This is a pre-proof, uncorrected version. Please refer to, and cite from, the final corrected version, forthcoming via Academic Imprint (weblink will be made available when this is released)

The State Without Sovereignty: Authority and Obligation in Hume's Political Philosophy

Paul Sagar[1,2]

Abstract: Hume has no theory of sovereignty. As a result he is frequently supposed to lack a proper theory of politics, providing only a political sociology incapable of addressing the central normative significance of political obligation in thinking about the modern state. This is a serious mistake. Hume addressed himself directly to the question of political obligation, but his argument was predicated upon a prior reconfiguration of our thinking about the nature, role, and power of philosophy. In coming to appreciate this prior reconfiguration, in particular via a re-examination of Hume's indirect engagement with Locke's earlier juridical political theory, we can properly appreciate Hume as advancing a radically innovative theory of political obligation. What emerges is the possibility of a theory of the state without sovereignty. As well as thereby revealing Hume to be a major and highly original post-Hobbesian theorist of the state, we are invited to consider whether present political theory would do better by adopting Hume's recommended philosophical reconceptualization.

Keywords: Hume, Locke, Hobbes, Political Obligation, Sovereignty

Introduction

Hume has no theory of sovereignty. By extension, he offers no attempt to explain political obligation in terms of what rulers are justified in expecting (and if necessary, extracting) from the ruled, by virtue of the particular kind of relationship they stand in towards them *as* rulers. Instead, Hume's analysis

[1] King's College, Cambridge, CB2 1ST. Email: prs49@cam.ac.uk

[2] The author would like to thank John Dunn, Jeremy Waldron, John Robertson, Isaac Nakhimovsky, Duncan Kelly, Duncan Bell, Clare Chambers, Clif Mark, Jia Wei, Ed Hall, and two anonymous referees for their comments and support. An earlier version of this article was presented to the Cambridge Political Theory Workshop. Research was undertaken with support from the Arts and Humanities Research Council, and the University of Cambridge Prince Consort and Thirlwall prize.

focuses upon the ruled themselves – the bearers of the 'opinion of mankind' – and the psychological processes by which they believe themselves bound by the authority of their superiors, whom they always outnumber but nonetheless typically obey.[3] Because of this it may appear that Hume fails to offer a political theory proper, providing only a political sociology which is incapable of adequately addressing, let alone answering, the problem of political obligation: of why obedience is owed to established power, and why such power may legitimately coerce those who disobey by virtue of its possession of supreme rightful authority – that is, sovereignty.[4]

Political obligation is one of, if not the, central problems of western political theory. If it cannot be adequately accounted for the legitimacy of all other activities undertaken by the state, as the locus of organised coercive power, is jeopardized.[5] The earliest investigation in the western tradition (far in advance of the emergence of the modern state, but addressing the same fundamental issue) is Plato's *Crito*. In this dialogue Socrates famously refuses to flee Athens after being condemned to execution, citing a duty of gratitude and obligation to the city as like a parent that has nurtured him, to which he has previously consented, and which must therefore be obeyed even when putting

[3] David Hume, 'Of the first principles of government', in *Essays Moral, Political and Literary*, ed. E.F. Miller (Indianapolis, 1987), pp. 32-6, pp. 32-3.
[4] For the view that Hume lacks a proper political theory see in particular John Dunn, 'From applied theology to social analysis: the break between John Locke and the Scottish Enlightenment', in *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment*, ed. I. Hont and M. Ignatieff (Cambridge, 1983), pp. 119-35. See also P.F. Brownsey, 'Hume and the Social Contract', *The Philosophical Quarterly* 28 (1978), pp. 132-48, pp. 142-3.
[5] Recent treatments that have emphasized the centrality of political obligation to political theory include Robert Nozick, *Anarchy, State, and Utopia* (Oxford, 1974); Carole Pateman, *The Problem of Political Obligation: A Critical Analysis of Liberal Theory* (Chichester, 1979); A. John Simmons, *Moral Principles and Political Obligation* (Princeton N.J., 1979); the essays collected in John Dunn, *Political Obligation in its Historical Context* (Cambridge, 1980); John Horton, *Political Obligation* (Basingstoke, 2010).

him to death.[6] Few have been convinced by that answer in the two and a half millennia since, whilst the problem takes on new forms with the rise of the modern state: its scale, anonymity, territorial ubiquity, and capacity for coercive power and control pushing a Platonic city-parent analogy even further beyond breaking point.[7]

In the modern context, Hobbes remains a particularly illuminating author – even if only because his parsimonious attempt to settle matters could not evade the complexity of the problem. For Hobbes, that individual or assembly possessing sovereignty had not just supreme power, but legitimate authority to use coercive power to enforce obedience. Hobbes's claim was never that might made right. Sovereignty was generated by the consent of the ruled, even if extracted at the point of a sword.[8] Being the basis of all sovereignty, consent was thus also the foundation of political obligation: one was obliged to that power one had consented to be sovereign, and could be legitimately coerced by that power to ensure obedience (that of oneself, and others). Everyone within an established commonwealth consented, everyone was obliged, and hence everyone could be legitimately coerced, even if a residual right to resist wounds and death remained. Yet this parsimonious account of the grounds of sovereignty

[6] Plato, *Euthyphro. Apology. Crito. Phaedo. Phaedrus*, ed. H. North Fowler (Cambridge, Mass., 1982), pp. 175-191. Hume describes the Crito as building a Tory doctrine of passive obedience on a Whig principle of original contract, and emphasises that because eighteenth century doctrines of authority as founded in consent have no historical precedent, this is a strong argument against their being true: 'Of the original contract', in *Essays*, pp. 465-87, p. 487.

[7] Adam Smith adapted Plato's 'divine maxim' that one was made for the state and not the reverse, and should no more harm the state than one's parent, but this presupposed a post-Humean innovation regarding the nature and content of political authority. See Istvan Hont, 'Commercial Society and Political Theory in the Eighteenth Century: The Problem of Authority in David Hume and Adam Smith', in *Main Trends in Cultural History: Ten Essays*, ed. W. Melching and W. Velema, (Amsterdam, 1994), pp. 54-94, p. 89.

[8] Hence Hobbes's dictum that 'It is not therefore the victory that giveth the right of dominion over the vanquished, but his own covenant': Thomas Hobbes, *The Clarendon Edition of the Works of Thomas Hobbes: Leviathan*, 3 vols., ed. Noel Malcolm (Oxford, 2012), II, p. 312.

and obligation ran into difficulty when consent and power came apart. What if a sovereign, previously consented to, lost power to unlawful, but successful, rebels? If unable to protect, because no longer wielding the public sword keeping men in awe, such a sovereign could no longer *be* sovereign. To whom, then, was obedience owed, and why? Individual judgement, which Hobbes saw as a primary source of interminable strife and quarrel, and which he therefore sought to entirely exclude, reappeared at precisely the point where political obligation was an issue with more than just theoretical import.[9]

Hobbes's ambiguity in addressing political obligation at its limit has rightly attracted much scholarly attention.[10] But I will not address that vexed matter here. I wish merely to note that if political obligation is indeed a central item in western political theory, umbilically connected to the notion of sovereignty, and by extension the theory of the modern state (as exemplified by

[9] For a discussion see Kinch Hoekstra, 'Tyrannus Rex *vs.* Leviathan', *Pacific Philosophical Quarterly* 82 (2001), pp. 420-46. As Hoekstra concludes (p. 438): 'Though he strives to minimize its role, Hobbes must recognize that private judgment is ineliminable. The very feet of his great Leviathan are of mortal clay'.

[10] This focuses not just on the contents of his theory and whether he was a royalist, a 'de facto' theorist, or a theorist of consent, and in particular the addition of 'A review, and conclusion' to *Leviathan* with its 'twentieth' law of nature that men are to defend in times of war that power which protected them in time of peace. There is also Hobbes's returning to England in 1650 and submitting himself to the new regime, which had overthrown a monarchy Hobbes was unequivocal in maintaining had held rightful 'sovereignty from a descent of six hundred years was alone called sovereign, had the title of Majesty from every one of his subjects, and was unquestionably taken by them for their king': Hobbes, *Leviathan*, II, p. 286. For discussions of Hobbes's theory of political obligation, see Quentin Skinner, 'The Context of Hobbes's Theory of Political Obligation', and 'Conquest and Consent: Hobbes and the Engagement Controversy', in *Visions of Politics: Volume 3, Hobbes* (Cambridge, 2002); 'Historical introduction', in Thomas Hobbes, *The Clarendon edition of the works of Thomas Hobbes: Writings on the common law and hereditary right*, ed. A. Cromartie and Q. Skinner (Oxford, 2005), pp. 159-76; Kinch Hoekstra, 'The *de facto* turn in Hobbes's political philosophy', in Leviathan *after 350 Years*, ed. T. Sorell and L. Foisneau (Oxford, 2004), pp. 33-74; Jeffrey R. Collins, *The Allegiance of Thomas Hobbes* (Oxford, 2005); Mary G. Dietz, 'Hobbes's Subject as Citizen', in *Thomas Hobbes and Political Theory*, ed. M.G. Dietz (Lawrence, 1990), pp. 91-119; Howard Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation* (Oxford, 1957); Annabel Brett, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought* (Cambridge, 1997), chapter 6; *Changes of State: Nature and the Limits of the City in Early Modern Natural Law* (Princeton, 2011), pp. 108-14.

Hobbes), then the suggestion that Hume disabled himself from addressing this issue due to the mode of his political enquiry should be, at the very least, deeply surprising. Hume was a political thinker of the utmost genius and seriousness, whilst his status as a philosopher of epistemological, metaphysical, and moral matters is in doubt by nobody. Is it plausible to suppose that he nonetheless failed to grapple with the outstanding item of concern in western political thought? I suggest not. We must instead come to see Hume's project as attempting a fundamental recasting of how to think about both the status of philosophy as an enterprise with practical political import, and what we can coherently hope and expect from any notion of political obligation appropriate to a secular world. Hume understood very well the centrality of political obligation to our thinking about politics. His aim was to change our thinking.

The central and most instructive comparison to be drawn is between Hume and the political thought of John Locke. This is for two reasons. Firstly, Locke (or at least, a secularized and vulgarized version of Locke's ideas) is Hume's primary confrontation point in the *Treatise*, which remains the site of Hume's most fundamental engagement with the issue of political obligation.[11] Secondly, lying beneath Hume's direct arguments against contract theory is an

[11] The later essay 'Of the Original Contract' restates much of Hume's position in the *Treatise*, but largely assumes, without explicit statement, Hume's reconfiguration of the nature and role of philosophy for its coherence. To properly appreciate that reconfiguration, and hence Hume's thought as a whole, we must concentrate our attention on the *Treatise*, where Hume delineates the foundations of his philosophical approach. For the context of Hume's attack on contract theory see Duncan Forbes, *Hume's Philosophical Politics*, (Cambridge, 1975), chapters 3, 5 and 6; Stephen Buckle and Dario Castiglione, 'Hume's Critique of the Contract Theory', *History of Political Thought* 12 (1991), pp. 457-80. For discussions of Hume's theory of allegiance and his attack on contract theory see Rachel Cohon, 'The Shackles of Virtue: Hume on Allegiance to Government', *History of Philosophy Quarterly* 18 (2001), pp. 393-414; Frederick G. Whelan, 'Hume and Contractarianism', *Polity* 27 (1994), pp. 201-224; Thomas W. Merrill, 'The Rhetoric of Rebellion in Hume's Constitutional Thought', *The Review of Politics* 67 (2005), pp. 257-82; David Gauthier, 'David Hume, Contractarian', *The Philosophical Review* 88 (1979), pp. 3-38.

attempted reconfiguration of what political philosophy can hope to achieve, and of how the issue of political obligation can and should be conceptualized. Istvan Hont has identified that Hume, like his friend and philosophical successor Adam Smith, objected to Locke not on the principle (to employ Smith's later terminology) of 'utility', but of 'authority'.[12] Utility related to the well-being of a governed populace: '*Salus Populi Suprema Lex* is certainly so just and fundamental a Rule, that he, who sincerely follows it, cannot dangerously err' wrote Locke.[13] Hume and Smith did not disagree. Government was legitimate only so long as the safety of the people was in practice, and not just in theory, the supreme law.[14] But Hume and Smith could not accept Locke's insistence that the 'authority' of present government – by which it could rightfully claim, and if necessary, coercively extract, obedience – was founded upon the consent of the ruled.

