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Duncan Forbes
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I The Foundations of Politics

I

*The experimental method in morals:
the Natural Law forerunners*

One of the more important and characteristic aspects of the rehabilitation of Hume's philosophy in the twentieth century has been the recognition of the importance of the sub-title of the *Treatise of Human Nature*: 'being an attempt to introduce the experimental method of reasoning into moral subjects'. The 'Newtonian' aspect of Hume's science of man has by now long been taken for granted, and has become one of the many fossils in the history of ideas, firmly embedded in the pages of text books and general histories, and accepted uncritically by the commentators: until recently no one has tried to investigate thoroughly what it means. There was nothing very original in the programme of the now only too well-known subtitle as such – after all, the argument from design was regarded as precisely that – and it was in fact the basis of the Natural Law theory which Hume is so often said to have destroyed. The fact is brought home by a useful coincidence.

In the year after the publication of the first two volumes of the *Treatise*, the year of the publication of Part III (1740), George Turnbull produced his *Principles of Moral Philosophy, An Enquiry into the wise and good government of the Moral World*, in which his aim was to 'vindicate' human nature, 'by reducing the more remarkable appearances in the human system' to 'general laws', treating them as questions of fact or natural history, in which hypotheses assumed at random and by caprice, or not sufficiently confirmed by experience, are never to be built upon (*Principles*, ii, iv). Moral philosophy, like natural philosophy, is not just a system of facts discovered by experiment and observation, but a mixture of experiments with reasonings from experiments – anything else is 'mere' hypothesis (19, 20, 22). The reader is referred to the *Principia* and Cotes' Preface. Next year appeared Turnbull's annotated translation of one of the standard text-books of natural jurisprudence – Heineccius' *Methodical System of Universal Law* – and appended to it, a discourse by Turnbull on the nature and origin of moral and civil laws, 'in which they are deduced by an analysis of the human mind in the experimental way, from our

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internal principles and dispositions'. In the Preface to the *Methodical System*, the discourse is described as 'an attempt to introduce the experimental way of reasoning into morals, or to deduce human duties from internal principles and dispositions in the human mind': its object was to derive natural law, those laws of natural and universal obligation which in all well-regulated states constitute the sum and substance of what is called the civil laws (*Methodical System*, II, 322), from the frame and constitution of man and the connexions of things relative to him and his actions, which are a natural law to man, as unalterable as the laws of motion and gravity, which limit, fix or settle the effects of his behaviour and conduct, and which are laws to us in the same sense that the laws of motion are laws to human arts for the attainment of their ends, and all connexions of nature of whatever kind can only be learned from experience; this is too evident to be insisted on (247–53, 293). 'We reason from fact or experiment, and what we have maintained can only be refuted by shewing our analysis of the human mind not to be fact' (304). 'For we ought, as in physicks, so in morals, to reason from the real state, frame, constitution or circumstances of things' (150).

In spite of the claim made on his behalf by James McCosh, in *The Scottish Philosophy* (1875), that he was the first metaphysician of the Scottish, or indeed of any school, to announce unambiguously and categorically that we ought to proceed in the method of induction in investigating the human mind (99), Turnbull does not seem to have regarded his programme as especially original or even exclusively post-Newtonian, or post-Baconian. For in the Preface to his translation of Heineccius, having announced his intention of applying the experimental way of reasoning to moral subjects, he forthwith appeals to Cicero, who in his excellent treatise of laws told us long ago that this was the only valid method in ethics and jurisprudence. Cicero calls them laws of nature, because the obligation to them is founded in human nature; mankind are pointed and prompted to fulfil them by natural dispositions or principles in their minds (225). How an enquiry into human nature or natural philosophy ought to be carried on, we learn from Cicero *de Finibus*... (*Principles*, 10n).

