Jürgen Busch

Political and Legal Philosophy

Lessons 6&7: Rousseau & Montesquieu
Common principles to natural law doctrines

• system of generally binding legal norms including moral principles of justice (i.e. being valid independent from space and time)

• these moral principles of justice are based on a reasonable world order or on the nature of mankind

• they are unconditionally valid: they are beyond human influence and precede flexible human law making

• they can be generally understood and practically realized by humans making use of their natural ability of reason
Jean Bodin (1529/30-96)

1576: Les Six livres de la République (Six Books of the Commonwealth)
Modern theory of SOVEREIGNTY
Europe 1550
Hugo Grotius (1583-1645)

1609: Mare Liberum (The Free Seas)
1625: De jure bellis ac Pacis libri tres (On the Laws of War and Peace)

Roots of modern NATURAL LAW thinking
Thomas Hobbes (1588-1679) I

Beginning of SOCIAL CONTRACT THEORY
in legal philosophy
English School of EMPIRICISM
Thomas Hobbes (1588-1679) II

1651: Leviathan

Concept of „state of nature“

Bellum omnium contra omnes

-> necessity of law

(Aristotle: political nature of man)
“State of Nature” (Hobbes, Locke, Rousseau)

- Source of human conflicts: two primary forces of human acts (self-defence & happiness)
- Hypothesis of state of nature: looking at the natural conditions of man, what would happen if man were living without binding legal order maintained by state power (a sovereign)
- Right of everybody to everything (unlimited freedom, in the sense of freedom of arbitrariness)
- Bellum omnium contra omnes
Social Contract (Legitimacy/Justification of Law & State)

- concluded out of human reason to overcome shortcomings of the freedom in the state of nature: requirement of sustainable peace
- arbitrariness character of individual freedom is mutually restricted
- by establishment of a strong, sovereign state power: (can guarantee a peaceful life of human being in society through their means of law)
- objectives of law: to perpetually guarantee self-preservation and peace
John Locke (1632-1704) I

1689: An Essay Concerning Human Understanding
Epistemology of EMPIRICISM (TABULA RASA)
John Locke (1632-1704) II

1689: Two Treatises of Government

LIFE, LIBERTY, PROPERTY

Separation of powers
State of Nature

• already state of nature is governed by law of nature, identifiable and obligatory for all individuals (who are all equal by nature)

• 3 principal laws of nature: life, liberty, property: because of lack of centralized state power, everybody is entitled and obliged to enforce them

• private property: ownership as right out of one’s creative industry (initial right to one’s own body and its forces: what is created out of them is property as well)

• formation theory of property (2 limits)
Social Contract (Legitimacy/Justification of Law & State)

- partiality, passion, egoism of human beings cannot secure impartial execution of general laws of nature
- conclusion of social contract ("original compact"): insecurity grows in advanced monetary economies (precondition for expansion of property, production beyond the level of personal needs in order to produce goods for exchange), brings increase of inequality in society
- unification of society in a "body politick": shift of individual competence to enforce laws of nature to "civil government" (legislative/executive branch)
John Locke (1632-1704) V

Social Contract (Legitimacy/Justification of Law & State)

- relationship of trust: no unlimited competence of state power(s)
- they are bound by natural laws of freedom
- unlike Hobbes: main objective of state is the maintenance of private property as already existing in state of nature in peace and security (property in the broad sense of “goods” of life, liberty, property) – social contract not to overcome state of nature, but to secure natural rights enshrined in it! (right to civil disobedience)
- inborn rights of individual: roots of human rights!
Next Lesson

- Rousseau
- Montesquieu
Jean Jacques Rousseau (1712-1778)

Discourse on the Origins of Inequality (1755)

The Social Contract (1762)

Emile (1762)
Jean Jacques Rousseau (1712-1778) II

- like Hobbes & Locke: organisation of society and state power **not given** in a teleological natural order – derives **out of human reason** itself
- **state of nature** and **social contract** theory to legitimate state government, but develops a more differentiated view:
  - **home sauvage** – amour de soi – pitié – perfectibilité – amour propre: alienation from natural human condition
Jean Jacques Rousseau (1712-1778) III

- **role of property**: cause of inequality
- **social contract**: political liberty for natural liberty: artificial 2nd nature of man based on reason and patriotism
- **volonté générale**: reasonable collective will to secure individual liberty
Jean Jacques Rousseau (1712-1778) IV

Bertrand RUSSELL
(1872-1970)
1945: A History of Western Philosophy, ch. 19:

„He is ... the inventor of the political philosophy of pseudo-democratic dictatorships ... At the present time, Hitler is an outcome of Rousseau; Roosevelt and Churchill, of Locke.“
Charles Montesquieu (1689-1755)

Charles-Louis de Secondat, Baron de La Brède et de Montesquieu
Charles Montesquieu (1689-1755) II

1721: Persian Letters

1734: Considerations on the Causes of the Greatness of the Romans and Their Decline

1748: The Spirit of the Laws (De l’esprit des lois)
Charles Montesquieu (1689-1755) III

- applies ideas of enlightenment on society and its basis: the law
- English example, influence of Locke
- comparison of natural conditions of societies and their law
- from nature of things follows the spirit of the laws
Charles Montesquieu (1689-1755) IV

- different natural factors determine people, a **general spirit** is formed out of them
- **territory**: big have tendency to monarchy, small to republic
- **climate**: greater stability in warmer regions
- other societal and historical factors like **religion**, **morals**, **history**, **economy**, maxims of government
Charles Montesquieu (1689-1755) V

- 3 forms of government:
  - Despotism: governed by the principle of fear
  - Monarchy: honour
  - Republic: a democracy or aristocracy: virtue

- A government is good when it is decent; only then it guarantees liberty
• Separation of powers serves liberty:
  – **Legislative:** controls executive and consists of two chambers
  – **Executive:** veto against decisions of leg.
  – **Judicial:** strict separation from executive
Influence on European politics, like enlightened monarchs (Joseph II., ...)
NEXT LESSON

• Kant

• Hegel