Hont writes that Hume 'doggedly tried to develop a rounded theory of political allegiance with a proper emphasis on the importance of authority' in the *Treatise of Human Nature*, political *Essays*, and *A History of England.* Still, he does

---

[12] Adam Smith, *The Glasgow Edition of the Works and Correspondence, Volume 5: Lectures on Jurisprudence,* ed. R.L. Meek, D.D. Raphael and P.G. Stein (Indianapolis, 1982), pp. 318-21, 401-3; Istvan Hont, 'Adam Smith's History of Law and Government as Political Theory', in *Political judgement: Essays for John Dunn*, ed. R. Bourke and R. Geuss (Cambridge, 2009), pp. 131-71, p. 139.

[13] John Locke, *Two Treatises of Government*, ed. P. Laslett (Cambridge, 1960), p. 373, §158. As Hume later put it, 'The maxim, *fiat Justitia & ruat Cœlum*, let justice be performed, though the universe be destroyed, is apparently false, and by sacrificing the end to the means, shews a preposterous idea of the subordination of duties', whereas '*Salus populi, suprema Lex*, the safety of the people is the supreme law' is a 'maxim…agreeable to the sentiments of mankind in all ages': Hume, 'Of passive obedience', in *Essays*, pp. 488-92, p. 489; cf. David Hume, *The Clarendon Edition of the Works of David Hume: An Enquiry Concerning the Principles of Morals*, ed. T.L. Beauchamp (Oxford, 1998), p. 22.

[14] For a detailed discussion of how Hume and (especially) Smith positioned themselves on the conflict between the principles of *salus populi* and *fiat justitia* in political practice, and in the context of an intellectual inheritance from an earlier natural law tradition, see Istvan Hont, 'Needs and Justice in the *Wealth of Nations*', in *Jealousy of Trade: International Competition and the Nation State in Historical Perspective* (Cambridge, Mass., 2005), pp. 389-443, especially pp. 412-9.

not identify Hume as fully engaging with the Lockean challenge regarding the basis of political authority. Instead it is Smith, in his history of law and government, who 'went even further than Hume in this direction and made the task of developing a new principle of authority the central task of post-Lockean political theory'.[15] Yet this assessment faces a serious difficulty. How can a *history* of law and government provide an answer to the *normative* problem of why some agent or agents hold authority, thus obligating others and generating a condition of political obedience which can be coercively enforced? Despite Hont's insistence that 'Secular political theorists can lose nothing and stand to gain a great deal both by taking Smith seriously as a political thinker and by abandoning the attempt to try to pigeon-hole his work as mere historical sociology', the reader is left wanting.[16] Hont's claim that Smith offered the resources for a theory of natural authority enabling us to progress beyond the theistic basis of Locke's thought on the one hand, and an inadequate Hobbesian prudentialism on the other, is left at the level of a promise not made good on, his magisterial reconstruction of Smith's account of the emergence of modern liberty notwithstanding.[17] And it is difficult to see how that promise could be made good on, at least in the terms Hont presents. For a history of law and government to become a political theory capable of explaining the normative

[15] Hont, 'Smith's History of Law and Government', p. 141. Hont outlines Smith's 'sociological' account of authority, and the practical political consequences of understanding it in those terms (especially in opposition to both French physiocracy and the enthusiasm of systematizing zeal) in Hont, 'Commercial Society and Political theory', pp. 86-91.
[16] Hont, 'Smith's history of law and government', p. 168.
[17] On the effort to progress beyond Hobbes without resort to theistic foundations see John Dunn, 'The Politics of Imponderable and Potentially Lethal Judgement for Mortals: Hobbes's Legacy for the Understanding of Modern Politics', in Thomas Hobbes, *Leviathan*, ed. I. Shapiro (New Haven, 2010). Dunn himself attempted to provide a secular alternative to Locke and Hobbes in 'Political Obligations and Political Possibilities', in *Political Obligation in its Historical Contexts: Essays in Political Theory* (Cambridge, 1980), though by his own admission the attempt is unsuccessful.

content of authority, some normative account must ultimately be offered. History alone cannot supply that: political theory needs philosophy. Without it, Smith's history of law and government can offer only an interesting dead end.

Yet what if Smith's history of law and government is not best taken as a freestanding intervention, but presupposes a prior reconfiguration of our philosophical thinking on the question of authority? That is the suggestion I wish to advance. That Smith did not, as Hont suggests, go 'even further' than Hume, but rather was expanding the analysis within a new philosophical idiom forged *by* Hume, supplied most clearly in the *Treatise*, and which Smith presupposed as the normative philosophical background for his history of law and government as political theory. To see this, however, we must first turn to Locke in some detail, and I beg the reader's patience in this matter. For it is only after properly examining the foundations of Locke's theory of authority that we can examine Hume's engagement with the problem from a vantage point that allows us to appreciate its considerable philosophical profundity and ambition.

I – Locke's Two Frameworks: Juridical and Historical

As is now well recognised Locke's political thought is irreducibly theistic.[18] His central premise was that all human beings are created equal by God, with their natural condition being one wherein 'all the Power and Jurisdiction is reciprocal, no one having more than another', meaning all are 'equal one amongst another

[18] The classic statement remains John Dunn, *The Political Thought of John Locke: An Historical Account of the* 'Two Treatises of Government' (Cambridge, 1969). See also John Dunn, 'What is living and What is Dead in the Political Theory of John Locke?', in *Interpreting Political Responsibility: Essays 1981-89*, (Padstow, 1990); David Gauthier, 'Why Ought One Obey God? Reflections on Hobbes and Locke', *Canadian Journal of Philosophy* 7 (1997), pp. 425-46, especially p. 432.

without Subordination or Subjection'.[19] Some could obtain political authority over others only if those who became subordinate agreed to this change of affairs. Just as each individual's own body was only on loan from its maker – meaning suicide, as much as harm to others, was naturally outlawed – so no person could come to have legitimate temporal political authority without this ultimately being divinely sanctioned.[20] Such sanction came not through any act of intervention by God, but by the specific mechanism He had approved for the establishment of earthly political power: the consent of the ruled.[21] As John Dunn noted some time ago, 'There is no such category in Locke's political theory as authority which is both intrinsically human and legitimate'.[22]

Locke rejected Hobbes's thoroughgoing conception of natural unsociability, but he did not counter this with a statement of man's being thoroughly sociable, either.[23] Instead he claimed that 'God having made Man such a Creature, that, in his own Judgement, it was not good for him to be alone, put him under strong Obligations of Necessity, Convenience and Inclination to drive him into *Society*, as well as fitted him with Understanding and Language to

[19] Locke, *Two Treatises*, p. 269, §4. For a sustained investigation of the importance of this premise to both Locke's thought and of its relevant to contemporary political theory see Jeremy Waldron, *God, Locke, and Equality: Christian Foundations in Locke's Political Thought* (Cambridge, 2002).
[20] Locke, *Two Treatises*, pp. 270-1, §6.
[21] 'Men being…by Nature, all free, equal and independent, no one can be put out of his Estate, and subjected to the Political Power of another, without his own *Consent*': ibid, p. 330, §95.
[22] Dunn, *Political Thought of John Locke*, p. 127.
[23] Thanks to Peter Laslett it is now widely recognized that Locke's primary intellectual target in writing the *Two Treatises* was the patriarchal theory of Sir Robert Filmer, not Hobbes. I here broadly agree with the reading offered in Dunn, *Political Thought of John Locke,* chapter 7, that Locke did not undertake serious intellectual engagement with Hobbes in the *Two Treatises*, but mostly made polemical remarks intended to implicate that position without troubling to tackle it directly. That said, Locke was clearly familiar with Hobbes's views, and in asserting that men was driven to society in efforts to secure utility would have known that he was writing in opposition to Hobbes. Indeed, it is precisely by asserting an attenuated utility-orientated view of human sociability that Locke is able to largely by-pass Hobbes's arguments. His alternative conception of sociability contributes to the state of nature being a state of inconvenience rather than full-blown war, meaning the departure point for Locke's intellectual endeavor is crucially different from Hobbes's, enabling the marginalization of Hobbes's political theory that Dunn describes.

continue to enjoy it'.[24] Human beings lack any specific appetite for society. But in their natural condition the human predilection for (to revert to Hobbes's term) 'honour' was not sufficient to disrupt pursuit of the clear utility gains of grouping together for 'advantage'. Hence whilst men were 'driven' to society rather than seeking it for its own sake this was essentially unproblematic. Locke here postulated man as he was in his specifically *natural* condition, understood as obtaining prior to the establishment of political society and before a subsequent process of moral corruption rendered the desire for recognition much more problematic.[25] It is essential however to appreciate that this natural condition was analysed by Locke in two complementary, but distinct, frameworks: juridical and historical. We must carefully distinguish, and then interrelate, both these frameworks if we are to properly appreciate the foundations and force of Locke's political theory.

Locke's juridical account of man's natural condition was styled under the heading of the 'state of nature', and has attracted by far the greatest attention (although its status as a normative framework, rather than a real historical proposition, is often misunderstood).[26] Considered from the juridical viewpoint

---

[24] Locke, *Two Treatises*, pp. 318-9, §77.

[25] In this sense Locke embryonically foreshadows Rousseau's response to Hobbes. On the relationship between Rousseau and Locke, see Christopher Brooke, '"Locke En Particulier Les a Traitées Exactement Dans les Mêmes Principes que Moi": Revisiting the Relationship Between Locke and Rousseau', in *Locke's Political Liberty: Readings and Misreadings*, ed. C. Miqueu and M. Chamie, (Oxford, 2009).

[26] cf. Dunn, *Political Thought of John Locke*, pp. 97, 103 and in general chapter 9; Hont, 'Smith's history of law and government', p. 142. For detailed discussions of Locke's juridical political theory see Ross Harrison, *Hobbes, Locke and Confusion's Masterpiece: An Examination of Seventeenth Century Political Philosophy* (Cambridge, 2003); A. John Simmons, *On the Edge of Anarchy: Locke, Consent, and the Limits of Society* (Princeton N.J., 1993); '"Denisons" and "aliens": Locke's Problem of Political Consent', in *Justification and Legitimacy: Essays on Rights and Obligations*, (Cambridge, 2001); John Marshall, *John Locke: Resistance, Religion and Responsibility* (Cambridge, 1994), chapter 6; James Tully, *An Approach to Political Theory: Locke in Contexts* (Cambridge, 1993), chapter 1. For the historical context of Locke's political intervention, see especially Richard Ashcraft, *Revolutionary Politics and Locke's* Two Treatises of Government,

men in the state of nature are not only natural equals, but also in a state of liberty to do as they please within the bounds set by natural law, itself accessible to anybody with the basic capacities of reason (thus Locke's famous dictum that a state of liberty was not a state of license).[27] Property could be acquired in the state of nature by mixing one's labour with the materials of the earth, following God's imperative that men must not only use but also improve His bounty, being permitted to keep the increased fruit of their labours so long as their appropriation of what was previously held in common left 'enough, and as good…for others'.[28] Property rights were hence entirely compatible with pre-political circumstances. Yet their enforcement in such conditions was deeply problematic. Locke put forward the 'strange doctrine', earlier suggested by Grotius, that each individual was equipped with a natural right to punish those who violated his rights.[29] But as a consequence the state of nature was characterized by 'inconvenience' of dual foundation. On the one hand, without settled laws and enforcement mechanisms one's property was forever at risk from the illegitimate acquisitive advances of others. On the other, one was tasked with the enforcing of one's rights – both defensively and retributively – oneself, a considerable and dangerous burden. Given that men are naturally partial and tend to be poor judges of equity in matters that regard themselves, individual

(Princeton, N.J., 1986) and Mark Goldie, 'John Locke and Anglican royalism', *Political studies* 31 (1983), pp. 61-85.

