

JOHN B. STEWART

Opinion and Reform in Hume's Political Philosophy



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POLITICAL PHILOSOPHY**

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John B. Stewart

PRINCETON UNIVERSITY PRESS

PRINCETON, NEW JERSEY

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PUBLISHED BY PRINCETON UNIVERSITY PRESS, 41 WILLIAM STREET,
PRINCETON, NEW JERSEY 08540
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LIBRARY OF CONGRESS CATALOGING-IN-PUBLICATION DATA

STEWART, JOHN B. (JOHN BENJAMIN), 1924—
OPINION AND REFORM IN HUME'S POLITICAL PHILOSOPHY/ JOHN B.
STEWART.
P. CM.

INCLUDES BIBLIOGRAPHICAL REFERENCES AND INDEX.

ISBN 0-691-08626-5

1. HUME, DAVID, 1711-1776—CONTRIBUTIONS IN POLITICAL SCIENCE
2. HUME, DAVID, 1711-1776—CONTRIBUTIONS IN POLITICAL ETHICS.
 - I. TITLE.

JC176.H9S74 1992 320'.01-DC20 91-35909

THIS BOOK HAS BEEN COMPOSED IN LINOTRON SABON

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OF THE COUNCIL ON LIBRARY RESOURCES

PRINTED IN THE UNITED STATES OF AMERICA

1 3 5 7 9 10 8 6 4 2

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PREFACE

WHEN I BEGAN reading Hume in the 1950s, few studies of his moral and political philosophy were available; at that time scholarly work was focused almost exclusively on his epistemology. Since then, however, not only has Book I of the *Treatise* retained its place as a work of fundamental importance in philosophy, but scholars have gone forward to study Hume's views on "moral subjects"—economics, government, and history. In writing the chapters here presented, I have benefited greatly from books and articles by that large company of scholars who now study eighteenth-century British moral philosophy.

It is a polite, industrious company. To acknowledge here all the obligations I have incurred among its members would be impossible. Suffice it to say that I have profited from many works, perhaps learning more from authors with whom I disagreed—for example, those prominently mentioned in this book—than from many of those with whom I agreed. However, certain scholars must be singled out for thanks—and to do so is a great pleasure—because they participated directly in the writing of this book. Professor M. M. Goldsmith, then of Exeter University, England, and now of Victoria University, Wellington, New Zealand, made perceptive observations on chapters 2, 5, and 6. Professor Russell Hardin, of the University of Chicago, commented constructively on the entire manuscript; he was especially helpful in showing me how best to marshal my argument that Hume was not a conservative. I owe most to Professor David Fate Norton of McGill University. He read the entire manuscript at two stages of its development; on both occasions he proposed some major and many minor changes. I am grateful to these scholars: they prompted important improvements; yet they were content to let me write my own book.

In 1979–1980 when, as a member of the faculty of St. Francis Xavier University, Antigonish, Nova Scotia, I was beginning the research that produced this book, I was assisted by a sabbatical leave award from the Humanities and Social Science Research Council of Canada. With pleasure I record my gratitude.

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**OPINION AND REFORM IN HUME'S
POLITICAL PHILOSOPHY**

INTRODUCTION

ABOUT ten years ago I began to write a few chapters on the politics of Adam Smith. Almost immediately I saw that to prepare myself I would have to revive, and perhaps correct, my knowledge of Hume, on whose moral and political philosophy I had published a book in 1963. Soon my plan changed so that what I had in prospect was two short volumes: one on Hume, the other on Smith. I had in mind an account that showed these two North Britons analyzing the needs of their times and prescribing for them; it was to be lucid and uncomplicated, the kind of account that would help the ordinary reader. Parts of chapters 3, 4, and 6 of the present book were written on that plan; with what success each reader will decide.

First and foremost, Hume was a moral and political philosopher. Having shown in Book I of the *Treatise* that the “moral subjects” deal with beliefs about facts and values and with the results of those beliefs, Hume proceeded in his later writings to examine the origins and reliability of moral and political beliefs. Immediately a question arises: what effect did the prominence of belief in Hume’s epistemology have on his politics? In 1981 David Miller published *Philosophy and Ideology in Hume’s Political Thought*.¹ There is much to be praised about that book, but it is misleading in one fundamental respect: while finding that Hume was a revolutionary in philosophy, it holds that Hume’s political theory is basically conservative, that his theory is an establishment ideology. Miller contends that Hume accepted and defended the social status quo; he married a revolutionary philosophy to an establishment ideology “to yield what is probably the best example we have of a secular and sceptical conservative political theory” (p. 2). Then, in 1984, came Donald W. Livingston’s work, *Hume’s Philosophy of Common Life*, which praises Hume as the originator of the only true political philosophy, conservatism.² In the following year, Frederick G. Whelan published *Order and Artifice in Hume’s Political Philosophy*.³ Although finding elements of liberalism in Hume’s writings, he too presents Hume as a conservative. Hume’s theory, he says, lacks “the common liberal confidence in reason as the source or foundation of the social order” (p. 363). Major differences of approach appear in these three books; however all share, with variations, the nineteenth-century view that Hume’s epistemology led him to conservatism.

¹ Oxford: Clarendon Press, 1981.

² Chicago: The University of Chicago Press, 1984.

³ Princeton: Princeton University Press, 1985.

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That view was stated by J. S. Mill: "This [Hume's] absolute scepticism in speculation very naturally brought him round to Toryism in practice; for if no faith can be had in the operations of human intellect, and one side of every question is about as likely as another to be true, a man will commonly be inclined to prefer that order of things which, being no more wrong than every other, he has hitherto found compatible with his private comforts."⁴ In reaction to these works, I draw together, in chapters 5 and 6, what I hope is a more accurate analysis of Hume's politics. I agree that there is a connection between his epistemology and his politics; my submission, however, is that Hume is liberal, not conservative, in politics.

