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John Locke's State of Nature and the Origins of Rights of Man

Abstract
Locke's *Second Treatise of Government* lays the foundation for a fully liberal order that includes representative and limited government, and that guarantees basic civil liberties. Though future thinkers filled in some gaps left in his doctrine, such as division of powers between executive and judicial branch of government, as well as fuller exposition of economic freedom and human rights, it is Locke, who paves the way for others. The article reviews the *Treatise*, paying particular attention to his ingenious way to render absolute power illegitimate and to create an order that breeds citizens, not subject. In this, the article claims, Locke is a Whig rather than a continental liberal. He worries about state omnipotence and the threat it poses for citizens. Though resorting to an abstract construct—state of nature—he still is a common sense, English thinker, far from a continental reformer who would thoroughly redesign the existing order.

Keywords: state of nature, state of war, absolute power, natural law, slavery, parental authority, civil society, absolute power, liberty, civil rights

By accepting the Galilean-Cartesian claim that life is a matter in motion, and by inventing the notion of state of nature, Thomas Hobbes believed he gained the method of making the "science of man" as certain, as the exact and natural sciences. In state of nature, an individual can be observed and analyzed with the same certitude as stars. While this discovery placed Hobbes in the forefront of the emerging "new science" in the seventeenth century, the conclusions of his doctrine did not. According to him, individual is such a violent and brutal being that he needs a leviathan—an unlimited government—to curb his nature. By denying goodness of man and making the government omnipotent Hobbes contradicted principal

premises of the new science and the nascent liberal thought. State is to protect nothing else but human life, and the individual has no other rights except to life. "Rights of man"—the early modern incarnation of our current concept of human rights—is thus foreign to Hobbes.

Hobbes was so sure of scientific character of his work that he believed his doctrine be taught for all times to come. Yet it was not him, but another Englishman, John Locke (1632-1704), who has made more profound impact on Western political thought. About fifty years younger, Locke attempted to lay theoretical foundation for limited government, rule of law, rationality and goodness of man as well as for his inalienable rights. He borrowed from Hobbes the idea of state of nature and of individual as the cornerstone for civil society and law, yet he avoided the snare of leviathan. He thus fulfilled all the assumptions of the new science and in the process became the first of the founding fathers of liberalism and "the philosophical father of the tradition in moral and political thought which centrally employs the thesis of inalienable rights" (Simmons, 1983:175). How was he able to achieve it? How did he change Hobbesian premises to make his theory fully compatible with a new trend? This article briefly reviews Locke's *Second Treatise of Government* and traces the roots of man's rights in his political theory.

Locke's state of nature

Like Hobbes, Locke begins his arguments by making a series of presuppositions on which his whole theory rests. His first assumptions are identical with Hobbes's: he introduces the state of nature as an abstract idea—not historical conditions of the distant past—and then he treats liberty and equality as fundamental conditions ruling in that natural state, both being self-evident. He also stresses the concern for self-preservation (Locke, 1980, § 4-5; Locke, 1823, § 66, 88).[1] At this point, however, similarities between him and Hobbes end. For Locke defines differently both equality and liberty, and deprives self-preservation its vicious features.

First, equality without authority as well as concern for self-preservation do not lead individuals to inevitable and incessant wars, as Hobbes

[1] Not all agree that state of nature was an abstract idea or a myth for Locke, cf. Goldwin: 126-29.

claimed, but to the recognition of likeness of their nature. Individuals see that they belong to the same kind, therefore, they cannot treat others like animals, which were created for their use. They accept as self-evident that all individuals are entitled to "the same advantages of nature." This in turn imposes on us the "obligation to mutual love" as well as to justice and charity. Supporting this argument with a long quotation from Richard Hooker, the sixteenth century Anglican priest and theologian, Locke stresses that equality and likeness of nature prevent individuals not only from harming one another but also from indifference. Love, justice and charity in conditions of equality make suffering of others intolerable. We do help each other, especially, if we see fellow man in anguish (Locke, 1980, § 4-6).[2]

Second, from the opening sentence of the *Second Treatise* Locke makes it clear that both liberty and equality are not only "rights," as Hobbes wanted, but first of all "laws." They are duty, more than entitlements (ibid., § 4).[3] Furthermore, although state of nature guarantees "perfect freedom," that freedom is not "a state of license" but of order, maintained by "the law of nature." In a striking similarity to St. Thomas's teaching on law, Locke points to reason, not will, as the source of law ("reason, which is that law"). It is reason that teaches us self-preservation and not harming one another in our "life, health, liberty, or possessions." Furthermore, this reason requires that we do what we can "to preserve the rest of mankind" (§ 6).[4]

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[2] Cf. Jonghe, 1988: 303-04.

