Philosophy of Natural Rights According to John Locke

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PHILOSOPHY OF NATURAL RIGHTS
ACCORDING TO JOHN LOCKE

by

Mark Francis Hurtubise, S.J.

A Thesis Submitted to the Faculty of the Graduate School
of Loyola University in Partial Fulfillment of
the Requirements for the Degree of
Master of Arts

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1952
LIFE

Mark F. Hurtubise, S.J., was born in Chicago, Illinois, November 16, 1919. He completed his elementary education at St. Ignatius Grammar School, and in June, 1937, was graduated from Loyola Academy, Chicago, Illinois. He attended the Downtown College of Loyola University during the years 1938-1941.

In August, 1941, he entered the Society of Jesus, at Milford, Ohio. He enrolled in the undergraduate school of Xavier University, and in June, 1945, he received a degree in Bachelor of Literature.

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During the years of 1948-1951, he taught at St. Ignatius High School, Chicago, Illinois. In June, 1951, he returned to West Baden College, to begin the study of theology.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>II. BACKGROUND TO TREATISES ON CIVIL GOVERNMENT</td>
<td>8</td>
</tr>
<tr>
<td>Political and historical background--Absolutism of English kings--Theory of James I on divine right of kings--Locke's criticism of this theory as it is proposed by Filmer.</td>
<td></td>
</tr>
<tr>
<td>III. LOCKE ON NATURAL LAW</td>
<td>16</td>
</tr>
<tr>
<td>Locke's concept of the state of nature--The place in it for his concept of natural law--Locke's theory of natural law as compared to that of Hobbes.</td>
<td></td>
</tr>
<tr>
<td>IV. LOCKE'S PHILOSOPHY OF NATURAL RIGHTS</td>
<td>38</td>
</tr>
<tr>
<td>Locke's doctrine as presented in the second Treatise--First an explanation of the doctrine in general, then in particular--The three main natural rights which Locke treats are life, liberty, and property--Emphasis given to right of property because of the peculiar place it holds in Locke's doctrine.</td>
<td></td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>V. EVALUATION OF LOCKE'S DOCTRINE</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>First a brief statement of Locke's main philosophy—Demonstration of Locke's inadequate philosophical basis for doctrine on natural rights—Secondly a criticism according to scholastic philosophy of Locke's doctrine on natural rights in general—Criticism of specific rights of life, liberty, and property.</td>
<td>64</td>
</tr>
<tr>
<td></td>
<td>BIBLIOGRAPHY</td>
<td>101</td>
</tr>
</tbody>
</table>

v
CHAPTER I

INTRODUCTION

Today many nations of the earth are being enslaved by ideologies which glorify the state and trample upon the individual, denying completely all God-given rights. The subject of natural rights therefore, is of great importance. It is as important as man is himself. Two centuries ago, the writers of the American Constitution thought natural rights so important that they took them as a founding principle. Thomas Jefferson, the author of the Declaration of Independence, is said to have been greatly influenced by the writings of John Locke on the subject of natural rights.\(^1\) Four fundamental political ideas, the doctrine of natural law and natural rights, the compact theory of the state, the doctrine of popular sovereignty, and the right of revolution against an unjust government, are all found in the Declaration much in the phraseology of John Locke.\(^2\) However,

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it would be extremely difficult and certainly beyond the scope of a master's thesis to prove the influence of John Locke on Thomas Jefferson. Whether John Locke was the main influence, or merely a minor influence, he is cited and popularly thought to be one of the classical writers on the theory of natural rights. Therefore, it is certainly worth our while to make a study of his doctrine on natural rights as it appears in his Treatises on Civil Government.

As every great political movement in history finds a defender in the writings of either a philosopher or a historian, so the coming of William and Mary to the throne of England found its defenders: Macaulay in his History of England, and John Locke in his Treatises on Civil Government. To defend the "glorious revolution of 1688", Locke had to show that man had certain natural rights, among which was the right to revolt against a despotic king. Two main adversaries of Locke on this point were James I, who defended the theory of the divine right of kings, and Thomas Hobbes, who held the theory of absolute sovereignty. These two writers became the target of Locke's attack in his two Treatises on Civil Government.

The first of the two Treatises is important only in so far as the divine right of kings theory is opposed to the theory of natural rights, especially popular sovereignty. Therefore,
in the first chapter of our thesis, we shall briefly consider the divine right theory, as proposed by James I, and Locke's criticism of it. The second Treatise, however, is of great importance for it contains the whole of Locke's theory on natural rights. As a basis for his theory, Locke uses the state of nature and natural law. Our second chapter will consider these two concepts and compare Locke's viewpoint with that of Hobbes, the unnamed adversary of the second Treatise. In the third chapter, we shall make a textual exposition of Locke's philosophy of natural rights, first in general, then in particular, considering three main rights, life, liberty, and private property. In the final chapter we shall briefly consider Locke's main philosophy in order to show that Locke had no philosophical basis for a natural rights theory. The remainder of the chapter will be a criticism according to scholastic doctrine of Locke's "common sense" philosophy on natural rights.

Life of John Locke

John Locke was born on the 29th of August, 1632, at Wrington, a small town near Bristol, in England. At the age of fourteen he entered Westminster School. It was in this year that a fierce struggle between King and Parliament was raging. In 1652 Locke was elected to a junior studentship at Christ Church, Oxford. Here he acquired his Master's degree. Locke
remained at the University for eight years. After dabbling in diplomacy for a time, Locke began the study of medicine. He was elected a Fellow of the Royal Society in November, 1668.

Two years previously Locke first met Lord Ashley, afterwards Earl of Shaftesbury. Locke admired Ashley, one of the most influential men in the country, while Ashley, on his side, recognized the learning and wisdom of the young man. From the middle of 1667 onwards Locke became one of Ashley's advisors, and went to live with him in London, where he served in the capacity of private physician.

Probably, at this time, Locke began seriously to consider political ideas. In April, 1672, Ashley was raised to the peerage as Earl of Shaftesbury. Locke also received greater duties, for he was appointed Secretary for the Preservation of Benefices. This office he held for a little over a year, and then was appointed Secretary to the Council of Trade and Plantations. But by 1675 his health was so bad that he was forced to go to France for a rest. There he remained for four years, traveling about the country. He then returned to London to find the

country filled with political unrest. He lived at London or Oxford for two years, during which time he was in and out of royal favor along with his patron. Finally Shaftesbury was compelled to flee the country to Holland where in 1683 he died, broken hearted, no doubt, by his failure to prevent the succession of the Duke of York to the throne. Locke himself decided to leave England since his intimate friendship with Shaftesbury and his political sympathies were known. He spent two years traveling about Holland, when he received news from Dean Fell of Christ Church that "his majesty's command for the expulsion of Locke from the college was fully executed." Locke bore this unpleasant blow calmly.

In 1687 Locke moved from Amsterdam to Rotterdam where he could take a more active interest in English politics. Here he entered the plot against James II, and was an advisor to William of Orange, who had thrown in his lot with the English Whigs. In 1688 the plans for revolution came to a head, and William left for England in November. By February the revolution had been carried out peacefully, so that Locke could return to England in the company of Lady Mordaunt and Princess of Orange, now to be Queen Mary of England.

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Locke was fifty-six years old when he returned from Holland. Though already known to many, he was to become a national figure, the prophet of the Whig party which had put William on the throne. Upon his return to England Locke began to write. His first publication, the Letter Concerning Toleration, appeared anonymously. In 1690 he published the Two Treatises on Civil Government, also anonymously. In the same year Locke published what is usually regarded as his greatest work, An Essay Concerning Human Understanding. Three years later, Some Thoughts Concerning Education, was printed. In 1695 Locke published The Reasonableness of Christianity, a defense of what he thought to be the main feature of true Christianity, namely, the recognition of Christ as the Messiah. The last work of his life, a paraphrase and commentary of the Epistles of St. Paul, appeared posthumously in 1705.

During his last years, Locke, forced by delicate health into a life of semi-retirement, lived among a circle of affectionate friends. In fact, all his life Locke had many close friends wherever he traveled or lived. He must have had that kind of disposition that made people love him. As one author puts it, "the existence of this wide circle of warm

7. Ibid., 38.
and enduring friendships must itself in turn have contributed to his sympathetic view of human nature." The last years of his life were lived with two close friends, Sir Francis and Lady Masham. John Locke died on October 28, 1704. No higher tribute to him could be found than that contained in a letter written by Lady Masham.

