

## ***John Locke and Liberalism***

*di Michael P. Zuckert*

John Locke is one of the preeminent names in the history of political philosophy. He is often identified as the founder of the liberal tradition of political thought and as the author of the most compelling case for religious toleration. His achievements extend beyond moral and political matters for he was the founder of modern empiricism, a doctrine of how and what we can know, as well as being the author of important works in economics, theology, and educational theory. His work remains influential today, as is manifest in the revival of Lockean style political philosophy in the late twentieth century by thinkers like John Rawls and Robert Nozick.

Locke lived in tempestuous times and often found himself very much caught up in the tempests. The most obvious were the political tempests: He lived through the two British revolutions of the seventeenth century, the civil war of mid-century and the Glorious Revolution of 1688-89. His father was an active participant in the former on the Parliamentary side; Locke himself was much identified with the Whig Party before and during the latter revolution because of his close relationship with the Earl of Shaftesbury, the acknowledged leader of the Whigs in the post-Restoration years. Locke was in exile in Holland when the Glorious Revolution came, but his name is indelibly associated with it because he cast his *Two Treatises of Government* as an effort «to establish the Throne of our Great Restorer, our present King William», the ruler who supplanted King James II as a result of the Glorious Revolution.

In those turbulent times Locke did not lead a cloistered life. It is a matter of some controversy among scholars as to just how much Locke was entangled in restoration era revolutionary plots, but his role as Shaftesbury's confidante, secretary, aide de camp guaranteed that he was involved in some part of it. On two separate occasions he felt that his safety required that he flee England for fairly extended periods on the continent, once in France, and then in Holland.

Locke's political writings must be seen to some extent as efforts to respond to the issues underlying the political turmoil of the age. Those conflicts were complex because they occurred along two dimensions – the

strictly political or constitutional and the religious. The political dimension concerned the relations between the powers of King and Parliament; the religious dimension derived from the unsettled character of British Christianity that followed on the Reformation. Locke wrote his *Two Treatises* to settle the political side, and his *Letter on Toleration* to settle the religious side.

Of course, to emphasize the relation between Locke's writings and his political context is not to reduce those writings to being merely partisan statements with bearing only on the immediate situations. He attempted to speak to the political conflicts of his time by presenting the truth about politics and the political place of religion, truth that was valid for more than this particular time and place. Locke was a political actor, but he was also a philosopher, and examination of his writing's bears out the view that his philosophic and political activity were completely intertwined. It was an era of turmoil and innovation in the philosophic world also. Locke was a generation or so younger than the great innovators of modern philosophy and natural science. Thus his work shows great debts to Francis Bacon, Thomas Hobbes, and perhaps most of all, René Descartes, pioneers of the new philosophy. Locke was also a great friend of Isaac Newton, of Robert Boyle, one of the early practitioners of the science of chemistry, and of Thomas Sydenham, one of the founders of modern medical science. Indeed, so far as Locke can be said to have had a profession it was as a physician, in which capacity he first met Shaftesbury, an event that changed his life by lifting him out of the ivory tower atmosphere of Oxford and replanting him in the Shaftesbury household.

Locke presented himself in his major work, *An Essay Concerning Human Understanding*, as a mere «under-laborer in clearing ground a little, and removing some of the rubbish, that lies in the way to knowledge». This is no doubt too modest, for his achievements in the *Essay* are much greater than that, but his identification of his task is helpful for getting a sense of the overall character of Locke's corpus. The "rubbish" he wished to remove is the the dominant scholasticism, what Locke often refers to as the teachings of «the schools». Locke was a partisan in the debate between the new philosophy of Bacon, Descartes, and the others and the old scholastic philosophy tracing back to Thomas Aquinas and Aristotle. Locke's moral, political, and religions writings are best understood as an effort to apply the new philosophy, as he understood and developed it, to the practical affairs of human life.

Given that understanding of Locke's efforts, it is surely not surprising that his political philosophy has been controversial from the outset. Because he expected controversy he published only a few of his writings with his name on them, most importantly his masterwork, the *Essay Concerning Human Understanding*. His *Two Treaties*, his *Letter on Toleration*, his *The Reasonableness of Christianity* were all published

anonymously. Nonetheless, all of these but the *Two Treatises* entangled him in major controversies in his own time, most often with clergymen who found his writings insufficiently orthodox. Locke's later years were spent, in large part, in producing long responses to the various clerical attacks his work inspired. He was concerned that his works not be taken to be so religiously heterodox as his critics claimed.

Locke remains controversial among scholars today, with the religion issue still underlying much of the controversy. Ironically perhaps, the terms of the debate have shifted since the seventeenth century, for now the dominant view is that Locke is, perhaps above all, a religious thinker, a Christian thinker. The dissenters from that orthodox view see Locke as a more secular thinker. The controversies are probably more heated than they need be, for when properly understood it becomes clear that Locke straddles the divide between the scholars in a way that makes both sides right.

Locke's political philosophy is contained mainly in his *Two Treatises of Government*, but others of his works, especially his *Letter on Toleration* contain important supplementary materials. The *Two Treatises* was published in 1690, shortly after the Glorious Revolution and ostensibly to justify the replacement of James II as King by William III. According to the prevailing scholarly consensus, Locke wrote most of the *Two Treatises* perhaps a decade before he published it. The occasion, it is now believed, was not the Glorious Revolution, but the agitation to prevent the openly Catholic James from succeeding his brother Charles II as King. The leader of this movement for Exclusion, as it was called, was Locke's friend and patron, the Earl of Shaftesbury.

