

Contemplating Locke Wednesday, November 6, 2024 6:45p.m. - 8:15 p.m. EDT Professor Joseph E. Hartman Georgetown University

# On the History and Influence of Ideas

The ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood. Indeed, the world is ruled by little else. Practical men, who believe themselves to be quite exempt from any intellectual influence, are usually the slaves of some defunct economist. Madmen in authority, who hear voices in the air, are distilling their frenzy from some academic scribbler of a few years back. I am sure that the power of vested interests is vastly exaggerated compared with the gradual encroachment of ideas.

> —John Maynard Keynes, *The* General Theory of Employment, Interest and Money (1936)

I. Who Was John Locke?

II. Lockean Thought and the American Founding

III. Introduction to *The Second Treatise* 

IV. Themes

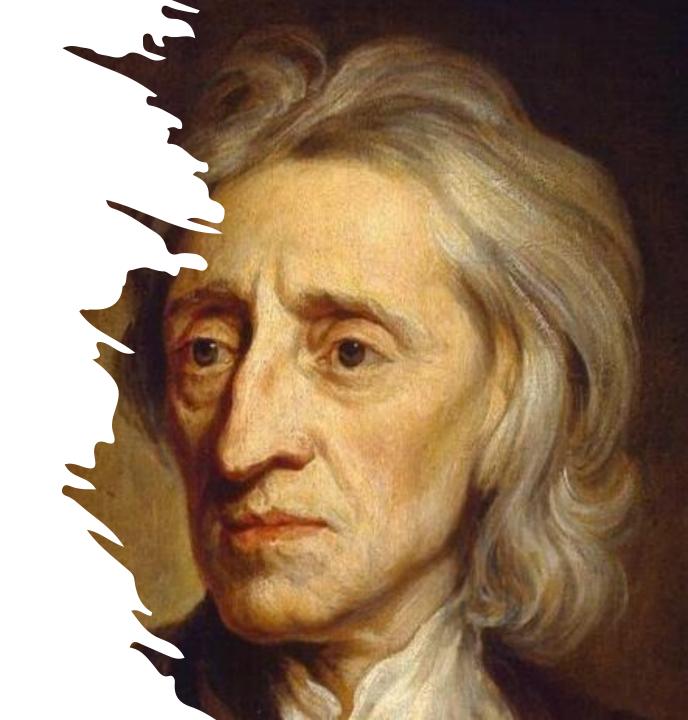
V. Text

# I. WHO WAS JOHN LOCKE?

JOHN LOCKE (1632-1704);

Second Treatise of Government (1689)

- BIOGRAPHY: English philosopher and physician, Enlightenment thinker, the "Father of Liberalism." Raised in Puritan Circles.
- HISTORICAL CONTEXT: Glorious Revolution (1688) King James II of England overthrown by William of Orange (William III)
- PURPOSE: Found civil society based on natural rights and social contract theory
- TEXT: Treatise—systematic



II: LOCKEAN
THOUGHT AND
THE AMERICAN
FOUNDING

## Locke's Influence on the Founders

JEFFERSON: "Bacon, Locke and Newton I consider as the three greatest men that have ever lived, without any exception, and as having laid the foundation of those superstructures which have been raised in the Physical & Moral sciences."

HAMILTON: "Anyone desiring to understand those favoring American independence should "apply yourself without delay to the study of the law of nature, I would recommend to your perusal . . . Locke." (February 23, 1775)

OTIS: "The authority of Mr. Locke has . . . been preferred to all others."

# Declaration of Independence: Preamble

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.

