

# The Locke Newsletter

*edited by* Roland Hall

An Annual Journal of Locke Research

No.28

1997

## THE LOCKE NEWSLETTER

EDITOR

Roland Hall  
Visiting Senior Research Fellow in the History of Philosophy  
Lancaster University

ADDRESS FOR SUBSCRIPTIONS AND CORRESPONDENCE

Summerfields, The Glade, Escrick, York YO4 6JH, England  
(E-mail: rh1@york.ac.uk)

-----  
Articles in this journal have all been refereed  
-----

Published by the Department of Philosophy, Lancaster University,  
and printed by Lancaster University Print Unit  
ISSN 0307-2606

© Roland Hall, 1997

## CONTRACT, TRUST, AND RESISTANCE IN THE SECOND TREATISE

RORY J. CONCES

### I: Introduction

If there is a single problem that has dominated political thought for the past four hundred years, it is the tension within the body politic between the will of the collective, as it is expressed by those vested with authority and power, and the will of the individual. Among political theorists who have examined this problem, Thomas Hobbes and John Locke viewed this potentially ruinous tension in radically different ways. In his *Leviathan*, Hobbes presents the problem of how we are to conduct ourselves as a society, an apparent dilemma whose horns are anarchy and servile absolutism. Either we submit to the constraints imposed upon us by government, or we accept the dire consequences of his infamous state of nature. Since he was well acquainted with the strife of a war-torn Europe (including the Thirty Years' War [1618–48] in Central Europe and the first 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 misfortune, resulting in a condition in which 'the life of man, [is] solitary, poore, 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. Yet he did not advocate authoritarian rule. Rather, he is known as a champion of liberty, natural rights, and consent as the only basis

<sup>1</sup> Thomas Hobbes, *Leviathan*, ed. C. Macpherson (Harmondsworth 1975), ch. 13, para. 8.

of political society and government. Although an ardent believer in law and order, Locke was aware that an inordinate fear of anarchy could eventually lead to an overly intrusive or oppressive state, the hallmark of which would be the diminution of individuals' liberties. Not wishing to compromise the moral inviolability of persons, Locke sought to protect liberties by arguing for what has been called the 'liberal state'. To what extent Locke's state can be characterized as the minimal or 'night-watchman' state of classical liberal political theory is open to debate,<sup>2</sup> but his liberal posture is shown by his 'emphasis on constitutionalism, that is, the insistence on political guarantees for the maintenance of individual liberties'.<sup>3</sup> Locke recognized, however, that no judicial mechanism could guarantee the liberties of individuals, that it would always be possible for the state apparatus to circumvent or undermine any protective measure, and so he advocated a 'revolutionary liberalism' in which resistance to governmental authority could be undertaken

<sup>2</sup> For a discussion of the night-watchman state, see R. Nozick, *Anarchy, state, and utopia* (New York 1974), pp. 26–7 and J. Paul (ed.), *Reading Nozick: Essays on 'Anarchy, state, and utopia'* (Totowa, NJ 1981). Nozick, a libertarian, revives the Lockian claim that 'a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; that any more extensive state will violate persons' rights not to be forced to do certain things, and is unjustified; and that the minimal state is inspiring as well as right' (p. ix). It is worth noting, as Martin Seliger has done in *The liberal politics of John Locke* (London 1968), pp. 18–20, that the theory and practice of liberalism has actually called for strong government rather than the 'minimalist' state that is often attributed to it. This becomes especially clear when we consider how the hotly debated 'liberal' plan for universal health insurance coverage in the USA is to be implemented.

<sup>3</sup> Seliger, op. cit., p. 21. It is important to note that some contemporary communitarians 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 partly defined by the community they inhabit. See, for example, S. Avineri & A. De-Shalit (eds), *Communitarianism and individualism* (Oxford 1992); S. Mulhall & A. Swift, *Liberals and communitarians* (Oxford 1992); and M. J. Sandel, *Liberalism and the limits of justice* (Cambridge 1982).

without fear of tearing apart the fabric of society and without fear of moral impropriety, particularly since resistance becomes legitimized once all avenues of legal recourse have been exhausted. There is little doubt that Locke took the evils of rebellion to be an acceptable risk in the event that a ruler betrayed the trust reposed in him by his subjects.<sup>4</sup>

