**Two Treatises of Government** – John Locke

Book One – Of Government

This first book is a sustained critique of Sir Robert Filmer’s treatise *Patriarcha* in which the author essentially argues that all government is absolute monarchy and the monarch’s absolute power is guaranteed by the right Adam had as an absolute monarch; i.e. by divine right. There are two “fountains” of Adam’s monarchical right: property and fatherhood. The first grants ownership and is supposed to arise from God’s “donation”. The second is the right to rule and comes from the act of begetting. Locke attacks *Patriarcha* on two broad fronts. First, he rejects the idea that Adam was an absolute monarch and second, he rejects the notion that the right to rule can pass on by inheritance.

*Adam – The Absolute Monarch*

Locke finds three arguments for Adam’s sovereignty in *Patriarcha*:

1. God’s creation of Adam – Sovereignty does not follow from having been created.
2. God’s “donation” of sovereignty to Adam – Through a fairly detailed analysis of Biblical passages, Locke argues:
   1. That God did *not* give Adam monarchical absolute power over other people. This dominion did not extend beyond non-human animals.
   2. That the donation was made, not to Adam alone, but to the “whole species of man” (p.23)
3. The dominion God gave Adam over Eve – The most that Locke is prepared to grant here is that Adam had a “conjugal power, not political” (p.32) power, over Eve. Also in the passage where God delivered this judgement, it was clearly meant as a punishment to Eve, not as a benefit for Adam.
4. The dominion Adam had as father over his children – The idea here is that by begetting children, the father have absolute power over them. Political sovereignty is grounded on this. There are three main problems here:
   1. No man can properly say they ‘create’ a child in such a way that they ought to have complete control over it.
   2. If it were true, mothers ought to have equal, if not a greater, share of the dominion over the child. First, they carry the child to term and nourish it from their own bodies. Second, when the Bible entreats that children obey or honour someone, it almost never says the “father” only; rather we find it include the mother (as in “Honour they father and thy mother” – 5th commandment) or “parents”.
   3. This, again, cannot possibly refer to political subjection and obedience since the parents were already living under civil government and were subjects in political societies.

*Inheritance of Monarchical Power*

There are a number of problems with the power to rule being inheritable in the way Filmer asserts. I will only mention a few of them:

1. If the right to rule can pass on to only one child (as it must do if we are to have only one sovereign) and is grounded in the begetting of the child by the father, how can any sibling be subject to another who did not beget him?
2. Children have a right to inherit property from their parents because they depend on their parents for subsistence. If this is the case, it cannot be that property passes to only one child at the exclusion of others. All children ought to have an equal right to the inheritance.
3. While property can be inherited, government, “being for the benefit of the governed, and not the sole advantage of the governors” (p.58) cannot.
4. If God bestowed rule to one man, it is only by divine endowment, i.e. not by a different means (begetting), that any later person can also lay claim to rule.
5. Most of this second book is taken up with the issue of exactly who the heir to Adam’s right to rule is. Assuming we overcome the problem of which child is to receive it, we then have the problem of discerning who, among the contenders for any throne, is of the line and posterity of Adam. Such a doctrine, Locke maintains, “cuts up all government by the roots,” (p.75)

Book Two – Of Civil Government

*Of the State of Nature*

Locke describes the state of nature with two ‘sub-states’:

1. “[A] *state of perfect freedom* to order their actions, and dispose of their possessions and persons, as they think fit…” (p.97)
2. “A *state* also *of equality*, wherein all the power and jurisdiction is reciprocal, no one having more than another…” (p.97)

The one law in the state of nature is that, “being all *equal and independent*, no one ought to harm another in his life, health, liberty, or possessions.” (p.98) It falls to each person to *execute* the law themselves; i.e. punish transgressors; for which there are two purposes; reparation and restraint. Murder is acceptable in severe violations of the state of nature, although “each transgression may be *punished* to that *degree*, and with so much *severity*, as will suffice to make it an ill bargain to the offender, give him cause to repent, and terrify others from doing the like.” (p.100)

Since, in the state of nature, everyone is responsible for the executive power of the law of nature, individuals will be unable to fairly and impartially judge offenders, Locke proposes *civil government* as the proper remedy.

*Of the State of War*

Whenever someone declares “by word or action, not a passionate and hasty, but a sedate settled design upon another man’s life” (p.102), they are then in a state of war. This includes the situation where someone attempts to put another in their absolute power because “he who would get me into his power without my consent, would use me as he pleased when he had got me there, and destroy me too when he had a fancy to it” (p.102).