[3] The first chapter summarizes Locke's *First Treatise of Government* in which he combatted the notion of divine rights. The arguments in favor of limited power begins only in chapter ii, § 4.

[4] Locke was not fully consistent as far as his claim that law of nature is grounded in reason. He asserts it in *the Second Treatise*, but in the *First Treatise* he says: "God having made man, and planted in him, as in all other animals, a strong desire of self-preservation... Strong desire of preserving his life and being, having been planted in [man] as a principle of action by God himself, reason, 'which was the voice of God in him.'" (Locke, 1823, § 66, italics supplied); or "The first and strongest desire God planted in men, and wrought into the very principles of their nature, [was] that of self-preservation," (Locke, 1832, § 88, italics supplied). Terms as desire and animals suggest will, not reason. At the same time, he claims that "reason" is the voice of God in man and dictates his conduct. On these confusing passages, see Strauss and Cropsey, 1987: 483-84.

Third, "the law of nature would... be in vain, if there were no body that in the state of nature had a power to execute that law." Law has to be enforced, if it is to be observed, stresses Locke. Since there is no government to administer justice, the power of "execution" of law (judicial and enforcing authority, we would say today) rests on each individual. A person who suffered injury against his health or property is responsible for enforcing the law of nature. The state of "perfect equality" gives to us equal power to punish offenders against our life, health, liberty and property (§ 7). Punishment should be compatible with the crime, though, because the "executive" power is neither absolute nor arbitrary. Once "executioner" has the offender in his hands, he should exercise what "calm reason and conscience dictate," and carefully measure up retribution. Since crime cannot be a good bargain, the penalty must be severe, yet proportionate to the offence (§ 8, 12).

Finally, Locke collects all these features of state of nature and defines it in the following way: "Men living together according to reason, without a common superior on earth, with authority to judge between them, is *properly the state of nature* (§ 19).

The state of nature, such defined and depicted by Locke, is entirely different than that of Hobbes. It is not a *bellum omnium contra omnes*, without justice, property and law, but a state of peace in which individuals enjoy perfect freedom and equality under the protection of the law of nature. As John Hallowell, an American political philosopher stated, it is a secularized version of "the Christian myth of the Garden of Eden," except that man's nature was to be studied apart from his divine origin (Hallowell, 1984: 102-03). If so, if the conditions in the "Garden" are so bright, nearly perfect we would say, how come we ever thought about changing them? What do we need government and civil society for, if each of us was happy without them? Does Locke notice any weakness in the state of nature?

Locke provides full exposition of his arguments for society and state much later, in chapter seven. In his description of the state of nature, he mentions only flaws of natural conditions, i.e., a negative side of living in it. First, one should not be a judge in one's own case, for this leads to partiality and injustice. Punishment of offenders by the victims creates precisely such a situation. Second, as he adds in the chapter on state of

war, the strength of the executioner might be equal (or weaker) to that of the offender, thereby making the punishment difficult or impossible to carry out. In such a case, the state of war continues, without a chance for its termination (§ 13, 20-21).

While Locke is proud of his perspective on natural conditions of humankind, we might point out another serious weakness of this perspective and of his political theory in general. The individual he projects is unavoidably selfish; his love, justice, and charity toward others notwithstanding. Although individual is not to harm but help others, his assistance has definite limits. He has a duty to rescue others only "when his own preservation comes not in competition" (§ 6). Unlike Thomist natural law that sets no limits in its call to do good, Locke's law of nature has a clear border: one does not have to help others, even must not, if one's own life, or health, or "limb" are at stake. The call for overcoming our egoism is entirely foreign to Locke.