But why did Locke allow for the possibility of resistance knowing that it could lead to a state of anarchy? Why was such a risky venture found acceptable by Locke? Why did he think that anarchy and authoritarian rule did not exhaust the possibilities, thereby allowing him to escape through the horns of the Hobbesian dilemma? The reasons lie principally in his umbrella concept of consent, which underwrites his doctrine of resistance, as well as his confidence that the integrity of the community can be maintained even in the absence of authoritarian rule. More specifically, his notion of consent, which seems to cover 'all instances of deliberate, voluntary alienation of rights (and undertakings of obligations)',<sup>5</sup> reflects an understanding of institutions which distinguishes the dissolution of government from the dissolution of political society. Although a quick reading of the Second Treatise might leave the impression that political society and government form an amalgam, created by a single consensual agreement made by those individuals who have decided to leave the state of nature, such a reading would mean that political society and government are coterminous.<sup>6</sup>

<sup>4</sup> It has been argued that Locke's portrayal of the state as a potential aggressor is premised on his notion of liberty or negative freedom. For example, S. L. Newman, 'Locke's *Two treatises* and contemporary thought', in *John Locke's Two treatises of government: New interpretations*, ed. E. J. Harpham (Lawrence 1992), p. 180.

<sup>5</sup> A. J. Simmons, *On the edge of anarchy: Locke, consent, and the limits of society* (Princeton 1993), p. 69.

<sup>6</sup> John Locke, *Two treatises of government*, ed. P. Laslett (Cambridge 1960). References to the Second Treatise are given by 'II' followed by a section number (e.g., II. 4).

Not only would the integrity of the community be in jeopardy, if the initial consent were abrogated for want of a new leader, but the liberties and interests of the individual members of the community would be at risk as well. But by asserting that these institutions are not one and the same, and that there is a plurality of agreements that create political society and government, Locke seems to have acknowledged an institutional logic that allowed for the dissolution of government without compromising the integrity of political society. In other words, Locke's view satisfies what may be called the integrity condition. Such a line of thought seems, however, from the perspective of the individual members of the community, to allow for nothing short of rebellion to safeguard their liberties and interests from a tyrant. Locke did not, however, merely adopt a Dual-Consent (D-C) Theory of political society and government, for the institutional logic amounted to more than simply calling for separate consensual agreements of the same kind. Some sort of institutional arrangement or practice was needed to acknowledge the moral inviolability of the individuals of the community, and to serve as notice to the sovereign that his actions would be met with legitimate resistance if he did not meet certain standards of performance. 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 teems with the words 'contract' and 'trust'—in which a contract brings about the onset of political society and a trust establishes 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 allocates rights and obligations in a way that *favours* the individual members of the community. Characteristic of trust, then, is this moral bias towards those who are ruled. This paper examines the grounds for interpreting this theory as one that, in meeting

the conditions of integrity and moral inviolability, allows Locke to escape through the horns of the Hobbesian dilemma.

The organization of the paper is as follows: Part II gives an account of Locke's state of nature and the origin of political society; Part III of various questionable views regarding Locke's treatment of the consensual foundations of political society and government, as well as the C-T Theory. Part IV then offers the C-T Theory, with regard to some of the literature on the Second Treatise, as a view that accords well with the conditions of integrity and moral inviolability as understood within Locke's doctrine of resistance.

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

To appreciate Locke's attempt to justify resistance within his liberal framework, we need to delineate what is political and what is not. Understanding the state of nature and the origin and justification of political society is thus essential for understanding Locke's idea of the boundaries of political authority. The state of nature is, as A. J. Simmons has shown, a relational concept in so far as a person, *A*, is in a state of nature with respect to another person, *B*, if and only if *A* has not voluntarily agreed to become a member of (or is no longer a member of) a legitimate political society of which *B* is a member.<sup>7</sup> It not only refers to a state of affairs in which pre-political persons existed, but also refers to a post-political state, like that which results from civil war or tyranny.<sup>8</sup> Much of Locke's early discussion of the state of nature seems to refer to the pre-political person, though it is not difficult to imagine it referring to the post-

<sup>7</sup> Simmons, *op. cit.*, p. 21.