Hume sought to put moral subjects on "a new footing"; he sought, as the title of the *Treatise* announces, to introduce "the experimental Method of Reasoning into Moral Subjects." In a famous footnote to the introduction of the *Treatise*, he names some of the writers whom he regarded as pioneers of the new approach. In 1980 J. L. Mackie began his book *Hume's Moral Theory* with a chapter dealing with most of those writers, and also with Clarke and Wollaston, exponents of the approach rejected by Hume.⁵ That chapter serves admirably to introduce the reader to the philosophical war into which Hume plunged when he published the *Treatise*. Impressed by that chapter, I undertook to make my own examination of major precursors. I concluded that Grotius and Pufendorf had to be included; without them the need for a "new footing" might not be understood. Although Hume cites Grotius only once in his works and Pufendorf not at all—both are mentioned in an early letter—the content of his political science is much like theirs on many questions; however, as stated, Hume thought that Shaftesbury, Mandeville, and the others were wise to turn to human nature as the basis of moral subjects. Why? What was wrong with the natural-jurisprudence approach? In chapters 1 and 2 of this book, I undertake, first, to show why attempts to derive systems of natural morality from supernatural sources were unsuccessful and, second, to show the nature and promise of the approach taken by Shaftesbury, Mandeville, and so on. These writers, in turn, had their own predecessors, many of them French or classical; however, it is not my business to report on the findings of scholars now hard at work discovering the more remote sources of Hume's famous "new Scene of Thought." Relying on the reader's knowledge of Hobbes and Locke, I make only passing references to those writers, important though they were.

In addition, in those two chapters I call attention to some of the leading

⁴ John Stuart Mill, "Bentham" in *Essays on Ethics, Religion and Society*, ed. J. M. Robson, in *Collected Works of John Stuart Mill* (Toronto: University of Toronto Press, 1969), 10:80.

⁵ *Hume's Moral Theory* (London: Routledge & Kegan Paul, 1980).

topics in public morality dealt with by Grotius, Pufendorf, Shaftesbury, Mandeville, and others and explain briefly the positions those writers took on them. Here we find antecedents of Hume's discussions of the origin and nature of sovereign power, the limits of allegiance, private property, commerce, luxurious living, and the management of religion. We see, for example, that Hume's analysis of justice as a negative virtue was not new. We see, also, that certain concepts—humanity, avarice and ambition, benevolence, sympathy, the impartial observer, the “wise and virtuous man”—had been defined and given currency long before Hume (and Adam Smith) employed them. We will understand better what Hume wrote on moral subjects if we see him as a bold, new combatant in an old war and know something of how that war stood when he ventured upon the field.

In 1975 the civic humanist tradition was given new prominence by J.G.A. Pocock in *The Machiavellian Moment*.⁶ Since then much ink has been spread in an effort to show that this tradition was pervasive in British and American thought during the eighteenth century; writer after writer, including Hume and Smith, has been assayed for civic humanism. I doubt that it is possible to unravel the political discourse of the eighteenth century so that party spokesmen confidently can be labeled as belonging to one tradition and as opposed to another; there will be points of agreement and overlapping. What we find, after investigation, is that although Hume based the principles of civil society on a natural, not a supernatural, foundation, the content of his political theory is far closer to natural-law theory than to civic humanism.

That Hume, although a man of the enlightenment, was antirationalist is a dogma of orthodox intellectual history. But was he? Shaftesbury and Hutcheson, for different reasons, had sought a natural basis for morals; they had turned away from both the contemporary versions of natural law, for both, the rationalist and the voluntarist alike, taught, not natural law, but supernatural law. Both versions sought to derive the content and the obligation of natural law from God, from either His reason or His will. Hume followed Shaftesbury and Hutcheson. When we say that Hume was antirationalist, do we mean that he was opposed to the rationalist version of theological morality or to the voluntarist version of theological morality? Or both? And is it antirationalist to be opposed to theological morality in either version, or both?

Having found both theological versions of natural law defective, Hutcheson contended that the ends human beings seek are appointed by the passions; however, he never said that reason is unimportant in the

⁶ *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975).

selection of the means by which those ends are to be sought; indeed, he attributes the differences in morality around the world to differences in the advance of reason. Again, Hume follows Hutcheson; but he differs from him in that he emphasizes the importance of reason far more strongly. Reason, which distinguishes human beings from beasts, is the cause of civilization. Is this antirationalism? Moreover, Hume is quite ready to uphold natural law and natural rights—insisting, obviously, on naturalistic, not theological, definitions. He believed that the opinion that there are natural laws and thus natural rights is well founded. Notwithstanding that its constitutional lawyers may announce that a government has absolute power, and that its priests may teach that it has such power by divine right, no government ought to ignore, or to be permitted to ignore, those natural laws and rights. Certain articles of Magna Carta, we are told in the *History of England*, provide for “the equal distribution of justice, and free enjoyment of property; the great objects for which political society was at first founded by men, which the people have a perpetual and unalienable right to recal, and which no time, nor precedent, nor statute, nor positive institution, ought to deter them from keeping ever uppermost in their thoughts and attention” (*H.*, 1:445). Again, in *An Enquiry concerning the Principles of Morals*, we are told, “Where a civil law is so perverse as to cross all the interests of society, it loses all its authority, and men judge by the ideas of natural justice, which are conformable to those interests” (*E.*, 197n).

Was Hume a conservative or a liberal? As he himself warns, there is nothing to be gained by mere verbal disputes: the words “conservative” and “liberal” do not have metaphysical meanings. Nor are the political parties that call themselves Conservative and Liberal vested with authority to define those words conclusively: parties took those names because the words already had achieved public meanings. When writers such as Miller, Livingston, and Whelan state that Hume was a conservative, we know immediately fairly well what they are saying; although each uses the term “conservative” in his own way, which he makes clear, all are in basic agreement. My submission is that Hume was not what they call conservative; I call him a liberal. I use the word broadly, to refer to those who thought that major reforms were highly desirable in the United Kingdom in the late-eighteenth and early-nineteenth centuries, and I have certain economic and political reforms—not socialist, Marxist, or neoliberal reforms—in mind. When I say that Hume’s political principles are liberal, I trust that nobody will take me to mean that he was an advocate of democratic government as practiced in the United Kingdom, or the United States of America, over two centuries after his death.

Clearly, Livingston is correct in asserting that Hume denies the autonomy of reason, and that Hume requires that those who would be true

philosophers try to understand the status quo. But Livingston does not stop there; he attributes to Hume a far more specific position, a truly conservative position. For Hume, he says, the status quo is legitimate. Hume shares "the conviction that established order has a sacred character and that this sacred character constitutes part of the authority of that order" (p. 330). We are to respect "the sacred character of common life" (p. 334). Improvements in the established order are possible, but given the subservience of reason, they can be made only pragmatically, only within "the narrative order." Where Livingston uses the expression "a narrative order" in explaining that for Hume the social and political order—of England, for example—is historical or temporal, not logical like a geometric figure, Whelan writes of "order and artifice" to make much the same point. Experience "in the form of history and tradition . . . is authoritative as a source of moral and political values. Just as mental habits unify experience into orderly cognitive patterns, rendering it a reasonable guide to the future, so also does social custom, embodying collective convictions of right, underlie the artificial rules and other continuities that constitute order in our social experience" (p. 322).

