

Philos 117AC, Fall 2017
Setting the Stage:
Robert Filmer, *Patriarcha*, Ch. 1

Main Text:
John Locke, *Second Treatise of Government*, Ch. 1–4, 6

Locke wrote *two* treatises of government, and the first of these treatises is a painstaking, and frankly often tedious, refutation of Filmer's *Patriarcha*, which argues that God bestows legitimate political authority on monarchs.

Filmer seeks to *refute* the thesis that all men are naturally free and equal, and owe obligations of obedience only as a result of their own consent. As he puts the thesis he is trying to refute, "Mankind is naturally endowed and born with freedom from all subjection, and at liberty to choose what form of government it please, and that the power which any one man hath over others was at the first by human right bestowed according to the direction of the multitude" (2).

What do "power," "government," etc. mean here?

- (i) a ruler's right to *command* certain people to do certain things: or, put another way, those people are obligated to obey the ruler's commands to do certain things, and
- (ii) a ruler's right to *do* certain things to those people: or, put another way, no duty not to do those things.

These rights might be:

- (a) Unlimited: The ruler has the right to command *anything* and do *anything*.
- (b) Unique: No one but the ruler has these rights.
- (c) Unconditional: Nothing can deprive the ruler of these rights.

Filmer's argument:

- The first man, Adam, had an unlimited, unconditional, and unique right to *rule* over all of his progeny: including Eve and their children.
- Adam also had an unlimited, unconditional, and unique right to *do* whatever he liked. The world and its inhabitants were his property.
- This right to rule and to do then passed to certain of his descendants, being divided at certain points.

Therefore, men are not naturally equal. Some—namely, the heirs of Adam's rights—have the right to rule over others. And apart from those heirs, men are not naturally free. "We are all born slaves," as Locke arrestingly, but not inaccurately, summarizes Filmer. "Life and Thralldom we enter'd into together, and can never be quit of the one, till we part with the other."

Correspondingly, absolute monarchy is legitimate, insofar as the candidate monarch

- (i) is in fact one of Adam's heirs and
- (ii) inherited a right to rule over, specifically, the candidate subjects (rather than, say, people living somewhere else).

Notice that the consent of the governed is completely irrelevant. Relations of authority and obedience are settled quite independently of the choices of men.

What accounts for Adam's right to rule? And what gave his heirs that right? The ultimate answer is clear enough: God's will. For Filmer, the source of all duty is what God wills. Locke, as we will see, agrees with this. But he disagrees with Filmer about what God has willed. What is the *evidence*, Locke asks, that God wanted Adam to have a unique, unconditional, and unlimited right to rule over men? And what is the evidence that God wanted Adam's heirs to have it? There are two kinds of evidence for God's will.

- First, revealed religion: God's particular pronouncements to men, which we know from scripture.

- Second, natural religion: the way God made things, which we know simply by observing His creation.

Locke argues that the evidence suggests, instead:

- (i) that Adam himself had no unique, unlimited, and unconditional right to rule and
- (ii) that even if he had, his heirs had no such right.

For good measure, Locke adds:

- (iii) that even if his heirs had such a right, there is no way to determine an heir in certain cases, which must have often have arisen in the past, and
- (iv) that even if all of these problems are waived, there is no way to determine who among those presently alive is heir: the eldest in eldest line of Adam's descendants.

But then what is Locke's alternative?

Natural Freedom and Equality:

"To understand political power right," Locke opens Ch. II, "we must consider what State all Men are naturally in." To a first approximation, a state of nature between A and B is a state in which A and B have not agreed to accept some common political authority.

Men are *naturally free*, not in the sense that there are *no* rules that legitimately constrain what they do. Even in the state of nature, men have a duty to obey God and to abide by the "laws of nature" that He has set down. The sense in which men are free is that they have (i) *a duty to abide by the law of nature*, but (ii) *no duty to obey other men*. They can do as they think best, within the bounds of the law of nature, without having to ask for any human being's permission.

