

Moral Reasoning 74:
The Theory and Practice
of Republican Government

Lecture 09:
The Philosophy of Institutional Form

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From last time...

IV. Restoration (1657-1661)

- Protectorate could last only as long as Cromwell did
- Morgan: a triumph of popular sovereignty, not a defeat [*Inventing*, pp. 92-93].
- But all is not the same: Crown checked, Lords below Commons, precedent established, at minimum with the Petition of Right (1628).

What Would You Do (WWYD)?

- Scenario One [Interregnum]: You can't have a monarchy, but you need some degree of executive authority. What do you do? [Think outside the "box" of the U.S. Constitution.]
- Scenario Two [Restoration]: You must have a monarchy, and so you have no president.

WWJDD?



WWJDD?

... SELL OUT.

Philosophies of Institutional Form

- I. Harrington: Form of Commonwealth
- II. Balance of Wealth and Agrarian Foundations
- III. Locke and the Legislature

Harrington's Dilemma of Government

“Now government is no other than the soul of a nation or a city; wherefore that which was reason in the debate of a commonwealth, being brought forth by the result, must be virtue; and for as much as the soul of a city or nation is the sovereign power, her virtue must be law. But the government whose law is virtue, and whose virtue is law, is the same whose empire is authority, and whose authority is empire.”

Harrington's Dilemma of Government

“But seeing they that make the laws in commonwealths are but men, **the main question seems to be how a commonwealth comes to be an empire of laws and not of men?** Or how the debate or result of a commonwealth is so sure to be according unto reason, seeing they who debate and they who resolve be but men. And ‘as often as reason is against a man, so often will a man be against reason’.”

Harrington's Solution

- A. Primacy of Laws
- B. Mixed Regime
- C. Balance of Power through Balance of Wealth, through Balance of Land
- D. Cultivation of Virtue, through Primacy of Agrarian Living

Primacy of Law

“Again, if the liberty of a man consist in the empire of his reason, the absence whereof would betray him unto the bondage of his passions; then **the liberty of a commonwealth consisteth in the empire of her laws, the absence whereof would betray her unto the lusts of tyrants**; and these I conceive to be the principles upon which Aristotle and Livy...have grounded their assertion that **a commonwealth is an empire of laws and not of men.**”

Mixed Regime: The Senate

“A commonwealth is but a civil society of men. Let us take any number of men, as twenty, and forthwith make a commonwealth. Twenty men, if they be not all idiots – perhaps if they be – can never come so together, but there will be such difference in them that about a third will be wiser, or at least less foolish, than all the rest. ... **The six then approved of, as in the present case, are the senate**, not by hereditary right, not in regard to the greatness of their estates only, which would tend unto such power as might force or draw the people, but **by election for their excellent parts, which tendeth unto the advancement of the influence of their virtue or authority that leads the people.**”

Senate as Deliberate Proposer

“Wherefore the senate is not to be commanders but counsellors of the people; and that which is proper unto counsellors is first to debate the business whereupon they are to give advice, and afterward to give advice in the business whereupon they have debated; whence the decrees of the senate are never laws, nor so called, but *senatusconsulta*, and these, being maturely framed, it is their duty *ferre ad populum*, to propose in the case unto the people. **Wherefore the senate is no more than the debate of the commonwealth.**”

People as Chooser

“Nor is there any remedy but to have **another council** to choose. The wisdom of the few may be the light of mankind, but the interest of the few is not the profit of mankind, nor of a commonwealth; wherefore, seeing we have granted interest to be reason, they must not choose, lest it put out their light; but as the council dividing consisteth of the wisdom of the commonwealth, so the assembly or council choosing should consist of the interest of the commonwealth. As the wisdom of the commonwealth is in the aristocracy, so the interests of the commonwealth is in the whole body of the people.
...this council is to consist of such a representative as may be equal, and so constituted can never contract any other interest but that of the whole people.
Six debate, fourteen choose.

Senate and People Together Make Laws

“Dividing and choosing, in the language of a commonwealth, is debating and resolving; and whatsoever upon debate of the senate is proposed unto the people, and resolve by them, is enacted *auctoritate patrum et jussu populi*, by the authority of the fathers and the power of the people, which concurring make a law.”

Executive Power

“But the law being made, saith Leviathan, ‘is but words and paper without the hands and swords of men’; wherefore as those two orders of a commonwealth, namely the senate and the people, are legislative, so of necessity there must be a third to be executive of the laws made, and this is the magistracy; in which order with the rest, being wrought up by art, the commonwealth consisteth of the senate proposing, the people resolving, and **the magistracy executing**, whereby **partaking of the aristocracy as in the senate, of the democracy as in the people, and of monarchy as in the magistracy, it is complete.**”

II. Balancing in the Harringtonian Republic

Harrington wants an equal commonwealth, “such an one as is equal both in the balance or foundation and in the superstructures, that is to say in her **agrarian law** and in her **rotation**.”

“An equal agrarian is a perpetual law establishing and preserving the balance of dominion, by such a distribution that no one man or number of men within the compass of the few or aristocracy can come to overpower the whole people by their possession in lands.”

Rotation and Elections

“Equal rotation: is equal vicissitude in government, or succession unto magistracy conferred for such convenient terms, enjoying equal vacations, as take in the whole body by parts, succeeding others through the free election or suffrage of the people.

The contrary whereunto is prolongation of magistracy which, trashing the wheel of rotation, destroys the life or natural motion of a commonwealth.

The election or suffrage of a people is freest where it is made or given in such a manner that it can neither oblige (*qui beneficium accepit libertatem vendidit*) nor disoblige another, or through fear of an enemy, or bashfulness towards a friend, impair a man's liberty.”

Equal Commonwealth

1. Equal agrarian basis
 2. Three orders
 - Senate proposing
 - People resolving
 - Magistracy executing
 3. Magistracy rotates, due to suffrage in ballot
- Commonwealth of Oceana, p. 34 [Pocock].

How to Balance and Secure a Commonwealth?

- A. Division of Property (“BASIS” of government)
- B. Promotion of Husbandry, Labor.

“But the tillage, bringing up a good soldiery, bringeth up a good commonwealth...

Ambition, loving to be gay and to fawn, hath been a gallantry looked upon as having something of the livery, and husbandry or the country way of life, though of a grosser spinning, as the best stuff of a commonwealth, according unto Aristotle, *agricolarum democratica respublica optima*; such an one being the most obstinate assertress of her liberty and the least subject unto innovation or turbulency.”

Locke’s Government

Aim of government is to secure “property” (*Second Treatise*, Chapter 9): “the mutual preservation of their Lives, Liberties and Estates, which I call by the general Name, *Property*.”

Need:

- (1) law: “an establish’d, settled, known Law, received and allowed by common consent to be the Standard of Right and Wrong”
- (2) “A known and indifferent judge”
- (3) A magistrate to execute law: “Power to back and support the sentence when right, and to give it due Execution.”

Locke’s Legislature

“the *first and fundamental positive law* of all Commonwealths, is the *establishing of the Legislative Power*; as the *first and fundamental natural Law*, which is to govern even the legislature itself, is the *preservation of the Society* and (as far as will consist with the publick good) of every person in it’ [ch 11]

This *Legislative* is not only the supream power of the Common-wealth, but sacred and unalterable in the hands where the Community have once placed it....”

Questions

1. How seriously should we take Harrington's prescriptions to balance property in a commonwealth? Doesn't this conflict with Locke? How? A middle ground between the two?
2. What of courts in Harrington?
3. Notice Locke has no necessity for, or establishment of, senate.
