN HUME'S *HISTORY*, PART 1

by Daniel B. Klein

In my post "Hume Really Did Make Mere-Liberty Central," I touched on three significant mere-liberty passages in Hume's *History* (Vol. III: [77-79](#), [135](#); V: [114](#), [560](#)). I am new to the *History*. In an autumn 2017 reading group, we covered—I won't say "read"—volumes III, IV, V, and VI, skipping volumes I and II. But a smattering is better than nothing (and, besides, these posts are supposed to be limited to 800 words). Surely there are other passages more significant than some of those that follow. I take care not to include passages where Hume channels parties in his narrative, except when noted otherwise. I boldface bits that seem to speak of, or imply, an idea of mere-liberty, not merely parliamentary rights, established rules, etc. There are of course oodles of "personal liberty," "civil liberty," "political liberty," "system/plan of liberty," "English liberty," "liberty" and "freedom" *simpliciter*, etc. that could be seen either way (or both). With a couple of exceptions I do not use those, focusing rather on passages *where an idea of mere-liberty is most salient*.

Mere-liberty is clearly connoted in the following expressions:

*liberty of thought/conscience/religion:*  
III: [136](#), [189](#), [266](#), [433](#); IV: 263;  
V: [125](#); 6: [71](#), [88](#), [482](#).

*liberty of press/speech:* IV: [285](#); V: [91](#), 92, [130](#).

*captives recovering their liberty/being restored to liberty/etc.:* III: [164](#), [166](#), 167, [229](#); IV: [7](#), [50](#), [180](#);  
VI: 88, 540.

Volume I:

Hume says that some of the articles of the Great Charter "[provide for the equal distribution of justice](#), and **free** enjoyment of property; the great objects for which political society was at first founded by men, which

the people have a **perpetual and unalienable right to recal**, and which no time, nor precedent, nor statute, nor positive institution, ought to deter them from keeping ever uppermost in their thoughts and attention" (445).

Volume II:

The only part that I have read is the valediction ([518-25](#)) at the end of the volume (the last to be written). Liberty Fund has extracted it as "[The Progress of English Liberty](#)."

[The gradual progress of improvement](#) raised the Europeans somewhat above this uncultivated state; and affairs, in this island particularly, took early a turn, which was more favourable to **justice** and to **liberty**. Civil employments and occupations soon became honourable among the English.... [522]

[T]he distinction of villain and freeman was totally, though insensibly abolished, and that no person remained in the state, to whom the former laws could be applied.

[Thus personal freedom](#) became almost general in Europe; an advantage which paved the way for the encrease of **political or civil liberty**, and which, even where it was not attended with this salutary effect, served to give the members of the community some of the most considerable advantages of it. [524]

In the last (also quoted by Nick), I confess I don't know which corresponds best to mere-liberty, but it seems like one of them must do so pretty well.

Volume III:

Here I leave off the important [77-79](#) and [135](#), which were treated previously.

[What proves either a stupid or a wilful blindness in the parliament is](#), that they pretended, even after this statute, to maintain some limitations in the government; and they enacted, that no proclamation should deprive any person of his lawful possessions, liberties, inheritances, privileges, franchises; not yet infringe any

common law or laudable custom of the realm. They did not consider, that **no penalty could be inflicted on the disobeying of proclamations, without invading some liberty or property of the subject**; and that the power of enacting new laws, joined to the dispensing power, then exercised by the crown, amounted to a full legislative authority. [267]

If I understand the immediately foregoing, Hume is saying that the enforcement of such proclamations inherently invades the liberty of the subject.

At [330-31](#) there are more free-market comments (like those at 77-79), and I would argue that such words as "fixing," "permitting," "confining," "excluding," and "prohibited" all imply a mere-liberty notion.

Volume IV:

Hume speaks of Elizabeth "[allowing a free exportation of corn](#)" (48).

Hume treats Peter Wentworth's "premeditated harangue" and says in his own voice: "[it seems to contain a rude sketch](#) of those principles of liberty, which happily gained afterwards the ascendant in England" (178). Hume's summary of the harangue shows both mere-liberty and established-rule/parliamentary ideas. Hume also says that "[Wentworth better understood the principles of liberty](#)" (180). We return to Wentworth in part 2.

