

# The Locke Newsletter

*edited by Roland Hall*

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## I: Introduction

If there is a single problem that has dominated political thought for the past four hundred years, it is the question whether the duty of the individual to the collective is best expressed by those vested with authority or by the individual.

Among political theorists who have examined this problem, Thomas Hobbes is probably the most famous.

Hobbes presents the problem of how we are to conduct ourselves as a society, as a peasant or a denizen whose horns are abjectly and servilely absolute.<sup>1</sup> And the source of the problem imposed upon us by government, or 'we accept the dire consequences of his infamous state of nature. Since he was well acquainted with the horrors of 17th century Europe (including the Thirty Years' War [1618-48] in Central Europe and the English Civil War [1642-46] in England), the choice was an easy one for Hobbes. He leaves no doubt what the alternative government is: *the sole work of nature, testifying in condition, idem*, which 'the life of man is, Solitary, poor, nasty, brutish, and short'. It is therefore to man's advantage to leave this state by accepting absolute sovereignty as the only rational alternative.

Like Hobbes, Locke witnessed the turmoil of his age. Yet he did not advocate authoritarian rule. Rather, he was a champion of liberal natural rights and consent as the only basic

<sup>1</sup> Thomas Hobbes, *Leviathan*, ed. C. Macpherson, 13, para. 8.

of political power in law and order. [REDACTED] anarchy could eventually lead to an overly intrusive or oppressive state, the hallmark of which was the infringement of individuals' liberties. Not wishing to compromise the moral inviolability of persons, [REDACTED] argued for what had been called the 'natural law'. To what extent Locke's statement can be criticized, and as 'natural law' or 'night-watchman' state of the classical liberal political theory is open to debate.<sup>12</sup> But this liberal posture has its own difficulties. His emphasis on constitutional guarantees for the maintenance of individual rights has been recognized, however, that no judicial mechanism could guarantee the rights of individuals, that it would always be possible for the state apparatus to circumvent or undermine an alternative measure, and so he advocated a 'revenue tax' which [REDACTED] could be under

and *anarchy* (New York 1974), pp. 76-7. Nozick's book, *Anarchy, state, and utopia* (Totowa, NJ 1981), a libertarian, revives the Lockian claim that there is a natural state of nature in which no one has rights against force, theft, fraud, deception or promises, and so on. In this more extensive state it violates persons' rights not to be forced to do certain things and is unjustified; and that the minimal state is inspiring when as right. It is worth noting, as Martin Berger has done in *The liberal polity by Brian Skiba* (London 1968), pp. 18-20, that the theory and practice of liberalism has actually called for strong government rather than the 'minimal state that is often attributed to it. This becomes especially clear when we consider the 'universal' plan for universal health insurance coverage in the *Conservative Commonwealth*.

unitarians frequently criticize rights-based liberalism for an undue emphasis upon individual liberties and a corresponding neglect of the community. They make the case that the membership of a community is what gives us our sense of identity and inhabit. See, for example S. Avinash K. A. The Shanti Gade, *Individualism* (Oxford 1993), L. W. O'Keeffe, *Liberalism and Communitarianism* (1982).

**SPECIES** [REDACTED] instances of deliberate, involuntary alienation of rights (and undertakings of obligations)?<sup>5</sup> reflects an understanding of

\* It has been argued that this is not so. See J. C. R. Gaskins, "Locke's portrayal of the state as a polity premised on his notion of liberty or negative freedom," for example, S. L. NEWMAN,

**Ketabat III** refers to the Second Reading arc given by II followed by a section, zimba (e.g., II, 4).

Not only would the integrity of the community be in jeopardy, if the initial consent were abrogated, but also the individual's liberty. [REDACTED] By insisting that the institutions are not one and the same, and that there is a plurality of agreements that constitute "political society" and "government," Locke seems to... [REDACTED] It is not allowed for the dissolution or government which government without the integrity of political society. [REDACTED] satisfied [REDACTED] what may be. [REDACTED] In the end, it is of thought seems, however, from the perspective of the individual members of the community, to allow for nothing short of rebellion to [REDACTED] Locke did not, however, initially adopt a ~~total~~ ~~consent~~ ~~Revolution~~ Theory of Government, as he did not have the logical [REDACTED]

sensual agreements of the same kind... Some sort of arrangement or practice was needed to acknowledge the moral inviolability of the individuals of the community, and to serve as notice to the members that the nation would be [REDACTED] II  
met with resistance [REDACTED] if he did not meet with the standards of performance. It had to meet what may be called the 'moral' inviolability condition. To this end [REDACTED] Locke employed a Contract-Trust (C-T) Theory—shown by the fact [REDACTED] that the words 'contract' and 'trust'—in which a contract brings about the onset of political society and a [REDACTED] III xiii  
[REDACTED] [REDACTED] to [REDACTED] that all that distinguishes trust from contract, according to Leibniz's view, is that trust is a consensual agreement, in which the members of the community give their moral bias to [REDACTED] those who [REDACTED] This is the grounds for his pre-emptive abjuration [REDACTED] [REDACTED] that in meeting

#### THE CONDITIONS OF INTEGRITY AND MORALITY

II. The State of Nature and the Origin of Political Society

eral trainees, we need to understand what is political and is not. Understanding the state of the justification of political entities is thus essential for understanding.

