

John Protevi

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Notes on Locke, *Second Treatise of Government*

## READING ASSIGNMENT

Ch 1, #2-3

Ch 2, all

Ch 3, all

Ch 4, all

Ch 5, all

Ch 7, all

Ch 8, all

Ch 9, all

Ch 15, all

## CHAPTER OUTLINE

### BASIC CONCEPTS

Ch I: Political power

Ch II: state of nature

Ch III: state of war

Ch IV: slavery

Ch V: property

Ch VI: paternal power

### CIVIL SOCIETY

Ch VII: civil (aka “political”) society

Ch VIII: origins of civil society

Ch IX: ends (goals or purposes) of civil society

### FORMS AND FUNCTIONS OF GOVERNMENT

Ch X: Forms of government

Ch XI: Extent of Legislative power

Ch XII: Legislative, Executive, and Federative power

Ch XIII: Separation of powers (plus statement of popular sovereignty)

Ch XIV: Executive power (“prerogative”)

### RECAP OF TYPES OF POWER

Ch XV: recap of paternal, political and despotic power

### IILLEGITIMATE GOVERNMENT

Ch XVI: unjust foreign conquest (and the limits on the victor of a just war of conquest)

Ch XVII: usurpation

Ch VXIII: tyranny

### DISSOLUTION OF GOVERNMENT

Ch XIX: changing rules of the game, moving toward tyranny, etc.

## BASIC CONCEPTS (Chapters I-VI)

### Ch I: Definition of political power: PP = right of

- 1) making laws with penalty of death (or lesser) for regulating and preserving of property,
- 2) employing force of community to execute those laws,
- 3) employing force of community in defense from foreign attack,
- 4) only for the public good.

### Ch II: state of nature (natural law and natural right)

- 1) State of nature is ¶ 4
  - a. state of freedom to act w/in bounds of natural law
  - b. state of equality (unless God has made manifest a right to dominion)
- 2) Natural law ¶ 6
  - a. SN not a state of license, bcs of natural law (NL)
  - b. accessible by reason
  - c. obliges everyone
    - i. not to harm anyone (as we are God's works and God's property)
    - ii. to preserve himself (not doing so would harm us)
    - iii. when our safety is assured, to preserve rest of mankind
- 3) Punishment in state of nature ¶ 7-12
  - a. anyone can punish a violator of the law of nature
  - b. but this punishment
    - i. cannot be arbitrary
    - ii. it must be limited to reparation and restraint
- 4) Partiality of men in punishment in SN ¶ 13
  - a. a reason to join civil society
  - b. remember, absolute monarchs are men too
- 5) Did SN ever exist ¶ 14?
  - a. Present heads of state are in SN to each other regardless if they have treaties
  - b. SC is a special kind of contract (to form civil society)
    - i. Treaties and other private contracts
    - ii. Keep parties in SN
  - c. All men are in SN until they join CS ¶15

### Ch III: state of war

- 1) State of war (SW): ¶16
  - a. State of enmity (not a passionate, heat of the moment decision)
  - b. You can destroy your war enemy just as you can destroy a wolf or lion
    - i. Animals are not rational and thus not under NL
    - ii. Violators of NL have only force and violence as rule
    - iii. So they may be treated as beasts of prey
- 2) What triggers SW?
  - a. Trying for absolute power (i.e., making someone a slave) is act of war ¶17:
    - i. This holds in SN
    - ii. And in CS

- b. theft is an act of war ¶ 18:
- 3) SN and SW are **not** coextensive ¶ 19:
  - a. SN = men living together w/o CS authority but still bound by NL
  - b. SW = use of force w/o CS authority able to be appealed to
    - i. So you can be in SW with someone if CS law enforcement (LE) is not present
    - ii. ¶ 20, but when CS LE arrives, SW ceases
    - iii. but SW continues in SN once begun
- 4) Avoiding SW is great reason to quit SN and join CS to have recourse to LE ¶ 21:

