

JOHN LOCKE

1632 - 1704.

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Historical Context

The Two Treatises on Government were written after the English Civil War during the restored monarchy of Charles II. to vindicate the Earl of Shaftesbury's attempt to exclude James II from the throne. During this time there was a fear of the autocratic tendencies of the Stuart kings, their catholic leanings and their French connections. Locke came from a puritan trading family and was a successful intellectual employed in the house of the Earl of Shaftesbury. He took up Shaftesbury's causes concerning both toleration and resistance to autocracy and specifically argued during the Exclusionist Crisis (1679-1683) that the people had a right to oppose what on the face of it appeared to be legitimate monarchs. This was viewed as tantamount to treason and Shaftesbury's co-plotters were hanged after an unsuccessful revolt forcing Shaftesbury and Locke to flee to Holland. When William of Orange and his wife Mary were offered the throne of England, Locke was able to return and his work became famous after 1688 as legitimizing the Glorious Bloodless Revolution. However, Locke never admitted he wrote The Two Treaties. His work "On Toleration" was also to support Shaftesbury but his more philosophical works i.e. The Essays on the Laws of Nature and The Essay on Human Understanding were not related to Shaftesbury's causes although the essays on the laws of nature clearly underpin the Second Treatise.

C.B. MacPherson's interpretation of Locke as a possessive individualist justifying the new market order (like Hobbes) could be seen as having some relevance as Locke, unlike Hobbes, was very concerned with economics, having a role on the Board of Trade, writing about interest rates and making a strong justification of private property in the Second

Treatise. There followed an even more vehement attempt to counter MacPherson's interpretation - Tully and Dunn being the best examples.

Locke had a massive impact on Enlightenment thought in France during the 18th century as the amazing English philosopher who both scotched divine right theories in his Second Treatise as well as religious superstition in his Essay on Human Understanding. However, this constituted a misunderstanding of the relationship between the philosophical Essay on Human Understanding and the more specific political argument in the Second Treatise as the latter bore no relationship at all to the former - in fact it undermined it. The Second Treatise was based on natural law, the origin of which was God. Hence religion was basic and integral to the Second Treatise.

Aims and Purposes

The Second Treatise is not a direct attack on Hobbes's concept of sovereignty but rather an attack on a similar thesis in a different guise i.e Filmer's Patriarcha which argues the divine right of kings thesis much as Bodin's "Six Livres de la Republique" in France. It was important to undermine such a thesis because although it might have been intellectually dated, it was more accessible and popular than Hobbes and therefore more practically influential. Moreover, Locke's arguments, despite their rational formulation, relate to God – and therefore take on divine right arguments in their own terms i.e. what God wills.

Locke's aim is to demonstrate that the authority of the sovereign to govern came not from God to the king but from God to individuals who would then form a society and entrust their powers to a sovereign. If the majority felt that the sovereign were not acting in accordance with fundamental law (rules governing the trust) or he was in any way breaking the trust which they had granted him and there were no other way to stop such abuse – then they could appeal to heaven (i.e. revolt) in order to remove him. In Martin Seliger's "The Liberal Philosophy of John Locke" he points out that this need to justify

revolt shows that Locke is operating in a non-constitutional political environment where kings could not be removed by any non violent procedures. It is clear that Locke himself is hardly a revolutionary type of person – he is a most reluctant conservative revolutionary and appears to be advocating a more forward looking liberal constitutional order, but never quite does so. Locke’s thinking has more radical implications than he might have intended hence it is easy to read back modern ideas into his work (e.g. a developed constitutionalism or radical democracy)

C.B. MacPherson also ascribes to him the purpose of justifying a new burgeoning capitalist market society but John Dunn is almost certainly right in his criticism that this was not Locke’s conscious intention. However, even if it were not his conscious intention his work (as with Hobbes) might still be regarded as a reflection of this changing environment). Dunn tends to concentrate on Locke’s philosophical purposes which underpin his political thesis i.e. to show that man by his reason can understand the laws of nature which represent God’s reason. He also, however, points out that Locke’s great epistemological work, the *Essay on Human Understanding* tends to undermine the possibility of man’s knowledge of natural law. It is therefore possible that the reason why Locke refused to acknowledge that he was the author of the *Two Treatises* was that he realised the books were inconsistent and that he wished his reputation to rest more on the *Essay on Human Understanding* than on the *Two Treatises*. Or, it may have been that, with reason, he wished to dissociate himself from the dangerous field of politics.