The first of the *Two Treatises* was aimed against the work of Sir Robert Filmer, strong partisan of the royalists in the political conflicts of the day, who had argued in his book *Patriarcha* that kings ruled by divine right. Of course that claim had been raised much earlier, by James I, for example, but Filmer attempted to show that divine right monarchy was established in the Bible. According to Filmer, God had appointed Adam, the first father to mankind, king of all his descendents, with his monarchic power descending to his next heir: Filmer put together the account of Adam's creation in *Genesis* with the widely accepted social fact that children owed obedience to their fathers to create the theory that the power of kings was the power of Adam, a power inherent in fatherhood.

Although the evidence is somewhat mixed, it appears that Filmer's doctrine had much influence in the years when the Exclusion Controversy roiled the waters of British politics. The *First Treatise* was a thoroughgoing and extremely effective critique of Filmer's argument, challenging, among other things, Sir Robert's Biblical interpretations.

According to Locke's subtitle, the *First Treatise* aimed to overthrow «the False Principles and Foundation» of Filmer's system. The second

essay was meant to supply «The True Original, Extent, and End of Civil-Government». The first was largely critical in character; the second more constructive. Nonetheless, much of importance for understanding Locke's philosophy of politics is to be found in the *First Treatise*, a fact that speaks strongly against the dominant practice of reading the *Second Treatise* without the *First*.

### 1. Locke and the Liberal Tradition

Locke is the founder of the liberal tradition in political thought. What can that mean? In the first instance it means that he asks a certain - novel - question about politics and then answers it in a certain novel way. His question comes to sight in the definition of political power with which he opens his *Second Treatise*.

«Political power then I take to be a right of making laws with Penalties of Death, and consequently all less Penalties, for the Regulating and Preserving of Property, and of employing the force of the Community, in the Execution of such Laws, and in the defense of the Commonwealth from Foreign Injury, and all this only for the Public good (II<sub>3</sub>)».

Locke's definition of political power contains many noteworthy points but most striking because most jarring is his opening assertion: «Political Power then I take to be a Right [...]». This sounds strange in our ears because we usually take political power to be a fact, not a "right." Political power, according to Locke, is a certain kind of power to coerce, to make and enforce laws with the penalty of death and consequently all lesser penalties as well. He highlights the harsh coercive side of political power and by denoting it a right he brings to the fore the question: what makes right this coercive power? Locke is not taking for granted the existence and contours of political power. He demands at the outset a justification for its very existence. It is for this reason that he begins his political philosophizing by positing a state of nature, that is, a «state of perfect freedom» and «a state also of Equality, wherein all the Power and Jurisdiction is reciprocal, no one having more than another». He posits a condition in which human beings are subject to no law but the law of nature and are «subject to no body (II<sub>12</sub>)». The state of nature is a state of anarchy, of no political power as Locke has defined it. Although there are real life instances of the state of nature («all Princes and Rulers of Independent governments all through the World, are in a State of Nature [II<sub>19</sub>]»), the chief point of the state of nature is not to identify an actual condition. It is to give us the baseline of no authority and to pose for us in a particularly graphic way the question implied in the definition of political power: whence come the right to exercise coercive power, especially the

power to take the life of another?

Locke is, in the first instance, the founder of the liberal tradition because he so clearly formulates the demand that the very existence of political power as rightful coercion be justified. It might be objected to this formulation that Locke merely follows Thomas Hobbes in positing a state of nature and demanding an account of the genesis and justification of political power from that beginning. This would be a fair objection, but Hobbes is at best a proto-liberal, for from the starting point of absolute freedom he generates the legitimacy of an absolute sovereign. Locke is a liberal in the full sense because he generates from the condition of no-rule only limited governmental power.

It is not only the conclusion of Locke's argument that earns him the title of father of the liberal traditions. There was something about the type of argument he made that was significant as well. The immediate target of his critical *First Treatise* was Robert Filmer, who, according to Locke, rested his argument solely on «Scripture-proofs». In relying on the Bible Filmer was by no means unique for the time; much of the serious political thinking in the 17<sup>th</sup> century was, one might say, political theology, rather than political philosophy. Although Locke engages in Biblical one-upmanship against Filmer, he rests neither his main critical weight nor his constructive philosophizing there. In the *First Treatise* Locke identified reason as mankind's «only star and compass». To take guidance elsewhere can carry man «to a Brutality below the level of the Beasts, when he quits his reason (I<sub>58</sub>)». Locke is thus a rationalist and depends not on revelation for understanding the «true original» of political life. Thus there are few biblical citations in the *Second Treatise*. This is not to say that Locke is hostile to revelation; he grants that it has a place in establishing truths that transcend the powers of reason, but he is wary of so-called revelations that induce irrational enthusiasm. To avoid enthusiasm he insists that reason has a role in establishing the credentials of alleged revelations. Politics, he believes, is well within the sphere of reason and thus, although he occasionally looks to the Bible for confirmation of conclusions he draws on the basis of reason, it is reason by which he «steers».

Locke's definition of political power highlights rightful coercion as the decisive means of the political and at the same time he emphasizes the limited ends for which that power exists: «for the Regulating and Preserving of Property, and [...] the defence of the common-wealth from Foreign Injury, and all this only for the Publick Good». The definition of the political thus points to a series of topics that together give Locke's political philosophy its particular texture: (1) On what basis does he posit a state of nature as the proper beginning point? (2) What does he mean when he specifies the «regulation and preservation of property» as (one of) the chief ends of political life? and (3) How does he get from the state of nature to rightful political power?