Property

Locke's state of nature ensures not only life in peace and order regulated by the law of nature, but also encourages individuals to work, and to acquire property. The Creator provides gifts of nature to all for free because all need food and drink in order to survive. Thus, products of earth are originally a common property. However, as soon as we mix gifts of nature with our work, we acquire private property. Apples on a tree growing in primeval forest are common. But when we pick an apple from that tree, it becomes ours. Work that we have performed changes common possession into private property. Our body and its work belong exclusively to us, stresses Locke, and we do not need the consent of others to appropriate that which we mix with our labor. What is not appropriated is in common use; what we mixed with labor is for private enjoyment (§ 25-28).[5] The only condition attached to appropriation is that nothing is to be spoiled. We cannot pick more apples than we can eat and allow some to get rotten, for we must not waste gifts of nature (§ 31).

[5] However, what is left for common use in civil society is in fact a joint property, therefore cannot be appropriated without consent of others.

Does this mean that Locke delegitimizes wealth? Not at all. We can sell goods of which we have surplus. In this way we do not spoil gifts of nature. Money changes everything. Far from being a reason for poverty of some, it contributes to general welfare of humankind. We produce more thereby multiplying gifts of nature. Money motivates us to harder work: we abandon idle life that satisfies merely our basic needs and we develop active life that provides us with abundance of goods. We appropriate land by clearing out the forest, and by cultivating the field. By making it private possession, the field produces much more than it did in natural conditions without human labor. Ultimately, money (and work) creates not only commerce, industry, and wealth, but also culture and civilization. It pulls us up from primitive conditions and leads us to civil society and civilization. Locke praises money as probably no one prior and after him (§ 36-37, 41, 48-50).[6]

The existence of property in state of nature is another reason, why individuals are inclined to enter into political society. Human nature impels man to "enlarge his possessions beyond the use of his family, and a plentiful supply to its consumption" (§ 48). Inequality of property, which especially increases after introduction of money, multiplies occasions for crimes. Property then becomes "very unsafe" because state of nature provides only insufficient provisions for its protection. It lacks "an established law," a judge who distributes justice and an executive that enforces it. Only political society can supply us with these institutions and fully protect property. The importance of property is so high according to Locke that he makes its preservation "the great and chief end" for which men unite into commonwealth and establish government" (§ 123-126).[7]

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[6] Locke has no doubts that money existed in state of nature, on the basis of voluntary consent (§ 50), cf. Strauss and Cropsey, 1987: 1987: 492.

[7] Locke's overemphasis of property as the reason for civil society was probably what irritated Lord Acton the most, and what inclined him to write the following remarks: "Locke is always reasonable and sensible, but diluted and pedestrian, and poor." His "notion of liberty involves nothing more spiritual than the security of property, property, and is consistent with slavery and persecution": Lord Acton, *Lectures on Modern History*, 3rd ed. (Cleveland and New York: Meridian Books, 1967), 208, and "The History of Freedom in Christianity*," Selected Writings of Lord Acton*, 3 vols. (Indianapolis: Liberty Classics, 1985–1988), I: 47.

State of war

Locke is not nad've to believe that state of nature is without conflicts. Individuals do deceive, steal and break contracts. That is why each individual has the right to punish the offender, so that the law of nature would not "be in vain." Locke calls for moderation in exercising this right, with one exception. Killing, or the use of force, or even a threat of using force calls for the most severe retribution. They constitute the highest crime and introduce state of war between the victim (and, to some extent, the rest of humankind) and the offender. Locke sees only one penalty for this crime: death (§ 11, 16). If murder may justify death penalty, why does Locke demand an equal retribution for the use of force or the treat of using force? Does he see no difference between those crimes?