... from civil war or tyranny. Note that Locke's early discussion of the state of nature seems to... though it is really difficult to imagine it referring to the

<sup>2</sup> A. J. Simola, *The Ethics of Care*, in: *Years of Richter* (Princeton 1992), p. 125.

political persons as well. In chapter 2, §. 5. of the *Second Treatise* Locke says and quotes the "State all Men are naturally in, and that is, a State of perfect Freedom, no order, Actions, and dispose of the Power over their own Persons, think fit, with the Lawes of the Land, or by the Lawes of Nature, without asking leave, or depending upon the Will of any other Man" (§. 4). It is not a state of license, but rather of natural liberty, in which the law of nature is the sole guide that prohibits man from interfering with the rights of others, and which leaves man in full life, liberty, and property as we understand it, independent of another except in cases in which the law of nature is transgressed. (§. 6.) And since Locke is of the "unwilling with bounden" no "principles" of humanity, the natural law of no private claims of nature.<sup>9</sup>

Rationality, however, is neither man's only characteristic nor the most influential one when it comes to the way men act in nature. Affective responses, like self-love and revenge, show that men often refuse the guiding light of reason by being partial with their agreements and violent in their punishment. Instead, our being have more creative resources because they do not get in each other's way. This led Locke to make the strong claim that men are naturally equal and just (II, 725).

Although Locke begins with a description of a tranquil, lawless state of nature, this is by no means the situation that prompts men to join together to form a community. Indeed why would anyone want to quit such a peaceful way of life for the risk of anxiety, deceit, and violence? Rather, what compels people to join together to form a community is ~~is the fact that not everyone respects the rights of other people~~, which eventually transforms the quiet, state into something resembling the Hobbesian state of war. Although it is a state of natural liberty it is also a state

<sup>9</sup> L. J. Macfarlane, *The Royal Society*, 1971, p. 8.

"in which some ~~He~~ break the law of nature and 'place themselves in a state of war with ~~the~~ rest of mankind'. ~~Men~~ who do this, "ought to be put out of his Absolute Power, does not make him less a criminal. ~~For~~ he is still living under the law of Nature, and subject to the punishment of God; and though he may have escaped ~~the~~ punishment of men, yet he cannot escape ~~the~~ judgment of God; and ~~he~~ will be made to stand in his ~~own~~ judgment-seat." (Hobbes, *Leviathan*, Ch. 5) His "Absolute Power" being understood as "a power given by ~~the~~ people, or by ~~the~~ law of Nature".

peace (Oxford, 1992). In this paper I shall focus on the two variations of the state of nature that are found in the *Two Treatises*, and I shall argue that the state of nature in the first treatise is a more plausible concept than the state of nature in the second. I shall also argue that the state of nature in the second treatise is not a plausible concept, and that it is not even a concept that can be used to explain and discuss the nature of the political and social relationships between human beings.

formalism, this kind of thinking has been called "Lockeanism" and is often referred to as "Locke's theory".

[T]here, and there [REDACTED] . . . .  
bers hath quitted this natural Power, resign'd it up into the hands of the  
Community in all cases that exclude him not from appealing for Protec-  
tion to the Law established by it. And thus all persons, and creatures of  
particular Members being excluded, [REDACTED] . . . .  
by settled standing Rules, indifferent, and [REDACTED] the same to all Parties, and  
Men having Authority from the [REDACTED] . . . .  
Rules, decides all the differences that may happen between any Members  
of that Society, concerning any matter of right; and punishes those  
Offences, which any Member hath committed against the Society.  
[REDACTED] . . . .  
such Persons as the [REDACTED] . . . . has established: Whereby it is [REDACTED] to discern  
who are, and who are not, in *Political Society* together. Those who [REDACTED] . . . .  
united into one Body, and have agreed upon, established Law and Judicature  
to appeal to, with Authority to decide Controversies between them, and  
punish Offenders, are in *Platt Societies* one with another; but those who [REDACTED] . . . .  
have no such common Appeal, i.e. Nature or Father, are still in the state of law or  
Nature, each being, where there is no other, Judge for himself, and  
Executioner, which is; I apprehend shew'd it, the perfect state of  
Nature. [REDACTED] . . . .

