



Reading Political Philosophy: From Machiavelli to Mill

Locke: Jon Pike and Jeremy Waldron

Jon Pike

Hello, I'm Jon Pike and I'm delighted to be here today to talk to Jeremy Waldron, Professor of Legal and Political Theory at Columbia University about Locke's *Second Treatise*. Jeremy Waldron's the author of *Two Worries About Mixing One's Labour*, and a number of other important articles and papers on Locke and contemporary political and legal theory. Jeremy, does Locke's *Second Treatise* make it into your top ten?

Prof. Jeremy Waldron

He'd certainly be there, not because I think that everything Locke says is correct, or that his influence is always to the good, but he's an undoubtedly influential figure in the history of political philosophy, and in the political institutions of the world; had a great impact on America, great impact on our tradition of political theorising about freedom and democracy. So certainly he would be on the list, along with probably the five or six others that you have. We might disagree around the edges but there's no doubt about Locke. He's in the core.

Jon Pike

Perhaps you could say something about the impact of Locke on political institutions. One might see Locke as contributing to the genesis of Liberalism as a form of political thought, but it's too simple perhaps to say that Locke is just a liberal. How would you go about qualifying that characterisation of Locke?

Prof. Jeremy Waldron

Yes. The first thing to say is that you won't find the word 'liberalism' in Locke, that is, he didn't write in order to be a liberal, he wrote in order to give us Locke's views, and if we have made some of those into a tradition called liberalism that's something that we've done, and it makes sense to us. But there are views in Locke that modern liberalism is a little uncomfortable with. Maybe later, when we talk about natural law we'll talk about its very strong religious basis in Locke's thought that not all modern theorists are entirely comfortable about committing themselves to. And there are other aspects of Locke's theory that some liberals are unsure as to how central to liberalism these views are. Some of his views about property fall into this category. But in general the core aspects of liberalism, the insistence on the rule of law, on individual rights, on economic freedom, and on the rights of the person against the government, on all of those including his writings on religious toleration, it really is John Locke who most clearly sets out the basis of the liberal agenda in early modern political philosophy.

Jon Pike

The question then arises, since we're reading the *Second Treatise*, what's become of the *First Treatise*. Shouldn't we be reading that first?

Prof. Jeremy Waldron

Yes. Very few people read the *First Treatise*. That's because the agenda of 17th Century philosophy and political philosophy was not always our agenda. The *First Treatise* is an attempt to refute a strictly scriptural biblical argument in favour of the Divine Right of Kings, and that was an argument that was current in Locke's day and it was felt to be very important to show that the scriptural passages in Genesis and elsewhere in the Old Testament did not support the view that God had given the world to Adam and to Adam's eldest son, let alone the preposterous view that the current heir to that inheritance was Charles Stewart and his elder brother James. So a lot of the *First Treatise*, its relevance is located quite specifically to the 17th Century politics, and the type of argument is not an argument that we're particularly interested in. The other thing to notice about the *First Treatise* is that we only have

apparently half of it. Half of the *First Treatise* is lost, thankfully, for those of us who do have to read it because it's very tedious stuff.

If I can just add one more thing, the one thing that makes Locke scholars wake up screaming in the middle of the night is the prospect that somebody somewhere has discovered the missing half of the *First Treatise* and that we're all gonna have to spend the rest of our professional lives studying this tedious stuff on the biblical basis of the Divine Rights of Kings.

Jon Pike

Can I ask you now about the context of the writing of the *Second Treatise*? It used to be thought that the *Second Treatise* was written after the 1688 revolution as a justification after the event, but now we know that it was written before the revolution. How does this information change our understanding of the *Second Treatise*?

Prof. Jeremy Waldron

I remember when I first read that historical material, re-dating the composition. It made a huge difference to my attitude to the *Second Treatise*. It didn't seem to be a rationalisation of something, it seemed much more dangerous, much more subversive when you knew that this was stuff that could well have cost Locke his life had it been published at the time it was being written. It was a call for a revolution to take place, not a successful rationalisation after a revolution had happened. So with that in mind you can be alert to some rather different things. It doesn't change of course the letters on the page, it doesn't change the text, but it makes you more alert to the risks that were being taken. Now having said that, it remains the case that the important event in the public life of the two Treatises is the date of publication, not the date when Locke puts pen to paper, and it is true that he thought it was important to publish this stuff in 1690 or 1689, even though he thought it was important to write it, and perhaps circulate it to his friends in around 1680. as for the specific context, it has to do with a crisis in English politics after the Restoration where people are increasingly worried, first of all about Charles II's continued attempts to do without compromised deals with parliament on supply and to possibly enter into alliances with the absolutist regime in France, alliances that may well lead to the reintroduction of Roman Catholicism into England, and may well bolster Charles's own absolutist tendencies.