<sup>8</sup> A. J. Simmons, *The Lockean theory of rights* (Princeton 1992), p. 129.

political person as well. In chapters 2–5 of the Second Treatise, Locke portrays the state of nature as the 'State all Men are naturally in, and that is, a *State of perfect Freedom* to order their Actions, and dispose of their Possessions, and Persons as they think fit, within the bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man' (II. 4). It is not a state of licence, but rather of natural liberty in which the law of nature is the sole guide that prohibits persons from interfering with the property (taken in a very broad sense to include life, liberty, and property as we understand it today) of another except in cases in which the law of nature is transgressed (II. 6 and 87). And since Locke took this law to be a law of reason or 'principle of conduct', he also took it to be part of man's nature.<sup>9</sup>

Rationality, however, is neither man's only characteristic nor the most influential one when it comes to life in the state of nature. Affective responses, like self-love and revenge, show that men often refuse the guiding light of the law of nature by being partial in their judgements and violent in their punishment. Indeed, our being rational creatures does not mean that we do not get in each other's way. This led Locke to make the strong claim that the greater part of mankind does not strictly observe equality and justice (II. 123).

Although Locke begins with a description of a tranquil, idyllic 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 one full of anxiety, deceit, and violence? Rather, what compels people to join together to form a community is the fact that not everyone respects the rights of other people, which eventually transforms this idyllic 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, *Modern political theory* (New York 1973), p. 8.

in which some transgress the law of nature and place themselves in a state of war with others. As Locke put it, '[H]e who attempts to get another Man into his Absolute Power, does thereby *put himself into a State of War* with him; It being to be understood as a Declaration of a Design upon his Life' (II. 17). It is they, the transgressors of this law, who follow the rule of force and violence rather than the rule of reason (II. 16).<sup>10</sup> In order to preserve property, in the broad sense of the term, and to punish those who act contrary to this end, men recognize that they must consolidate their power and move from a condition in which they have natural liberty and follow the law of nature, to one in which they have civil liberty and are governed by standing laws (II. 22). In other words, they recognize the need to form political society, and hence they give their consent to its

<sup>10</sup> There are other interpretations of Locke's state of nature. In *Locke on war and peace* (Oxford 1960), pp. 45–105, R. H. Cox argues that the Second Treatise offers two variations of the state of nature: an early one (SON-E) and a late one (SON-L). SON-E refers to the pristine condition of man prior to political society and political power, whereas SON-L refers to the state of affairs in which political power has been parcelled out to individuals in order to erect a new polity. In other words, SON-E is a state of peace, whereas SON-L is a state of disorder.

According to another view, however, Locke's state of nature is not a 'governmentless phase' in the development of political society, but rather an interpretative tool to illustrate the fundamental rights of men as well as a description of a situation that obtains between states and between individuals. See Seliger, op. cit., pp. 82–4. Similarly, John Dunn, in *The political thought of John Locke: An historical account of the argument of the 'Two treatises of government'* (Cambridge 1969), contends that 'the state of nature, that state that "all Men are naturally in", is not an asocial condition but an ahistorical condition. It is that state in which men are set by God. The state of nature is a topic for theological reflection, not for anthropological research' (p. 97).

And still others take the view that it is plausible to consider the historicity of Locke's state of nature. Simmons, for example, says so: 'There is, then, no inconsistency or confusion involved in Locke's using the state of nature sometimes as an analytical device (to explain and discuss the nature of the political relationship), sometimes to describe a historical condition of people, sometimes to describe a moral or social condition of possible or contemporary persons. All are perfectly proper applications of the concept' (*On the edge of anarchy*, p. 23).

formation. This line of thinking is summarized as follows by Locke:

[T]here, and there only is *Political Society*, where every one of 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 judgement of every particular Member being excluded, the Community comes to be Umpire, by settled standing Rules, indifferent, and the same to all Parties; and by Men having Authority from the Community, for the execution of those 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, with such Penalties as the Law has established: Whereby it is easie to discern who are, and who are not, in *Political Society* together. Those who are united into one Body, and have a common establish'd 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, I mean on Earth, are still in the state of Nature, each being, where there is no other, Judge for himself, and Executioner; which is, as I have before shew'd it, the perfect *state of Nature*. (II. 87)

The community that is formed seems to be a response to the darker side of man's nature. Precisely for this reason political society is the most efficient and enduring means by which the more productive side of human nature can be nurtured. A relatively secure social environment is the result of the initial consent.