#### Ch IV: slavery

- 1) Liberty ¶ 22:
  - a. In SN: to be free of superior power and have only NL as rule
  - b. In CS: to be only under legislative power to which you have consented
    - i. Not license
    - ii. But to have published, standing laws common to all in CS
- 2) Men cannot enslave themselves ¶ 23:
  - a. that would give away a power over your life which you yourself don't have
    - i. NL commands self-preservation
    - ii. and self-enslavement endangers that self-preservation
- 3) Only by forfeiting your life can you be enslaved by another ¶ 23:
  - a. in this case you are not harmed
  - b. bcs you can always resist and draw down possible death
- 4) Justified or "perfect" slavery = SW btw lawful conqueror and captive ¶ 24:
  - a. once there is a contract, you become a servant
  - b. what the Biblical Jews called "slavery" is really contracted servitude

#### Ch V: property

- 1) Commons
  - a. ¶ 25: reason and revelation agree that God gave the Earth to mankind in common
  - b. ¶ 26: thus fruits and beasts belong to all in common, but there must be appropriation, as even the "wild Indian" must have an exclusive right to what nourishes him
- 2) Most basic form of property
  - a. ¶ 27: everyone has property (exclusive right) in their own person
    - i. is labor alienable? (big question in Locke scholarship)
  - b. appropriation of common goods via "mixing" your labor with it
- 3) Labor
  - a. ¶ 28: mixing labor provides property
    - i. w/o having to ask consent "of all Mankind"
    - ii. "thus the grass my horse has bit; the turfs my servant has cut ...."
      - 1. This seems to suggest alienable labor on the part of the servant
  - b. ¶ 31: NL places a limit on labor-mixing property:
    - i. God gave the Earth to us to use
    - ii. So labor-gained property rights cannot allow things to spoil
- 4) Agriculture and enclosure
  - a. ¶ 32: agricultural labor creates property rights ("inclosure" from commons)
    - i. God commanded us to labor, and natural scarcity requires labor
  - b. ¶ 33: as long as "enough, and as good" land is left over, no one is injured by "inclosure"

- c. ¶ 35: enclosure governed by civil law vs original enclosure in SN
  - d. ¶ 36: finitude of labor creates a limited “measure” of property which still holds, as large as the world seems (America as reserve vs enclosed England)
- 5) Spoilage
- a. ¶ 37: improvement of land’s product via agriculture is in effect a gift to mankind
    - i. so enclosure of improved land doesn’t detract from livelihood though it does detract from ability to gain land as property
    - ii. however, allowing spoilage of hunted-gathered things beyond immediate use is offense against NL and justifies punishment for having injured common natural property
  - b. ¶ 38: same strictures against spoilage applies to agricultural land
    - i. no commonly acknowledged land properties prior to CS
    - ii. but agricultural labor does convey property rights to land
- 6) Value and money
- a. ¶ 40-43: labor creates “difference of value”
    - i. American ppl are rich in [non-agriculturally improved] land but poor in comforts
  - b. ¶ 45: unimproved land is still available where inhabitants have not adopted use of money and thereby joined international commerce system
  - c. ¶ 47: as money does not spoil, it enables a store of value that enables men to escape the spoilage limitation on property
  - d. ¶ 48: different degrees of industriousness first created different property holdings; money allows continuing differentiation.
  - e. ¶ 49: w/o money in use, “in the beginning all the World was America”
  - f. ¶ 50: consent to use money shows consent to unequal possessions

## CIVIL SOCIETY

### Ch VII: political or civil society

- 1) God has prepared us for society ¶177
  - a. He gave us obligations of necessity, convenience, and inclination to join society
  - b. And understanding and language to continue and enjoy society
- 2) Household relations ¶178-86
  - a. Master = husband, father, employer, and slaver
  - b. But NO political power as right of life and death **except** for enslaved persons
    - i. Husband of a wife: conjugal society (we will discuss this when we read Pateman)
    - ii. Father of children: paternal society
    - iii. Master (employer) of servant (further discussion with Macpherson)
      1. Freeman become servants by selling services for wages
      2. They enter the household this way but the master’s power is limited by contract
    - iv. Master (slaver) of enslaved person
      1. Captives in a just war
      2. Subjected to absolute dominion and arbitrary power
      3. Thus have no property, having forfeited their lives, liberty, estates
      4. Hence cannot belong to CS, which aims to preserve property
- 3) Political Society (CS) ¶187-
  - a. In SN we are free and equal to use our NL power