McCosh says that in following this method, Turnbull claims to be superior to Pufendorf, Grotius and the older jurists (*op. cit.* 100), but this remark must be qualified, because it applies only in political philosophy, where it is certainly important. Turnbull insists that the only solid basis to build on here, as in physics, is

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induction from experiments, which means history and the instruction it affords as to the natural effects of various constitutions in different situations. (Domat he recommends as an excellent author: *Methodical System*, II, 312.) Turnbull is anxious to supplement and correct the views of Heineccius and the older jurists, particularly with respect to the rights and duties of magistrates and subjects, by taking into account the natural causes of government and their necessary operations and effects, 'a consideration of great moment overlooked by Grotius, Pufendorf and all the moral-system writers I have seen' (222): 'here, as well as in the moral world, effects may be with certainty inferred from their causes', that is, in the 'science of politics', and to be convinced of this, says Turnbull, one need only look into the political reasonings of any good writer on politics, Aristotle, Polybius or 'our own Harrington' (*Principles*, 201), for everything in moral or corporeal nature must have its natural course, its natural rise, progress and variations. And as to know the one is to be a natural philosopher, so to know the other is to be a moral philosopher or politician (*Methodical System*, II, 119). And indeed Turnbull's use of the experimental method to improve the political science of Grotius, Pufendorf and Heineccius consists almost wholly in the uncritical acceptance and application of the thesis, or rather 'laws', concerning the balance of property and power of Harrington, 'who reasons from natural causes in these matters as natural philosophers do about phenomena commonly called natural ones' (*id.*, cf. 82), and who, Turnbull suggests elsewhere, was a Newtonian before Newton, in so far as he managed to reduce several great phenomena in the moral world to a few very simple laws or principles, even if he did not compare these with the laws of the material world – but natural philosophy has much improved since his time. (*Principles of Moral and Christian Philosophy*, i.e. Vol. II of *Principles*, London, 1741, Preface.)

This insistent appeal to 'our' Harrington, 'our excellent politician' (*Methodical System*, I, 295), is a criticism of the too exclusive use of the 'a priori' method of the 'older jurists' – Turnbull for example says that if they had attended more to the 'natural causes' of 'empire' or civil government, they would not have debated its origin so much (*id.*, II, 145) – but the method of the older jurists was equally 'experimental', in so far as 'a priori' in this context means prior to experience of the observed effects, not prior to experience of the facts of human nature given to observation,¹ and

¹ Thus Kames, for example, arguing that property is founded in the Law of Nature, derives it 'a posteriori' from the growth of population, the need for industry etc,

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in so far as the application of experimental method to morals meant, to use Turnbull's words, 'deducing human duties from the internal principles and dispositions in the human mind', this is what not just Cicero, but the whole school of modern natural law from Grotius onwards, to which Heineccius belonged, had done. The foundations of the science of jurisprudence were empirically established and confirmed in so far as the first principles of natural law were said to be certain obvious and undeniable facts of human nature which anyone could ascertain and confirm for himself by introspection and observation. This was what Grotius meant, or a large part of what he meant, when he said, arguing against Carneades as representative of those who altogether denied the existence of natural law, that the proof of it from man's social nature would have 'a degree of validity' even if God did not exist (*De Jure Belli ac Pacis*, Prolegomena § 11).¹ That is, even if one were to grant Carneades and his like the truth of such an absurd (and wicked) hypothesis, their denial of any such thing as justice and natural law would not square with the facts of human nature. As Barbeyrac pointed out in his note on this paragraph, Grotius' assertion is to be admitted only in the sense that the maxims of the law of nature are not merely arbitrary rules but are founded on the nature of things in the very constitution of man, from which certain relations result between such and such actions and the state of a reasonable and sociable creature. 'For the very nature of man, which even if we had no lack of anything, would lead us into the mutual relations of society, is the mother of the law of nature' (*De Jure*, Prolegomena, § 16). And Pufendorf began the main part of his book on the Law of Nature, after the preliminary definitions, by showing that man is an animal so made that he cannot live without society and therefore without law (Book II, Chap. 1: 'It is not agreeable to the nature of man that he should live without law'),² later pointing out that this is what is meant by saying that the law of nature is 'the dictate of right reason', viz: that 'the

but says that it is also founded 'a priori' in the nature of man and consequently in the original or 'abstract' laws of nature. *Essays upon several subjects in Law*, (Edinburgh, 1732), 100-1.

¹ I am quoting from the translation of the Prolegomena by F. H. Kelsey (The Liberal Arts Press, 1957), and the 1738 (London) edition of *The Rights of War and Peace*, with Barbeyrac's notes.

² Cf. Hume, *Enquiry concerning Morals*, Section 4, § 3. 'Human nature cannot, by any means, subsist without the association of individuals: and that association never could have place were no regard paid to the laws of equity and justice. Disorder, confusion, the war of all against all are the necessary consequences of such a licentious conduct.' I am using Basil Kennett's edition of *The Law of Nature and of Nations* of 1703 (Oxford).

