

ANSWERING THE FREE-RIDER*

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In the last four paragraphs of his highly polished *Enquiries*¹ David Hume concludes by turning his attention to the alleged advantages of vice and the possible responses to a sensible knave whose guiding policy is "[t]hat *honesty is the best policy* may be a good general rule, but is liable to many exceptions; and he ... conducts himself with most wisdom, who observes the general rule, and takes advantage of all the exceptions."² Hume promptly continues:

I must confess that, *if a man think* that this reasoning much requires an answer, it will be a little difficult to find any which will to him appear satisfactory and convincing. *If his heart rebel* not against such pernicious maxims, *if he feel no reluctance* to the thoughts of villainy or baseness, he has indeed lost a considerable motive to virtue; and we may expect his practice will be answerable to his speculation. *But in all ingenuous natures*, the antipathy to treachery and roguery is too strong to be counter-balanced by any views of profit or pecuniary advantage. Inward peace of mind, consciousness of integrity, a satisfactory review of our own conduct; these are circumstances, very requisite to happiness, and will be cherished and cultivated by every honest man, who feels the importance of them.³

This response to the problem of the 'free-rider' is quite in keeping with the view that moral evaluations are essentially subjective and that there are no external, objective moral standards, nor rights or duties to be reasoned to or intuited, nor even epistemological best answers independent of metaphysics. It is compatible with an acceptance that the core motives of action are not reason-based; that reason merely guides choices by showing probable consequences; that the inclinations and propensities propelling people are not monolithic or homogeneous. In short, this response to the free-rider problem corresponds with what one would

* The bulk of this article formed a small part of the author's doctoral thesis on David Hume and moral scepticism. Special gratitude is owed to Mark Fisher.

¹ David Hume, *Enquiries Concerning the Human Understanding and Concerning the Principles of Morals* (ed L A Selby-Bigge, 3rd edn, revised by P H Nidditch), Oxford University Press, 1962 (hereafter '*Enquiries*').

² *Enquiries*, pp. 282-3 (italics in original).

³ *Ibid.* (all italics mine).

expect of a moral sceptic like Hume⁴ who is perhaps characteristically optimistic about human nature, at least as regards the bulk of mankind.

In this paper I would like to consider Hume's response to the free-rider in greater detail. I will do this as one who concurs in Hume's second-order moral scepticism. Consequently my focus will not be moral scepticism *per se* but rather the task of seeing what, if any, answer the sceptic can give to the sensible knave who inclines towards free-riding.

To start it must be said that Hume's own discussion of the free-rider problem is somewhat unsatisfactory. The problem is *not* that his moral theory fails to make free-riding impossible or to prevent it—no theory has been able to eliminate free-riding. Rather one weakness is Hume's tendency to pose a false dichotomy:⁵ 'Should I, in balancing the account, opt for justice, with its occasional disutilities and impositions, or for no system of justice at all?' But it is evident these are not the only two choices. Scattered, and even widespread and regular, violations of a system of justice will not bring it down anymore than occasional optings for "simple acts of justice"⁶ which conflict with the rules. We see all around us what a sturdy resilience has justice. Additionally, the free-rider (as distinct from the revolutionary or terrorist) does *not* want the system of justice to collapse. Usually what he wants is widespread compliance by others making his 'prudential compliance where necessary but avoidance where profitable' strategy that much more advantageous. Hume seems at times to gloss over the crucial difference between an interest in having a system, convention or framework in place and an interest in always abiding by its rigours.

So having ruled out the reply that, 'being just is better than having no system at all' we can look more closely at the oft laboured task of attempting to make the case that every individual is always better off by being just. Then we can ask whether a sceptical moral theory like Hume's is open to the charge that it cannot wholeheartedly condemn the free-rider.

4 This is my reading of Hume in both the *Enquiries* and *A Treatise of Human Nature* (ed L A Selby-Bigge, 2nd edn, revised by P H Nidditch), Oxford University Press, 1978 (hereafter '*Treatise*'). I also draw on a wide range of others' views including those of Barry Stroud, *Hume*, Routledge, 1977 (hereafter 'Stroud'); J L Mackie, *Hume's Moral Theory*, Routledge, 1980 (hereafter 'Mackie'); and Gerald Postema, *Bentham and the Common Law Tradition*, Clarendon Press, 1986 (hereafter 'Postema').