People were particularly worried about the possible succession of his brother, because although Charles II had lots of offspring, there were not a large number of legitimate offspring, and it looked like his brother was heir apparent during this time and his brother was a well known Catholic. So Locke was involved with his patron, Anthony Ashley Cooper, Earl of Shaftsbury, in what we now know as the 'exclusion crisis', which was a crisis occasioned by the Whig faction in and out of parliament, attempting to exclude the Catholic James, Duke of York, from succession to the English throne in the event that his elder brother died without a legitimate heir. So that was the immediate context for Locke writing about this. And at that stage his Tory opponents were reviving theories of the Divine Right of Kings to which Locke wanted to reply specifically in the *First Treatise*, and generally in the *Second Treatise*.

Jon Pike

Locke starts his account of political philosophy with a state of nature. But the state of nature seems an altogether more attractive place for Locke than it does for Hobbes. Is this why Locke is able to defend a much more limited form of government than the absolutist state of Hobbes?

Prof. Jeremy Waldron

Yes I think it is. Both thinkers are asking themselves what would be left if you took away government? What would be left if you took away political institutions, and legal systems? What would human life be like, to put it more positively, how much do we owe to political institutions? And Locke is convinced that although we owe a lot, we don't owe everything. We certainly don't owe our basic sociability. We don't owe family structures – people fall in love and commit themselves to one another quite apart from whatever the laws say. We don't owe even the basics of the economy to government. Locke is quite sure that people would have an economy and they would engage in private ownership of things, even if there were no legal system to frame or embody that ownership. And most important I think he is saying

that we don't owe basic morality to government. Basic morality comes from people figuring out what they owe to each other, and what respect they ought to have for each other, and they can figure this out on the basis of their common reason, and they can figure this out on the basis of their religion, or their religious views. So, it's partly optimism – not about human nature so much – but about how much of what we might call civilisation is, in fact, established quite independently of government.

Jon Pike

So this notion of basic morality that you talk about that exists in the state of nature, which connects up, doesn't it, to the discussion of natural rights and natural law that we find in Locke?

Prof. Jeremy Waldron

Yes. It's very complicated to think about the relationship between natural law and natural rights, and it's complicated to think about both of those in relation to a basic morality that doesn't depend on state law or political institutions. Because it's difficult for Locke too. Locke wants to say that our basic morality is not based on conscience. It's not innate, it is not as though we are born with certain moral principles hard-wired into us, and Locke is a great opponent of the idea of innate moral principles. So for him everything turns on reason, everything turns on people's ability to reason, to figure out that they live in a world created by a god, who has created certain beings with the capacity to think of themselves in relation to god. He thinks that every human can figure that out for himself or herself and can, by observation and dealing with his fellow creatures, realise that he's also dealing with other people who have this relation to god, and that that's an important aspect of elementary human interaction and elementary human thinking, and it explains, says Locke, why most people then have what appears to be an instinctive repugnance to murder, or attacking or raping one another, or taking something that somebody else has made or grown.

This is not because we're hard-wired against doing those sorts of things, it's not a hard-wiring theory, it's rather a theory that the modes of thought that you need, the common sense that you need to figure all this out is pretty straightforward. Whereas for Hobbes the only thing that you can count on, according to Hobbes, is each person's own drive for survival and the appetites that that fuels. But for Locke, all of that is set in the framework of people having the capacity to think for themselves about morality.

Jon Pike

And these individuals who think for themselves about morality in the state of nature will, according to Locke, decide to form themselves into a political society. How does that come about?

Prof. Jeremy Waldron

Yes. It comes about partly because, although everybody is capable of figuring out the basics of what they owe to each other, this doesn't mean that we are all pure golden saints who will abide by the conclusions of our own reasoning, and Locke is perfectly clear about two things. There are some bad people in the state of nature, there are some genuine disputes and disagreements in the state of nature about particular details, and also that these processes of figuring things out may well yield genuine disagreement, and uncertainty, and controversy in the state of nature. Now he says, 'So that leaves you in a predicament. You're living in a basically moral world, but it's not a world without crime, it's not a world without disputes and it's not a world without moral controversy'. And it's partly in response to those problems that we set up a state. But I think the important thing to notice about this, and it goes back to the question you asked me before about the difference between Locke and Hobbes. For Locke the government has a specific job to do, to make things specifically better in certain set ways, relative to the state of nature. The idea is that a government is legitimate so long as it is contributing to making things better in those ways, and that's where an awful lot of the argument in Locke's specifically political theory is based, all the time he's saying this looks like a government but it's not, in fact, making things better. It's making things worse for people. They would be better off taking their chances in the state of nature, which after all is not all that appalling, than having to put up with a government like this, pointing secretively at the government of Charles II.