- i. Self-preservation
    - ii. Punishment of violators of NL
  - b. There is CS when all its members transfer this power to community
    - i. Goal: to preserve property
    - ii. Methods: standing laws, impartial judges
    - iii. Powers: law enforcement, foreign affairs
    - iv. Necessary criterion: appeal to a supreme power to settle disputes
- 4) Absolute monarchy (AM) is inconsistent with CS ¶90
  - a. Because there is no appeal higher than the AM
    - i. Thus we are in SN with the AM ¶91
    - ii. If we are in SW with AM, we have no rights of appeal; we are enslaved persons
      - 1. NB: there is a large debate whether “slave” in Locke means only “subject to an AM” or whether it also encompasses chattel slavery as in the Africa / Atlantic / New World sense
  - b. History shows absolute power is no guarantee of respecting NL ¶92
  - c. You can appeal to higher power for disputes with others under an AM ¶93
  - d. But you can’t appeal a dispute with the AM, so why think it’s better than SN?
    - i. Famous line: [Giving power to AM] “is to think that Men are so foolish that they take care to avoid what Mischiefs may be done them by *Pole-Cats*, or *Foxes*, but are content, nay think it Safety, to be devoured by *Lions*.” ¶ 93
- 5) Origin story ¶94
  - a. Perhaps at first, people allowed by tacit consent that a wise person be judge of disputes
  - b. But time brought degeneration of rulers who didn’t respect property
  - c. So the people looked to form CS when they could

#### Ch VIII: origins of civil society

- 1) Two aspects of CS ¶95-99
  - a. Give up SN powers and form a CS
  - b. Agree to majority rule in that CS
- 2) First objection: no historical evidence of consent-based CS ¶101-112
  - a. But there is evidence ¶102
    - i. in Rome and Venice
    - ii. Americas: war chiefs but not kings in peacetime
  - b. It is true that single man is the oldest practice ¶105
    - i. Family expansion as historical origin
      - 1. A good father would be trusted
      - 2. But upon his death, a poor leader would drive ppl to pick another leader
    - ii. So we are back to consent at origin of CS: elective monarchies ¶106
  - c. Filial affection lends familiarity to monarchy ¶107
  - d. Early monarchs (e.g. in America or Israel) are war chiefs ¶108-111
  - e. Degeneration from golden age to that of ambitious, grasping rulers ¶111
- 3) Second objection: growing up under government = no freedom to form a new one ¶113-22
  - a. Historical examples of withdrawal and beginning new CS
  - b. Express consent
    - i. Foreigners need EC: they do not become members of CS by merely obeying laws
    - ii. If you give express consent, you are bound to stay (you might need to fight)
  - c. Tacit consent for natives via staying in place upon coming of age

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Ch IX: ends (goals or purposes) of civil society

- 1) Preservation of property (= lives, liberties, and estates)
- 2) Deficiencies of state of nature
  - a. No known, settled laws
  - b. No known and impartial judge
  - c. No law enforcement
- 3) In SN, men have two powers
  - a. To do what he thinks best for self-preservation (this is given up to be regulated by laws of CS except *in extremis*)
  - b. To punish offenders against NL (this is wholly given up; you also pledge to help in CS LE)
- 4) Limitations on CS power
  - a. It cannot go beyond common good of preserving everyone's property
  - b. So CS can only exercise its powers for the end of preserving property
    - i. Promulgate laws
    - ii. Set up judges
    - iii. Enforce laws
    - iv. Provide defense against foreign attack

RECAP OF TYPES OF POWER

Ch XV: recap of paternal, political and despotic power

- 1) Paternal power over children until age of maturity; no power over child's property (life)
- 2) Political power via voluntary agreement
- 3) Despotical power (over enslaved persons) via forfeiture of life from losing unjust war
  - a. Forsake reason and NL as rule
  - b. Become a beast who has only force as rule
  - c. Thus continuation of SW