## 2. The State of Nature and Natural Rights

Locke begins by positing a state of nature, a condition in which men are not subject to political rule, but in which nonetheless have moral guidance. «The State of Nature has a Law of Nature to govern it, which obliges every one (II<sub>6</sub>)». The Content of the law of nature derives from the claim that «men being all the workmanship of one Omnipotent and infinitely wise Maker; all the servants of one sovereign Master, sent into the world by his order and about his business, they are his property, whose workmanship they are, made to last during his, not one another's Pleasure». Certain limitations on what human beings may do to themselves and others follow from the fact that they are God's property. They may not «destroy one another», for that would be a violation of God's property in men. A man may not even «quit his Station willfully» for the same reason. That is, they may not «take away, or impair the life or what tends to the Preservation of the Life, the Liberty, Health, Limb, or Goods of another (II<sub>6</sub>)». As God's property men are morally obliged to respect certain limits in their dealings with self and others. These limits in effect establish rights to life, liberty, and property for all, rights which include the immunity from others' efforts to harm them. This “workmanship” argument, on which Locke places much weight, should not be taken to be an appeal to Biblical doctrine *per se*, although it obviously echoes theological interpretations of the account of creation in *Genesis*. Locke does not present it as a version of Genesis, however. Although he does not attempt a rational proof for the existence of an omnipotent, omniscient, creating God in the *Treatises*, he does attempt such a proof in his *Essay Concerning Human Understanding* and it is that rational argument that is the backdrop for his assertions in the *Second Treatise*. That is, he is not deviating from his affirmation of reason as our «only star and compass». Locke is appealing here to a theological argument, but we need to recognize the distinction, so commonplace in Locke's time, between Biblical and rational theology. Locke is appealing to an argument meant to be one of rational theology.

We are God's property, but Locke also affirms that «every man has Property in his own Person. This nobody has any Right to but himself (II<sub>27</sub>)». Which is it - are men God's property or their own? What are we to make of Locke's apparent contradiction? We cannot answer those questions unless we understand what Locke is saying when he declares men to have «property in their own persons», or to be self-owners. Locke is hereby stepping into a debate set off by his predecessor Thomas Hobbes, who stipulated that by nature, or in the natural state, men possessed the «right of nature», which is a «right of every man to everything», which, Hobbes explains, includes a right even to one another's bodies. This is no

doubt an extensive doctrine of right, for it implies there is no wrong in nature, i.e., no action or claim that can be raised that goes beyond one's rights. Hobbes intended that conclusion for he understood right to be a liberty pure and simple, that is, a moral warrant or permission to do (or not) as the right possessing agent chooses. With natural right so understood it was but a short step for Hobbes from the state of nature to a state of war, for all have a right to do to others whatever they please. Of course, Thomas' right to John's body or life imposes no obligation on John to recognize or give way to Thomas's effort to exercise his right. John has just the same right relative to Thomas and indeed has an incentive to preemptively exercise his right against Thomas. Everyone has an incentive and a right to preempt the hostile actions of others: the inevitable result is war.

Many readers of Hobbes were put off by his doctrine of natural right; some accused him of misusing the very concept of right. A right, it was rejoined, is not merely a liberty, but it is a morally valid claim such that it comes with a correlative duty in another to respect or recognize that right in some way. Thus if Thomas has a right of free speech, others have a duty or obligation not to interfere with Thomas in his exercise of his right. Or more immediately to the point, if Thomas has a right to life, then others do wrong if they take his life; they violate a duty, moral limitation imposed on them by Thomas's right. Right, as these critics saw it, is concomitant with duty, if only the duty to forbear from interfering with the right holder in his enjoyment of his right.

Locke affirms that men have property in themselves, and goes so far as to call all the natural rights men possess "property"; he affirms, for example, that man «[...] hath by nature a power, [...] to preserve his property, that is, his life, liberty and estate, against the injuries and attempts of other men (II<sub>87</sub>)». What are usually referred to as the objects of rights - life, liberty, and estate - are referred to by Locke as property. Unlike "right," which has the ambiguity of meaning at work in the debate between Hobbes and his critics, property is unequivocal. To affirm property is to affirm that nobody else has a right, without the consent of the owner, to seize, damage, or otherwise infringe on the property of another. Thus Locke can say that the infringements by others on one's property are "injuries," i.e., actions against rights, *jura* in the original Latin. Although some scholars have identified the Hobbesean and Lockean doctrine of rights, they are in fact quite different.

Lockean rights, whether derived from God's ownership or from self-ownership, thus have as correlates duties of forbearance on the part of others. That means, among other things, that men do not have a natural right to one another's bodies. They have instead a moral immunity against others using violence or otherwise impinging on their bodies. It is wrong for others to coerce or interfere with the bodies (the platform of life), the

actions (liberty), or the external goods (property) of others. Because men have the basic natural rights and the correlative immunity from coercion, the initial situation is rightfully conceived of as a state of nature, that is to say, a state where there is no authority or political power as Locke has defined it, for that is at core the right to use coercion even into death. The state of nature then is an inference from the natural endowment with rights, understood as derived either from divine or self-ownership.

Locke contradicts himself, or at least says something very puzzling when he affirms both sorts of ownership, but the strange thing is that the results - natural rights and the state of nature - are more or less the same no matter which starting point one follows out. One of the most characteristic and pervasive features of Locke's political philosophy is just this double track argument proceeding simultaneously from quite different premises to the same conclusions. Because Locke proceeds on both tracks through his *Second Treatise*, the scholars have divided into champions of a theistic versus champions of a non-theistic Locke. Why Locke gave both kinds of arguments is difficult to say simply on the basis of his political writings. One would need to probe his epistemological and theological writings to get insight into this difficult question. But our need is to understand how Locke's political doctrine flows from a convergence of the two lines of argument.