Jon Pike

Perhaps we could come back to this basic morality in the state of nature. You've said that god plays an important role in Locke's conception of what our natural rights are, so what happens if god drops out of the picture? For an atheist, does anything of the Locke account remain plausible or interesting?

Prof. Jeremy Waldron

There has been a lot of controversy about that in recent Locke scholarship, and I think the consensus is that it's very difficult to simply bracket god out of the picture and leave the content of the morality intact, because for Locke it's not just a matter of god said this or god said that 'thou shalt not kill, thou shalt not abridge liberty', as though the content of those commands could remain even after you remove the commander from the picture. It's rather that the image of what's valuable about human beings, the image of what capacities our natural rights depend on, the notion that we are in some sense created in the image of god and that we have these god-like capacities of reason. All of that's quite intrinsic to the picture, so it's possible that this is a religiously based argument through and through.

Now in modern philosophy and in modern politics people believe that they can get to the same conclusion substantially the same conclusions about human rights and natural rights without any of this god stuff. And maybe they're right. Maybe there are avenues to the same conclusion that there's something about the dignity of the human person – in itself – that commands respect, whether you think of us as creatures in the image of god. All I want to say is that according to John Locke such views depend historically on theological arguments even if they don't acknowledge that heritage, they depend on the theologians having done all the hard work, and then people taking over secular versions of these arguments. And the other thing to remember about Locke is that he himself believed that atheists were a social menace, and in his arguments about religious toleration the one group of people that he was very emphatic about not tolerating were atheists, because they didn't have the fear of god, and they couldn't sort of view social life in the way in which somebody would view it once they believed that there was something special about humans, and that something special had to do with their creation.

So, just to sum up I think that it's perfectly reasonable to suppose that substantially similar conclusions could be reached on a secular basis, but John Locke didn't agree with that as a possibility.

Jon Pike

One important way in which Locke does reach his own conclusions is to move from the state of nature to a political society. Now you've mentioned that consent is important in that process, but just what sort of consent is necessary, and why is it so central to Locke's political programme?

Prof. Jeremy Waldron

Right. In the state of nature Locke has shown us why we might need government, and so why government would be a rather good idea to help us resolve disputes and suppress crime and maintain laws in the face of controversy. But showing that it's a good idea is not the same as showing that we need to base it on consent, and I think what's going on here is that Locke is insisting that there is something important about the minds of ordinary people, that people are not like pets simply to be pampered with various regimes. If something is important then you must be able to explain its importance to the people to whom it is important.

When you feed your cat you don't sort of laboriously sit down and agree a contract with the cat to explain the feeding regime, but when you are feeding an adult human being in the possession of their faculties you give them a menu and let them choose. So I think what Locke is saying is that part of the respect that we owe one another is that if we are to make any changes in the basic circumstances of human life, those changes have to be made through the mind and willingness of the people affected, not made in a way that short circuits that, or in a way that acts as though that mind and that willingness were of no importance. So

I think that's the importance of consent for Locke that the account that we give must ultimately be an account that makes sense to the minds of the ordinary men and women who are going to be subject to government.

Jon Pike

That sounds to me like a very plausible account of the role of consent, but perhaps little more plausible than the account that Locke actually provides in the *Second Treatise*. There he makes a famous distinction between express consent and tacit consent. Would you like to say something about what that distinction is?

Prof. Jeremy Waldron

Yes. I mean, the distinction can be approached in two ways. One is that we all know in ordinary economic life when you enter into contracts with the shopkeeper at the corner shop you don't always say I hereby promise to pay you 45p for The Times as you pick up the newspaper. You walk in at 8 o'clock in the morning, you pick up a newspaper, you grunt at the shopkeeper, you throw down some money. He says, 'Good morning, sir' and gives you your change, and the entire contract is conducted, tacitly, because there are aspects of human behaviour besides speech by which people can show their commitments and their undertakings. So in a sense the distinction between tacit and explicit consent is just an insistence on being realistic about social relations, that there are various ways that people can show their commitment and show their acceptance of something apart from actually explicitly setting out an agreement.

The more disturbing side of Locke's suggestion is the claim that maybe this consent is shown simply by making use of any of the facilities that the state offers, by barely travelling the highways or enjoying the protection of the police or the state, that any way of doing that counts as tacit consent and therefore brings you under the authority of the state. And there there's a problem. It doesn't seem to be that you have any real choice. Locke is effectively saying, 'Well you're going to be assumed to have tacitly consented simply by remaining in the kingdom under the protection of the state, and if you don't want to have assumption made about your behaviour then you had better leave'. And Hume says, 'That's like saying to somebody who was born on board a boat in the middle of the ocean you are assumed to have tacitly consented to the authority of the captain, and if you don't like it you can leave'. Where is he going to leave? Is he going to jump overboard?

