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## **Contractarianism as a Broad Church**

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**Abstract:**

I defend the claim, made in a previous paper, that ‘a Humean can be a contractarian’, against the criticisms of Anthony de Jasay. Jasay makes a categorical distinction between ‘ordered anarchy’ (which he associates with Hume) and ‘social contract theory’. I argue that Hume’s political position was conservative, not anarchist. On Hume’s analysis, a convention is an implicit agreement; the concept of convention is more general than, rather than distinct from, that of agreement by exchange of promises. Hume justifies political obligation by treating established forms of government as conventions in this sense.

*Keywords:* contractarianism, social contract theory, Hume, ordered anarchy, convention.

I recently wrote an essay entitled ‘Can a Humean be a contractarian?’ I argued that the answer to this rhetorical question was ‘Yes’, and explained why I thought my own approach to normative economics was both Humean and contractarian (Sugden 2009). That essay provoked a very critical response from Anthony de Jasay (2010). Jasay insists that there is—or should be—a categorical distinction between the theory of ‘ordered anarchy’ (which he associates with Hume) and ‘social contract theory’ (which he associates with Hobbes, Locke, Rawls, Buchanan and Gauthier). He charges me with making political theory ‘woolly’ by not recognising the importance of this distinction. He sees ‘contractarianism’ as a redundant term for this woolliness. His paper in this special topic presents a similar argument (Jasay 2013). The current paper is a short reply to this criticism. It is short because I cannot do much more than repeat the argument I made in the original paper, and because what seems to be at issue is largely a matter of how one categorises ideas.

Jasay is a political theorist who argues in favour of ordered anarchy as the ideal form of social organisation. He claims that a system of conventions of the kind described by Hume would be “comfortably sufficient to create and uphold a social order [and to ensure] a high degree of justice and freedom”, without the need for any mechanism of non-unanimous collective choice. The absence of politics from this model is “a safeguard and a benefaction” (Jasay 2013). Viewed in this perspective, the distinction between anarchy and government is obviously of central importance. But one is entitled to make other distinctions and, if one is not an anarchist, one may find other distinctions more useful. It is reason-

able to point to features that are common to Hume's theory and social contract theory, and to use 'contractarianism' as a generic term which encompasses both. This way of categorising ideas is useful in economics, because the common features of the contractarian approach are not present in mainstream normative economics. Normative economics, as conventionally practised, produces recommendations that are addressed to an imagined social planner or policy-maker, modelled as a benevolent despot. The contractarian approach, as I characterise it, is addressed to individuals, imagined as potential parties to mutually beneficial agreements. I explain this idea in more detail in another paper (Sugden 2013). Hume and the writers that Jasay presents as social contract theorists are all on the contractarian side of this divide. Given that this is such a minority position in normative economics, I see no merit in factional in-fighting. One person's wooliness is another person's broad church.

However, there is one substantive philosophical issue on which Jasay and I disagree, and which is important for the question posed by the organisers of this special topic, of whether a social contract can be signed by an invisible hand. That issue is the interpretation of Hume's concept of convention. I agree with Jasay that Hume's theory of convention provides analytical resources on which theories of ordered anarchy can draw. But I do not agree that Hume's analysis supports Jasay's categorical distinction between ordered anarchy and social contract. In the present paper, I will focus on this issue.

Let me begin by pointing to two features of Jasay's reading of Hume that seem strained.

The first is Jasay's characterisation of Hume's political orientation as ordered anarchism. Jasay (2010, 402) sketches of a set of conventions, centred on the "great Humean trinity of ownership, transfer and promise", and describes this as "the foundational institution of ordered anarchy". He then says:

"In a closed society, this set of convention[s] suffices to keep the peace and to uphold the social order, and makes the Hobbesian government redundant, just as the creation of such government by social contract makes the set of conventions redundant. Humeans would have no hesitation in deciding which of the two is redundant."

After noting that many political theorists have thought that ordered anarchy is possible only in very small societies, Jasay says:

"Hume was perfectly aware of the small group-large group problem. He nevertheless judged that a society ruled only by its conventions could function as an ordered anarchy if left alone. He declared unambiguously that '[...] I assert the first rudiments of government to arise from quarrels, not among men of the same society, but among those of different societies'."

