

Controlling THE STATE (Gordon)

1 Hobbes/LOCKE: power FROM PEOPLE = shared belief

4 Policy PRECEDES LAW

CONST. : INSTITUTIONALIZED MECHANISMS - INTERESTS/ LIBERTIES

- o RECENT ORIGIN (~1642)
- o LIMITATION OF GOVNT BY LAW: most dominant DEF.
- o ≠ WRITTEN CONST. ONLY
- o laws 'o MEN - old CONCEPT

6 - BUT = GOVNT: USE OF POWER BY INDIVS.

CENTRAL problem: CONST. - PROBLEM OF CONTROLLING POWER

Rule of law ≠ GOVNT OF LAWS

CENTRAL prob. : POLITICAL SCIENCE: HOW STATE AUTH. EXERCISED

- 8 · POWER: ≠ WELL-STUDIED (∅)
- ORGANIZATION : SMALL GROUP POWER (PIATO, ARISTOTLE)

*> 11 · ROUSSEAU: power / CONTRACT : people AT LARGE - 1ST
= REVOLUTIONARY CONCEPT

13 NAT. LAW ≠ CONSTRAIN

PIATO: CENTRAL Q. = LEADER SELECTION -> Dictatorship

· SINCE: how TO Limit

SOVEREIGNTY: 1) STATE VIS STATE
2) ENTITY W/JIN STATE

19 origin: JUSTINIAN
: modern - Bodin/ HOBBS

- Bodin: royal Authority (1576)
- ROMAN law: UNIVERSAL validity ≠ SUFFICIENT
- ∴ COMPARATIVE -> SOVEREIGNTY : WIDENED INVESTIGATION

21 · All stable = hierarchical

*> · Authority of SOVEREIGN = ABSOLUTE : NO LIMITS / UNITARY
· ≠ CONSENT
· ≠ Right of RESISTANCE (BUT CONTRADICTS)

24 · Hobbes (1651): 2 yrs post- Charles I execution
· CONTRACT theory : BOLSTER Absolute SOV. : CLEAR Support

26 · UNITARY power: 'o Church / STATE
*> · DENIES puritan God - INDIV. K = SOV.'S Mediation
· NON-absolute STATE: degeneration
· NO divided power
· META-∅ BASIS Empirical / PRAGMATIC

27 BASIS: CONCEPTION OF HUMAN NATURE
 : RATIONAL SELF-INTEREST
 : GALILEO : MOTION

POWER : ORGANIZED = SIG. ATTRIBUTE
 o 'o MACHIAVELLI - MEANS ONLY

People-AS-SOVEREIGN :

· ROME: THRU EMPEROR

29

· JUSTINIAN

· VOX POPULI - 8th C

*> AQUINAS: SECULAR SOURCE = PEOPLE (1/0 ?)

MARSILLIUS: SOCIETY = UNIQUE ENTITY

31 Rousseau: (MARSILLIUS) - GENERAL WILL

· UNITARY POWER

LOCKE: ≠ MENTION

35

ANTI-STUART: PARLIAMENT - USES FICTION TO GAIN AUTHORITY

HOOKE - PRO-PARLIAMENT (PRO-STUART)

BLACKSTONE: " " ~ AMBIGUOUS

BAKHOUT: CABINET = PLATONIC ELDERS

43 DICEY: ORIGINATOR: AUSTIN - COMMAND / HABIT OF OBEDIENCE

45 · SOVEREIGNTY: IMP. FOR UNWRITTEN CONST'S

· UNWRITTEN: LAW IN CONVENTIONS

49 · US/UK: CONTROL OF STATE POWER

· COURTS: CREATE LAW: PRECEDENCE = FICTION

52 · COURTS: PROVIDE END '10 POLITICS

· GOV'T OF FEW

54 SIDGWICK: ANTI-SOV. THEORY: KEY = POLITICAL POWER

· POWER = DISTRIBUTED

LASKI: MULTIPLE GROUPS - W/O HABITUAL OBEDIENCE

56 · POWER FOCUS: MORAL ISSUES

MARTIN: REJECTS POWER / HEGELIAN TRANSCENDENT STATE: MORAL PROBS.