#### Lockean Themes

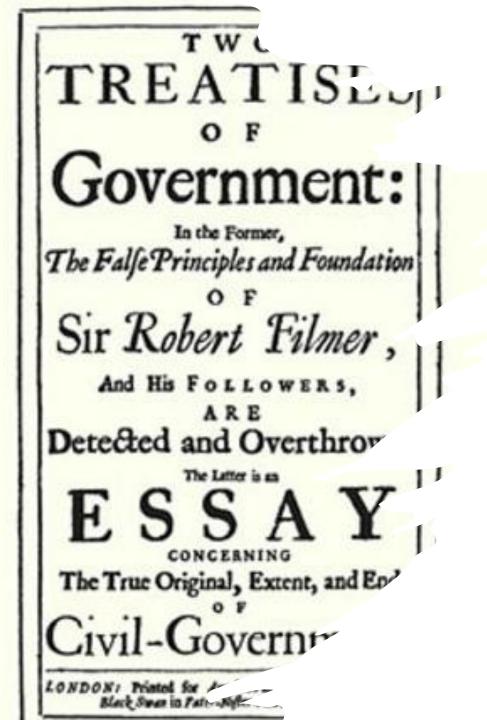
EQUALITY: ("all men are created equal")

NATURAL RIGHT TO LIFE, LIBERTY AND HAPPINESS: ("endowed by their Creator with certain unalienable rights."

CONSENT OF THE GOVERNED: (Governments "deriv[e] their just powers from the consent of the governed.")

RIGHT OF REVOLUTION: ("it is their right, it is their duty, to throw off such Government . . .")

III:
INTRODUCTION
TO THE SECOND
TREATISE



### III. Introduction to the Second Treatise

- The Problem: How to establish governmental legitimacy absent monarchy? (First Treatise is a a response to Robert Filmer's *Patriarcha*)
- The Solution—Consent of the Governed: Social contract in which individuals consent to form a representative government that protects natural right (life, liberty and property under the Rule of Law).

# III: THEMES OF THE SECOND TREATISE

### IV. Themes of the Second Treatise

- **Human Nature:** Appetite and Reason; Free and Equal
- Popular Sovereignty/Consent of the Governed:
- Constitutional Government
- Liberal Premise:
- Fundamental Rights: Life, Liberty, Property
- Rationale for Government: Protection of Natural Rights
- Separation of Powers: Nondelegation and Executive Prerogative
- Right of Revolution
- Self-Interest or Virtue?

# IV. TEXT: Outline of *The Second Treatise*

- Ch. 1: INTRODUCTION
- Chs. II VII: THE ORIGIN OF, AND GROUNDS FOR GOVERNMENT
- Chs. VIII XIV: LEGITIMACY OF POLITICAL POWER
- Ch. XV: RECAP OF PREVIOUS CHAPTERS
- Chs. XVI XVIII: Of Illegitimate Governments
- Ch. XIX: RIGHT OF REVOLUTION

# Ch. I: INTRODUCTION

# Ch. I. Introduction

#### POLITICAL POWER DEFINED: § 3:

The "right of making Laws with penalties of death, and consequently all less penalties, for the Regulating and Preserving of property, and of employing the force of the community, in the execution of such laws, and in defence of the common-wealth from foreign injury, and all this only for the public good."

# Ch. I. Introduction

#### NOTE:

Power is not just *capacity*, but *morally sanctioned capacity* (we might call this *authority*)

# Ch. II. OF THE STATE OF NATURE

#### FREEDOM AND EQUALITY: § 4:

To understand political power right, and derive from it from its original, we must consider, what state all men are naturally in, and that is, a *state* of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man. A state also of quality, wherein all the power and jurisdiction is reciprocal, no one having more than another..."

#### LAW OF NATURE: § 6:

The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that... no one ought to harm another in his life, health, liberty, or property.

#### NO HOARDING:

"God has given the World to Men in common . . . to make use of to the best advantage if Life and convenience."

TWO NATURAL RIGHTS (ORIGIN OF CRIMINAL AND CIVIL LAW?): § 11:

From these two distinct rights, the one of punishing the crime for restraint, and preventing the like offence, which right of punishing is in every body; the other of taking reparation, which belongs only to the injured party.

#### EXECUTIVE POWER IS NATURAL: § 13

"In the state of nature everyone has the executive power of the law of nature" § 13 (note that the state of nature is still superior to monarchy)

PRESENT STATE OF NATURE—INTERNATIONAL REALM: § 14:

All princes and rulers of independent governments throughout the world are in a state of nature.