In many ways there are great similarities between Hobbes and Locke in that they both wished to clarify the rights and duties of rulers and subjects and they used similar concepts such as states of nature, natural law, contract. However, Locke is more concentrated on analysing the concepts of authority and power and different types of relationship in society e.g. father and family, employer and employee, master and slave. The point of this is to demonstrate the limitations of governmental power and what

constitutes true governmental authority. As such, he is famous for his doctrine of consent i.e. that governmental authority is based only on consent, that it is a distinctly different type of relationship from any other type of relationship in society and that there is no basis or arguable rationale for arbitrary rule. Hence we have a philosophically argued basis for limited government by consent – which constitutes a movement towards constitutionalism without fully establishing in what it might consist in any great detail apart from a few pointers towards majority rule and an elementary idea of the separation of powers.

Methodology

Locke uses a form of philosophical rationalism similar to Hobbes but is less concerned to be fashionably scientific and more concerned to attack another specific argument.

Although rationalist, his work is more accessible than Hobbes and more inclined to resort to backing his rational argument with reference to empirical realities (i.e. imagining a state of nature could really exist and enumerating all the circumstances when revolt could legitimately occur). The argument is less definitional and always relates back to God – again, unlike Hobbes.

Construction of the Argument.

1. Attack on Filmer and the Divine Right and descent from Adam:

The case is made in both the First and Second Treatise that Filmer is wrong in asserting that kings acquired their authority from descent from Adam to whom God himself had given power to rule. His first point is how could one work out this complex lineage and prove it? The second is that Filmer is making a false analogy in comparing the authority and power of a father over his family to the king over a country. These types of authority are different and not analogous. Yet, even if one did wish to make this analogy one could not derive any sort of absolute or arbitrary power from it. This is because a father's power over children is limited until they are of age, whereas that of a

sovereign is continuous; also that a father's power is shared by the wife and mother. A father's power over the mother of the children is not arbitrary either because this is based on contract which is not absolute.

Here Locke is denying the validity of arguing by analogies, especially those deriving from the medieval theory of order i.e. that the order of nature is hierarchical – that everything in nature has a head e.g. the lion as the king of the beasts, the queen bee in the hive or that the singleness of the head is important for unity, harmony and order. The presumption was a great chain of being from God, the angels, humans, the animals etc. and that hierarchy was natural and God ordained. It followed that if men challenged this, disorder would result and ends never achieved.

2. **Natural Law and the State of Nature**

Locke then goes on to postulate that God did not give power to kings to rule but rather gave each individual a power to govern himself. Like Hobbes he assumes **all men were born free and equal** but Locke's natural man is more sociable and able to reason than Hobbes imagined. Like Hobbes, again, he hypothesizes a state of nature (which he occasionally insists could actually have existed). Unlike Hobbes, however, this **state of nature is guided by a law of nature** which God intended man to understand through their powers of reasoning. Locke had previously, not very successfully, tried in eight essays on natural law, to prove how these could be understood. However, it is very important for his argument that these natural moral laws should be comprehensible because he wishes to argue that **man is not naturally a totally anti-social creature and the state of nature is not necessarily a state of war**. Most men according to Locke will uphold this law.

3. **Deficiencies of a State of Nature,**

However, if in the state of nature life is not nasty, brutish and short, as Hobbes would have it, why should men agree to leave its freedom and set up a civil society and state?

His answer to this is that although the state of nature is not a state of war, it is not paradise either and it does have certain inconveniences and deficiencies which are:

- a) It **lacks a common judge** who will be impartial in judging disputes which will occur because mankind tends to interpret natural law in a self interested way.
- b) It **lacks the force to punish** those who break the law (individually we cannot always be sure to punish transgressors).
- c) It lacks a force **to authoritatively interpret the law** .

Hence he arrives that the three functions of government: judicial, executive and legislative.

In the Second Treatise one can find certain inconsistencies about the state of nature – sometimes it is seen as a state of perfect freedom and at other times more a war of all against all. The reason for this inconsistency might be that he must give reasons for leaving it (then he inclines to emphasise the difficulties), yet at the same time he does not want to suggest that a return to it would cause a total collapse of society (so sees it as relatively harmonious). Given that he is arguing for a revolt he must be able to view society without a head – if only for a short while – as something feasible. Locke's view of society is never so individualistic as Hobbes – he always sees it as something which can sustain itself and has some sort of cohesion. However, the way Locke constructs his contract ensures that if a sovereign were removed, society would not collapse anyway. So, the reason for this inconsistency cannot be entirely explained in this way.