[27] Locke, *Two Treatises*, pp. 269-72, §4-9.

[28] Ibid., p. 288, §27. For an overview of Locke's theory of property and its fundamentally theistic basis, see Alan Ryan, *Property and Political theory* (Oxford, 1984), chapter 1; Karl Olivecrona, 'Appropriation in the State of Nature: Locke on the Origin of Property', *Journal of the History of Ideas* 35 (1974), pp. 211-30; Waldron, *God, Locke and Equality*, chapter 6.

[29] Locke, *Two Treatises*, p. 272; Hugo Grotius, *De Iure Praedae Commentarius*, ed. G.L. Williams (Oxford, 1950), p. 92; *The Rights of War and Peace*, ed. R. Tuck (Indianpolis, 2005), pp. 953-68.

exercise of the right to punish led to exacerbated conflict.[30] The solution was for men to relinquish their natural right to punish unto a centralized system of arbitration, undertaken by an impartial power enforcing judgements.[31] This was the foundation of political power proper: the erection of a common arbiter for the defence and regulation of property, thus better promoting the mutual advancement of utility.[32] Men consented to be ruled by others so as to escape the inconvenience of the state of nature on condition that such rule continued to advance their utility. Locke's juridical framework thus supplied a tandem account of both the utility and authority of government. The end of political society was the advancement of utility as furthered by the institution of property, overseen and protected by government, whilst the authority of that government came from the consent of those natural equals who freely agreed to submit themselves to it for the utility benefits it yielded.

Being a juridical stylization Locke's state of nature was not temporally bounded, but defined by the absence of a common arbiter to settle disputes, entailing that men had to resort to individual exercise of the natural right to punish. As a consequence the state of nature could potentially obtain at *any* historical moment. A highwayman demanding one's purse when there was no hope of rescue by the established authorities of the land put himself into a state of nature with his victim, who in turn had the right to fight off, and if necessary kill, the assailant.[33] Locke turned this notion to his specific polemical purposes in the *Two Treatises*, arguing that because political society was the imposition of a

[30] Locke, *Two Treatises*, pp. 274-6, §12-13.
[31] Ibid., pp. 274-6, §12-13.
[32] Ibid., pp. 350-3, §123-31.
[33] Ibid., p. 279-80, §18, though natural law forbade the seizing of the assailant's property.

common arbiter, it was incompatible with absolute power (which was by definition arbitrary power) and thus an extension of the state of nature into even more incommodious and dangerous conditions.[34] The result that Locke left for readers to infer was that alongside his frontal assault on Robert Filmer's patriarchalist theory of monarchical power, he was sanctioning the legitimacy of individuals attacking and killing any ruler who claimed absolute power over subjects, as being on a par with the 'wild Savage Beasts with whom Men can have no Society or Security', to be destroyed in legitimate self defence.[35]

Locke's juridical theory was not, however, intended as an account of how human beings had in historical practice come to form modern societies ruled by government as found everywhere in western Europe.[36] Human beings initially formed family groupings to satisfy the sex instinct, continued them in order to better rear the resulting offspring, experienced the utility benefits of ongoing association which they therefore sustained, and gradually expanded these to include master and servant relationships.[37] Historically these groupings remained within the juridical state of nature insofar as obedience was delivered to the patriarch not because subservient family members consented to his rule as a political relationship, but out of gratitude, filial piety, and informal convenience.[38] Yet over time patriarchal families organically transitioned to the status of political society proper as facilitated by the consent of the ruled. Being

[34] Ibid., pp. 284-5, 326-7, §23-4, 90-2.
[35] Ibid., p. 274, §11.
[36] As Hont puts it, 'Locke was obviously not a theorist of original contract when thinking about the historical emergence of government': 'Smith's History of Law and Government', p. 143. And as Hont further notes, Peter Laslett long ago pointed out that the term 'contract' appears only about ten times in the entire *Second Treatise*, and that it is 'compact' and 'agreement' that creates a society in historical practice: Peter Laslett, 'Introduction', in *Two Treatises*, pp. 3-122, pp. 113-4.
[37] Locke, *Two Treatises*, pp. 316-8, 321-3, §74, 81-3.
[38] Ibid., pp. 303-15, 336-44, §52-72, 105-112.

accustomed to the rule of a patriarch before nonage when children reached maturity they would look to this established source of leadership to become the neutral arbiter for settling disputes, as well as the most effective governmental structure for organizing defence against incursions by aggressive rival groupings attracted by increased material prosperity.[39] In this way men historically consented to be ruled by a common arbiter, and to give up exercise of their natural right to punish, with succession typically granted to the sons of successful patriarchs. 'Thus the natural *Fathers of Families*, by an insensible change, became the *politick Monarchs* of them too'. This explained why the earliest political societies were always kingdoms. As the first patriarchs 'chanced to live long, and leave able, and worthy Heirs, for several Successions, or otherwise; So they laid the Foundations of Hereditary, or Elective Kingdoms, under several Constitutions, and Manners, according to Chance, Contrivance, or Occasions happen'd to mould them'.[40] The juridical state of nature as a prevailing condition over large areas of territory was historically exited by an 'insensible' transition from patriarchal authority (which was *ex hypothesi* non-political), to political power proper as founded in the consent of the God-created free equals who benefited from its establishment and enlargement, and thus agreed to its erection and continuation.

Yet to this historical story Locke added a further postulation. This was that after entering political society man had undergone a process of corruption

[39] Ibid., pp. 338-40, §107-8; 'As Locke pointed out, communities were threatened existentially much more from the outside, by other communities, than by the domestic criminality of individuals. Hence the idea of leadership, the rule of man over man, first originated from attempts to deal with issues of external security which necessitated the creation of military command': Hont, 'Smith's history of law and government', p. 143.
[40] Locke, *Two Treatises*, p. 318, §76.

that caused him to lose the 'Golden Age' of the earliest political societies.[41] The cause of this corruption was economic. The invention of money had allowed men, whilst remaining within the bounds of natural law, to accumulate vast quantities of non-perishable material wealth, thus avoiding violation of the 'enough, and as good' proviso but drastically increasing inequality and in turn comparative envy.[42] This led to the rise of economies of luxury and the pursuit of material superfluities, which produced 'vain Ambition, and *amor sceleratus habendi*, evil Concupiscence' and 'corrupted Mens minds into a Mistake of true Power and Honour'.[43]

The political consequences of this economic revolution were profound. Whereas in the golden age men had 'more Virtue, and consequently better Governours, as well as less vicious Subjects', the advent of 'Ambition and Luxury' caused 'Princes to have distinct and separate Interests from their People'. As a result 'Men found it necessary to examine more carefully *the original* and Rights of *Government*; and to find out ways to *restrain the Exorbitances*, and *prevent the Abuses* of that Power which they having intrusted in another's hands only for their own good, they found was used to hurt them'.[44] Checks to judicial and executive power had to be introduced to guarantee the *salus populi*, as rulers increasingly abused the trust put in them. This was achieved by the innovation of legislative power, a mechanism for better arbitrating the dramatic increase in the incidence of social conflict following the advent of economic prosperity and the proliferation of property rights, whilst protecting peoples from the ravages

[41] Ibid., pp. 338-343, §107-11.
[42] Ibid., pp. 341-3, §110-11, cf. Hont, 'Smith's history of law and government', pp. 143-4.
[43] Locke, *Two Treatises*, p. 342, §111.
[44] Ibid., pp. 342-3, §111.

of rulers who could not be trusted outside of the relatively idyllic simplicity of pre-modernity.[45] Furthermore, and of particular importance for the question of political authority, the corruption of men's sentiments by ambition and luxury meant that present governments could not claim legitimacy by direct descent from the earliest kings, who had directly received their authority by the consent of the ruled. The economic sea-change that introduced modernity meant that governmental legitimacy in juridical terms had to be *re-founded* in the consent of the people, in line with full acknowledgement that man's situation was now characterized by potentially severe misalignment of the interests of princes and subjects.

Providing for such consent, however, threatened to constitute a serious stumbling block for Locke. Manifestly there had never been any act of political re-founding for modern conditions in recorded, or even plausible conjectural, history: no moment at which modern people's had expressly given their consent to forms of government on the basis of *salus populi* with especial regards to the defence of property, which Locke identified as the justificatory basis of all government.[46] Locke's solution to this predicament – much more powerful and conceptually adept than is typically realised – was his notorious invocation of tacit consent. Men were said to have given '*sufficient Declaration*' of consent to be '*subject* to the Laws of any Government' when they 'hath any Possession, or Enjoyment, of any part of the Dominions of Government', extending not just to the possession of land under the protection of law, but 'barely travelling freely

[45] Hont, 'Smith's history of law and government', p. 144.
[46] Locke, *Two Treatises*, pp. 350-1, §123-4.

on the Highway'.[47] Whilst naturalized foreigners needed to engage in an act of explicit consenting to join a political society, those born into it gave their sufficient consent tacitly by enjoying the benefits of organised power and choosing not to decamp to the wilderness of America to start political society afresh upon reaching maturity.

