CHAPTER 21

POLITICAL THEORY

Excerpted and adapted from L. Hunt et al., *The Making of the West: Peoples and Cultures*, 4th edition, vol. "B" (Boston, 2012) pp. 507 and 531-532; J. Coffin et al., *Western Civilizations: Their History & Their Culture*, 17th edition, vol. 2 (New York, 2011) pp. 447-449.

The persistent religious and political upheaval of the sixteenth and seventeenth centuries inaugurated a crisis of authority, prompting many European intellectuals to develop new theories of government. For many thinkers living during these chaotic times, traditional social structures seemed outdated and could no longer cope with the new challenges facing a religiously fragmented Europe; in attempts to establish some foundation for a new authority, they proposed a variety of new political theories.

For example, the French nobleman Michel de Montaigne (d. 1592), writing during the height of the French wars of religion, proposed in his *Essays* a radical questioning of contemporary political practices. The son of a Catholic father and a Huguenot mother of Jewish ancestry, the well-to-do Montaigne retired from a legal career at the age of thirty-eight to devote himself to a life of reflection. The *Essays* that resulted were a new literary form originally conceived as "experiments" – the French word *essai* means "attempt." Montaigne espoused a troubling skepticism, making his motto: *Que sais-je?* – What do I know? Faced with the confusing reality of prolonged civil war waged by Christians espousing competing creeds, Montaigne ultimately decided that he knew very little. According to him, "it is folly to measure truth and error by our own capacities" because our capacities are severely limited and deeply flawed. From this claim followed Montaigne's second main principle: the need for moderation. Because many people think they know the perfect religion and the perfect government, yet they cannot agree on what that perfection might be, Montaigne concluded that the Frenchmen of his day should obey the religious and political authorities placed over them without resorting to "fanaticism" in either sphere. Montaigne thus hoped that his stress on humility and moderation would provide a peaceful resolution to religious and political chaos afflicting France.

Montaigne's contemporary, the French lawyer Jean Bodin (d. 1596), took a more active approach to the problem of uncertain authority. He wanted to resolve the disorders of his day by reestablishing the powers of the state on new and more secure foundations. Like Montaigne, Bodin was particularly troubled by the upheavals caused by the religious wars in France; he had witnessed the St. Bartholomew's Day Massacre of 1572. But he was resolved to offer a practical, political solution to such turbulence. In his monumental *Six Books of the Commonwealth* (1576), he developed a theory of absolute state sovereignty. According to Bodin, the state arises from the needs of groups of families; once constituted, the state should brook no opposition to its authority because maintaining social order is its paramount duty. For Bodin, sovereignty was "the most high, absolute, and perpetual power over all subjects," which could make and enforce laws without the consent of those governed by the state – precisely what Charles I of England argued, and precisely what the Puritan members of Parliament disputed. Although Bodin acknowledged the possibility of government by aristocrats or even by democracy, he assumed that the powerful, centralized nation-states of his day would have to be ruled by monarchs, and he insisted that such monarchs should in no way be limited – whether by legislative and judicial bodies, or even by laws made by their own predecessors. Bodin also believed that monarchs should exercise authority over their national churches, thus overseeing temporal as well as spiritual affairs. Bodin maintained that every subject must trust in his ruler's "mere and frank good will," much as a child naturally trusts in the benevolence of his father. Yet even if the ruler proved a tyrant, Bodin insisted that the subject had no right to resist, for any resistance would open the door "to a licentious anarchy which is worse than the harshest tyranny in the world." Bodin's vision of a monarch leading the state without constraint was subsequently termed "absolutism" and was popular, for a time, among English and French rulers such as Charles I and Louis XIV.

Some political theorists, such as the Englishman Robert Filmer (d. 1653), generally agreed with Bodin's vision of a powerful monarch dominating his subjects as a father guiding his children; others, however, rejected Bodin's absolutism. Prominent among them was the Dutch legal scholar Hugo Grotius (d. 1645). Living amidst the Calvinist revolt in the Netherlands against Catholic Spain, Grotius furthered secular thinking by attempting to systematize the notion

of "natural law" – laws of nature, applicable to all men universally, that give legitimacy to government and stand above the actions or teachings of any particular ruler or religious group. Grotius argued that natural law stood beyond the reach of either secular or ecclesiastical authority; it was always and everywhere valid. By this account, natural law – not scripture, religious authority, or tradition – should govern politics. Such ideas got Grotius into trouble with both Catholics and Protestants. His work *The Laws of War and Peace* (1625) was condemned by the Catholic Church, while the Dutch Protestant government arrested him for religious dissent. Grotius's wife helped him escape prison by hiding him in a chest of books. He fled to Paris, where he got a small pension from Louis XIII and served as his ambassador to Sweden. The Swedish king Gustavus Adolphus claimed that he kept Grotius's book under his pillow even while at battle. Grotius was one of the first to argue that international conventions should govern the treatment of prisoners of war and the making of peace treaties, conventions which superseded any particular national interest or religious allegiance.

