

# The Locke Newsletter

EDITOR

Roland Hall

Visiting Senior Research Fellow in the History of Philosophy

Lancaster University

www.lancaster.ac.uk

ADDRESS

Stewart House, 11th Floor, 111 York Street, London

(E-mail: [111@york.ac.uk](mailto:111@york.ac.uk))

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## I: Introduction

If there is a single problem that has continued to preoccupy political theorists for the past four hundred years, it is the problem of how to reconcile the tension between the will of the individual and the will of the collective as it is expressed by those vested with authority. Among political theorists who have examined this problem, Thomas Hobbes is the most radical. He presents the problem of how we are to conduct ourselves as a society as an argument whose horns are anarchy and servile absolutism. Either we submit to the consequences of his infamous state of nature, or we accept the consequences of his infamous state of nature. Since he was well acquainted with the horrors of the Thirty Years' War [1618–48] and the English Civil War [1642–46] in England, the choice was an easy one for Hobbes. He leaves no doubt that the dissolution of government is the single worst condition, resulting in a condition in which 'the life of man is solitary, nasty, brutish, and short'.<sup>1</sup> 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. He did not advocate authoritarian rule. Rather, he was the champion of liberty, natural rights, and consent as the only basic

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



Not only would the integrity of the community, but the initial consent were abrogated. The initial consent were abrogated, the liberties

institutions are not one and the same, and that there is a plurality of agreements that constitute political society and government. Locke seems to allow for the dissolution of government without compromising the integrity of political society.

of thought seems, however, from the perspective of the individual members of the community, to allow for nothing short of rebellion to

Locke did not, however, merely adopt a Contract-Trust (C-T) Theory of political society and government.

logic of sensual agreements of some kind. Some arrangement or practice was needed to acknowledge the moral inviolability of the individuals of the community, and to serve as notice to the

members of the community that his actions would be in accordance with the moral resistance.

ance. It had to meet what may be called the 'moral inviolability' condition. To this end, Locke employed a Contract-Trust (C-T) Theory—shown by the fact that the Second Treatise uses the words 'contract' and 'trust'—in which a contract brings about the onset of political society and a

government. It is crucial to note that what distinguishes trust from contract, according to Locke's view, is that trust is a consensual agreement between the people and the ruler, which

category rightly and originally is a category of the members of the community.

moral bias towards those who are the grounds for the

the conditions of integrity and moral law. The organization of the paper. The organization of the paper is an

account of Locke's state of nature and the origin of political society; part III of various questionable views regarding the treatment of the consensual foundations of political society.

C-1 Theory, with regard to some of the literature on the doctrine of resistance.

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

to appreciate the significance of the moral framework, we need to appreciate what is political and is not. Understanding the state of nature is thus essential for understanding the justification of political society.

cept of consent. For a person, A, to consent to another person, B, if and only if A has not consented to become a member of or is no longer a member of a legitimate political society of which B is a member.

from civil war or tyranny. Much of Locke's early discussion of the state of nature seems to

though it is not difficult to imagine it referring to the

John Locke, *Two Treatises of Government* (Princeton 1992), p. 126.



formation. This line of thinking is summed up in the following by Locke:

[T]here, and there, the Members 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 Protection to the Law established by it. And thus all private Males are united into one Body, by settled standing Rules, indifferent, all the same to all Parties; and by Men having Authority from the Community, by the said standing 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, such Penalties as the Law has established. Whereby it is, as if all those who are, and who are not, in Political Society together. Those who are united into one Body, and have a common established Law and Judicature to appeal to, with Authority to decide Controversies between them, and punish Offenders, are in Civil Society one with another; but those who have no such common Appeal, remain in a State of Nature. In the State of Nature, each being, where there is no other, Judge for himself, and the perfect state of Nature.

The community that is formed seems to be a response to the state of nature. Precisely how this response is formed is the most difficult and enduring mystery. A relatively secure social environment is the result of the initial consent.

### III: Consent Foundations of Political Society and Government

Is the initial consent restricted to the formation of a political society or does it establish government as well? This is an extremely important question, for the answer to it is Locke's doctrine of consent.

At first glance, this consent is in jeopardy. The difficulty, in part, lies in the fact that Locke sometimes writes as though by a fallacy the distinction between society and government. If society and government could be viewed, and rightly so, as being antagonistic to the community, this is not surprising, given Locke's

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 natural power, but he also suggests that this union brings a sort of governing apparatus associated with the rule of the society and government. More specifically, the consent of each member endows the community. Mainly, it is a feature of the onset of political society, inherent in its genetic structure. Again, as a family but telling passage. Locke says

Whenever therefore out of a state of Nature units into a Community, which they then unite to, by the authority of the community, unless they expressly agree to unite to a government. And this is done by barely agreeing to unite to a political

constitutes any Political Society, is the consent to the authority of the community.

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



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 is to disregard Locke's use of certain words indicative of liberalism and his view of 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 different institutions that is, a contract in person

<sup>15</sup> Ibid. Frederick Pollock holds this view when he states that "Locke... is in no small pains to show that the dissolution of government is to be distinguished from that of society. 'When 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 Locke's Political Philosophy*, p. 76).

Unlike Pollock, however, Grant underscores a practical problem that arises from this terminological distinction: whether political society can exist in the form of government long enough for the majority to create a new one (op. cit., p. 705). Can the community function as a modern nation-state? 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 not viable in its basic democratic form. 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 stage is an agreement between certain individuals to live in a commonwealth (Locke's *Second Treatise*, ch. 9, § 135). In other words, this stage has been completed, that the second stage is that is, when the institutions of the commonwealth obtain their form by the placement of power in the hands of the majority of the people (ibid., ch. 9, § 135).