Lying behind Locke's supposition of tacit consent was his juridical framework with its stipulation that government was founded on the twin principles of utility and authority. Tacit consent was a bilateral phenomenon. Subjects indicated that they gave such consent by staying within a government's territory and taking advantage of the improved living it made possible. But equally, such consent was always given on condition that the rulers of political society continuously promoted the interests of the ruled to a sufficient degree. If a government failed with regards to the *salus populi*, it violated the grounds of utility, and hence forfeited the basis of authority. Due to Locke's polemical purposes in writing the *Two Treatises* as an intellectual justification for armed revolution, it is the insurrectionist side of his conceptual coin that tends to be emphasised: that if government sufficiently harms the interests of the people, then the people may rightfully rebel and over-throw it – even if there is no intrinsically secular justification for such action, human judgement being fallible, and with the situation ultimately devolving to 'an appeal to heaven'.[48] But Locke was clear that such a situation was highly unusual, with the interests of the

[47] Ibid., pp. 347-8, §119.
[48] Ibid., pp. 282, 426-7, §20, 240-2.

people needing to be pushed a very long way before rebellion was actually likely to be triggered.[49]

The more normal state of affairs, which Locke's juridical framework also covered, related not to the right of revolution but to the right of legitimate governmental coercion. The government of a political society that successfully upheld *salus populi* and was tacitly consented to by its subjects possessed rightful authority over its populace. As a consequence such a government could legitimately deploy coercive force – the necessary means of political rule – with regards to that populace. Utility and authority were thus deeply intertwined for Locke, and the innovation of tacit consent was much more than an ad hoc innovation to get around the evident lack of an historical Ur-revolution at the foundation of modern politics. Tacit consent tied subjects to established government whilst generating the legitimacy of such government's authority in the ordering of political society. Accordingly, whilst governmental authority certainly depended upon the delivery of utility, the point also cut the other way. Insofar as citizens were the recipients of sufficient levels of utility, they granted authority to the government that provided it – tacitly, but no less conclusively.[50]

This was Locke's account of political obligation. It was irredeemably theistic insofar as its lynchpin – consent – could only have the normative force Locke ascribed to it by granting Locke's foundational premise that God made us

[49] Ibid., pp. 416-8, §228.
[50] Hont's claim that Locke believed 'that the corruption of early governments could be reversed only through active resistance and revolution' is therefore an overstatement ('Smith's History of Law and Government', p. 143). The advent of tacit consent meant that resistance and revolution was the exception, not the norm, resorted to only in cases of extreme necessity. As Locke rhetorically put it when making a different but connected point: 'how came so many lawful Monarchies into the World?' – the point being that the world *was* populated with lawful (i.e. legitimate) monarchies, for the most part, and despite the general lack of Ur-acts of resistance and revolution (Locke, *Two Treatises*, p. 344, §113).

all equal and free in juridical terms, even if in real history the central fact that had to be negotiated was that men were everywhere and always unequal in their physical, economic, and rational capacities. But it was nonetheless a powerful, and within its own terms, coherent, account of why legitimate government could coerce, and why by the very same lights illegitimate government could be removed. Smith's later history of law and government was an ambitious attempt to 'fill the enormous gap that Locke left between his history of early governments and the emergence of the English constitutional crisis of the seventeenth century'.[51] Smith displaced Locke's historical story, replacing the account of liberty gained and lost due to a luxury-engendered corruption with a complex historical triad of liberty gained, lost, and regained thanks to the motor of economic luxury, which could ultimately be politically vindicated as the basis of modern liberty.[52] But the central political theoretic action in Locke's account is ultimately not in his historical story of man's natural condition (and his subsequent exit from that condition in real historical practice), but in his underpinning normative juridical framework. Smith's history of law and government by itself cannot touch Locke's underlying explanation of how and why legitimate political authority is generated: it can only propose a different, more optimistic, view of mankind's past and progress. For an alternative theory of political obligation, one that presents a direct alternative to Locke's theism, we

[51] Hont, 'Smith's history of law and government', p. 149.
[52] Ibid., p. 165. Whether luxury could be morally vindicated is a separate question. Smith's late scepticism on this matter, expressed in a revision to the final edition of the *Theory of Moral Sentiments*, is well-known: 'The disposition to admire, and almost to worship, the rich and the powerful, and to despise, or, at least, to neglect persons of poor and mean condition, though necessary both to establish and to maintain the distinction of ranks and the order of society, is, at the same time, the great and most universal cause of the corruption of our moral sentiments', Adam Smith, *The Glasgow Edition of the Works and Correspondence, Volume 1: The Theory of Moral Sentiments*, ed. D.D. Raphael and A.L. Macfie (Oxford, 1976), p 61.

must ultimately locate the primary point of disagreement as being with regards to the juridical, not the historical, account. And for that we must turn not to Smith, but to Hume.

II – Hume's Alternative

Hume agreed with Locke that property could exist prior to the erection of governmental power, although he accounted for this through the workings of human imagination rather than a labour-mixing theory of acquisition. Property was a species of causation: the mind attributed a 'necessary connexion' to external relations (in this case, human individuals and physical objects) which in fact had its basis in the mind itself due to repeat exposure to regularities of convention, not any relations detected between external objects.[53] Yet after human societies grew to such a size that anonymity and the possibility for self-interested defection overcame the bonds of sympathy and mutual affection, the innovation of magistracy was required to settle disputes over property in a satisfactory way, impartial arbitration in such conditions being much preferable to the partial and self-interested judgements of individual plaintiffs.[54] The innovation of magistracy, initially introduced to regulate the possession and transfer of property by redirecting the short-term pursuit of contiguous self-interest to socially cohesive ends, led to the erection of government. In time, government developed to take on the role not just of protecting possessions, but of compelling men to partake in 'concurrence in some common end or purpose'.

[53] David Hume, *The Clarendon Edition of the Works of David Hume: A Treatise of Human Nature*, ed. D.F. Norton and M.J. Norton (Oxford, 2007), T.2.1.10.1; SBN 310; T.3.2.3.6-8; SBN 505-7.
[54] Ibid., T.3.2.7.7; SBN 538.

This enabled large-scale collective action, and thus 'bridges are built; harbours open'd; ramparts rais'd; canals form'd; fleets equip'd; and armies disciplin'd'.[55]

But there was no guarantee that human beings would, as a matter of actual historical development, develop the artifice of government. The tribes of North America demonstrated that men could live in 'concord and amity' for thousands of years without formalizing mechanisms for resolving disputes over property. Instead, the bonds of tribal affection and the 'natural' and 'moral' obligations to justice were sufficient to maintain successful small-scale societies able to meet the needs and wants of their members.[56] 'The state of society without government is one of the most natural states of men, and may subsist with the conjunction of many families, and long after first generation'.[57] Government in its modern form was a specific and geographically peculiar invention, carried to particular perfection in Europe (although other locales had also achieved this innovation, China being the oldest remaining non-European example). Its origin thus required special explanation.

Hume broadly agreed with Locke that the decisive change from pre-governmental society to political organization proper came about due to the growth of competition between groups following economic development: 'Nothing but an increase of riches and possessions cou'd oblige men to quit' their natural condition of concord and amity.[58] Men could maintain small-scale primitive society, operating the artifice of justice even without government, only

[55] Ibid., T.3.2.7.8; SBN 538-9.
[56] Ibid., T.3.2.8.2; SBN 540.
[57] Ibid., T.3.2.8.2; SBN 541.
[58] Ibid., T.3.2.8.2; SBN 541.

in conditions of external security. If threatened by aggressive outsiders attracted by the material prosperity generated by group living, things were different:

> Men fear nothing from public war and violence but the resistance they meet with, which, because they share it in common, seems less terrible; and because it comes from strangers, seems less pernicious in its consequences, than when they are expos'd singly against one whose commerce is advantageous to them, and without whose society 'tis impossible they can subsist. Now foreign war to a society without government necessarily produces civil war. Throw any considerable goods among men, they instantly fall a quarrelling, while each strives to get possession of what pleases him, without regard to the consequences. In a foreign war the most considerable of all goods, life and limbs, are at stake; and as every one shuns dangerous ports, seizes the best arms, seeks excuse for the slightest wounds, the laws, which may be well enough observed while men were calm, can now no longer take place, when they are in such commotion.[59]

Military organization for defence taught men the benefits of submitting to the rule of an individual who provided the decisive leadership required for security. Learning the advantages of this mode of organization, men later imported it back into civil arrangements. Magistrates were appointed for the regulation of possessions, thus improving the workings of the artifice of justice in large and lasting conditions, and eventually enabling large-scale co-ordination to enhance public utility to the benefit of all. This was the birth of government. Again the Native American tribes provided the proof, albeit via implicit comparison with their alternative historical experience. Only during times of war did individual Indians 'pay any submission to any of their fellows', when 'their captain enjoys a shadow of authority, which he loses after return from the field, and the

[59] Ibid., T.3.2.8.1; SBN 540.

establishment of peace with neighbouring tribes'.[60] When hostilities ceased, the abundance of the North American geographical bounty meant the Indian tribes could revert to small-scale societies operating justice without government.[61] The origin of European government lay in the geographical pressures of a smaller territory where resource scarcity and the proximity of rivals necessitated the retention of authoritative leadership in civil, as well as military, matters, not least because future conflicts with neighbours were correctly expected to recur. Paradoxically, the less resource-rich environment of Europe had required more intensive cultivation of the land, which due to the benefits of organised industry led to more rapid and considerable economic development than in North America, greed for which eventually triggered the wars of acquisition that gave birth to leadership, magistracy, and eventually government.

Smith's attempt to fill the gap Locke left between his history of early governments and the English constitutional crisis thus had precedent. Hume had already suggested the outlines of a historical story predicating economic development as the motor of history, even if in the *Treatise* we have to infer this from the logic of his position rather than it being stated outright.[62] Hume later supplied at least part of the story directly in *The History of England*, the medieval volumes of which argued that the English barons had dissolved their own power by pursuing luxury status goods at the expense of military power, allowing in turn for the emergence of modern liberty as feudalism was replaced with

[60] Ibid., T.3.2.8.2; SBN 540.
[61] Ibid., T.3.2.8.2-3; SBN 540-1.
[62] Hont, 'Smith's history of law and government', p. 149.

modern constitutional government.[63] That is, Hume offered the same basic account of the historical relationship between luxury and modern liberty that Adam Smith later placed at the heart of Book 3 of *The Wealth of Nations*.

In the *Treatise* Hume disparaged the Lockean suggestion that political leadership first emerged as the patriarchs of families were bequeathed political power by offspring already accustomed to their rule, taking his economic-military hypothesis about the origin of government to 'be more natural, than the common one deriv'd from patriarchal government, or the authority of the father, which is said first to take place in one family, and to accustom the members of it to the government of a single person'.[64] Furthermore, early leadership conceived of as an outgrowth of economically-triggered military competition straightforwardly accounted for why all political societies started as monarchies, and why 'republics arise only from the abuses of monarchy and despotic power'. Military leadership had to be strictly hierarchical, a single decision-making power vested with final say, which in turn became the essence of kingship as a form of civil rule.[65]

As a consequence, historically speaking Hume was more thoroughly a theorist of the original contract than Locke. Members of tribal groupings living in 'amity and concord', and operating the artifice of justice but not yet government, would, recognising the threat from external aggressors, initially meet together to expressly pledge obedience to the individual perceived as most capable in organizing defence: 'When men have once perceiv'd the necessity of government

[63] *The History of England from the Invasion of Julius Caesar to the Revolution in 1688*, foreword by William B. Todd, 6 vols. (Indianapolis, 1983), I, pp. 463-4; II, pp. 523-4; cf. Andrew Sabl, ***Hume's Politics: Coordination and Crisis in the*** History of England (Princeton N.J., 2012), pp. 63-8.
[64] Hume, *Treatise*, T.3.2.8.2; SBN 541, cf. 'Of the Original Contract', pp. 468-9.
[65] Hume, *Treatise*, T.3.2.8.2; SBN 540.

to maintain peace, and execute justice, they wou'd naturally assemble together, wou'd choose magistrates, determine their power, and *promise* them obedience'. Learning the benefits of leadership in times of war, and seeing that the administration of justice would be better maintained in times of peace if the innovation were retained, men initially promised obedience and erected government through a foundational act of consent. At the very beginning of political societies, therefore, obedience to government *was* founded in the obligation arising from an act of promising, and the authority of the earliest governments was straightforwardly a function of the consent of the ruled: 'a promise' being 'suppos'd to be a bond or security already in use, and attended with a moral obligation, 'tis to be consider'd as the original sanction of government, and as the source of the first obligation to obedience'.[66]

Yet Hume denied that promising could be the foundation of authority or the basis of obligation with regards to government in conditions of European modernity. To demonstrate this he attacked not Locke's specific account in the *Second Treatise*, but the popularized Lockean position advanced by the Whig party of his day. The 'foundation of our fashionable system of politics' and the 'creed of a party amongst us' transplanted the historical plausibility of an original promise directly into contemporary conditions:

> *All men*, say they, *are born free and equal: Government and superiority can only be established by consent: The consent of men, in establishing government, imposes on them a new obligation, unknown to the laws of nature. Men, therefore, are bound to obey their magistrates, only because they promise it; and if they had not*

[66] Ibid., T.3.2.8.3; SBN 541, cf. Hume, 'Of the Original Contract', pp. 468, 474.