Jon Pike

So there seems to be a problem with the voluntariness of tacit consent. What do you think is at the root of that problem?

Prof. Jeremy Waldron

I think what is happening there is that Locke is finding himself torn between two aspects of his theory. On the one hand he doesn't want to have a theory which has the consequence that most people owe no allegiance to any government, and that would certainly be a consequence if he were insisting on an explicit social contract. On the other hand he does want to insist on some component of voluntary participation, and I think in this tacit consent passages you can see him wriggling around on that point and moving first one way, and first the other way. He doesn't want to be accused by his opponents of fostering anarchy. On the other hand he doesn't want to be accused by his supporters of dragooning people into a society that they don't in fact consent to.

Jon Pike

So there's that tension in the background of Locke's account. What then can be said about the positive side of consent?

Prof. Jeremy Waldron

For Locke consent doesn't particularly settle anything, you are not bargaining away your basic rights. Consent brings you under the authority of government. It makes you one of the consenters. It gives you the right of revolution, it gives you the right of resistance. It means that you are now somebody that the government must take seriously. In a sense, consent brings with it as many rights as it brings duties. Consent isn't just a generator of political

obligation. Your consent – whether it's tacit or express, means that you are one of the people that the government must take seriously, you are one of the people that the government must be answerable to, even though your relation to the government is barely that of walking the highways and obeying the laws. So remember there are an upside as well as a downside to the consent relationship.

Jon Pike

So that leaves us with a position in which perhaps there are some problems with saying how an individual gives consent to the government, but we have established something quite important there, which is that we the people may take away consent from a government. That is, that we have a right to turn out a government that is acting against our will. Perhaps you'd like to comment on this aspect of Locke's *Second Treatise* which carries with it a depiction of Locke as a revolutionary writer.

Prof. Jeremy Waldron

Yes, yes, I think just before I comment on the revolutionary passage, one of the things to remember is that the most important feature of Locke's view about politics and government and law, is that above all the government must treat the subjects as though they were the founding parties to a social contract. Whether that 'as though' refers to explicit consent or tacit consent or hypothetical consent, the government is not entitled to treat anybody as a mere subject. The government is entitled to treat people basically in the relation of trustee to a set law, a trustee to beneficiary. The government is the trustee, but the people are the ones who have set up the trust. And the whole point of the apparatus of consent is to firmly establish that that is the only matrix of relationship between the people and their government. The people are not naturally subjects.

Now, if you have set up a trust and you find that the trustee is abusing the trust that you have set up, then there are various procedures that you can set in course, in law, to take those powers away from the trustee. And even if the original set law has died long ago, the beneficiaries of the trust, those for whom the trust was set up, can go into a court and ask for the trustees to be restricted, or in the last resort for the trust to be taken away from that trustee and vested in somebody else.

Well Locke is thinking that since government is shaped in exactly the same way, there has to be a similar power in the people when the government is abusing its trust. What trust? Well, I refer back to what we said earlier about the functions that government are supposed to perform in the state of nature. Is the government helping to reduce crime, or is the government committing crime? Is the government operating impartial courts, or is the government corrupting the courts? Is the government making clear legislation, or is the government violating the rule of law? These are questions about whether the government is actually making things better than they would be in the state of nature, because that is what the people by their consent have entrusted the government with.

Jon Pike

So the relationship between the community or the people and the government is a relationship of trust. How does this actually work itself out?

Prof. Jeremy Waldron

Now, if you're talking about a specific trust set up by somebody in their will, then you can go to a court of law to adjudicate a dispute about the trustees' behaviour. But of course, if you are talking about the whole governmental system as a trust then there's no court of law in Locke's world to which you can go to have that adjudicated, because what you are now questioning is the entire corruption of the legal system. And so at that stage, Locke says you can just simply appeal to heaven, and he uses this picturesque phrase of 'appeal to heaven' which does *not* mean that you sit and pray and hope things will become better. But an appeal to heaven means you take up arms, and you acknowledge to god that you'll take responsibility for the consequences if in fact this rebellion is unjustified. But you are exercising your very primeval or natural right as either a set law, one of the people who set up the government, or at least one of the people for whose benefit it was set up, to insist that the trustee actually does its job.

So that's the basis of the Right of Revolution, and it flows naturally from I think these two points that government has a very specific set of jobs to do, and that in the end these jobs are not only for the benefit of the people, but the government has to be able to convince the people that these fundamental tasks are being carried out. Remember my analogy with the pets before. When you're dealing with your cat, I guess if you don't give the cat enough food it dies, and maybe it will wander off. But when you're dealing with a person you're dealing with an active, enquiring, demanding intellect, who will insist on having a say in evaluating whether you're doing your job or not.