Speaking of Elizabeth's use of purveyance (that is, forced hospitality), Hume notes that payment "[was often distant and uncertain](#)" and continues: "so that purveyance, **besides the slavery of it**, was always regarded as a great burthen, and being arbitrary and casual, was liable to great abuses" (272). Most significant here is the word *besides*: *Besides* the uncertainty and arbitrariness, there is the sheer slavery of it.



*Queen Elizabeth I*

At [344-46](#) Hume again decries market interventions under Elizabeth, particularly monopolies. The words "restraints," "extorted," "free themselves," and "restrained" all imply mere-liberty. Hume then says such restrictions embarrass certain prepossessions about the degree of "**liberty** possessed under the administration of Elizabeth" (346). Hume then notes:

[It was asserted, that the queen inherited both](#) an enlarging and a restraining power; by her prerogative she might **set at liberty** what was restrained by statute or otherwise, and by her prerogative she might restrain **what was otherwise at liberty**.... [346]

Hume here clearly draws a contrast between liberty and established statute. (See also [Note \[HHI\]](#), 411f.)

At 367 Hume speaks of "[branches of prerogative, which are now abolished](#), and which were, every one of them, **totally incompatible with the liberty of the subject**." Sounds to me like individual liberty (mere-liberty).

By the way, at 380, it is quite interesting that Hume baldly reports in a paragraph consisting solely of one very short sentence: "[In the fifth of this reign](#) was enacted the first law for the relief of the poor." No comment—just as Smith never weighed in on the poor law (apart from the

related settlement restrictions) in his otherwise quite comprehensive review of public policy.

In the next post I continue with volume V and VI.

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## LIBERTY AND ENGLISH EXCEPTIONALISM

by Nicholas Capaldi

The individual is the starting point of Hume's science of man. Both the *Treatise* and the *Enquiries* explain how an individual can come to terms with a social context (sympathy). The social world is not fully constitutive of who we are; it depends on how we come to understand that context and whether we choose to absorb it, modify it, fritter it away, or abandon it.

As Hume made clear in an appendix to the *Enquiries*, while there are universal truths about human beings, humans develop in different historical and cultural contexts. Hume was not the first to engage in historical explication. Outside of England, Montesquieu (who had studied law) noted, in 1748 in *The Spirit of the Laws*, before Hume began publishing his *History* (1754), some unique features of English history. Hume corresponded with Montesquieu and shared much of his perspective. They identified three types of regime: despotic, civilized monarchies, and constitutions based on liberty – of which England is the shining example. Both Hume and Montesquieu are concerned with individual liberty. Representative government is a means to liberty not the essence of liberty. Both begin with Tacitus and the "liberty" of the Britons ([II, I, 5](#)).



*Tacitus*

There is something special about England. From that relevant history, individualism and individual liberty emerged as prioritized norms. Hume gives a history of how liberty emerged (evolved) in the specifically English context from the time of the Britons and Saxons up to his own time. He insists that it evolved (no ancient constitution) through a series of practices and was well instantiated in his own time in a variety of legal and political practices. One such practice was habeas corpus (later praised by Dicey as the greatest guarantee of individual liberty). Habeas corpus preceded both *Magna Carta* and the Normans.

The claim I make on behalf of Hume (and others) is that there are certain features of the English conception of liberty that are rather exceptional, and that is the result of something special about English history. Certainly some of his contemporaries thought so (Voltaire, Montesquieu, Constant, authors of the *Federalist Papers*) and hoped to see those features adopted elsewhere. In retrospect, some of those features such as the presumption of innocence and habeas corpus have been *subsequently* adopted elsewhere. Nevertheless, those features developed originally in the English context, and they may well continue to mean something slightly different in different cultural contexts.

Where I think I may differ from others is in my maintaining that the meaning of an institution or a specific practice depends on the larger cultural context. Nazi Germany, China, Iran, and the Soviet

Union all claim to have had or have the rule of law. Surely it means something very different in the Anglo-American context. The cultural origin explains not just the starting point, but may also explain the evolution and meaning.