Grotius's conception of natural law also challenged the widespread use of torture on the grounds that it presumed guilt without proof and thus unjustly deprived a suspect of his natural right to freedom from coercion. Most states and the courts of the Catholic Church used torture when a serious crime had been committed and the evidence seemed to point to a particular defendant but no definitive proof had been established. The judge might order torture – hanging the accused by the hands with a rope thrown over a beam, pressing the legs in a leg screw, or just tying the hands very tightly – to extract a confession, which had to be given with a medical expert and notary present and had to be repeated afterwards without torture. Children, pregnant women, the elderly, aristocrats, kings, clerics, and even professors were exempt. Thus the long-standing Roman legal practice of torture was yet another tradition that Grotius challenged.

To be in accord with natural law, Grotius argued, governments had to defend natural rights, which he defined as life, body, freedom, and honor. Grotius did not encourage rebellion in the name of natural law or rights, but he did hope that someday all governments would adhere to these principles and stop killing their own and one another's subjects in the name of religion. Grotius's

notions of natural law and natural rights would play an important role in the founding of constitutional governments from the 1640s forward and in the establishment of various charters of human rights in our own time.

As was the case in France and Holland, the upheaval caused by the religious warfare also sparked new political ideas in England. Most prominent among the English theorists were Thomas Hobbes and John Locke. Although Hobbes and Locke wrote in response to the crises of their times, they offered opposing arguments that were applicable to any place and any time, not just to England of the seventeenth century. Hobbes (much like Bodin) justified absolute authority; Locke, however, provided the rationale for constitutionalism (a form of government in which the state is limited in the exercise of its authority by custom and law). Yet both argued that all authority came not from divine right but from a social contract among citizens. The Dutch scholar Hugo Grotius had originated the idea of a social contract, but he conceived of it in a more limited way. For Locke, in particular, the social contract implied that government rested on the consent of the governed.

Thomas Hobbes (1588-1679) was a royalist who sat out the English civil war of the 1640s in France, where he tutored the future king Charles II. Returning to England in 1651, he published his masterpiece, *Leviathan* (1651), in which he argued for unlimited authority in a ruler. Absolute authority could be vested in either a king or a parliament; but it had to be absolute, Hobbes insisted, in order to overcome the defects of human nature. Believing that people are essentially self-centered and driven by the "right to self-preservation," Hobbes made his case by referring to science, not religion. To Hobbes, human life in a state of nature – that is, in any situation without binding political authority – was "solitary, poor, nasty, brutish, and short." He believed that the desire for power and natural greed would inevitably lead to unfettered competition. Only the assurance of social order and the terrifying threat of punishment could convince selfish people to act according to law; consequently he maintained that giving up certain personal liberties was the price of collective security and of the common good. Rulers derived their power, he concluded, from a contract in which their absolute authority protects people's rights and maintains peace.

Hobbes's notion of rule by an absolute authority left no room for political dissent or nonconformity, and it infuriated both royalists and supporters of Parliament. He enraged royalists by arguing that authority came not from divine right but from the social contract. Parliamentary supporters resisted Hobbes's claim that rulers must possess absolute authority to prevent the greater evil of social anarchy; they believed that a constitution was sufficient to protect individual rights under the law and to guarantee shared power between king and Parliament. Like Machiavelli before him, Hobbes became associated with a cynical, pessimistic, naturalistic view of the human condition, and future political theorists often began their arguments by refuting Hobbes.

An engraving by French artist Abraham Bosse atop the title page of the 1651 edition of Hobbes's *Leviathan*, depicting the sovereign wielding supreme temporal and spiritual authority, supported by and composed of the masses of his subjects, the body politic. The Latin inscription reads: "There is no power on earth which can be compared to him."