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

Is the initial consent restricted to the formation of political society or does it establish government as well? This is an extremely important question, for the answer will tell us if Locke's doctrine of resistance is compatible with the integrity of

the community. At first glance, this compatibility seems to be in jeopardy. The difficulty stems in part from the fact that Locke sometimes writes as though he collapses the distinction between society and government. If so, Locke's doctrine of resistance could be viewed, and rightly so, as being antagonistic to the integrity of the community. This is not surprising, given Locke's shifting use of language. As Grant indicates, one of the ways in which Locke uses the word 'government'—designated here by 'government<sub>1</sub>'—suggests that political society coexists with government<sub>1</sub>: Whenever people come together to preserve their property by creating a community, they must have also created government<sub>1</sub>.<sup>11</sup> The former cannot exist without the latter, and vice versa. Take, for instance, II. 87 cited above. Locke not only suggests that political society is an institution in which the natural powers of each individual are consolidated by a single consent, but he also suggests that this union brings about some sort of governing apparatus associated with the rule of law (supporting what I call the Single-Consent [S-C] Theory of political society and government). More specifically, the consent of each member empowers the majority to act as the governing body of the community. Majority rule is a feature of the onset of political society, inherent in its genetic structure. Again, in a familiar but telling passage, Locke says:

Whosoever therefore out of a state of Nature unite into a *Community*, must be understood to give up all the power, necessary to the ends for which they unite into Society, to the *majority* of the Community, unless they expressly agreed in any number greater than the majority. And this is done by barely agreeing to *unite into one Political Society*, which is *all the Compact* that is, or needs be, between the Individuals, that enter into, or make up a *Common-wealth*. And thus that, which begins and actually *constitutes any Political Society*, is nothing but the consent of any number of Freemen capable of a majority to unite and incorporate into such a

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

Society. And this is that, and that only, which did, or could give *beginning* to any *lawful Government* in the World. (II. 99)

The two passages quoted at length (II. 87 and 99) 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 'rule of government<sub>1</sub>' as they are employed in the act of forming society (II. 132). With a single consensual agreement bringing some individuals out of the state of nature and under legitimate authority, Locke seems to highlight a sort of democracy that is basic to political society, thereby linking political society with government<sub>1</sub> 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<sub>1</sub>, thereby nullifying the initial consent, not only would the legitimate government<sub>1</sub> 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).<sup>13</sup>

The common origin of political society and government seems to have dealt a fatal blow to the claim that Locke's doctrine of resistance is compatible with the integrity condition. However, I believe they can be understood to be compatible, if only we focus on the other sense of the word 'government' that Grant attributes to Locke, here designated by 'government<sub>2</sub>'. If government<sub>2</sub> means a *designated form* that is set up by the majority to be the trustee for the legislative and executive powers of the collective in an attempt to preserve property, then

<sup>12</sup> Ibid., p. 104. In addition, 'Whenever the *Society is dissolved*, 'tis certain the Government of that Society cannot remain' (II. 211).

<sup>13</sup> In *On the edge of anarchy*, Simmons notes that 'the state of war is certainly not *coextensive* with the state of nature, however, even if it is *consistent* with it' (p. 43).

it is correct for Grant to argue that political society has a temporal and theoretical priority over government<sub>2</sub>. It is temporally prior in so far as the '*Constitution of the Legislative* is the first and fundamental Act of Society' (II. 212), and it is theoretically prior in so far as government can be construed as 'an instrument of the society for the preservation of the society'.<sup>14</sup>

Consequently, once we acknowledge the priority of political society, we must also acknowledge that any attempt to assert an existential linkage between the two (that is, that the existence of political society presumes the existence of government and vice versa) is bound to fail. Arguing for the priority of political society suggests, then, that political society can exist, at least for the time being, without government<sub>2</sub>. The implication of this is significant, for it means that Locke's doctrine of resistance is not necessarily antagonistic to society. Although withdrawal of the consent that creates government<sub>2</sub>, in the event that government<sub>2</sub> is remiss in its obligation to protect the property rights of the people, may result in some disorder, it does not necessarily lead to the dissolution of society. Indeed, the majority of society, who initially formed government<sub>2</sub>, may establish a new government<sub>2a</sub>. To put it in Locke's own words:

[T]he Community may make compounded and mixed Forms of Government, as they think good. And if the Legislative Power be at first given by the Majority to one or more Persons only for their Lives, or any limited time, and then the Supreme Power to revert to them again; when it is so reverted, the Community may dispose of it again anew into what hands they please, and so constitute a new Form of Government. (II. 132)

The integrity of the community can thus be maintained by focusing on the second sense of government, a sense which allows Locke to distinguish the origin and dissolution of political

<sup>14</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 establishes political society and another sets up government is to disregard Locke's use of certain words indicative of liberalism and its allocation 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, 'contract' is associ-

<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 societies. "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 history of the science of politics* (London 1961), p. 76).

