

LIBERTY UNIVERSITY
HELMS SCHOOL OF GOVERNMENT

Natural Law and the Founding of America

by

Jillian Fournier
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Abstract

The ideas of natural law and contractual government as proposed by Locke and others appear to have been a significant influence on the political tradition established in America. The idea that man is born free and equal with certain rights is foundational for claiming the right to consent to be ruled by a governing authority. This is for the purpose of protecting rather than restricting the right to life and property. It follows that if the government is abusing its power, the people have the right to revolt given the nature of the social contract. The research presented here examines the connection between theories on natural law and the right to revolt as the basis for American Independence. The hypothesis explored is that the formation of a government that endowed citizens with freedom and liberty was largely based on principles found in the theories of Locke and others who defended the idea of a natural law higher than the magistrate. It is concluded that there is a strong correlation between the theories of Locke and the founding tradition.

Introduction

The founding of America was the result of centuries of philosophical thinkers and writings. From ancient Rome to modern-day rational thought, the founding is best understood through comparing the central ideas of the founding with theories that were prevalent at the time. Foundationally, there was a justification for separating from England, followed by the establishment of a representative government, the rule of law, and the protection of natural rights. There was also a recognition of an authority higher than the magistrate, which was key to understanding the purpose of government. Social Contract Theory was foundational to the founding of America. John Locke, Thomas Hobbes, and Jean-Jacques Rousseau are notable figures who disused social contracts; this paper will be focusing on Locke's social contract and its influence on the founding of America. These theories centered around the idea that individuals have certain rights also sought to answer where those rights originate. The founding of America was a display of centuries of political theories culminating in the formation of a new form of government.

Hypothesis and Research Question

The question that this research paper seeks to answer is how Locke's theories and political philosophy influenced the concept of liberty present at the founding of America. The hypothesis proposed is that the formation of a government that endowed citizens with freedom and liberty was largely based on principles found in the theories of Locke and others who defended the idea of a natural law higher than the magistrate.

Research Method

The research used for this paper examined primary sources and scholarly analysis on Classical ideas and their effects on the founding. The independent variable is the theories of Locke and others, and the dependent variable is the influences on the founding of America. This work will be utilizing a qualitative method of research through examining the theories and works of Locke, Calvin, Rutherford, and the Founders. The literature review will mainly focus on the *Second Treatise, A Letter Concerning Toleration, and Lex Rex*.

Natural Law

To understand Locke's theory on government, it is important to begin by examining his explanation of the state of nature and natural law. In Locke's own words, "To understand Political Power right, and derive it from its original, we must consider what state all men are naturally in... a state of perfect freedom."¹ But this is not a "state of license... he has not liberty to destroy himself, or so much as any creature in his possession."² In the state of nature, each person is free to follow their own will without the constraint of government. However, there is a guiding law that exists in the state of nature, "and reason which is that law, teaches all mankind, who will but consult it, that being equal and independent, no one ought to harm another in his life, health, liberty, or possessions."³ Therefore, each is free and equal in the state of nature but lives under Natural laws which require that each uses reason to act responsibly. The state of nature is the starting point for understating the origin of rights that are bestowed upon mankind.

Natural law is present in the state of nature and precedes the establishment of man-made laws. The laws of nature include the idea that "no one ought to harm another in his life, health, liberty, or possessions."⁴ These are the fundamental rights that Locke argues are endowed to

¹ Locke, John. *Second Treatise of Government*. (Wheeling, Illinois: Harlan Davidson, Incorporated, 2014).

² Ibid., 4.

³ Ibid., 4.

⁴ Ibid., 4.

each individual. Before the institution of government, each has a right to their own property which must be respected by others. There is a tension between the natural order and human sovereignty. One author puts it this way, "Locke teaches that we must reconcile ourselves to a human condition between divine and human sovereignty, neither in complete subjection to nor in complete dominion over a divine or natural order."⁵ Individuals are free and have the right to exercise sovereignty over their property, however, there is simultaneously a law under which this is subject.