On Jasay's reading, it seems, Hume maintained that the commercial societies of his time did not need organised government. But I know of no passage in Hume's

work that suggests that this was his view. To the contrary, Hume says that, just as in the case of the principle of property, “interest” is “at once the original motive to this institution [i.e. government], and the source of our obedience to it”. He goes on: “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.” (1978[1739–40], 550–551) And, again drawing a parallel between the institution of government and the institution of property: “Nothing is more advantageous to society than such an invention [i.e. government]; and this interest is sufficient to make us embrace it with ardour and alacrity.” (556)

The originality of Hume’s analysis of political obligation comes when he discusses the question of *which* government (or potential government) should receive people’s allegiance. Hume is clear-sighted in recognising that almost all royal houses, and indeed almost all political structures, were originally founded on “usurpation and rebellion”, and that it is only the effects of time that make any form of government seem rightful. But nevertheless, he recommends his readers to give allegiance to governments that have acquired this appearance of rightfulness (556). Jasay (2013) describes Hume’s attitude to government as acquiescence: “Hume taught that man does not create and approve of the authority of the state, but acquiesces in it.” The suggestion is that Hume’s ideal is the abolition of government, but his attitude seems better described as (in Geoffrey Brennan and Alan Hamlin’s [2004] expression) *analytic conservatism*. Hume does not pretend that, in any absolute sense, the Hanoverian monarchs have a uniquely rightful claim to rule Great Britain at the time he is writing; but it seems clear that he *does* approve of their authority (see, e.g., Hume 1985[1777], 502–511). When Hume discusses the claims of royal houses to the allegiance of the British people, his comparisons are between alternative rulers, not between government and anarchy. For example, he suggests that, had history turned out differently, Britain might now (that is, in 1740) be ruled by Cromwell’s successors, in which case they—and Cromwell himself, retrospectively—would be seen as having the same legitimacy as the Hanoverians in fact enjoy (1978[1739–40], 566–567).

Notice that in the passage that Jasay quotes, Hume is writing about *the first rudiments of government*, not about government in the commercial societies of his own time. Hume’s argument, as I read it, is that small and economically primitive societies, such as those of the native populations of north America, are able to organise their internal affairs by self-enforcing conventions, and need organised government only for warfare. Thus, the *first* form of government was that of temporary military commanders (1978[1739–40], 539–541). One does not have to be an anarchist to recognise the plausibility of this explanation of the origins of government.

A second tension in Jasay’s reading of Hume concerns the status of promises. Jasay (2013) writes:

“Hume recognizes ‘the performance of promises’ as one of the key conventions of the social order. Arguably, it is self-referential: com-

pliance with this convention ensures the performance of promises, and promising to comply with any convention transforms that convention into a binding commitment.”

If I have understood this passage correctly, Jasay is suggesting that one part of the ‘great Humean trinity’ of conventions may be philosophically unsound. But if this reading of Jasay is correct, he has misunderstood Hume’s concept of convention. On Hume’s analysis, the performance of promises *is* a convention, and there is no self-reference in that proposition. And, which is more to the point of the topic of my paper, ordered anarchy and contract are not categorically opposed to one another.

Hume’s (1978[1739–40]) account of convention begins with his discussion of the law of ‘stability of possession’ in goods that are external to individuals, and hence capable of being transferred between them. The content of this law is:

“a convention enter’d into by all the members of the society to bestow stability on the possession of those external goods, and leave everyone in the peaceable enjoyment of what he may acquire by his fortune and industry” (489).

Explaining what he means by ‘convention’, Hume goes on:

“This convention is not of the nature of a *promise*: For even promises themselves, as we shall see afterwards, arise from human conventions. It is only a general sense of common interest; which sense all the members of the society express to one another, and which induces them to regulate their conduct by certain rules. I observe, that it will be for my interest to leave another in the possession of his goods, *provided* he will act in the same manner with regard to me. He is sensible of a like interest in the regulation of his conduct. When this common interest is mutually express’d, and is known to both, it produces a suitable resolution and behaviour. And this may properly enough be call’d a convention or agreement betwixt us, tho’ without the interposition of a promise; since the actions of each of us have a reference to that of the other, and are perform’d on the supposition, that something is to be perform’d on the other part.” (490)

When Hume says that the rule of stability of possession *may properly enough be called* a convention, he seems to be acknowledging that, in its linguistically proper sense, ‘convention’ implies agreement. In calling the rule a convention he is claiming that, in significant respects, it *is like* an agreement. At the same time, he is stressing that it *is not* an agreement in the usual sense of an exchange of promises. To the contrary, the practice of promise-keeping is itself a convention.

