

## Chapter 4

# The Origins of Government and the Social Contract

### Introduction

As an empiricist, Hume was not given to speculative theorizing about causal relations in the world, about the principles of justice or the proper conception of property, or about what the transcendent principles of morality are. With the exceptions of things like mathematics, Hume was skeptical that we can know anything about things we have not observed. So while we can know with certainty that the interior angles of a triangle are equal to two right angles, because the conclusion follows logically from the inherent features of a triangle and a right angle, when it comes to things like the effects and strength of gravity, the structure of DNA, or where the principles of justice come from, Hume thought we could not just sit in our offices and think hard: we have to go out and look.

This is the way that Hume believed Newton made such a tremendous improvement over astronomers like Aristotle and Ptolemy: he observed the way things move, looked for patterns, formulated hypotheses to explain their regular behaviour, inferred predictions about future behaviour based on the hypotheses, then made further observations to falsify or corroborate the hypotheses, and revised the hypotheses accordingly. Newton's universal law of gravitation, which he published in his 1687 *Mathematical Principles of Natural Philosophy*, were observation-tested, not based on *a priori* theorizing, and were accepted because of their empirical explanatory power, not because they comported with any prior conception of how the world "should" behave. What made Newton the great philosopher Hume (and many others) held him to be was that he enabled us to understand how significant parts of the world work—and the

principles work: they explained past events, and they enabled predictions that turned out to be true. That, for Hume, was “natural philosophy” *par excellence*.

If that Newtonian empirical methodology could work so well for gravity and for explaining motion both on earth and in the heavens, perhaps a similar methodology could be applied for understanding human social phenomena. So, Hume wanted to construct a “science of man” that would adapt Newtonian methodology from natural philosophy to “moral philosophy,” or to the study of human nature and human-constructed phenomena, like language, morality, and government. Could we study these social phenomena and discover repeated patterns, regular behaviour that could give rise to hypotheses that could be subject to empirical verification? As we saw in chapter 3, Hume believed that employing the Newtonian empirical “experimental method” could enable us to understand, among other things, where our concept of justice comes from, what purpose it serves, and how it entails notions like property, right, and obligation. Because the rules of justice are created by human beings but at the same time arise from fixed features of human nature and the human condition, Hume says they are *artificial* but not *arbitrary*. That is, they are in fact human-made, meaning that if there were no humans there would be no principles of justice, just as if there were no humans there would be no law or language. But not just any principles of justice will do: because they are constructed by people who are self-interested with limited benevolence and under conditions of scarcity, they will necessarily be adapted to precisely such creatures in precisely such conditions.

If you hear echoes of Darwinian evolutionary theory in Hume’s account of justice, property, and so on, you are not far off. Of course, Darwin did not publish his theory of evolution until a century later (the *Origin of Species* was published in 1859), so Hume did not have Darwin’s theory in his intellectual arsenal. But Hume’s account of our conceptions of justice and property as well as of many of the other social institutions human beings create had a distinctively evolutionary flavor: like water flowing to the path of least resistance, we find ourselves discovering rules of behaviour, organization, and association that ease the “correspondence among men” and constitute “artificial contrivances for the convenience and advantage of society” (T 3.2.5: 337). Just as the sciences of boat-making and ship-building can, in a profound sense, be said to have been

created by the sea, human social institutions were created by human nature and the human condition.

The flow of water can be altered, however. We can put up dams, obstacles, and diversions, some of which might turn out to be beneficial while others turn out to be destructive. The case is similar for institutions that human beings have created to recognize and enforce conceptions of justice. That brings us to government. Throughout human history there have been thousands of experiments in government, thousands of different systems constructed and applied in different ways. Some of them have been better than others; some of them have been destructive, while some (many fewer) have been beneficial. Though debates raged in Hume's time about what sort of government we ought to have, and similar debates continue to rage today, Hume offered a way of looking at government that might allow us to make some headway in separating the good from the bad, the beneficial from the destructive: Take a look. Review the historical experiments that have been run and evaluate them objectively to see which have enabled their members to prosper and flourish, and which have not. What would such a review reveal?