### 3. Property

Since Locke uses the term "property" to describe all the natural rights, his identification of «the Regulation and Preserving of Property» as the purpose for which political power exists means that he understands the purpose of government in the same terms as Thomas Jefferson used in the American Declaration of Independence: «in order to secure these rights, governments are instituted among men». Contrary to what some have said of Locke, he does not see government as exclusively serving the needs of property and property owners, understood in the narrow sense of external goods. Men form civil societies, Locke says, «for the mutual Preservation of their Lives, Liberties, and Estates, which I call by the general, Name, Property (II<sub>123</sub>)». All human beings are possessors of some property in this extended sense.

Yet it is true that Locke is also deeply concerned with property in the narrow sense and that concern is also reflected in his positing the regulation and protection of property as the chief end of civil society. Locke devotes an entire chapter of his *Second Treatise* to the topic of property. This chapter is probably the best known part of the treatise and seems to have been the part Locke took special pride in, for he commended it above all else in the book

The chapter on property has attracted as much attention as it has

because its main line of argument and its conclusions have been held to lay the ground work for the theory of capitalism. The context for Locke's discussion is set by his polemical confrontation with Filmer, on the one side, and more generally with the way property and political economy were generally understood in the dominant Christian-Aristotelian tradition that defined the reigning political culture.

Filmer had maintained that not only did God grant Adam and his heir dominion over the rest of mankind, but that He had granted private ownership to the non-human parts of the world to them as well. He rested his claim in part on the authority of the Bible, but he also argued that no other theory could account for the possibility of legitimate private property. If, Filmer reasoned, the world was originally not Adam's property, but was common to all mankind, then no part of the world could rightly come to belong to any individual. If the world were common property to all, then the consent of all would be required to remove any of it from the common and make it private. But that consent never was and never could be achieved. Thus if the world were originally common, it would always remain so. However, Adam as original proprietor could authorize the transfers of ownership that eventually led to the distribution of property of the modern age.

Locke put forward an array of arguments, some drawn from his theistic, some from his non-theistic track. His first move, however, was to reconceptualize the original commons as Filmer had spoken of it. Things may be in common in two ways, as jointly owned or as unowned. Filmer understood the hypothetical original commons as jointly owned; Locke maintained that it is better understood as unowned, which leaves open the possibility that parts of the commons can come to be privately owned. He pointed out, secondly, that in order to survive men must appropriate goods in the original commons, for a man must eat to live and in eating the food «must be his, and so his, i.e., a part of him, that another can no longer have any right to it, before it can do him any good for the support of his life (II<sub>26</sub>)». This primitive act of appropriation must be understood as right, for if we think the matter through via the workmanship argument we see that in creating man God must have had a «design, that man should live and abide for same time upon the Face of the Earth, and not that so curious and wonderful a piece of workmanship [...] should perish again, presently after a few minutes continuance (I<sub>86</sub>)».

Alternatively, if we think of men as self-owners and possessors of a right to preservation, we can see that «every man has a Property [in] the labour of his Body, and the work of his Hands». These «are properly his»; when he mixed what is his, his labor, with what is unowned, the commons, in the service of his preservation, he acts with right to make what was unowned his. Mixing his labor not only legitimates his primitive appropriation, e.g., digesting, but it generates the kind of exclusive claim

that constitutes property, even if he collects items that he does not immediately eat. «It being by him removed from the common state Nature placed it in, it hath by this *labour* something annexed to it, that excludes the common right of other men (II<sub>27</sub>)». Thus Locke initiates his «labor theory of property», which is meant to refute Filmer's critique of the possibility of private property on any basis other than his notion of an original divine donation of the world to Adam.

Locke's discussion of property was also addressed against traditional notions of property, which, in various ways, set limitations on acquisition, ownership, and use of property. Locke initially accepts such limitations. At various moments in his account of the right to appropriate the fruits of the earth and then to appropriate the earth itself he suggest that there is a limit to what one may rightfully appropriate: that one take no more of the fruits of the earth than «one can make use of to any advantage of life before it spoils (II<sub>31</sub>)», and that of land “every man” can appropriate through his labor «as much as he could make use of (II<sub>36</sub>)». The limitations have a common theme and like much in Locke have a dual root. Under the law of nature, i.e., the rules for treating others that are the obverse of one's natural rights, one may not directly or indirectly harm others, unless there is a good reason, such as one's own preservation coming into conflict with theirs. One thus has a right to appropriate as much of the external world as is useful to one, but not more, for to take more than one can use is to put others at risk of (at least) indirect harm gratuitously. This natural law duty has the advantage of being nearly self-enforcing, for both appropriating the fruits and cultivating the earth requires the expenditures of hard labor. Rational men will not expend labor to acquire goods that will spoil, i.e., be of no use to them. Thus the «spoilage limitation» has a solid grounding in moral principle and in the actual principles of human behavior. It is what Locke elsewhere calls an “endowed” moral principle in being more than a mere moral dictate. It is a natural law in an emphatic sense.