> *given their word, either expressly or tacitly, to preserve allegiance, it would never have become a part of their moral duty.*[67]

This was a vulgarized and secularized version of Locke's account.[68] (Indeed without appeal to consent as the divinely sanctioned mechanism by which authority could be generated, Locke himself would have repudiated it as conceptually incoherent and normatively inert.) Hume was scornful of this popularised Whig view: 'when carry'd so far as to comprehend government in all its ages and situations, [it] is entirely erroneous'.[69] Such vulgar Lockeanism proceeded as though there were no difference between primitives establishing the first systems of hierarchical social organization, and European moderns who had inherited hundreds of years of constitutional history and institutional political practice. Such an equation was an absurdity, refuted by any common observation of the facts not corrupted by excessive party philosophy. By contrast, Hume maintained that although 'the duty of allegiance be at first grafted on the obligation of promises, and be for some time supported by that obligation, yet as soon as advantages of government are fully known and

---

[67] Hume, *Treatise*, T.3.2.8.3; SBN 542. There is a historical puzzle here, however, insofar as by the late 1730's popularized Lockeanism was unlikely to have been altogether fashionable, being instead something of an embarrassment to establishment Court Whigs, and evidently of no appeal to opposition Tories. It is also arguable that the territory of political argument by this point had shifted from philosophical and jurisdiction notions of contract to historical narrative about an ancient constitution. Why, then, did Hume claim Lockeanism as the foundational philosophical theory of contemporary Whiggism? We may never possess a definitive answer, but it is surely relevant that Hume composed the *Treatise* in France, away from the day-to-day party controversies of England. Furthermore, his interests were arguably of a deep philosophical kind, even if he took himself to be also capable of addressing relevant contemporary issues. That is, here is an example where attempting to tie Hume closely to the live practical political context of his time is liable to confuse, rather than illuminate, the nature of his political thought. I am grateful to an anonymous reader of the Journal for raising this matter.

[68] For Hume as criticizing 'vulgar' Whig doctrines in the mode of fundamentally friendly, if severe, critic, who sought instead to supply a 'scientific' basis for Whig politics, see Forbes, *Hume's Philosophical Politics*, pp. 126, 139, 150-3. The division between 'vulgar' and 'scientific' Whiggism is something of a joke on Forbes's part: Hont, 'Commercial Society and Political Theory', p. 59.

[69] Hume, *Treatise*, T.3.2.8.3; SBN 542.

acknowledg'd, it immediately takes root of itself, and has an original obligation and authority, independent of all contracts'.[70]

Dispatching the vulgarized version of Locke's account was child's play. Drawing on his own theory of artificial virtues, Hume demonstrated that both the 'natural' and 'moral' obligations to promise-keeping and obedience to authority were entirely distinct, as were the ends for which human beings first invented, and then engaged in, such practices. One might as well resolve the convention of promise keeping into allegiance, as the other way around.[71] As for tacit consent, Hume lambasted this as simply a further absurdity. On the one hand, 'what is given tacitly and insensibly can never have such influence on mankind, as what is perform'd expressly and openly', thus drastically reducing the plausibility that tacit consent could provide sufficient basis for the erection of political authority. On the other, tacit consent presumed – at least if it was to have any meaningful content – the willed intention of the individual that signs other than explicit speech be taken as the giving of consent: 'a will there must certainly be in the case, and can never escape the person's notice, who exerted it, however silent or tacit'. Yet manifestly 'were you to ask the greatest part of the nation, whether they had ever consented to the authority of their rulers, or promis'd to obey them' they would think 'very strangely of you' and reply that 'the affair depended not on their consent, but that they were born to such obedience'.[72] Trying to get around this by saying that a person's continued residency in a territory constituted consent to political authority was only a further absurdity. Could it be reasonable to claim that a poor peasant without the

[70] Ibid., T.3.2.8.3; SBN 542.
[71] Ibid., T.3.2.8.4-8; SBN 543-7; Hume, 'Of the Original Contract', pp. 481-2.
[72] Hume, *Treatise*, T.3.2.8.9; SBN 547-8.

means to emigrate nonetheless freely gave his willed and meaningful consent via continued residency?[73] Nobody not led astray by party frenzy could seriously maintain so, evidenced by the fact that nobody had ever suggested the doctrine of tacit consent before the constitutional crises of the late seventeenth century, a sure sign that it was not the basis of authority in modern (or indeed any) conditions.[74]

Hume's task was made easy by his total disregarding of Locke's juridical motivations in making tacit consent the *normative* lynchpin of his account of authority. Hume bypassed this central aspect of Locke's theory – a casualty of his insistence on an entirely secular account of politics, as we shall see below – whilst torpedoing the vulgarized version of Locke's ideas which drew upon tacit consent not as a normative justification for authority in the absence of a political Ur-revolution, but as an *empirical* claim about the foundations of authority in present circumstances. This has led some of Locke's more recent admirers to bemoan Hume's arguments as a failure to engage with Locke's most serious underlying position, supplying only a straw man version of his ideas easily put up for burning.[75] Yet whilst Hume's presentation of his arguments is liable to give the impression of sloppy misrepresentation, further fuelling the suspicion that he lacks a theory of politics proper and offers only a political sociology, it is nonetheless a serious mistake to conclude that this is all he in fact supplies. Hume fully engaged the fundamental challenge bequeathed by Locke: the need to

[73] Hume, 'Of the Original Contract', p. 475.
[74] Hume, *Treatise*, T.3.2.8.9; SBN 547-8; 'Of the Original Contract', *Essays*, pp. 475-7
[75] Dunn, 'Applied theology', p. 129; Brownsey, 'Hume and the Social Contract', p. 145; Martyn P. Thompson, 'Hume's Critique of Locke and the "Original Contract"', *Il Pensiero Politico* 10:10 (1977), pp. 189-201. Buckle and Castiglione, 'Hume's Critique of the Contract Theory', defends Hume from the complaints Thompson advances, in a spirit similar to the argument advanced here.

supply an alternative theory of authority which did away entirely with consent as the normative lynchpin within a theistic framework. Yet his response to Locke, unlike his direct reply to the popularized Lockeanism of his day, is offered by implication rather than direct engagement. It is revealed – and must ultimately be judged – by the coherence and upshot of his own rival positive account of authority, which if successful would entirely displace not just Locke's conceptual edifice, but the fundamental worldview upon which it was predicated. It is that positive account of political authority we must therefore examine.

III – Utility and Authority

Hume agreed with Locke that identifying the proper basis of authority required understanding its relation to utility. The appropriate point of analysis was the one Locke had identified: under what circumstances government was owed obedience, and when it forfeited a rightful claim of allegiance by prejudicing utility. Hume summarised the Lockean position concisely. Because government was an invention for the furthering of 'protection and security' men would only reasonably consent to the authority of such government so long as these things were provided. If instead they were met with 'tyranny and oppression', they were 'freed from their promises (as happens in all conditional contracts) and return to that state of liberty, which preceded the institution of government'.[76] Authority was conditional on utility: if government did not supply the latter, it forfeited the former. In times of crisis rebellion was therefore licensed, but in

[76] Hume, *Treatise*, T.3.2.9.1; SBN 549-50. In 'Of the Original Contract', Hume added the insistence on natural equality to the secularized version of Locke's argument, which maintained that 'all men are…born equal and owe allegiance to no prince or government unless bound by the obligation and sanction of a promise': 'Of the Original Contract', p. 469.

times of stability obedience was owed. Hume did not question that the *outcome* of this argument was 'perfectly just and reasonable'.[77] The problem was that 'the conclusion is just, tho' the principles be erroneous'. The most erroneous principle of all was making the connection between utility and authority dependent upon a conditional promise given by the ruled – something which had never actually taken place, and which nobody other than party philosophers had ever thought to be the basis of political authority in modern conditions.[78] By contrast, Hume believed that he could 'establish the same conclusion on more reasonable principles'.[79]

To do so he turned to his own theory of artificial virtues, coupled with observation of the actual psychological processes undergone by agents living under modern political rule. Allegiance, like justice, was attended with both a 'natural' and a 'moral' obligation. The natural obligation was straightforward and obvious. Being an artifice for the promotion of utility, the 'natural' obligation to obey government extended only so far as utility was indeed promoted:

> This interest I find to consist in the security and protection, which we enjoy in political society, and which we can never attain, when perfectly free and independent. As interest, therefore, is the immediate sanction of government, the one can have no longer being than the other; and whenever the civil magistrate carries his oppression so far as to render his authority perfectly intolerable, we are no longer bound to submit to it.[80]

As well as making appeals to promising as a method of securing utility insufficiently parsimonious and explanatorily redundant, the natural obligation to allegiance explained why the Lockean conclusion that abusive governmental

[77] Hume, *Treatise*, T.3.2.9.1; SBN 549.
[78] Ibid., T.3.2.8.8; SBN 547.
[79] Ibid., T.3.2.9.2; SBN 550.
[80] Ibid., T.3.2.9.2; SBN 550-1.

power may legitimately be resisted was correct: 'The cause ceases; the effect must cease also'.[81]

But with regards to the 'moral' obligation to obedience 'the maxim wou'd here be false, that *when the cause ceases, the effect must cease also*'. It was readily observable that human beings are 'mightily addicted to *general rules*, and that we often carry our maxims beyond those reasons, which first induc'd us to establish them'.[82] The moral obligation to allegiance out-ran the natural. On the one hand, allegiance (like justice) took on the quality of a moral virtue in its own right, the agreeableness and utility of which did not make direct recourse to calculations of individual interest, and was strengthened by sympathy with the public weal. The prospect of rebellion made one uneasy for the interests of oneself and one's neighbours, and the typically vain and selfish ambitions of rebels were manifest to others, who accordingly found their actions disagreeable, likely to be contrary to utility, and thus vicious – further strengthening the virtue of allegiance by comparison.[83] Established power received enhanced sanction from the very fact that it was established, and men were apt to tolerate infractions of their immediate interest (undermining their 'natural' obligation to virtue) without this translating into a forfeiture of the 'moral' obligation.[84] The basis of modern authority was thus a function of complex psychological processes supervening on the securing of interest, rather than being straightforwardly utilitarian: dependent upon the workings of human imagination in line with general rules

[81] Ibid., T.3.2.9.2; SBN 550-1.
[82] Ibid., T.3.2.9.3; SBN 551.
[83] Ibid., T.3.2.10.3; SBN 555.
[84] Ibid., T.3.2.10.19; SBN 566: 'that power, which at first was founded only on injustice and violence, becomes in time legal and obligatory. Nor does the mind rest there; but returning back upon its footsteps, transfers to their predecessors and ancestors that right, which it naturally ascribes to the posterity, as being related together, and united in the imagination'.

and sympathy with public utility, not the direct calculation of individual advantage.