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understanding of man is endued with such a power as to be able from the contemplation of human condition, to discover a necessity of living agreeably to this law; as likewise to find out some principle by which the precepts of it may be clearly and solidly demonstrated'. This is what the Scriptures mean when they say that it is written in the hearts of men: not that the general principles of natural law are innate, because not everybody can apprehend 'the artificial method of demonstrating these natural precepts', and most men come to learn and observe them by custom and use in society ('the common course and tenour of living'), and to that extent they may be said to have a sociological origin in so far as Pufendorf explains how the ability to distinguish right and wrong is 'owing in a great measure to exercise and use', and is learnt like a language (see the *Whole Duty of Man according to the Law of Nature*, 55): from their earliest years children see certain things approved and disapproved and their minds become 'so fixed and disposed by daily practice and by the whole series of common life, that few of them so much as doubt whether they may not proceed by other methods'. But the principles of natural law or 'dictates of right reason' can be seen to be true principles which agree with 'the nature of things well observed and examined', when deduced by correct rules of reasoning from accurate observation. The phrase in *Romans* 11.15 means that, and is 'certainly figurative' (*Law of Nature*, Book II, Ch. III, XIII). And this presumably is what Locke meant by it.¹

To the young Hume, who thought he had found the 'experimental' clue to the science of man and all the moral sciences,

¹ *The Second Treatise of Government* (Ed. P. Laslett), 292-3. It is not, as Laslett says in his note, the most conspicuous instance of Locke's willingness to take advantage of the belief in innate ideas and innate practical principles excoriated in Bk I of the *Essay concerning Human Understanding*. Cf. Hans Aarsleff in *John Locke: Problems and Perspectives* (Ed. J. W. Yolton, Cambridge, 1969), esp. pp. 129-31. Aarsleff does not mention Pufendorf in this connection, but Pufendorf was, of course, a standard author, recommended by Locke (*On Education*, § 186). It is worth noting that Viscount Stair, in his *Institutions of the Law of Scotland*, does hold what Yolton in *John Locke and the Way of Ideas* calls the 'naive' form of the doctrine. Stair's *Institutions*, 2nd ed. 1693. pp. 2-3: Like those instincts by which animals know what is necessary for their preservation, 'so the first principles of this natural law are known to men without reasoning or experience, without art, industry or education, and so are known to men everywhere. . . though they keep no communion or intercourse together, which is an unanswerable demonstration of the being of this law of nature. It is said to be written in the hearts of men, because law useth to be written on pillars or tables for certainty of conservation: so this law is written by the finger of God upon man's heart, there to remain for ever. . . With these common principles with which God hath sent men into the world, he gave them also reason', that they might be able to deduce his law in more particular cases.

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including politics and criticism, in the principle of association of ideas, and was accordingly anxious to stress the novelty of his approach to the science of man, this grounding of natural law in human nature must have seemed rudimentary, scarcely an experimental science of man at all. Book III of the *Treatise*, in which the first version of Hume's political philosophy is to be found, was not designed to stand alone; together with the books on the Understanding and the Passions (for a study of the comparatively neglected Book II and its connexion with Book III, see P. S. Ardal, *Passion and Value in Hume's Treatise* (1966)) it is part of an attempt at a unified Newtonian system of the moral sciences with association as the ultimate explanatory principle.

In the Introduction to the *Treatise*, Hume says that 'some late philosophers in England' (the footnote refers to Locke, Shaftesbury, Mandeville, Hutcheson (*sic*), Butler etc.) have 'begun to put the science of man on a new footing'; that it is not surprising that it has taken 'above a whole century' for the experimental philosophy to be applied to moral subjects since the space of time between the 'late philosophers' and Bacon is 'nearly equal' to that between the origins of these sciences in Thales and the time of Socrates respectively. This is rather typically imprecise, but the implication seems to be that the putting of the science of man on its 'solid foundation' of 'experience and observation' is a fairly recent event. Hume's 'foundation' for 'a compleat system of the sciences', 'the only one upon which they can stand with any security', is 'almost entirely new'. (*Treatise*, xx . . . this surely is not meant to refer simply to his use of the principle of association.) The natural law writers are not included among the pioneers of the application of experimental method to moral subjects, presumably because at this time Hume's thinking was dominated by the importance of the science of man in its narrower, exclusively psychological sense; the writers he mentions – a mixed bag otherwise, and why for that matter does he not mention Hobbes?¹ – could all be regarded as having 'begun' a rather more intensive study of the human mind, and in addition they were all 'English', belonging to a land of liberty in which such speculation can flourish – a point Hume was anxious to make. So he does not mention the very acute psychology of Malebranche, which he must have known. (In the *Inquiry concerning the Principles of Morals*