His death was like his life, truly pious, yet natural, easy and unaffected; nor can time, I think, ever produce a more eminent example of reason and religion than he was, living and dying.9

Such is the life of John Locke, the man. Now let us consider his philosophy of natural rights as we study the greatest of his political works, Two Treatises on Civil Government.


CHAPTER II

BACKGROUND TO TREATISES

ON CIVIL GOVERNMENT

When John Locke wrote his *Treatises on Civil Government*, he had one purpose in mind, namely, "to establish the throne of our great restorer, our present King William, to make good his title in the consent of the people—and to justify to the world the people of England whose love of their just and natural rights... saved the nation when it was on the very brink of slavery and ruin."¹ To achieve this purpose Locke had to prove that man has natural rights, among them the right to revolt against an unjust king. In order to do this, Locke first had to disprove a theory which most stood in opposition to natural rights, the theory of the divine right of kings. Locke devotes the entire first *Treatise* to this task. To understand the place of importance that this theory held, it is necessary to consider it briefly in its historical aspect.

The political theory of the divine right of kings

of the 17th Century, according to Professor Figgis,\(^2\) goes back to medieval times, and is derived from the medieval conception of the Holy Roman Empire. It is his contention that the political theory of the divine right of kings is primarily of religious origin, and is the result of the conflicting claims of the medieval Popes and Emperors.

In theory the Empire, according to Figgis, was a perfect organization with two elected heads, one spiritual and one temporal, working in harmony for the maintenance of peace and Christianity. An intimate connection existed between politics and religion, for the ideal of the Empire was a theocracy with Christ as the King, having two vice-regents, Pope and Emperor, to carry out His will upon earth. It was the vividness, as Rager points out, with which men realized the position of Christ as Lord of the Christian Commonwealth that alone could render possible such a state.\(^3\) A principle cause of the downfall of the Empire was that both Pope and Emperor claimed independence and supremacy, with claims based on the divine right. These conflicting claims "remain the fundamental basis of politi-


cal controversy, not only through the Middle Ages, but until the theory of the divine right has passed away. It was the Papal claim to divine right which cause the emperors to put forth a similar claim, which eventually led to the theory of the divine right of kings, or the right of secular rulers to be free from Papal control. The need for unity would also force a claim on the part of the secular rulers. Figgis claims that, "Unity in a state is only to be obtained by the unquestionable supremacy of some one authority whose acts are subject to no legal criticism." Thus the way is open to the assertion of the divine institution of monarchy as the ideal form of government, with the monarch deriving his power immediately from God alone and subject to no other.

This theory, born in the Holy Roman Empire, spread throughout Europe, and, later on, in the Protestant Revolution was paradoxically defended by Martin Luther.

Luther started with a plea for reform in the concept of the church and ended with a reform in the concept of the state. He started with a plea for individual liberty and for freedom on conscience; yet his doctrine led directly to a belief in the divine right of kings and to the belief that monarchs have a right to dictate


5. Ibid., 49.
religious dogmas to the private individual. It can be readily seen what influence such a doctrine would have on a man's rights if it would dictate man's religious beliefs according to the whim of the existing monarch.

Likewise, this theory spread to England. It found expression in the writings of Wycliffe and is the basis of a definite theory of kingship of Richard II. According to Wycliffe, the king, although not subject to positive law, should obey his own laws, not under compulsion, but voluntarily for he is above the law. Richard regarded himself as the "sole source of law, not bound by custom, and was king by God's grace and right of birth."  

Later on Henry VIII broke with Rome and put himself up as both the head of the state and the head of the English Church. Though he did not expressly hold the divine right theory, Henry VIII did by his absolutism, by his ruthless reign, by his gathering to himself more and more power by which he could work his will on Parliament, lay the foundation for those who would later defend the theory. Henry VIII was not legally an absolute monarch, but he managed to work his will with the

7. Figgis, Divine Right, 75.
In the beginning of the English state the theory of its nature was that the English state was a single body politic of which the king was the head and the people its members, all bound together by identical interests. In theory, Henry VIII wanted the interests of the people identified with his own. But in practice, he himself wanted to be in complete charge of the state.

It was by act of Parliament that Henry VIII had secured the separation of Church of England from Roman jurisdiction and transferred it to himself; it was by act of Parliament that suppression of the monasteries was begun... Parliament rendered 'the absolute and royal power legitimate'.

Though Henry's power was limited by general definition of the common law, he or the crown-in-council had the right, when circumstances arose for which neither law nor custom made any provision to act "out of the ordinary course of the common law." During the reign of Elizabeth, she and her council began a very subtle exaltation of the undefined and extraordinary powers of the crown. "By the prerogative, they claimed the crown might set things at liberty restrained by statute, or

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9. Ibid.

10. Ibid., 239.
restrain things which be at liberty." This royal prerogative of Elizabeth grew in both scope and power, regardless of any defined natural rights of her subjects.

Therefore, when Elizabeth's cousin, James VI, King of Scotland, son of Mary Stuart, and great-grandson of Henry VII through his daughter, Margaret, ascended the English throne as James I, he found the crown possessing almost unlimited power. Being a student of political theory, he set out to justify his royal prerogative. Even before he became King of England, James I in his Trew Law of Free Monarchies set forth the doctrine of divine right, complete in every detail. He speaks of "mutuall dutie and alleageance betwixt a free and absolute Monarche and his people", but of no natural rights for the subjects. These would depend more on the accidental goodness of the ruler than on the nature of the people governed. To prove his case of a "free and absolute monarcke" James I adduces three arguments, one from Scripture, the second from history, and the last from nature. This last argument was singled out and expanded by Filmer ten years later in his Patriarchia. In his treatise "he attempts to find the origin of kingship in the

11. Ibid.

natural constitution of society, and bases it neither on force nor on popular sanction, but on human nature, as formed by the Creator." But Filmer's whole argument depends on the identification of the kingdom with the family, and of royal with paternal power. To do this he proposed the authority of the father as the sole natural right. This concept of right further strengthened the position of the absolute monarch. Against this divine right theory John Locke wrote his first Treatise on Civil Government. That he concentrates more on Filmer, a most unworthy opponent, rather than on Hobbes, is unfortunate. But there is a reason.

... in Locke's time Sir Robert Filmer was fashionable among royalists and Hobbes was not. Hobbes had rejected the claims of the ecclesiastical party and reduced the Church to a mere department of the State.15

In refuting the theory of the divine right of kings, Locke restricted himself to the arguments as proposed by Filmer. The weak points of the argument were obvious. First Locke claimed that Filmer misinterpreted Scripture, since, as a matter of fact, historical fact, no such kingly power was

13. Figgis, Divine Right, 149.
14. Ibid.
claimed for Adam, nor was ever held by him. Even if Adam did
hold this right of sovereignty, there could be no possible
reference between it and the power of modern kings because of
the impossibility of finding a lawful heir of Adam to this
kingship.16 Besides attacking this theory of paternal sovereign-
ty from a negative viewpoint by showing that Filmer's proofs
were inadequate, Locke proposed a positive theory, that all men
were born free and equal, with inalienable rights given to them
by God. These rights will be studied in a later chapter.

Filmer "deserves to be remembered, less as the most
perfect exponent of the theory, than as the herald of its decen-
dence."17 Filmer's writings, instead of strengthening the
theory, weakened it. After Locke's critique of Filmer, never
again was the theory of the divine right of kings widely defend-
ed in England.


CHAPTER III

LOCKE ON NATURAL LAW

Of John Locke's Two Treatises on Civil Government, Sir Frederick Pollock has said that the second treatise "is probably the most important contribution to English Constitutional Law by an author who was not a lawyer by profession."¹ A study of the second treatise will show us what this important contribution was. Locke was one of the first English writers to make a popular defense of natural rights the basis of any constitutional form of government. Before we can study these natural rights, we must begin where Locke began, with the concept of man in the state of nature, ruled by the law of nature.

In writing his Two Treatises on Civil Government, John Locke followed a fashionable error of his times. In order to study man in political society, Locke, like many other political philosophers of the 17th and 18th centuries, began with man in an original state of nature, before any form of government existed. At the beginning of the second chapter of his

treatise Locke describes the state of nature.