The community that is formed seems to be a response to the "rule of law" and "order". Precisely to this extent, a well-organized political society is the most efficient and enduring means by which the more productive side of human nature can be effectively utilized. A relatively secure social environment is the result of the mutual consent.

III: Consensus Foundations of a Strong State: Theory and Evidence

Is the initial consent restricted to the formation of a ~~sovereign~~ <sup>sovereign</sup> ~~political~~ <sup>political</sup> ~~body~~ <sup>body</sup> or does it establish government as well? This is an extremely important question, for the answer will determine whether Locke's doctrine of ~~sovereignty is compatible with the principles of~~ <sup>sovereignty is compatible with the principles of</sup> ~~all~~ <sup>all</sup> ~~modern~~ <sup>modern</sup> ~~politics~~ <sup>politics</sup>.

the cousin. "The 'united' is the At first glance, this causes no jeopardy. The difficulty disappears, in part from ... But the fact that Lincoln sometimes writes as though he were allegorizing the distinction between society and government. If so, it is only a very slight one; the two could be viewed, and rightly so, as being antagonistic to the

“*Significance of the community*. This is not surprising, given the  
“*shameful use*” of language. A faint hint goes toward the way it is

government; whenever people come together to preserve their  
property by creating a community, they must have also created

vice versa. Take, for instance, the

... --only suggests that political society is an alliance of natural power.

... sort of governing apparatus associated with the rule of man or that shall be Single-Party Rule.) The point remains: society and government). More specifically, the consent of each member empowers the majority. This is a feature of the onset of political society, inherent in its genetic structure. Against this family

Whence it is therefore that all of a state of Nature unite into a Community,  
which is able to give up all their power, necessarie  
where they think necessary; with the authority th<sup>t</sup> the ~~comes~~ <sup>comes</sup> ~~July~~ <sup>July</sup>, unless  
they expressly agree to ~~any~~ <sup>any</sup> other condition than this ~~July~~ <sup>July</sup>. And this is  
done by barely agreeing to ~~any~~ <sup>any</sup> political  
the ~~com~~ <sup>com</sup> ~~July~~ <sup>July</sup>; which is, or needs to be, between those ~~July~~ <sup>July</sup>, that they may

<sup>11</sup> R. W. Grant, *John Locke's liberalism* (Chicago 1987), p. 103.

Society. And this is that, and that only, which did not make it lawful to give beginning to any lawful Government in the World. (II. 9)

The two passages quoted at length (II. 87 and 90) together give reason to think that the consenting individuals agree to whatever decisions and policies may be arrived at by a majority of the community. Indeed, the decrees of the majority seem to constitute the 'will' of government as they are employed in the act of forming society (II. 12).<sup>11</sup> As far as the consent of the majority is concerned, bringing some individuals out of the state of nature, against the legitimate authority, Locke seems to highlight a form of democracy that is basic to both civil society and the political society. It is with government, in such a way that the former cannot exist without the latter and vice versa.<sup>12</sup> The implication of rebellion, however, undermines the integrity condition, for once the members resist the authority of government, thereby nullifying the original contract, only would the legitimate government cease to exist, but political society would cease to exist as well. The result would be a return to the state of nature (if not a state of war).

The common origin of political society, however, does not seem to have dealt a fatal blow to the integrity condition. The doctrine of resistance is compatible with the integrity condition. However, I believe that I understand to be compatible if, and only if, we focus on the other sense of the word. In his defense of Grant's view, in contrast to Locke, here designated his 'government', Grant's government means an *designated*, *from* what is *legitimate* majority to be the trustee for 'the' legislative power.

<sup>11</sup> Ibid., p. 104. In addition, 'Whenever the Society is dissolved, the Government of that Society cannot be lawfull'. (II. 12.)

<sup>12</sup> In *On the edge of anarchy*, Shlomo Avineri maintains that 'Locke's theory of consent' does not coincide with the state of nature, however, even though

it is correct for Grant to argue that political society has a *legitimate* moral and theoretical prior insofar as the 'Constitution of the League' is the first and fundamental Act of the Society (II. 212), and it is therefore *anally* prior insofar as government can be considered a *constrained* instrument of the society for the present.

Since property and the state of nature are the two main features of political society, we must also acknowledge that any attempt to assert an existential linkage between the two truths, that the existence of property (private property, private property, or public property) is bound to the existence of political society suggests that the former is the cause of the latter. At the time being, without government, the imputation of this is straightforward, for it means that Locke's doctrine of resistance is not necessarily *anally* prior insofar as it means that the consent of the members creates government.