: INDIVIDUALIST THOMISM ('10 AUTHORITARIAN)

: STATE = INSTRUMENT '10 PERSON

*> 58 : ROUSSEAU'S POP. SOV. = PERNICIOUS

ATHENIAN:

60 democ.: PEOPLE + AUTHORITY

*> ENDED ONLY BY MILITARY INVASION '10 ROME

1. SECULAR / INSTRU. GOV'T

2. ADAPT.

3. WIDE SPECTRUM

4. PUBLIC OPINION

5. LAW = ALL CITIZENS

6. IND. COURTS

7. ARBITRARY POWER = CONSTRAINED

64 SOLON REFORMS

71 JURY COURTS: PUBLIC ADMIN. / POLICY D-M

· PROCESS

*> 75 JUDICIAL SUPERVISION OF STATE

*> PLATO: LIBERTARIAN

79 NON-HIERARCHICAL - NO SOVEREIGN

*> "BROAD" PARTICIPATION: LIMITED TO CITY-STATE CIRCUMSTANCES

MIXED GOV'T: MOST INFLU. CONTRIB.

ROME:

87 Republic: unlimited local control w/ unlim. Roman gov.

92 · strike - most effective

· small - full citizens 'no Latin Rights

94 · no central mil. control ∴ CAESAR → END OF REPUBLIC

98 · UNWRITTEN CONST.: CUSTOM

105 · constrained - varying assembly

108 · Polybius: mixed govt - change - stability

· checks + balances

110 · CICERO: Aristocracy

115 · 1 BC: END REPUBLIC = END CONSTITUTIONALISM

121 CATH. + PROT. = INTOLERANT / SOVEREIGN^{Ab.}

HUGUENOT: PROT. right of rebellion (1573)

16th C.

124 CONTRACTUAL Theory → rebellion

*→ 127 Role of LESSER OFFICES IN GOV'T = NEW

131 VENICE: > TAX REVENUE THAN UK / FRANCE : CAPITALISTIC

137 · ONLY DURABLE CONST. ORDER

· ≠ WRITTEN

· NO CONST. REVIEW : LX OR INDIV. RIGHTS

· CONSTRAINTS: CUSTOM

142 · INTERNAL / EXTERNAL SUBVERSION FEARS

150 · STATE ~ CONTROL OF church

PAPAL INTERDICTION (1606) → political theory

· MAJOR INFLUENCE ON PROT. STATES

*→ · Model: church - STATE

*→ 156 · Focus: GOV'T machinery 'no ∅

Pragmatism

· MYTH OF VENICE:

· Marsilius

· Medici - Florence →

*→ 158 · BEGINNING - political SCIENCE b/o ANALYSIS

161 Machiavelli:

T.P.:

· MANUAL: amoral, manipulative, etc.

· DISCOURSES: Republican

: Social K

: SECULAR

: MAN = SELF-INTERESTED (Hobbes)

ELSE: ≠ Sig. Theoretical CONTRIB.

Richard III
EFFECT

Dutch:

- 166 LATE 16th - Rebelled HAPSBURG
LOCAL + REGIONAL GOVNT STRUCTURE
- 170 ECON 1/10 NOBLES - 1/10 LAND
- * > . 1st CAPITALISTIC GOVNT
- * > 173 . 1st: Religious Toleration
. WM OF ORANGE: \neq liberal
- 177 MOST POP. SUBJECT: law (ECON/ETHICS)
- 1637: DESCARTES: METHODS - 1/10 DUTCH CLIMATE: SCIENCE
- 180 1687: PRINCIPIA
- 206 CONST.: ECON. 1/10 Religious, ETC.:
- 211 . CALVIN/LUTHER: INDIV. NATURE OF \mathbb{R} - TRANSLATES
. GROTIUS: Batavian myth - TRAD. Germanic liberty
- 215 . REAL GOVNT- PEOPLE CONTRACT (1/10 Locke/Hobbes)
- 217 - REVOLT JUSTIFICATION 1/10 GOVNT ANALYSIS
- 219 GROTIUS : EXILED
: polymath
- * > o NATURAL LAW = SECULAR: GROUNDED IN REASON