Without any third party to appeal to for the settling of such situations, a state of war, once begun, may be interminable. Avoiding this is another reason for opting for civil government.

*Of Slavery*

Freedom, for Locke, doesn’t mean being free to live without laws and do whatever one wants. Rather, “*freedom of men under government* is, to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things, where the rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man” (p.105).

Indeed, slavery is simply “*the state of war continued, between a lawful conqueror and a captive*” (p.105).

*Of Property*

Locke is of the opinion that God gave the world to all “men in common” (p.107) but through *labour*, anyone may take any part of what was common, removing it out of the state of nature and fixing their property it.

One may object that there is then no limit to how much one can thereby take to be one’s own property. Locke rejects this, saying that God gave the world to us *to enjoy*, and so “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” (p.109).

It was only after the invention of money that it became possible for someone to possess more property (especially land) than they can fairly use.

*Of Paternal Power*

First, Locke amends the term ‘paternal power’ to read ‘*parental* power’ in recognition of the mother’s role. Next he clarifies what it means to say “*all men by nature are equal*” because he recognises that “*age* or *virtue* may give men a just precedency” (p.118). Our concern here is with age; specifically, children.

Children aren’t equal by birth because, lacking reason, they are ignorant and can’t properly be included under any law. But this natural deficiency confers on parents a duty to take care of, and *support*, their children. Their power over them is grounded in this responsibility and lasts only until the child reaches a “state of maturity wherein he might be supposed capable to know that law, that so he might keep his actions within the bounds of it.” (p.120) The effective execution of this duty by the parents then confers on the mature child the duty to *honour* his or her parents.

*Of Political or Civil Society*

*Conjugal society* is the “voluntary compact between man and woman” (p.128), principally for procreation but also entailing mutual support and assistance. When there are differences of opinion, Locke does feel that “the last determination… naturally falls to the man’s share, as the abler and the stronger” however this “gives the husband no more power over her life than she has over his” (p.129). He also considers the relation of *master* and *servant*, where one sells his or her services to another in exchange for wages, and *slaves* which he defines as captives taken in a just war.

None of this; i.e. “a *master of a family* with all these subordinate relations of *wife*, *children*, *servants*, and *slaves*, united under the domestic rule of a family” (p.131) is anything like a commonwealth or a monarchy.

*Political*, or *civil*, *society*, on the other hand, occurs only where individuals have voluntarily given up their rights in the state of nature, “united into one body, and have a common established law and judicature to appeal to, with authority to decide controversies between them, and punish offenders” (p.131). A part of this necessarily includes the separation of the *legislative* and *executive* powers. *Absolute monarchy* is therefore inconsistent with *civil society* because in the former the legislative and executive powers are both found in one person.

*Of the Beginning of Political Societies*

There are three points Locke makes here that are worthy of mention. First, a civil society involves making the community “one body, with a power to act as one body, which is only by the will and determination of the *majority*.” (p.136) Second, a child is not born a subject of a country or government. Until he or she reaches the “age of discretion” (p.145) and can make a voluntary decision for his or herself, they are under the parents’ tuition and authority. Third, “submitting to the laws of any country, living quietly, and enjoying privileges and protection under them, *makes not a man a member of that society*” (p.147). Only a person’s “positive engagement, and express promise and compact” (p.147) can secure such a thing.

*Of the Ends of Political Society and Government*

“The great and *chief end*… of men’s uniting into common-wealths, and putting themselves under government, *is the preservation of their property*.” (p.148) This guarantee is missing in the state of nature for the want of three things:

1. No established, settled, known law.
2. No indifferent judge.
3. The lack of a power to support the execution of the laws.

Ultimately, the end of political society is “the *peace*, *safety*, and *public good* of the people.” (p.150)

*Of the Forms of a Common-wealth*

Locke lists five forms of government which can be enacted as is or mixed:

1. Perfect democracy – Where the majority makes laws and execute them by officers of their own appointing.
2. Oligarchy – Where the power to make laws is put into the hands of a few select people.
3. Monarchy – Where the power to make laws is put into the hands of one person.
4. Hereditary monarchy – Where the power to make laws is put into the hands of one person and their heirs.
5. Elective monarchy – Where the power to make laws is put into the hands of one person until his or her death before which time they can nominate a successor.