To understand political power aright, and derive it from its original, we must consider what estate 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. ²

Before we begin an analysis of Locke's statement of man's state of nature, two questions arise. First, was this state of nature both pre-social and pre-political, as it was for other political philosophers such as Hobbes, or was it merely pre-political? In describing the state of nature as "a state of peace, goodwill, mutual assistance and preservation"³ Locke takes it as a social state of nature. At the end of the second chapter Locke takes the state of nature as pre-political. "But I, moreover, affirm that all men are naturally in that state, and remain so till, by their own consents, they make themselves members of some politic society."⁴

The second question cannot be answered as readily. Did Locke consider this state of nature as a moral or historical

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2. Locke, C.G. II, 4. All references to Locke's Treatise will be to paragraph numbers.
3. Ibid., II, 36.
4. Ibid., II, 15.
fact? Much ink has been spilt in an effort to determine whether or not Locke (and the other contract theorists, Hobbes and Rousseau) thought that the state of nature was an historical occurrence. That Locke's idea of the state of nature was an account of how as a matter of historic fact political society came into being, has been denied by some critics of Locke in recent discussions. In fact, Locke was more influenced by Grotius and Hobbes than by Pufendorf, who was the only important political philosopher of the seventeenth century who denied that the state of nature was an historical era. He believed that the state of nature was an actual period which preceded in time the state of civil society. He pointed to the state of nature in the beginnings of Venice and Rome, in several com-

5. Pollock, Locke's Theory, 241: "This state (i.e. the state of nature), for Locke as for the schoolman, is rather a perfectly conscious abstraction than an attempt to construct the actual origin of society. The question is what a man's rights would be in the absence of any positive institutions . . . This amounts to saying that the problem is not to account for the existence of society, but to ascertain its best or normal mode of existence." When Pollock in this passage speaks of "the actual origin of society" or "the existence of society", it is of political society that he is thinking. Society in the broader sense of a community of persons had no origin for Locke, but has existed as long as persons have existed.

munities in the Americas, in the colony of "those who went away from Sparta with Palantus," and in the early history of the Jewish people. However, though Locke did believe that the state of nature existed at one time in history, he was not so much interested in describing an historical fact as in asserting the existence of a moral fact. Locke was interested in how man should behave in a state of nature antecedent to political society.

In describing the state of nature, Locke speaks of it as a state of equality,

wherein all the power and jurisdiction is reciprocal, no one having more than another, there being nothing more evident than that creatures of the same species and rank, promiscuously born to all the same advantages of Nature, and the use of the same faculties, should also be equal one amongst another, without subordination or subjection.

Here Locke describes an equality which seems to be based on the concept of the same human nature. Besides equality, there is "perfect freedom to order their actions, and dispose of their possessions and persons as they think fit." Yet it is not a state of licence, "for" the state of nature has a law of

8. Ibid., II, 4.
9. Ibid., II, 6.
nature to govern it which obliges everyone... and should accordingly issue in a state of peace, good-will, mutual assistance and preservation."

This state of peace and tranquility stands out in contrast to that state described by Hobbes, against whom Locke was writing. According to Hobbes' completely naturalistic interpretation, men are simply brutes, although possessed of superior cunning. At first they are equal. "Nature hath made men equall in the faculties of body, and mind..." Since men have an equality of ability, there "ariseth equality of hope in the attaining of our Ends." But this leads not to peace and understanding, but to enmity and war. "And therefore... they become enemies... and they are in that condition which is called Warre; and such a warre, as is of every man, against every man." In this state of war there is no justice or law.

To this warre of every man against every man, this also is consequent; that nothing can be Unjust. The notions of Right and Wrong, Justice and Injustice have there no place. Where there is no common power, there is no Law: where no Law, no injustice. Force

10. Ibid., II, 6.
11. Ibid., II, 19.
13. Ibid., 263.
are in warre the two Cardinall vertues. 14

But such a state of chaos could never exist. Even Hobbes did not attempt to prove it did. To explain the step from complete absence of all law to a state in which society could be formed, Hobbes posited two natural laws. The first he calls the "Right of Nature" which is "the liberty each man hath to do anything to preserve his own Nature." 15 The second law is a precept to preserve himself. These two laws are not enough, so Hobbes posits two laws of reason. One is to endeavor peace; the other to do all that is necessary to acquire peace. These so-called laws have no real basis; they are put forward by Hobbes to insure the formation of society, as we shall see later on. In contract, Locke proposes a somewhat solid foundation for natural law.

**Locke called Reason the law of Nature**

The state of Nature has a law of Nature to govern it, which obliges every one, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions. 16

At first glance this statement seems to be in line with scholastic doctrine. The statement is correct, if it is rightly under-

14. Ibid., 265
15. Ibid.
stood. However, in explaining certain characteristics of natural law, Locke falls into error. Natural law, according to scholastic philosophy, consists in universal dictates of reason which arise from man's nature adequately understood. Now Locke was correct in basing natural law on reason which is universal in that it was to govern all men. "The law that was to govern Adam was to govern all his posterity, the law of reason." But Locke, even though he attempted to use both reason and the idea of God as the basis of his ethics, could not have an adequate concept of man's nature. First of all, Locke, according to his epistemology, was a sensist. All that he could know was ideas of things, and not realities themselves. He could not have certain knowledge about the immateriality of man's soul. And therefore he could not conclude to the immorality of man's soul, a fact which is the presupposition of any adequate system of morality. This great truth he had to take on faith. Even the idea Locke had of God was not sufficient for a completely adequate concept of morality. For Locke, the God of Christianity

17. Ibid., II, 57.


19. Ibid., 440.
was the God of future rewards and punishments. In his Essay concerning Human Understanding, Locke has an idea of God as the author of divine law.

First, there is the divine law, whereby I mean the law which God has set to the actions of men, whether promulgated to them by the light of nature, or the voice of revelation. That God has given a rule whereby men should govern themselves, I think there is nobody so brutish as to deny. He has a right to do it; we are His creatures. He has goodness and wisdom to direct our actions to that which is best; and He has power to enforce it by rewards and punishments, of infinite weight and duration, in another life; for nobody can take us out of His hands.\(^2\)

But in the Treatises, he does not employ the idea of God as a means of proving his moral rules, but derives his conclusions from the agreement or disagreement of other ideas.\(^2\) Reason is emphasized as the most reliable norm. "Reason must be our last judge and guide in everything."\(^2\) But even reason, because men can disagree so much among themselves, is not final. A common consent of that reason teaches is needed. "There wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and this common measure to decide all controversies between them."\(^2\)

20. Ibid., 280.
logically argues to the need of civil law. Reason, the law of nature, was adequate for man in determining right from wrong. But because of ignorance, prejudice, and the inopportunity to apply reason, something more was needed. This was civil "law, received and allowed by common consent to be the standard of right and wrong." Now human agreement as the sole norm of law would lead to positivism. Locke did not intend such an extreme. But his emphasis on agreement would provide the key which would open the door to positivism and pragmatism later on. This can be more readily seen when we come to examine his ideas on what would correspond to obligation and sanction in our terminology.

When John Locke first speaks of reason as the law of nature, he says that it "obliges every one". Furthermore, in speaking about paternal power he says: "For law, in its true notion, is not so much the limitation as the direction of a free and intelligent agent to his proper interest, and prescribes no further than is for the general good of those under the law." 24

And in a third place: "... for men being all the workmanship of one omnipotent and infinitely wise Maker; all the servants of one sovereign Master, are sent into this world by His order and

about His business . . . 25 These three statements of Locke, appearing in different places in his work, would be sufficient if taken together to form the basis of a correct concept of obligation. For they contain the two necessary points of obligation, namely, ultimate end and ordination. But nowhere in his work does Locke join these ideas to form a proper concept of obligation. Locke saw that reason, the law of nature, was the promulgation of the divine law. But he does not stress ordination to man's final end, the basic factor in obligation. Therefore Locke is forced to stress the obligation of reason. However, he does not make reason autonomous, as does Kant. Reason is man's means of knowing his obligation to strive for his final end. But reason alone, an intrinsic principle, cannot be the ultimate foundation of obligation. The obligation must come from an external principle, as ordination to a final end, which is found in the eternal law. This can oblige man to order his actions so that God, his final end, can be achieved. Since reason alone did not provide sufficient obligation, in the original state of nature, according to Locke, sought a more perfect obligation in political society. But if reason in the case of one man was insufficient to provide obligation, how could "an

25. Ibid., II, 6.
established, settled, known law, received and allowed by the common consent to be the standard of right and wrong" be forceful enough to obligate all men? His efforts to find a solid basis for obligation in civil society were doomed to failure.

As Locke erred in his explanation of obligation, so he erred in his discussion of sanction of the natural law. Of all the points of Lock's doctrine, this particular one on sanction and coaction is the strangest. Locke, an extreme individualist, made the mistake of confusing self-defense with sanction, and so gave to each man the power of execution of the law.