The most characteristic feature of Locke's philosophy of property is his demonstration that the limitations on the acquisition and possession of property no longer have validity or force in civilized society. He demonstrates this both as a matter of individual right and of the «publick good». He had justified the initial appropriation of land on the ground that the earth in its natural condition leaves men in a state of «penury», which requires of men that they labor. Over time they discover that labor invested in cultivating the land is far more productive than labor expended in hunting and gathering activities (II<sub>32</sub>). Indeed, cultivated land is one hundred times more productive than uncultivated land, so the individual who “encloses” or takes land out of the natural commons does no harm to his fellows, for he, in effect, gives back to mankind ninety-nine acres for every acre he cultivates. The one who takes is thus a benefactor.

This is Locke's perhaps most fundamental insight: what nature supplies are «almost worthless» raw materials; human labor supplies most of what is of value through its power to transform the given and make it both more plentiful and more suited to human use. The solution to the human problem, so far as there is a solution, lies in unleashing human creative labor power to produce in order to overcome the various forms of penury men face in the world. The fulfillment of human nature, so far as there is a fulfillment, is the unleashing of human power to transform, to make a world, for man is the making or transforming animal, the animal with the power to overcome by negating the given and through that negation to produce a "second nature" through positive productive action. Such negation/production is in part in the service of need, the needs associated with survival, but more than that is the expression of human freedom and rationality itself.

In addition to a labor theory of property, Locke also has a labor theory of value, not precisely the same as what Marx meant by that phrase but a recognizable forerunner of it. As becomes clear as the argument in chapter on property proceeds, once all the land is owned, labor is no longer a title to property, but it remains the source of value, as explained above. This is not to say, however, that labor in itself is the source of exchange value. Locke sees that prices are the result of market forces - supply and demand - and are not nor should they be, related directly to the labor invested in goods. Market prices, what men in general are willing to pay for goods, signal how the labor of individuals can be coordinated to produce goods that are in the «publick good»; individual labor uncoordinated with the labor and desires of others has no guarantee of serving the public good.

The mechanism by which labor becomes of use, or greater use to others is exchange. Locke outlines a two-stage process whereby the spoilage limitation is overcome both as a moral and as a practical matter. The first stage has to do with barter. If one can exchange the surplus one has of one good, i.e., of what one has (or can have) over and above what one can use without spoiling, for the surplus of another, one can rightly acquire more than the spoilage limitation would otherwise allow. The possibility of bartering, then both encourages and morally permits the expenditure of more labor than life without barter would allow. The decisive innovation, however, is money, for this can be stored indefinitely with no threat of spoilage and thus it leads to an even greater unleashing of human labor, for it, in effect, waives all limits on acquisition by leading to an exponential increase in productivity.

One result of the invention of money, however, is the disappearance of the commons. Men no longer have unowned land on which they can hunt and gather for subsistence. The new system of private property greatly advantages some over others, for some own land, while others are

reduced to their self-owned bodies and labor-power, which they must sell in order to survive. Locke sees this arrangement, so objectionable to thinkers like Rousseau and Marx, as justified by the rights of the owners but also by its service to all, including the non-owners. The creation of a complex society with a complex division of labor, and great productive power is of benefit for all, because, as Locke says, «a king of a large and fruitful territory [in America, where there is no private property] feeds, lodges, and is clad worse than a day labourer in England (II<sub>41</sub>)».

Everybody benefits from the system of private property and the regime of unlimited acquisition that money makes possible, at least in theory. So far as that is not the case, Locke affirms a «right to charity», which «gives every Man a Title to so much out of another's Plenty as will keep him from extreme want, where he has no means to subsist otherwise (I<sub>42</sub>)». It is, of course, odd to speak of charity as a right, as Locke does, but he does so because it is actually a manifestation of the inalienable right all have to preservation. In support of this lingering natural right Locke proposed a poor law, i.e., a limited safety net right to social support that could, he thought, provide the means of subsistence to which the unemployed have a right without sapping incentives to labor by creating an incentive to dependency. To modern eyes Locke's proposal looks harsh, but its details are less important for today than the philosophic basis on which Locke formulated his welfare scheme.

The system of private ownership serves the public good so far as it allows freedom to acquire and use property. All (more or less) are better off under this system than they would be without it, but the benefits are differentially spread through society, which thus takes on a class character. Some own much and can hire others to do the hard labor that produces value; others must sell their labor to survive. Although Locke affirms that all are better off, some are a good deal better off than others, and great inequality comes to characterize society.

The regime of private property comes to have a particularly prominent role to play in political life, as is visible in Locke's definition of political power. For one, Locke affirms almost unlimited power to determine the uses of property - a freedom implicit in the very idea or nature of property, but also on the whole necessary to the adjustment of property use to markets and thus to the public good. But he does not concede complete freedom. The natural limits that one not harm others remains in effect always, and thus property is subject to regulation in order to prevent it from doing harm. Thus Locke affirms that one aim of political power is «for the Regulation [...] of Property». On the other hand, the great inequality concomitant on the property system introduces the strong possibility of class conflict in which some, the owners, are tempted, and may possess the resources to oppress the non-owners (i.e., threaten their property in themselves), and in which the others, the non-owners may try

to dispossess or redistribute the property of the owners. Both the claims of individual natural right and the public good speak against either of these outcomes and thus Locke affirms that the purpose of political power is also the «Preserving of Property», meaning the preserving of the property rights of all in both the narrow and broad senses for property in light of the potential conflict between the two. Without government to «regulate and preserve» both sorts of property, this institution of so great value to mankind is vulnerable to abuses by both of the great classes formed around ownership. Property is thus another great reason for the negation or overcoming of the state of nature and the formation of civil government.