### **The origins of government**

Hume offers two accounts of the origins of government. One account, which appears in his early *Treatise of Human Nature*, explores why a government would be necessary and what proper purpose it would serve. The other account appears in several of his later essays, in which he explores the historical development of actual governments. The former outlines what government should do, whereas the latter account focuses on what they actually do. As one might expect, the latter departs rather significantly from the former. But Hume's purpose in giving these two accounts was, first, to help us see clearly what the nature of government is and, second, give us some potential guideposts for reform. Let us take the two accounts in turn.

In the *Treatise*, Hume had argued that entering into society allowed people to alleviate, on the one hand, their relative weakness as individuals, and, on the other, the relative ease with which their possessions could be taken from them. Humans are not particularly big, strong, or fast, compared with other animals, and individually they are relatively easy prey. They have extensive

and complicated desires, but they possess little ability to satisfy many of them on their own. For these reasons, humans do much better, and their prospects for reducing the hardships and misery they face (to say nothing of leading a fulfilling life of happiness) increase significantly, if they work in cooperation with other humans. That has indeed been the secret of humanity's success as a species. We might not have fur, claws, or wings, but we do have language and reason, and the latter two enable us to plan, coordinate, and cooperate in ways that have proven to best virtually every other species, including those whose members are individually much more powerful than any single human. Our language and reason have enabled us to become, in many ways, the top species on earth, and the only species that has been able to understand, subdue, and control large parts of nature and put it to our own uses. That has happened only because of our ability to cooperate, which is what Hume means by entering into "society."

Humanity's ability to coordinate its efforts also, however, allows it to prey on other humans. Humans can coordinate attacks and raids, and much of human history is marked by humanity's apparent thirst for predation. Our selfishness and limited generosity have frequently led groups to dehumanize and even brutalize the members of other groups, killing, enslaving, colonizing, and stealing from them. These unfortunate marks on our history raise an interesting philosophical question, however: if each of us wants to improve his own condition, if peaceful cooperation is so beneficial to us, and if respecting the rules of justice and property are so essential for enabling the beneficial cooperation that allows improvement in our situations, then why would people ever disrespect justice and property? As Hume put the question: "Since, therefore, men are so sincerely attach'd to their interest, and their interest is so much concern'd in the observance of justice, and this interest is so certain and avow'd; it may be ask'd, how any disorder can ever arise in society, and what principle there is in human nature so *powerful* as to overcome so strong a passion, or so *violent* as to obscure so clear a knowledge?" (T 3.2.7: 342).

Hume's answer was that human beings are short-sighted. While we may understand that in some overall or global sense the rules of justice and property are necessary for us to achieve what we want, nevertheless in the moment, or in the heat of the moment, we may think that we can benefit ourselves by violating

those rules without thereby significantly endangering the beneficial effects of the overall system of justice and property. Hence people may often “prefer any trivial advantage, that is present, to the maintenance of order in society, which so much depends on the observance of justice. The consequences of every breach of equity seem to lie very remote, and are not able to counter-balance any immediate advantage, that may be reap’d from it” (T 3.2.7: 343). Because of our preference for short-term gain even at the risk of long-term loss, many of us will take advantage of situations where we can benefit ourselves by violating the rules of justice and property, even while we want others to respect those rules and even when we ourselves benefit from widespread respect for them.

One way to think about this worry is by considering what the contemporary economist Robert Frank calls “golden opportunities” (see Frank, 1988: 72–5). A golden opportunity arises when you could benefit by breaking some moral rule you otherwise accept, but you know you would not be caught or punished for it. Consider, as an example, taking a ream of paper from your office for your personal use at home. Could you, if you wanted to, find an opportunity to do this when no one would know that you did so? Almost certainly. Would this be a breach of the rules of justice and property? Unless you had permission to do so, yes it would. This is a “golden opportunity.” Once you begin thinking about it, you will probably realize that you have countless such opportunities all the time; we all do. Most of us will not avail ourselves of most of them, but some will. Even a relatively small proportion of golden opportunists can weaken the trust we have in each other, the faith we have in the rules of justice and property, and thus endanger the benefits to us all that respect for those rules can enable.

