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## LOCKE ON MARRIAGE

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### Introduction

Like many canonical early modern male philosophers, Locke never married, and we don't know whether he had any romantic or sexual relationships. We do know, however, that he had an intense intellectual friendship with Lady Damaris Cudworth Masham (1659–1708) and lived in her household for over a decade, where she cared for him in his last days (see Jacqueline Broad's chapter on Locke and Masham in this volume). While Locke didn't participate in the institution of marriage himself, he wrote about it in both his published and unpublished works. We find glancing references to marriage scattered throughout his writings on anthropology, religion, metaphysics, and epistemology, but the most sustained account of marriage appears in *The Second Treatise of Government*, where he devotes seven full paragraphs to the topic. Some of the claims he makes about marriage are more suggestive than developed. My goal in this chapter is to reconstruct Locke's views on marriage, paying attention to the logic of the arguments and attempting to bring out some of the ambiguities and tensions.

To begin, there are at least three questions we can ask about Locke on marriage.

First: *Why is Locke talking about marriage at all?* It was common for seventeenth-century political theorists to address marriage and the family, since they sought to provide comprehensive accounts of social and political life. In the tradition that Locke inherits (e.g. Grotius, Hobbes, and Pufendorf), marriage and the family was a familiar intermediary topic between the state of nature and politics. Unlike other social contract theorists, Locke had an additional reason for delving into these matters: discussing how to understand the relationship between the sexes and between parents and children was essential for his rebuttal to Sir Robert Filmer. The political and historical context of the *Two Treatises of Government* is complicated, but part of Locke's purpose is to reject and offer an alternative to Filmerian patriarchalism and divine right of kings (see Filmer (1991)).

Second: *Where is this discussion located and what does that location tell us?* 'Conjugal society,' as Locke calls it, occupies a noteworthy place. If the *First Treatise* is devoted to a line-by-line refutation of Filmer, the *Second Treatise* sets out Locke's positive picture. Like other works at that time, it begins with a discussion of what man is like in his 'natural condition,' that is, without government. After painting a picture of this state of nature, in which humans are naturally governed only by natural law, and showing why that state is undesirable, Locke turns to discussions of

property, slavery, and parenthood, each of which gets its own chapter. The chapter on parent/child relations delves into detailed questions about the nature and extent of parents' authority over their children's lives and property (see Alexandra Oprea's chapter in this volume). The next chapter, 'Of Political or Civil Society,' opens with an examination of marriage, consisting of the seven paragraphs previously mentioned (§77–§83 and §86). The location in the text, then, suggests that Locke views marriage as a postscript to parenthood and a preface to political society. In fact, much of what Locke does with his discussion of conjugal society is to set up a contrast with political society. He emphasizes the differences between conjugal and political society in the first paragraph on marriage (§77) and returns to them in the last (§86). He makes exactly the same move with parenthood, insisting that his interest in the subject is shaped by his ultimate goal, politics, which differs in kind from both the relationship between husbands and wives and parents and children. Clearly, Locke's interest in marriage and the family is in no small part instrumental in demonstrating his larger philosophical agenda.

Third: *What does Locke actually say about marriage and how are we to understand his claims?* Locke defines marriage as a voluntary agreement for the purpose of procreation, the rearing of children, and companionship and care between the parties:

*Conjugal Society* is made by a voluntary Compact between Man and Woman: and tho' it consist chiefly in such a Communion and Right in one anothers Bodies, as is necessary to its chief End, Procreation; yet it draws with it mutual Support, and Assistance, and a Communion of Interest too, as necessary not only to unite their Care, and Affection, but also necessary to their common Off-spring, who have a Right to be nourished and maintained by them, till they are able to provide for themselves.

(Second Treatise §78)

In the discussion that follows this definition, we can identify four main themes: (1) he explains the differences between humans and other animals in light of conjugality; (2) he claims marriage is nothing but a contract, which implies the legitimacy of divorce; (3) he argues for the authority of husbands over wives; and (4) he states how he relates marriage in itself to marriage as a civil institution. While each feature of his account is interesting in its own right, containing surprising or puzzling details, there are also, I suggest, important parallels between Locke's claims about marriage and key aspects of his political theory. In what follows I'll take the claims in the order in which they appear in the text.