Men are *naturally equal* in the same sense as (ii). No one has a duty to obey anyone else and, correspondingly, that no one has a right to rule anyone else.

Children: a counterexample?

Problem: There seem to be some "natural" relations of authority and obedience. Isn't it true that parents have a right to rule over their children—which is precisely what Filmer claims?

Locke's reply:

- *First*, children are rightly ruled by other people because children lack reason and so can neither know the law of nature or regulate their behavior in accordance with it. (Men are naturally free, recall, only insofar as they are bound by the law of nature.) When children acquire reason, they are no longer rightly ruled by others.
- *Second*, it is parents, in particular, who have a right to rule over their children because parents have a *duty*, commanded by God, to raise their children until their children acquire reason. (The "natural" evidence of this command lies in the fact that parents are naturally inclined to care for their children.) Parents do *not* have the right to rule their children on the grounds they have created them. Such a right, were it to exist, might last the children's whole lives.
- Granted, children have a duty to *honor* their parents that continues into adulthood. But this is quite a different thing from a duty to obey their parents.
- The important point is that these natural relations of authority and obedience neither undermine Locke's claim that men are naturally free and equal, nor support Filmer's specific contention that fatherhood gives rise to a unique, unlimited, unconditional right to do and to command.
 - Parental rights over young children are *conditional*, since they fall away when the child acquires reason.
 - Parental rights over young children are *limited*, since parents have those rights only in order to fulfill their duties to raise their children.
 - Parental rights to be honored by adult children are not really rights to command or to do at all. They're merely rights to receive certain nice things.

The law of nature

The idea that all people are naturally free and equal is enshrined in our Declaration of Independence, which was influenced by Locke. “We hold these truths to be self-evident, that all men are created equal, and that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.” But Locke takes “created” more seriously than the Declaration may. When it comes down to deciding what rights people have, Locke thinks, we have to figure out what rights God intended them to have.

The property argument for the law of nature:

§6: “The State of Nature has a Law of Nature to govern it, which obliges everyone: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions. For Men being all the Workmanship of one Omnipotent, and infinitely wise Maker; All the Servants of one Sovereign Master, sent into the World by his order and about his business, they are his Property, whose Workmanship they are, made to last during his, not one another's Pleasure. And being furnished with like Faculties, sharing all in one Community of Nature, there cannot be supposed any such *Subordination* among us, that may Authorize us to destroy one another, as if we were made for one another's uses, as the inferior ranks of Creatures are for ours. Everyone as he is *bound to preserve himself*, and not to quit his Station willfully; so by like reason when his own Preservation come not into competition, ought he, as much as he can, *to preserve the rest of Mankind*, and may not unless it be to do Justice on an Offender, take away, or impair the life, of what tends to the Preservation of the Life, the Liberty, Health, Limb, or Goods of another.

- (i) If X creates Y, then Y is X's property.
- (ii) God created all men.
- (iii) Therefore, men are God's property.
- (iv) If Y is X's property, then X has the claim-right to decide whether Y will be destroyed. This is a claim-right. It entails that others have corresponding duties not to destroy Y, unless X consents to their doing so.
- (v) Therefore, God has a claim-right to decide whether men will be destroyed.
- (vi) If God had at some point wished to delegate to some particular man the exercise of this right, then He would have communicated this wish either naturally—i.e., through creation—, or through revelation.
- (vii) The fact that all men are roughly equal shows that God did not communicate this fact naturally.
- (viii) Scripture shows that God not communicate this grant through revelation.
- (ix) Therefore, God has not delegated the exercise of this right to some particular man.
- (x) Therefore, God retains this right.
- (xi) Therefore, everyman has a corresponding duty to God *not to destroy* himself and then not to destroy other men.
- (xii) Therefore, the law of nature: Every man has a duty to God *preserve* himself and a duty to *preserve* other men, unless this duty conflicts with (a) his duty to preserve himself or (b) his duty to enforce the law of nature by punishing violators.