Now, one breach of justice and property might not have much effect. (Would anyone at your office even notice if just one ream of paper went missing?) That can easily lead us to think that it is no big deal, that this one violation does not have any significant effect or even any effect at all on the larger scheme of justice and property; and if we are motivated—we really want to use that ream of paper at home—we can all too easily discount whatever remote negative effect our one opportunism will have. Of course, everyone else can reason similarly in his or her own case, and such thinking can engender widespread opportunism. Even if the opportunism in which any one of us engages has little effect, their cumulative effect can be devastating. It can lead to distrust

in each other and in our public institutions, and even those of us who refrain from opportunism might begin to feel like dupes if we come to believe that everyone else is doing it—and so we do it too.

That, Hume argued, is where government can come in. Government can provide an “expedient, by which men cure their natural weakness, and lay themselves under the necessity of observing the laws of justice and equity, notwithstanding their violent propensity to prefer contiguous to remote” (T 3.2.7: 344). To achieve this goal, government is created and empowered to protect and enforce the rules of justice and property. The officers of this government would then both “execute the laws of justice” as well as “decide all controversies concerning them” (T 3.2.7: 344). If they do so effectively, with objectivity and impartiality, then citizens can have trust in the security of their lives, property, and agreements, which will give them the freedom they need to pursue mutually voluntary and productive associations with others, as well as confidence that other people and their shared public institutions will allow only cooperative and never extractive transactions. If we have the right institutions, Hume argues that the benefits to all of us will be manifold: “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 subtile inventions imaginable, a composition, that is, in some measure, exempted from all these infirmities” (T 3.2.7: 345).

That, then, is what government should do, and what its proper purpose is. What does it in fact do? And what are the historical origins of actually existing governments? Here Hume had a very different story to tell.

The first place to look is Hume’s essay “Of the Original Contract,” in which he took up the question of whether there is such a thing as a “social contract” indicating the duties citizens have toward their government or country and, if so, what obligations or duties it entails. Hume claimed that many believe that government is founded “altogether on the consent of the PEOPLE,” and therefore “suppose that there is a kind of *original contract*, by which the subjects have tacitly reserved the power of resisting their sovereign, whenever they find themselves aggrieved by that authority, with which they have, for certain purposes, voluntarily entrusted him” (EMPL: 466). But is there such

an original contract, or a social contract of any kind? Hume's answer is no. It is a historical and philosophical fiction: "Almost all the governments, which exist at present, or of which there remains any record in story, have been founded originally, either on usurpation or conquest, or both, without any pretence of a fair consent, or voluntary subjection of the people" (EMPL: 471).

Cast your mind's eye across the world today, or back through history: where, Hume asked, were people asked to consent to their government? Even in so-called democracies, like, for example, ancient Athens, although some people were allowed to vote on some things, still there were large numbers of people who were not allowed to vote (women, slaves, aliens, the propertyless, and so on), and in any case there were large proportions of state activity that were beyond the reach of anyone's voting. A similar situation is still in place today, including in countries like Canada and the United States. Consider, for example, that in 2019, Canada had 287,978 federal employees (not including most of the RCMP or Canadian Forces). Of these, the only ones elected are federal MPs, or 388 of them. That means that only 0.13 percent of Canadian federal employees are subject to election, and 99.87 are unelected. Similarly, in 2018, the United States federal government had 2,124,062 employees (not including military and Post Office employees). Of these, 537 are subject to election (435 members of the House of Representatives, 100 members of the Senate, the president, and the vice president). That means that 99.97 percent are unelected. Because each individual adult American citizen may vote for only two senatorial offices, one congressional office, the president, and the vice president, that means that 99.9998 percent of all federal office holders are beyond the reach of the electoral authority any individual citizen has. Yet their laws, regulations, mandates, and restrictions are enforced on all citizens, and the terms and conditions of their employment, as well as the scope of their authority, are beyond the scrutiny, authority, and oversight of American citizens.