Social Contract

Each is free in the state of nature, but when men are subjected to a "state of war", the people form a social contract. There is a defect in the state of nature which is centered around the lack of "an established, settled, known law... the common measure to decide all controversies"⁶ Because of the fundamental idea that man is free, equal, and independent in the state of nature, "no one can be put out of this estate, and subjected to the political power of another, without his own consent."⁷ This is the premise around which Locke establishes his theory of consensual government. His reasoning continues that though men establish a legislature and executive through a social contract, freedom is not sacrificed.⁸ In fact, Locke argues that "The end of law is not to abolish or restrain, but to preserve and enlarge freedom. For in all the states of created beings, capable of laws, where there is no law there is no freedom."⁹ The law is not the end itself but is a tool through which every citizen's freedom can be equally protected. Locke's premise is that if each is naturally free, "The only way in which they could legitimately become subordinate was by their own consent, for there was no source of political authority independent of their decision to establish it"¹⁰ When man leaves the state of nature, he joins together in a social contract to have a guiding law to ensure the protection of his basic rights.

Right to revolution

The right of the people to consent to be governed leads to the right to revolt if the contract has been abused. When a government is overstepping its bounds and interfering with the natural rights given in the state of nature, it is the people's obligation to overthrow the government to reinstate one where the people's liberties are protected. As one author explains, "Locke assumed that the authority of government was the result of a commission from human beings to protect and maintain their rights. People constituted governments, and they did so on terms that put limits on the scope of governmental authority."¹¹ Since the government is instituted by the people, it is rightfully absolved if it is obstructing the rights that each individual naturally possesses.

This brief overview of Locke's theories displays that his reasoning has similarities to the ideas that were central to the founding. Locke's *Second Treatise* has similarities to the American *Declaration of Independence*. Thomas Jefferson states that man is entitled to "Life, liberty, and the pursuit of happiness", which is remarkably similar to Locke's idea of Life, liberty, and

⁵ Myers, Peter C. "Between Divine and Human Sovereignty: The State of Nature and the Basis of Locke's Political Thought." *Polity* 27 (1995): 629 - 649.

⁶ Locke, John. *Second Treatise of Government*, 75.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Stanton, Timothy. "Authority and Freedom in the Interpretation of Locke's Political Theory." *Political Theory* 39, no. 1 (2011): 6-30. <http://www.jstor.org/stable/23036032>.

¹¹ Ibid., 15.

property.¹² A social contract is an agreement between the people and their government, when the government is not upholding their end, the people have the right to revolt.¹³ The founders operated under the idea that power rests in the people and they have the right to absolve a government that is abusing power.¹⁴ This was the central justification that was used for the American Colonies to sever ties with Great Britain.

Religious toleration and Human Nature

The concept of religious toleration was vital at the founding of America. This idea can be traced in the works of theorists prior to the advent of America. In Locke's *Letter Concerning Toleration*, he makes a distinction between two areas, the civil and the religious. Civil society is defined in terms of a commonwealth, this is constructed when the people come into society in order to protect their interests through the establishment of government.¹⁵ The commonwealth serves the purpose of "procuring, preserving, and advancing their own civil interests."¹⁶ Therefore, the government does not have jurisdiction to decide religious matters. One article explains, "religion is the spiritual realm of the human soul, which is free from human authority and laws; the commonwealth is the temporal realm of the human body subject to the legislative power of the magistrate."¹⁷ Locke's *Letter Concerning Toleration* sets forth the idea that government does not have absolute authority to dictate man's religious choices.

Locke defends the individual rights of the people, and that no entity has the right to undermine this – neither the church nor the state. He states, "No peace and security, no, not so much as common friendship, can ever be established or preserved amongst men so long as this opinion prevails, that dominion is founded in grace and that religion is to be propagated by force of arms."¹⁸ Locke's idea of toleration is similarly articulated in the First Amendment and the American idea that the government does not have the authority to dictate religious practices or establish a state-sponsored church.¹⁹

The idea of natural law, consensual government, and individual liberty are ideas that were developed by other thinkers in the centuries preceding American political thought. One event that prefaced the American Revolution was the Protestant Reformation, beginning in 1517. This event planted seeds that led to a model government that acknowledged a higher authority. It restored the supremacy of Scripture as authoritative beyond any human pope or a king. The Reformers modeled that all men answer to God and therefore are permitted to resist a tyrannical government. John Calvin states: "Men's fault or failing causes it to be safer and more bearable for a number to exercise government, so that they may help one another, teach and admonish one another; and, if one asserts himself unfairly, there may be a number of censors and masters to restrain his willfulness."²⁰ Calvin recognized the depravity of man. Because of the sin nature present within every person, every ruler is susceptible to corruption.

