

Ch 2: The US Constitution

Day 1

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Course: American National Government (GOVT 2305)

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A question

If you were stranded on a desert island, what is the one music album you will bring?

Analysis

Lets analyze the question and not the answers!

- Where do we even get this notion of being “stranded in a desert island”? [▶ Hint](#)
- Is there a concept we have seen in class so far that relates to this?
- Is the original source full of violent themes or it is more peaceable?
- Is there a contradiction in the original source with the concept in class?

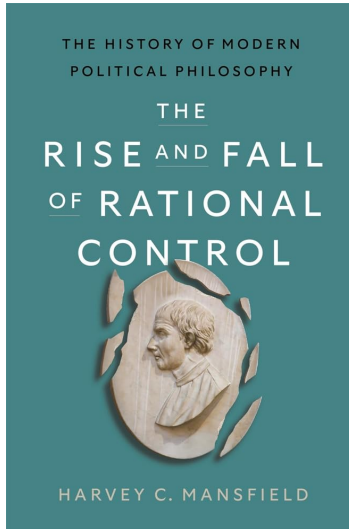
Takeaway: Crusoe is not depicting a Hobbist “State of Nature” but rather a Lockean one!

Today's class

We will discuss the intellectual origins of the US constitution in John Locke (1632-1704).

- Some context
- Locke's state of nature
- Property rights
- Constitutionalism

Same source as Hobbes



Locke's major works

Work	Main Theme
<i>An Essay Concerning Human Understanding</i> (1688)	Epistemology
<i>Two Treatises of Government</i> (1690)	<i>First Treatise (FT)</i> : refutes the divine right of kings theory. <i>Second Treatise (ST)</i> : defends political authority based on natural individual rights, the separation of powers, and the consent of the governed.
<i>A Letter Concerning Toleration</i> (1689)	Separation of church and state
<i>Some Thoughts Concerning Education</i> (1693)	Pedagogy

Two Treatises of Government

- *FT*: It is about “Paternal Power,” and refutes divine rights theory. I will not discuss it. [▶ Link to reference](#)
 - It is designed as a specific critique of a book by Robert Filmer called *Patriarcha*.
 - This is similar to Hobbes in countering religion but is not as vehement of an opposition as Hobbes.
- *ST*: It is about “Political Power.” and we will discuss this.

Comparison with Hobbes

- Mentions Hobbes once in the *Essay*!
- Mapping of works:

Hobbes' Leviathan

Part 1: "Of Man"

Part 2: "Of Commonwealth"

Parts 3 & 4 on religion

Locke's Works

Essay

Treatises

The Reasonableness of Christianity

- Locke is in methodological agreement but in political disagreement with Hobbes.
- Locke was highly secretive and avoided attention/ire unlike Hobbes!

Perfect Freedom with Equality as an undoubted right

- State of nature is a state of “perfect freedom”
- There is equality among all but “an equality resting on the failure of any particular inequality to be undoubted”
 - Equal until proven unequal (which can actually never be undoubtedly proven)
 - More on this later... [▶ later](#)

Two seemingly contradicting deductions

- The equality of the state of nature means two things to Locke:
 - Everyone is independent of each other with a *right* to self-preservation.
 - Sound familiar?
 - Everyone is obliged to each other, and has a *duty* to protect others.
 - Duty is to punish anyone who violates the natural law of self-preservation, freedom, and equality of others.
 - Imagine this: What if you kill a serial killer for self-preservation?
- We now have right *AND* duty.
 - This actually lets us NOT have 'solitary, poor, nasty, brutish, and short' lives in the state of nature!
 - *Leviathan* need not apply!

Right v Duty and War v Peace in the state of nature

- Will the right to self-preserve be more pronounced than duty to others in the state of nature?
- Locke's answer on whether there will be war (right > duty) or peace (duty > right) in the state of nature is nuanced.
 - Locke says there is a “plain difference” between state of nature and war.
 - Locke also says state of nature has “great inconveniences”, and is “not to be endured”, and it is “full of fears and continual dangers.”
- To him state of nature is just “living together according to reason without a common superior on earth.”
 - Does reason tell you not to war? Then no war even in state of nature!
 - Say you do have a common superior - so escaped state of nature. Is he any good? No? Then war!
- War is more likely in state of nature. But it need not necessarily happen. What *does* happen then in the state of nature?