It is *anally* an obligation to protect the property rights of the people, may result in some difficulties, it does not necessarily do so.

The integrity of the community can thus be maintained by maintaining

The Community reserving all commandments, and the commandments of the Law, to the Majority, to one or more Persons only, for their Lives or, give, by the Majority, to one or more Persons only, for their Lives or, give,

it is so reverted, the Community may dispose of it again and it again anew into lands they please, and so

The integrity of the community can thus be maintained by maintaining

Locke, in distinction to the citizens who dissent... (Ibid., 11.)

<sup>13</sup> Grant, *op. cit.*, p. 104.

society from that of government.<sup>15</sup>

This is not, of course, to say that Locke advocated a Dual Consent (D-C) Theory as was discussed above, for simply to say that one consent to government does not mean that the other consent to government is to disregard Locke's use of certain words indicative of liberalism and all its antiauthoritarian rights and obligations that favour the individual.<sup>16</sup> More specifically, it neglects the fact that Locke delineates two sorts of consensual agreement that are associated with the functioning of political society and "consent" associated with the second stage of government under a Contractarian Theory of government, which is compatible with the integrity condition as well as the moral validity of the contract.

<sup>15</sup> Ibid. Frederick Pollock holds this view when he states that "Locke ... is at no small pains to show that the dissolution of government is to be distinguished from that of society." Where the society is dissolved, the government cannot remain; but governments may be altered or dissolved from within, and the society not be destroyed (An introduction to the Second Treatise of Government, www.computerbooks.com, p. 76).

Unlike Pollock, however, Grant underscores a practical problem that arises from this terminological distinction: whether political society can exist in form of a government long enough for the majority to create a new one (op. cit., p. 105). Can the community function as a unit, even though government is not? Since Locke argues that people in society have the liberty to erect a new legislature,

society can preserve itself, he seems to suggest that political society is survivable in as basic democratic fashion. In other words, Grant is not persuaded that the majority of a community can act in the way that government can act in order to maintain society by resolving disputes among its members (ibid., p. 106).

<sup>16</sup> Some commentators understand the D-C Theory as involving a two-stage agreement. For example, Pollock interprets Locke as saying that one stage establishes political society and another sets up government (Pollock and Hartog, *The Formation of an Agreement: A Reinterpretation of John Locke's Political Theory*, 1992, p. 11). It is only after this stage has been completed that the second stage follows, that is, when the institutions of the commonwealth obtain their form by the placement of power in the hands of those who consented to them by the joint or unanimous assent (ibid.).

L. J. Macfarlane also suggests this interpretation when he states: "All that each and every individual does in his initial common act of consent is to give up his right to the use of his own body and his personal organization for his own ends, and to let it be used by others for the proper functioning—the beginning of Political Society—of the commonwealth, that is, for the common good of the society. This is the first stage of Government, that is, the first stage of the commonwealth, or the state. It had nothing to do with the members in this respect, but it was the first logical step to a complete society" (Macfarlane, *John Locke's Political Theory*, 1992, p. 12).

associated with the functioning of political society and "consent" associated with the second stage of government under a Contractarian Theory of government, which is compatible with the integrity condition as well as the moral validity of the contract.

#### IV. The Contractarianist Theory

##### A. References to the C-T Theory

Second, Treatise... we need look no further than J. W. Pollock's *An Introduction to the Second Treatise of Government* (London, 1825), where he discusses the limits of society. Gauthier and Simmons develop this interpretation where the point of civil society is being established by a group of individuals agreeing to join and combine into a community, staying together for the common defense of life and property. In the state of nature, render in vain its vaguest two kinds of rights—the right to self-preservation of himself and of others. While the Law of Nature is giving up to the extent that the "preservation of himself and the rest of that Society shall require" (I, 128), and, I suppose, the right to self-preservation of others, the Law (i.e., the Law of Nature) ... no will, and 130). This is, more or less, what is called political power, and it is this power that is handed over in the contract.