¹ Dugald Stewart thought that Hobbes' writings on psychology were the only part of his works that could still be read with any interest: they had, he thought, plainly been studied with the utmost care by Locke and Hume. Dugald Stewart, *Collected Works*, I, 81.

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he professed to regard Malebranche as having started the 'abstract theory of morals' afterwards adopted by Cudworth, Clarke and the ethical rationalists, (197n), a system that 'never will be reconciled with true philosophy'.¹ And why not even Descartes, described by Dugald Stewart as the father of the experimental philosophy of the human mind? (*op. cit.* I, 113).

In the famous letter to Dr Cheyne, which is dated 1734, Hume made it clear that he did not agree with the view that the classical moralists had grounded their moral philosophy on a properly philosophical or Newtonian study of human nature. Having described his physical symptoms, he goes on to tell 'how my mind stood all this time . . . I began to consider seriously how I should proceed in my Philosophical Enquiries. I found that the moral Philosophy transmitted to us by Antiquity, labor'd under the same Inconvenience that has been found in their natural Philosophy, of being entirely Hypothetical, and depending more upon Invention than Experience. Every one consulted his Fancy in erecting schemes of Virtue and of Happiness, without regarding human Nature upon which every moral Conclusion must depend. This therefore I resolved to make my principal Study, and the Source from which I wou'd derive every Truth in Criticism as well as Morality' (*Letters*, I, 16).²

For an example of what Hume meant by deriving natural law from the principles of human nature, one can turn to the *Treatise* Book III, Part I, Section III, 'Of the rules which determine property', in which he applies his 'singular method of reasoning', (510n) in order to show the important role played by what he calls the 'imagination' (which for Hume means the principle or regular activity of the association of ideas), in determining the main rules

¹ The importance of Malebranche for Hume's philosophy is well enough known to those who do not take the narrow Locke–Berkeley–Hume approach to it. See, for example, C. W. Hendel, *Studies in the Philosophy of David Hume* (1925), 49 *et seq.*, 82 *et seq.*, R. W. Church, *Hume's theory of the Understanding* (1935, 80, 94–5, 171–2, 211). In a letter of August, 1737, Hume tells one of his friends to read 'le Recherche de la Verite of Pere Malebranche' [sic] (followed by Berkeley and Bayle) as a way of 'entering into' the *Treatise of Human Nature* 'more easily'. (Quoted in I. S. Ross, *Lord Kames and the Scotland of his Day* [Oxford, 1972], 76: it is not in *Letters* or *New Letters*.) A copy of *De la Recherche de la Verité* with Hume's book-plate is in Edinburgh University Library. See the catalogue of the exhibition 'Benefactors of the Library in Five Centuries' (1963), item 132. There is more in this book that reminds one of Hume than most of the commentators, who are primarily concerned with causation, seem to realize, especially Malebranche's emphasis on men's psychological dependence on one another.

² Contrast Turnbull: 'no sooner had I conceived this idea of moral researches [i.e. following the Newtonian method] than I began to look carefully into the better ancients . . . to know their opinion of human nature', especially Plato. *Principles*, iii.