¹² *Declaration of Independence. Second Treatise of Government.*

¹³ Locke, John. *Second Treatise of Government.*

¹⁴ Declaration of Independence.

¹⁵ De Roover, Jakob, and S. N. Balagangadhara. "John Locke, Christian Liberty, and the Predicament of Liberal Toleration." *Political Theory* 36, no. 4 (2008): 523–49. <http://www.jstor.org/stable/20452650>.

¹⁶ Locke, John. *A Letter Concerning Toleration.* *Chinese Law & Religion Monitor* 8, no. 2 (Jul, 2012): 113-29

¹⁷ De Roover, Jakob, and S. N. Balagangadhara. "John Locke, Christian Liberty, and the Predicament of Liberal Toleration." *Political Theory* 36, no. 4 (2008): 523–49. <http://www.jstor.org/stable/20452650>.

¹⁸ *A Letter Concerning Toleration.*

¹⁹ See Jefferson, Thomas. *Jefferson's Letter to the Danbury Baptists (June 1998)* - Library of Congress Information Bulletin. (n.d.). Retrieved December 7, 2021, from <https://www.loc.gov/loc/lcib/9806/danpre.html>.

²⁰ Camacho, Daniel José. *John Calvin: Source for Political Resistance?* *The Christian Century*, June 19, 2017. <https://www.christiancentury.org/blog-post/practicing-liberation/johncalvinresistance>.

The idea of the depravity of man equates to the checks and balances that were established by the Founders. As Madison stated when arguing for a federal government, “It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. What is government itself but the greatest of all reflections of human nature?”²¹ An understanding of human nature is indispensable for creating a government that balances the law and order while preserving natural rights.

The ideas developed by Samuel Rutherford in his writing of *Lex Rex* also addresses the idea of the law as the supreme authority, rather than the king. Similar to Locke, he asserts that each is born equal.²² His argument is that a ruler is not so by birth because all men are created equal, but rather, government is established through a mutual agreement; “There is an oath betwixt the king and his people, laying on, by reciprocation of bands, mutual civil obligation upon the king to the people, and the people to the king.”²³ He establishes that the ruler has an obligation to the people and the goal is the safety of the people.²⁴

They give to the king a Politic power for their own safety, and they keep a natural power to themselves which they must conserve, but cannot give away; and they do not break their covenant when they put in action that natural power to conserve themselves; for though the people should give away that power, and swear though the king should kill them all, they should not resist, nor defend their own lives, yet that being against the sixth commandment, which enjoineth natural self-preservation, it should not oblige the conscience, for it should be intrinsically sinful; for it is all one to swear to non-self-preservation as to swear to self-murder.”²⁵

According to Rutherford, the government is ordained to preserve life. Man is created in the image of God and therefore protecting life is of the utmost importance according to scripture. “So God created man in his own image, in the image of God he created him; male and female he created them.”²⁶ Rutherford asserts that the people should obey God over the government, establishing the right to resist when necessary.

The founding of America was built upon the ideas and writings that presented the idea that a ruler or government is not the ultimate source of authority but is instituted to protect the natural rights that each individual possesses. The *Declaration of Independence* has language that carries the concepts developed by Locke and Rutherford. It speaks of a time when “it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them.”²⁷ This supports the idea of contractual government that allows men to separate from their rulers and establish a new government when these laws are not being upheld. The Declaration further states that government is given power through the

²¹ Federalist Papers, No. 10 & No. 51 (1787-1788). Accessed December 7, 2021. <https://www.ourdocuments.gov/doc.php?flash=false&doc=10&page=transcript>.