Other comments about the property argument:

- Notice that we owe our duty not (say) to kill one another *to God*, not to one another.
- For Locke, our (liberty-)rights are the consequence of our duties. Why do we have a (liberty-) *right* to preserve ourselves? Because we have a *duty* (to God) to preserve ourselves. If we are *required* to preserve ourselves, then it must be the case that we are *permitted* to preserve ourselves.
- The right to liberty follows from the right to self-preservation (IV, 23). Liberty is a necessary means to our survival. But we might think that liberty has independent value. Can Locke make sense of this?
- Our duty not to kill ourselves limits the kinds of contracts that we can enter into. “This *Freedom* from Absolute, Arbitrary Power, is so necessary to, and closely conjoined 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 way his Life, when he pleases. No body

can give more Power than he has himself; and he that cannot take away his own Life, cannot give another power over it" (IV, 23). We cannot "alienate" the right to destroy ourselves, *because we have no such right in the first place*.

The right to punish

Notice that there is an exception in the law of nature for punishing those who offend against it. We need not do as much to preserve them as we would to preserve innocents. We have a liberty-right to punish. Why?

- (i) The law of nature would be impotent, if there were no means to enforce it.
- (ii) God did not intend for the law of nature to be impotent. (How could He intend that? The law of nature is His will.)
- (iii) Therefore, God intended *someone* to have the right to enforce the law of nature.
- (iv) Since we are all equal, however, we know that God did not intend only some of us to have natural rights that the others lacked.
- (v) Therefore, God intended *each of us* to have the right to enforce the law of nature. (It must, therefore, be a liberty-right, compatible with the liberty-rights of others.)
- (vi) If God intends X to have a right to Y, then X has a right to Y.
- (vii) Therefore, each of us has the right to enforce the law of nature: to punish offenders for the purpose of *restraint* (i.e., deterrence).

"I doubt not but this will seem a very strange Doctrine to some Men," Locke admits. But he observes that it makes sense of certain of our practices. After all, a judge has the right to punish a foreigner who breaks the law of nature, even though the judge and foreigner are still in a state of nature with one another. The foreigner has not consented to the judge's authority. So the judge must be exercising a natural right that he has to punish the foreigner.

The right to exact reparations by force

For somewhat different reasons, the Law of Nature gives every individual the right to exact *reparations* for losses he himself has suffered as a result of violations of the Law of Nature. This right, unlike the right to punish, arises from the right that every man has to preserve himself, a right clearly implied by the Law of Nature. (If the Law of Nature gives us a duty to preserve ourselves, then it also gives us a right to preserve ourselves.) And unlike the right to punish, it is a right that only the injured party has (although "any other Person who finds it just, may also...assist him" (§10)?).

"Forfeiture" of rights

Does this justify slavery? "[H]aving, by his own fault, forfeited his own Life, by some Act that deserves Death; he, to whom he has forfeited it, may (when he has him in his Power) delay to take it, and make use of him to his own Service, and he does him no injury by it. For, whenever he finds the hardship of his Slavery out-weigh the value of his Life, 'tis in his power, by resisting the Will of his Master, to draw on himself the Death he desires" (IV, 23).

Why is it up to the person to whom he has "forfeited" his life to decide when to kill him? Doesn't he have a *duty* to kill him, in the interests of *deterrence*? And hasn't he forfeited his life to *everyone*? Is this then a matter of *reparation*, rather than of punishment? But why then should slavery extend beyond what is necessary for reparation?

Question: Many believe that a Spanish court would have been within its rights to try, convict, and punish General Augusto Pinochet (or for that matter U.S. Secretary of State Henry Kissinger) for crimes committed in Chile against Spanish citizens. (As it happens, the British government refused to extradite Pinochet to Spain.) How does this belief support Locke's view about the right to punish?