The Hume I read is far bolder. He has confidence in the philosopher's ability to discover the basic principles of economics and politics. True, he delights in pulling the props out from under the projects of those who, dreaming of antiquity, would reshape England as a patriotic republic. But, what is more revealing, he is far from reluctant to denounce contemporary laws and policies as bad—witness, his essay "Of Public Credit." He is ready to denounce as "vulgar" and "barbarous" certain maxims of those set in authority, sparing neither kings nor prime ministers. He is ready to attack entailed landed estates, the historic rights in Parliament of both the spiritual and the temporal lords, and the historic rights of electors. This hardly shows Burkean reverence for the established order.

It is my submission that Hume was out to reform moral subjects, not only in theory, but in practice. The *Treatise* is indeed "an attempt to introduce the experimental method of reasoning into moral subjects." He would have philosophers turn from "airy sciences" and apply themselves diligently to "the proper province of human reason." If they would but do this, no longer would they be dismissed as noisy "metaphysicians"; rather, they would be seen as persons useful in the business of life. Hume's great purpose was to advance moral subjects—not simply to gratify curiosity, but, carrying them nearer their perfection, to render them subservient to the genuine interests of society. To be successful, his attempt required two major advances in thought. First, the fact had to be established that reasoning has to do, not with the good (ends), but with the true (knowledge of causes, both permanent and temporary). Second, the correct method to achieve knowledge in the moral subjects had to be

adopted. Knowledge about physical and moral subjects alike, acquired through either experience or education, he calls "belief," thus recognizing that, unlike fictions of the imagination, such knowledge deals with probabilities and can be either true or false, and also that, unlike mathematical knowledge, it is not demonstrable. Hume holds that we all rely on beliefs, for example, that when launched a well-built ship will not sink, that the end of international trade is the accumulation of gold, that good government requires that all governors be elected. Many of our beliefs (or opinions) are incorrect. Consequently, what is needed is a way to improve our beliefs; what is needed is the experimental method of reasoning, which combines adequate *experience* and careful *reflection*. Thereby we can test old beliefs for accuracy and acquire accurate new beliefs.

The picture of Hume clinging timidly to a raft of custom and artifice because, poor skeptic, he had no alternative, is wrong. He was confident that by experience and reflection philosophers can achieve true principles. He must not be understood as asserting that radical criticism of what exists is impossible. He opposes, not just one, but two mistaken views. The first of these exalts reason above the feelings; it holds that reason can discover immutable moral laws, laws comparable to theorems in geometry, and thus can prescribe how people ought to live and how societies ought to be organized. The other wrong view is that since the pretences of reason are false, we have no choice but to rely on our unexamined beliefs, on beliefs produced perhaps by inadequate experience, faulty education, false analogy. We should recognize, Hume argues, that some of our beliefs are more dubious, far less reliable, than others. We need to improve our beliefs by deliberate resort to extensive experience and by engaging in profound reflection. This is the experimental method of reasoning; by using it we can liberate ourselves from an inheritance of false opinion. While Hume insists that moral subjects cannot be modeled on mathematics, he never states that we cannot improve and correct our beliefs (opinions) about moral subjects. The achievement of sounder opinion is the essential first step in the reform of laws, policies, and constitutions, for all these are based on opinion.

To say this is not to say that civil society can be reordered fancifully. The reformer must understand the reality he would reshape; he must discover the causes, some constant, some historical, which combined to create the present order. Some of those causes are natural facts; for example, the soil and insular location of England. Some are based on human passions; for example, the desire of the common man to improve his condition. Some are historical; for example, at different times the populace was highly patriotic, highly superstitious, indolent, industrious. Some are beliefs originated by particular interests; for example, the beliefs concerning the wool trade, nonconformity to the established religion, the taxation of

colonies. Some of the causal factors are beyond human control. Some can be resisted, but only by violence. Others can be changed. The purpose of introducing the experimental method of reasoning into moral subjects is to bring about reform, change for the better, not simply minor improvements made incrementally by drudging empiric practitioners, but major improvements based on scientifically known principles.

To say that Hume held that there are principles that if followed will make society better—the rules of property, the sanctity of contracts, the free operation of domestic and international markets, the rule of law, religious toleration, and so on—is not to deny the assertion made by some writers that Hume would have denounced the disorder and violence of the French Revolution. He was fully aware of the danger of making radical changes too rapidly, so rapidly that the whole structure of the society is put in jeopardy. It is one thing to say that we must rely on historic beliefs and ways because there are no principles; it is another to say that the realization of the principles of civilized society requires skill and patience. It is not Burke's condemnation of the excesses of the French Revolution which makes him a conservative; rather, it is his insistence that we must rely on prejudices, inherited rights, custom, religious authorities, and the presumption that men of great property are wise and virtuous. In sharp contrast, Hume finds no evidence pointing to the conclusion that in politics whatever is established is best. In any case, Hume was focusing on the economic and political situation in Great Britain in his own day; he provides remarkably little analysis of the social and political situation of contemporary France.

When I began to write this book, I shared the view—the common view, I think—that Hume was neutral in terms of the party divisions of his age. I now doubt that this is accurate. Clearly, he accepted the mythology of neither English party and believed that both liberty (the Whig principle) and authority (the Tory principle) are essential to good government. In terms of Scottish politics, he was not a Jacobite, although many of his friends were: he accepted the Union of 1707 as progressive and argued fervently against allegiance to the Stuart line. Nor was he a Tory—he said that for historical reasons, there were no true Tories in Scotland. In other words, Hume was a Scots Whig. But what kind of Scots Whig? Writing in 1747 on behalf of his friend, Archibald Stewart, Provost of Edinburgh, 1744–1746, who had been charged with failing to defend the city against the Young Pretender, Hume observed that there is a vast difference between “political Whigs” and “religious Whigs.” He praised the former; he decried the latter. Thus he revealed that he was neither unable nor unwilling to distinguish publicly between good and bad Whigs. Those whom he denounced were members of the *Squadron Volante*, a Country interest composed of intermarried Lowland families, staunchly pro-

Union, fiercely anti-Jacobite, with fundamentalist presbyterian roots. Those whom he praised were their rivals, the Argathelians, members of the interest led after 1743 by Robert Walpole's close friend, Archibald Campbell, the third Duke of Argyll.⁷ Moreover, it appears that Hume's friends knew where he stood, at least after he had explained and then corrected his essay on Walpole—written perhaps under the influence of James Oswald, William Mure, and Archibald Stewart, supporters from 1740 to 1742 of the second Duke of Argyll, who had broken with Walpole—and were prepared to recommend and support him for private and public posts, although his views on some matters were scandalous. This interpretation helps explain Hume's attitude to Patriots.