Killing means the breach of all fundamental laws of nature: liberty, equality, kindness (love) and self-preservation. By doing so, the offender not only opens state of war, but he also declares that he lives according to a different law than the law of nature, i.e., the law that orders the behavior of man and woman (§ 11, 16).[8] This, in turn, has profound consequences. For Locke's law of nature seems to have a striking similarity to St. Thomas's eternal law (but not necessarily to the natural law). Eternal law determines the behavior of all beings in universe, according to St. Thomas. Sun rises every morning and sets every evening; dog barks and cat meows. They cannot behave otherwise, for their conduct is imprinted on them. Had they changed it, they would not have been the being they were supposed to be, but one of a different kind. Locke applies the same reasoning to human beings: if they challenge the law of nature, they do not simply break dictates of conscience and side with evil, yet still stay human—as St. Thomas teaches in his doctrine on natural law—but declare they live according to a different law, therefore, they are not human beings anymore. They admit as if they had a different law of nature that applies to their kind and that requires of them to kill others. This, in turn, makes them a dangerous species for humankind, like "a lion or a tiger," and therefore, they must be annihilated (§ 10-11, 16).[9]

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[8] "Besides the crime... a man... declares himself to quit the principles of human nature and to be a noxious creature" (§ 10).

As said before, Locke extends the same principle to any use of force or a threat of it. He does it in an ingenious way that allows him to kill two birds with one stone. First, he delegitimizes and stigmatizes absolute power, and second, he justifies killing for crimes against private property, so characteristic of early modern societies. As for the first, Locke argues that anyone who aims at absolute power *de facto* introduces a state of war between oneself and others. Absolute power is redundant if its goals are in harmony with my free will. "No body can desire to have me in his absolute power, unless it be to compel me by force to that which is against the right of my freedom, i.e. make me a slave" (§ 17). By implication, such a ruler (though Locke uses only the term "offender") is to be killed like a dangerous, wild animal. This must have sounded like a blasphemy, in the age of Louis XIV of France, the "Sun King" who had raised royal majesty to the highest level imaginable.

As for the second argument, Locke seems to contradict to what he said earlier about exercising moderation in punishing the offender. He changes his mind by degree. First, he argues that it is "lawful for a man to kill a thief, who has not... hurt him, nor declared any design upon his life, any farther than, by the use of force" (§ 18). This is sufficient to kill him, for the victim does not know what the offender would do, once he has him in his power. Second, in state of nature, where there is no authority to appeal for help, one may kill the thief if he merely steals property, because the sheer act of stealing makes him an aggressor and opens state of war (§ 19).[10]

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[9] Locke's language also confirms similarity between his law of nature and Thomas's eternal law: "Thus the law of nature stands as an eternal rule to all men, legislators as well as others" (§ 135). Cf. Simmons, 1983: 184-85.

[10] Locke's legal language to which he often resorts does not help interpreting this passage on the right to kill a thief: "Thus, a thief whom I cannot harm, but by appeal to the law, for having stolen all that I am worth, I may kill when he sets on me to rob me but of my horse or coat, because the law, which was made for my preservation, where it cannot interpose to secure my life from present force, which if lost is capable of no reparation, permits me my own defence and the right of war, a liberty to kill the aggressor, because the aggressor allows not time to appeal to our common judge, nor the decision of the law, for remedy in a case where the mischief may be irreparable."

Locke seems to care equally for delegitimizing arbitrary power, as for protecting private property to the utmost.

Locke defines state of war as "force, or a declared design of force upon the person of another, where there is no common superior on earth to appeal to for relief." In other words, state of war erupts whenever an aggressor attacks another individual and there is no authority, which could protect the person under assault. It exits only between individuals directly involved in the conflict, while the rest of men and women continue to live in state of nature (although those who are the closest to the warring parties should help the person(s) under attack). Thus, the state of war and the state of nature coexist side by side. The former does not contradict the latter. The state of war neither end the state of nature as some thinkers claimed (for example, Montesquieu, Rousseau), nor are identical, as Hobbes asserted (§ 19; cf. Goldwin, 1976:127).[11] Furthermore, the state of war and, by extension, the state of nature can reemerge in civil society, if authority cannot rescue an assaulted person. In such a case, as Locke maintains, state of nature with its laws immediately returns, and the person under attack may kill the aggressor (who declares a state of war) in self-defense (§ 20).