Hume is not slipping into self-reference here. He is formulating a philosophically precise concept which has some of the content of ‘agreement’ but is more

fundamental than that of an exchange of promises. I see Hume's construction of this concept as among his greatest philosophical achievements.

According to Hume's account, a convention rests on a *general sense of common interest*; each member of society has this sense and is aware that the others have it too. The content of a convention is *reciprocal*: each individual constrains his own actions as part of a general practice in which other people constrain theirs. As Hume puts it:

“A single act of justice is frequently contrary to *public interest*. [...] But however single acts of justice may be contrary, either to public or private interest, 'tis certain, that the whole plan or scheme is highly conducive, or indeed absolutely requisite, both to the support of society, and the well-being of every individual. 'Tis impossible to separate the good from the ill. [...] And even every individual person must find himself a gainer, on ballancing the account; since, without justice, society must immediately dissolve [...].” (497)

As this passage makes clear, the idea of *mutual advantage* is an essential part of Hume's account of a conventional practice: ‘on ballancing the account’, each individual construes the practice as a whole as beneficial *to him*. Thus, although a convention is not an exchange of promises, it *is* a form of exchange.

In this respect, Hume's concept of convention is not quite the same as the one that has come to be used by game theorists. Game theorists tend to use the term ‘convention’ to describe any Nash equilibrium that is sustained in recurrent play of a game in which there are two or more such equilibria. Such an equilibrium is a convention in Hume's sense only if it is associated with a sense of common interest. Common interest is important for Hume because he is concerned with stability of possession not only as a social fact, but also as a *rule of justice*, to which the idea of virtue has been ‘annexed’. His account of the ‘moral obligation’ to comply with the rules of justice depends on the assumption that people have a natural tendency to sympathise with the ‘public interest’ that those rules promote: “*Thus self-interest is the original motive to the establishment of justice: but a sympathy with public interest is the source of the moral approbation, which attends that virtue.*” (499–500)

So, for Hume, a convention is a mutually beneficial practice that is generally followed in a society; each individual is motivated to follow it both by interest and by a sense of justice; but both motivations are conditional on the expectation that others will follow the practice too. The performance of promises is one example of such a practice. In a society in which the convention of promise-keeping is generally followed, mutually beneficial agreements can be carried out through the exchange of promises. In this sense, explicit agreement is a special case of Hume's concept of convention. But that concept also includes practices that might reasonably be called implicit agreements.

Hume continually emphasises the social and historical contingency of conventions. In particular, the rules that define stability of possession in any given society are often arbitrary. Hume explains many of their peculiarities in terms

of the workings of human ‘imagination’ in perceiving associations of ideas (501–513). Even the more fundamental rules for determining property rights, which Hume thinks are common to most societies, have morally arbitrary implications. For example, the principle of prescription (by which a person acquires a property right in an object by uninterrupted possession of it over an extended period) allows acts of theft and violence to be retrospectively legitimised. Hume argues that, because there is such a strong common interest in stability of possession, it is in everyone’s interest to accept these apparently arbitrary features of property. According to Hume, “’Tis the same case with government” (556). Thus, the Hanoverians’ claim to allegiance rests on a political analogue of the principle of prescription.

So is Hume a social contract theorist? Yes and no. He does not claim that political institutions acquire legitimacy through actual agreements in which individuals exchange promises. Nor does he claim that the test of their legitimacy is that they could have been formed in this way. But he does claim that, in reasonably well-functioning societies, political institutions are conventions in the same sense that rules of property are conventions, and that allegiance to those institutions naturally and properly comes to be seen as morally obligatory. If conventions can be thought of as implicit agreements, Hume is arguing that social contracts *can* be signed by invisible hands.

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