And that all men may be restrained from invading other's rights, and from hurt to one another, and the Law of Nature be observed, which willeth the peace and preservation of all mankind, the execution of the law of Nature is in that state put into every man's hands, whereby he has the right to punish the transgressors of that law to such a degree as may hinder its violation. 26

Locke is quite correct in realizing the need of sanction of law. 'For the law of Nature would, as all other laws that concern men in this world, be in vain if there was nobody that in the state of Nature had a power to execute the law, and thereby preserve the innocent and restrain offenders ...' 27 But his faulty logic carries him into error.

26. Ibid., II, 7.
27. Ibid.
and if any one in the state of Nature may punish another for the evil he has done, every one may do so. For in that state of perfect equality, where naturally there is no superiority or jurisdiction of one over another, what any man may do in prosecution of the law, every one must needs have a right to do.\textsuperscript{28}

As if this right of execution of the law was not enough, Locke went even further. He gave to the injured party the right to seek reparation. "He who hath received any damage has (besides the right of punishment common to him, with other men) a particular right to seek reparation from him that hath done it."\textsuperscript{29}

In attributing to each individual man the right of execution and the right of reparation, Locke was merely following his own logic. Yet he did not come to the true, logical conclusion. The whole idea of jurisdiction is based on superiority. It would be contrary to justice for one equal to exercise jurisdiction over another equal. Therefore, for one man to exercise jurisdiction over another, he must be that man's superior, either by nature or by office. Now, according to Locke, all men in the state of nature were equal. Therefore Locke was forced to admit a contradiction, namely, equals exercising jurisdiction over one another. This was truly a strange doctrine, as Locke was willing to admit.

\textsuperscript{28} Ibid.

\textsuperscript{29} Ibid., II, 10.
The reason for Locke's admitting such a doctrine can be found in his extreme individualism. Locke studied the government of his own day and saw that it rightly possessed the power of punishing criminals and exacting reparation. Since government according to him was merely a social contract of individuals, and had no more power than what each individual ceded over to it as he joined governmental society, Locke concluded that each man in the state of nature must possess executive power. Locke missed a fundamental distinction. Men binding themselves together in civil society have the right to designate the man or group of men who will act as executor of the law. But individual men cannot execute the law. Though Locke sees the need of sanction for natural law, he certainly errs in determining how this sanction is obtained. In one place, when discussing conquest, Locke does speak of eventual righting of the scale of justice, of divine sanction, thus showing that he had some notion of the ordination of law. But nowhere does he develop this idea; nor does he connect it with the law of reason, which for him is the natural law.

In our discussion of natural law, we saw that in Locke's state of nature there was a need for a greater understanding of the individual's obligation to natural law. This need was one of several, according to Locke, which led to the foundation of civil society. Though Locke's state of nature was "a state of good will, mutual assistance and preservation"
thought it was not a "state of warre, every man against every man", still it was not an ideal state. Locke gives three motives which prompted men in the state of nature to form civil society.

The first motive was to fulfill the desire for greater physical conveniences of life.

... for as much as we are not by ourselves sufficient to furnish ourselves with competent store of things needful for such a life as our Nature doth desire, a life fit for the dignity of man, therefore to supply these defects and imperfections which are in us, as living single and solely by ourselves, we are naturally induced to seek communion and fellowship with others.

The second motive is the desire for a more perfect security than that which is found in the state of nature.

Though in the state of Nature man hath a right (to life and liberty) yet the enjoyment of it is very uncertain and constantly exposed to the invasion of other; for all being kings as much as he, every man his equal, and the greater part no strict observers of equality and justice, the enjoyment of the property he has in this state is very unsafe, very insecure.

Although both of the above reasons are valid, the conclusion is


32. Ibid., II, 123, italics mind.
not sufficient. Civil society is not merely useful, but is absolutely necessary for the complete perfection of man's nature in this life. Man by nature is a social being. For he is born into the family which is a real society, although an imperfect one. Man in his human nature is ordained to a final end, namely God. Therefore man is obliged to do all that is necessary to achieve this one final end and all intermediate ends which lead up to the final end. Man has a body to be developed and perfected. But from the day of his birth he needs help from others, his mother, family, school companions, teachers, nurses, doctors, and countless others. Man is capable of learning the arts and sciences, of learning an indefinite amount of knowledge. But he must be helped, cajoled, inspired, and sometimes forced into learning. Man has a soul, created for one final purpose, to know and love God. But he needs the help of his mother, of religious teachers, of priests, and the prayers and good example of others. Men need to be directed in deciding a common procedure in the persuasion of collective goals. In short, man has a nature to perfect. Therefore he has the aptitude and necessity for society.

The third, and most pressing motive for forming civil society was, according to Locke, the difficulty and inconvenience involved in the fact that in the state of nature each man possessed complete executive power of the law of nature. Locke gives
three reasons for this difficulty. First:

There wants an established, settled, known law, received and allowed by the common consent to be the standard of right and wrong, and the common measure to decide all controversies between them. For though the law of Nature be plain and intelligible to all rational creatures, yet men, being biased by their interests as well as ignorant for want of study of it, are not apt to follow it as a law binding them in the application of it to their particular cases. 33

In the second place, even though men may have a right will to do what is just toward others, still men can never be sure that what they decide to do is the best thing, because man is naturally biased in his own regard.

Lastly, granting the first two conditions, man without the force of law and government behind him, cannot be sure that he has the strength to see that justice is done, whether in his own regard or in the case of a neighbor. These three reasons are brought forward by Locke to explain a difficulty he would not have had if he had known that the individual man has the power to designate the executor of the law, but does not have that executive power himself. Having explained man's motivation for forming civil society, Locke proceeds to show by what act government is formed.

Since the state, according to Locke, did not flow from man's nature, a way had to be found to arrive at civil society.

33. Ibid., II, 124.
Locke proposed the compact theory.

Man being, as has been said, by nature all free, equal and independent, no one can be put out of this estate and subjected to the political power of another without his consent, which is done by agreeing with other men, to join and unite into a community.\(^34\)

The essential note which binds men into civil society, therefore, is consent.

And thus, that which begins and actually constitutes any political society is nothing but the consent of any number of freemen capable of majority, to unite and incorporate into such a society. And this is that, and that only, which did or could give beginning to any lawful government in this world.\(^35\)

Locke's doctrine on consent was two-fold. First, as far as the original founding was concerned, Locke demanded that consent be gotten from each man. "For, when any number of men have, by the consent of every individual, made a community, they have thereby made that community one body."\(^36\) This is certainly in contrast with scholastic doctrine on consent, as it is explained by Suarez, who demands the consent of only a majority.\(^37\) Secondly, when

\(^34\) Ibid., II, 95.

\(^35\) Ibid., II, 99.

\(^36\) Ibid., II, 96.

\(^37\) Franciscus Suarez, Omnia Opera, Paris, 1856, V, 15, 4. "secundum civile autem jus illa censetur sanior pars quae est major totius consessus."
Locke speaks about the consent of the majority, he is referring more to the acts of the state once it has been formed.

When any number of men have so consented to make one community or government, they are thereby presently incorporated, and made one body politic, wherein the majority have a right to act and conclude the rest. 38

... they have thereby made the community one body, with a power to act as one body, which is only by the will and determination of the majority. 39

And thus every man, by consenting with others to make one body politic under one government, puts himself under an obligation to everyone of that society to submit to the determination of the majority, and to be concluded by it. 40

In explaining majority doctrine, Locke goes too far. He sees the majority assuming a right coincident with the formation of the state to decide matters of policy. Majority vote, however exercised, is merely a procedure agreed upon in the formation of some states for the ultimate decision of disputed questions. Besides demanding the consent of each individual in the founding of civil society, Locke made consent the sole means of entering civil society. "Nothing can make any man so but his actually entering into it by positive engagement and express promise and

38. Locke, C.G., II, 95.
39. Ibid., II, 96.
40. Ibid., II, 97.
compact.\(^41\) Locke even requires children to give consent when they become of age. This is obviously false. A child when he grows up may change his citizenship. But at birth, he becomes a citizen of the country in which he is born.

By the act of consent which brings the community into existence as a body politic, each man, according to Locke, relinquishes two powers he possessed in the original state of nature.

The first power of doing whatever he thought fit for the preservation of himself and the rest of mankind, he gives up to be regulated by laws made by society . . .

Secondly, the power of punishing he wholly gives up, and engages his natural forces . . . to assist the executive power of the society as the law thereof shall requires.\(^42\)

Other natural rights, namely, the rights of life, liberty, and estate, man retains after he consents to enter civil society.

When we compare the above explanation of consent with general scholastic doctrine,\(^43\) we find obvious differences.

\(^41\) Ibid., II, 122.