The rule *of* law is specifically Anglo-American; what other legal systems have is more *rule through law* (mere legality). There is a large and growing scholarly literature on this. Those who deny the sanctity of individualism and reject classical liberalism are exactly those (Raz, Rawls, Dworkin) who denigrate the rule of law or reduce it to a formality or do not even discuss it, and who advocate some form of equality at the expense of liberty. Liberty never stops needing an articulation and a defense.

Although Continental Europe may have started in a similar fashion, it is only the Angles and Saxons who preserved some early version of individual liberty. The Germanic tribes that swept through the Continent were Romanized and later adopted a very different legal system. I would maintain that some version of a classical collective good permeates Continental thinking to this day. There are important historical studies of why classical liberalism did not prosper in Continental Europe in the 19th and 20th centuries. Post-World War II, the Germans created a constitution that gives the individual certain protections (abstract human rights), but the constitution is a product of democratic politics (very un-Humean and un-English), and Continental thinkers in general, with the exception of the Anglophiles, believe that majority rule gives us access to something like the general will – ideas that would be anathema in the Anglo-American context.

English thinkers have long been cognizant of their difference from Continental Europe. If I had more space I would detail the myriad ways in which English culture stands out in making the individual the primary focus (everything from Protestantism and the novel to UK corporate practice). To the best of my knowledge, the English language is the only one in which the first person singular pronoun ("I") is always capitalized.

## SOME MORE MERE-LIBERTY MOMENTS IN HUME'S *HISTORY*, PART 2

by Daniel B. Klein

Volume V

Here I leave off 114, 560, which were treated previously.

By the way, at [18-19](#) is a nice passage pertinent to Nick's contention about liberty as an especially British unfolding (featuring an interesting occurrence of "liberal").

At [20-21](#) we find free-market remarks, including the endeavor "to **free** trade from those **shackles**," "patents for monopolies ... extremely **fettered** every species of domestic industry," the Commons attempted "to give **liberty** to the trading part of the nation," and an attempt "to **free** the nation from the burthen of purveyance."

In reflecting on James I, Hume remarks on developments *since 1625*:

By the changes, which have since been introduced, the **liberty** and independence of **individuals** has been rendered much more full, intire, and secure; that of the public more uncertain and precarious. [128]

Notice that the liberty *of individuals* is said to have become not only more "secure" (predictable, certain, etc.) but more "full" and "intire."





*Sir Edward Coke*

At 160 Hume says of a key group of parliamentarians, including Thomas Wentworth, Robert Philips, Edward Coke, and John Selden: "[Animated with a warm regard to liberty](#), these generous patriots..." Then at [189-91](#) Hume quotes Philips and Wentworth at length, and mere-liberty is conspicuous in their words.

At 194-95 Hume channels the "[partizans of the court](#)": "it were surely much better for human society to be deprived of **liberty** than to be destitute of government."

I'm really not sure what Hume means by "civil liberty," so the following is a "maybe" (and others like it could have been added). Sketching three types of puritan, Hume says that one were "[the political puritans](#), who maintained the highest principles of **civil liberty**" (212).

At 556, Note [J], Hume says: "[In the ancient feudal constitution](#), of which the English partook with other European nations, there was a mixture, not of authority and **liberty**, which we have since enjoyed in this island, and which now subsist uniformly together; but of authority and anarchy...." The connotation here is perhaps not so clearly mere-liberty. (See also [533](#).) But the passage relates to what I wrote about *imperium* in my initial essay. Other passage related to the imperium theme are found at I: [254](#); II: [525](#); III: [49](#), [51](#), [73-77](#), [80](#); IV: [384](#), [406](#), [414](#).

Speaking again of commerce, the free-market Hume says "[the monopoly was gradually invaded](#), and commerce increased by the encrease of **liberty**" (148).

Hume writes of "[the rigours exercised against conventicles](#)," of the "enormous outrage" of quartering mercenaries to enforce it, and of how, furthermore, "chicanery was joined to tyranny" (328-29). "[If ... a protestant church](#) ... [that] approaches towards unlimited authority were so tyrannical, how dismal its final establishment; when all dread of opposition shall at last be removed by mercenary armies, and all sense of shame by long and inveterate habit?" (331).