So there's Locke with this theory. Government is based on consent, and in extremes, that consent can be withdrawn.

Jon Pike

Jeremy, the doctrine of trust in the *Second Treatise* lays the basis for the right to oust an oppressive government. But this isn't just a formal clause at the margins of the theory is it? It has real substantial political implications.

Prof. Jeremy Waldron

Locke is very worried about how often people will use this Right of Revolution. He was involved in conspiracies himself in the 1680's, which were revolutionary. We have reason to believe that he was involved in regicidal conspiracy. Conspiracy to assassinate the king, failed conspiracy as it happens. But he was certainly engaged in conspiracy sufficiently seriously for him to flee for his life in 1683, with the imminent succession of James, Duke of York. So Locke knew what he was talking about when he talked about the right to revolution. It was something he took deadly seriously, and by deadly seriously I mean what I say. It could have cost him his life. So these are very heartfelt passages, the passages on revolution at the end of the book.

Jon Pike

Well, we've got to the end of the book and there's an extremely valuable account of Locke's whole political theory running through that you've just given us. But slap bang in the middle of that is Chapter 5, the chapter on property. And the first time one approaches this book one reads the *Second Treatise*, one might wonder what this self-contained chapter about property doing in the middle of it. So the question is, how does Chapter 5, the chapter on property, fit in with Locke's account of limited government?

Prof. Jeremy Waldron:

Yes it fits in two ways. First of all as a matter of the controversies that were taking place at the time, the divine right of crown, the Tory defenders of royal absolutism, were making fun of people like John Locke, because they said if you believe that ultimately and originally all humans are equal, how do you explain private ownership? These guys are Communists they would say. These guys would overturn all property, and remember there was a vivid image in English consciousness of the tendency of radical factions like the Levellers, during the civil war that had taken place three or four decades earlier, people were really troubled by this accusation that the tendency of Liberal politics, the tendency of Liberal natural rights, was to deny the legitimacy of private property. So I think it was very important for Locke to be able to show that even on his natural rights premises, private property made sense, and private property made sense quite independently of government, so that's the first thing that's happening in Chapter 5.

The second thing that's going on, is you also have to remember that a lot of the political controversy that's taking place in the 1670's and 1680's is about taxation, and is about the king's right to tax the wealth and income and land of his subjects. And in order to resist arbitrary taxation, Locke and his circle are stressing that this is tantamount to an attack on the very persons of the king's subjects, that people have the right to demand that there be no taxation without consent, no taxation without representation. Certainly there's no taxation except through parliament. This is a very, very important issue in the turmoil of Charles II's reign, as it had been important, of course, under Charles II's father in the lead up to the civil war. So for that purpose, what Locke wants to establish is that people own their property

quite independently of anything that the state has decided. You don't own your property as a sort of a stewardship to the king. It's not the case that the king has created property and so therefore the king can modify it, or tax it, or change it, or alter it as he pleases.

The idea is to insist very strongly in Chapter 5, that property is a natural right, established by natural activity by people even in the state of nature, and that the purpose of government is to reinforce and support that property, and not screw it up and tax it and change its distribution. So I think for those two ideological reasons, for those two very sound political reasons, first of all to answer this allegation of Communism, and secondly establish property rights as a point of resistance to royal absolutism, it's important for Locke to have that chapter on property there. Now, those are reasons that make sense in the late 17th Century, but we find the chapter on property tremendously helpful for our thinking about all sorts of issues of political economy, some of which would have been familiar to Locke but many of which are really 20th Century concerns.

Jon Pike

You've explained why it's there, but what's your assessment of that chapter? Notably you've talked about a natural process whereby we gain private property, and the metaphor that Locke uses is one about mixing one's labour with un owned objects in the world. Do you think that metaphor works, do you think it's a useful metaphor?

Prof. Jeremy Waldron

I think it probably isn't. There's always a problem about the idea of mixing one's labour with something. It sounds like it's supposed to involve somehow a little bit of Waldron gets mixed in with something that originally belonged to everybody in the way that I might drop, I don't know, a sandwich or a doughnut into a vat of cement that belonged to everybody, and now because the vat of cement contains this doughnut that belonged to me, therefore I must be entitled to the whole vat of cement because that's the only way to secure my rights over the doughnut. I think the natural response to this is, 'look, mixing your doughnut with the cement is a way of losing your doughnut, it's not a way of gaining the cement'. And that, I think, is what's difficult about the mixing labour argument itself.

However, it doesn't mean that the labour theory is inappropriate or wrong. That is what Locke is insisting, I think, is that people can understand and respect others' economic activities, and the labour and energy that people have invested in land and resources, even outside a framework of law, which would make that a valid mode of acquisition, so that when you're on the frontier and there's no sheriff for miles, and you notice that some homesteader has started cultivating a field, it doesn't take a whole lot of common sense to think that there would be something wrong about simply brushing that homesteader aside and treating his cultivation activity as though it didn't matter.

