

The Origin and Development of our Property Rights

The first thing that comes to be considered in treating of rights is the original or foundation from whence they arise.

Now we may observe that the original of the greatest part of what are called natural rights, or those which are competent to a man merely as a man, need not be explained. That a man has received an injury when he is wounded or hurt any way is evident to reason, without any explanation; and the same may be said of the injury done one when his liberty is any way restrained; any one will at first perceive that there is an injury done in this case. That one is injured when he is defamed, and his good name hurt amongst men, needs not be proved by any great discussion. One of the chief studies of a mans life is to obtain a good name, to rise above those about and render himself some way their superiors. When therefore one is thrown back not only to a level, but even degraded below the common sort of men, he receives one of the most affecting and atrocious injuries that possibly can be inflicted on him. The only case where the origin of natural rights is not altogether plain, is in that of property. It does not at first appear evident that, e.g. any thing which may suit another as well or perhaps better than it does me, should belong to me exclusively of all others barely because I have got it into my power; as for instance, that an apple, which no doubt may be as agreeable and as usefull to an other as it is to me, should be altogether appropriated to me and all others excluded from it merely because I had pulled it of the tree.

We will find that there are five causes from whence property may have its occasion. First, occupation, by which we get any thing into our power that was not the property of another before. Secondly, tradition, by which property is voluntarily transferred from one to an other. Thirdly, accession, by which the property of any part that adheres to a subject and seems to be of small consequences as compared to it, or to be a part of it, goes to the proprietor of the principal, as the milk or young of beasts. Fourthly, prescription or *Usucapio*, by which a thing that has been for a long time out of the right owners possession and in the possession of an other, passes in right to the latter. Fifthly, succession, by which the nearest of kin or the testamentary heir

has a right of property to what was left him by the testator. Of these in order.

Of Occupation

Before we consider exactly this or any of the other methods by which property is acquired it will be proper to observe that the regulations concerning them must vary considerably according to the state or age society is in at that time. There are four distinct states which mankind pass thro: first, the Age of Hunters; secondly, the Age of Shepherds; thirdly, the Age of Agriculture; and fourthly, the Age of Commerce.

If we should suppose 10 or 12 persons of different sexes settled in an uninhabited island, the first method they would fall upon for their sustenance would be to support themselves by the wild fruits and wild animals which the country afforded. Their sole business would be hunting the wild beasts or catching the fishes. The pulling of a wild fruit can hardly be called an employment. The only thing amongst them which deserved the appellation of a business would be the chase. This is the age of hunters. In process of time, as their numbers multiplied, they would find the chase too precarious for their support. They would be necessitated to contrive some other method whereby to support themselves. At first perhaps they would try to lay up at one time when they had been successful what would support them for a considerable time. But this could go no great length. The contrivance they would most naturally think of, would be to tame some of those wild animals they caught, and by affording them better food than what they could get elsewhere they would induce them to continue about their land themselves and multiply their kind. Hence would arise the age of shepherds. They would more probably begin first by multiplying animals than vegetables, as less skill and observation would be required. Nothing more than to know what food suited them. We find accordingly that in almost all countries the age of shepherds preceded that of agriculture. The Tartars and Arabians subsist almost entirely by their flocks and herds. The Arabs have a little agriculture, but the Tartars none at all. The whole of the savage nations which subsist by flocks have no notion of cultivating the ground. The only instance that has the appearance of an objection to this rule is the state of the North American Indians. They, tho they have no conception of flocks and herds, have nevertheless some notion of agriculture. Their women plant a few stalks of Indian corn at the back of their huts. But this can hardly be called agriculture.

This corn does not make any considerable part of their food; it serves only as a seasoning or something to give a relish to their common food; the flesh of those animals they have caught in the chase. Flocks and herds therefore are the first resource men would take themselves to when they found difficulty in subsisting by the chase.

But when a society becomes numerous they would find a difficulty in supporting themselves by herds and flocks. Then they would naturally turn themselves to the cultivation of land and the raising of such plants and trees as produced nourishment fit for them. They would observe that those seeds which fell on the dry bare soil or on the rocks seldom came to any thing, but that those which entered the soil generally produced a plant and bore seed similar to that which was sown. These observations they would extend to the different plants and trees they found produced agreeable and nourishing food. And by this means they would gradually advance in to the age of agriculture. As society was farther improved, the several arts, which at first would be exercised by each individual as far as was necessary for his welfare, would be separated; some persons would cultivate one and others others, as they severally inclined. They would exchange with one another what they produced more than was necessary for their support, and get in exchange for them the commodities they stood in need of and did not produce themselves. This exchange of commodities extends in time not only betwixt the individuals of the same society but betwixt those of different nations. Thus we send to France our cloths, iron work, and other trinkets and get in exchange their wines. To Spain and Portugall we send our superfluous corn and bring from thence the Spanish and Portuguese wines. Thus at last the age of commerce arises. When therefore a country is stored with all the flocks and herds it can support, the land cultivated so as to produce all the grain and other commodities necessary for our subsistence it can be brought to bear, or at least as much as supports the inhabitants when the superfluous products whether of nature or art are exported and other necessary ones brought in exchange, such a society has done all in its power towards its ease and convenience.