\(^42\) Ibid., II, 129-130.

\(^43\) For a treatment of consent as the proximate efficient cause of civil society in connection with popular sovereignty confer: St. Thomas, Summa Theologica, I-II, q 97, a 3, ad 3; De Reg. Principum, I, 6; Suarez, De Legibus, III, 4,2; 4,4; Defensio, III, 2,7; 2,9; Bellarmine, De Laicis, VI, note 3 and 4.
Locke makes consent the basis of a compact theory. Whereas the social nature of man requires no compact. Again, Locke sees the majority assuming a right upon formation of the State. Where in reality, majority-rule is only a procedure, and not a right. Moreover, Locke is in error in assigning the chief cause of society to the preservation of property. Any state of nature which requires a compact to form civil society implicitly denies the social nature of man. According to Locke, civil society arose out of convenience and utility. This misconception about man’s nature will be in evidence in Locke’s treatment of natural rights.

As we have seen in Locke’s theory, reason, albeit acting from utilitarian motives, was the directing cause of the institution of government. Whereas in Hobbes’ theory, men are compelled by necessity to come together into a community, self-preservation forces men to introduce the restraint of authority upon their actions. And yet this contract, according to Hobbes, is not natural but artificial.

Lastly, the agreement of these (animal) creatures is Naturall; that of men, is by Covenant only, which is Artificiall: and therefore it is no wonder if there be somewhat else required to make their Agreement con-

stant and lasting; which is Common Power, to keep them in awe, and to direct their actions to the Common Benefit. 46

In the natural state of man, war, according to Hobbes, made the laws of nature incapable of restraining and directing men. A Common Power was an absolute necessity. The only way to erect this Common Power was "to conferre all power and strength upon one man, or upon one assembly of men, that may reduce all their wills, by plurality of voices, to one Will". 47 This handing over of each man's power to one authority results in the formation of the commonwealth. The common power or sovereign has absolute power over his subjects, "to the end he may use the strength and means of them all, as he shall think expedient, for their Peace and Common Defence". 48 How the consequence of such a theory escaped Hobbes is surprising. For men would be living in a slave state. True, they would be protected from the attacks of their fellow men, but they would be powerless against a tyrant ruler.

The two contract theories of Hobbes and Locke really had much in common. Both theories emphasize the need for justification for the existence of the state and its exercise of

46. Ibid., 284.
47. Ibid., 284.
48. Ibid., 285.
restraint, and both attempt to give that justification. Both are based on a view of human nature which takes man to be fundamentally autonomous and independent. Hence the necessity of a contract to bring men together. Both Locke and Hobbes failed to make the conclusion that men are dependent on each other, since they require the society of their fellows for their own complete individual development. However, these two theories had one major difference. Hobbes' theory destroyed natural rights, while Locke's theory was pushed to the limit to preserve natural rights, as we shall see in the next chapter.
CHAPTER IV

LOCKE'S PHILOSOPHY
OF NATURAL RIGHTS

In the preceding chapter we considered Locke's treatment of natural law, the basis for natural rights. Now we shall study his doctrine of natural rights, first in general, then in particular. But first we must begin with a discussion of the word right, or its Latin equivalent, ius. Right can stand for three things: first, for a particular thing or object of justice; secondly, for a law; and thirdly, for a moral power or faculty. The first meaning is primary, and from it the other two are derived. St. Thomas, in his treatment of right, shows that justice is a virtue which orders one person toward another, setting up some kind of equality; and that in respect to which this equality exists is called ius, or right. Hence we may conclude that right is the object of justice. Having understood


2. St. Thomas, Summa Theologica, II-II, 57, 1 c.
this, we can see how right stands for law. For law is the source and the measure of right taken in the first sense. From right as a law flows the meaning of right as a faculty or moral power. For anyone under a law, must have the power or ability to do that which is demanded by the law. This is the meaning in which right is generally used by modern authors. Therefore, we may define right as "a moral power of doing, demanding, or possessing something". This is the meaning in which we shall consider right in our study of Locke.

Locke, in his treatises on Civil Government, never gives a strict definition of right. But from the way he speaks about it, we can easily arrive at his meaning of right. The dictionary defines right as "a power or privilege to which one is entitled upon principles of morality, religion, law, or the like". Locke would certainly agree with this definition in so far as right is a power to something. But the question that arises is whether Locke considered this power moral or physical. Locke does not answer this question in so many words, but from what he says we can safely conclude that he meant the power to be moral. First of all, Locke wrote against Hobbes, who gave...


man no natural rights but the right to do everything to preserve his own life, to kill if necessary. For Hobbes might, that is, physical power, was right. Locke in opposing him held that right was based on reason, not on might. Secondly, this right was known by reason to be equal among all men, and therefore had to be moral. If power was physical, rights would not be equal among men.

After this preliminary examination of what Locke meant by right, we must now consider the basis he gives for right. Locke says that men are "all the servants of one sovereign Master, sent into this world by His order and about His business." In the same paragraph, Locke goes on to explain that those who are under the law have certain obligations to the law. To fulfill these obligations, they have the necessary rights. Now Locke correctly starts out with law, the divine law.

In the second book of his Essay on Human Understanding, where he discusses moral relations, Locke speaks of divine law as "the measure of sin and duty".

First, the divine law, whereby I mean the law which God has set to the actions of men, whether promulgated to them by the light of nature, or the voice of revelation. . . . This is the only true touchstone

5. Locke, C.G., 6.
6. Ibid.
of moral rectitude; and by comparing them to this law it is that men judge of the most considerable moral good or evil of their actions; that is, whether as duties or sins they are like to procure themselves happiness or misery from the hands of the Almighty. 7

In this paragraph Locke states all the elements necessary for a correct concept of right. First, there is law universally promulgated by either reason or revelation. Here we are interested mainly in divine law promulgated through reason. Secondly, Locke speaks of duty and obligation. In fact he devides human actions into only two categories, duties and sins. This concept of obligation Locke further clarifies in two other places in the Essay. First he speaks about moral good and evil. "Moral good and evil, then, is only the conformity or disagreement of our voluntary actions to some law, whereby good and evil is drawn on us from the will and power of the lawmaker." 8 This concept of moral good or evil leads to morality which he explains when rejecting innate moral principles.

8. Ibid., II, 28, 5.
thereof necessary to the preservation of society, and visibly to all with whom the virtuous man has to do ... This (the disobedience of some) takes nothing from the moral and eternal obligation which these laws evidently have.

Here Locke refers to the proximate end of man, the happiness of man in human society in this world. There is no opposition to the ultimate end. Locke merely fails to treat of man's ultimate end. This concept of divine law is correct as far as it goes. But it is inadequate. Locke failed to make a complete analysis of the matter. He assumed as true the doctrines commonly accepted in his day. This is the great weakness of his whole treatment.

From obligation to divine law would naturally flow natural rights of those under the law. In his Essay on Human Understanding, Locke stresses the point of obligation, and fails to treat of rights. This treatment he leaves for his second Treatise on Civil Government, where he considers natural law and all its implications.

At the beginning of his second Treatise Locke makes two statements, one about the equality of men in the state of nature, and the other about the law of reason which teaches a conclusion of equality. Firstly, Locke says that the state of nature is:

9. Ibid., I, 3, 6, Italics mine.
A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another, there being nothing more evident than that creatures of the same species and rank, promiscuously born to all the same advantages of Nature, and the use of the same faculties, should also be equal one amongst another, without subordination or subjection. 10

And secondly, about reason, Locke says:

The state of Nature has a law of Nature to govern it, which obliges everyone, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions. 11

The first of the above statements shows the equality of man from the fact of equality of nature. This seems rather clear and requires no further proof. The second statement shows that all men are equal, a fact taught by reason, the law of nature. This equality would extend to whatever rights men might have. Locke does not yet prove natural rights. The sentence: "No one ought to harm another in his life, health, liberty or possessions." is a negative statement of man's duties. From this Locke could have reasoned to natural rights. But he does not do so at this point.

In another place Locke seems to argue to natural rights

11. Ibid., 6.
from the fact that men are all creatures of one God.

\[\ldots\] for 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 another's pleasure.\[12\]

Here Locke comes close to a correct argument for natural rights, but, again, the analysis is incomplete. He fails to state the end of man. The clause, "sent into the world by His order and about His business," provides a correct line of argument. If God puts man in this world with a specific task to perform, man has the obligation to do all in his power to accomplish this task. Along with the obligation, man must have all necessary rights, as the duties are natural duties. And these would be natural rights. Had Locke cared to develop this argument, he would have had a strong basis for his natural rights doctrine. But he contented himself with assumptions that probably seemed to him to be obvious.