Now the other thing, of course, that's going on in Locke's chapter on property is with this emphasis on labour, and with his emphasis on cultivation, particularly when he talks about land, there's a whole sub-theme about the settlement of the Americas going on in this story because Locke is effectively saying that the important way in which people learn to respect each other's property is that they learn to respect, if you like the visible signs that others have worked on the land. Now you come to a bunch of American Indians who hunt and gather on a piece of land but haven't, Locke says, particularly modified the landscape, these people have occupied the land without investing any of the labour in the land so it's perfectly fine for us to come in and set up our homesteads, because they have not taken possession of that land, they have simply used it.

So here's another war that Locke is waging in Chapter 5. He's not only defending himself against the accusation of Communism, he's not only establishing the demand for no taxation without representation, he's also establishing that some modes of subsistence, modes of economy, are more legitimate than others, and he's quite strident about that. If we have a look at Chapter 5, particularly in the middle and towards the end, again and again he's saying 'tis labour that puts the difference of value on everything. A piece of land uncultivated is virtually worthless. It's only when it's cultivated that it really makes a difference, and I think

the target there are the Native Americans and those philosophers in Locke's time who had argued that occupancy by itself was sufficient to generate entitlement, rather than cultivation.

Jon Pike

Perhaps we could come back to the point about Native Americans in a moment, but I'd like to pursue your worries a little. There's a problem with 'mixing one's labour' if labour is a substance. But if we think of labour not as a substance but as the realisation of a purpose, would that make the mixing argument any better? Would it resolve any of your worries about it?

Prof. Jeremy Waldron

I think so. The worries I had were about the particular form of mixing one substance with another. All the time, remember that the question that Locke is trying to answer is: 'Could people figure out for themselves without the help of law, that they owed a certain respect not only to the persons of other people and the bodies of other people and the minds of other people, but also to the economic activity of other people as represented in things like farms, and artefacts?' And Locke is insisting, I think, 'yes'. When you see that somebody has laboured to change something, you can figure out that respecting that possession is part of what it takes to respect that person. I believe personally that the mixing labour argument is a very unhelpful way of describing that, but that doesn't mean to say that labour is unimportant, and I think what Locke largely succeeds in doing is giving some articulate voice to a theme that has been present in human discussions about property really from beginning to the modern age, that there is something very, very important to personhood and to human dignity about the relation of having invested labour in some enterprise, and that Locke is connecting that with a very puritan view of god's commandment to labour on the world, and he sees it as a religious duty as well as an economic one. But it is, I think, a tremendously interesting passage because it inspires a notion of property organised around individual human activity, individual human responsibility, and indeed some respect for the deserving character of certain sorts of actions.

Jon Pike

Okay, so in Locke there's a puritan view of our duty to labour on the world and that's a duty to cultivate the world. Now, how does that sit with the point you raised earlier about Native Americans? This emphasis on cultivation as the process that establishes property rights sounds a bit like a justification of the dispossession of aboriginal peoples.

Prof. Jeremy Waldron

It certainly can be read as a rationalisation of imperialist colonisation, it can be read as a rationalisation of the dispossession of Aboriginal peoples and many people in the 20th Century see it in that light and condemn it in that light. I think it's important to see that Locke actually believed what he was saying about cultivation. He wasn't committed to the sort of super tolerant view which says that every mode of subsistence is as good as every other, or that any mode of economy is as good as any other. He took very seriously what he regarded as god's commandment, to go forth into the world, be fruitful, and multiply. And that meant, Locke thought, that the earth should be made to bear the number of human inhabitants that at its most fertile and at its most fruitful it could bear, and simply using vast acres of land for a few hunting expeditions, when that very same fertile land could be used for intense cultivation, Locke thought we had a duty to pursue this as well as, of course, this duty happening to the advantage of mercantile and imperialist England. I think we can say a little bit the same about the capitalist flavour of Locke's account. The emphasis on the individual entrepreneur taking control of land, forget about the Native Americans for a moment, there is a feeling Locke's theory of property that he is justifying private enclosure against common land and common property. And certainly his work was part of the ideological campaign that backed that up, and some modern critics like C.B. McPherson have emphasised that you can't understand Locke except as an apologist for early exclusionary capitalism. That's true and it's false, that is I don't think Locke is simply making this up in order to come up with something that will put a good spin on capitalism, again I think he really believes what he's saying, that the intense labouring activity of the individual proprietor, the labouring activity of the individual farmer and cultivator and artisan are tremendously important, and people can figure out their importance as a matter of basic morality, and one can figure out that this mode

of subsistence makes more sense than common use of land or the mere occupancy of land or the mere hunting and gathering use of land. So all the time as we read this material, I think it is important to understand when Locke is being serious and saying what he believes in, which has consequences that might seem uncomfortable to us, and when Locke is simply attempting to rationalise some practice.