There is an interesting (if odd) interpretation of Locke's inconsistencies on this point to be found in William Cox's "Locke on War and Peace" He argues that Locke is really wanting to argue more like Hobbes but dare not do so. Given that the aim of Locke's work is almost the opposite of Hobbes this would seem a strange and untenable position. (Note also that C.B. MacPherson has a different interpretation of the inconsistency).

4. The contract: both social and political.

Locke, like Hobbes uses the concept of contract, but it is worth noting that he adds another dimension i.e. the **concept of trust**, as well as erecting a more complex construction involving both contract and trust. Locke's first stage is a situation whereby individuals form themselves into a society by an act of contract (this is specifically **to form a civil society**). This means society is an act of choice – which implicitly means that there is an option. However, entering this contract is **not the same thing as agreeing to the sovereign** (as with Hobbes) and this means **society can exist without a sovereign**. However, the point of forming civil society is clearly so that a majority can establish a government and it can act and conclude the rest. Society is seen to be placing its trust in the sovereign it erects, placing the **sovereign in a position of trusteeship – not contract**. Contract implies rights on both sides, whereas trust would mean the sovereign only had duties to fulfil the trust – i.e. no specific rights. (Note the emerging usage of contract and trust law at this time; also usage of the idea of majority rule (open to question and interpretation) and **see Gough for Locke's usage of contract and trust**

Locke makes it clear that the transference of power from people to sovereign is for **limited** and clear purposes only (which he calls fiduciary powers). The government and state is there to protect **life, liberty and property** – and no more. There are no other purposes and, moreover, the people have a right to judge whether the sovereign is upholding natural law or not. The power of judgement in the last resort is not something which people would rationally give up. In other words, **all government is based on consent** and is strictly limited to the purposes for which it was rationally constructed.

Locke has clearly drawn a **line between state and society** – seeing society as existing independently of state and as the origin of all authority. Government, as such is about the protection of rights and is limited to such a function. This forms the basis of classical liberal theory – often seen as a **negative view of the state** as a necessary evil and limited to

preventing people from harming one another rather than doing anything more to improve or create a better society. Locke's formulation, however, has a distinctly liberal political basis - unlike Hobbes.

5. **Rebellion, revolution, appeal to heaven**

The point of Locke's elaborate construction is to be able to argue that when a sovereign begins to act against the conditions of the trust – or the purposes for which it was set up e.g. by subverting the constitutional order, interfering with the legislature, twisting the law for its own purposes, infringing the natural rights and liberties of the subjects (the list he makes is remarkably close to the specific historical situation encountered), then the **population has the right of resistance** which he terms appeal to heaven, clearly a euphemism for **force against the powers** which are considered to be in the wrong. It is interesting that Locke does **not view this as a revolt against authority** or legitimacy because the government in subverting the trust has no authority – it has dissolved it. Logically this must be so as **authority can only be based upon consent**. In this sense, it is the offending powers that be that have made themselves illegitimate and it therefore then becomes legitimate to resist in order to restore legitimacy. **Rebellion or revolution has thereby been legitimized**. In a genuinely constitutional state this would be unnecessary.

Aware that many would argue this doctrine could lead to anarchy and disorder, he counters with the view that **mankind is really very conservative by nature** and does not rise up in revolt easily and for nothing. Indeed, it is very difficult to get people to act and they will only do so when there has been a long and serious train of abuses of authority. It has nevertheless been noted that this could appear more a theory of revolution than one of government. The problem is pinpointed by Seliger that in the 17th century there was no constitutional formula for removing kings, nor is Locke suggesting one although he does seem to be pointing towards ideas on which a constitutional system could be based. In

the absence of any constitutional mechanisms to rid themselves of arbitrary government, Locke has to advocate the right to revolt. Some writers have viewed this as a return to an **older medieval right to resist kings**, although it is presented in a more rational manner and has constitutional implications.

6 Constitutional Ideas and the problem of sovereignty

It is worth noting that Locke puts forward an elementary idea about the separation of powers. He thought the legislative and the executive powers should not be in the same body or fused. This seems to have been based on the idea that the legislature would not have to sit for long but the executive had to be enforcing the law continuously as well as well as the idea that no single body should have all power concentrated in it (unlike Hobbes) There seems both a fear of a Long Parliament as well as an arbitrary executive monarch. He allows for the King to be part of the legislature although asserts that he should not be able to interfere with it arbitrarily. Law should equally apply to all, including the executive.