The above statements, sketchy as they may seem, are Locke's arguments for natural rights. Perhaps it would be better to call them mere statements of natural rights, for Locke has made little attempt to prove them. Still, from his principles, Locke has deduced two cardinal rights. The first is the right

\[12.\text{ Ibid.}\]
of property of which we shall treat shortly. The second is the right to punish those who transgress the law. The second right which is more a defense of right, is "a very strange doctrine", even according to Locke.

All rights, as we saw above, are moral powers. Now from an analysis of right we can conclude that certain rights are coactive. That is, a person possessing a right, has joined to it, the moral power of exercising physical force to protect or insure his right. This property of right is absolutely necessary, for right without it would be in vain. Locke saw the importance of this point when he said that it was necessary "that all men may be restrained from invading others' rights, and from doing hurt to one another, and the law of Nature be observed, which willeth the peace and preservation of all mankind."

Now in stating his argument, Locke makes a valid premise. "For the law of Nature would, as all other laws that concern men in this world, be in vain if there was nobody that in the state of Nature had the power to execute that law, and thereby preserve the innocent and restrain offenders." But then Locke comes to

15. Locke, C.G., 7.
16. Ibid., 7.
this conclusion.

The execution of the law of Nature is in that state put into every man's hands, whereby every one has a right to punish the transgressors of that law to such a degree as may hinder its violation . . . and if anyone in the state of Nature may punish another for any evil he has done, every one may do so. For in that state of perfect equality, where naturally there is no superiority or jurisdiction of one over another, what any man may do in the prosecution of that law, every one must needs have a right to do. 17

Because of insufficient analysis Locke has come to a wrong conclusion. He has confused coaction of right with execution of the law. And to do so, Locke had to go contrary to his own logic. All along Locke has been arguing the equality of men. This equality would include whatever rights were natural to men. But this equality could not include the right to execute the law. For in order that one man execute the law in regard to another, he must be his superior, either by nature or by office. The first is impossible, since all men are born "creatures of the same species and rank . . . equal one amongst another, without subordination or subjection". 18 The second is likewise ruled out, since no man has been appointed by God as ruler over another. Therefore Locke is led to the illogical conclusion of having equals exercising an office which implies superiority.

17. Ibid., 7.
18. Ibid., 4.
Locke's general doctrine on natural rights is weak because he failed to carry his reasoning through to its conclusions. However, the statement of his doctrine accomplished its immediate purpose, the refutation of the absolutism of Thomas Hobbes. Man in the state of Nature, according to Hobbes, was at war with every man, while Locke claimed the state to be peaceful. According to both, the state of Nature was succeeded by a civil society based on compact. For Locke, this was a matter of utility since man lacked certain conveniences in the state of Nature. However, for Hobbes, this compact was one of necessity. Though man was at war with his neighbor, he somehow illogically was "endeavoring peace"\textsuperscript{19} and was "willing to lay down his rights to all things"\textsuperscript{20} to become an absolute subject with merely positive rights.\textsuperscript{21} Not so according to Locke. Man entered society, retaining some dignity and certain inalienable rights. These rights are classically enumerated as the rights to life, liberty, and property. Sometimes Locke speaks of them separately: "... the life, the liberty, health, limb or goods of an-

\textsuperscript{19} Hobbes, \textit{Leviathan}, 250.
\textsuperscript{20} Ibid., 250.
\textsuperscript{21} Ibid., 272.
other", 22 while at other times, he groups them all under the one title of property: "... preservation of their lives, liberties, and estates, which I call by the general name, property." 23 For convenience sake, and because they are so treated by most authors, we shall consider them as individual rights.

The first inalienable right is the right to life. Few philosophers would explicitly deny this. Even Hobbes in his state of war, all against all, admitted that man had a right to his own life, though, as has been seen, this was not strictly a moral power. Locke, therefore, found it easy to defend this natural right. His arguments are deduced from reason. First, men are "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 another's pleasure." 24 From this Locke draws two conclusions. The first is a prohibition against suicide. "Everyone is bound to preserve himself, and not to quit his station will-

23. Ibid., II, 123.
fully. The second is an obligation to preserve the rest of mankind and "not to take away or impair the life, or whatever tends to the preservation of the life of another". The second argument is from equality. "And, being furnished with like faculties, sharing all in one community of Nature, there cannot be supposed any such subordination among us that may authorize us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for ours." These two arguments are quite reasonable, and were in no way strange to any man of 17th century England. Locke, therefore, had no trouble in proving man's fundamental right to life. But not so when he came to consider the problem of liberty.

In studying the subject of liberty, Locke considers it in two circumstances, first in the state of nature, and then in civil society. They are essentially the same, although the latter has self-imposed restriction on the former. In the fourth chapter of his Treatise, Locke defines the liberty of the state of Nature. "The natural liberty of man is to be free from

25. Ibid., 6.
27. Ibid., 6.
any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of Nature for his rule".28 This liberty, as we have seen, is not a state of licence, but one entirely subject to reason which regulates the use of all creatures.29 This limitation of liberty is entirely in accord with man's nature. His ordination to a final end limits his activities if he is to pursue his final goal. Locke refers specifically to two limitations in the state of nature. First, man "has not liberty of destroy himself, or so much as any creature in his possession."30 Secondly, man 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".31 This use of liberty is based on man's reason, and is greatly befitting his dignity and nature.

Liberty in society is similar to that in nature, only here the restrictions are made explicit by established law.

The liberty of man in society is to be under no other legislative power but that established by consent in the commonwealth, nor under the dominion of any will, or restraint of any law, but what the legislative shall enact according to the trust put in it.32

29. Ibid., 6.
30. Ibid., 6.
31. Ibid., 6.
32. Ibid., 21.
This "liberty to follow ones will in all things were the rule prescribes not" has a negative aspect. Man is to be left to his own liberty as much as possible. This individualistic tendency will limit law more and more, and its influence becomes more evident in Locke's treatment of private property.

In the Treatise on Civil Government the treatment of liberty assumes great importance for it was closely connected with the main purpose of the Treatise. Locke wrote to justify "the Glorious Revolution of 1688". To do this Locke had to prove that man had by nature a right to revolt against a tyrannical government. Since men freely entered into civil society to protect their rights and liberties, Locke concluded that whenever these rights and liberties were in grave danger, men had the right to revolt.

Whensoever, therefore, the legislative shall transgress this fundamental rule of society, and either by ambition, fear, folly, or corruption, endeavor to grasp themselves, or put into the hands of any other, an absolute power over the lives, liberties, and estates of the people, by this breach of trust they forfeit the power the people had put into their hands for quite contrary ends, and it devolves to the people, who have a right to resume their original liberty, and by the establishment of a new legislative (such as they shall think fit), provide for their own safety and security, which is the end for which they are in society.33

33. Ibid., 222.
The argument is logical, and the conclusion, valid. Men do possess the liberty of choosing their own form of government, and of disbanding it when it no longer serves the purpose for which it was formed.

In order that we may later make a valid criticism of Locke's writings on liberty, it is necessary to consider his treatment of this natural right in another of his works. Locke wrote three Letters Concerning Toleration, and three defenses of The Reasonableness of Christianity. In a note to the reader of the first Letter on Toleration Locke writes: "Absolute Liberty, Just and True Liberty, Equal and Impartial Liberty, is the thing we stand in need of." About toleration he writes, "I esteem that Toleration is the chief characteristic Mark of the True Church". And further on he says:

The Toleration of those that differ from others in Matters of Religion, is so agreeable to the Gospel of Jesus Christ, and to the genuine Reason of Man-kind, that it seems monstrous for Men to be so blind, as not to perceive the Necessity and Advantage of it, in so clear a Light.

However this was a strange kind of toleration which Locke claimed he had found in the Gospel of Christ, for it allowed him to

34. Locke, Works, Letter on Toleration, II, 231.
35. Ibid., 233.
36. Ibid., 234.
exclude both Roman Catholics and Atheists from the state, all in the same breath. Actually, Locke was at this point introducing into his essay without discrimination some related but quite distinct questions, namely, freedom of conscience in general, the Protestant claim to the right of privately interpreting Sacred Scripture, and the political relation between the state and a Church claiming to be of divine origin and independence. Tired with the religious squabbles of his day, Locke was willing to cut Christian doctrine down to a minimum, leaving to the liberty of the individual the rejection or acceptance of anything over and above the minimum. In our last chapter we shall give a more complete criticism of Locke's treatment of liberty.