5 Stroud makes a similar point about Hume at pp. 205, 208, 210 and 214. *Vide* too Postema, pp. 137-8. Hume's tendency to pose an all-or-nothing choice is evident in his discussion of justice in *Treatise*, III ii 2, in particular pp. 497-498.

6 *Treatise*, p. 497.

Postema argues⁷ that the question Hume must answer is not *a*) What now motivates most people to comply with rules of justice? but rather *b*) "Is it *rational* for an individual to participate in the formation of the practice of justice and is it rational for such a person also to comply with the rules of the practice thus established?"⁸. I agree with Postema about *a*); however I do not agree that Hume's task is to make a universal case for the *rationality* of compliance with justice if by 'rational' is meant 'reason-based motives in favour of'. Such an undertaking would fundamentally undermine Hume's non-reason-based theory of motivation and his whole case that morality is not based on reason. Of course if 'rational' is to mean something like 'desirable' or 'appropriate' then Postema's question is fine but vague. (Hume himself sanctions a loose, non-literal use of the term 'reason'—"an improper sense"⁹—to correspond to popular usage and stand for calm, impartial sentiments.) Hence the question I think Hume tries to answer in the affirmative is *c*) Is it always in every individual's self-interest to comply with the rules of justice?

Hume's basic strategy is to provide experience-based prudential arguments against free-riding although, as Stroud notes,¹⁰ he occasionally lapses into rhetoric reminiscent of Plato and what I might call gold versus bronze types of satisfactions.¹¹ But I put such rhetorical passages down to exuberance and Hume's literary skills and turn to Hume's basic strategy.

Here Hume does not labour too hard¹². His arguments are fairly straightforward. Firstly, if one is caught cheating she will be worse off (even long-term) than had she always been honest. Secondly, successful free-riding is difficult. This is also presented in the obverse form that the easiest course is to act justly (in which form it may carry extra psychological insight). Then finally, recognising that not each single act of justice always leads to gain for any particular agent, Hume points to the value of general rules¹³ and sets up the false dichotomy I have rejected above.¹⁴

⁷ Postema, p 135, fn 38.

⁸ *Ibid.* (italics mine).

⁹ *Treatise*, p 536. *Vide too Treatise*, pp 417, 437, 583.

¹⁰ *Vide* Stroud, p. 215.

¹¹ *Vide Enquiries*, pp. 283-284.

¹² Postema discusses Hume's arguments from pp. 137-143. Hume's arguments in the *Enquiries* occur just before and after the quotation which began this paper. See fn. 3 above. His discussion of justice and the need to follow rules is at *Treatise*, III ii 2.

¹³ *Vide Treatise*, p. 497, 532, 551 and *Enquiries*, p. 304 *inter alia*. Hume's version of rule-utility is doubtlessly strict. He seems to condone violations only where the rules themselves threaten society. (*Vide* Postema, pp. 105-107). *Cf.* fn. 17 *infra*.

¹⁴ *Vide* p. 2 *supra*.

The first two arguments are powerful lessons drawn from experience. But as Hume saw they do not hold in all situations.¹⁵ Not everyone is caught. Some few are intelligent enough to pick their opportunities well. What is essential is merely to make others *believe* one is a respecter-of-justice, a keeper-of-promises, an honest person, as Stroud points out.¹⁶ Nor does Hume's version of the third argument work.

John Mackie proposes¹⁷ a more sophisticated version. He argues that debates in moral philosophy frequently focus misleadingly on *acts*. This might be the case with the free-rider dilemma (which is of course one aspect of the right versus good or well-being contest). To attempt to dissuade the potential free-rider—or more accurately *all* potential free-riders—by offering him self-interested, experienced-based generalisations of outcome which favour the 'justice option' is impossible *on an act-by-act basis*. Nor does Hume's all-or-nothing rule-utility help once it is acknowledged that the free-rider will not destroy the system. But if attention were shifted away from acts-in-isolation to practices or dispositions the case against free-riding would be stronger. The nub of Mackie's case is that for human beings, operating in the uncertain swirl of other human beings all themselves similarly operating, some choices are impracticable. Some options are simply not 'live' options. This is because consequences become impossible to assess perfectly and even where they can be guessed at, it may well be unachievable to organise matters appropriately. Perhaps one must choose some practice, some disposition to act in a particular way, and each such choice necessarily (given human limitations) includes some particular acts that would *not* be chosen on their own.¹⁸ This is a world in which

¹⁵ And the larger and more complex a society grows the less obvious to all become the tasks mandated by reciprocity. In short, it is easier to cheat in a large, modern, complex society. Additionally, in such societies can be found the triad or mafia boss - not exactly a free-rider because he operates by force and fear, not deception, and not exactly a revolutionary or terrorist because he does not want the existing system of justice to collapse. I prefer to think of all similar mafiosa as 'fear-riders' rather than 'free-riders' but the following discussion is generally applicable to these fear-riders as well.