Slavery and parental authority

In an effort to make absolute power illegitimate, Locke has proved so far that men and women are good; that they lived peacefully in state of nature, therefore did not need leviathan to curb them; and that state of war is but an inconvenience of the state of nature. To undermine further any claim for arbitrary authority, he deals with slavery and parental authority.

Slavery is unnatural because by nature man and woman are free. They cannot and must not recognize any power over themselves except for the law of nature, and, in civil society, the power "established, by consent, in the common-wealth" (§ 22).[12] One cannot sell oneself into

[11] The opposite to the state of war is the state of peace, in the same way as the state of nature is the opposite to civil society.

[12] John Dunn notices the difference between our's and Locke's understanding of consent: By consent Locke means "a theory of how individuals become subject to political obligations and how legitimate political societies can arise," while now we tend to think about government by consent, which means a "proper conduct of government" (Dunn, 1967: 154).

slavery because slavery contradicts the principle of self-preservation. Locke stresses that no individual has the power "to quit his station willfully," i.e., he has no right to commit suicide (§ 6). "For a man, not having the power of his own life, *cannot*, by compact or his own consent*, enslave himself* to any one, nor put himself under the absolute, arbitrary power of another, to take away his life, when he pleases." Slavery, as it existed, was "nothing else, but *the state of war continued, between a lawful conqueror and a captive*" (§ 23). If so, we can then infer that the captive has the right to kill his conqueror (who in fact is an aggressor), although Locke does not dare to be so open and, in fact, he further blurs the case by adding the adjective "lawful" to the term conqueror, and by suggesting the possibility of a compact between both parties that would establish a limited power. At any rate, Locke maintains that slavery, as being contradictory to the natural law, cannot justify arbitrary government, even if he dares not to risk views that could have provoked a wrath of his contemporaries (cf. Farr, 2008: 495-522).

A similar conclusion Locke draws from parental authority. The power of parents originates not in the act of begetting children but in raising them (§ 65). Like Aristotle, he stresses that children must be ruled by parents because they cannot rule themselves. Although they are born free and equal, they cannot survive without the care of their parents: they need to be fed, clothed and educated (§ 55, 57-58, 61, 63). The work which parents perform produce authority they have over their children. It seems similar to arbitrary political power, but in fact it is not, especially that most of parental work belong to the mother rather than to the father, and the latter is chiefly responsible for children's education (§ 69). Locke links so closely parental authority and the duty to raise offspring that he asserts that marriage has no natural reason to be continued beyond the time necessary to take care for the children (§ 79). Furthermore, parental authority is alienable. If parents stop performing their duty toward their children, and leave them in orphanage, their power over children vanishes (§ 65). Parental authority is thus always link with their duty.

Parental authority is not permanent and stops when the children achieve maturity, i.e., when they are able to take care of themselves. As grownups, children owe respect to their parents and have the duty to help them in old age. That responsibility is not alienable because the parents

have already performed their part—they raised their offspring.[13] But mature children have no duty to obey their parents. They are now free and equal, and they have the right to rule themselves. Locke dismisses the power exercised by parents over their mature children as not parental authority (§ 69-70). True, parents sometime keep their adult children in dependence, even tyrannize them, but that power, he stresses, is of different nature. It originates in the right of the parents "to bestow their estates on those who please them best," and the hope of the children to inherit them. Thus, the son remains dependent on his parents because he desires to inherit their property, not because he owes obedience to them as a child (§ 72-73). Political authority, therefore, cannot be derived from parental power.

Locke admits that there is confusion in this respect. Kings tend to compare their power to that of the *pater familias*. Additionally, some passages of "the archphilosopher" (Aristotle) and the Bible contributed to this confusion. Aristotle says that father's authority in the household and elder's in several households (village) seemed both parental and royal (*Politics* I, 2:5-7); the Bible, in turn, shows ancient governors, such as Melchizedek (*Genesis* XIV: 18-20), who mixed political authority with priestly functions that originally belonged to the *pater familias*. Nevertheless, Locke maintains that this linkage of political, parental and priestly authority was just a confusion of distinct powers—easily imaginable "in the first ages of the world"—and that each of these powers is, in fact, of different nature that must not be mixed (§ 74, 74n). Consequently, Locke reiterates, kingship does not originate in parental authority (§ 75-76).