Jon Pike

Thank you, that's a very useful account of what is going on in Chapter 5 of the *Second Treatise*. If we stand back from the *Treatise*, we might be able to spot a big absence, as it were. And that's the absence of a really extended discussion of the place of women in the Social Contract. Are women a party to the Social Contract? Locke also writes about man and mankind. Could we just get away with changing that to human or humankind without changing the theory?

Prof. Jeremy Waldron

Yes, it's a difficult question to answer. A lot of recent scholars, particularly feminist scholars, have had their doubts about whether Locke is entirely politically correct on this matter. They have suggested that Locke, since he doesn't talk about women a whole lot and since he does talk about man and mankind, has a view that somehow on the whole women will be parties to the social contract only by the consent of their fathers or their husbands, rather than being parties to the social contract in their own right. Now against that you have to say a couple of things. The first is that in the *First Treatise* when he is dealing with his opponent Robert Filmer, the Divine Right of Kings' man, Locke is very, very adamant that the work 'mankind' includes women, that god gave the world to Adam *and* Eve, not just to Adam, and that there is no original god-given basis for any natural superiority of men over women. Secondly, although he believes that in a marriage default authority goes to the husband rather than to the wife, he believed very strongly that this is only on the basis of consent, which you enter into marriage, and he was also an early believer in divorce. He thought there was no particular need for marriages to last forever and a wife could remove herself from marriage at any time, and when she did she was entitled to take off with her share of the matrimonial property. Sounds very modern, but it is there.

Third thing. There were a lot of Locke's contemporaries – including some of his friends, James Tyrell as an example – who were quite explicit about women having no part to play in politics. What we can say about Locke is that he was not explicit about that, and there wasn't any particular reason for him to be speaking in code on this matter. It would not have got him into trouble had he said that women should play a part in politics. So his silence on that can be read either as tacit consent to women being involved in politics, or it can be read as his genuine uneasiness and uncertainty on the question. I think Locke's position on women is complex. It's fraught with tension. I think Locke is struggling to retrieve early Liberalism from an entirely patriarchal or male-oriented view. He's not always successful in that struggle, it's very interesting to watch it going on, not only in the *Second Treatise* but in the rest of Locke's work as well.

Jon Pike

We've talked in some detail now about the *Second Treatise* and discussed some of its complexities. However, it's undoubtedly a difficult read the first time around. What advice would you give someone approaching the *Second Treatise* for the first time?

Prof. Jeremy Waldron

Yes, the best general advice that I can offer is to begin by reading the book sympathetically. Begin by reading the book in a way that makes you alert to what message Locke wanted to get across, and what part of it would have been most striking or most disconcerting to his contemporary audience? I mentioned the revolutionary stuff before. I mentioned his insistence on human equality, and his insistence which seemed quite offensive to a lot of his contemporaries, that the entire legitimate operation of government must be referred back to the consent of the ordinary people. So I would begin by reading it, alert to those features that would have been most striking to Locke's contemporaries. But we're not just reading it as an historical exercise, we're also reading it for political philosophy, and then we're entitled to pose our own questions to the text. And so all the time I think the questions that I would ask,

is Locke giving a credible account of human morality and human sociability? Are we prepared to accept that institutions like property, and marriage, and family, and economy can, in fact, get going without law and without the state? Are we prepared to accept what he says about the importance of consent in political obligation and about the consequences of consent, or do we find that an incredible account of our relation to the state which, as we all know, doesn't depend on our consent at all. The state exercises its authority over us whether we consent or not. And then thirdly we may want to ask, is Locke giving an adequate account of the social dimension of human life, particularly in his account of property where he appears to be stressing individual enterprise, individual cultivation? Is he giving an adequate account of the claims of the whole mankind, which of course is the starting point of the account of property and what got him into the trouble about Communism in the first place?

And finally I think the question would have to be asked, as you read through the *Second Treatise*, are we getting an account of government, and law, and political institutions that is of any interest to us or is it completely driven by Locke's experience with the institutions of late 17th Century England? And there I think we should ask that question as a genuinely open question. We say to ourselves, he was writing this in a particular context at a particular time but it wasn't just a pamphlet. So we want to interrogate him and see what there is of general applicability to our understanding of basic rights, to our understanding of the place of courts and the place of parliament in a modern state to our understanding of the rule of law, and to our understanding of individual liberty. And I think we're entitled to interrogate the text on that basis.