It is easy to see that in these severall ages of society, the laws and regulations with regard to property must be very different. In Tartary, where as we said the support of the inhabitants consists in herds and flocks, *theft* is punished with immediate death; in North America, again, where the age of hunters subsists, the *ft*

is not much regarded. As there is almost no property amongst them, the only injury that can be done is the depriving them of their game. Few laws or regulations will be requisite in such an age of society, and these will not extend to any great length, or be very rigorous in the punishments annexed to any infringements of property. Theft as we said is not much regarded amongst a people in this age or state of society; there are but few opportunities of committing it, and these too can not hurt the injured person in a considerable degree. But when flocks and herds come to be reared property then becomes of a very considerable extent; there are many opportunities of injuring one another and such injuries are extremely pernicious to the sufferer. In this state many more laws and regulations must take place; theft and robbery being easily committed, will of consequence be punished with the utmost rigour. In the age of agriculture, they are not perhaps so much exposed to theft and open robbery, but then there are many ways added in which property may be interrupted as the subjects of it are considerably extended. The laws therefore tho perhaps not so rigorous will be of a far greater number than amongst a nation of shepherds. In the age of commerce, as the subjects of property are greatly increased the laws must be proportionally multiplied. The more improved any society is and the greater length the severall means of supporting the inhabitants are carried, the greater will be the number of their laws and regulations necessary to maintain justice, and prevent infringements of the right of property.

Having premised this much, we proceed as we proposed to consider property acquired by occupation. The first thing to be attended to is how occupation, that is, the bare possession of a subject, comes to give us an exclusive right to the subject so acquired. How is it that a man by pulling an apple should be imagined to have a right to that apple and a power of excluding all others from it — and that an injury should be conceived to be done when such a subject is taken from the possessor. From the system I have already explain'd, you will remember that I told you we may conceive an injury was done one when an impartial spectator would be of opinion he was injured, would join with him in his concern and go along with him when he defended the subject in his possession against any violent attack, or used force to recover what had been thus wrongfully wrested out of his hands. This would be the case in the abovementioned circumstances. The spectator would justify the first possessor in defending and even in avenging himself when injured, in the manner we mentioned. The cause of this sympathy or concurrence betwixt the spectator and

the possessor is, that he enters into his thoughts and concern in his opinion that he may form a reasonable expectation of using the fruit or whatever it is in what manner he pleases. This expectation justifies in the mind of the spectator, the possessor both when he defends himself against one who would deprive him of what he has thus acquired and when he endeavours to recover it by force. The spectator goes along with him in his expectation, but he can not enter into the designs of him who would take the goods from the first possessor. The reasonable expectation therefore which property is acquired by occupation. You may ask indeed, as this apple is as fit for your use as it is for mine, what title have I to detain it from you. You may go to the forest (says one to me) and pull another. You may go as well as I, replied I. And besides it is more reasonable that you should, as I have gone already and bestowed my time and pains in procuring the fruit.

Having explain'd the foundation on which occupancy gives the property to the occupant, the next thing to be considered is at what time property is conceived to begin by occupation. Whether it be when we have got a sight of the subject, or when we have got it into our actual possession. In most cases the property in a subject is not conceived to commence till we have actually got possession of it. A hare started does not appear to be altogether in our power; we may have an expectation of obtaining it but still it may happen that it shall escape us. The spectator does not go along with us so far as to conceive we could taking such a booty out of our power. We see however that in this point lawyers have differed considerably. Trebatius, as Justinian informs us, conceived that an animal began to be our property when ever it was wounded; that this gave us a just title to it, and that one might claim it from any possessor *rei vindicatio compelere et iudicabat*: Other more strict lawyers, as Proculus and Sabinus, were of opinion that it did not become ours till it came into our actual possession. Frederic Barbarossa, refining still more on Trebatius doctrine, made a distinction with regard to the manner in which the wound was given. If it was given with a missile weapon he judged that it did not immediately convey property; but if it was with a weapon held in ones hand,