Rejecting both Hobbes and the more traditional royalist defenses of absolute authority, John Locke (1632-1704) used the notion of a social contract to provide a foundation for constitutionalism. Locke experienced political life firsthand as physician, secretary, and intellectual companion to the Earl of Shaftesbury, a leading English Whig. In 1683, political enemies forced Locke to flee with Shaftesbury to the Dutch Republic. There he continued work on his *Two Treatises of Government*, which, when published in 1690, served to justify the Glorious Revolution of 1688. Locke's position was thoroughly anti-absolutist. He denied the divine right of kings and ridiculed the common royalist idea that political power in the state mirrored the father's authority in the family. Like Hobbes, he posited a state of nature that applied to all people. Unlike Hobbes, however, he thought people were reasonable and the state of nature peaceful.

Locke insisted that government's only purpose was to protect life, liberty, and property, a naturalistic notion that linked economic and political freedom and disconnected them from any higher spiritual realities. Ultimate authority rested in the will of a majority of men who owned property, and government should be limited to its basic purpose of protection. A ruler who failed to uphold his part of the social contract between the ruler and the populace could be resisted and even deposed, an idea which justified England's Glorious Revolution and would inspire the leaders of the American and French Revolutions a century later. Finally, for England's seventeenth-century landowners (many of whom served on Parliament), Locke's theories supported their interests and defended their privileged position atop the social hierarchy.

HOMEWORK QUESTIONS

1.) How did the Protestant revolt inspire the creation of new political theories?

2.) What do thinkers like Grotius and Locke imply by using the term "natural law?"

** PRIMARY SOURCES **

Thomas Hobbes, *Leviathan*

Excerpted from J. Brophy et al. (ed.), *Perspectives from the Past: Primary Sources in Western Civilizations*, 5th edition, vol. 1 (New York, 2012) pp. 497-499.

The office of the sovereign, be it a monarch or an assembly, consists in the end for which he was trusted with the sovereign power, namely, the securing of "the safety of the people"; to which he is obliged by the law of nature, and to render an account thereof to God, the author of that law, and to none but him. But by "safety" here is not meant a bare preservation but also all other contentments of life which every man by lawful industry, without danger or hurt to the commonwealth, shall acquire to himself. And this is to be done, not by care applied to individuals further than their protection from injuries when they shall complain, but by a general provision contained in public instruction, both of doctrine and example, and in the making and executing of good laws to which individual persons may apply their own cases.

And because, if the essential rights of sovereignty ... be taken away, the commonwealth is thereby dissolved and every man returns into the condition and calamity of a war with every other man, which is the greatest evil that can happen in this life, it is the office of the sovereign to maintain those rights entire, and consequently it is against his duty, first, to transfer to another or to lay from himself any of them. For he that deserts the means deserts the ends; and he deserts the means when, being the sovereign, he acknowledges himself subject to the civil laws and renounces the power of supreme judicature, or of making war or peace by his own authority; or of judging of the necessities of the commonwealth; or of levying money and soldiers when and as much as in his own conscience he shall judge necessary; or of making officers and ministers both of war and peace; or of appointing teachers and examining what doctrines are conformable or contrary to the defense, peace, and good of the people. …

To the care of the sovereign belongs the making of good laws. But what is a good law? By a good law I mean not a just law; for no law can be unjust. The law is made by the sovereign power, and all that is done by such power is warranted and owned by every one of the people; and that which every man will have so, no man can say is unjust. …

For the use of laws, which are but rules authorized, is not to bind the people from all voluntary actions but to direct and keep them in such a motion as not to hurt themselves by their own impetuous desires, rashness, or indiscretion; as hedges are set not to stop travelers, but to keep them in their way. And, therefore, a law that is not needed, having not the true end of a law, is not good. A law may be conceived to be good when it is for the benefit of the sovereign, though it be not necessary for the people – but it is not so. For the good of the sovereign and people cannot be separated. It is a weak sovereign that has weak subjects, and a weak people whose sovereign lacks power to rule them at his will. Unnecessary laws are not good laws but traps for money; which, where the right of sovereign power is acknowledged, are superfluous, and where it is not acknowledged, are insufficient to defend the people. …

It belongs also to the office of the sovereign to make a right application of punishments and rewards. And seeing the end of punishing is not revenge and discharge of anger but correction, either of the offender or of others by his example, the severest punishments are to be inflicted for those crimes that are of most danger to the public, such as are those which proceed from malice to the government established, those that spring from contempt of justice, those that provoke indignation in the multitude, and those which, unpunished, seem authorized, as when they are committed by sons, servants, or favorites of men in authority. …