If one did not denounce the Hanoverian kings as usurpers, how could one justify opposition to their governments? From 1726 Robert Walpole's Whig rivals found their answer in Patriotism. They resorted to civic humanism: England's balanced constitution was fundamental to virtue and liberty; by places and money (with the standing army in reserve), a faction, headed by Walpole, had enslaved the country; the Patriotic task was to end robinarchy, reestablish the constitution, heal all partition, revive virtue. As the prophet of Patriotism, Bolingbroke had two great problems: first, to persuade Country Whigs and Court-at-heart Tories to cooperate year after year as an organized, industrious opposition to Walpole; second, to find true believers in the Patriotic cause, as distinct from politicians whose Patriotism fell away as they kissed hands. Very early

⁷ The Argathelian interest had had its origins among the supporters of the Junto (or Court Whigs) during the reign of Queen Anne. It was the party of John Campbell, second Duke of Argyll, and his brother, Archibald Campbell, Earl of Islay. After 1721, when Robert Walpole returned to office, as First Lord of the Treasury, the Argathelians supported him with cooperative peers in the House of Lords and loyal members in the House of Commons; in return, he strengthened them by accepting their nominees for places and pensions, at the expense of the other Whig faction, the *Squadron Volante*. The *Squadron* had been formed in 1704 as an interest independent of the Court Whigs; the Tories named them "the Flying Squad" because of what the Tories saw as their unpredictable, opportunistic maneuvers in that early period. From 1725 until 1761, the Argathelians ordinarily were the dominant interest in Scottish politics. In 1739, the second Duke broke with Walpole; this contributed greatly to Walpole's fall in 1742. In 1743 the second Duke died and Islay succeeded his brother. From 1742 to 1746, the *Squadron* was dominant. In 1746, after the *Squadron* had demonstrated its inability to prevent and then to cope with the Rebellion of 1745, Argathelian influence was reestablished at Westminster, but at a lower level and less exclusively than when Walpole was the minister. The third Duke of Argyll (Islay) died in 1761. See Eric Cregeen, "The Changing Role of the House of Argyll in the Scottish Highlands," and J. M. Simpson, "Who Steered the Gravy Train, 1707–1766?" both in *Scotland in the Age of Improvement*, eds. N. T. Phillipson and Rosalind Mitchison (Edinburgh: Edinburgh University Press, 1970), pp. 5–23 and 47–72. Also, Alexander Murdoch, *'The People Above': Politics and Administration in Mid-Eighteenth-Century Scotland* (Edinburgh: John Donald Publishers Ltd., 1980) and J. S. Shaw, *The Management of Scottish Society 1707–1764* (Edinburgh: John Donald Publishers Ltd., 1983).

Hume began to express scorn for those who proclaimed themselves Patriots.⁸

Hume must be read as a man of his own country and times. Both his praise of political Whigs and his denunciation of religious Whigs are significant. In 1707, only four years before his birth, Scotland finally, after centuries of disorder and poverty, so he insisted, had set itself on the road to becoming a genuine civil society. The nature and value of such a society—based on justice, the rule of law, and obedience to the established government—had to be driven home to all who longed for “the good, old days.” That was one item on his agenda. Another related to false religion. The pernicious effects of superstition and enthusiasm show that “the corruption of the best things produce the worst.” The Reformation had shattered the monolithic authority of Rome, but that beneficial result did not show that Protestantism *per se* was a force for civilization. Indeed, some of its extreme versions were at least as bad as Roman Catholicism at its worst. For example, covenanting Calvinism, the fount of religious Whiggery in Scotland, with its special blend of enthusiasm and superstition, had contributed greatly to the political barbarism under which the Scottish people had suffered before 1707. Nor was it dead, as Francis Hutcheson and his liberal colleagues at Glasgow knew.

It was no accident that Hume came to speak well of Robert Walpole. Hume saw the need for authority, but he was no Tory; divine-right kings and bishops and the old order in society were things of the unlamented past. Nor was Hume a Patriot: the Patriotic indictment of Walpole was

⁸ In his chapter, “Pitt and Patriotism,” John Brewer writes, “Throughout the Hanoverian period oppositions sought to clothe their attacks on administration in patriot garb. By the 1720s the term ‘patriot’ had become virtually synonymous with that of ‘member of the opposition’. During the 1730s, patriotism, in the hands of Lord Bolingbroke, became not only one of the chief means of legitimating opposition, but also a programme if it should win power.” *Party Ideology and Popular Politics at the Accession of George III* (Cambridge: Cambridge University Press, 1976), p. 99. Both the Patriotic indictment of Walpole and the defence made by Walpole and his propagandists—the background of the essays on political subjects published by Hume in 1741—are analyzed by Isaac Kramnick in *Bolingbroke and His Circle: The Politics of Nostalgia in the Age of Walpole* (Cambridge: Harvard University Press, 1968), pp. 111–87. Hume proposed—in the preface (p. iv) to the first edition of his *Essays*—to stand above the battle: “[T]he Reader may condemn my Abilities, but must approve of my Moderation and Impartiality in my Method of handling POLITICAL SUBJECTS. . . . Public Spirit, methinks, should engage us to love the Public, and to bear an equal Affection to all our Country-Men; not to hate one Half of them, under Pretext of loving the Whole.” For a more cynical interpretation of Bolingbroke’s purpose than that given by Kramnick, see Quentin Skinner, “The Principles and Practice of Opposition: the Case of Bolingbroke versus Walpole,” in *Historical Perspectives: Studies in English Thought and Society in Honour of J. H. Plumb*, ed. Neil McKendrick (London: Europa Publications, 1974), pp. 93–128. A general survey of the period is to be found in B. W. Hill, *The Growth of Parliamentary Parties 1689–1742* (London: George Allen & Unwin Ltd., 1976), pp. 189–226.