¹⁶ *Vide* Stroud, p. 206. *Vide* too Postema, p. 136.

¹⁷ *Vide* Mackie, pp. 90-93. The following paragraph is my liberal interpretation of Mackie.

¹⁸ Mackie's own example is of the election campaign in which electing candidate X has more utility than electing any of the others, indeed more utility than if all X's supporters chose to do something other than vote. Now the best result would be a victory by X by one vote, with all the rest of X's supporters out increasing utility in some other way. This, though, is not possible to arrange and so X's supporters must spend their time voting. The optimal result is unattainable. *Vide* Mackie, pp. 91-92.

the 'live' options are practices or dispositions—not particular acts. And so the prospective free-rider:

may reasonably, out of prudent self-interest, adopt a regular practice and cultivate a disposition in oneself, or, again, enter into and try to maintain an interpersonal general practice with its associated dispositions, because the practice as a whole (in either case) is advantageous to oneself, although some of the separate acts which constitute it (either one's own or those of other agents) will be against one's interest.¹⁹

This argument, that certain acts which *cannot* be seen as good even in the long, long-term may nevertheless be seen as inexorable side-effects of a good, desirable practice or disposition, improves upon Hume's prudential case. By not omitting to consider what is and is not possible for creatures such as humans it cleverly makes more coherent how a general *system* of justice, where some acts in accordance with that system, but viewed in isolation, are actually harmful and unjust, can nevertheless be for the good.

I fear, however, that Mackie also fails to answer the free-rider. He simply does *not* manage to "show [conclusive] reasons why [each and every free-rider] should always act justly or honestly, even when [her] action, considered on its own, is harmful."²⁰ He seems to move too cheerfully and optimistically from the conclusion that a scheme of justice most certainly can be good even though it unfortunately, and due to human variables necessarily, has bad particular consequences to the further conclusion that any free-rider would, for reasons of self-interest, apply this to her own case and choose justice. But to do this is to conflate the issue of whether society will be better off with inflexible rules with the free-rider's calculation of whether to follow justice unswervingly. The two questions need to be evaluated from different vantages.²¹ In reality Mackie's case to the potential free-rider boils down to an assertion that the only viable options for people are all-or-nothing dispositions (which is different from claiming that the only viable justicial systems contain all-or-nothing rules). This psychological assertion, though, seems to me to be false. The mind is more compartmentalized than Mackie makes out²²; the

¹⁹ Mackie, p. 93.

²⁰ *Ibid.*, p. 86.

²¹ It seems to me that Postema (*vide* pp. 134-143) may also conflate the two issues.

²² This criticism also undermines Postema's formulation (pp. 140-142) of Hume's case that any knave's strategy, to be successful, must not leave him or her cut off from the community. Free-riding need not be a 'systematic' pursuit. As Hume

devout Catholic can choose to have an abortion or, with fewer if any qualms, to use contraception; the environmentalist can deliberately litter, enjoy air-conditioning and drive hours each day to and from work; the convicted thief can be a loving father and dependable friend; and there are free-riders who can and do attempt to follow justice when it is in their interests but not otherwise. It may for many be 'wise' to choose in terms of a disposition but for some at least raw self-interest—even after accounting for the difficulty of stepping in and out of a practice and the costs of overcoming certain qualms—must surely point towards free-riding.

Must we conclude then that the task of convincing each and every individual that his self-interest (even in the broader sense in which self-interest is taken to be furthered when an agent happens to get happiness by, say, making some sacrifice for his lover) points him towards justice on all occasions is an impossible task? For the moral sceptic the answer quite simply is yes. Any moral theory must admit that all systems of justice have their free-riders. For the moral sceptic, there is the further admission that on her principles there is no way to answer some free-riders. To make that all-inclusive answer requires some form of moral objectivism—the reply that certain values and thus behaviours simply are right and mandated whatever the surrounding circumstances or costs. Without an objective foundation for obligation²³ there will always be occasional circumstances (given a particular type of person) in which self-interest and self-referential benevolence and even the instinctive desire for communal interaction are not convincingly re-directed towards justice.