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of natural jurisprudence as to the allocation of goods, viz: present possession, occupation, prescription, accession and succession. Since motives of public interest are also involved for most of the rules which determine property, and 'since no questions in philosophy [= natural philosophy] are more difficult, than when a number of causes present themselves for the same phenomenon, to determine which is the principal and predominant', Hume, though he suspects that 'these rules are principally fixed by the imagination', is going to explain their causes and leave it to the reader to decide whether public utility or the workings of the 'imagination' is the most important (504n). The principle of human nature involved is that very crucial one in Hume's philosophy, which makes a rigidly mechanistic interpretation of the principle of association inadequate: the tendency to generalize beyond the fragmentary and discontinuous evidence provided by the senses, to close the gaps in experience, which Price calls the 'inertia of the imagination':¹ the natural propensity of the mind to join two closely related objects still more closely by adding another relation: '... the mind has a natural propensity to join relations, especially resembling ones, and finds a kind of fitness and uniformity in such an union. From this propensity are derived these laws of nature, *that upon the first formation of society, property always follows the present possession; and afterwards, that it arises from first or from long possession*' (509n).²

¹ H. H. Price, *Hume's Theory of the External World* (1940).

² Cf. 504n: 'Since, therefore, we can feign a new relation and even an absurd one, in order to complete any union, [Hume says that the inclination is so strong as often to make us run into errors in order to complete the union], 'twill easily be imagined, that if there be any relations which depend on the mind, 'twill readily conjoin them to any preceding relation, and unite, by a new bond, such objects as have already an union in the fancy. Thus for instance we never fail in our arrangement of bodies, to place those which are *resembling in contiguity* to each other, or at least in *correspondent* points of view; because we feel a satisfaction in joining the relation of contiguity to that of resemblance, or the resemblance of situation to that of qualities'. What Price called the 'inertia of the imagination', or something similar, is to be found in Malebranche, *De la Recherche*. See Bk. III, Part II, Chapter x, for example. '...l'attention fatigue beaucoup l'esprit...l'esprit suppose donc des ressemblances imaginaires où il ne remarque pas les différences positives et réelles; les idées de ressemblance lui étant plus présentes, plus familières et plus simples que les autres... Les hommes s'imaginent donc que les choses de différente nature sont de même nature; et que toutes les choses de même espèce ne diffèrent presque point les unes des autres. Ils jugent que les choses inégales sont égales; que celles qui sont inconstantes sont constantes; et que celles qui sont sans ordre et sans proportion sont tres-ordonnées et tres-proportionnées. En un mot ils croient souvent que des choses différentes en nature, en qualité, en étendue, en dureté et en proportion sont semblables en toutes ces choses...' Cf. Chapter XI: 'Cette facilité que l'esprit trouve à imaginer et à supposer des ressemblances partout où il ne reconnaît pas

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Without any very prolonged examination of Hume's demonstration, which is detailed, with examples from Roman law and the civilians, and as usual extremely condensed, and also unique in the *Treatise* for the length of its footnotes – the chapter is nearly all footnotes, possibly due to Hume's belief, later expressed to Kames, that law and literature do not go together – one can see how he tries to show that the rules of natural jurisprudence concerning property are the 'effect of the relations of ideas and of the smooth transition of the imagination' (510n). Like a good experimental philosopher, Hume considers cases which seem to contradict his 'hypothesis'; he explains, for example, why, when the imagination passes more easily from little to great than from great to little, small objects become accessions to great ones, as the *Orkneys*, *Hebrides* and *Isle of Man* to Great Britain, and not vice versa, i.e. why authority over the former does not naturally imply any title to the latter. (If a great and a small object are related together and a person is strongly related to the great object, he will likewise be strongly related to both the objects considered together, because he is related to the most considerable part. But if he is only related to the small object, he will not be strongly related to both considered together, since his relation is only with the most trivial part, which is not apt to strike us in any great degree when we consider the whole. The objection is thus easily solved by a more careful consideration of the working of the 'imagination'.) The reason why it is 'the general opinion of philosophers and civilians' that the sea cannot be the property of any nation is that it is impossible to 'form any such distinct relation with it as may be the foundation of property'; 'friths and bays' on the other hand can be; not that they have any bond or union with the land any more than the Pacific Ocean would have, 'but having an union in the fancy, and being at the same time *inferior*, they are of course regarded as an accession'. Big rivers, like the Rhine or the Danube cannot, like small ones, belong to relatively small proprietors; they can be the property of the relatively much larger countries through which they flow. A portion of river bank dislodged does not become any one's property till it unites with the land, and till trees and plants have spread their roots into both – before that, 'the imagination does not sufficiently join them' (511n). The distinction in Roman law between 'confusion' and 'commixtion' is explained on the same principle; Hume quotes from the

visiblement de différences jette aussi la plupart des hommes dans les erreurs très dangereuses en matière de morale.'