

## Liberty and free government [Locke, Paine and Madison]:

### Locke:

- Lecture #1, Chapters 1-5
- Background:
- Written in political turmoil. The political struggle was because of the concept of authority. “who held authority?”
- Chapter 1:
- Political power is very different from any other type of power. i.e. the difference between the power a father has over his son.
- “What gives someone the right to be obeyed?” **Main question of the chapter.**
- Everybody in the state of nature is fundamentally equal (*page 6*)
- Kings and Princes will always live in a state of nature.
- We live in a state of nature where there is nobody that can tell me what to do.
- “The law of nature” The law that governs our interactions with one another. (*page 9*) **You should not harm another person.** This is because we are all God’s property. As we are all God’s property you cannot harm another person. i.e. Locke’s statement says you cannot harm another persons liberty, possessions etc.... We are God’s property. **Everything comes full circle.**
- We use reason to determine our own course of action. This is for minor things. Example: what sandwich to get?
- According to Locke, You can punish people in two ways:
- Restraint (*page 10*)
- Reparation
- The problem is we do not make good judges for our own cases. We are passionate, impartial etc....
- Locke says that the law of nature is good in an ideal world, although with humans flaws it creates a problem and a need for authority, as we make terrible judges in our cases. Once conflict arises from humans flaws, flaws arise in the state and law of nature.
- State of War: arises when people who live together forgo reason, as the basis of interaction between each other. When they use violence, the state of war begins.
- When someone begins a state of war with you, they want an absolute control of your life.
- *Killing a thief*: Locke’s description of a thief: mugger. Locke claims that you have the right to protect yourself against somebody who is willing or has used force against you. Locke claims it is never legitimate to put yourself in a state of war with somebody else. Although if somebody does put themselves in a state of war with you, you have the absolute right to protect yourself, by any means necessary. These are the rights you hold when you are apart of political society. **“Force without right”**
- You also the right to kill a murderer because it will deter others to do it and stop him from doing it again. When you become a murderer, you are putting yourself in a state of war with all of mankind.
- Slavery:
- Locke made his fortune from slavery.
- Locke claims that to live in a political society you must be governed under laws that were chosen by the consent of people. It can never be legitimate to be under the control of something beside the law of nature and laws that are created by mutual consent. **If you don’t have absolute power over your own life, you cannot possibly give it to someone.** The only way someone can get it is through aggression. There is no basis for me to give absolute advantage of myself to another person.
- Slave or death: \*\*\*\*\*
- Property:
- Property for Locke, is a right that preexists political society. We enter a political society with property.
- God has a purpose for us, and Locke takes the view that everything on Earth has a purpose.
- The state of nature is a state where everything is equal. The problem is God gave us everything in common. We need there for our preservation. Locke says there must be a way for someone to claim something for themselves and their sustenance. One way, is consent. But that model cannot work in our society, because you cannot ask everybody. Locke says there must be a way to take something from the common without asking everybody. Locke says is there any way of saying anything is unquestionably mine. **Your labor is your own.** So if you use your labor to reach up an apple tree to grab an apple, you have mixed your labor with the apple. Thus it is now yours, because you have used some of your labor to achieve the goal of getting an apple. The apple was once in the common, but now because you have mixed your labor into it, it is now yours, because you have earned it.
- The problem is greed. *A common human trait.* Locke’s qualifications for mixing your labor with common goods is that there must be enough for everybody else and as good for everybody else. You cannot let things spoil, as thus you have wasted it. Locke claims that God wanted us to acquire property and its rational to acquire it.
- Dealing with the spoilage limitation (*page 23*): If you enclose a plot of land, and are able to put labor into a piece of land for example and make it significantly better. You have increased its value by nearly 100 times. So instead of taking from the common, you have increased it. Another problem arises when people begin to create things on their land. Bartering begins because people have a surplus of their product and don’t want it to spoil and they want different products.
- By introducing money to the equation, we get rid of the two qualifications. Money never goes bad and there is always

enough money for everybody. Money also allows us to buy labor from other people. Labor and entitlement is separated. Equality is broken, because