Civil society, government and rights

In opening chapters of the *Second Treatise*, Locke only mentions the negative side of living in state of nature. In chapter seven he produces positive reasons for entering into compact and establishing civil society and government. Though he finds support for his arguments in the Bible and Hooker, he in fact invokes most of Aristotle's teaching on man as *zoon politikon*. Like Aristotle, he mentions that we are not self-sufficient beings, therefore, to overcome this deficiency, "we are naturally induced

[13] Second Treatise, chap. VI, § 66-68.

to seek communion and fellowship with others" (§15). Then he adds that God made us in such a way that for the sake of "necessity, convenience, and inclination" we are driven into society (§ 77).

The first "society" (conjunction, as he says) originates between husband and wife, and this leads to "that between parents and children." This creates various relations and dependences, between husband and wife, parents and children, master and servants (slaves), which are taken nearly literally from Aristotle. Locke uses different terms but describes the same relations. Man holds the power in these relations but, except for that toward the slave, his authority is not absolute. The only difference is that Locke elaborates on the need for the lasting (though not permanent) union between man and woman for the sake of raising children, while Aristotle does not, and that he is more equivocal on the intermediate stage between family and polity (§ 79-86).

The inclination toward association with one another ultimately leads men and women to a political union. Political (civil) society or a commonwealth is established by a compact that ends the state of nature. Locke defines this compact as "an agreement for a limited power on the one side, and obedience on the other side" (§ 23).[14] By entering political society, men and women give up their natural powers, such as the right of self-preservation and of punishing offenders, and pass them on to the community. Now it is the duty of political society to protect individuals and to punish offenders. However, these powers are transferred, not abolished, and—as said before—they return to individuals whenever authority fails to protect them against an aggressor (§ 87-89). Furthermore, the government is to do a better job in administering law than each individual in the state of nature. For political society removes inconveniences of state of nature, such as partiality in judgment, and weakness vis-ŕ-vis the aggres-

[14] It is strange that Locke provides exact definition of state of nature, state of war but not civil society. The cited definition is inserted on an odd occasion, that of relations between the master and the slave. Locke provides several other quasi definitions of the compact but none is as clear as one cited above. For example: "Where-ever ... any number of men are so united into one society, as to quit every one his executive power of the law of nature, and to resign it to the public, there and there only is a political, or civil society" (§ 89).

sor. It provides impartiality in judging the offender and supports the innocent party with the strength of the whole community (§ 87-90).

Yet the compact does not nullify the original rights of man as stipulated by the law of nature. Man and woman are by nature free, equal, and kind toward each other, and remain to be so in civil society. They have a natural right to preserve their life, and society guarantees it better than the state of nature. That is why the compact founds a limited and representative government. Moreover, the government is divided according to a new principle. Unlike ancient division of forms of government—the rule of one, of few and of many—Locke divides powers within the government. The legislative branch makes law and possesses superior power, while the executive enforces it and is inferior (§ 150). Locke was the first to introduce such a division of powers, although unlike Montesquieu about 60 years later, he did not distinguish the executive from the judicial branch and put both in the hands of the executive (§ 88).[15]

Locke stresses that the right to appeal to a common superior, a judge "with authority to determine all the controversies, and [to] redress the injuries" constitutes the essence of civil society (§ 89). Whenever there is no such authority, individuals live in state of nature. Locke claims that such is the case of arbitrary government. Absolute monarchy is "inconsistent with civil society" because the ruler, however titled—King, "Czar, or Grand Seignior"—has "both legislative and executive powers in himself alone" (§ 90-91). There is no independent authority that could settle disputes between the ruler and the ruled. Thus, absolute monarchy brings back the conditions of state of nature, in which the ruler and the ruled are in a state of war. And since the subjects are powerless, and cannot exercise their right to punish the offender, they are in fact reduced to the position of slaves (§ 91). The only semblance of political society that the ruled enjoy is when they settle disputes among themselves. Then, they can appeal to laws and judges to resolve their conflicts (§ 93).