The third and last inalienable right about which Locke writes, is the right to private property. In our consideration of this right two questions arise. Does man in general have the right or dominion over private property; and secondly, how does each particular man acquire dominion over private property? The answers to these two questions will be the basis of Locke's doctrine on private property.

37. Ibid., 251, "That Church can have no right to be tolerated by the Magistrate, which constituted upon such a bottom (sic), that all those who enter into it, do thereby ipso facto, deliver themselves up to the Protection and Service of another Prince . . . Those are not to be tolerated who deny the Being of God."
In order to answer the first question it is necessary to consider whether or not man according to his nature does have the right of dominion. And then, what kinds of dominion does man exercise. First of all Locke says that man is capable of dominion. "... God makes (man) 'in His own image after His own likeness', makes him an intellectual creature, and so capable of dominion." This dominion, which is derived from the Latin dominus, designates authority over a person, or power over a thing. In regard to the first kind of dominion, that of one man over another, Locke enumerates and distinguishes several powers. "The power of a magistrate may be distinguished from that of a father over his children, a master over his servant, a husband over his wife, and a lord over his slave."  

In the family the parents have power over their children "by the law of Nature, which gives such power over them to him that begets them." This power is temporary and does not extend to their lives or goods.

His command over his children is but temporary, and reaches not their life or property. And

38. Locke, C.G., I, 30.
41. Ibid., I, 101.
though a father may dispose of his own possessions as he pleases when his children are out of danger or perishing of want, yet his power extends not to the lives or goods which either their own industry, or another's bounty, has made theirs.\textsuperscript{42}

The husband had a certain power over his wife, yet it is by no means absolute. In fact she retains all rights which belong to her as an individual. "This power reaching but to the things of their common interest and property, leaves the wife in full and true possession of what by contract is her peculiar right."\textsuperscript{43}

Political power is also defined by Locke.

Political power, then I take to be a right of making laws, 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.\textsuperscript{44}

Such political power arises from voluntary agreement "for the benefit of their subjects, to secure them in the possessions and use of their properties",\textsuperscript{45} it can never be arbitrary. For "the supreme power cannot take from any man any part of his property without his consent".\textsuperscript{46}

\begin{itemize}
\item \textsuperscript{42} Ibid., II, 65.
\item \textsuperscript{43} Ibid., II, 82.
\item \textsuperscript{44} Ibid., 3.
\item \textsuperscript{45} Ibid., 173.
\item \textsuperscript{46} Ibid., 138.
\end{itemize}
According to Locke, the state is concerned with the individual's just possession of those things which belong to this life, the Church is concerned with the public worship of God, and the acquirement of eternal life. Hence, "Nothing ought, nor can be transacted in this society (the church), relating to the possession of civil and worldly goods." This sharp distinction could lead to problems of church and state. But here, Locke intended another example of the inviolability of man's property rights.

From the above considerations of power we are able to come to a double conclusion. First, according to Locke, man does exercise power over other men, but at no time is this power absolute in the true sense of the word. Secondly, the exercise of dominion of one man over another never extends to the property of the second person. This second conclusion is a negative proof that man does possess a right to private property. If man did not possess this right, why would Locke be so jealous in guarding the right of private property when he speaks about dominion of one man over another. But the proof of his thesis does not rely completely on this negative aspect. Locke offers a positive argument to show that man in general has a right to

private property.

In the fifth chapter of his *Treatise on Civil Government*, Locke begins thus:

> Whether we consider natural reason, which tells us that men, being once born, have a right to their preservation, and consequently to meat and drink and to such other things as Nature affords for their subsistence, or 'revelation', which gives us an account of those grants God made of the world to Adam, and to Noah and his sons, it is very clear that God... has given the earth to mankind in common.

Since the earth and the things that are on it, have been given to mankind in common, Locke correctly concludes that there must be some way by which individual man acquires food and property for himself. The first possibility, namely, the common consent of all mankind, is immediately ruled out, for "if such a consent as that was necessary, man had starved, notwithstanding the plenty God had given him". In continuing to seek after a solution, Locke treats of two ways by which man may acquire property. The first is inheritance. Locke refers to this in several places. First, in discussing the subject of inheritance in connection with property title belonging to Adam's children,

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he says: "But if any one had begun and made himself a property in any particular thing . . . that possession, if he disposed not otherwise of it by his positive grant, descended naturally to his children, and they had a right to succeed to it and possess it." 50 Again, in talking about the dependence of children upon their parents, Locke writes:

... nature appoints the descent of their property to their children, who thus come to have a title and natural right of inheritance to their father's goods, which the rest of mankind cannot pretend to. 51

Lastly, in discussing Conquest, Locke says:

Every man is born with a double right. First, a right of freedom to his person, which no other man has a power over, but the free disposal of it lies in himself. Secondly, a right before any other man to inherit, with his brethren, his father's goods. 52

Inheritance, therefore, is a clear and valid title for property. However, it is not the primary title to property. To determine this primary title, Locke begins with the individual man who possesses "a right of freedom to his person."

Though the earth and all inferior creatures be common to all men, yet every man has a 'property' in his own 'person'. This nobody has any right to but himself. The 'labor' of his body and the

50. Ibid., I, 87.
51. Ibid., I, 89.
52. Ibid., II, 190.
'work' of his hands, we may say, are properly his. 53

From the above premise, Locke draws this conclusion. "Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labor with it, and joined to it something that is his own, and thereby makes it his property." 54 Locke's words are quite similar to those used by Leo XIII. 55 But Leo XIII does not make labor the primary title of property; whereas, Locke does. "For this 'labor' being the questionable property of the laborer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good left in common for others." 56 And later on in the same chapter: "He (God) gave it (the earth) to the use of

53. Ibid., II, 26.
54. Ibid., II, 26.
55. Pope Leo XIII, Rerum Novarum: "Now, when man thus spends the industry of his mind and the strength of his body in procuring the fruits of nature by that act he makes his own that portion of nature's field which he cultivates --- that portion on which he leaves, as it were, the impress of his own personality; and it cannot but be just that he should possess that portion as his own, and should have a right to keep it without molestation." Taken from text as quoted in Reorganization of Social Economy, Oswald Von Nell-Breuning S.J., New York, 1936, 369.
the industrious and rational (and labor was to be his title to it)."57

In discussing labor as the title to property, Locke also considers the limitation of private property. In answering the objection that if gathering the acorns or other fruits of the earth, makes a right to them, then anyone may engross as much as he will, Locke says, "Not so. The same law of Nature that does by this means give us property, does also bound that property too."58 What is this limit set by Nature? Locke answers: "As much as anyone can make use of to any advantage of life before it spoils, so much he may by his labor fix a property in. Whatever is beyond this is more than his share, and belongs to others."59 Here in the state of Nature reason proposes the amount that a man ought to have. Use or need, joined with perishableness, is the norm by which a man is to be guided. A man may gather together all the foodstuffs that he and his household are able to use, but he must not let it spoil before it can be used. But even in the state of Nature "if he also bartered away plums that would have rotted in a week, for nuts that would

57. Ibid., II, 33, Italics mine.
58. Ibid., II, 30.
59. Ibid., II, 30.
last good for his eating a whole year, he did no injury; he wasted not the common stock... The criterion by which limitation of property is set seems to be changing; use or need is passed over, and perishableness or durability is alone considered. If the property does not spoil, a man might gather whatever he wanted. However, with the discovery of valuable metals and the invention of money there seems to be no limit to what a man might justly gather to himself.

If he would give his nuts for a piece of metal, pleased with its color, or exchange his sheep for shells, or wool for a sparkling pebble or a diamond, and keep those by him all his life, he invaded not the right of others; he might heap up as much of these durable things as he pleased.

This last quotation appears to one author, as the "charter of rugged individualism." In practice this may be true; but in Locke's defense it may be suggested that he did not realize the power of "big money", and hence saw no harm to others in the pecuniary acquisitions of some.