¹ Corrupt passage. The gist is that the owner's action was available to the wounder of the animal to compel a possessor to restore it.

as a spear or sword, he judged that the beast, e.g. a wild boar, came immediately under the property of the person who gave the wound. It was without doubt very near being in his power and he conceived it to have been altogether. In different countries there are different constitutions on this head. It was enacted by a law of the Lombards that a hart which was wounded, if killed in 24 hours after he received the wound, should belong partly to the person who gave the wound and partly to him who killed him, as the former was conceived to have had a hand in the catching him. The part given to the wounder was I think a leg and 4 ribs. In the same manner, at this day, the ships which go to the Greenland fishery share the whale that was wounded betwixt the ship who wounded and that which killed the whale. If the harpoon of any ship that was at the fishing the same season be found in the fish, a certain part is allotted to that ship as having by the wound contributed to the taking of the fish. In most cases however property was conceived to commence when the subject comes into the power of the captor.

The next thing in order which comes to be treated of, is, how long and in what circumstances property continues and at what time it is supposed to be at an end.

At first property was conceived to end as well as to begin with possession. They conceived that a thing was no longer ours in any way after we had lost the immediate property of it. A wild beast we had caught, when it gets out of our power is considered as ceasing to be ours. But as there is some greater connection betwixt the possessor who loses the possession of the thing he had obtained than there was before he had obtain'd it, property was considered to extend a little farther, and to include not only those animals we then possessed but also those we had once possessed though they were then out of our hands, that is, so long as we pursued them, and had a probability of recovering them.

If I was desirous of pulling an apple and had stretched out my hand towards it, but an other who was more nimble comes and pulls it before me, an impartial spectator would conceive this was a very great breach of good manners and civility but would not suppose it an incroachment on property. If after I had got the apple into my hand I should happen to let it fall, and an other should snatch it up, this would be still more uncivil and a very heinous affront, bordering very near on a breach of the right of property. But if one should attempt to snatch it out of my hand when I had the actual possession of it, the bystander would immediately agree that my property was incroached on,

and would go along with me in recovering it or preventing the injury before hand, even suppose I should use violence for the accomplishing my design. Let us now apply this to the case of the hunters. When I start a hare, I have only a probability of catching it on my side. It may possibly escape me; the bystander does not go along with me altogether in an expectation that I must catch it; many accidents may happen that may prevent my catching it. If one in this case should come and take the game I had started and was in pursuit of, this would appear a great trespass on the laws of fair hunting; I can not however justly take satisfaction of the transgressor. The forester may in some countries impose a fine on such an offender. If after I had taken the hare or other wild beast it should chance to escape, if I continued to pursue it and kept it in my view, the spectator would more easily go along with my expectations; one who should prevent me in this pursuit would appear to have trespassed very heinously against the rules of fair hunting and to have approached very near to an infringement of the right of property. But after it is out of my power, even tho I may possibly see it, there is no longer any connection betwixt it and me; I can have no longer any claim to it any more than to any other wild animal, as there is no greater probability I should catch it. But if he had violently or threfuously taken from me what I had actually in my possession, this would evidently be an atrocious transgression of the right of property such as might justify, in the eyes of the beholder, my endeavours to recover what I had been so wrongfully deprived of. In this age of society therefore property would extend no farther than possession.

But when men came to think of farming these wild animals and bringing them up about themselves, property would necessarily be extended a great deal farther. We may consider animals to be of three sorts. First, Ferae, such as are always in a wild state. Secondly, Mansuetae, which are those which have been tamed so as to return back to us after we have let them out of our power, and do thus habitually; tho there be others of the same sort, as stags, hares, ducks, etc. of which there are some wild and others tame. Thirdly, Mansuetae, which are such as are only to be found tame, as oxen. When men first began to rear domestick animals, they would be all under the class of the mansuetae, as there must have been others still wild. But even in this case it would be absolutely necessary that property should not cease immediately when possession was at an end. The proprietor could not have all those animals about him