²² Rutherford, Samuel, and George Buchanan. *Lex, rex, or, The law and the prince: a dispute for the just prerogative of king and people*. (Edinburgh: Robert Ogle and Oliver & Boyd, 1843).

²³ *Ibid.*

²⁴ *Ibid.*, 119.

²⁵ *Ibid.*, 84.

²⁶ Genesis 1:27, English Standard Version.

²⁷ Declaration of Independence: A Transcription. National Archives and Records Administration. National Archives and Records Administration. Accessed December 7, 2021. <https://www.archives.gov/founding-docs/declaration-transcript>.

consent of the governed, therefore when the citizen's safety and happiness are threatened, it is their right to establish a new government.²⁸

The idea of a higher authority and the sinfulness of man developed during the Reformation made the Founders aware of the need to create a system of checks and balances to retain man's tendency to usurp power for self-serving ends. The idea of restraining power due to man's sinful nature aligns with the scripture (Romans 3:23, Romans 5:12).

Conclusion

The research presented in this paper displays that the founding relied on the ideas of theorists who argued that every individual is under the law, including the highest magistrate. There appears to be a high level of influence of Lockean ideas on the founding documents and other key ideas developed during the creation of the United States. There were also ideas that contributed to the concept of the right of the people to enjoy freedom with a government that protects natural rights providing law and order to further, not restrict, liberty. This supports the hypothesis that the founding was closely connected to theories on natural law and freedom of religion.

²⁸ Declaration of Independence: A Transcription. National Archives and Records Administration. National Archives and Records Administration. Accessed December 7, 2021. <https://www.archives.gov/founding-docs/declaration-transcript>.

Bibliography

- Brutus, Stephanius Jurius. *Vindiciae Contra Tyrannos, or, Concerning the Legitimate Power of a Prince over the People, and of the People over a Prince*. Cambridge ; New York :: Cambridge University Press, 1994.
- Camacho, Daniel José. *John Calvin: Source for Political Resistance?* The Christian Century, June 19, 2017. <https://www.christiancentury.org/blog-post/practicing-liberation/johncalvinresistance>.
- Declaration of Independence: A Transcription. National Archives and Records Administration. National Archives and Records Administration. Accessed December 7, 2021. <https://www.archives.gov/founding-docs/declaration-transcript>.
- De Roover, Jakob, and S. N. Balagangadhara. "John Locke, Christian Liberty, and the Predicament of Liberal Toleration." *Political Theory* 36, no. 4 (2008): 523–49. <http://www.jstor.org/stable/20452650>.
- Federalist Papers, No. 10 & No. 51 (1787-1788). Accessed December 7, 2021. <https://www.ourdocuments.gov/doc.php?flash=false&doc=10&page=transcript>.
- Jefferson, Thomas. *Jefferson's Letter to the Danbury Baptists* (June 1998) - Library of Congress Information Bulletin. (n.d.). Retrieved December 7, 2021, from <https://www.loc.gov/loc/lcib/9806/danpre.html>.
- Locke, John. *Second Treatise of Government*. (Wheeling, Illinois :: Harlan Davidson, Incorporated, 2014).
- Locke, John. A Letter Concerning Toleration. *Chinese Law & Religion Monitor* 8, no. 2 (Jul, 2012): 113-29, <http://ezproxy.liberty.edu/login?qurl=https%3A%2F%2Fwww.proquest.com%2Fscholarly-journals%2Fletter-concerning-toleration%2Fdocview%2F1328328669%2Fse-2%3Faccountid%3D12085>.
- Myers, Peter C.. "Between Divine and Human Sovereignty: The State of Nature and the Basis of Locke's Political Thought." *Polity* 27 (1995): 629 - 649.
- Rutherford, Samuel, and George Buchanan. *Lex, Rex, or, The law and the prince: a dispute for the just prerogative of king and people*. (Edinburgh: Robert Ogle and Oliver & Boyd, 1843).
- Stanton, Timothy. "Authority and Freedom in the Interpretation of Locke's Political Theory." *Political Theory* 39, no. 1 (2011): 6–30. <http://www.jstor.org/stable/23036032>.