Hume explains that the Jesuits believed that they would be able to convert the English population if they were to obtain "toleration" and then "[entire liberty](#)" (340).



Discussing habeas corpus, Hume says that it "[seems necessary for the protection of liberty](#)." He also comments: "It must, however, be confessed, that there is some difficulty to reconcile with such extreme **liberty** the full security and the regular police of a state, especially the police of great cities" (367).

Again, my command of the *History* is minimal, and there surely are other passages more significant than some of the foregoing. I compiled this without making use of the search function (except to pull already-identified passages). Searching on "liberty," "free," etc. would turn up much more.

And again there are oodles of other passages in which, I think, a mere-liberty connotation is eminently present,

but in which the other related meanings also make good sense.

And this document treats only the *History*; the presence of mere-liberty in Hume's other works is more familiar, and a few moments of it have been highlighted in foregoing posts by Nick and me.

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## ON THE USES OF HUME'S *HISTORY*

by Chandran Kukathas

Much of the conversation now coming to an end has centered on Hume's *History of England* and on his use of history to serve his political philosophical purposes. Dan Klein has appealed to the *History* by citing more and more chapters and verses to illustrate and reinforce his thesis that "mere liberty" was central to Hume's concerns. Nicholas Capaldi concurs (having originally advanced the claim that liberty was the default value for the pluralist Hume), suggesting that getting the historical narrative right was important for Hume, as it must be for all defenders of (mere) liberty. Capaldi's response to the challenges put by those of us who dissent from his view has been to state that view anew, each time in slightly different form. I remain unconvinced by either of these scholars because I do not see that they have addressed the objections leveled against their views rather than simply supplied more of the same.



In Dan Klein's contributions, further citation of passages from Hume's *History* cannot establish the truth of the claim that what he has in mind is "mere liberty," or of the view that mere liberty was *central* to his concern. Hume uses the word "liberty" about 700 times in the *History*. He uses the word "authority" just shy of 2,000 times. Repeated reference to the passages discussing or using the term "authority" would not do if one wished to persuade a reader that "authority" was Hume's central preoccupation. Nor would it help to untangle the meaning of "authority" in Hume's analysis. To my mind, the notion of "mere liberty" remains as obscure as ever and the thesis that liberty is central to Hume's thought still merely asserted with conviction rather than defended with argument supported by evidence.

If Klein has tried to persuade by citing chapter and verse from the texts in play, Capaldi has tried to do so by representing the sweeping narrative that is his reading of the history of philosophy from the demise of ancient certainties to the emergence of modern thought freed from the shackles of teleology and an implausible metaphysics. His own narrative style of argument is consistent with his assertion that we must understand the world *historically*, rather than *scientifically* or *rationalistically* as the defenders of the "Enlightenment Project" have proposed. Capaldi thus commends Hume: "what governs society is a narrative of how we understand our society and its history; hence the importance of getting the narrative correct — this is why Hume writes the *History*."

My objection to all this is essentially an Oakeshottian one. Oakeshott sought to protect the different modes of inquiry—philosophical, scientific, and *historical*—from domination by *practical* concerns. Genuine historical inquiry is about a past that is dead and gone and can have no practical relevance for us. Historical inquiry is explanatory and not a search for guidance. Works that tell stories from the perspective of the present, looking to offer such guidance or instruction, or narratives of progress, belong not to the discipline of history but to contemporary practical politics. What Capaldi has offered in this regard, in Oakeshottian terms, is not history but

retrospective politics. This is not to disparage the enterprise; but it is not history.

The deeper problem, however, is that if we understand history as Oakeshott would have us do, we cannot say *both* that "what governs society is a narrative of how we understand our society and its history," *and* that what is necessary is "getting the narrative correct." Getting the history right is of importance only to historians, and there is no reason to think that a true history will be more useful than a highly imaginative one. What, then, is Hume doing: trying to get it right or crafting a narrative that will help him make his point?

What, indeed, is Nicholas Capaldi doing in supplying his own historical narrative? I am not sure I have the means to unravel that particular mystery, which may have to be left to future historians, or perhaps to readers with greater facility for handling esoteric writing than I.