'Virtue tends to duty, policy to law, and law to justice. When a man has made and society is formed, the law of justice may be established, and he had not the first of the members in this represents the first logical step to a complete society' (Macfarlane, *John Locke's Political Theory*, 1992, p. 12).

of the Society. (171) It is at this juncture that talk of government arises; for the first use of the community may be the establishment of government in the society. The logical power (II. 212).<sup>18</sup> This formation of a peoplebody. As Gough and Simmons note, we are talking about the relationship of a kind of a big world people or that part which have it right. the people. Rather, as Gough and Simmons note, something is formed by society's granting a trust, thereby entrusting government with the power of the majority.<sup>19</sup>

In an ordinary legal trust such as that set up to administer the child's inheritance, there is a difference between trustee, and beneficiary. But what we have in the Second Treatise is something quite different from Locke's political theory. There is a relationship between only two parties - the trustee (government) and the trustee (the people who is to be in charge). It is the latter who determines all the terms of the trust and

<sup>17</sup> Simmons, *On the relation of politics to law*, 169. Simmons notes that the contract and the rules that form political society and government are logically separate, though they may not be temporally separable.

<sup>18</sup> J. W. Gough, *The Social Contract* (Oxford, 1949), p. 129-33.

<sup>19</sup> Simmons, loc. cit.

<sup>20</sup> In John Locke's political writings, Oxford 1927, as Vol. I, Gough argues that there is one political trust, one in which the executive acts as the trustee for the people and another in which the legislative acts as being the trustee for the electorate. Instances of the legislative trust are found in II. 153 and II. 139, whereas instances of the executive trust are found in II. 145; II. 152; II. 156. This is reiterated by Léonard Parry in *John Locke* (1952) when he says that 'Government, to repeat, is not the sole trustee of the power. God however intended to it for the exercise of a right originally retained by the people. This power is however entrusted to it for the exercise of a right originally retained by the people.'

<sup>21</sup> Parry, op. cit., p. 124. For a detailed description of the differences between contract and trust see Gough, *ibid.*

therefore, the authority or discretionary power of the trustee.

extremely important consequences bear now Locke's doctrine resistance to the social contract's condition.

Of course, there are many ways like John Dunn and Marjorie

Singer, who quickly dismiss the importance of Locke's conception of trust as a legal or juridical trust, and instead sent him something which is absurdly something else. However, arguments have been advanced by such coming that the trust as a legal basis of political theory. Locke uses the conception of trust, Barker writes,

... that there is a difference between the trustee and the trustee, and that, of course, to explain such a difference, we need not go the whole way English law. In private law, trust means that the trustee has a right to the property, or, as Gough, you could say, is the case in public law, the State, to which Locke may be said to transfer the doctrine of trust, the People of France, which is both the trustee and the trustee, may do so in its capacity of sovereign by way of conferring a fiduciary power on the agent, or, in other words, the State, as itself, and all its members, in its other capacity of *ressus que trust* or *depository* bring it about.<sup>22</sup>

The implication of this is not lost.

distinctive means for politics

<sup>22</sup> E. Barker, Notes to O. Gierke, *Natural law and the theory of society*, Oxford, 1900 (Legal, I, Cambridge, 1934), p. 262. Gough knows Hegel's *Rights* as clarifying note.

A trust is not a ~~contract~~ contract; and the trustee does not enter into relations or contract with the ~~beneficiary~~. The trustee is said to consent to incur a unilateral obligation—an obligation ~~to the~~ beneficiary which, if it ~~is~~ gives the trustee's possession, is a right against the trustee, or, if it ~~is~~ given on behalf of that beneficiary, is a right for the ~~beneficiary~~. We may therefore regard a trust as a ~~contract~~ contract with the People, or the People with him—whether we regard the People as ~~trustor~~ or as ~~beneficiary~~—to ~~times~~ leaves no room for a ~~contract of subjection~~.

one of the best in fact that is, the S-C type is for the fair - & and  
the C & P is the best in my opinion, with a few exceptions.

they are of course to select key passages of the text, but they fail to acknowledge the point that the Constitution has a social role in interpreting the Second Treatise as a document of revolution.

the moves) inviolability of the individual. By using the notions of contract and trust, Léviel was able to escape the logic of the state or of God's benevolence, reducing man to a free agent with which allowed for an alternative route other than an exclusive or authoritarian.

This interpretation of [Locke] as a proponent of the C-T Theory, it seems to me, is not only textually sound, but also reflects the general [ ] go people against the abuse of power by government<sub>2</sub>. That is, it represents the sort of institutional arrangement or practice needed to acknowledge of the community resistance to governmental authority by establishing how governments "becomes" finally and "irreversibly" bound to serve. In the event that government<sub>2</sub> is remiss in its obligation towards this end even if it means taking up arms against sovereign.

## V: Conclusion

I have argued that while some commentators on [REDACTED] Locke's [REDACTED] Treatise are fond of pointing out the consensual foundations of political society and government [REDACTED] be added the two first institutions. Political society and government [REDACTED] are either lumped together and their origin acknowledged to be

<sup>24</sup> Barker, *ibid.* Gough quotes part of the passage in *The social contract*, p. 134.