#### **4. Political Power**

Locke begins with the state of nature, i.e., the recognition that because human beings are naturally rights possessors, they are not naturally subject to political authority. But Locke is no anarchist; the point of his political philosophy is to show how, despite the fact that men are born free they came to be rightfully subject to political power and that this subjection is for the good of all, i.e., the public good. Locke's treatment of the making of political society is framed by one major question and one major claim. The question is this: «If Man in the state of Nature be so free; [...] If he be absolute Lord of his own Person and possessions, equal to the greatest, and subject to no Body, why will he part with his freedom? (II<sub>123</sub>)». And the claim is this: «Men being [...] by Nature, all free, equal and independent, no one can be put out of his Estate, and subjected to the Political Power of another without his consent».

When Locke asks why men leave the freedom and equality of the state of nature he is asking why can men not live together without the coercive institution of the state. As with many aspects of his political philosophy he supplies a complex, two-stage answer. The state of nature, it will be recalled, is a state in which men are «perfectly free» of all law and all subjection, except to the law of nature. Locke assumes, first that there is a law of nature, a set of moral rules, which is known to men, i.e., promulgated, and by which they are capable of regulating their behavior. The existence and effectiveness of this law seems to distinguish Locke's version of the state of nature from Hobbes's. In the latter case, the state of nature is straightforwardly equivalent to the state of war, because the moral mandate naturally governing men is the right of nature, which, it may be recalled, mandates a right to everything, including each other's bodies. The two states are one because to act under the mandate of the right of nature produces war, not as a deviation but as a fulfillment of the natural moral guide to action. Locke, on the other hand, affirms natural law as either the implicate of the workmanship argument or as the obverse

of the basic rights concomitant with self-ownership. To war against others, i.e., to use or threaten force against them, is a violation of the law of nature and thus at least in principle Locke can distinguish the state of nature and the state of war, the latter being the «use of force without right», and the former the absence of that condition (II<sub>19,20</sub>).

Even assuming full knowledge of the law of nature, the state of nature tends to degenerate into a state of war. The two states are often or even normally coincident, but they are not conceptually identical. To show how the state of nature typically degenerates into a state of war, i.e., to show why men, even when they know the moral rule that should govern their actions, cannot live well without the coercive authority of government, Locke posits what he calls a «strange doctrine»: all men in the state of nature possess the «executive power of the law of nature», which, is a power to enforce the law on their own and others' behalf (II 9, 13). In order to be a *law* the law of nature must have some effective sanction in this world; therefore someone must have an enforcement power. But since all men are naturally equal in authority, this power, if it exists at all, must be held by all equally. In the state of nature, then, there can exist two different sorts of use of force: force without right; i.e., violations of the law of nature, and force with right, i.e., attempts to punish and deter force without right.

Even when men know the moral rule that is to govern their actions they are tempted to use force without right. The discussion of property supplies one set of reasons for the constant temptation to such violations. Men live in a penurious world relative to their needs and desires, the penuriousness of which can be overcome only with painful labor. Hence there is a constant temptation to violate the labor and ownership claims of others in order to acquire goods without labor. Other sorts of rivalries, jealousies, and enmity may also provoke the use of force without right.

The naturally authorized response to these violations of the law of nature is use of the natural executive power against the criminal. This power is extensive and expansive. It extends to the right to inflict the penalty of death, a penalty that may be imposed even if the transgressor has only robbed, or even is merely perceived to be a threat to another. No one is obliged to wait until the potential transgressor has made his attempt on one's life or goods. The attempt may be anticipated and the executive power deployed preemptively.

Men, being naturally more concerned with their own survival and that of their friends and family, will tend to overreact to transgressors and potential transgressors; since it is difficult to know for certain whether another has «enmity» towards one, and since it is dangerously risky to estimate wrongly, men will tend to act preemptively more than is strictly rational or warranted. However, this tendency will be greatly accentuated by the dialectic of preemption: all will be aware that all others will be

tempted to preempt and all will be even more likely to act preemptively to preempt the preemptive actions of the others. This dialectic of preemption more or less guarantees that the state of nature will degenerate into a state of war. Indeed, perhaps the most striking fact about this state of war is that in it legitimates acts of force against others will not be easily distinguishable from illegitimate ones. Human beings, so self-favoring and able to rationalize their own motives for action, will be able to deceive themselves into thinking that transgressive actions are really preemptive enforcement actions.

The end result is what Locke gently calls the great “inconvenience” of the state of nature, the «inconvenience being that the basic rights, or property in both narrow and extended senses, are “very insecure». So, harsh as it may be to live under coercive government Locke shows that the situation of men without it is worse than with it, especially if it is properly constructed. Locke’s answer to his own question of why men leave the state of nature is, then, that the absence of public coercive power leads to an intolerable situation of rights insecurity.

If that is not bad enough, Locke also suggests that he has understated the problem in his analysis of the dynamic leading from the state of nature to the state. He had initially assumed that men know the law of nature, but in a later recapitulation he denies that as well: «For though the Law of Nature be plain and intelligible to all rational creatures; yet Men being biased by their Interest, as well as ignorant for want of study of it, are not apt to allow it as a law binding to them in the application of it to their particular Cases (II<sub>124</sub>)». Locke’s thought moves in two somewhat different directions. The law of nature is «plain and intelligible to all rational creatures». Yet it also must be studied to be known, and most men do not study it, and therefore most are ignorant of it. If ignorant of it, they cannot take it as the rule of their action. In the *Treatise* Locke expends little effort explaining how the law of nature is known and why it requires study. He addressed that question at length in his early (1662) manuscript on the law of nature. Although he affirms the existence of this law, he concludes from the empirical evidence that men are for the most part ignorant of it and that, being secret and hidden it requires great effort to discover, effort than men may have a natural law duty to undertake, but which, being ignorant of the natural law, they do not undertake. In this early manuscript as well in the *Two Treatises* Locke raises the serious question of whether the law of nature is sufficiently promulgated to be binding and effective. If the law of nature, i.e., the natural moral limitations on behavior, is not naturally known, then all the more reason to suspect that the state of nature will not be the potentially harmonious and peaceful state that human life effectively governed by natural moral standards might be.