which he had tamed; it was necessary for the very being of any property of this sort that it should continue some what farther. They considered therefore all animals to remain in the property of him to whom they appartained at first, as long as they retain'd the habit of returning into his power at certain times. And this continues still to be the case with regard to those animals that are mansuetae, or what we properly call tamed. Hawks, stags, etc. when they no longer return into the power of their owner are supposed to cede to the occupant. But in process of time, when some species of animals came to be nowhere met with but in the state of mansuetae, they lost that name and became mansuetae. A farther extension was by this means introduced into the notion of property, so as that all these animals were esteem'd to be in the property of their master as long as they could be distinguished to be his; altho they had for a long time ceased to come into his power, yet still they were considered as fully his property. This was no doubt a great extension of the notion of property. But a still greater followed on the introduction of agriculture. It seems probable that at first, after the cultivation of land, there was no private property of that sort; the fixing of their habitations and the building of cities first introduced the division of land amongst private persons. The notion of property seems at first to have been confined to what was about ones person, his cloaths and any instruments he might have occasion for. This would naturally be the custom amongst hunters, whose occupation lead them to be continually changing their place of abode. Charlevoix tells us that a certain Canadian woman having a great string of wampum which serves for money amongst them was so extremely fond of it that she could never let it out of her sight. One day it happened that she carried it with her to a field where she was to reap her corn. There was no tree in her field, but one in that of her neighbour hard by. In this tree she hung up her string. Another woman, observing her, went and took it off. The owner of the string demanded it from her, she refused, the matter was referred to one of the chief men of the village, who gave it as his opinion that in strict law the string belonged to the woman who took it off the tree, and that the other had lost all claim of property to it by letting it out of her possession. But that if the other woman did not incline to do very scandalous action and get the character of excessive avarice (a most reproachfull term in that country), she ought to restore it to the owner, which she accordingly did.

The introduction of shepherds made their habitation somewhat

more fixed but still very uncertain. The huts they put up have been by the consent of the tribe allowed to be the property of the builder. For it would not appear at first why a hut should be the property of one after he had left it more than of another. A cave or grotto would be considered as belonging to him who had taken possession of it as long as he continued in it; but it would not appear that one had any right to it tomorrow night because he had lodged there this night. The introduction of the property of houses must have therefore been by the common consent of the several members of some tribe or society. Hence in time the house and the things in it became to be considered as the property of the builder. Hence the Greek and Latin words for property, *dominium* and *ovkiov*. But still property would not be extended to land or pasture. The life of a shepherd requires that he should frequently change his situation, or at least the place of his pasturing, to find pasture for his cattle. The property of the spot he built on would be conceived to end as soon as he had left it, in the same manner as the seats in a theatre or a hut on the shore belong no longer to any person than they are possessed by him. They would not easily conceive a subject of such extent as land is, should belong to an object so little as a single man. It would more easily be conceived that a large body such as a whole nation should have property in land. Accordingly we find that in many nations the different tribes have each their peculiar territory on which the others dare not encroach (as the Tartars and inhabitants of the coast of Guinea). But here the property is conceived to continue no longer in a private person than he actually possessed the subject. A field that had been pastured on by one man would be considered to be his no longer than he actually staid on it. Even after the invention of agriculture it was some time before the land was divided into particular properties. At first the whole community cultivated a piece of ground in common; they divided the crops produced by this piece of ground amongst the several inhabitants according to the numbers in each family and the rank of the several individuals. The inclination of any single person would not be sufficient to constitute his property in any parcel of land if it were but for one season; the rest of the community would cry out against him as encroaching on and appropriating to himself what ought to be in common amongst them all. In the same manner as any corporation or society amongst us would not permit any of their body to set apart for his own use any part of their common field or any tree in it, etc., as they ought to reap in common the fruit

of these common'd subjects. As a confirmation of this, we learn from Tacitus that each nation who had any agriculture amongst them cultivated some spot of ground the product of which was divided amongst the members of the community. The first origin of private property would probably be mens taking themselves to fix habitations and living together in cities, which would probably be the case in every improved society. The field they would cultivate when living together in this manner would be that which lies most contiguous to them. As their place of abode was now become fixt, it would readily appear to them to be the easiest method to make a division of the land once for all, rather than be put to the unnecessary trouble of dividing the product every year. In consequence of this design the principal persons of such a community, or state, if you please to denominate a set of men in this condition by that honourable appellation, would divide the common land into separate portions for each individual or family. We find accordingly that Homer and Aristotle, whenever they give us an account of the settling of any colony, the first thing they mention is the dividing of the land. Aristotle too mentions the manner in which this was done. He tells us that the ground lying nearest to the new built city was divided into separate parcels as it was most convenient for each, but that which was more remote was still allowed to remain common.