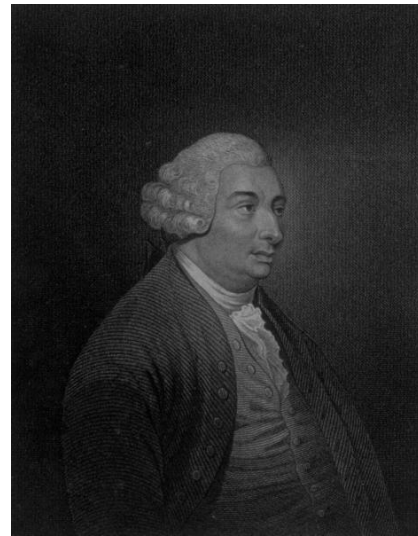
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## DANGERS OF MERE-LIBERTY

by Daniel B. Klein

Chandran sees "nothing in Hume that comes remotely close to conceiving of liberty" in the way of mere-liberty. Yet Chandran assures us that "Hume's general concern for liberty is not at issue," presupposing not only that he (Chandran) is able to signify something by the word *liberty*, but that we could be presumed to know what that something is. If the signification has no resemblance to *others not messing with one's stuff*, well, what is it?

Further, if Hume exhibited a general concern for liberty—and Andrew recognizes "Hume's apparently anti-interventionist maxim"—did Hume not, then, also *communicate* that concern to his sympathetic reader? Did he not then recommend some favor for liberty, maybe even some presumption of liberty?



*David Hume*

Maybe—presupposing political stability like England had achieved by Hume's maturity ("adamantine," says Plumb)[\[58\]](#)—we are just disagreeing about *how strong* a presumption Hume gave to the liberty principle and how it relates with other central elements of Hume's outlook, such as a presumption of the status quo. In reckoning such matters, many scholars have been shy on recognizing mere-liberty as a key ingredient in the brew, an ingredient that accounts for much of the flavor.

The flavor is an acquired taste, and the brew is a heady one, associated with frightening gateways. In many ways the flavor goes against our basic nature and instincts, something that I think Hume, Rousseau, and Smith recognized. Chandran's challenge on esotericism, endorsed by Andrew, is well taken:

[I]here is no evidence of Hume writing esoterically about liberty ... and it is hard to imagine what motive he might have had for doing so. Hume said enough about liberty throughout his *Essays* and in his *History* to suggest that it is unlikely that he was afraid of revealing his appreciation of freedom. It does not seem likely either that he was wary of provoking the politically powerful.

Nick and Gordon Lloyd (2016) explicate a dynamic cycle at the heart of what they call the liberty narrative:

$TP \rightarrow ME \rightarrow LG \rightarrow RL \rightarrow CPA \rightarrow TP.$

TP stands for the technological project.

ME stands for the market economy.

LG stands for limited government (restraining government on behalf of individual liberty).

RL stands for rule of law.

CPA stands for the culture of personal autonomy.

(Capaldi and Lloyd 2016, 2)

They are basically right, and the package does indeed represent transformative developments, not just the great enrichment (McCloskey 2016), but really new and frightening human conditions. By reason of some of the latter, "the Liberal Creed" was famously condemned by Karl Polanyi (1944), but as Nick and Gordon Lloyd teach us (2016; 2011), the profound criticisms and doubts go back a long way.



***Karl Polanyi***

The claim to be able to live without others messing with one's stuff is so strong in equal-equal jural relationships (you and your neighbor) that to even suggest a parallel in superior-inferior jural relationships, and to denominate that parallel in some fashion, such as *liberty*, is bound to suggest claims of parallel strength. Even when one takes pains to say otherwise, one is apt to be misunderstood

and misrepresented. After all, although the commutative-justice delineations of "stuff," "one's," and "messing with" evolve toward precision and accuracy, as Hume taught us (and proving that they are "artificial"),<sup>[59]</sup> the limitations, the hedges, the judicious stays and cautions, remain but loose, vague, and indeterminate, and are often given less than justice. To use Andrew's allusion to "Wilkes and Liberty," and his final words, a simple principle might "seduce us into imagining we can judge easily in the present." Simple principles may give rise to men of system and men of faction. "[A] man has but a bad grace, who delivers a theory, however true, which he must confess leads to a practice dangerous and pernicious" (Hume EPM, 279).<sup>[60]</sup>