HOOKER ARGUMENT (similar to Hobbes' commodious living):

"forasmuch as we are not by ourselves sufficient to furnish ourselves with a competent store of things, needful for such a life as our nature doth desire, a life fit for the dignity of man, therefore to supply those defects and imperfections which are in us, as living single and solely by ourselves, we are naturally induced to seek communion and fellowship with others: this was the cause of men's uniting themselves at first in politic societies (see also Book II of Republic)

# Ch. III. OF THE STATE OF WAR

# Ch. III. Of the State of War

#### STATE OF NATURE vs. STATE OF WAR: § 19:

They "are as far distant, as a state of peace, good will mutual assistance and preservation, and a state of enmity, malice, violence and mutual destruction are from one another. Men living together according to reason, without a common superior on earth, with authority to judge between them, is properly the state of nature. But force, or a declared design of force, upon the person of another, where there is no common superior on earth to appeal to for relief, is the state of war.

## Ch. III. Of the State of War

#### STATE OF WAR IS TEMPORARY: § 20:

"when the actual force is over, the state of war ceases between those that are in society, and are equally on both sides subjected to the fair determination of the law." (Cf. ex parte Milligan (1866)

#### Ch. IV. OF SLAVERY

# Chapter IV. Of Slavery

#### INALIENABLE RIGHT TO LIFE: § 23:

"This freedom from absolute, arbitrary power is so necessary to, and closely joined with a man's preservation, that he cannot part with it, but by what forfeits his preservation and life together: for a man, not having the power of his own life, cannot, by compact, or his own consent, enslave himself to any one, nor put himself under the absolute, arbitrary power of another, to take away his life, when he pleases (compare to Hobbes)

# Chapter IV. Of Slavery

#### DRUDGERY AND SLAVERY: § 24:

Slavery "is nothing else, but the state of war continued, between a lawful conqueror and a captive" (note defense of the Bible, distinction between drudgery and slavery

CH. V. OF PROPERTY

DUAL SOURCES OF EVIDENCE/AUTHORITY: § 25:

Reason and Revelation.

ALL ORIGINALLY HELD IN COMMON: § 26:

Fruits of the earth "belong to mankind in common, as they are produced by the spontaneous hand of nature, and no body has originally a private dominion, exclusive of the rest of mankind, in any of them, as they are thus in their natural state: yet being given for the use of men, there must of necessity be *a means to appropriate* them some way or other, before they can be of any use."

#### PROPERTY DEFINED: § 27:

"every man has a *property* in his own *person* . . . the *labour* of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his *labour* with, and joined to it something that is his own, and thereby makes it his property."

#### APPROPRIATION OF NATURE: § 30:

"whoever has employed so much *labour* about any of that kind, as to find and pursue [the hare] has thereby removed her from the state of nature, wherein she was common, and hath begun a property."

#### LIMITATION—NO SPOILAGE: § 31:

"As much as any one can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in: whatever is beyond this, is more than his share, and belongs to others."

## Ch. V. Of Property

### PROTESTANT WORK ETHIC? § 34:

"[God] gave it to the use of the industrious and rational . . . not to the fancy or covetousness of the quarrelsome and contentious.

§ 38—Note that if one does not use all his property, he is wasting it and could be the possession of another

## Ch. V. Of Property

AMERICA AS THE STATE OF NATURE: § 41:

"in the beginning all the world was America"

PROPERTY IS NOT PRIMEVAL OR GIVEN, IT REQUIRES LABOR: § 45:

"labour, in the beginning, gave a right of property (not Adam)

THEORY OF MONEY:§ 47:

"some lasting thing that men might keep without spoiling." It allows for one to "enlarge his possessions" § 48.

## CH. VI. OF PATERNAL POWER

### Ch. V. Of Paternal Power

PARENTAL, NOT PATERNAL: § 52:

**EQUALITY:** § 54: All men are in equality

PURPOSE OF LAW—FREEDOM: § 57: "the end of law is not to abolish or restrain, but to preserve and enlarge freedom . . . where there is no law there is no freedom."