Unlike Pollock, however, Grant underscores a practical problem that arises from this terminological distinction: whether political society can exist without a designated form of government long enough for the majority to create a new one (op. cit., p. 105). Can the community function as a unit in the way that government functions? Since Locke argues that people in society have the liberty to erect a new legislature when government has been dissolved, and that it is only through this liberty that society can preserve itself, he seems to suggest that political society is not viable in its basic democratic form. 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, loc. cit.). The first stage is an agreement between certain individuals to live in a commonwealth (*pactum unionis*). It is only after this stage has been completed that the second stage occurs, that is, when the institutions of the commonwealth obtain their form by the placement of power in the hands of those designated by the people of the society (*pactum subjectionis*).

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 enter society on the understanding that some form of political organization will be necessary for its proper functioning—"the beginning of Politick Society depends upon the consent of the Individuals, to joyn into and make one Society; who, when they are thus incorporated, might set up what form of Government they thought fit" (II. 106)' (op. cit., p. 226).

ated with the founding of political society and 'trust' is associated with the setting-up of government. This amounts to Locke endorsing a Contract-Trust (C-T) Theory of political society and government, which is compatible with the integrity condition as well as the moral inviolability condition. It is to this view that I now turn.

#### IV: The Contract-Trust Theory

To find references to the C-T Theory in the literature on the Second Treatise, we need look no further than J.W. Gough's *The social contract* and his *John Locke's political philosophy*, and A. J. Simmons's more recent work, *On the edge of anarchy: Locke, consent, and the limits of society*.

Gough and Simmons develop this interpretation when they point to civil society as being established by a group of men agreeing to join and combine into a community. Having recognized the dangers of life in the state of nature, men agree to surrender in various degrees two kinds of rights on entering political society: (1) the right 'to do whatsoever he thinks fit for the preservation of himself and others within the permission of the *Law of Nature*' is given up to the extent that 'the preservation of himself, and the rest of that Society shall require' (II. 128-9) and (2) the '*power to punish the Crimes* committed against that Law [i.e., the Law of Nature] ... he wholly gives up' (II. 128 and 130). This is, more or less, what is called political power, and it is this power that is handed over by the contracting individuals to the body politic. That is to say, once this contract is made and society is formed, the majority have the right to act on behalf of the rest of the members. This represents Simmons's first logical step to a complete society, expressed by Locke when he writes: '*Political Power* is that Power which every Man, having in the state of Nature, has given up into the hands



of the Society' (II. 171).<sup>17</sup> It is at this juncture that talk of government<sub>2</sub> arises, for the first act of the community is the establishment of government<sub>2</sub> in the guise of the legislative power (II. 212).<sup>18</sup> This is Simmons's second logical step in the formation of a complete society.<sup>19</sup> But whether we are talking about the relations of a king to his people or of a parliament to those it represents, there is no contract between government and the people. Rather, as Gough and Simmons note, government is 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 child, there are three different parties—trustor, trustee, and beneficiary. But what we have in the Second Treatise is something quite different, for Locke's political trust is a relationship between only two parties—a trustee (government<sub>2</sub>) and the trustor (the people), who is also the beneficiary.<sup>21</sup> It is the latter who determines the terms of the trust, and

<sup>17</sup> Simmons, *On the edge of anarchy*, p. 68. Simmons notes that the two steps 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 1936), pp. 129–33.