### The natural history of marriage

Locke kicks off his account of marriage with an explanation of its origin, engaging in what was at the time known as 'natural history.' He asks: Why do human beings, as opposed to other animals, form lasting unions between males and females of the species? On Locke's view, the length of animal unions varies because their purpose is to produce offspring and ensure their survival until they are independent. He tells us that, for herbivores, the union of males and females lasts no longer than the sexual encounter itself, because 'the Teat of the Dam [is] sufficient to nourish the Young, till it be able to feed on Grass.' And so 'the Male [herbivore] only begets, but concerns not himself for the Female or Young, to whose Sustenance he can contribute nothing.' By contrast, assistance of the males is necessary for omnivores and carnivores since the mother needs the father's help to feed herself and her children. Locke notes an exception for domesticated birds saying that the 'plenty of food excuses the Cock from feeding, and taking care of the Young Brood' (*Second Treatise* §79). This remark calls our attention to the normative

nature of Locke's discussion. He thinks that procreation has a goal – the production of viable offspring – and that there are corresponding obligations for the parties to that procreation. Parents are obliged to nurture and raise their young until they can survive on their own. But where biology or circumstance make the father's contribution unnecessary to that end, he is exempt from this obligation; Locke's cock is thus 'excused.'

With this picture in hand, Locke turns to human beings, shifting from talking about 'males' and 'females' to talking about 'fathers' and 'mothers' and 'men' and 'women.' Because mothers can become pregnant again while still nursing and human children take years before they can survive on their own, men and women are 'tied to a longer conjunction than other Creatures.' A father is 'bound to take care for those he hath begot [and] is under an Obligation to continue in Conjugal Society with the same Woman' (*Second Treatise* §80). So, while the cock is 'excused' from securing food for the domesticated hen, fathers are 'bound' to provide for mothers and, though Locke doesn't say this, presumably mothers are bound to stay with fathers insofar as their presence and assistance is required to raise the offspring to independence.

Locke takes the opportunity here to 'admire' the divine workmanship of this design. While men and women form lasting unions because that's what's needed to ensure the survival of their children, this also offers them the opportunity to achieve certain goods, namely, known and stable property relations. Locke says,

The great Creatour . . . hath made it necessary, that *Society of Man and Wife should be more lasting*, than of Male and Female amongst other Creatures; that so their Industry might be encouraged, and their Interest better united, to make Provision and lay up Goods for their common Issue, which uncertain mixture, or easie and frequent Solutions of Conjugal Society, would mightily disturb.

(*Second Treatise* §80)

Near the beginning of the *Second Treatise*, Locke asserts that God made humans to improve the world through appropriation (§26). Indeed, people leave the state of nature and agree to form a commonwealth in large part in order to ensure the protection of private property. Thus, Locke's treatment of marriage, especially his emphasis on the divine workmanship that leads men and women to develop long-lasting property relations, reflects his larger philosophical tenets. In the context of marriage, as the preceding quotation demonstrates, concern for stable property relations issues in a justification for monogamy because 'uncertain mixture, or easy and frequent Solutions of Conjugal Society' (read: promiscuity) would 'mightily disturb' the 'Goods for their common Issue' (read: inheritance).

### Marriage as compact

Despite the religious valence of his natural history of marriage, Locke doesn't define marriage as a sacrament or overlay many other theological ideas onto his account of it (at least not in the *Second Treatise*). Rather, he insists on the utterly contractual nature of marriage, so much so that he legitimizes divorce when circumstance permits. This places him in opposition to many of his contemporaries and arguably in line with more progressive ideas. Locke argues,

But though these are Ties upon *Mankind*, which make the *Conjugal Bonds* more firm and lasting in Man, than the other Species of Animals; yet it would give one reason to enquire, why this *Compact*, where Procreation and Education are secured, and

Inheritance taken care for, may not be made determinable [terminable], either by consent, or at a certain time, or upon certain Conditions, as well as any other voluntary Compacts, there being no necessity in the nature of the thing, nor to the ends of it, that it should always be for Life; I mean, to such as are under no Restraint of any positive Law, which ordains all such Contracts to be perpetual.