The case of absolute monarchy that in fact maintains law of nature sheds some light on a puzzling passage, which Locke inserts in the early

[15] Locke did in fact distinguish the executive (by which he meant judicial) and "federative" (i.e., executive). He noticed that they are sometimes separated, but usually left in the same hands (§ 146-148).

section of the *Second Treatise*: "It is often asked as a mighty objection, *where are,* or *ever were, there any men in such a state of nature?* To which it may suffice as an answer at present, that since all princes and rulers of *independent* governments all through the world, are in a state of nature, it is plain the world never was, nor never will be, without numbers of men in that state" (§14; cf. Strauss and Cropsey, 1987: 478). If Locke treats arbitrary government as illegitimate and contradictory to political society, then any "prince" that has unlimited power brings state of war between himself and his subjects. Consequently, it is lawful to kill the tyrant by virtue of the law of nature, although Locke does not call openly for tyrannicide.

Unlike Hobbes, Locke claims that the compact, which establishes civil society, must be approved by all participants, not just a majority.[16] It must be voluntary, not one imposed on the people without their consent. By entering it, all individuals abandon state of nature and form "one body politic" (§ 95). The consensus of all is, however, necessary only for the original compact. Once civil society is established, majority rule substitutes for the consensus (§ 95-96). The majority must rule, for otherwise "this original compact... would signify nothing," and the state of nature would continue (§ 97).

Locke defines the body politic initiated by the compact as an "*independent community* which the Latines signified by the word *civitas*, to which the word, which best answers in our language, is *common-wealth*" (§ 133). Thus, commonwealth means a polity with representative government, regardless of its form. It can be a monarchy, oligarchy or democracy, depending on the will of legislature (§ 132). In addition to representative government, the commonwealth requires a legislative body that constitutes supreme authority and that the will of majority rules in it. The chief task of legislature is to make law, so that the rule of law substitutes for the government of men (§ 134-142).

Locke maintains that the commonwealth does not deprive its citizens of the substance of rights, which they enjoyed in state of nature. What really changes is that justice no longer rests in the hands of each individual but of government. However, he increasingly stresses the value

[16] Except for Rome and Venice, Locke provides little evidence that such a compact ever occurred in history (cf. § 102-104).

of property, which cannot but have an adverse effect on other principles, especially that of equality. When he elaborates on the ends of political society and its order (nine and subsequent chapters), it seems at times that civil society exists solely for the protection of property, while other rights, including that of life, are safeguarded as long as they contribute to this end (cf. § 124, 127, 137-39, 142).[17] Furthermore, although Locke stresses the importance for "fair and equal representation" of the people in legislative, he seems to imply that representation belongs only to the taxpayers, in particular those who possess "estate" (§ 158, 140). Cities are to have representation in proportion to their tax contribution (§ 157-158). Natural rights of man that begin in the state of nature with the right to live in liberty, equality and peace seem to evolve in Locke's teaching on civil society into the right to life, liberty and property (cf. § 59, 87, 131, 135).[18]

Although Locke stresses the supreme power of the legislative branch of government and the rule of law, and although he subjects the executive

[17] The protection of property is not only "the chief end" for which men establish commonwealth (§ 124), but is "the end of government" (§ 138; this further explains Lord Acton's contempt for Locke, for Acton insisted that liberty is the end of government). Legislature cannot take property without owner's consent (§ 138-139); taxes cannot be raised "on the property of the people without the consent of the people given by themselves" (§ 142). On the other hand, what is property if not that which cannot be taken without owner's consent? Cf. Dunn, 1967: 165.