L. J. MacIntyre also suggests this interpretation when he states: "All that each and every individual does in his initial common act of consent is to... the second... the beginning of Political Society... the individuals, to join into and make one Society; who, when they are thus incorporated... (ibid., ch. 9, § 135).

ated with the... of political society... ated with the... of government... a Contractualist (C-T) Theory of government, which is compatible with the integrity... "well as the... of individuality... now turn

#### IV. The Contractualist Theory

<sup>16</sup> and references to the C-T theory... Second Treatise... we need look no further than J. W...

... Locke, consent, and the limits of society...

Grant and Simmons develop this interpretation when... point to civil society as being established by a group of men... agreeing to join and combine into a community, having...

... the dangers of life... the state of nature...

... render in vain... two kinds of rights... preservation of himself and others... Law of Nature is given up to the extent that the... himself, and the rest of that Society shall require" (II, 728).

... Law (i.e., the Law of Nature)... and 130). This is, more or less, what is called political power...

... made and society is formed... this logical step to a complete society... when he writes: "Political Power is that Power which every...

... Man... in the state of Nature... has given up into the hands...

of the Society of Friends. It is thus true that the task of government is to establish a political trust in the mind of the people (II. 212).<sup>18</sup> This

formation of a political trust is the result of the people's consent to the terms of a trust formed by society's granting a trust, thereby entrusting government with the power of the majority.<sup>20</sup>

In an ordinary legal trust, such as that set up to administer the estate of a deceased person, there are three distinct parties: the trustee, and beneficiary. But what we have in the political trust is something quite different. Locke's political trust is a relationship between the trustee (the government) and the trustor (the people, who are the beneficiaries). It is the latter who determines the terms of the trust and

<sup>18</sup> Simmons, *On the contract of government*, p. 160. Simmons notes that the terms of the trust that form political society and government are logically separate, though they may not be temporally separable.

<sup>19</sup> J.W. Gough, *The social contract* (Oxford, 1927), pp. 129-31.

<sup>20</sup> Simmons, loc. cit.

<sup>21</sup> In *John Locke's political philosophy*, 2nd edn. (Oxford, 1970), p. 163, Gough argues that the political trust is one in which the executive acts as the trustee for the people and another in which the legislature acts as the trustee for the electorate. Instances of the former are found in II. 153 and II. 139, whereas instances of the latter are found in II. 135, II. 136, and II. 138. This is reiterated by Gerard Parry in *John Locke* (Leicester, 1970), p. 124. Parry is entitled to do for the extra instance of the latter by this trust and is

<sup>22</sup> Parry, op. cit., p. 124. For a detailed description of the differences between contract

therefore, the authority or discretionary power of the trustee.

Extremely important consequences flow from Locke's doctrine of political trust. The first is that the trustor (the people) has the right to resist the trustee (the government) if the trustee fails to perform its duties. The second is that the trustor has the right to transfer the trust to another trustee (the people) if the trustee fails to perform its duties. The third is that the trustor has the right to transfer the trust to another trustee (the people) if the trustee fails to perform its duties. The fourth is that the trustor has the right to transfer the trust to another trustee (the people) if the trustee fails to perform its duties. The fifth is that the trustor has the right to transfer the trust to another trustee (the people) if the trustee fails to perform its duties. The sixth is that the trustor has the right to transfer the trust to another trustee (the people) if the trustee fails to perform its duties. The seventh is that the trustor has the right to transfer the trust to another trustee (the people) if the trustee fails to perform its duties. The eighth is that the trustor has the right to transfer the trust to another trustee (the people) if the trustee fails to perform its duties. The ninth is that the trustor has the right to transfer the trust to another trustee (the people) if the trustee fails to perform its duties. The tenth is that the trustor has the right to transfer the trust to another trustee (the people) if the trustee fails to perform its duties.

Locke's political trust is a relationship between the trustee (the government) and the trustor (the people, who are the beneficiaries). It is the latter who determines the terms of the trust and

The implication of this is not lost. It is that the trustor has the right to transfer the trust to another trustee (the people) if the trustee fails to perform its duties.

<sup>23</sup> E. Barker, Notes to O. Gierke, *Natural law and the theory of society*, 2nd edn. (London, 1934), p. 272. Gough, *Locke's political philosophy*, p. 160.

A trust is not a contract; and the trustee does not enter into relations of contract with the beneficiary. The trustee is not said to consent to incur a unilateral obligation—an obligation to the beneficiary which, if it incurs the trustee's possession of rights against other parties on behalf of that beneficiary, is itself to be regarded as a trust. It is not a contract with the People, or the People with him—whether we regard the People as trustor or as trustee. It leaves no room for a contract of subjection.

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 sort of institutional arrangement or practice needed to acknowledge the resistance to governmental authority by establishing how government becomes necessary in its obligation to serve. In the event that government is remiss in its obligation towards this end even if it means taking up arms against the sovereign.

## V: Conclusion

I have argued that while some commentators on Locke's Treatise are fond of pointing out the consensual foundations of political society and government, they fail to note the emergence of the state of nature. Political society and government 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.

of a contract (that is, the social contract) they are not. Second, these interpretations, however, they do not neglect key passages of the text, but they fail to acknowledge the importance of the second Treatise as a document of revolutionary moral accountability of the individual. By using the notions of contract and trust, Locke was able to escape the trap of Hobbes's dilemma, leading him to a conclusion which allowed for an alternative other than servitude or authoritarianism.