Men only gave up the 'moral' obligation to obedience when the 'general rule' of allegiance was confronted with an exception which itself had the qualities of a 'general rule, and be founded on very numerous and common instances'. Although men fundamentally submit to the 'authority of others' in order 'to procure themselves some security against the wickedness and injustice of men', nobody was naïve enough to believe that those appointed to rule thereby automatically transcended the partiality and rapaciousness that ordinary individuals were prone to. What was expected from rulers 'depends not on a change of their nature but of their situation, when they acquire a more immediate interest in the preservation of order and the execution of justice'. Nonetheless, separated from their subjects by wealth and power, rulers were apt to neglect even their immediate interest in providing the *salus populi*, instead being 'transported by their passions into all the excesses of cruelty and ambition'. Awareness of these facts provided the 'general rule' which could, in extreme enough circumstances, outweigh the general rules underpinning our 'moral' obligation to obedience. 'Our general knowledge of human nature, our observation of the past history of mankind, our experience of present times' all combined to yield the conclusion 'that we may resist the more violent effects of supreme power, without any crime or injustice'.[85]

Hume's account received added credibility by being 'both the general practice and principle of mankind'. Likewise, 'no nation, that cou'd find any

[85] Ibid., T.3.2.93; SBN 551-2.

remedy, ever yet suffer'd the cruel ravages of a tyrant, or were blam'd for their resistance'.[86] The Tory doctrine of passive obedience was an 'absurdity', decisively revealed as such by reconfiguring the Lockean conclusion of a right of resistance on an empirically credible and intellectually coherent foundation.[87] When one got down to the fundamentals of what government was an invention for, 'There evidently is no other principle than interest'. Accordingly, 'if interest first produces obedience to government, the obligation to obedience must cease, whenever the interest ceases, in any great degree, and in a considerable number of instances'.[88]

Yet rebellion was sociologically a highly unusual phenomenon: men's interests had to be pushed a very long way before they took up arms *en masse,* whilst the vain ambitions of rebels seeking self-aggrandizement rather than the *salus populi* met with the disapproval and rejection of the populace. Furthermore it was 'certain, that in the ordinary course of human affairs nothing can be more pernicious and criminal' than rebellion. Whilst 'numerous and civiliz'd societies cannot subsist without government', it was equally the case that 'government is entirely useless without an exact obedience'. The means and end of government would be debilitated were men to withdraw obedience whenever they personally judged that it was in their interest to do so:

> We ought always to weigh the advantages, which we reap from authority, against the disadvantages; and by this means we shall become more scrupulous of putting in practice the doctrine of resistance. The common rule requires submission; and 'tis only in cases of grievous tyranny and oppression, that the exception can take place.[89]

---

[86] Ibid., T.3.2.9.4; SBN 552.
[87] Ibid., T.3.2.9.4; SBN 552; cf. 'Of Passive Obedience', pp. 489-91.
[88] Hume, *Treatise*, T.3.2.9.4; SBN 553; cf. Hume, *Enquiry*, p. 28.
[89] Hume, *Treatise*, T.3.2.10.1; SBN 553-4, cf. 'Of the original contract', p. 480.

A 'blind submission' was due to magistracy in all cases other than the extreme one of resistance to tyranny.[90] Implicit in Hume's sociological analysis of allegiance and obligation is therefore a utilitarian justification for the necessity of obedience in normal conditions, cashed in terms of the likely disastrous effects of aggregated individual judgement. If the decision whether or not to obey was left to each individual on a case-by-case basis, this would jeopardize the continued functioning of government, which required 'blind submission' in the aggregate.[91] Hobbes's conclusion had been just, though his principles erroneous: individual judgement was not a primary source of destructive confrontation, but its elimination was nonetheless a requirement for political obligation and the securing of obedience in modern conditions. Fortunately, the moral obligation to allegiance ensured that human beings spontaneously reconciled themselves to obedience, refraining from case-by-case judgement in favour of a 'blind submission' in ordinary circumstances. Government power thus did not need to explicitly take over the function of individual judgement as a necessary condition of continued political stability.

Nonetheless the right of revolution was not something that could be clearly determined in advance by disgruntled individuals, or prescribed *a priori*

[90] Hume, *Treatise*, T.3.2.10.2; SBN 554.
[91] Ibid., T.3.2.10.1; SBN 553-4. Of course, this justification could only work with regards *to the aggregate*, and could gain little traction with the solitary individual who pointed out that *their* particular act of self-interested defection, if undetected and unpunished, would benefit themselves without brining down the social edifice. Regarding the problem of this 'free rider', as she came to be known to the chagrin of twentieth century political and economic scientists, see Richard Tuck, *Free Riding* (Cambridge, Mass., 2008), chapter 4 of which explicitly examines Hume's theory of artificial virtues. I do not, however, agree with Tuck's reading, and suggest that Hume's answer to the political free rider is better understood as paralleling that of his answer to the free-riding 'sensible knave' of the *Second Enquiry*: the self-approval flowing from adherence to the moral obligation to allegiance is the reason individuals should 'blindly submit' to government. Regarding Hume and the 'sensible knave', see Paul Sagar, 'Minding the Gap: Bernard Williams and David Hume on Living an Ethical Life', *Journal of Moral Philosophy*, 11 (2014) pp. 615-38.

by the theorist. Although no reasonable person blamed subjects for overthrowing a Nero or a Philip II, this judgement was only admissible when made retrospectively.[92] Hume acknowledged that a right of revolution existed, but this was distinct from a right to openly promote revolution. Such action threatened to destabilize government by undermining the authority upon which it irreducibly depended.[93] If authority became genuinely forfeit due to assaults upon utility, revolution would (eventually) spontaneously occur. Political theory could not validate such spontaneity beyond its sociological manifestation as a consequence of the degradation of the *salus populi* eventually eroding the imaginative basis of authority. Whilst revolutions could be legitimate, Hume's philosophy told strongly against the possibility of a *justificatory theory of a right of revolution*, one that could be appealed to over and above the interplay of utility and authority in the imagination of the citizenry. The practice of politics in any given time and place, not the dictates of philosophy, should (and would) determine the conduct of a people with regards to tyrants. Indeed, Hume felt that sometimes the sentiments of the people tended *too far* towards authority and paradoxically threatened to undermine utility, as had occurred when the general citizenry of England had almost prevented the Glorious Revolution through a dogmatic loyalty to the dangerously reactionary James II.[94] By the mid-eighteenth century, however, Hume saw the pendulum as swinging too far the other way: an over-emphasis on liberty by the victorious descendants of 1688, coupled with the vulgar Lockean justification of a right of revolution, jeopardized

[92] Hume, *Treatise*, T.3.2.9.4; SBN 552.
[93] Hume, 'Of the Origin of Government', in *Essays*, pp. 37-41, p. 40.
[94] Hume, *Treatise*, T.3.2.10.16-19; SBN 360-2; Hont, 'Smith's History of Law and Government', pp. 151-2; Forbes, *Hume's Philosophical Politics*, pp. 96-8, 139.

the simultaneous maintenance of authority upon which all viable government depended. Hume's 'sceptical Whiggism' was a perspective urging a corrective to both excesses.[95]

With the basis of authority accordingly delineated, the question arose as to whom obedience was due. Hume identified five bases upon which modern authority was granted, none of them founded upon an act of promising: long-possession, present possession, conquest, succession, and positive law.[96] Again these were all determined more by human imagination – with a peculiar predilection for members of established ruling families – than by direct appeal to interest.[97] 'The same interest….which causes us to submit to magistracy, makes us renounce itself in the choice of our magistrates, and binds us down to a certain form of government, and to particular persons, without allowing us to aspire to the utmost perfection in either'. Determining the 'objects of allegiance' paralleled the conventions established for the government of possessions. It is 'highly advantageous, and even absolutely necessary to society, that possession shou'd be stable; and this leads us to such a rule'. But were we to pursue that same advantage 'in assigning particular possessions to particular persons, we shou'd disappoint our end, and perpetuate the confusion, which that end is intended to prevent'. Likewise, we come 'to choose our magistrates without having in view any particular advantage from the choice'.[98] Deciding on the 'objects' of allegiance in practice, as with analysis of the phenomenon of authority more generally, was only indirectly a function of utility, being more

[95] Forbes, *Hume's Philosophical Politics*, chapter 5.
[96] Hume, *Treatise*, T.3.2.10.4-14; SBN 556-62.
[97] Ibid., T.3.2.10.11-13; SBN 559-61.
[98] Ibid., T.3.2.10.3; SBN 555-6.

primarily dependent upon the 'general rules' that influenced human imagination. In the terminology Hume would adopt after the *Treatise*, authority was therefore ultimately a function of 'opinion'. It is 'on opinion only that government is founded', even in the most despotic and military governments, analytically decomposing into that of 'interest' and of 'right' (itself subdivided between that of 'power' and 'property'), corresponding to what the *Treatise* had labeled the 'natural' and 'moral' obligation to allegiance.[99]

Explicated in this manner, Hume's account may indeed appear to offer only a sociology of politics. 'Opinion' resembles the contemporary category of 'public opinion', and an empirically plausible sociological account of how and why men do or do not obey particular forms of rule is duly forthcoming. Yet the question of why obedience and authority are owed not just as a matter of psychological observation of how people are, but as a *normative obligation over and above contingent local practices* – one which is binding upon citizens in all times outside of tyranny, and can be legitimately coercively extracted by rightful rulers – remains conspicuously outstanding. In short, despite the astuteness of his psychological account and his allowing for the justice of rebellion in times of tyrannical oppression, Hume apparently fails to address the outstanding philosophical issue: how the phenomenon of political obligation, a permanent feature of social organization under modern government, can be *normatively justified*, rather than merely *sociologically explained*. Yet what we need to recognise is that Hume's 'sociology' is predicated upon an underlying philosophical worldview which rejects the possibility of external normative

[99] Hume, 'First Principles of Government', pp. 31-4, cf. Dunn, 'Applied Theology', p. 121: 'Property, justice, allegiance, loyalty, duty, fidelity, all human rights and all human duties, are in the last instances functions of opinion'.

justification as granted by the pronouncements of philosophy, and seeks to reconfigure our thinking about how to even pose, and then answer, the question of what political obligation can coherently consist of. Until that is realised we will radically underappreciate and misunderstand the nature and scale of Hume's ambition, as well as his 'sociology'. To do better we must pay close attention to Hume's conception of what philosophy is, and the little it can hope to achieve in practical matters.

IV – Opinion and the Role of Philosophy

On Locke's account, God's having creating men free and equal, and able to generate legitimate political authority only via the mechanism of consent, ensured that there was always an evaluative philosophical position external to particular human practices from which those practices could be judged, with specific arrangements impugned or justified accordingly. Hume entirely rejected this.[100] His wholly secular political theory contended that human political practice could only be judged from the inside, by its own standards and values. As he put it when concluding his case against the popular secularized version of Locke's position:

> Lest those arguments shou'd not appear entirely conclusive (as I think they are) I shall have recourse to authority, and shall prove, from the universal consent of mankind, that the obligation of submission to government is not deriv'd from any promise of the subjects. Nor need any one wonder, that tho' I have all along endeavour'd to establish my system on pure reason, and have scarce ever cited the judgment even of philosophers or historians on any article, I shou'd now appeal to popular authority, and oppose the sentiments of the rabble to any philosophical reasoning. For it must be observ'd, that the opinions of men, in this

[100] Duncan Forbes, 'Hume's Science of Politics', in *David Hume: Bicentenary Papers*, ed. G.P. Morice (Edinburgh, 1977), pp. 39-50, pp. 48-9; cf. Buckle and Castiglione, 'Hume and the Contract Theory', pp. 465-69.