(Second Treatise §81)

As much as Locke insists on the natural and divine mandate that the mother/father union be long lasting, he also asserts it need not be forever. His reasoning goes as follows: since conjugal society is entered into in order to serve specific purposes – the production and rearing of children until independence – it can be ended once that purpose is fulfilled. When children have been sufficiently raised and educated and their inheritance has been provided for, the parties to the marriage contract are free to dissolve the union. This implication directly follows from the contractual nature of marriage; it's dissoluble 'as well as any other voluntary Compacts.' The distinctly non-Christian nature of this picture is clear when Locke adds that positive law can add a requirement that marriages in a certain jurisdiction be 'perpetual' but insists that being perpetual is not in the 'nature' of marriage.

The admission that divorce is wholly a matter of human decision – not, say, divine will or scriptural mandate – did not go unnoticed. Some of Locke's contemporaries were infuriated. The cleric Thomas Elrington expresses his horror saying, 'To make the conjugal union determinable by consent is to introduce a promiscuous concubinage' (quoted in Locke 1988: 321). Early modern England wasn't ready for Locke's insight, and it was another 150 years before the availability of divorce became widespread in England (the Matrimonial Causes Act of 1857 for the first time made it the case that one could be granted a divorce by the courts, rather than an Act of Parliament).

The Lockean social contract is entered into in order to protect the lives and property of the subjects. The executive is entrusted with the power of government, but that can be rescinded if he has abused this power. In light of that fact, we shouldn't be surprised that Locke is the early modern political theorist who insists so explicitly and firmly on the legitimacy of divorce. Because political and conjugal societies have their source in contract, both can be dissolved.

### **Patriachal marriage**

Of all the things that Locke says about marriage, his discussion of the nature of the spousal relation has earned the most discussion and generated the most extreme reaction from scholars. This is the controversial passage:

But the Husband and Wife, though they have but one common Concern, yet having different understandings, will unavoidably sometimes have different wills too; it therefore being necessary, that the last Determination, i.e., the Rule, should be placed somewhere, it naturally falls to the Man's share, as the abler and the stronger. But this reaching but to the things of their common Interest and Property, leaves the Wife in the full and free possession of what by Contract is her peculiar Right, and gives the Husband no more power over her Life, than she has over his. The *Power of the Husband* being so far from that of an absolute Monarch, that the *Wife* has, in many cases, a Liberty to *separate* from him; where natural Right, or their Contract allows it, whether that Contract be made by themselves in the state of Nature, or by the Customs or Laws

of the Country they live in; and the Children upon such Separation fall to the Father or Mother's Lot, as such Contract does determine.

(Second Treatise §82)

There are at least two claims here that need to be separated. First, there is the argument that, generally, a husband's will should supersede his wife's. Second, the husband's power is limited: he doesn't have rights over the wife's life or property, and she may be able to separate from him and gain custody of their children. Let's take each in turn.

Why does Locke grant authority in the family to the father? That is, why does he think marriage is patriarchal? His argument seems to be this: husbands and wives will inevitably disagree and when they do, one of the parties needs to have the final say, what he calls the 'last determination, i.e., the rule.' That role goes to the husband because he is the 'abler and the stronger.' This accords with his claim in the *First Treatise* that it is 'the Womans Lot' that a wife should be 'subject to her husband'; Locke says that 'there is, I grant, a foundation in nature for it' (§47).

When attempting to make sense of Locke's position on the relationship between the sexes, a lot depends on how we understand what the case is 'naturally.' As we have seen, he does say that there is a 'foundation in nature' for the subjection of wives to husbands and that rule 'naturally' falls to the man. But it's unclear what he means by 'in nature' or 'naturally' in this context.