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based on bad history, a wrong appreciation of the constitution, a false concept of virtue; moreover, the extremism of most of the Patriotic attacks on Walpole, especially those fortified with religious Whiggery, bespoke much of folly, cant, and knavery, and little or nothing of moderation, wisdom, and honesty.

THE ARGUMENT BEFORE HUME:

THE LEGALISTS' DILEMMA

DURING David Hume's formative years, Scotland was making a troubled new beginning. The union with England, from which so much had been hoped, seemed to have paid off badly. Scotland had given up her independence. What had she gained in return? Besides, by uniting with England, Scotland had accepted the Act of Settlement, enacted by the English Parliament in 1701, appointing the Hanoverians as Anne's successors. Did not the ancient Scottish royal family, the Stuarts, have rights not lightly to be set aside? Yet another cause of division was religion. In 1690 the Scottish Parliament had sought to end the religious turmoil which had ravaged the country for generations by determining that the Church of Scotland would be presbyterian, not episcopalian. That decision closed the fighting phase of one religious controversy; now another controversy came to the fore. Would the Church of Scotland remain true to fundamentalist Calvinism? Could the inroads of rationalist theology be stopped? In 1696 Thomas Aikenhead had been convicted of blasphemy; although he was the last person put to death in Scotland on account of religion, the defence of the old doctrines was not neglected during Hume's lifetime. From 1714 until 1729, John Simpson, professor of theology at Glasgow, was harassed for heresy. Archibald Campbell, professor of church history at St. Andrews, author of *A Discourse Proving that the Apostles were no Enthusiasts*, was charged with heresy in 1736, as was Francis Hutcheson in 1738 and William Leechman, professor of divinity at Glasgow, in 1744. Hume himself was to be charged in 1756. And there were other questions, more mundane but still important—questions relating to the economy and foreign policy. By the union, Scotland had accepted England's trade laws, England's colonial ambitions, England's continental policy. She had committed herself to provide men, and money too, for the struggle against the evil kingdom, France—represented by religious Whigs as an imperialist slave state—on the continent, in North America, in India. Were the trade, colonial, and foreign policies of the government at London, now Scotland's government, sound and wise, or ill founded and foolish?

By the time he was thirty, Hume was deep into moral philosophy. He had worked out both his theory of ends (the good) and his theory of

means (the true). In addition, he had made up his mind on politics and had made a beginning in economics. New prospects were being opened up in those fields: the discoveries made by the natural philosophers had revealed that much could be learned about nature by experimentation; their successes seemed to promise comparable results from the application of the experimental method to the moral sciences. Moreover, no longer did young Scots have to go abroad to study the theory of society and government: Gershom Carmichael at Glasgow was teaching from and writing on Pufendorf's magisterial works. Down in London, Bernard Mandeville had mounted a rousing attack on conventional wisdom, arguing that England would prosper and grow rich even if all her people did not strive for the good of the nation, or rather, especially if they did not do so. From the Molesworth circle at Dublin the liberal ideas of Molesworth's friend, the third Earl of Shaftesbury, were carried into Scotland by Francis Hutcheson, who proceeded to develop and to teach, with far-reaching consequences, a theory of morals based on neither religion nor reason. The shift to a theory of morality based on human nature was confirmed and advanced by no less a figure than the Right Reverend Joseph Butler.

Aside from sermons and books expounding Holy Writ, much of what had been written about the moral sciences in the century before Hume's birth had been the work of writers on natural jurisprudence. This line of endeavor had a long history, but it had been given a new start in Protestant Europe by Grotius. Its goal was to develop a science of society—property, government, law, trade, international relations, and so on—which depended as little as possible on divine revelation. But the authority of natural law was still in dispute. While there was agreement on many specific teachings, the nature of the authority behind those teachings was hotly disputed. Why do we, why should we, feel obliged to heed natural law? The cardinal principles had not been settled. For Hume the challenge was irresistible. He would, first, put the moral sciences on their proper basis. He would then proceed to establish the fundamental principles. Hume's first work, *A Treatise of Human Nature*—Books I and II published in 1739 and Book III in 1740—is subtitled, "An Attempt to introduce the experimental Method of Reasoning into Moral Subjects." Another subtitle, especially apt for Book I, might have been, "A Study of how the Truth may be discovered and made to serve the Good." Such a subtitle would have served to remind us that not only does the *Treatise* explain the correct method by which to advance knowledge, but it applies that method to the moral sciences.

The fact that the *Treatise* was not greeted with acclaim did not lead Hume to abandon his enterprise. His great work had failed, he reassured himself, not because the project was ill conceived, but because he had

gone to the press too soon, while the book still was flawed by youthful gaucheries, defects far more of presentation than of substance. In 1741 he brought out another book, and in 1742 yet another. His concern still is moral subjects. The presentation now, however, is very different: he writes lucid, succinct essays. Presented in this way, the science of politics would not, he hoped, prove too demanding for the rulers of Britain. Thus was launched his career as a politician, an economist, an historian—a career which was to help make a revolution in the moral sciences.

Hugo Grotius

My purpose in this chapter is to indicate the main strands of the argument into which Hume plunged when he began to write *A Treatise of Human Nature*. My focus is on the warp, the continuing strands, not the woof added by writers dealing with matters to the fore at particular times and places. I begin with Grotius because, first, he introduced natural-law thinking into Protestant Europe, and, second, because his works, especially *De Iure Belli ac Pacis* (1625), exerted a powerful influence on moral and political thought in western Europe, and beyond, for many generations.¹ It could be said that Grotius set up the loom at which Hume's predecessors, and then Hume himself, were to work. Thomistic natural-law theory was based on the concept of the just (righteous) society. It asked what structures, relationships, and acts are just (or right); that is, just (or right) for rational beings living in society. The ends or goals of certain activities and institutions were regarded as self-evidently reasonable. They were required by reason—by practical reason, not theoretical reason—and were goods to be sought and promoted by all the members of the society, both severally and collectively. Every member of a society was seen as obliged to work for those goods—obliged in a way analogous to the way a subject is obliged to obey the laws of a legitimate ruler. He was obliged, it was said, to obey the “laws of nature.” This term, “the laws of nature” (or “natural law”), was used to distinguish this body of