# CH. VII. OF POLITICAL OR CIVIL SOCIETY

### Ch. VII. Of Political or Civil Society

### FAMILY FIRST? § 77:

"The first society was between man and wife, which gave beginning to that between parents and children; to which, in time, that between master and servant came to be added."

### Ch. VII. Of Political or Civil Society

### DEFINITION OF POLITICAL SOCIETY: § 89:

"Where-ever therefore any number of men are so united into one society, as to quit every one his executive power of the law of nature, and to resign it to the public, there and there only is a political or civil society. And this is done, where-ever any number of men, in the state of nature, enter into society to make one people." (note that by definition an absolute monarchy is not a civil society). § 90

### Ch. VII. Of Political or Civil Society

### CRITIQUE OF HOBBES? § 93:

"In absolute monarchies . . . what fence is there, in such a state, against the violence and oppression of this absolute ruler? the very question can scarce be borne. They are ready to tell you, that it deserves death only to ask after safety.

CH. VIII. OF THE BEGINNING OF POLITICAL SOCIETIES

## Ch. VII. Of The Beginning of Political Societies

### CONSENT THEORY OF GOVERNMENT: § 95:

"The only way whereby anyone divests himself of his natural liberty, and puts on the *bonds of civil society*, is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any, that are not of it."

#### **CONSTITUTIONALISM:**

Note the importance of the "original compact"

## Ch. VII. Of The Beginning of Political Societies

### CRITICISM—PEOPLE ARE BORN INTO GOVERNMENTS PREEXISTING: § 113:

"That all men being born under government, some or other, it is impossibly any of them ever should be free, and at liberty to unite together, and begin a new one, or ever be able to erect a lawful government."

### TACIT CONSENT: § 119:

"There is a common distinction of an express and a tacit consent. . .. every man, that hath any possessions or enjoyment, of any part of the dominions of any government, doth thereby give his *tacit consent*, and is as far for the obliged to obedience to the laws of that government, during such enjoyment, as any one under it; whether this is his possession be of land, to him and his heirs for ever, or a lodging only for a week." Accept the benefits, assume the burdens

CH. IX. OF THE ENDS OF POLITICAL SOCIETY AND GOVERNMENT

# Ch. IX. Of Ends of Political Society and Government

#### HOBBES REDUX? § 123:

If man in the state of nature be so free, as has been said; if he be absolute lord of his own person and possessions, equal to the greatest, and subject to no body, why will he part with his freedom? Why will he give up this empire, and subject himself to the dominion and control of any other power? To which it is obvious to answer, that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain, and constantly exposed to the invasion of others: for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very unsecure. This makes him willing to quit a condition, which, however free, is full of fears and continual dangers: and it is not without reason, that he seeks out, and is willing to join in society with others, who are already united, or have a mind to unite, for the mutual preservation of their lives, liberties and estates, which I call by the general name, property.

# Ch. IX. Of Ends of Political Society and Government

### PRESERVING PROPERTY: § 123:

"It is not without reason, that [man] seeks out, and is willing to join in society with others, who are already united, or have a mind to unite, for the mutual *preservation* of their lives, liberties, and estates, which I call by the general name, *property*.

§ 124 "The great and *chief end*, therefore, of men's uniting into common-wealths, and putting themselves under government, *is the preservation of their property.* To which in the state of nature there are many things wanting." (66)

Ch. IX. Of Ends of Political Society and Government

ORIGINS OF GOVERNMENTAL POWER IN STATE OF NATURE: § 128:

Origins of legislative and executive: the power to "do whatsoever he thinks fit for the preservation of himself, and others, within the permission of the *law of nature*" and "the power to punish the crimes committed against that law."

CH. XI. OF THE EXTENT OF THE LEGISLATIVE POWER

# Ch. IX. Of the Extent of the Legislative Power

### PURPOSE OF LEGISLATURE: § 134:

Legislature exists for "the preservation of the society." It is the "supreme power" of the commonwealth.