Could he mean 'in God's design'? No. After all, Locke is trying to argue *against* the Filmerian picture that God made women subordinate to men. He contends that people are mistaken to interpret the Bible as giving patriarchal power; the power over children lies equally, he tells us, in the mother. Furthermore, scripture doesn't justify women's subordination; it merely 'foretells' it (§47). In Locke's text we find an insistence that wives need not be subject to husbands if there is a remedy for it any more than women need to suffer pain in childbirth if a remedy can be found. The fact that women are subject to husbands and do suffer in childbirth does not justify those things or give us reason to continue them if we can find a way to avoid it.

Could his use of 'naturally' mean 'as a matter of empirical fact'? Patriarchy was pervasive and thought to be almost universal. Though he isn't arguing against patriarchy as we know it today, Locke is skeptical of the claim that custom or tradition automatically generates normativity. He remarks that 'an Argument from what has been, to what should of right be, has no great force' (*Second Treatise* §103). And so, we should hesitate to interpret his appeals to nature as appeals to what is the case, even if it has always been the case. More importantly, like others in the social contract tradition, Locke believes in the legitimacy of queens and denies that queens lose their sovereignty if they marry (*First Treatise* §47). So, as a matter of empirical fact, it simply isn't true that men are always and have always been in charge. But even if it were true, that would not serve to justify the institution of patriarchy for Locke.

These interpretive questions get thornier, though, when we consider Locke's commitments to human equality. One of the fundamental premises of the *Second Treatise* is that (adult) human beings are naturally free from domination, that all relationships of rule are the product of consent. Locke's state of nature is a 'State also of Equality' (*Second Treatise* §4, see also §54). Admittedly, it is difficult to square his pronouncements about human equality with his statements about the naturalness of male rule (let alone with his statements about non-Europeans and slavery). One way to understand Locke here is that marriage involves two equal parties who equally agree to a contract that is fundamentally unequal.

Contemporary scholars argue about how to interpret Locke's specific comments on the rule of husbands, as well as his general position on women. On the one hand, some scholars champion Locke as a strong believer in sexual equality, even a kind of proto-feminist (e.g. Waldron 2002). Gordon Schochet, for example, comments that Locke 'more fully than anyone else, analyzed the patriarchal

political theory and tried to put something in its place' (1975: 275). In perhaps the most sympathetic reading, Melissa Butler argues that, for Locke, 'new places had to be opened for women'; and, while he didn't intend it as such, his philosophy was instrumental in the 'shift in collective consciousness which gave rise to the sexual revolution' (1978: 142, 136; see also Shanley 1979).

Locke defenders often contextualize and soften his pronouncements about the authority of husbands over wives. Some emphasize the 'hesitant' tone of those remarks which can most easily be read as sexist (Butler 1978: 143). More importantly, they emphasize that Locke immediately qualifies the 'last determination' statement, pointing out that a husband's power over his wife does not extend to her life or individual property (what he calls her 'peculiar right'). For Locke, there's no doubt that a woman can acquire and own her own property and this property is immune from her husband's control or title. He says, 'For as to the Wife's share, whether her own Labour or Compact gave her Title to it, 'tis plain, her Husband could not forfeit what is hers' (*Second Treatise* §183). Further, Locke insists that the wife can leave the marital contract under some circumstances. Indeed, Locke imagines the instigators of divorces to be aggrieved wives. Perhaps his statement that 'aggrieved' wives could start the divorce proceedings at least suggests his awareness of the terrible conditions that many women lived under. Finally, Locke's seemingly sexist remarks might be explained in terms of his rhetorical strategy. On Butler's reading, Locke is aware of the biases of his (male) audience and does not want to 'risk alienating' them by being too forceful about the equality of women (1978: 147).