Hume wrote: "The face of the earth is continually changing, by the encrease of small kingdoms into great empires, by the dissolution of great empires into smaller kingdoms, by the planting of colonies, by the migration of tribes. Is there any thing discoverable in all these events but force and violence? Where is the mutual agreement or voluntary association so much talked of?" (EMPL: 471). Hence, the idea that there has ever been anything like a

social contract is spurious and fanciful. Think of contracts in other walks of life, say employment contracts. They list obligations on both sides, what each side promises the other; they have stipulations regarding breach and punishment; they have terms for withdrawal; and they are entered into explicitly, by signing or some other official act of engagement and promise. For the overwhelming majority of the world's people, however, nothing like any of these elements happened or are in place. People are born in countries and subject to their governments' authority and laws; even if they eventually are able to vote, they can vote only on some small range of things the government does, and in any case the power of their vote is considerably diminished by being just one among many—sometimes millions—of votes. The idea that “the people” vote and thus that politicians are subject to the “will of the people” is a similar philosophical legerdemain: “the people” is not a single, aggregated mass or consciousness; it is made up of individuals with unique identities and very different schedules of goals, values, purposes, and preferences. Thus, there is no real sense in which they have any single, united will, and therefore no real sense in which whoever gets elected can reflect this “will of the people.”

If governments do not actually represent the will of the people or rest on the consent of the governed, however, then on what does their authority rest? Hume's answer is “opinion.” Consider, Hume suggested, “the easiness with which the many are governed by the few; and the implicit submission with which men resign their own sentiments and passions to those of their rulers” (EMPL: 32). This is puzzling, given that their greater numbers means that “FORCE is always on the side of the governed” (EMPL: 32). How, then, do small numbers of rulers manage to exercise authority over large numbers of citizens? Hume's answer was that it is “on opinion only that government is founded” (EMPL: 32). Hume suggested that over time people come to think not only that government can serve their interests—which, after all, Hume argued in his *Treatise* is the central purpose for government—but, more than that, that their current government is in fact doing so. Growing up in a country gives people a romantic attachment to it, and, just as we can come to overlook a family member's failings out of our love for her, we overlook the reality of our government's failures and malfeasances and corruptions and abuses, and convince ourselves to support it regardless.

In addition to this belief in the overall goodness and benefit of our government, we can also, Hume argued, come to believe in the justice of our government. That is, we come to believe that almost whatever it does is right, just, and proper, that its authority can be trusted and its behaviour excused. Think of an alcoholic and abusive parent: growing up with him and loving him as our father will incline us to forgive and excuse any number of his bad behaviours and actions; it may take decades for us to realize just how bad a person he was, and even then we might still forgive and excuse him. The case is similar, Hume argued, with our government. An objective and sober look at one's government's actual activities—not its words, pretenses, and claims, but its actual behaviour—would almost certainly require a radical reevaluation of our opinion of it. For most of us, however, this is too much to ask. We would rather continue to believe in the comforting and reassuring myths about our government than experience the disenchantment of viewing it as it actually is. Here is how Hume described this progress of sentiments people have toward their government:

[W]hen a new government is established, by whatever means, the people are commonly dissatisfied with it, and pay obedience more from fear and necessity, than from any idea of allegiance or of moral obligation. [...] Time, by degrees, removes all these difficulties, and accustoms the nation to regard, as their lawful or native princes, that family, which, at first, they considered as usurpers or foreign conquerors. [...] The original establishment was formed by violence, and submitted to from necessity. The subsequent administration is also supported by power, and acquiesced in by the people, not as a matter of choice, but of obligation. They imagine not that their consent gives their prince a title: But they willingly consent, because they think, that, from long possession, he has acquired a title, independent of their choice or inclination. (EMPL: 475)

One example of a reality about our government that we often prefer to turn away from and ignore is that every law, regulation, mandate, and restriction enacted and every good or service provided by the government is ultimately based either on force or the threat of force. In this, the government is fundamentally

different from virtually every other walk of human life. If you do not like the way this person treats you, you end your relationship and move on; if you do not like the service at this coffee shop, you go to a different one; if you do not like your boss, you quit and go elsewhere. In any of these cases, and countless others, you retain an opt-out option, or the right to say “no, thank you” and go elsewhere. But if the Internal Revenue Service tells you that you need to pay it this amount of money, you cannot say “no, thank you”—or, if you did, eventually people with guns would arrive to take you away. The situation is similar with other laws, regulations, and so on: if you do not comply or obey, people with guns will eventually come for you. We do not like to think about that, however. We prefer to think that if the government provides, say, health care for its citizens, it is simply providing an important benefit to them; we do not like to think that to do so it is forcibly taking money and property from its citizens, or that it is forcing doctors, nurses, technicians, drug manufacturers, insurers, and so on to comply with its wishes. So, we turn away from those ugly realities and focus instead on the benefit provided (or hoped to be provided), and we ignore where it comes from and how it is procured.