¹ Grotius used concepts developed over centuries and brought together by writers such as Molina and Suárez. On the precursors of “modern natural law,” see Quentin Skinner, *The Foundations of Modern Political Thought* (Cambridge: Cambridge University Press, 1978) 2:113–78. One factor that gave Grotius his great influence was the fact that though writing primarily for Protestants, who took God's commands as promulgated in the Bible as their chief guide, he drew upon scholastic and classical sources. Thus he achieved relevance in a religiously divided Europe. The view that Grotius inaugurated modern natural-law philosophy was introduced by Jean Barbeyrac in his prefatory discourse on the history of the science of morality, prefixed to his translation into French of Pufendorf's *The Law of Nature and Nations*. Grotius was given the credit for founding their discipline by both Adam Smith and Thomas Reid.

law from Christian divine law, the will of God made known to His own people by particular revelation at various times after Creation, as by the Ten Commandments and the Sermon on the Mount. Also, it was called “natural”—following the Stoics—to distinguish it both from the civil law, made by the rulers of particular cities and nations, and from conventional rules, known as “laws of nations,” creatures of time and custom, adopted for the conduct of trade, treaties, and the like, between neighboring nations. Since the ends or goals of natural law were set by human nature, that is, were based on what is good for human beings, they were valid in every nation. For St. Thomas Aquinas, natural law was the moral constitution of all humankind. All laws made by human governors were subordinate to it. Only so far as such laws were consistent with natural law were they valid; if *ultra vires* in either form or content, they were nullities.

Given the ambiguities of the terms “natural” and “law,” it was easy for some writers to think of natural law as basic principles shared by all animals, rational and brute alike. Grotius, in contrast, insists that “natural law” applies only to rational, self-disciplined beings. It was easy also for others to think of natural law as the principles of the primitive or “natural” state, principles that continue to be valid and fundamental, but which, like the bedrock shared by a cluster of towering buildings, have been left far below and behind by the creators of advanced civilizations; thus the rude state of nature could be compared unfavorably with the glories of polite society. Grotius, in contrast, contends that highly developed cultures are certain to have a far better understanding of natural law than primitive peoples.

Like St. Thomas Aquinas, Grotius builds on Aristotelian principles. First, contrary to Carneades, man by his nature is a social animal. Among the traits that distinguish man from all other animals “is an impelling desire for society, that is, for the social life—not of any and every sort, but peaceful, and organized according to the measure of his intelligence, with those who are of his own kind; this social trend the Stoics called ‘sociableness’. Stated as a universal truth, therefore, the assertion that every animal is impelled by nature to seek only its own good cannot be conceded.”² Second, while other animals show gregarious instincts, mature men are able to act for the good of their society under the guidance of reason. Among animals, man alone has the ability to speak. “He has also been endowed with the faculty of knowing and of acting in accor-

² Hugo Grotius, *On the Law of War and Peace*, translated by Francis W. Kelsey for the Carnegie Endowment for International Peace (Oxford: Clarendon Press, 1925; reprinted Indianapolis: The Bobbs-Merrill Company, Inc., n.d.), p. 11. When Hume was completing the *Treatise* a notable English translation of *De Iure Belli ac Pacis* was published: *The Rights of War and Peace* (with Barbeyrac’s notes), translated by Basil Kennet (London: for W. Innys and R. Manby, J. and P. Knapton, O. Brown, T. Osborn, and E. Wicksteed, 1738).

dance with general principles." Here, then, is the great natural end: the preservation, not of mere society, but of high-quality society, of society at the level that fosters human life of the highest quality. Here also is the special means: well-framed judgments as to what is necessary for such a society. Whatever is contrary to what is judged necessary as the best means to the end is understood to be "contrary also to the law of nature, that is, to the nature of man."³ The law of nature prescribes the characteristics of just, righteous, or lawful society. On this view, society is essential to the good life. Human beings need to associate with others. The just man is the man who in those of his activities that involve others does not violate, by either commission or omission, the rules of justice (righteousness). Those rules are the basic constitution of society. Where those rules are badly neglected there is little or no genuine society. Grotius accepts this Aristotelian-Thomistic position. However, it is crucial to notice that what he uses most in showing what is right and wrong in war and peace is not the concept of righteous society within and among nations, but the concept of rights. Instead of moving from just (right) society to the roles and stations of the participants in such society, he proceeds from roles or stations, from the basic or natural rights of the participants. Clearly, his assumption is that when the rights of all the participants have been integrated, the result will be a just (right) society. However, from an Aristotelian-Thomistic viewpoint, the peril of proceeding thus is that the natural rights of the participants may be so defined that a genuine society will be difficult, perhaps even impossible: if societies are thought of in terms of an organic analogy, as they were in that tradition, to define the rights of the several members of a projected society abstractly, without taking their different roles into account, might produce a badly deformed, perhaps a fatally deformed, society.

Grotius's chief concern is with the basic rules that ought to be followed by sovereign states—persons, in international law—in their relations with one another, but since those rules have much in common with the rules that ought to be applied between private persons, he finds that he must begin by explaining all the main aspects of moral relationships, that is, the origin and status of private property, the various standard relationships among persons, the origin of government, the nature of sovereignty, and so forth. As a result, *De Iure Belli ac Pacis* is a general treatise on moral and political theory.

Grotius opens by explaining his title. Is it ever right to resort to violence (war) between individuals or states; if so, when? Are there rules as to when and how war may be waged lawfully (rightfully)? Only Christians are subject to Christian divine law. The laws of nations do not pretend to

³ *On the Law of War and Peace*, pp. 12–13.

be more than agreed-upon practices adopted for the sake of convenience. Well then, setting aside both divine law and the laws of nations, is it still possible to say that some acts of violence are wrong, while others are right? Is resort to war ever lawful? Grotius's answer is affirmative: there are laws of natural justice, based on the requirements of society; those rules are to be upheld and defended against those who act unlawfully (unjustly). "For law," says Grotius, "in our use of the term here means nothing else than what is just, and that, too, rather in a negative than in an affirmative sense, that being lawful which is not unjust. Now that is unjust which is in conflict with the nature of society of beings endowed with reason."⁴

What then is essential to rational society? First, there are certain standard relationships, such as those of parent and child, master and servant, brother and brother, citizen and citizen: acts consistent with those relationships are right; discordant acts are wrong. Second, there are the rights of persons. The term "rights" here refers to what a person may justly claim in society either as an *aptitude* or as a *power*. An aptitude right is based on suitability or worthiness, that is, merit. Aptitudes, says Grotius, are the subject of "attributive justice"—what Aristotle called distributive justice. Aptitude rights are *imperfect*; they are claims to good works to be done by others. In contrast, a faculty right is a power. Rights of this kind are the subject of "expletive justice"—or what Aristotle called commutative justice—and are *perfect*. While Grotius does not dismiss distributive justice as unimportant, it is powers—that is, perfect rights or rights properly so called—that he emphasizes.