We have a view here that the sovereign body (if it exists) is hemmed in by fundamental law (i.e. the purposes for which the sovereign was set up which he seems to regard as basic to the rules made at that time of the contract and the trust) as well as natural law which, in the last resort, we are all allowed to interpret. (unlike Hobbes).

How sovereign, therefore is Locke's sovereign? Locke has a clear idea about the sovereignty of the people – the fount of all legitimacy and the final umpire. But, the sovereignty of the people is outside the legal order as such. Locke's legal sovereign is certainly not sovereign in the sense it would have absolute legal authority and certainly has no absolute, or what he terms, arbitrary power. His concept of a separation of powers also adds to the problem. Where there is a separation – there is always a problem as to where sovereignty resides. Does sovereignty have to mean what Hobbes understands by

it? Does one need a clear source of sovereignty? Locke has a very clear location of political sovereignty which lies in the people but no clear source of legal sovereignty.

7. **Constitutional problems in Locke: W. Kendal, Locke on Majority Rule.**

Kendall was concerned that Locke gives all power to the majority to act and contain the rest. He does so because he assumes that unanimity is impossible and society must move towards its greater force. Kendall, assuming Locke to be a majority rule democrat, castigated him for not being genuinely liberal about minorities. Theoretically, this is a reasonable position if one could really accept Locke as a majority rule democrat, but there is no evidence that this is so, despite his assumption about all men being equal. He was a 17th century gentleman and it might appear more realistic to assume he was **not really thinking about majorities** at all. He did not assume that any one other than a property owner should have any voice in formulating government policy or any role in choosing the government and, indeed, he gives reasons for this. His assumptions would fit the later Whig view of the world and in the 17th century only the Levellers and the Diggers tended to question this assumption.

'This would seem, however, to give rise to problems concerning political obligation. Locke certainly believed that **non-property owners should be obliged to obey the laws** which means he must have understood them to have consented to the rules that society be established and the majority be allowed to erect a government. He must also have assumed that everyone would also agree that the representatives, including the majority, would only include property owners. We might now question this assumption and also that it could be considered as a genuine majority at all. However, as this was the assumption of his times, it is not surprising that he would have held this view. His reason for not allowing non-property owners a voice is that they would then be making decisions about the property of others. But, according to Locke all men have property in their right to life

and liberty hence he must have assumed that the property owners would be able to safeguard the lives and liberties of non-property owners. Although this was then a commonplace assumption, it is not necessarily a rational one given that Locke expresses the view that men tend to be self interested and biased. It is worth noting that until the end of the 19th century it was also assumed that men could look after the interests of women.

James Tully's view is that the logical conclusion of Locke's work is the extension of the franchise. Indeed, if one accepts Locke's view that all men are equal as well as self interested and biased, then it does logically follow that all men should be able to vote. This clearly helps to explain why Locke often appears more modern than he actually is. If one accepts such a train of logical conclusions then Locke becomes the majority rule democrat Kendall imagines him to be. MacPherson, however, sees Locke as justifying a class rule of the bourgeoisie, i.e. the exclusion of non property owners from political society. However, his interpretation is that this exclusion is justified as resting on a lack of rationality. (Note there is a little, but not a great deal of, hard evidence to support this interpretation). An important question might be: why did both Locke and Hobbes start from the stand point of individuals who were naturally both free and equal when in reality they knew full well that men were not equal? Locke, especially, seems to have had no egalitarian project either as regards the franchise or in respect of property.

8. **Property**

Locke was extremely interested in property and how one could justify its individual ownership. Sometimes he writes as if property covers life, liberty and material goods and sometimes just material things. There were two major problems for Locke to deal with: the first, that the bible says that God gave the earth to all mankind in common and the second, that the divine right of kings argument claimed the king's absolute jurisdiction over all land and its people.

Locke aimed to demonstrate how individuals came to a private right in the land and property in order to counter both arguments. Tully's interpretation focuses on Locke's argument about property being directed against the king's jurisdiction over all land and property, whereas MacPherson takes a more general view, regarding Locke as justifying limitless acquisition of property and the capitalist ethic.

The **argument**: Locke assumes that men have a right to themselves and their bodies and that God intended us all to make use of things he had provided. As we use our body labour to feed and provide for ourselves, we mix a part of ourselves with the material object and thus make it rightly ours. We do this in a state of nature where there are clear limits to our acquisitions. God, he assumes, would not have willed us to waste the things he provided nor would he wish anyone to starve through lack of subsistence. Hence, in a state of nature we should not take so much that it perish and we should leave enough for others.