In sum, men cannot live without government because the alternative - non-coerced or individually enforced guidance by natural morality - is

ineffective and leads to a situation in which rights are extremely insecure. «Thus Mankind, notwithstanding all the Privileges of the state of Nature, being but an ill condition, is quickly driven into Society», for the sake of securing their rights, or in Lockean language, preserving their property (II<sub>127</sub>).

## 5. Consent

Men thus need political power, or authority, but given its natural absence, how can they rightfully create it? Do not the same natural rights that lead to positing a state of nature, the same rights that require protection from government, also stand in the way of creating legitimate political power?

The basic ingredient in the creation of government is the very same executive power of the law of nature, which contributed to the state of nature's being so intolerable a condition. The executive power provides a legitimate basis for political power, for it is a natural and rightful power to coerce others, including a right to kill them, in order to protect property in the extended sense. In terms of his narrative of the state of nature, when men discover that they can not safely abide the state of nature, they come together to pool their individual natural executive powers. They agree first to form a society and resign up their executive powers to the community. The individuals surrender their right to wield the executive power on their own and according to their own judgment. The state that they create thus acquires a «monopoly of legitimate coercion». The coercive power that exists in the community is now exercised «by Men having Authority for the community (II<sub>87,130</sub>)».

The process whereby the executive power is transferred to the community is called by Locke compact; and it requires the unanimous and individual consent of every would-be member. The compact actually has two elements: first, the unanimous agreement to form a political society, and then a unanimous agreement that the majority of the community will have the power or right to establish a particular sort of government for the community.

As we have seen, Locke emphasizes that the entire process occurs according to the «consent of the governed», as Thomas Jefferson put it in the American Declaration of Independence. Since no person is born subject to another the only way in which subjection can be instituted is voluntarily and consent is the means by which this is done. Unlike many of the Whig thinkers who preceded him, Locke did not claim that the consent of some group of «original compactors» was sufficient to bind their descendents. The consent of each member, since each is free and equal, is required to continually reconstitute the political society. Locke develops two themes in his doctrine of consent. One concerns the content of consent; the other means by which consent is given.

Since political power is constructed from the natural executive power of the members, this power must be given up: «the Power of punishing he wholly gives up (II<sub>130</sub>)». Consent also disposes of the «Power [...] of doing whatsoever he thought fit for the Preservation of himself, and the rest of Mankind». This power, each compactor «gives up to be regulated by Laws made by the Society, so far forth as the preservation of himself, and the rest of that Society shall require (II<sub>129</sub>).» In other words in creating political authority, men give up their original equality; in subjecting themselves to be “regulated” by the laws of the society, they give up their original liberty.

In the abstract, Locke’s doctrine of the means of consent is largely intelligible but many ambiguities and uncertainties surround the more specific working out of the doctrine. Most members of political society, with the exceptions perhaps, of naturalized citizens, have no recollection of having given anything like explicit consent to being a member. Most were indeed born into society and subject to the reigning authorities. Locke raises the question: «Every Man, being [...] naturally free, and nothing being able to put him into subjection to any Earthly Power, but only his own Consent, it is to be considered, what shall be understood to be a sufficient Declaration of a Mans Consent, to make him subject to the Laws of any Government (II<sub>119</sub>)». Locke’s discussion of this question permits of no simple answer. The difficulty stems from the multitude of forms of consent Locke allows, but the bearing of which he does not carefully sort out. Thus he explicitly recognizes express consent, presumably taking an oath or some related act; tacit consent, consent expressed in some lesser way, or implied in some other overt act undertaken; constructive consent, an imputation of consent (and the contents of consent) to men as what “rational men” in that circumstance would or should consent to; and finally, consent as consensus. All four of these meanings one at work in different places in Locke’s theory, but careful readers have had a difficult time sorting out which is in play where and, in particular, how to understand his most thematic claims: nothing can put a man «into subjection to any Earthly Power, but only his own Consent (II<sub>119</sub>)».

## **6. Government**

However we are to understand consent Locke is very explicit that there are limits to what men may consent to, i.e., to the kind of government they may subject themselves to. «But though Men when they enter into Society, give up the Equality, Liberty, and Executive Power they had in the State of Nature», the legislative power they create cannot «be absolutely Arbitrary over the Lives and Fortunes of the People [...] (II<sub>135</sub>)». In accord with his dual grounding of rights, Locke has a two-fold argument to prove absolutism «impossible». On the one hand, «no Body can transfer

to another more power than he has in himself; and no Body has an absolute, arbitrary power over himself», a reference to the “workmanship argument” and the limitations imposed on one’s power over oneself (II<sub>135</sub>). On the other hand, in a very striking example of Locke’s deployment of the idea of constructive consent, he affirms that men, cannot be presumed to have consented to absolute, arbitrary power in their governors, «for no rational Creature can be supposed to change his condition with an intention to be worse», which, according to him, an absolutist regime would be (II<sub>131</sub>). Here is a very fine example of how Locke’s theistic and non-theistic strands of argument land him in the exact same place.