- Important: All this is before we enter a political society.
- When entering a political society we are equal in our rights and liberty. Although what is noteworthy is people will own more than others. Money creates the first sense of inequality.
- The power of government is transferred from us. We give the government the power to enforce these laws.
- Why people leave the state of nature and allow the government to force these laws upon us is because it gives us impartial judges, rules will be impartially enforced, and a more peaceful living and coexistence between each other.
- Locke claims that nobody has superiority over another in the state of nature. Nobody rules over anybody else. Although if someone is willing to give their *consent* to be under control, it is possible.
- Power is only real when it has been consented.
- Locke claims that if rulers were "rulers" simply because they were, they would do whatever they want. Locke claims that people will constantly look at the political environment and examine it to see if it is just.
- Locke claims that people born under government have the right to leave the government and start their own. He uses the example that if this was not the case, there would only be one government, which is certainly not true.
- Main idea: The child never gave his consent to join the government and society. As said above giving your consent is the only way for somebody to hold power over you.
- Absolute rule is never legitimate. If a government does decide to use this method they are establishing a state of war with everybody in the society, essentially they are an open target.
- Locke claims that if you live under government, you enjoy certain benefits. Such as you have property rights and the government enforces them. If you enjoy the government, then you are giving your consent to the rule. Example: If you decide to come to Canada and enjoy the benefits of it, you are giving your consent to the authority of the government. "*My house, my rules*"
- Parents cannot make permanent life decisions for their children. Such as to enslave them.
- *Tacit consent*: revocable. You can leave the society, but you must leave your property if you do.
- *Express consent*: not revocable. You cannot leave, you are a permanent member of the society. Example: in the United States, pledging allegiance to the flag.
- Why would someone leave the state of nature, to join a political society? It is because even though the state of nature has everything we need to live, humans have one fatal flaw, we are impartial judges. The people who enforce the law of nature do not do it impartially.
- A political society is able to remedy the fatal flaw of humans, *impartiality*. Political societies give us three things. First, they give us known and widely published laws unlike the state of nature where there is a lot of assumptions on what the laws are. Secondly, it also gives us impartial judges, unlike the state of nature where people solve disputes themselves, in a political society there is a third party judge who is impartial. Thirdly, it gives us the power to enforce the law. This is in the form of police.
- How does a political society get this power? It gets this power because the state of nature and law of nature allow us to do all three of these things before we enter a political society. We already had these powers, the power of government is simply the power from a group of people transferred to one body. The government cannot exceed the power of the group of the individuals.
- We give up this power that we had in the state of nature, to ensure the coordination of society and safety of it. Locke claims that we give up the power to do whatever we want, but only to the extent that is needed to ensure the safety of society and the coordination of it. Example: Red light.
- You also give up the right to punish somebody the way you want, it is up to the government to decide how to enforce the law of nature. The government is responsible for enforcing the law and they dole out the punishment.
- Locke claims that the legislative and executive powers must be separated. The legislature makes the laws, and the executive branch enforces it or executes it.
- Locke says that legislative power is limited, political power should never be arbitrary and absolute. This is because we don't even have absolute power over our own bodies, God does. Legitimate political power is always limited.
- Government has to rule from established laws. A government allows society to be predictable, you know right and wrong and you are able to know if what you are doing is wrong or right. Additionally laws must be for the common good, this is because we decided to create a government for the common good. Furthermore, the primary reason we joined a political society is for the preservation of property. Although Locke understands that a society needs money to run and function. So he understands that taxation is something a society needs. Although he claims that taxes cannot be raised without the consent of the people.
- The legislative power can never transfer the power to something else. The authority and consent that you have given to them is not transferable. We consent to the state, not a specific group or person. If the man in charge changes it is not considered a transfer, although if Canada passes a law that states they have a new set of laws, that is not allowed because you have given consent to those set of laws, not these new laws.
- Legislative branch should only serve during intervals while the executive branch should be working at all times. This is because the legislative branch does not need to pass laws constantly, but the executive branch must always be working because he is the one that executes and enforces the law. The enforcement of law cannot take a break, but the passing of laws can.
- **Locke's main theme:** *Government authority rests on consent, you can only consent to what you have. Thus the government cannot have absolute power because you don't even have absolute power over yourself. You cannot consent to what you don't*

have.