> case, carry with them a peculiar authority, and are, in a great measure, infallible.[101]

Morality – which for Hume includes assessments of political legitimacy, authority and obligation – 'is founded on the pleasure or pain, which results from the view of any sentiment, or character'. Yet such pleasure or pain 'cannot be unknown to the person who feels it', hence there is only so much virtue or vice in any character or circumstance as one actually places in it.[102] Morality is a purely human construction, built out of the materials of natural sentiment (though it is no less real for being that). There is therefore *only* the internal perspective of sentiment from which to make moral and political judgements. But moreover, the pronouncements of that perspective are *ipso facto* 'infallible', because there just is no external perspective (such as God's) from which to otherwise judge them. Likewise, it is impossible that with regards to what our sentiments find pleasure or pain in, we, as the sources and bearers of those sentiments, 'can ever be mistaken'.[103] Errors can be made about the 'origin' of vices or virtues, but not about whether things are vices or virtues to us. With specific regard to authority and obligation, and the attendant artificial virtue of allegiance, the question of importance is not about 'origin', but about 'degree': about whether or not we believe ourselves obliged to authority, thus owing obedience in given circumstances. Hume's conclusion, entailed by his underlying ethical

[101] Hume, *Treatise*, T.3.2.8.8; SBN 546.
[102] Ibid., T.3.2.8.8; SBN 546.
[103] Ibid., T.3.2.8.8; SBN 546. For a discussion (that is much more hostile to Hume in this area than I am) see Brownsey, 'Hume and the Social Contract' pp. 137-40, 147; for a counterview to Brownsey, see Buckle and Castiglione, 'Hume's critique of the contract theory', pp. 463-69.

sentimentalism, is that insofar as the opinion of mankind judges that some power possess authority and is owed obedience, *it therefore does and is.*[104]

Locke would have entirely rejected Hume's position. But the action of disagreement would have taken place on the grounds of whether or not an external position is possible with regards to normative assessment of our present practices, and hence ultimately over the question of the existence of God and what we can know He wills and commands.[105] The same could not be said for the vulgarized Lockean position Hume deliberately put up as his target in the *Treatise*. Deliberately, because Hume's science of man proceeded in entirely secular terms and hence he engaged not Locke's argument proper, but only that version of it which could be admitted under the principles of experience and observation, excluding any underlying theism however essential for the coherence of a supervening account.[106] Hume demonstrated that the secularized

---

[104] Hume's approach, however, invites a serious worry about the mechanisms by which belief in political legitimacy is generated. Even if legitimacy can only ultimately be judged internally, we nonetheless need some way of identifying illegitimate methods, and in turn outcomes, when it comes to the securing the psychological assent of citizens, both when judging the conditions of historical and geographical others, and in assessing our own practices to decide whether they generate belief in legitimacy in the right sort of way. Hume does not address himself to this important concern, but after the 20th century and following the growth in the modern state's capacity to manufacture consent via manipulation and intimidation, it cannot now be ignored. On precisely this point, however, see the importance that Bernard Williams assigns to what he calls the 'Critical Theory Test' in his own Humean internalist political theory, i.e. the requirement that belief in a regime's legitimacy is not itself a function of the very power being putatively legitimated. Bernard Williams, *Truth and Truthfulness: An Essay in Genealogy* (Prinecton, N.J., 2002), chapter 9, and also the essays collected in *In The Beginning Was the Deed*, ed. G. Hawthorn (Princeton, N.J., 2005). See also Edward Hall, 'The Basic Legitimation Demand: A Defence', *Political Studies* (forthcoming), and Paul Sagar, 'From Scepticism to Liberalism: Bernard Williams, The Foundations of Liberalism, and Political Realism', *Political Studies* (forthcoming).

[105] Hume would likely have had the better of that argument, as indicated by his posthumously published *Dialogues Concerning Natural Religion*. For a summary of the power of Hume's position in this work, see Simon Blackburn, *How to Read Hume* (London, 2008), chapter 8.

[106] We thus need to qualify Dunn's statement that Hume was not 'at all a careful critic of Locke's text' and does not 'appear to have grasped even the essentials of its argument' though he 'certainly mounts an intellectual and polemically effective enough critique of vulgar Whig shibboleths': Dunn, 'Applied Theology', p. 129, cf. Thompson, 'Hume's Critique of Locke and the "Original Contract"'. Whether or not Hume was a careful reader of Locke becomes beside the point when we realise that his entire intellectual project in the *Treatise* was to conduct an

version of Locke's view collapsed into incoherence when attempting to retain the external justificatory philosophical perspective whilst lacking the theocentric *weltanschauung* required to make it coherent. The most telling sign of this was the generation of absurd conclusions:

> Any one, who finding the impossibility of accounting for the right of the present possessor, by any receiv'd system of ethics, shou'd resolve to deny absolutely that right, and assert, that it is not authoriz'd by morality, wou'd be justly thought to maintain a very extravagant paradox, and to shock the common sense and judgment of mankind. No maxim is more conformable, both to prudence and morals, than to submit quietly to the government, which we find establish'd in the country where we happen to live, without enquiring too curiously into its origin and first establishment. Few governments will bear being examin'd so rigorously. How many kingdoms are there at present in the world, and how many more do we find in history, whose governors have no better foundation for their authority than that of present possession?[107]

Taking the example of the Grecian and Roman empires, it was evident that all titles in these periods were founded upon, and maintained by, violence: it 'was by the sword…that every emperor acquir'd, as well as defended his right'. Accordingly, we must 'either say, that all the known world, for so many ages, had no government, and ow'd no allegiance to any one or must allow, that the right of the stronger, in public affairs, is to be receiv'd as legitimate, and authoriz'd by morality, when not oppos'd by any other title'.[108] It was absurd to insist that government founded upon the sword rather than the consent of the ruled was no government at all (and hence owed no obedience), simply because such a form of

---

investigation only in terms of 'experience and observation', meaning theocentric political theory was excluded from the outset, to be entirely replaced by Hume's alternative secular philosophical worldview.

[107] Hume, *Treatise*, T.3.2.10.7; SBN 558.

[108] Ibid., T.3.2.10.7; SBN 558. Hume extended his list of examples in 'Of the Original Contract', pp. 483-5.

government did not conform to one's preferred philosophical tenets. Any philosophy that maintained that there had been no government owed obedience in the Graeco-Roman world did not offer a credible account of authority and obligation. The correct response was to find a better philosophy, one able to account for the evident realities of the world.[109]

Indeed, Hume urged more than just the finding of a better philosophy: he aimed to call into question, and then realign, our underlying conception of what political philosophy is and can do. If one viewed the role of political philosophy as being the issuing of pronouncements as to the legitimacy of human social practices, predicated upon an external and ultimately superior standard of justification, whilst specifically making consent the condition by which the legitimacy of political authority was achieved, then one must claim that any government not actually consented to by its population was *ipso facto* illegitimate. As Hume demonstrated, the consequence of this was to end up committed to the absurd conclusion that all government everywhere is, and has always been (at least after the first age of primitive founding), illegitimate.[110] Locke avoided such an embarrassing conclusion by appealing to tacit consent not as an empirical claim about how authority was actually generated in practice, but as a normative mechanism for securing the sanction of external justificatory legitimacy in the absence of a historic re-foundation of political legitimacy,

[109] 'The necessities of human society, neither in private nor public life, will allow of such an accurate enquiry: And as there is no virtue or moral duty, but what may, with facility, be refined away, if we indulge a false philosophy, in sifting and scrutinizing it, by every captious rule of logic, in every light or position, in which it may be placed': Hume, 'Of the Original Contract', p. 482. For a view resistant to Hume's urging that we adopt a new philosophy, because rejecting of Hume's underlying attempted reconfiguration of what political philosophy is and can hope to be, see P.F. Brownsey, 'Hume and the Social Contract'.

[110] Hume explicitly refers to such a conclusion as the advancing of 'absurdities': 'Of the Original Contract', p. 470.

otherwise required to validate present arrangements.[111] But the secularized version of Locke's argument – which treated tacit consent not as a normative justification within a theistic juridical framework, but as a descriptive empirical claim about the actual basis of present authority in modern conditions – collapsed into absurdity. Because tacit consent was itself a manifest absurdity as an empirical proposition, secular Lockeans were confronted with a dilemma. Either maintain their system upon the absurdity of tacit consent, or claim that because no modern government ever in fact received authority by express consent, then all modern government was illegitimate and thus not owed obedience.[112] This latter conclusion was also itself absurd, however, because the legitimacy of governmental authority was not something determined by the theories of philosophers, but by the opinion of mankind rooted in moral sentiment. Though 'an appeal to general opinion may justly, in the speculative sciences of metaphysics, natural philosophy, or astronomy, be deemed unfair and inconclusive' by contrast 'in all questions with regard to morals, as well as criticism, there is really no other standard by which any controversy can ever be decided'.[113]

---

[111] By asking rhetorically of his opponents 'how came so many lawful Monarchies into the World?', Locke indicated that he believed legitimate government was the norm, not the exception: Locke, *Two Treatises*, p. 344, §113.

[112] This dilemma remains for those who wish to maintain a secular Lockeanism in present political theory. A. John Simmons, for example, takes the second horn and concludes that because no present government has in fact been consented to by anything like a sufficient number of its citizens, no government in the world can presently be considered legitimate: A. John Simmons, 'Justification and Legitimacy', in *Justification and Legitimacy*, pp. 122-57, p. 155-6. A similar view is taken by P.F. Brownsey, who claims that 'If history discloses no social contracts in the histories of actual governments, the contract theorist can simply conclude "so much the worse for the governments of this world; none of them is legitimate"': Brownsey, 'Hume and the Social Contract', p. 133. This conclusion may be met by Hume's heirs today with the same response Hume urged: that it is to put the cart of theory before the horse of political practice, and to render one's philosophical position, and indeed one's entire philosophical outlook, absurd as a consequence. For an illustration, see Hall, 'A Defence', pp. 3-4, 10.

[113] Hume, 'Of the Original Contract', p. 486.

Hume illustrated this with the example of absolute government. By furthering utility and receiving the allegiance of the subjects who judged it to have authority, absolute rule was 'as *natural* and *common* a government as any', and hence 'must certainly occasion some obligation; and 'tis plain from experience, that men, who are subjected to it, do always think so'.[114] The fact that such subjects 'do always think so' means that obligation *was* therefore owed by subjects under such conditions, there being no other coherent standard from which to judge. If secular Lockeans continued to decry absolute government as no government at all, insisting that their philosophy was *right*, and that it was the world that needed to change in line with the dictates of their speculations, this only confirmed and enhanced their absurdity. Nothing 'is a clearer proof, that a theory of this kind is erroneous, than to find, that it leads to paradoxes, repugnant to the common sentiments of mankind, and to the practice and opinion of all nations and ages'.[115]

Hume's outlook, unlike that of a secularized Lockeanism, fully recognised, indeed embraced, the fact that 'if we remount to the first origin of every nation, we shall find, that there scarce is any race of kings, or form of a commonwealth, that is not primarily founded on usurpation and rebellion, and whose title is not far worse than doubtful and uncertain'.[116] The lesson to draw was not that all government was therefore illegitimate, but that we must 'learn to treat very lightly all disputes concerning the rights of princes', becoming 'convinc'd that a strict adherence to any general rules…hold less of reason, than of bigotry and

[114] Hume, *Treatise*, T.3.2.8.9; SBN 549, cf. 'Of the Original Contract', pp. 486-7.
[115] Hume, 'Of the Original Contract', p. 486.
[116] Hume, *Treatise*, T.3.2.10.4; SBN 556, cf. 'Of the Original Contract', pp. 474-5.

superstition'.[117] In real political practice philosophy had almost no power to determine serious controversies over authority, which were themselves not usually amenable to purely intellectual resolution anyway: the 'study of history confirms the reasonings of true philosophy; which, showing us the original qualities of human nature, teaches us to regard the controversies in politics as incapable of any decision in most cases, and as entirely subordinate to the interests of peace and liberty'. Indeed, 'when these titles are mingled and oppos'd in different degrees, they often occasion perplexity; and are less capable of solution from the arguments of lawyers and philosophers, than from the swords of the soldiery'.[118]