One thing which strengthens the opinion that the property of land was settled by the chief magistrate posterior to the cultivation is that, in this country, as soon as the crop is off the ground the cattle are no longer kept up or looked after but are turned out on what they call the long tether; that is, they are let out to roam about as they incline. Tho' this be contrary to Act of Parliament yet the country people are so wedded to the notion that property in land continues no longer than the crop is on the ground that there is no possibility of getting them to observe it, even by the penalty which is appointed to be exacted against them.

This last species of property, viz. in land, is the greatest extension it has undergone.

Source: Adam Smith, *Lectures on Jurisprudence*, ed. R. L. Meek, D. D. Raphael and P. G. Stein, Oxford 1978, pp. 13-23

transactions of early ages, as not deserving to be remembered; and even in the history of later and more cultivated periods, they have been more solicitous to give an exact account of battles, and public negotiations, than of the interior police and government of a country. Our information, therefore, with regard to the state of mankind in the rude parts of the world, is chiefly derived from the relations of travellers, whose character and situation in life, neither set them above the suspicion of being easily deceived, nor of endeavouring to misrepresent the facts which they have related. From the number, however, and the variety of those relations, they acquire, in many cases, a degree of authority, upon which we may depend with security, and to which the narration of any single person, how respectable soever, can have no pretension. When illiterate men, ignorant of the writings of each other, and who, unless upon religious subjects, had no speculative systems to warp their opinions, have, in distant ages and countries, described the manners of people in similar circumstances, the reader has an opportunity of comparing their several descriptions, and from their agreement or disagreement is enabled to ascertain the credit that is due to them. According to this method of judging, which throws the veracity of the relater very much out of the question, we may be convinced of the truth of extraordinary facts, as well as of those that are more agreeable to our own experience. It may even be remarked, that in proportion to the singularity of any event, it is the more improbable that different persons, who design to impose upon the world, but who have no concert with each other, should agree in relating it. When to all this, we are able to add the reasons of those particular customs which have been uniformly reported, the evidence becomes as complete as the nature of the thing will admit. We cannot refuse our assent to such evidence, without falling into a degree of scepticism by which the credibility of all historical testimony would be in a great measure destroyed. This observation, it is hoped, will serve as an apology for the multiplicity of facts that are sometimes stated in confirmation of the following remarks. At the same time, from an apprehension of being tedious, the author has, on other occasions, selected only a few, from a greater number to the same purpose, that might easily have been procured.

Source: John Millar, *The Origin of the Distinction of Ranks*, Introduction, in William C. Lehmann, *John Millar of Glasgow*, Cambridge 1960, pp. 175-81

ADAM FERGUSON *The Origins of Civil Society*

Although the concepts of improvement and of progress were much in the air during the Scottish Enlightenment, many of the leading thinkers were aware that in many areas progress has a price tag, as witness, for example, Adam Smith's discussion (see excerpt 22) of the threat to the spiritual well-being of the citizens that is posed by the extreme application of the principle of the division of labour. In a sense what is called progress often involves new cures for new ailments.

Adam Ferguson takes much the same measured view as Adam Smith of the way a forward step of social progress is so often accompanied by a backward step. Indeed Ferguson is sceptical as to whether there is progress at all if progress is to be measured in terms of an increasing disproportion of happiness over unhappiness in society. Each person accommodates himself to the conditions of his own society, and the fact that we can hardly, if at all, imagine ourselves happy in most positions in any earlier society does not amount to serious proof that people reared in those societies were not as happy, more or less, as we are in ours. As against our totally unscientific conjectures about how we would feel if we lived in a society so unlike our own that we have practically no relevant experience to support our conjectures, Ferguson proposes a scientific methodology. Whereof there are no records, there is no point in offering descriptions. Ferguson refers to 'boundless regions of ignorance', and among the unscientific descriptions that he has in his sights are those by Thomas Hobbes and Jean-Jacques Rousseau. He also has in his sights Hume, whose *Treatise of Human Nature* is declared in its subtitle to be 'an attempt to introduce the experimental method of reasoning into the moral subjects', but whose account of the formation of society is a conjectural piece concerning the natural appetite between the sexes. In other

words Hume is attempting to read off the origins of society from a consideration of human nature as manifested in beings who are social to the core. His account therefore is every bit as conjectural and unscientific as are Hobbes's account of the state of nature as a state of war of every man against every man, and Rousseau's account of the noble savage who is corrupted by the encroachment of society. Both Hobbes and Rousseau looked back to a pre-social state of nature, while disagreeing utterly in their accounts of that state. Ferguson, noting that there is not a shred of evidence to support the claim that human beings ever did live, or even ever could have lived, in a pre-social state, restricts himself to the evidence, and the evidence suggests that we are by nature social animals, and therefore in living socially we live even now, no less than in previous ages, in a state of nature. Non-human animals also live in a state of nature, but there is this difference, that by an inner dynamic of human nature the human species has a great tendency to change, with successive generations adopting new social forms and new values, and no such thing can be said of other sorts of animal. A mouse or wolf 'attains', as Ferguson puts the point, 'in the compass of a single life, to all the perfection his nature can reach: but in the human kind, the species has a progress as well as the individual'. This progress is charted as a natural history of civil society, through the course of the *Essay*. In this excerpt Ferguson's scientific methodology is spelt out with great clarity.