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

<sup>20</sup> In *John Locke's political philosophy*, 2nd edn. (Oxford 1973), p. 161, Gough argues that there are two forms of political trust: one in which the executive acts as the trustee for the people and another in which the legislative shoulders the burden of being the trustee for the electorate. Instances of the executive trust are found in II. 153 and II. 139, whereas instances of the legislative trust are found in II. 135; II. 136; and II. 139. This is reiterated by Geraint Parry in *John Locke* (London 1978), when he says that 'Government, to repeat, is not instituted by the contract. It is the recipient of a power entrusted to it for the same purpose as it was originally wielded by the society itself—the preservation of property. Governmental authority is limited by this trust and is forfeited if the trust is broken' (p. 101).

<sup>21</sup> Parry, op. cit., p. 124. For a detailed description of the differences between contract and trust see Simmons, *On the edge of anarchy*, pp. 71–2.

therefore, the authority or discretionary power of the trustee. Employing the notion of trust rather than contract, as the kind of voluntary alienation or consent that establishes government<sub>2</sub>, has extremely important consequences for how Locke's doctrine of resistance relates to the moral inviolability condition.

Of course, there are nay-sayers, like John Dunn and Martin Seliger, who quickly dismiss the importance of Locke's conception of trust as a legal or juridical trust, and instead present it as something akin to 'trustworthiness'.<sup>22</sup> However, arguments have been advanced by such commentators as Ernest Barker to show that the trust as a legal notion is an important part of Locke's political theory. 'Locke uses the conception of Trust', Barker writes,

and not that of Contract, to explain 'subjection'. The trust is a conception peculiar, on the whole, to English law. In private law [*Privatrecht*] the trust means that *A*, as trustor, vests rights in *B*, as trustee, for the benefit of *C*, as *cestui que trust* or beneficiary of the trust. In public law [*Staatsrecht*], to which Locke may be said to transfer the doctrine of trust, the People or 'Public' (which is both the trustor and the *cestui que trust*) acts in its capacity of trustor by way of conferring a 'fiduciary power' on the legislature (which thus becomes a trustee), for the benefit of itself, and all its members, in its other capacity of *cestui que trust* or beneficiary of the trust.<sup>23</sup>

The implication of this is not lost on Gough, for he turns to Barker's clarifying statement on what Locke's contract-trust distinction means for politics:

<sup>22</sup> John Dunn, 'The Concept of "trust" in the politics of John Locke', in *Philosophy in history: Essays on the historiography of philosophy*, ed. R. Rorty et al. (Cambridge 1984), pp. 296–7 and Seliger, op. cit., p. 357.

<sup>23</sup> E. Barker, Notes to O. Gierke, *Natural law and the theory of society, 1500 to 1800*, vol. 1 (Cambridge 1934), p. 299. Gough acknowledges Barker's clarifying note to Gierke's work, in *John Locke's political philosophy*, p. 155.

A trust is not a contract; and the trustee does not enter into relations of contract with the trustor—or with the beneficiary. Roughly, he may be said to consent to incur a unilateral obligation—an obligation to the beneficiary which, if it implies the trustee's possession and vindication of rights against other parties on behalf of that beneficiary, implies no rights for the trustee himself on his own behalf. If therefore political power be regarded as a trust, it follows that the Sovereign has not entered into a contract with the People, or the People with him—whether we regard the People as trustor or as beneficiary of the trust. The trust, in its application to politics, leaves no room for a 'contract of subjection'.<sup>24</sup>

This interpretation of Locke as a proponent of the C-T Theory, it seems to me, is not only textually sound, but also reflects his interest in safeguarding the liberties and rights of the 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 the moral inviolability of the individuals of the community. Moreover, it acknowledges the basis for resistance to governmental authority, by establishing how government<sub>2</sub> becomes unilaterally obligated to the *people it serves*. In the event that government<sub>2</sub> is remiss in its obligation to preserve property, its constituents have the right to act 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 Second Treatise are fond of pointing out the consensual foundations of political society and government, they fail to note the differences between the two institutions. 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.

one contract (that is, the S-C Theory) or they are partially distinguished by means of the D-C Theory. Arguably, evidence for both interpretations can be found in various passages in the Second Treatise. In adopting these interpretations, however, they not only neglect key passages of the text, but they fail to acknowledge the insight that the C-T Theory has to offer in interpreting the Second Treatise as a document of revolutionary liberalism that acknowledges the integrity of the community and the moral inviolability of the individual. By using the notions of contract and trust, Locke was able to escape through the horns of Hobbes's dilemma, leading him to a doctrine of resistance which allowed for an alternative other than anarchy or authoritarianism.