Hume's point was double-edged: not only was philosophy ill-equipped to resolve real disputes over authority, which usually revealed no single correct answer but only a plethora of competing claims, it would never be the decisive factor even if it could, *per impossible*, reveal a final unitary answer.[119] In turn, rather than bemoaning the inadequacy of the real world for its failure to live up to one's preferred philosophy, one would be better off rethinking one's philosophy so that it better fitted the real world, and the actually existing conclusions of common sentiment, which gave the only genuine conditions of meaning and coherence one was ever going to get. Philosophy's role was to help us better understand our state of affairs, in particular to better appreciate the nature of our values, whilst being aware that such values must, and could only

[117] Hume, *Treatise*, T.3.2.10.15; SBN 562.
[118] Ibid., T.3.2.10.15; SBN 562.
[119] As Hume later put it, 'the Empire of philosophy extends over a few; and with regard to these too, her authority is very weak and limited': Hume, 'The Sceptic', *Essays*, pp. 159-81, p. 169.

ever be, our own creations.[120] As regards practical politics, 'I am afraid we shall never be able to satisfy any impartial enquirer, who adopts no party in political controversies, and will be satisfy'd with nothing but sound reason and philosophy'.[121]

Yet whilst Hume's philosophical outlook repudiated the possibility of any external justificatory perspective, it was nonetheless firmly vindicatory of established human political practice in propitious circumstances, whilst by the same lights accounting for the legitimacy of altering those circumstances through violent means if necessary for the maintenance of the *salus populi*. Government was an invention for the promotion of utility, garnering authority insofar as the human agents living under its arrangements came to believe that it did indeed possess such authority. As a result the question of political obligation – the need to obey government outside conditions of tyranny, and non-tyrannical government's legitimate right to extract obedience by coercion if necessary – could be given a positive and clear answer, which vindicated rather than condemned the general practice of mankind. Obedience was owed when a people thought that it was, and could (and eventually would) be withdrawn when a people believed that it ceased to be owed, i.e. when their interests were sufficiently damaged by governmental oppression such that the 'moral' obligation to allegiance ceased to outrun the 'natural'.

---

[120] Indeed, excessive philosophical thinking in matters of real political dispute was liable to do more harm than good, exacerbating rather than resolving conflicts as sound reasoning was twisted to the ends of party prejudice. In the *History of England* Hume warned against appeal to a mythical ancient constitution in attempts to vindicate present political change. The 'only rule of government, which is intelligible or carries any authority with it, is the established practice of the age', whereas 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': Hume, H*istory of England*, II, p. 525.
[121] Hume, *Treatise*, T.3.2.10.15; SBN 563.

Hume's account was sociological in its surface manifestation only, an effect of the philosophical reconfiguration he simultaneously sought to bring about. Rather than avoiding the crucial normative issues surrounding political obligation, he presented these as coherently intelligible only from within the internal perspective generated by human political practice. This yielded the possibility of natural authority: possessing no external justification, but built upon a science of man that denied the coherence or need for any such justification anyway. It was this reconfiguration of the nature and scope of political philosophy that Adam Smith followed Hume in adopting as the underlying normative framework for conceiving of authority in entirely secular terms.[122] What Hume had left outstanding was a detailed explanation of how natural authority had been generated in the specific historical experience of ancient and then modern Europe. This was the contribution made by Smith's history of law and government.

V - Conclusion

We may usefully conclude by reconnecting this evaluation of Hume's underlying philosophical ambitions with the question of sovereignty and Hume's wholesale omission of any such category. Sovereignty theory is fundamentally *justification* theory: it seeks to explain not only who has (or should have) ultimate political decision-making power, but more fundamentally who has (or should have) the legitimate authority to exercise that power. The sovereign, by virtue of being

[122] Although it is unclear whether Smith shared Hume's optimism at the final prospects for such a secular normative theory. As he put it in the final revisions to his *Theory of Moral Sentiments*, 'the very suspicion of a fatherless world, must be the most melancholy of all reflections; from the thought that all the unknown regions of infinite and incomprehensible space may be filled with nothing but endless misery and wretchedness. All the splendour of the highest prosperity can never enlighten the gloom with which so dreadful an idea must necessarily over-shadow the imagination'. Smith, *Theory of Moral Sentiments*, p. 235; cf. Dunn, 'Applied Theology', p. 128.

sovereign, is justified in using coercive force against those who do not obey his or her or its rightful authority, whilst those subject to sovereign power are not justified in resisting that sovereign's directions or impositions, insofar as these fall within the remit of that rightful authority.

Since at least Hobbes we have been accustomed to seeing sovereignty as a necessary feature of a theory of politics, and of the theory of the state in particular. Hobbes represents a particularly interesting case, because he seeks to provide a theory of sovereignty with recourse only to materials available from within a secular political theoretic framework.[123] His is justification theory, but it does not posit any *external* justificatory ground by which human political practice is to be assessed. Hobbes attempted this by making consent the lynchpin of his theory: the sovereign was such because all had consented to be held in awe by common power, even if such consent happened to be given in the utmost extremes of duress.[124] Yet the expansive understanding of consent Hobbes relied upon to generate a purely internal standard of justification for sovereignty was predicated for its coherence upon his radically reductive view of freedom as the

[123] Although Hobbes certainly recognised that his secular theory of politics must be squared with the realities of religion as a historical and sociological fact of the seventeenth century, hence the third part of *De Cive*, 'Of Religion', and the third book of *Leviathan*, 'Of Christian Commonwealth'. But this was a matter of the specific application of political science to contingent circumstances.
[124] Hobbes, *Leviathan*, II, pp. 306-8, 312, 326. The effect was heightened in *Leviathan* by adding the conception of 'authorization', whereby subjects individually came to own all the actions of the sovereign as their representative: Hobbes, *Leviathan*, II, pp. 244-52. Yet the theory of authorization is imposed by Hobbes via conceptual fiat: highly useful as it may be for his purposes within his deeply impressive conceptual edifice there is in fact no reason whatsoever, other than Hobbes's insistence, to accept the legalistic analogy by which consent equates to authorization and renders a representative an extension of one's own causal actions, and particularly when it generates the absolutist conclusions Hobbes aspired to. On the wider background to Hobbes theory of representation, and its place in the modern political theory of representation, see Mónica Brito Vieira and David Runciman, *Representation* (Cambridge, 2008), chapters 1-2.

absence of physical impediments to movement.[125] Insofar as one is unconvinced of the coherence or plausibility of that view, one will be doubtful that consent can in fact play the crucial role Hobbes assigns to it in the generation of sovereignty, or in the justificatory ambitions his theory of sovereignty embodies.[126]

Furthermore, Hobbes's absolutist vision failed – as both Locke and Hume recognised – to properly configure the balance between utility and authority. Hobbes correctly identified that the primary task of the state was the provision of order and security, but he radically over-estimated the threat posed by internal dissention whilst underestimating that posed by the rapacity of rulers. His system granted too much to authority, dangerously imperiling utility. As Locke famously remarked, to agree with Hobbes would be to think that 'Men are so foolish that they take care to avoid what Mischiefs may be done them by *Pole-Cats*, or *Foxes*, but are content, nay think it Safety, to be devoured by *Lions*', a sentiment shared by Hume, and facilitated in both cases by less bellicose conceptions of human sociability.[127]

---

[125] For a helpful and clear discussion see Quentin Skinner, *Hobbes and Republican Liberty* (Cambridge, 2008), chapter 6.

[126] Hume was clearly sceptical of anything like Hobbes's minimalist negative view of freedom, as revealed by his discussion of how we conceive of liberty in relation to the power of others insofar as they are restrained by law: Hume, *Treatise*, T.2.1.10.1-12; SBN 309-16. Recent commentators have illustrated the implausibility of Hobbes's purely negative view of liberty. See for example Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford, 1997), chapters 1-4; Quentin Skinner, 'The Idea of Negative Liberty', in *Philosophy of History: Essays on the Historiography of Philosophy*, ed. R. Rorty and J.B. Schneewind (Cambridge, 1984), pp. 193-221; *Liberty Before Liberalism* (Cambridge, 1998); 'Freedom as the Absence of Arbitrary Power', in *Republicanism and Political Theory*, ed. C. Laborde and J. Maynor (Oxford, 2008), pp. 83-101 – although, as is well known, the positive 'republican' theories Pettit and Skinner advance are not without their own problems. For a sketch of what an adequate theory of liberty must be able to achieve, see Bernard Williams, 'From freedom to liberty: the construction of a political value', in *In The Beginning was the Deed*, pp. 75-96.

[127] Locke, *Two Treatises*, p. 328, §93.

Locke's alternative to Hobbes was to retain the justificatory ambitions of sovereignty theory (his preference was to speak of 'supreme power'), locating the basis of that justification in consent, but now understood as the only mechanism which could generate legitimate relations of political authority between creatures created free and equal, and which took the place of Hobbes's theory of freedom embedded in a metaphysic of matter in motion, in order to provide the normative centrality of consent.[128] Hume by contrast embraced secular political theory whilst abandoning the aspiration to provide any external justificatory grounding for our moral and political practices, settling instead for their internal vindication by the light of the opinion of mankind, purposefully down-scaled from the ambitions of Hobbes's vision of a theory of sovereignty able to delineate the proper functioning of politics understood, and then administered, as an *a priori* science. For Hume, a proper science of politics could precisely not be *a priori*, and the crucial mistake to avoid was the putting of the cart of theory before the horse of practice, appreciating instead that it was always the latter which gave any worth or validity to the former. Accordingly, the category of sovereignty was redundant for Hume's purposes. In political *practice* it may well remain that talk of sovereignty is not only highly useful, but a real and permanent part of the constitutional and institutional make-up which must be taken account of, in particular with regards to identifying who holds (and by the lights of opinion, should hold) decision-making power at any given point. Insofar as theory aims to have something to say to, as well as about, practice, then sovereignty will remain a non-eliminable and central category of modern

[128] For Locke, supreme power must be vested in the legislature, the necessary check to judicial and executive power liable to be abused by rulers following the loss of the golden age: Ibid., pp. 355-63, §134-42.

politics, and which must to that extent be taken into account.[129] Yet in political theory prior to the engagement of practical politics as it happens to be given by the practice of the age, sovereignty is not a primary or useful category of political analysis from Hume's perspective. Who is or is not thought to hold sovereignty in any given time and place is determined by opinion, and hence it is the mechanisms of opinion that ought properly to occupy our philosophical attention, being sensitive to the fact that these can and do change as human circumstances alter. The upshot of this is that Hume ultimately offered a theory of the state without sovereignty: what looks like political sociology transpires to be an attempted reconfiguration of our fundamental thinking about what organised power consists of for human beings in what Smith called a 'fatherless' world.[130] This can only be properly appreciated if we simultaneously recognise the seriousness of Hume's engagement with political obligation. In turn we are invited to reconsider whether a theory of sovereignty is in fact a necessary part of an adequate theory of politics, or whether post-Hobbesian political theory can get by, and perhaps even flourish, without it.[131]

---

[129] I am grateful to both Richard Tuck and Richard Bourke for this point, though both will likely disagree with the ends to which I put it. On the extreme complexity of sovereignty theory and its messy interface with political practice, in particular as refracted through the French Revolution as a central event in the emergence of the modern representative republic, see Istvan Hont, 'The Permanent Crisis of a Divided Mankind: "Nation-State" and "Nationalism" in Historical Perspective', in *Jealousy of Trade*, 447-528 – although it should be observed that Hont notes (p. 487) that the new modern theory of sovereignty forged by Sieyès and offered to the French revolutionaries was no better understood by the principle political actors than the earlier accounts of Hobbes and Rousseau had been in previous generations.

[130] Smith, *Theory of Moral Sentiments,* p. 235.

[131] On the enormous historical, as well as theoretical, legacy of sovereignty theory that an opinion of mankind idiom must nonetheless reckon with, see Hont, 'Permanent Crisis'.