A.B.

Of the Question Relating to the State of Nature

Natural productions are generally formed by degrees. Vegetables grow from a tender shoot, and animals from an infant state. The latter being destined to act, extend their operations as their powers increase: they exhibit a progress in what they perform, as well as in the faculties they acquire. This progress in the case of man is continued to a greater extent than in that of any other animal. Not only the individual advances from infancy to manhood, but the species itself from rudeness to civilization. Hence the supposed departure of mankind from the state of their nature; hence our conjectures and different opinions of what man must have been in the first age of his being. The poet, the historian, and the moralist, frequently allude to this ancient time; and under the emblems of gold, or of iron, represent a condition, and a manner of life, from which mankind have either degenerated, or on which they have greatly improved. On either supposition, the first state of our nature must have borne no resemblance to what men have exhibited in any subsequent period; historical monuments, even of the earliest date, are to be considered as novelties; and the most common establishments of human society are to be classed among the encroachments which fraud, oppression, or a busy invention, have made upon the reign of nature, by which the chief of our grievances or blessings were equally withheld.

Among the writers who have attempted to distinguish, in the human character, its original qualities, and to point out the limits between nature and art, some have represented mankind in their first condition, as possessed of mere animal sensibility, without any exercise of the faculties that render them superior to the brutes, without any political union, without any means of explaining their sentiments, and even without possessing any of the apprehensions and passions which the voice and the gesture are so well fitted to express. Others have made the state of nature to consist in perpetual wars, kindled by competition for dominion and interest, where every individual had a separate quarrel with his kind, and where the presence of a fellow-creature was the signal of battle.

The desire of laying the foundation of a favourite system, or a fond expectation, perhaps, that we may be able to penetrate the secrets of nature, to the very source of existence, have, on

Nature, therefore, we shall presume, having given to every animal its mode of existence, its dispositions and manner of life, has dealt equally with those of the human race; and the natural historian who would collect the properties of this species, may fill up every article now, as well as he could have done in any former age. Yet one property by which man is distinguished, has been sometimes overlooked in the account of his nature, or has only served to mislead our attention. In other classes of animals, the individual advances from infancy to age or maturity; and he attains, in the compass of a single life, to all the perfection his nature can reach: but, in the human kind, the species has a progress as well as the individual; they build in every subsequent age on foundations formerly laid; and, in a succession of years, tend to a perfection in the application of their faculties, to which the aid of long experience is required, and to which many generations must have combined their endeavours. We observe the progress they have made; we distinctly enumerate many of its steps; we can trace them back to a distant antiquity; of which no record remains, nor any monument is preserved, to inform us what were the openings of this wonderful scene. The consequence is, that instead of attending to the character of our species, where the particulars are vouched by the surest authority, we endeavour to trace it through ages and scenes unknown; and, instead of supposing that the beginning of our story was nearly of a piece with the sequel, we think ourselves warranted to reject every circumstance of our present condition and frame, as adventitious, and foreign to our nature. The progress of mankind from a supposed state of animal sensibility, to the attainment of reason, to the use of language, and to the habit of society, has been accordingly painted with a force of imagination, and its steps have been marked with a boldness of invention, that would tempt us to admit, among the materials of history, the suggestions of fancy; and to receive, perhaps, as the model of our nature in its original state, some of the animals whose shape has the greatest resemblance to ours.

It would be ridiculous to affirm, as a discovery, that the species of the horse was probably never the same with that of the lion; yet, in opposition to what has dropped from the pens of eminent writers, we are obliged to observe, that men have always appeared among animals a distinct and a superior race; that neither the possession of similar organs, nor the approximation of shape, nor the use of the hand, nor the continued intercourse with this sovereign artist, has enabled any other species to blend their

nature or their inventions with his: that in his rudest state, he is found to be above them; and in his greatest degeneracy, never descends to their level. He is, in short, a man in every condition; and we can learn nothing of his nature from the analogy of other animals. If we would know him, we must attend to himself, to the course of his life, and the tenor of his conduct. With him the society appears to be as old as the individual, and the use of the tongue as universal as that of the hand or the foot. If there was a time in which he had his acquaintance with his own species to make, and his faculties to acquire, it is a time of which we have no record, and in relation to which our opinions can serve no purpose, and are supported by no evidence.