However, with the introduction of money (which he regards as a mere convenience) the situation has changed. Money does not rot, therefore we do not waste it. He was very interested in interest rates – and aware that money not spent can be used to gain interest. This he feels is not a problem. Again, concerning the situation in the 17th century and the enclosure movement, he was also aware that there was not much land left in England, but he rightly points out there is plenty of it in America which is still in a sort of state of nature. Additionally, he assumes it is acceptable to own the labour services of others, saying the “The turfs my servant has dug are mine” and that although one might have to work for someone in England rather than going to America, the standard of living one might achieve in England as a day labourer would be higher than a primitive land owner in America. This latter argument rests on an equivalence of returns to labour. Hence, he assumes no injustice has been done.

The relationship of a right to life in comparison with rights to material property is worthy of note. Locke assumes we cannot alienate our lives (this is because they do not belong to us but to God), which also means we may not commit suicide. But labour power for him is not the same as life in that we can contract to labour for another, even if this is to drudgery. Drudgery for him is not the same as slavery. A drudge is a worker who contracts to a relationship and is free to leave it, whereas a slave has no rights at all. There is a clear assumption here that there is always choice, when in reality there is often not. Marx writes of “wage-slavery” to indicate the problem.

It is also interesting that Locke tries to justify slavery and wrote the slave constitution of Carolina. He begins by recognizing that no one has a right to sell themselves or any other person into slavery. This is because we are God’s creation and in this sense do not belong to ourselves. Hence, in his view, the only way we could justifiably become a slave is to have committed some crime worthy of death. Whoever, therefore had the right to put another to death because they had broken the law, could, instead, decide to take them for a slave, because if the slave would prefer death they could provoke the master to kill them. Those conquered in unjust wars could also be justifiably made slaves. Locke has a consistency problem here because a) he appears to be justifying indirect suicide and b) it is the job of the properly constituted authorities to judge punishments and the death penalty, not individuals. Anyway, who would decide what an unjust war is given that all men tend to be biased? He must surely have known that the real origin of slavery had nothing to do with his justifications.

However, most interestingly, Locke asserts that the right to put someone to death or to enslave them, doesn’t mean that one can seize their property. I may kill a thief if my life is threatened, but I must not take his goods. I can enslave a man because he is an aggressor in an unjust war, but I must only take reparations and not all his property

because innocent wives and children have a right to survival and a title to the property. Locke seems much more sophisticated about property rights than rights to life and liberty.

Locke's liberalism must hence be couched in the context of his time when few people challenged the reality of slavery, the inequality of property ownership or the political inequality which was based upon it. Once again, in Locke, as with Hobbes, one finds some very modern concepts mingled with a less modern context giving rise to diverse and controversial interpretations.

9. **Toleration**

Locke also got involved in the argument for toleration (another of Shaftesbury's obsessions). His Letter on Toleration asserts that it is not a government's duty to concern itself with religion or the saving of souls. This is an individual affair and only the individual concerned is responsible. Indeed, he points out, one cannot force belief on another because belief is an inward thing and all one could achieve would be outward, external conformity which is not real. Government should therefore not interest itself in the procedures of different churches. They should simply tolerate different forms of worship within the general proviso that Christianity be upheld (A conclusion rather similar to Hobbes). Only two categories could not be tolerated: atheists and Catholics. The first because they would have nothing to swear on which would destroy the basis of society and the second because they would expose the nation to the domination of a foreign power i.e. the Pope, and additionally, they would not reciprocate the toleration. This was very radical for the times and highly rationalistic. Unlike Hobbes, Locke was never considered to be an atheist.

Hence much of Locke appears to have modern resonances and one must examine his assumptions (which tend to be those of his day) to understand his inconsistencies. Locke is important because his work was taken up by writers of the continental Enlightenment

who popularized his rationalist political thought and merged it with his empiricist epistemology. Both were "modern" at the time, but the Second Treatise, intended as a piece of political persuasion, was less modern than the Essay on Human Understanding. Although Locke regarded the latter as his most significant contribution to knowledge, the Second Treatise became the basis of classical liberalism in Britain and crystallized into the institutions and ideology of 18th century Whig England as well as influencing continental and American thought. Liberalism has moved on but still retains a large component of its Lockean base in concepts of government by consent and individual rights to life, liberty and property. It is perhaps no wonder that many interpretations appear to read back the modern into a 17th century background.