It is similar to how we judge our own characters. We construct pleasing myths about ourselves, flattering stories about our characters and personalities and behaviour that make us feel good about ourselves. If we instead viewed ourselves from a completely objective and disinterested perspective, it would be too uncomfortable, too disappointing, too painful. So, we don’t. The same, Hume contended, holds with how we view our government, our country, and our leaders. They might be terrible, and they might engage in all manner of malfeasance, but they are “ours,” and we would rather not think about the bad things. So, government arises from conquest and usurpation, and it relies on the submission and acquiescence to which we are habituated and which is supported by the rationalizing myths—including that there is some kind of “social contract”—that we construct and tell ourselves.

Given this reality (or alleged reality) of government’s nature and operations, however, what sort of person do you suppose would be attracted to working in the government, or to leading it? Perhaps some of them would be people who, initially unacquainted with the actual operations of government but persuaded by the myths we tell ourselves about it, would wish to make the

world a better place and decide to become “public servants” (note the term) to improve society. They would soon confront government’s reality, however, including all its waste and inefficiency, all its intrusions into others’ private business, all its oversight of others’ lives, all its special pleading and rent seeking and favoritism and cronyism and profiteering and buccaneering. For a decent person with even minimal respect for the dignity and moral agency of others, it would be too much to bear, and he would simply leave and seek an honest living elsewhere. Who would remain? Precisely the person, or type of person, who does not mind engaging in these kinds of activities, maybe one who positively enjoys it. So, there is an adverse selection problem: the people we would most want in government are the least likely to be attracted to it or remain in it, and the people most attracted to it are likely those we would least want in it.

It is in light of this observation that Hume made one of his most arresting claims about politics: “It is, therefore, a just *political* maxim, *that every man must be supposed a knave*: Though at the same time, it appears somewhat strange that a maxim should be true in *politics*, which is false in *fact*” (EMPL: 42–3). Most of us are not, in fact, knaves—a word that for Hume was quite negative, something like a wickedly dishonest scoundrel—and in our private associations with others any tendency we have to knavery is kept in relative check by the fact that others can decline to associate with us if they wish. Even if I wanted to be a knave, the fact that no one would hire me, partner with me, or even associate with me provides a strong disciplining factor that acts as a disincentive for my negative inclinations. In government, however, this disciplining factor dissipates. Hume wrote:

But where a considerable body of men act together, this check is, in a great measure, removed; since a man is sure to be approved of by his own party, for what promotes the common interest; and he soon learns to despise the clamours of adversaries. To which we may add, that every court or senate is determined by the greater number of voices; so that, if self-interest influences only the majority, (as it will always do) the whole senate follows the allurements of this separate interest, and acts as if it contained not one member, who had any regard to public interest or liberty. (EMPL: 43)

This, for Hume, gives us even greater reason to be wary of government, and yet more reason to circumscribe its powers and authorities carefully.

### **Tacit consent**

We should note one final claim Hume made regarding the notion of a social contract. One often hears that if one does not like one's country's government, or its laws, taxes, regulations, and so on, then one should leave. The corollary of this claim is that if you choose to stay in your country, you are thereby giving your consent, implicitly if not explicitly, to your country's laws. In that way, some social-contract theorists claim that your continued voluntary presence in a country, and your enjoyment of its privileges and protections, constitutes your assent to a social contract by which you agree to obey the government and to be taxed to support its activities.