Locke lays down quite flexible guidelines for the form of government the majority of the society may settle on. The community may chose among the various forms «as they think well», always accepting absolutism. Not only will rational individuals create government in a form of their choosing, but they will create a certain sort of government, what we now think of as a liberal order. In the first place, rational actors will understand that government is an artifact of their rational willing: as an artifact they will realize it has been made or should be understood as existing --for certain specific purposes, namely, to secure their preexisting rights. Rational individuals will understand the shortcomings of the state of nature that produce the radical insecurity of life without government. Although there is a law to govern the state of nature this does not of its own accord suffice. Though the law exists «yet men, being biased by their interest, as well as ignorant for want of study of it, are not apt to allow it as a law binding to them (II<sub>124</sub>)». That is, the law is not known sufficiently. Moreover, the system of self-enforcement means there is no disinterested judge to apply the law to resolve controversies (II<sub>125</sub>). Finally, with no organized enforcement of the law, the naturally strong are able to ride over the weak despite the law of nature (II<sub>126</sub>). Rational individuals recognize, then, the chief lacks of the state of nature as the absence of a legislative authority to particularize and promulgate the law, an independent neutral judge to resolve disputes under the laws, and a potent neutral executive to enforce the law. From his doctrine of the state of nature Locke thus generates the modern theory of separation of functions.

Rational individuals will thus form a political system containing these three functions. Locke also concludes that rational individuals will establish a government that separates the powers in different and independent institutions (II<sub>143</sub>). The separation of powers is one device by which rational actors attempt to assure that the government they establish will serve the ends for which it exists. All «well-framed governments» separate the legislative and executive powers (II<sub>159</sub>). (Locke considers the judiciary part of the executive but he does insist on a judiciary importantly independent of the executive head).

Locke concludes that rationally constructed government implies not

only separated powers, but limited power as well. That means in the first instance legislative supremacy over the executive (II<sub>149</sub>). It also means limitations on the powers of the legislature. Although the core of the limitations is substantive - protection of the rights of all and public good so far as that is possible - the limitations Locke specifies are more formal than substantive. The legislature must rule by standing public law not by arbitrary decrees. The laws must apply equally to all (II<sub>142</sub>), including especially the legislators themselves. Locke sees these two requirements together as the best guarantee of good governance, or at least of governance aiming at the public good (II<sub>138</sub>).

Although Locke is strongly in favor of legislative supremacy - the legislative function is conceptually primary, and the legislature, possessing the will but not the force of the community, is more safely entrusted in practice with supremacy. Nonetheless, Locke also demonstrates that there must be a large scope for independent action by the executive, which he calls by the traditional name of prerogative. His it is not, however, the traditional doctrine of prerogative (II<sub>163</sub>). He defines the prerogative as a «power to act according to discretion, for the publick good, without the prescription of the law, and sometimes even against it (II<sub>160</sub>)». Locke and his rational individuals/social contractors recognize that it is not always «necessary or useful to set precise bounds to [...] power in all things (II<sub>164</sub>)». Political life is too uncertain, too subject to unpredictable and threatening contingencies for it to be entirely governed by rules and procedures established in advance (II<sub>160</sub>). Locke, a great champion of what we have come to think of as constitutionalism, recognizes the limitations to the aspiration to constitutionalism. At the same time he reminds of the dangers of this kind of executive power freed from law and legislative control. Although he generally seeks to control political power by law, he recognizes that at the end of the day this cannot be entirely done. The executive can appeal to the public good as justification for exercises of prerogative, Locke is confident that if «this power» is «employed for the benefit of the community, and suitably to the trust and ends of the government, [it] never is questioned (II<sub>161</sub>)». When the prerogative is questioned, there is «no judge on earth» to settle a dispute between the executive and the legislature. The people themselves, in what Locke quaintly calls the «appeal to Heaven» must judge though some extra-legal means. Locke's openness to revolution or the routinization of political violence is a corollary of his attempt to develop a viable constitutionalism marked by the maximum possible rule of law.

At the end of the *Second Treatise* Locke turns to the “end” in the sense of the death of government. He surveys four circumstance or ways in which civil government may come to an end: conquest, which is the equivalent of «demolishing an House (II<sub>175</sub>)»; usurpation, which occurs when a person or persons other than those designated in the established political order seize power, is also a kind of death for civil government, because a usurper «hath no right to be obeyed», which means that juridically there is no government (II<sub>198</sub>); tyranny, which Locke defines as «the exercise of power beyond right, which nobody can have a right to» has the same fatal effects as usurpation (II<sub>202</sub>). Finally, in a kind of summary chapter Locke speaks of «the dissolution of government», a chapter in which he lays out his well-known doctrine (usually misnamed as) the right of revolution.

Locke’s position on “the end” of civil government follows seamlessly from his clear rejection of the legitimacy of absolute arbitrary power and his affirmation of institutionally and constitutionally necessary means to the effectuation of non-arbitrary government. Government that goes beyond its bounds is no government at all. When governments act beyond their powers, they are using force without right, and thus, literally, provoking a state of war with their citizenry. The citizens may then act as they have a right to in a state of war - they may resist illegitimate authority and act to establish new, legitimate government. When they do so, Locke insists, they are not rebelling - it is the authorities who go beyond their legitimate powers who reintroduce the state of war and who therefore rebel - in Latin, re-bellare - bring back war (II<sub>226</sub>). Locke then denies that he is a teacher of rebellion and disorder, as he strives to make resistance to rulers more respectable than it had ever been.