We are often tempted into these boundless regions of ignorance or conjecture, by a fancy which delights in creating rather than in merely retaining the forms which are presented before it: we are the dupes of a subtlety, which promises to supply every defect of our knowledge, and, by filling up a few blanks in the story of nature, pretends to conduct our apprehension nearer to the source of existence. On the credit of a few observations, we are apt to presume, that the secret may soon be laid open, and that what is termed *wisdom* in nature, may be referred to the operation of physical powers. We forget that physical powers, employed in succession, and combined to a salutary purpose, constitute those very proofs of design from which we infer the existence of God; and that this truth being once admitted, we are no longer to search for the source of existence; we can only collect the laws which the author of nature has established; and in our latest as well as our earliest discoveries, only come to perceive a mode of creation or providence before unknown.

We speak of art as distinguished from nature; but art itself is natural to man. He is in some measure the artificer of his own frame, as well as his fortune, and is destined, from the first age of his being, to invent and contrive. He applies the same talents to a variety of purposes, and acts nearly the same part in very different scenes. He would be always improving on his subject, and he carries this intention where-ever he moves, through the streets of the populous city, or the wilds of the forest. While he appears equally fitted to every condition, he is upon this account unable to settle in any. At once obstinate and fickle, he complains of innovations, and is never sated with novelty. He is perpetually busied in reformations, and is continually wedded to his errors. If he dwell in a cave, he would improve it into a cottage; if he has already built, he would still build to a greater extent. But

he does not propose to make rapid and hasty transitions; his steps are progressive and slow; and his force, like the power of a spring, silently presses on every resistance; an effect is sometimes produced before the cause is perceived; and with all his talent for projects, his work is often accomplished before the plan is devised. It appears, perhaps, equally difficult to retard or to quicken his pace; if the projector complain he is tardy, the moralist thinks him unstable; and whether his motions be rapid or slow, the scenes of human affairs perpetually change in his management: his emblem is a passing stream, not a stagnating pool. We may desire to direct his love of improvement to its proper object, we may wish for stability of conduct; but we mistake human nature, if we wish for a termination of labour, or a scene of repose.

The occupations of men, in every condition, bespeak their freedom of choice, their various opinions, and the multiplicity of wants by which they are urged: but they enjoy, or endure, with a sensibility, or a phlegm, which are nearly the same in every situation. They possess the shores of the Caspian, or the Atlantic, by a different tenure, but with equal ease. On the one they are fixed to the soil, and seem to be formed for settlement, and the accommodation of cities: The names they bestow on a nation, and on its territory, are the same. On the other they are mere animals of passage, prepared to roam on the face of the earth, and with their herds, in search of new pasture and favourable seasons, to follow the sun in his annual course.

Man finds his lodgment alike in the cave, the cottage, and the palace; and his subsistence equally in the woods, in the dairy, or the farm. He assumes the distinction of titles, equipage, and dress; he devises regular systems of government, and a complicated body of laws: or, naked in the woods, has no badge of superiority but the strength of his limbs and the sagacity of his mind; no rule of conduct but choice; no tie with his fellow-creatures but affection, the love of company, and the desire of safety. Capable of a great variety of arts, yet dependent on none in particular for the preservation of his being; to whatever length he has carried his artifice, there he seems to enjoy the conveniences that suit his nature, and to have found the condition to which he is destined. The tree which an American, on the banks of the Oroonoko, has chosen to climb for the retreat, and the lodgement of his family, is to him a convenient dwelling. The sofa, the vaulted dome, and the colonnade, do not more effectually content their native inhabitant.

If we are asked therefore, Where the state of nature is to be

found? we may answer, It is here; and it matters not whether we are understood to speak in the island of Great Britain, at the Cape of Good Hope, or the Straits of Magellan. While this active being is in the train of employing his talents, and of operating on the subjects around him, all situations are equally natural. If we are told, That vice, at least, is contrary to nature; we may answer, It is worse; it is folly and wretchedness. But if nature is only opposed to art, in what situation of the human race are the footsteps of art unknown? In the condition of the savage, as well as in that of the citizen, are many proofs of human invention; and in either is not any permanent station, but a mere stage through which this travelling being is destined to pass. If the palace be unnatural, the cottage is so no less; and the highest refinements of political and moral apprehension, are not more artificial in their kind, than the first operations of sentiment and reason.