Concerning the offices of one sovereign to another, which are comprehended in that law which is commonly called the "law of nations," I need not say anything in this place because the law of nations and the law of nature is the same thing. And every sovereign has the same right in securing the safety of his people that any particular man can have in securing the safety of his own body. And the same law that dictates to men that have no civil government what

they ought to do and what to avoid in regard of one another dictates the same to commonwealths, that is, to the consciences of sovereign princes and sovereign assemblies, there being no court of natural justice but in the conscience only; where not man but God reigns, whose laws, such of them as oblige all mankind, in respect of God as he is the author of nature are "natural," and in respect of the same God as he is King of kings are "laws."

John Locke, *Two Treatises on Government*

Excerpted from J. Brophy et al. (ed.), *Perspectives from the Past: Primary Sources in Western Civilizations*, 5th edition, vol. 1 (New York, 2012) pp. 510-514.

Of Political or Civil Society

Man being born, as has been proved, with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the law of Nature equally with any other man or number of men in the world, has by nature a power not only to preserve his property – that is, his life, liberty, and estate – against the injuries and attempts of other men, but to judge of and punish the breaches of that law in others, as he is persuaded the offence deserves, even with death itself, in crimes where the heinousness of the fact, in his opinion, requires it. But because no political society can be, nor subsist, without having in itself the power to preserve the property, and in order thereunto punish the offences of all those of that society, there, and there only, is political society where every one of the members has quitted this natural power, resigned it up into the hands of the community in all cases that exclude him not from appealing for protection to the law established by it. And thus all private judgment of every particular member being excluded, the community comes to be umpire, and by understanding indifferent rules and men authorized by the community for their execution, decides all the differences that may happen between any members of that society concerning any matter of right, and punishes those offences which any member has committed against the society with such penalties as the law has established; whereby it is easy to discern who are, and are not, in political society together. Those who are 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, are in civil society one with another; but those who have no such common appeal, I mean on earth, are still in the state of Nature, each being where there is no other judge for himself and executioner; which is, as I have before showed it, the perfect state of Nature. …

Wherever, therefore, any number of men so unite into one society as to quit every one his executive power of the law of Nature and to resign it to the public, there and there only is a political or civil society. And this is done wherever any number of men, in the state of Nature, enter into society to make one people one body politic under one supreme government: or else when any one joins himself to, and incorporates with any government already made. For hereby he authorizes the society, or which is all one, the legislative thereof, to make laws for him as the public good of the society shall require, to the execution whereof his own assistance (as to his own decrees) is due. And this puts men out of a state of Nature into that of a commonwealth, by setting up a judge on earth with authority to determine all the controversies and redress the injuries that may happen to any member of the commonwealth, which judge is the legislative or magistrates appointed by it. And wherever there are any number of men, however associated, that have no such decisive power to appeal to, there they are still in the state of Nature.

Hence it is evident that absolute monarchy, which by some men is deemed the only government in the world, is inconsistent with civil society and so cannot be a form of civil government at all, for the end of civil society is to avoid and remedy those inconveniencies of the state of Nature, which necessarily follow from every man's being judge in his own case, by setting up a known authority to which every one of that society may appeal upon any injury received or controversy that may arise and which every one of the society ought to obey. Wherever any persons are who have not such an authority to appeal to and decide differences between them, those persons are still in the state of Nature, and so is every absolute prince in respect to those who are under his dominion.

For he being supposed to have all, both legislative and executive, power in himself alone, there is no judge to be found, no appeal lies open to any one, who may fairly and indifferently and with authority decide, and from whence relief and redress may be expected of any injury or inconveniency that may be suffered from him, or by his order. So that such a man, however entitled, Czar, or Grand Signior, or how you please, is as much in the state of Nature, with all under his dominion, as he is with the rest of mankind. For wherever any two men are who have no standing rule and common judge to appeal to on earth for

the determination of controversies of right betwixt them, there they are still in the state of Nature and under all the inconveniencies of it, with only this woeful difference to the subject, or rather slave of an absolute prince: that whereas in the ordinary state of Nature he has a liberty to judge of his right according to the best of his power to maintain it; but whenever his property is invaded by the will and order of his monarch, he has not only no appeal, as those in society ought to have, but, as if he were degraded from the common state of rational creatures, is denied a liberty to judge of or defend his right, and so is exposed to all the misery and inconveniencies that a man can fear from one who, being in the unrestrained state of Nature, is yet corrupted with flattery and armed with power. …

Of the Beginning of Political Societies

Men being, as has been said, by nature all free, equal, and independent, no one can be put out of this estate and subjected to the political power of another without his own consent, which is done by agreeing with other men, to join and unite into a community for their comfortable, safe, and peaceable living, one amongst another, in a secure enjoyment of their properties, and a greater security against any that are not of it. This any number of men may do, because it injures not the freedom of the rest; they are left, as they were, in the liberty of the state of Nature. When any number of men have so consented to make one community or government, they are thereby presently incorporated, and make one body politic, wherein the majority have a right to act and conclude the rest.