A legal right (*facultas*) is called by the jurists the right to one's own (*suum*); after this we shall call it a legal right properly or strictly so called.

Under it are included power, now over oneself, which is called freedom, now over others, as that of the father (*patria potestas*) and that of the master over slaves; ownership, either absolute, or less than absolute, as usufruct and the right of pledge; and contractual rights, to which on the opposite side contractual obligations correspond.⁵

Rights of this kind—true natural rights—must be respected both within each nation and between nations.

In many instances, Grotius tells us, we ought not to insist on all that we may take as a matter of perfect right; rather, we ought to moderate our claims and exactions by reason of *humanity*. We must remember that "the rules of love are broader than the rules of law." A rich man who, intent on getting everything owed him, deprives a needy debtor of all his

⁴ Ibid., p. 34.

⁵ Ibid., pp. 35–36.

small possessions, "does nothing contrary to his right according to a strict interpretation"; yet he is guilty of heartlessness. It is honorable to practice humanity.⁶ However, since Grotius finds that even the perfect rights are being wantonly violated by murderers, dishonest traders, and other criminals, while sovereigns are told by skeptics that might is right, what he emphasizes is perfect rights, rights relative to which acts can be denominated simply either right or wrong. So basic, indeed essential, to society is respect for these rights that Grotius feels obliged to show exhaustively that Christians have a duty to enforce them and to punish wrongdoers. Christ was not a pacifist. When he spoke of loving enemies, sheathing the sword, turning the other cheek, and the like, it was not his purpose to leave society—life, liberty, property—defenseless against murderers, robbers, and other wrongdoers; rather, he was instructing his followers not to exaggerate trifling offenses.⁷

Natural law, Grotius submits, contains all the rules required for the maintenance of society. Some of the rules are provided immediately: natural law confers certain well-defined rights—to life, liberty, chastity, and so on—and acts violating these rights are wrong. Some rights may be forfeited or restricted as a result of criminal misconduct, so that imprisonment, servitude, even death are just penalties. Moreover, where the defense of his natural rights has not been transferred to civil authorities, every person has the right to resist and punish those who invade his rights. Other rules are provided mediately: on certain matters, the law of nature is silent; relative to such matters, a society lawfully may erect civil institutions and make civil rules. If this has been done rationally, the principles of natural law will support the operation of those institutions and those subordinate rules; for example, to disobey a good civil law would be wrong under natural law.

The most notable example of an artificial institution of this kind is property. In early times, when life was simple, there was no such thing as property; rather, each person simply took whatever goods he needed, and without wrong, for God had conferred on humankind in general a right to use those goods. And it would have been possible to perpetuate that primitive state (of community of ownership) if people had been bound together by mutual affection, as were the early Christians, or had been satisfied with great simplicity, as were certain tribes in America; but this was not to be. Eventually, as a result of population pressure and an increase in productive skills, it became desirable to initiate a new kind of rights: those of property. Initially people "divided off countries, and possessed them separately." Later the flocks and herds, and still later the pas-

⁶ *Ibid.*, pp. 759–60.

⁷ *Ibid.*, pp. 20, 70–81.

tures and arable lands were divided among the families.⁸ All this was accomplished by agreement. We can assume, Grotius tells us, that there must have been “a kind of agreement, either expressed, as by a division, or implied, as by occupation. In fact, as soon as community ownership was abandoned, and as yet no division had been made, it is to be supposed that all agreed, that whatever each one had taken possession of should be his property.”⁹ Subsequently, property rights are acquired by the rules of occupation, and so forth. Thus we see that although property is not an institution prescribed by natural law, it is a valid institution. It follows that theft is wrong; indeed, under the rules of simple expletive justice, we have a perfect right to kill robbers. Since natural law requires that parents support their children, once property has been introduced, the first right of succession is in the children.¹⁰

In a sense, property is simply an arrangement for the harmonious and efficient management of some of the goods given by God to all humankind collectively; it is neither all-inclusive nor ultimate. First, there are things—the open sea, for example—that cannot be appropriated; these things remain under the primitive common ownership. Second, in situations of extreme need, “the primitive right of user revives, as if community of ownership had remained, since in respect of all human laws—the law of ownership included—supreme necessity seems to have been excepted.” Nor is this simply a matter of charity: “The reason which lies back of this principle is not, as some allege, that the owner of a thing is bound by the rule of love to give to him who lacks; it is, rather, that all things seem to have been distributed to individual owners with a benign reservation in favour of the primitive right.”¹¹ Third, there is a natural right to innocent passage, for both persons and merchandise, by such land and water routes as are under the dominion of a city or nation; otherwise, one of the great ends of society, namely commerce, would be restricted. Here Grotius quotes Libanius: “God did not bestow all products upon all parts of the earth, but distributed His gifts over different regions, to the end that men might cultivate a social relationship because one would have need of the help of another. And so He called commerce into being, that all men might be able to have common enjoyment of the fruits of earth, no matter where produced.”¹² Fourth, the primitive right to acquire goods applies even within a property system; this means that obstacles

⁸ *Ibid.*, pp. 186–89. Hume cites Grotius’s explanation of the origin of private property, in *Enquiry* II, p. 307n.

⁹ *Ibid.*, pp. 189–90.

¹⁰ *Ibid.*, pp. 271–72.

¹¹ *Ibid.*, p. 193.