ARBITRARY: Cannot be arbitrary: § 135: Is limited to seeking the public good

RULE OF LAW: Cannot assume a power to rule by extemporary arbitrary decrees § 136. There must be "promulgated standing laws, and known authorized judges."

TAKINGS: Cannot "take from any man any part of his property without his own consent § 138.

NONDELEGATION: Cannot "transfer the power of making laws to any other hands' (Nondelegation) § 141

Ch. IX. Of the Extent of the Legislative Power

BOUNDARIES AROUND LEGISLATIVE POWER: § 142:

Legislatures must "govern by promulgated established laws "designed for "the good of the people," "they may not raise taxes on the property of the people, without the consent of the people" and they may not "transfer the power of making laws to any body else."

CH. XII. OF THE LEGISLATIVE, EXECUTIVE, AND FEDERATIVE POWER OF THE COMMONWEALTH

Ch. XII. Of the Legislative, Executive, and Federative Power of the Commonwealth

#### SEPARATION OF POWERS:

Laws need a perpetual execution, but we don't need a permanent legislature

#### **FEDERATIVE POWER:**

The power to act in foreign affairs

### CH. XIV. PREROGATIVE

### Ch. XIV. Prerogative

#### RATIONALE—§ 159.

When the legislative and executive powers are in distinct hands (as they are in all moderated monarchies and well-formed governments), the good of the society requires that various things should be left to the discretion of the executive. The legislators can't foresee and make legal provision for everything that may in future be useful to the community, so the executor of the laws—having the power in his hands—has by the common law of nature a right to make use of it for the good of the society in many cases ·of difficulty· where the existing law •doesn't deal with the difficulty—until the legislature can conveniently be assembled to make laws that •do. There are many things that the law can't possibly provide for, and those must be left to the discretion of him who has the executive power in his hands....

Ch. XIV.
Prerogative

DEFINITION: § 160.

The word 'prerogative' is the name for this power to act according to discretion, for the public good, without the support of the law and sometimes even against it. CH. XV. PATERNAL, POLITICAL AND DESPOTIC POWER, CONSIDERED TOGETHER

Ch. XV. Paternal, Political and Despotic Power, Considered Together PATERNAL: § 170:.

"Paternal or parental power is simply what parents have over their children to govern them for their own good until they come to the use of reason."

POLITICAL: § 171:

"Political power is the power that every man has in the state of nature and gives up into the hands of the society, and within the society to the governors whom the society has set over itself."

DESPOTIC: § 172

"Despotic power is an absolute, arbitrary power that one man has over another to take away his life whenever he pleases. Nature doesn't give this power, for it doesn't distinguish one man from another;"

### CH. XVIII. TYRANNY

## Ch. XVIII. Tyranny

DEFINITION--§ 199.

"Tyranny is the exercise of power to which nobody can have a right. That is what happens when someone employs the power he has in his hands, not for the good of those who are under it but for his own private individual advantage."

RULE OF LAW--§ 202:

Wherever law ends, tyranny begins.

# CH. XV. THE DISSOLUTION OF GOVERNMENT

# Ch. XIX. The Dissolution of Government

#### RIGHT OF REVOLUTION-- § 222.

Whenever the Legislators endeavor to take away, and destroy the Property of the People, or to reduce them to Slavery under Arbitrary Power, they put themselves into a state of War with the People, who are thereupon absolved from any farther Obedience, and are left to the common Refuge, which God hath provided for all Men, against Force and Violence. Whensoever therefore the *Legislative* shall transgress this fundamental Rule of Society; and either by Ambition, Fear, Folly or Corruption, endeavor to grasp themselves, or put into the hands of any other an Absolute Power over the Lives, Liberties, and Estates of the People; By this breach of Trust they forfeit the Power, the People had put into their hands, for quite contrary ends, and it devolves to the People, who have a Right to resume their original Liberty"

Closing Thoughts . . .

And Questions?