So that would be my advice. Read it first sympathetically, to see what would have been most striking and most unusual about it. Read it first on the assumption that Locke is not trying to pull the wool over our eyes. You may eventually come to the conclusion that he is on certain matters, and we mentioned this discussion about imperialism, and the discussion about women. But read him first as though he's not trying to pull the wool over our eyes. Then ask your awkward questions, and then if you have to conclude that this is just an exercise in liberal rationalisation you can, but at least you've given the book an opportunity to do its work on its own terms.

Jon Pike

Thanks, that sounds to me like very good advice. Can I take that last question though, and throw it back at you? What is there in the *Second Treatise* that's a contemporary relevance? What message is there that Locke can hand down to us today when we look at our political institutions?

Prof. Jeremy Waldron

Yes. The first thing I think we can take away from Locke, in regard to our assessment of political institutions, is the general spirit of his inquiry. Locke is all the time concerned with the arrogance of the government, and he's concerned with bringing that arrogance to book against the interests and the consent of ordinary people. The tone of his inquiry is always, 'How dare they behave like this? How dare they act as though government was some sort of sacred role, when in fact it is purely answerable to the interests and the consent of the people on whom it depends, and for whose benefit it was constituted'. So, the certain spirit of liberal interrogation of government is something that we can take away from Locke's work. Secondly, the lovely thing that one gets from Locke's account of political institutions is his sense of their humanness. There is natural law, it is known to god and we can figure out something of it, but everything we have in the way of human law, everything we have in the way of human political institutions, is just ordinary men and women, 5'10, 5'8, setting things up the best way they can. And we are to evaluate them on that basis as human constructions answerable to human purposes. And despite the funny hats, and the wigs, and the gowns and ermine that the government officials may clothe themselves in, they are just human beings purporting to do a job for other human beings. And Locke is continually willing to turn the tables on his opponents and say 'it's the king who is the real vandal here', or 'it's this government official who is the real criminal', or 'it is this corrupt judge who is the real revolutionary who has undermined the system'.

He's not prepared to say that the funny hat or the funny wig makes a difference to the basic assessment of governmental operations. That, I think, is tremendously important, it's entirely the spirit of all brands of liberal inquiry. In Locke's time to take that view of government was a form of insolence which was both treated with contempt, and which was quite dangerous to the person who confronted government in that spirit. It's now second nature to us, but we need to be reminded of its origins from time to time. I think that's very important.

Then I mean there are all sorts of detailed things that I think we would want to take away from the *Second Treatise*. We haven't said much in these discussions about the actual political institutions that Locke talks about, the limits and the legislature, the role of courts, the role of prerogative authority. I would just emphasise the theme of the rule of law, which is around the middle of the book. Very important, because Locke is insisting that the big difference between a well-functioning government and the state of nature, is that we have a set of agreed laws which embody our collective thinking about natural rights and natural law, and that the government then sticks to those agreed laws and people know where they stand. If you have a government that departs from its laws whenever it suits it then you might as well be back in the state of nature, because you are then subject to somebody's unpredictable whims. I think that argument about the rule of law continues to be very important in modern discussions about governance and legality, and Locke has given a particularly crisp formulation to it, at a time when it was not always safe to do so.

Jon Pike

There is then this account of the rule of law and of political institutions. Those political institutions and political principles are, in many respects, quite familiar to us because they form the backdrop of western democratic politics. But as we've seen in the *Second Treatise*, they rest on an account of the state of nature and a quite optimistic account of human nature. Is Locke's accounting over-optimistic?

Prof. Jeremy Waldron

It's certainly more optimistic than Hobbes, and it's partly a reflection of the fact that he really does think that ordinary humans – not just the elite – but ordinary humans are capable of figuring out most of the basics of social morality, and therefore they can be relied on to give their consent when consent is appropriate, and not to withdraw it where withdrawal is appropriate. But, remember Locke's critics are making exactly the accusation against him that you're making. They're saying this is a reckless optimism about human nature, undermining all traditional and hierarchical authority, predicating everything on the common sense of the ordinary person. Horror of horrors, of course in the 17th Century which they'd just been through, this massive period of upheaval. So we have to ask ourselves not whether this seems too optimistic up front but whether after two or three hundred years of liberal sentiment this has proved itself to be over-optimistic. And there I don't know what the verdict would be, I mean certainly the notion of a society of equals, and of a basically republican form of government is one that has worked in some countries. Whether we would want to say that the experience of our century shows Locke to be too optimistic I wouldn't really want to hazard a guess. I would insist that the question always be answered by saying 'in comparison to what?' And certainly the optimistic assumptions that you have to have in order for this theory to work pale in comparison with the optimistic assumptions you have to make about the character of kings in order for the competing theories to do their work.

Jon Pike

So optimism and a sense of insolence as well. Jeremy Waldron, thank you very much.

Prof. Jeremy Waldron

Thank you.