[18] "Men, when they enter into society, give up the equality, liberty, and executive power they had in the state of nature, into the hands of the society... yet it being only with an intention in every one the better to preserve himself, his liberty and property" (§ 131). Locke sometimes uses also terms "life, liberty and estate" (§ 59, 87) or "life, liberty and possession (§ 135). To add to the confusion, Locke seems to imply that property means more than just ownership: "Man being born... with a title to perfect freedom, and an uncontrolled enjoyment of all the rights and privileges of the law of nature, ...hath by nature a power... to preserve his property, that is, his life, liberty, and estate" (§ 87). Dunn argues that it is misinterpretation of Locke's thought if his defense of property is overemphasized. There is no proof that Locke gives franchise only to the property owners, nor that he neglects the importance of liberty in civil society, cf. Dunn, 1967: 162-174. For a brief review of various interpretations of Locke's theory of property, see also Lustig, 1991: 119-121.

branch to the legislature, still he admits that the former has the power of "prerogative," i.e., the right to act "for the public good, without the prescription of the law and sometimes even against it" (§ 160). A good, wise ruler or a "god-like prince" sometimes has to act arbitrarily for the sake of common good, i.e., to serve people's best interest (§ 166). The problem is that tyrants, who act for their own advantage, pretend to serve common good as well (§ 199). Besides, "the reigns of good princes have been always dangerous to the liberties of their people" (§ 166). For unlawful deeds become precedent and can be abused by bad princes in the future. The remedy for this Locke sees in people's judgment. The people are not meticulous in measuring what is lawful or unlawful, as long as prince's action serves their interest. However, they are able to recognize the tyrant who harms them, and then they resist him (§ 161; 240). Although Locke seems to invoke the right to armed resistance against tyrannical rule that goes back to the Middle Ages, he does it in an ingenious way: the people who resist the tyrannical rule act in accordance with law, while it is the tyrant who rebels against the established order (§ 226; cf. Strauss and Cropsey, 1987: 503-04). Therefore, it is he, who is the aggressor, while the people defend their rights and order in the commonwealth.

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Seventeenth and eighteenth century originated the notion of inalienable rights of man. Disregarding the medieval tradition of liberty, they proudly proclaimed themselves as the founders and authors of the rights that no government can deny or take away, and no individual can surrender. By being born human, man—and by extension we can add today woman—acquires certain rights, which are inalienable. These rights simply belong to their nature. Resorting to the state of nature, thinkers of that age believed that they had proved these rights. Locke, though not the first to use this concept, developed a theory that is the most comprehensive and that has a lasting impact on Western liberal thought.

Man and woman have the right to life, liberty, equality and peaceful coexistence. Law of nature endows them with these rights and makes them a part of human nature. The commonwealth that ends state of nature does not cancel the law of nature. Positive law must conform to it, even if its provisions change some fundamental rules and challenge others. Thus in

civil society, man and woman no longer have the power to execute law: this authority passes on to the government and its various branches. The transfer of power, however, takes away not the substance of rights, which man and woman enjoy, but the form of their execution. It abolishes inconveniences of the state of nature—where one is the judge and "executioner" in one's own case, and where one faces an aggressor who can be stronger—and protects individual rights with the power of the commonwealth.

The challenge, which positive law and conditions of life in civil society create for fundamental rights, applies mainly to the principle of equality. Inequality of wealth that according to Locke begins even in state of nature grows rapidly in civil society. The rich and the poor cannot be equal even if law maintains their legal equality. Locke is equivocal in this respect. Passages on electoral law are open to contradictory interpretations, and we are not certain what was his real view. Did he or did he not disenfranchise those without "estate"? On the other hand, Locke displayed prudence and did not advocate forcible enforcement of equality, which abstract principle of his law of nature would suggest. In this, he seems more Whiggish than doctrinaire, and therefore his theory proved useful in the American Revolution but redundant in the French Revolution.

In civil society, rights of man acquire a different shape than in state of nature. To preserve life, liberty, order and property, and avoid extreme inequality (if upholding equality would require force), man and woman have to be protected from the state rather than from other individuals. Thus Locke advocates political order—commonwealth—that safeguards the rights of man, and breeds citizens, not subjects. Its essential features are representative government, limited and divided authority, parliament, fair trial, protection of property, and armed resistance as the last resort against tyranny. Had he added freedom of speech and print, religious toleration, tripartite division of power, and elaborated on economic freedom, he would have presented a complete doctrine of classic liberalism on liberty. But even without it, Locke still remains a formidable figure of liberal thought and the author of liberal guarantees for individual freedom.

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