If the task of convincing each and every person of the advantages of justice be hopeless for the moral sceptic does it further follow that that same moral sceptic cannot condemn the free-rider? Certainly not! Hume's very strong attachment to justice is not weakened despite or by his inability to answer each and every knave.²⁴ To see why one need only recall that Hume's is a non-reason-based theory of action. Reason cannot 'convince' us how to act; it can merely guide us by illuminating probable causal consequences. But underlying such consequences are particular desires, propensities and inclinations and these vary between individuals. Certain people with

himself comments in *Essays, Moral, Political and Literary* (ed. Eugene Miller), Liberty Classics, 1985, "[T]he heart of man is made to reconcile contradictions." ('Of the Parties of Great Britain', p. 71) And again, "But what is man but a heap of contradictions." ('Of Polygamy and Divorces', p. 188).

²³ That foundation for obligation could be provided by any type of moral realism or perhaps even by a social contract analysis. (*Vide*, for example, Postema, pp. 53-54). Hume, in my view, rejects all these.

²⁴ *Pace* Postema, p. 138.

certain inclinations will find the consequences, including the obvious risks, of free-riding quite acceptable, even attractive.²⁵ What the Humean can condemn²⁶ then are these core inclinations. Their bad consequences make them 'inappropriate' and 'undermining' from a social perspective (and as Hume recognises they are 'risky' and more often than not 'socially isolating' from the free-rider's perspective). None of this, though, need alter those inclinations and thus 'convince' potential free-riders not to free-ride. Any appeal to self-interest depends in part on the agent's interests or passions. So the Humean can condemn the free-rider but only from a certain vantage, the vantage of him who has 'appropriate' inclinations. And this is what Hume is getting at in the passage cited at the start of this paper.²⁷

Finally, to accept that there are no arguments that can 'convince' all potential free-riders to desist, that no appeal to self-interest universally points to steadfast compliance with justice, is no more problematic than an inability 'rationally'²⁸ to dissuade all potential revolutionaries, terrorists or traitors. In all such extreme cases a society must rely on the efficacy of legal sanctions, of the general standards which have become generally known and settled and which provide an enforceable external criteria. The problem of the free-

²⁵ Of course to qualify as free-riders such people will also have to be those who are not moved to justice by benevolence, loyalty, generosity, public spirit, *etc.*

²⁶ By 'condemn' I mean 'assign blame for'. Such Humean blame would be a method of social dissuasion. Assigning blame for having socially undesirable inclinations would promote deterrence and further moral education by helping to repress and prevent these inclinations in future. On occasion the prospect of such blame might even be a motive contributing towards the re-direction of individuals' existing, undesirable inclinations. But Humean blame would not necessarily connote an acceptance of free-will and the possibility of choosing one's core inclinations, which possibility Hume himself, at least in those contemplative moments of philosophical reflection in his study, would have great difficulty accepting.

This is not to say that I accept the Humean compatibilist solution to the question of the possibility of free-will existing. I do not. My view is that coherent or incoherent, more is generally meant by free-will than the voluntariness or freedom from external compulsion which Hume seems to think it signifies. Still, I am following Hume when I note the difficulty in making a case against determinism. To respond by accepting the case for determinism but pointing out that despite such reasoning humans continue to feel, believe and behave as though they had free-will would be, in my opinion, typically within the Humean spirit. Any in-depth discussion of determinism is far beyond the purview of this paper. Here, it is enough to note that Humean condemnation is in terms of the consequences to society.

²⁷ *Vide* fn. 3 *supra*.

²⁸ *I.e.*, in terms of likely consequences. One might also attempt to manipulate and indoctrinate people with different sentiments and preferences.

rider graphically illustrates the need for established standards and enforceable sanctions which are positive and in that sense objective and mind-independent. Hume was well aware of the need for such legal standards. To those individuals whose hearts rebel not at the thought of villainy or baseness there is no other response the moral sceptic can give. She, like Hume, must ultimately rely on successful free-riding proving too difficult for most so inclined.