Hume rejected this argument, however, for two reasons. First: "Should it be said, that, by living under the dominion of a prince, which one might leave, every individual has given a *tacit* consent to his authority, and promised him obedience; it may be answered, that such an implied consent can only have place, where a man imagines, that the matter depends on his choice" (EMPL: 475). In other words, we can consider a person to have given consent to something only when she believed she had a choice. If one does not believe one has a choice, or if it never even occurs to one that a choice is possible, then it is fatuous to claim that one has made a choice. It is like speaking one's native tongue. Did you or I consent to speak in English, for example? Is the fact that people in Britain or the United States continue to speak in English evidence that they voluntarily chose to speak in English? Hume's answer was "no": one speaks one's native tongue as an unchosen matter of birth, and for the vast majority of people not only was no voluntary choice made but it never would even have occurred to them that they had a choice—tacit or otherwise.

Hume's second reason for rejecting the argument that we have tacitly consented to our government by remaining in our country was in the form of an analogy. "Can we seriously say, that a poor peasant or artisan has a free choice to leave his country, when he knows no foreign language or manners, and lives from day to day by the small wages he acquires? We may as well assert that a man, by remaining in a vessel, freely consents to the dominion of the master;

though he was carried on board while asleep, and must leap into the ocean, and perish, the moment he leaves her” (EMPL: 475). Most people do not have the wealth, or the moral or cultural resources simply to leave their country, so it is meaningless to claim that doing so is a real option for them—and hence again fatuous to claim that by remaining in their country they have voluntarily consented to it.

### **The risks and rewards of government**

The Humean argument is, then, that a properly configured government can provide tremendous benefits to humanity. If it protects justice, or provides its citizens security in their lives and possessions, and if it enforces private voluntary contracts, associations, and promises, it can give its citizens the institutional framework needed for them to entrepreneurially seek out voluntary cooperation with others to benefit both themselves and others. This, it will turn out, is the secret for enabling commercial society, and unlocking the indefinite increases in prosperity that people in such a society can generate. To accomplish these beneficial ends, government needs to (1) protect its citizens against foreign aggression, for which it needs a military; (2) protect its citizens against domestic aggression, for which it need an impartial system of police and courts; and (3) establish clear and consistently applied rules about what constitutes property, what constitutes ownership, and what constitutes transfer of property. In this way, the properly configured government affirms “the three fundamental laws of justice, the stability of possession, its transference by consent, and the performance of promises” (T 3.2.11: 363). Hume continued: “Where possession has no stability, there must be perpetual war. Where property is not transferr’d by consent, there can be no commerce. Where promises are not observ’d, there can be no leagues nor alliances. The advantages, therefore, of peace, commerce, and mutual succour, make us extend to different kingdoms the same notions of justice, which take place among individuals” (T 3.2.11: 363).

A good government provides, therefore, considerable benefit and considerable reward to its citizens. But the machinery that a government needs to accomplish these beneficial ends are powerful and can be put to destructive ends as well. For that reason, we must remain ever vigilant about the scope of the government’s authorities, about the means available to it, and about the

people who wield those authorities. The risks of abuse are so great, in fact, that we should endorse only that governmental authority for which we judge the likely reward to outweigh the likely risk that the people in government are not the best and most moral specimens our species has to offer but the worst—that they are not saints but “knaves.” If we have a notion to propose a governmental authority, duty, responsibility, or task that would succeed only if it were run by people more moral, more knowledgeable, and more benevolent than the ordinary run of humanity, we should reconsider—because the people likely to staff governmental agencies are not the most decent, humane, and righteous among us. On the contrary. We should, therefore, ask ourselves: would we still endorse this new law, regulation, agency, bureau, office, or authority if the people running it were knaves?

The upshot of asking this question is that we will wish to configure government so that it will provide benefit despite who is in office, not in the hopes of who might be in office. A government whose primary, perhaps sole, duty is to protect us against aggression on our lives, property, and voluntary promises, is the least likely to be used as a weapon against us or to be used to benefit some at the expense of others instead of protecting the conditions in which we can all benefit together. In such an institutional framework, an innovative, entrepreneurial, and prospering commercial society will emerge, all on its own. And such a society portends not only increasing material benefit for its members, but even improvements in knowledge, manners, and morals.

How exactly could a commercial society provide such benefits? We turn to that in the next chapter.