Critics of Locke reject these apologist excuses. For example, Carole Pateman argues that 'Locke retains all the patriarchal claims about the "natural" authority of fathers, but hidden beneath a glass of "consent"' (Brennan and Pateman 1979: 191). Locke seems to protect the 'peculiar right' of mothers, but this should not obscure the fact that this right is just that: peculiar. The mother does *not* have rights over things which are of 'common interest' to the couple. The feminist criticism of Locke has emerged from the academy into popular culture; in a recent issue of the *New Yorker*, Jill Lepore (2016) refers to 'the Lockean idea that men, born equal, create political society, to which women do not belong; women exist only in the family, where they are ruled by men.' While acknowledging Locke's powerful critique of a certain kind of patriarchy, following Pateman, we might think that he is substituting a new kind of patriarchy, one based on biological difference and consent instead of God's will.

Locke's views on marriage provoked feminist critique in his own time as well. In 1700, Mary Astell's sharp – and now famous – rebuke came in the form of a rhetorical question: 'If *all Men are born free*, how is it that all women are born slaves? as they must be if the being subjected to the *inconstant, uncertain, unknown, arbitrary Will of Men*, be the *perfect Condition of Slavery?*' (1996: 18). Scholars take it for granted that Locke was one of Astell's targets here.

Ultimately, there's no consensus on how to interpret Locke from a contemporary feminist perspective. The ambiguities and tensions in his account, combined with the fact that he never directly addresses the question of women's role in politics, means that different and conflicting interpretations can be generated from the text. As the *New Yorker* reference shows, the debate is far from settled either in the scholarship or in the public imagination.

### Marriage and the positive law

The final feature of marriage that Locke articulates in his *Second Treatise* account is about the relationship between marriage and the positive law. Here, he says,

For all the ends of *marriage* being to be obtained under Politic Government, as well as in the state of Nature, the Civil Magistrate doth not abridge the Right, or Power

of either naturally necessary to those ends, *viz.* Procreation and mutual Support and Assistance whilst they are together; but only decides any Controversie that may arise between Man and Wife about them. If it were otherwise, and that absolute *Sovereignty* and Power of Life and Death naturally belong'd to the Husband, and were *necessary to the Society between Man and Wife*, there could be no Matrimony in any of those Countries where the husband is allowed no such absolute Authority. But the ends of Matrimony requiring no such Power in the Husband, the Condition of *Conjugal Society* put it not in him, it being not at all necessary to that State. *Conjugal society* could subsist and attain its ends without it; nay, Community of Goods, and the Power over them, mutual Assistance and Maintenance, and other things belonging to *Conjugal Society*, might be varied and regulated by that Contract which unites Man and Wife in that Society, as far as may consist with Procreation and the bringing up of Children till they could shift for themselves; nothing being necessary to any Society, that is not necessary to the ends for which it is made.

(Second Treatise §83)

Several points here merit analysis. First, marriage is presented as a natural institution, meaning that it exists separately from and is not dependent on the existence of civil society and the rule of law; in this sense it is like money (see Justin C. Clark's chapter in this volume). The essence of marriage – that it is a 'voluntary compact' between adults for the purposes of raising children and providing 'mutual support and assistance' – is not something that can be changed by the laws of a government. This is a rejection of Hobbes, who forcefully argued that 'laws of matrimony' couldn't exist in a state of nature (1994: 129). One of the important differences between Hobbes and Locke is in their views on the possibility of pre-political institutions. Hobbes denies it; Locke affirms it. Both see marriage and property as the prime examples. While Locke insists that marriage exists independently of the state, he does admit the state has some role to play in the administration of marriage within certain jurisdictions, namely, adjudicating disputes within marriage. This reveals a deep similarity between Locke's account of property and his account of marriage. Both are pre-political institutions. The state does not bring them into existence, but the state adjudicates disputes. Moreover, Locke gives the state the ability to regulate certain features of marriage; as we've seen, he specifies that states can – but need not – require marital unions to be 'perpetual'.