If we admit that man is susceptible of improvement, and has in himself a principle of progression, and a desire of perfection, it appears improper to say, that he has quitted the state of his nature, when he has begun to proceed; or that he finds a station for which he was not intended, while, like other animals, he only follows the disposition, and employs the powers that nature has given.

The latest efforts of human invention are but a continuation of certain devices which were practised in the earliest ages of the world, and in the rudest state of mankind. What the savage projects, or observes, in the forest, are the steps which led nations, more advanced, from the architecture of the cottage to that of the palace, and conducted the human mind from the perceptions of sense, to the general conclusions of science.

Acknowledged defects are to man in every condition matter of dislike. Ignorance and imbecility are objects of contempt: penetration and conduct give eminence, and procure esteem. Whither should his feelings and apprehensions on these subjects lead him? To a progress, no doubt, in which the savage, as well as the philosopher, is engaged; in which they have made different advances, but in which their ends are the same. The admiration Cicero entertained for literature, eloquence, and civil accomplishments, was not more real than that of a Scythian for such a measure of similar endowments as his own apprehension could reach. 'Were I to boast,' says a Tartar prince, 'it would be of that wisdom I have received from God. For as, on the one hand, I yield to none in the conduct of war, in the disposition of armies, whether of horse or of foot, and in directing the movements of great or small bodies; so, on the other, I have

my talent in writing, inferior perhaps only to those who inhabit the great cities of Persia or India. Of other nations, unknown to me, I do not speak.'

Man may mistake the objects of his pursuit; he may misapply his industry, and misplace his improvements. If under a sense of such possible errors, he would find a standard by which to judge of his own proceedings, and arrive at the best state of his nature, he cannot find it perhaps in the practice of any individual, or of any nation whatever; not even in the sense of the majority, or the prevailing opinion of his kind. He must look for it in the best conceptions of his understanding, in the best movements of his heart; he must thence discover what is the perfection and the happiness of which he is capable. He will find, on the scrutiny, that the proper state of his nature, taken in this sense, is not a condition from which mankind are for ever removed, but one to which they may now attain; not prior to the exercise of their faculties, but procured by their just application.

Of all the terms that we employ in treating of human affairs, those of *natural* and *unnatural* are the least determinate in their meaning. Opposed to affection, forwardness, or any other defect of the temper of character, the natural is an epithet of praise; but employed to specify a conduct which proceeds from the nature of man, can serve to distinguish nothing: for all the actions of men are equally the result of their nature. At most, this language can only refer to the general and prevailing sense or practice of mankind; and the purpose of every important inquiry on this subject may be served by the use of a language equally familiar and more precise. What is just, or unjust? What is happy, or wretched, in the manners of men? What, in their various situations, is favourable or adverse to their amiable qualities? are questions to which we may expect a satisfactory answer; and whatever may have been the original state of our species, it is of more importance to know the condition to which we ourselves should aspire, than that which our ancestors may be supposed to have left.

Source: Adam Ferguson, *An Essay on the History of Civil Society*, ed. D. Forbes, Edinburgh 1966, part 1, section 1

DAVID HUME *Of the First Principles of Government*

In speaking about 'the first principles of government' Hume has in mind the explanation for the fact, which he considers a surprising fact, that the many allow themselves to be governed by the few. Force must always be on the side of the many; why then do they allow themselves to be governed by the few? The answer, that they do so because they think the government is entitled to their loyalty, prompts the question as to why they think this. There were two common answers to this latter question. One, associated with torism, is that allegiance to government is owed in virtue of the governor's divine right to govern. This is not an answer that could appeal to Hume, since it immediately prompts questions about the existence and nature of God, and about the veracity of alleged signs of divine right. Who knows what the signs are, and what evidence can be provided in support of the claim to speak with authority on this matter?

On the other hand, the characteristic answer of whiggism is in terms of a social contract, an act by which a number of individuals willed a government into existence where previously there had been no government. This answer however invokes something, an original contract, whose existence cannot be verified, and whose existence could not, even if verified, explain how it could have any force for subsequent generations who were, in the nature of the case, not party to that original contract. Furthermore a point arises concerning why the original contractors should give their allegiance to a government if the government is not already in place and already due their allegiance. But the question we are looking to answer concerns precisely why any government should be considered as due allegiance.

Hume answers his basic question, that concerning the willingness of the many to be governed by the few, in terms of two opinions. One opinion concerns interests, particularly