Side note: Liberalism, defined!

- Locke has made a distinction between the formalism of a right, and the exercise of the right.
 - You have a right to self-preservation.
 - But, you get to decide 'according to reason' how to exercise that right.
- Protecting individual rights but letting individuals exercise it how they want is the definition of Liberalism in government.
 - Right to Free Speech but no dictates on what to (not) speak about.
- Locke is thus rightly lauded as one of the top figures in Liberalism.
 - How many Americans even know Hobbes?!
- *Warning*: 'Liberalism' is an overloaded term, and can take different meanings based on context.
 - The definition I've given is in the Lockean context.

Back to the point: What *does* happen then in the state of nature?

Labor Theory of Value

- The natural right of self-preservation conferred equally on all in the state of nature, means your body is your only *private property*.
 - Everything else (plants, animals, water, air, land) is the commons.
- But, say, one takes the “almost worthless materials” of nature (the commons), and mixes it with one's body via labor. Now, this part of the commons becomes private property.
 - Remember ‘Excludability’? In the state of nature, one's labor confers excludability to a good.
- So, the natural right of self-preservation $\implies$ Private property in the state of nature.
 - Sidenote: Karl Marx used labor theory of value but to do *something else*. You celebrated Labor Day in the Marxian sense!
- We now have a right to private property *without any government*. But what about duty here?

The spoilage criterion aka the “Lockean Proviso” (Nozick 1974)

- Your duty is to only take “enough and as good is left in common for others.”
- But how do we know how much is enough?
- Say you took from the commons, and some of it spoiled. That is a clear sign you took more than what is enough.
 - Remember your parent's admonition?
- This means as long as one acquires it via labor, and the property doesn't spoil, one can own as much as one wants in the state of nature.
- How to overcome the spoilage constraint?

Invention of money as the way out of spoilage

- To avoid spoilage, in the state of nature, man can invent a standard item of exchange that doesn't spoil. This is *money*!
- Now, one can hoard as much of the commons as one wants using labor, since the surplus can always be sold for something that doesn't spoil - money.
- But isn't this just some trick? Aren't we violating the duty to only take enough? No! Because this makes everyone better off! ▶ Quote from Second Treatise Sect. 37
 - Scarcity of commons + Property rights - Money → Splitting up commons carefully to avoid spolage
 - Scarcity of commons + Property rights + Money → No more scarcity. More for all!
 - Precursor to Utilitarianism: "The greatest good for the greatest number of people" (Bentham)

Inequality creates Government

- While everyone is better off due to money, they are not better off to an equal extent. This *inequality* will create property disputes, and this will make men to be “quickly driven into society to protect their property.”
 - In other words, escape state of nature to create a Government.
 - What sort of property disputes? Eg: Inheritance ▶ Remember FT?
 - Remember equality that we started with? ▶ Equality
- “The great and chief end of men’s uniting into commonwealth is the protection of property.” Thus, government. QED.
 - This government is not a Leviathan! Just a solver of property disputes...
 - This justification to government feels more sober than Hobbesian fear!

Role of Government: Protect “Life, Liberty, and Estate”

- Locke elevates mere property rights to the high status of “Life, Liberty, and Estate.” But why?
 - Side note: Does that phrase sound familiar to you? From where?
- Because property is, in fact, a formalism of the idea of *consent*.
 - Property is the “fence” to life (i.e) an early warning system for life and liberty.
 - A liberal, representative government must protect the formalism of rights, and property is that very formalism.
- But what about the greediness this will inculcate in people?
 - Well, at least these greedy people aren't in government now!
 - An alternative outlet for the “covetousness of the quarrelsome and contentious” in economics rather than politics. Let them just compete for money.
- Then, *what about men driven by power rather than greediness?* ...