¹² *Ibid.*, pp. 199–200.

hindering the exchange of goods on mutually acceptable terms are not to be raised by either law or conspiracy.¹³

Natural law requires that perfect promises—those that conform to all the requirements of a genuine promise—be kept meticulously. Thus is provided the basis for the institution—based on agreed reciprocity—known as “contract.” Contracts are inviolable. Natural law requires that they be fair, that is, that the goods or services exchanged be of equal value in the eyes of the contractors and have no hidden flaws or defects.¹⁴

Just as there can be society without property, society is possible without civic governance; however, since civic governance is not prohibited by natural law, it is permissible for a multitude to band together as a distinct society and then to establish a sovereign. The members of the society may lodge sovereignty in the whole society, or they may transfer it to some distinct person or body. “That power is called sovereign whose actions are not subject to the legal control of another, so that they cannot be rendered void by the operation of another human will.”¹⁵ Similarly, natural law does not pronounce on the legality of forms of government. This means that a people is free to establish whatever form it wishes; it may even establish an absolute monarchy.¹⁶

From time to time Grotius reminds us of the fact, noticed above, that there are natural-law obligations that lie outside the area of perfect rights; in addition, Christians are under the divine laws, by which the will of God was revealed to them in the form of explicit commands. We may decide, for example, that it would not be right (according to divine law) to exercise our natural-law right to kill a particular robber; however, if we kill him, his friends cannot expect to have us convicted in any human court. The members of society have rights as human beings, as owners, and as contractors. If they have set up a government, they will have the rights that go with their unequal places in the civil constitution. Quite apart from civil laws, all others are under the natural-law obligation to respect those rights. If a right is not respected, the injured party (in the absence of civil remedies and restrictions introduced by civil law) has a right to punish the wrongdoer.

The basic rule is this: preserve society. This end can be advanced in various ways, but above all by preventing and punishing offenses against perfect rights. Now, are we to act in conformity with the law of nature because conformity is commanded by God? This was a position Grotius wished to avoid, for the more dependent the law of nature was on Christian religion, the more its authority was put in question by contemporary

¹³ Ibid., p. 203.

¹⁴ Ibid., pp. 346–50.

¹⁵ Ibid., p. 102.

¹⁶ Ibid., pp. 103–4.

attacks on religion. He wished to show that the requirements of natural-law righteousness are binding in all times and places regardless of the prevailing strength of religious beliefs.¹⁷ “The law of nature,” says Grotius, “is a dictate of right reason, which points out that an act, according as it is or is not in conformity with rational nature, has in it a quality of moral baseness or moral necessity; and that, in consequence, such an act is either forbidden or enjoined by the author of nature, God.”¹⁸ God commands what natural law requires; He forbids what is wrong according to natural law. However, we must not conclude that the content of natural law results from God’s will. To do so would be to confuse divine law and natural law: the former “does not enjoin or forbid those things which in themselves and by their own nature are obligatory or not permissible, but by forbidding things it makes them unlawful, and by commanding things it makes them obligatory.”¹⁹ In contrast, the law of nature is based, not on will, but on reason. Indeed, says Grotius, in his most famous sentence, “What we have been saying [about things ‘by their own nature’ either right or wrong] would have a degree of validity even if we should concede that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to Him.”²⁰ Later he says,

The law of nature, again, is unchangeable—even in the sense that it cannot be changed by God. Measureless as is the power of God, nevertheless it can be said that there are certain things over which that power does not extend; for things of which this is said are spoken only, having no sense corresponding with reality and being mutually contradictory. Just as even God, then, cannot cause that two times two should not make four, so He cannot cause that that which is intrinsically evil be not evil.²¹

Often it is said that Grotius launched modern natural jurisprudence by making it a science independent of God as supreme legislator. Strictly speaking, this is untrue: from the fourteenth century, the hypothesis of

¹⁷ The view that Grotius broke sharply with a uniform scholastic theory of natural law and originated “modern natural law,” a strictly rationalist theory, has been questioned by Charles Edwards, “The Law of Nature in the Thought of Hugo Grotius,” *The Journal of Politics* 32 (1970): 784–807. In contrast, but not in contradiction, Richard Tuck emphasizes the determination of Grotius, Pufendorf, and the other modern natural lawyers to refute modern skepticism. See “Grotius, Carneades and Hobbes,” *Grotiana* (n.s.) (1983): 43–62, especially pp. 56–58. Also Richard Tuck, “The ‘Modern’ Theory of Natural Law,” in *The Languages of Political Theory in Early-Modern Europe*, ed. Anthony Pagden (Cambridge: Cambridge University Press, 1987), pp. 99–119.

¹⁸ *On the Law of War and Peace*, pp. 38–39.

¹⁹ *Ibid.*, p. 39.

²⁰ *Ibid.*, p. 13.

²¹ *Ibid.*, p. 40.

God's nonexistence or indifference had been used frequently in scholastic writings on morality. But Grotius was writing in the Calvinist part of Europe, where both the form and the content of all righteousness were traced to the will of God. This was a world in which nothing was seen as intrinsically reasonable or right. What was accounted reasonable and right was commanded by God, but not because it was reasonable and right; rather, first of all it was willed by God and thus it became reasonable and right.²² By reverting to this old scholastic device, Grotius scandalized the faithful. In addition, he opened up questions about the nature of the obligation to observe natural law and to respect the rights conferred by natural law. If we say that natural law would be valid even if not backed by the will of God, how can we explain why these "laws" can be regarded as genuine laws, and how can we explain the obligation to obey them? Grotius himself does not have to answer these questions, for he believes both that these rules are intrinsically valid and that God, by giving His creation the nature it has, willed that they be obeyed. But would they be genuine laws for atheists, that is, for those who have no gods to give the rules the form of command, or for all those millions whose gods order or allow acts contrary to what Grotius and other Christians call "natural law"? How could Grotius or any other Christian convince those who do not presuppose the legislative authority of the Christian God that His commands are valid? After all, natural law applies to all humankind, to godless kings and pagan multitudes equally with Christian philosophers.

Thomas Hobbes

Hobbes, like Grotius, thinks of politics legalistically, in terms of authority, law, and rights. However, he focuses on society within one country, not all human society. While Grotius's great concern was to convince sovereigns, who have no superior on earth, that international peace is possible, Hobbes was out to show all the parties dividing England the way, the only way, to domestic peace. He had a remedy for their strife, that is, one absolute civil government.

For Hobbes the precivil condition is amoral. Nor are human beings drawn to work for great collective goals, for common goods. Before the

²² The influential Puritan writer William Perkins, for example, asserted "that even the virtues of reasonableness or justice, as human beings conceive them, could not be predicated of God, for God's will, 'it selfe is an absolute rule both of justice and reason'; and that nothing could therefore be reasonable and just intrinsically, 'but it is first of all willed by God, and thereupon becomes reasonable and just.' " Perry Miller, *Errand into the Wilderness* (Cambridge: Harvard University Press, 1956), p. 52.