17th C. ENGLAND:

- 224 UK: CONSTITUTIONALISM - VIA TURMOIL
- 226 . LONDON: ~ SOLE LOCATION OF DYP.
. military \neq ROLE
- 228 Religion: FOREFRONT
Protestant
. move \rightarrow pluralism
- * > * > 230 MAGNA CARTA: originally - pro. BARONS
. Symbol of monarchical CONST. Subjugation
- * > . IMPLICIT LINK: Freedom + \$ - prop. + TAX (Parliament)
. COURTS OF COMMON PLEAS: local \sim \rightarrow SEPARATE
- 234 . P.-AS-COURT (king, etc.)
. 16th C \rightarrow Commons 1/10 Lords: REPRESENTATIVES
- 237 SOVEREIGNTY: key 17th C. ISSUE
- 241 . JUDICIAL INDEPEN. (STUART ERA) \rightarrow 1649 Charles I trial (Parliament)
- 245 . APPROVAL OF P. For Appts.
- 247 . JAMES: DIVINE RIGHT (1610)
- * > 249 . FILMER: SOCIAL K = Empirically Impossible.
- * > 253 COKE (1552-1634): Anti-monarchical
o CASE LAW compilation

- 254
* >
- h_x '10 & AS ANALYTIC
 - CASE LAW '10 CODE
 - PRECEDENT
 - ANCIENT CONST. : RESTRICTS MONARCH - Rhetorical TOOL
- 256
- SOVEREIGNTY = MEANINGLESS = LAW
- 277
- 1721 : Walpole : 1st H.O.C. P.M.
- MONTESQUIEU :
- lawyer / NAT. SCIENCES
 - Dutch / English
 - Spirit (1748):
 - English INSPIRATION
 - CULTURAL, SOCIAL, & = FACTORS
- 279
- UTIL. / SCIENTIFIC
 - COMMUNITIES = INDIV. SPIRIT
 - England: liberty
 - : Solved power problem
- 281
- Republic disguised AS MONARCHY
 - SEP. OF POWERS
 - 1x, EXEC; JUDICIAL + ARRANGEMENT
- 292
- Locke's 2d TREATISE : Am. Rev. basis
- RETENTION OF right TO DISSOLVE - NO ANSWER re: grounds
- 296
- FUNCTIONAL GOVNT TRIAD
- CONST (1787):
- 299
- COMPROMISES ON EVERY MATTER
- * >
- little to support ORIG. INTENT
- 302
- Compound REPUBLIC (MADISON)
- 305
- No EXPLICIT POLITICAL THEORY IN preamble - REJECTED
- 308
- Checks & BALANCES
- Fed. 47
- 311
- SEP. OF POWERS - AS-CENTRAL : CONTESTABLE
- HUMAN NATURE : CENTRAL Fed. PRINCIPLE :
- must be kept VIRTUOUS
- 313
- MIXED VIRTUES
- Rights:
- MADISON (F.10) - how TO CONTROL MAJORITY

- 315
- REPRESENTATIVES 'to direct DEM. - PROTECT AGAINST MAJORITY
 - Need FOR PLURALISM

317 Fed. 10 = MOST SOPHISTICATED COUNTERBALANCE MODEL

BILL OF RIGHTS:

- LINK TO JUDICIARY

322 · ≠ FORMALLY ESTAB. IN CONST. = CONVENTION

CLASSIC MODELS: KNOWN + REJECTED

* > 342 PARLIAMENT ≠ 1x body
= public SCRUTINY body

345 LAW-MAKING: BUREAUCRATS