The liberty principle makes for an intoxicating brew. But it is more than that: it is an engine of policy formulation and criticism. And, finally, the liberty principle is a *an axe* that can be swung at any established general rules contravening the principle. Bentham (1787) swung that axe on usury laws—quite gloriously, but with a rationalistic eschewal of writing between the lines. Hume and Smith had looked to others to unfold, in due course, liberal discourse and liberal reform.

One need not think about radical assault, like that of the Lockean-anarchist author feigned by Burke in *A Vindication of Natural Society* (1756). The idea of just some serial abolitions would astonish 1750 readers: abolition of slavery and slave-trade, equal liberty for women, the end of vocational corporations/guilds. Had not greater freedom in religion produced a most alarming pandemic of *Gangræna* (Edwards 1646)?<sup>[61]</sup>

Today we find alarm over the notion of liberalizing gay marriage, prostitution, drugs, guns, human organs, 10-cent wage rates, and so on. Espousers of liberty open themselves to charges of defending the undefendable: merciless usurers, perverts, greedy merchants and capitalists, abettors of abortion and suicide. One is tarred with forsaking virtue for acquisitiveness, high things for low things. Hume in fact pulled his essay on suicide (in which he uses "[native liberty](#)" and "[our natural liberty](#)," 580, 588 n6), "[faced with the prospect of ecclesiastical condemnation and perhaps even official prosecution](#)."<sup>[62]</sup>

If a circa-1740 author wished to advance the centrality of mere-liberty, and wanted to make his voice appealing to a wide and future readership, and wanted to gain an appointment at Edinburgh or Glasgow, he might well have wished to obscure mere-liberty to some extent and to understate his support for it. He may also have wished to downplay consequences that tend to flow from liberalization, such as innovation, mobility, dynamism, and other moral and cultural consequences like those decried by Polanyi. Just how much independence of judgment, how much autonomy, do individuals really want to be responsible for? It is no wonder that great taboos surround mere-liberty.

The Hume literature features many works (Winters 1979, Livingston 1984, 1998, Baier 1991, Merrill 2015, Matson 2017a) that see Hume's discourse, from the very start, as deeply Socratic, designed not merely to elucidate principles, but to draw the sympathetic reader into a drama of inquiry—which Melzer (2014) associates with pedagogical esotericism. Indeed, Livingston (1998, 17) argues that the "The Dialectic of True and False Philosophy" is an ever-present dynamic in Hume's thought, from the *Treatise* to the *Dialogues*. The contention that Hume practiced esotericism, in all four forms explicated by Melzer, in his discourse about politics and liberty deserves candid consideration.

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#### Endnotes

[58.] J.H. Plumb, *The Growth of Political Stability in England, 1675-1725* (London: Macmillan. 1967), pp. xvii-xviii.

[59.] See the *Treatise*, 529-33, including the following passage highlighting the *specialness* of commutative justice's precise and accurate rules: "I was, therefore, with a view to this inconvenience, that men have establish'd those principles, and have agreed to restrain themselves by general rules, which are unchangeable by spite and favour, and by particular views of private or public interest. These rules, then, are artificially invented for a certain purpose, and are contrary to the common principles of human nature, which accommodate themselves to circumstances, and have no stated invariable method of operation."

[60.] An example in the *History* of Hume speaking to esotericism can be found in V: [544](#). This is an example of "protective" esotericism "to conceal truth from the populace."

If ever, on any occasion, it were laudable to conceal truth from the populace; it must be confessed, that the doctrine of resistance affords such an example; and that all speculative reasoners ought to observe, with regard to this principle, the same cautious silence, which the laws, in every species of government, have ever prescribed to themselves. Government is instituted, in order to restrain the fury and injustice of the people; and being always founded on opinion, not on force, it is dangerous to weaken, by these speculations, the reverence, which the multitude owe to authority, and to instruct them beforehand, that the case can ever happen, when they may be freed from their duty of allegiance.