Absolute vs Arbitrary power

- Hobbes gave the Leviathan absolute power.
- Locke is more nuanced. Absolute power is necessary but arbitrary power is not.
 - Example: A sergeant can have absolute power over his soldier but he can't arbitrarily take away the soldier's private property.
- But why this distinction? No one can have any rights that destroy society, and all the other rights (i.e.) no arbitrary power.
- Also, government also has a right to self-preservation (i.e.) it must have absolute power.

Constitutionalism to prevent arbitrary exercise of absolute power

To prevent arbitrary rule two things must happen:

1. Ensure Majority rule

- If power has become arbitrary → Majority rises up, and makes an “Appeal to Heaven” to bring it down! ▶ Pine Tree Flag

2. Ensure majority delegates power to some select few but carefully.

- Ensure legislative supremacy (i.e.) the power/process to make laws must be supreme than any particular law.
 - Watched the Odyssey?
- The legislative body is also subject to the process which involves an *election* by the majority.
- Create *separation of powers* in the legislative process.
 - The legislature's power is absolute but it can't exercise it arbitrarily.

Thus, we now have a “constitution”!

Locke's influence

Locke's influence is unfathomably deep! Here are some drops from the ocean:

- The Declaration of Independence, the US Constitution's Separation of Powers, and Consent of the governed
- An extreme formulation of Locke's influence on America is by Hartz (1955).
 - The book presumes that Americans have known nothing other than John Locke! They have "irrationally" turned Locke into a nationalist doctrine.
 - The idea is highly contested. For a good pushback, see Smith (1993) who wrote, "The nation has also been deeply constituted by the ideologies and practices that defined the relationships of the white male minority with subordinate groups, and the relationships of these groups with each other."
- Nozick (1974) and his libertarianism embraces Locke.
- Karl Marx's Labor Theory of Value in *Capital* is a counter to Locke.
- *Robison Crusoe* - where we started.

Summary

We discussed the intellectual origins of the US constitution in John Locke (1632-1704).

- Some context
 - We discussed the *Second Treatise*
 - Locke is using the same method as Hobbes but comes to different conclusions.
- Locke's state of nature
 - Infuses right with duties and originates the idea of Liberalism.
- Property rights
 - Argues that right of self-preservation $\implies$ Property rights $\implies$ Government
 - Property rights is elevated to "Life, Liberty, and Estate" since it is the "fence" to life. This also redirects the greedy to economics rather than politics.
- Constitutionalism
 - Deals with those motivated by power by ensuring majority rule, and separation of powers in the constitution.

References I



Hartz, Louis. 1955. *The liberal tradition in America* [in eng]. 2nd Harvest/HBJ ed. San Diego: Harcourt Brace & Company.



Nozick, Robert. 1974. *Anarchy state and utopia* [in eng]. New York: Basic Books.



Smith, Rogers M. 1993. Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America. *The American Political Science Review* 87 (3): 549–566. <https://doi.org/10.2307/2938735>.

Appendix slides

Hint for origins



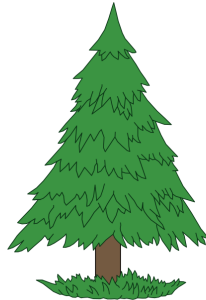
Quote from Sect 37 of ST

Emphasis added by me:

*"To which let me add, that he who appropriates land to himself by his labour, does not lessen, but **increase the common stock of mankind**: for the provisions serving to the support of human life, produced by one acre of inclosed and cultivated land, are (to speak much within compass) ten times more than those which are yielded by an acre of land of an equal richness lying waste in common. And therefore he that incloses land, and has a greater plenty of the conveniencies of life from ten acres, than he could have from an hundred left to nature, may truly be said to give ninety acres to mankind: for his labour now supplies him with provisions out of ten acres, which were but the product of an hundred lying in common."*

The Pine Tree Flag and riots

AN APPEAL TO HEAVEN



► Back to slide