*Of the Extent of the Legislative Power*

The establishing of the legislative power to make the laws everyone in the community will live by is the “*first and fundamental positive law* of all commonwealths” (p.152). However, Locke gives four restrictions:

1. It cannot be “absolutely *arbitrary* over the lives and fortunes of the people” (p.152). Established laws must apply equally to every individual without favour or bias.
2. It cannot “rule by extemporary arbitrary decrees” (p.153). The laws must be for the good of the people.
3. It cannot take “from any man any part of his *property* without his own consent” (p.154). Locke is strict about this as we will see later.
4. It cannot transfer the power of making laws to any other group or person.

*Of the Subordination of the Powers of the Common-wealth*

The legislative is the supreme power in Locke’s commonwealth however, he insists that the people must retain the ultimate power to “*remove or alter the legislative*, when they find the *legislative* act contrary to the trust reposed in them” (p.159). The *representatives* who make up the legislative are to be elected by the people, and these elections are administered by the executive power. If the executive branch misuses its power, Locke maintains that “the people have a right to remove it by force. In all states and conditions, the true remedy of *force* without authority, is to oppose *force* to it.” (p.161)

*Of Prerogative*

*Prerogative* is the “power to act according to discretion, for the public good, without the prescription of the law, and sometimes even against it” (p.164). Locke mentions this because it is sometimes necessary to make quick decisions without going to the trouble of calling a meeting of representatives, voting on a proposal, etc.

*Of Conquest*

Any aggressor who unjustly invades another’s right can “*never* come to *have a right over the conquered*” (p.171).

However, things are different for a conqueror in a just war. He or she:

1. Gets no power over those who conquer with him or her.
2. Has absolute power over those who waged an unjust war against him or her. Locke makes clear though that this power is only over those who “actually assisted, concurred, or consented to that unjust force that is used against him [or her]” (p.172); i.e. not innocent citizens who never gave their governors power to commit their unjust act.
3. Despite having “an absolute power over the lives of those, who, by putting themselves in a state of war, have forfeited them” (p.173) does not have a right or title to their property. This belongs to the children and wife.

*Of Usurpation*

This is a kind of “domestic conquest” except the “usurper can never have right on his side” (p.180). Until the people consent to the rule of the usurper, he or she can never lay claim to the title.

*Of Tyranny*

Tyranny is “*the exercise of power beyond right*, which no body can have a right to… this is making use of the power any one has in his hands, not for the good of those who are under it, but for his own private separate advantage.” (p.181)

*Of the Dissolution of Government*

The first and most usual way political societies are dissolved is from without, as in when a foreign force conquers them.

The second way is dissolution from within, which can happen in three ways:

1. When the legislative is altered:
   1. When a single person sets up his or her own will in place of the laws.
   2. When the prince prevents the legislative from carrying out its duties.
   3. When the electors or the ways of election are altered without the consent on the people.
   4. When the people are delivered into the subjection of a foreign power.
2. When the legislative (or the executive) act contrary to the trust put in them:
   1. When they try to “invade the property of the subject, and to make themselves, or any part of the community, masters, or arbitrary disposers of the lives, liberties, or fortunes of the people.” (p.189)
   2. When some person or group “employs the force, treasure, and offices of the society, to corrupt the *representatives*, and gain them to his purposes; or openly pre-engages the *electors*, and prescribes to their choice, such, whom he has, by sollicitations, treats, promises, or otherwise, won to his designs; and employs them to bring in such, who have promised before-hand what to vote, and what to enact.” (p.190)
3. When the executive “neglects and abandons [their] charge, so that the laws already made can no longer be put in execution.” (p.188)

In all of the above, the party responsible for the dissolution of government is guilty of rebellion because they “*introduce a state of war*, which is that of force without authority” (p.192).

Everyone agrees that foreigners or subjects who attempt to force on the properties of anyone else may be resisted with force, but Locke goes further than this to affirm that even *magistrates* or *kings* may be resisted with force because as soon as they breach the trust invested in them by the people, they lose the right to the title. Resisting them by force is therefore not rebellion because the official has already committed the rebellious act.

To the question, “*Who shall be judge*, whether the prince of legislative act contrary to their trust?” (p.199), Locke answers, “*The people shall be judge*; for who shall be *judge* whether his trustee or deputy acts well, and according to the trust reposed in him, but he who deputes him, and must, by having deputed him, have still a power to discard him, when he fails in his trust?” (p.199)

Locke finishes by saying that the “*power that every individual gave the society*, when he entered into it, can never revert to the individuals again, as long as the society lasts” but also “when the society hath placed the legislative in any assembly of men, to continue in them and their successors, with direction and authority for providing such successors, *the legislative can never revert to the people* whilst that government lasts” (p.200). Power only reverts to society if a limit in duration had been imposed on the legislative or if, through miscarriages in those in authority, that power is forfeited.