Second, in addition to the specific limitations he spells out on the husband's power over the wife in the previous passage, here he also appeals to a general principle that denies the possibility of absolute rule in the family. It can't be in the nature of marriage that the husband's power over his wife is absolute for two reasons. First, it would imply that there is no such thing as a non-absolute marital relationship, and that is clearly false. His reasoning here depends on a counterfactual. If it were the case that marriage necessitated the absolute power of husbands, then 'there could be no Matrimony in any of those Countries where the husband is allowed no such absolute Authority' (quoted previously). It's implied that there is, of course, the institution of marriage in those countries. Therefore, it follows that marriage does not require the absolute rule of husbands. Second, the ends for which marriage is pursued don't require absolute power. Implicit here is the idea that we derive the nature of marriage from its ends. Of course, Locke wants to deny the legitimacy of absolute power in most human relationships. For Locke, only the power of a master over a slave is absolute, but this is in an important sense not a relationship between humans because Locke thinks slaves have somehow made themselves less-than-human; by violating natural law, those who can be legitimately enslaved have renounced their status as

persons who can make a claim to a certain kind of treatment. (Charles W. Mills discusses the point in his chapter in this volume.) In any case, much of the purpose of the *Two Treatises* is to critique absolute power, and we find part of that critique in his analysis of marriage. As you can imagine, feminist defenders of Locke pay special attention to this point.

Third, he specifies that certain features of marriage – ‘community of goods, and the power over them, mutual assistance and maintenance’ – can be regulated by law as long as the regulation is consistent with the reproductive ends of the conjugal contract. Further, he says that ‘other things belonging to *conjugal society*’ can also be ‘varied and regulated’ by particular societies. Locke doesn’t tell us which ‘other things’ about marriage the civil law can control. As we’ve discussed earlier, he clearly means to include divorce in this category. But what else could he mean?

One plausible possibility is polygamy, which was a much-debated issue at the time. As Julie Walsh and I have recently argued (Sreedhar and Walsh 2016), there’s reason to think that Locke thought polygamy – here understood to be a man taking multiple wives – was permissible. For example, in a diary entry Locke describes a utopia, Atlantis, which includes ‘left-handed’ or Morganatic marriage, specifying only that the children of the second marriage cannot inherit from the first marriage (1997: 256). A left-handed marriage refers to a union of unequal social rank in which the husband’s property would not pass to his wife or their children upon his death. Locke crossed out this passage when he edited the journal entries, but it is unclear why. Nonetheless, the endorsement of polygamy in this particular case can be explained by the role he sees polygamy playing in much-needed population growth. Moreover, we see Locke’s overarching concern with stable property relations here; he is willing to allow polygamous marriages as long as the inheritance structure for children is clear. The Atlantis passage and others like it led Walsh and me to conclude that Locke generally admitted the permissibility of polygamy, which makes his attitude toward marriage ‘liberal’ and even ‘radical’ (Sreedhar and Walsh 2016: 106). Here, too, there is disagreement among scholars. Colin Heydt interprets Locke’s views on polygamy as ‘largely conventional’ (2018: 211), arguing that Locke followed Grotius and Pufendorf in thinking that while polygamy was strictly speaking not a violation of natural law, it also wasn’t a desirable state of affairs. By contrast, drawing on remarks Locke makes in *A Third Letter Concerning Toleration* about the justifiability of punishment for polygamy, John Witte Jr. interprets Locke’s position to be that polygamy is simply immoral (2015: 367).

The debate over how to understand Locke’s position on polygamy has some things in common with the debate about Locke on gender and reveals a split in Locke scholarship and reception, with some emphasizing the liberal, liberating, individualistic, modern aspects of Locke’s philosophy and others stressing the conservatism of his positions and arguing for the illusory nature of a Lockean promise of freedom and equality. Like many if not all figures in the history of philosophy, Locke is complicated and inconsistent. Such complexity accounts for at least part of our continued fascination with him.

### Related topics

Locke on the state of nature, property, consent, slavery, children’s rights and obligations

### Further reading

Hirschmann, N. J., & McClure, K. M. (Eds.). (2007). *Feminist Interpretations of John Locke*. University Park, PA: Pennsylvania State University Press.



This volume reprints some of the canonical writings of Locke on women, including ones cited earlier, but consists mostly of new pieces, including chapters on Locke and intersectionality, midwifery, and fetishism. A must-have for anyone interested in feminist readings of Locke.

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