- All legitimate government is limited. A legitimate government can never be absolute and or arbitrary.
- Locke claims that powers must be divided. The legislative branch is responsible for creating the law and the executive branch “executes” or enforces it.
- Locke brings up the dilemma of how maybe if the legislative is not sitting and the society needs a law to be placed. Locke gives a solution to this, prerogative. Prerogative is intended to be for the public good and can bypass previous laws if need be.
- Limitations on prerogative are the same as what the limitations of an executive have. i.e. cannot take property etc....
- Prerogative only kicks in when a decision needs to be made quickly and legislative is not sitting and no law is made for a certain situation.
- Positive laws are not an infringement of prerogative.
- Prerogative has to be used carefully, can easily be abused. Prerogative is limited.
- “page 87,” When the executive uses his prerogative to do something that is not within the rights he was granted by the people, he puts himself in a state of war with society.
- In chapter 15, Locke tells the differences between parental, political and despotic power. He claims that parental power is used to protect and guide the child through the beginning of their life, until they reach the age of maturity. It is important to differentiate between political and parental power, because one of the common ways of defending absolute monarchies in his time was saying that the king was the “father of the nation.” Despotic power is an absolute and arbitrary power. Despotic is given by forfeiture, and arises from the forfeiture of ones life. When a despot takes control over someone’s life, he is ultimately putting himself into a state of war with the people. He is ultimately saying that it is legitimate for anybody to kill the despot. To conclude, Parental power is given by nature, political power by consent and despotic power by forfeiture.
- *Chapter 19*, Locke says that the distinction between dissolution of government and society is different. Locke wants to show that you can dissolve government without dissolving society.
- Locke claims that the way to dissolve society is to be conquered by a foreign power.
- Locke claims that government can be dissolved in 2 primary ways:
- 1. When the legislative is altered. 2. When the legislative or prince acts contrary to their trust.
- *The legislative can be altered in a variety of ways:*
- 1. If they create arbitrary laws.
- 2. When the prince stops the legislative from acting freely or stopping it completely.
- 3. When an alteration has been made to the electoral system without the consent of the people.
- 4. If the prince or legislative surrenders to another legislative or other prince.
- 5. When the executive stops “executing” or enforcing the laws.
- In all five of these cases the thing to note is that the political system is breaking.
- When either of these two things happen, the right to revolution is legitimate.
- The right to revolution is able to happen because the government has dissolved itself. The government forfeits the right to be obeyed by doing anyone of the previous things. The government legitimizes the right to be overthrown by breaching the contract of the political society and the people. As Locke previously said, the state of war is never legitimate, but defending yourself is. As such a justifiable revolution is simply the people defending themselves against the government which has put themselves into state of war with the people.
- Locke notes that people may be more prone to revolting in this system. He has 2 responses to this:
- 1. Humans naturally avert conflict and would rather not revolt just for the sake of it.. Locke says that people will revolt no matter what if they are oppressed, they don’t need to be told they can. Just because people know they can rebel, does not mean they will immediately do it. They will do it when they are getting oppressed no matter what.
- 2. Locke says that people don’t revolt over every little political problem, they will only do it when they are getting oppressed.
- The message of this doctrine he says is made for the government not for the people. It is not a right to rebellion, it is a fence to rebellion. Ultimately, it is saying that the government should do right to the people because they know that people can rebel and revolt against them.
- Locke says that the reason for justifiable revolution and rebellion is always the governments fault.
- ***What to take from this text:***
- What Locke means by the “common good” is that it abides by the law of nature, allows freedom of the people, preserves the property rights of people. *Locke says that the common good is the preservation of life, liberty and possessions.*
- What is the conception of the individual? Locke says that individuals are rights bearing individuals. When we enter a political society, we already have rights.
- The role of government?
- The relation between the individual and the government?

**Paine:**

- Limited Government:

- Society vs. government
  - ▶ The reason why government is a necessary evil is it compensates for our moral faults.
  - ▶ Because we are social beings, we must live together.
- The development of government
  - ▶ Government begins "under a tree" where everybody is making decisions.
  - ▶ Soon people will relegate the delegating to representatives.
  - ▶ To keep the representatives in accordance with society's preferences, there must be frequent elections.
  - ▶ Government provides freedom and security.
  - ▶ The best governments are simple and minimal.
    - If you have a simple government, its very easy to replace and or fix, if it is not working.
  - ▶ He says the British constitution is too complex.
    - He says there is a divide between the people and the most powerful element of the constitution (the King)
    - "You started with a King, and then you formed the system of government" Paine says you must start with the individuals and what rights they have.
- Simplicity and minimal government:
  - Government should never be able to harm people with the power the individuals give them.

### **Madison:**

- Factionalism:
  - Liberty + fallible reason = factions
    - ▶ The exercise of liberty can actually be harmful to free government.
    - ▶ We choose free government, because we assume it is the best way to protect our basic rights.
    - ▶ If you accept that society consists of different people of all different views and values. This causes factionalism. People will join together with like-minded individuals.
    - ▶ Sometimes these factions may go against the values of the majority of society.
  - Causes of factionalism:
    - ▶ [Page 22]
    - ▶ Basically if you combine liberty and fallible reason, you will get different opinions and beliefs in your society.
    - ▶ The unequal distribution of property, causes the greatest amount of factionalism.
  - Two ways to combat factionalism:
    - ▶ Remove the causes:
      - Get rid of liberty. But this unpractical. You must control the effects. If you want to live in a free society, than one of the things you have to deal with is factionalism. It is a fact of life in a free society, as the only way to get rid of it is to get rid of liberty or somehow have everybody have the same opinions.
    - ▶ Control the effects:
      - Representative government:
        - If the faction is a minority it is taken care of because of democratic principle. As long as they remain a minority, the operation of free government can mitigate any of the effects of their factions.
        - Were actually better off to have the freedom to associate with anybody we want to and having fringe minority groups that can just be voted down.
        - Interests and opinions get filtered through representatives. They think of long-term interests.
      - Extended republic:
        - "A Large territory"
        - You can mitigate the effects better in a large territory than a small one.
        - Living in a larger country, gets you a greater amount of viable legislators.
        - It actually dilutes the effects of factions.
- Conclusions:
  - Free government is the best guarantor of basic liberties; however, by vesting power in their governments, individuals give their governors the power to oppress them.
  - The exercise of liberty can also threaten free government.