For, when any number of men have, by the consent of every individual, made a community, they have thereby made that community one body, with a power to act as one body, which is only by the will and determination of the majority. For that which acts any community, being only the consent of the individuals of it, and it being one body, must move one way, it is necessary the body should move that way whither the greater force carries it, which is the consent of the majority, or else it is impossible it should act or continue one body, one community, which the consent of every individual that united into it agreed that it should; and so every one is bound by that consent to be concluded by the majority. And therefore we see that in assemblies empowered to act by positive

laws where no number is set by that positive law which empowers them, the act of the majority passes for the act of the whole, and of course determines as having, by the law of Nature and reason, the power of the whole. And thus every man, by consenting with others to make one body politic under one government, puts himself under an obligation to every one of that society to submit to the determination of the majority, and to be concluded by it. ...

Every man being, as has been showed, naturally free, and nothing being able to put him into subjection to any earthly power, but only his own consent, it is to be considered what shall be understood to be a sufficient declaration of a man's consent to make him subject to the laws of any government. There is a common distinction of an express and a tacit consent, which will concern our present case. Nobody doubts but an express consent of any man, entering into any society, makes him a perfect member of that society, a subject of that government. The difficulty is what ought to be looked upon as a tacit consent, and how far it binds – i.e., how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expressions of it at all. And to this I say, that every man that has any possession or enjoyment of any part of the dominions of any government doth hereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government, during such enjoyment, as any one under it, whether this his possession be of land to him and his heirs forever, or a lodging only for a week; or whether it be barely travelling freely on the highway; and, in effect, it reaches as far as the very being of any one within the territories of that government.

To understand this the better, it is fit to consider that every man when he at first incorporates himself into any commonwealth, he, by his uniting himself thereunto, annexes also and submits to the community those possessions which he has, or shall acquire, that do not already belong to any other government. For it would be a direct contradiction for any one to enter into society with others for the securing and regulating of property, and yet to suppose his land, whose property is to be regulated by the laws of the society, should be exempt from the jurisdiction of that government to which he himself, and the property of the land, is a subject. By the same act, therefore, whereby any one unites his person, which was before free, to any commonwealth, by the same he unites his possessions,

which were before free, to it also; and they become, both of them, person and possession, subject to the government and dominion of that commonwealth as long as it has a being. Whoever therefore, from thenceforth, by inheritance, purchases permission, or otherwise enjoys any part of the land so annexed to and under the government of that commonweal, must take it with the condition it is under: that is, of submitting to the government of the commonwealth, under whose jurisdiction it is, as far forth as any subject of it. …

Of the Ends of Political Society and Government

If man in the state of Nature be so free as has been said, if he be absolute lord of his own person and possessions, equal to the greatest and subject to nobody, why will he part with his freedom, this empire, and subject himself to the dominion and control of any other power? To which it is obvious to answer, that though in the state of Nature he has such a right, yet the enjoyment of it is very uncertain and constantly exposed to the invasion of others; for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very insecure. This makes him willing to quit this condition which, however free, is full of fears and continual dangers; and it is not without reason that he seeks out and is willing to join in society with others who are already united, or have a mind to unite for the mutual preservation of their lives, liberties and estates, which I call by the general name "property."

The great and chief end, therefore, of men uniting into commonwealths, and putting themselves under government, is the preservation of their property; to which in the state of Nature there are many things wanting.

Firstly, there wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them. For though the law of Nature be plain and intelligible to all rational creatures, yet men, being biased by their interest, as well as ignorant for want of study of it, are not apt to allow of it as a law binding to them in the application of it to their particular cases. …

HOMEWORK QUESTIONS:

1.) According to Hobbes, what is the relation between a sovereign and his subjects?

2.) According to Locke, what are the relations between government, laws, and the subjects of a commonwealth?