See also the Hume passages in Melzer's online appendix <[http://press.uchicago.edu/sites/melzer/melzer\\_appendix.pdf](http://press.uchicago.edu/sites/melzer/melzer_appendix.pdf)>.

[61.] In *History* III: 232 Hume channels the "favourers of the ancient religion" who explain the dangers that arise from freedom in interpreting scripture.

[62.] E.F. Miller's editorial note on p. 577 of the *Essays*.

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## MESSING WITH LIBERTY

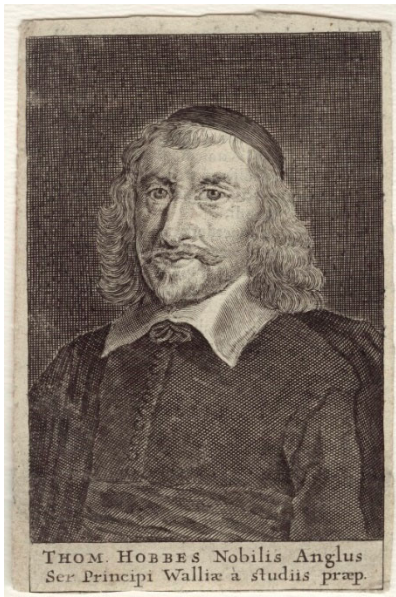
by Chandran Kukathas

Dan Klein asks: "If the signification [liberty] has no resemblance to *others not messing with one's stuff*, well, what is it?" In the history of the use of the term among philosophers and other writers, "liberty" has been held to mean many things: conceptions of liberty abound. For Locke it meant above all *not being enslaved*. For many republicans, past and present, it meant having a certain *status*: that of a free man, with certain rights and duties as a citizen—including *political* rights. For contemporary republicans, like Philip Pettit, it means not being dominated by others (which, in his account, requires certain social guarantees to individuals to ensure they are not rendered "unfree" by poverty, and regulation to ensure that the powerful are kept in check by

institutions that limit their ability to dominate others). For Rousseau and Kant, liberty was enjoyed when one was subject only to laws one gave to oneself (and therefore something not diminished by the collective deciding to regulate one's use of one's property since the laws made by the collective were not the determinations of some alien power but laws that were legitimate because generated by a whole of which one was a part). For yet others, one is free only if the choices one makes are authentically one's own and not the product of some form of social control, whether clumsy (say, brainwashing) or subtle (say, a background culture that shapes one's preferences to reconcile one to a condition of subservience). None of these views suggests that liberty is about not having others messing with one's stuff.

Hobbes offered the most austere definition of liberty by insisting that any impediment to action limited liberty. Thus even the law limited liberty—for example when it forbade theft since that limited the freedom of robbers. For Hobbes, a highwayman who offered his victim a choice between his money and his life did not limit his freedom to the extent that the victim retained the liberty to decide whether he wanted to part with his stuff. This account of liberty may come closest to what might be called "mere liberty," if by that we mean liberty shorn of all moral commitments. Hobbes preferred such parsimony because he feared that putting ethical content into the definition of liberty ran the risk of making liberty the subject of contestation and controversy—another source of quarrel. Bentham followed him in this for different reasons. Hillel Steiner offers a similarly "physicalist" account of liberty today—for different reasons again.

## ABOUT THE AUTHORS



*Thomas Hobbes (circa 1646)*

I do not think Hume follows Hobbes in adopting—or even seeking—a simple, unmoralized, definition of liberty (which, to be clear, also comes with difficulties of its own). The problem, then, is to work out what he might mean when he says "liberty" since he does not offer us a definition or extended discussion of the sort we find in other philosophers. The answer, I think, is that he does not mean any one thing by it, and we must look at the context in which he uses the term to work out what he is driving at. At times he clearly thinks liberty has been violated by restrictions on trade or the regulation of certain commercial activities. At other times he has in mind political liberty, which might not involve any restriction on use of one's property, but clearly limits one's action. He speaks at other times of "public liberty," which refers to something enjoyed when certain institutions prevail, but which again has nothing to do with the security of property—though he does not doubt the importance of the security of property for all kinds of reasons.

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