At all times, Locke was at pains to protect man's right to property. Even in considering the rights of conquest,

60. Ibid., II, 46.
61. Ibid.
Locke defended property with a "strange doctrine". For "He has an absolute power over the lives of those who, by an unjust war, have forfeited them, but not over the lives or fortunes of those who engaged not in the war, nor over the possessions even of those who were actually engaged in it." Again Locke seemed to make the protection of property the purpose of government. He frequently said that men entered civil society in order to protect their property. "The great and chief end, therefore, of men uniting into commonwealths, and putting themselves under government, is the preservation of their property." In the opening chapter of the Second Treatise, Locke defines political power as "a right of making laws... for the regulating and preserving of property." However, as we pointed out above, Locke uses the term 'property' in two different meanings. The first has the usual meaning of property goods, while the second includes every man's "life, liberty, and estates". Therefore,

63. Locke, C.G., 180.
64. Ibid., 178.
65. Ibid., 124.
66. Ibid., II, 3.
67. cf. page 47.
68. Locke, C.G., II, 123.
we cannot attribute to Locke "the narrow Whig view which made the preservation of property in its ordinary restricted sense the whole raison d'etre of the state". Still, in emphasizing the property rights of the individual, Locke overlooked the duties of the individual. In reality, as Gough points out, Locke was setting up a type of government, aristocratic rather than democratic, which would afford greater protection to certain classes, rather than to men as a whole. This point we shall consider more completely in our final chapter, the criticism of Locke's doctrine on natural rights.


70. Ibid., 84. "The consequence was that, in spite of his theory that every man had a right to acquire property in the state of nature, he acquiesced in a state of affairs in which political power was concentrated in a property-owning oligarchy, and the propertyless mass of mankind, who in practice had little or no say in the direction of public affairs, were relegated to the care of the poor-law."
CHAPTER V

CRITICISM OF
LOCKE'S DOCTRINE

In the preceding chapters we have considered John Locke's doctrine on natural rights. In our study we examined, for the most part, the text of his Treatise with little comment or explanation. The work of this remaining chapter, therefore, will be to criticize Locke's doctrine on natural rights as it is bound up in his political philosophy. However, his doctrine on rights does not stand alone. Lamprecht points this out.

There can be traced in all his allusions to, and discussions of, moral and political problems the effect of the epistemological principle set forth in the Essay, with the same inadequacies, the same shifting of ground, and the same limitations of a rationalistic position.1

Therefore, it will be necessary to consider briefly Locke's general philosophy. This we can do by examining the main points of his Essay Concerning Human Understanding.

The occasion for his essay, as Locke tells us, was the doubts which arose in discussion with a number of friends. It

1. Lamprecht, Moral and Polit. Phil., 149.

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occurred to Locke that, "before we set ourselves upon inquiries of that nature, it was necessary to examine our own abilities, and see what objects our understandings were, or were not, fitted to deal with."2 In the Introduction then, he sets himself a threefold method and purpose, to inquire into the origin of our ideas, to show what knowledge the understanding has by these ideas, and the certainty, evidence, and extent of it, and finally to examine the reasons and degrees of assent.3 A rough outline of the four books of the Essay shows in the first a rejection of innate ideas and principles, in the second Locke's theory that ideas arise from experience in sensation and reflection, in the third his concern over the meaning and use of words, and in the fourth his criteria for the validity and extent of human knowledge.

Some of the inadequacies and shifting of ground which Lamprecht complains of can be seen in the final words of Locke's introduction. Locke asks pardon of his readers for the use of the term, idea, and then defines it:

... it being that term which, I think, serves best to stand for whatsoever is the object of the under-

3. Ibid., 3.
standing when a man thinks, I have used it to express whatever is meant by phantasm, notion, species, or whatever it is which the mind can be employed about in thinking; . . . I presume it will easily be granted me, that there are such ideas in men's minds. Everyone is conscious of them in himself; and men's words and actions will satisfy him that they are in others. 4

From the viewpoint of Scholastic philosophy, the inexactitude of terminology is a count against Locke, but the basic presupposition contained in this definition is the chief source of complaint. For Locke has made the object of the understanding to be the idea, even in the broad sense, and not the thing known. The consequences of this position appear throughout his work; yet it does not prevent him from taking an essentially realist stand at the same time. Locke wants us to take for granted that the real, objective order of other men who think, talk, and act is simply beyond question.

To proceed with the general aspects of his doctrine, the rejection of innate ideas in book one is of concern to the present discussion only in the light of what Locke has to say about innate principles of morality. Neither the ideas nor the principles of morality based on them can be innate according to Locke, because men simply do not act in the same way all over

4. Ibid., 8.
the world, as they would if ideas and principles of morality were innate. Yet he is quick to disclaim:

There is a great deal of difference between an innate law and a law of nature; between something imprinted on our minds in this very original, and something that we, being ignorant of may attain to the knowledge of by the use and due application of our natural faculties. And, I think, they equally forsake the truth who, running into contrary extremes, either affirm an innate law, or deny that there is a law knowable by the light of nature; that is, without the help of positive revelation.5

Locke puts himself on record then as believing in the ability of our understanding to attain the principles of morality, and indeed, of arriving at a knowledge of a law of nature apart from positive revelation. This position is perhaps the saving grace for his subsequent writings on natural rights, but it remains to be seen what the ability of human understanding amounts to under the restrictions placed on it by Locke himself.

For in the second book of his Essay he tells us that the source of all ideas must be either sensation, in so far as "external objects furnish the mind with ideas of sensible qualities, which are all those different perceptions they produce in us;" or by reflection, that is, the "notice which the mind takes of its own operations, and the manner of them, by reason whereof

5. Ibid., I, 3, 13.
there come to be ideas of these operations in the mind."⁶ Locke goes on in his rather physiological dissection of the mind's operation to discuss the origin of simple ideas from one or more senses, from reflection only, or from a combination of the two. Combination of simple ideas gives us complex ideas, comparison of two ideas whether simple or complex gives us the idea of relations, and separating ideas from all that accompanies them in real existence by the process of abstraction gives us general ideas.⁷ In his discussion of substance and of primary and secondary qualities of things, Locke's inherent nominalism comes to the fore. Substance is for him an unknown and unknowable substratum which supports the primary qualities of any body. The collection of notes which experience and the observation of men's senses commonly find to exist together are given names, such as man, horse, gold, but the mind never arrives at a knowledge of their essence, as such.⁸ Among his conclusions after the dissection of simple ideas, Locke has this to say:

... it seems probable to me, that the simple ideas

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⁶. Ibid., II, 1, 4 and 5.
⁷. Ibid., II, 12, 1.
⁸. Ibid., II, 23, 2 and 3.
we receive from sensation and reflection are the boundaries of our thoughts beyond which, the mind, whatever efforts is would make, is not able to advance one jot, nor can it make any discoveries, when it would pry into the nature and hidden causes of those ideas.9

One wonders in the face of this empiricism how Locke can validly a few pages further discourse on the moral relations of good and evil, of laws, Divine and Civil. He is quite dogmatic in stating that there is a divine law "which God has set to the actions of men, whether promulgated to them by the light of nature, or the voice of revelation. That God has given a rule whereby men should govern themselves, I think there is nobody so brutish as to deny."10 It is not clear whether the "light of nature" is comprehended under the simple ideas which we get, according to Locke, only from sensation and reflection.

The nominalism mentioned above is nowhere more evident than in the third book which treats of the names of substances. Locke distinguishes the real and the nominal essence of things, the former being the unknown real constitution of things, the latter the complex idea for which such a general abstract word like gold stands.11 It is the abstract ideas which bound the

10. Ibid., II, 28, 8.
11. Ibid., III, 6, 2.
species for Locke, and not the real essences which we do not know, nor the substantial forms.\textsuperscript{12}

The final book of the \textit{Essay} assigns this definition to knowledge, "the agreement or disagreement between two ideas". The definition is verified in four ways according to Locke, in identity or diversity, in co-existence or necessary connection between two ideas, in relations, and finally in real existence.\textsuperscript{13}

This agreement can be intuitive without the need of any other term, or it can be demonstrative in a reasoning process using a middle term. To these sources of knowledge Locke adds the sensitive knowledge of particular existence. Here he faces the problem of future philosophers who followed his principles: does the external object exist? Locke says yes, because we are conscious of our idea and sense impression from the object, and we are completely passive with regard to the sense impressions.\textsuperscript{14}

Thus rescued from being cut off from the external world, Locke goes on to examine the limits of knowledge. The disagreement or agreement of ideas in relations offer the best field for comment here; morality is a relation capable of demonstration:

\begin{itemize}
\item 12. \textit{Ibid.}, 20.
\item 13. \textit{Ibid.}, IV, 1, 2 and 3.
\item 14. \textit{Ibid.}, 2, 14.
\end{itemize}
The idea of a Supreme being, infinite in power, goodness, and wisdom, whose workmanship we are, and on whom we depend; and the idea of ourselves, as understanding, rational beings, being such as are clear in us, would, I suppose, if duly considered and pursued, afford such foundations of our duties and rules of actions as might place morality among the sciences capable of demonstration; therein I doubt not, but from self-evident propositions, by necessary consequences, as incontestable as those in mathematics, the measures of right and wrong might be made out, to any one that will apply himself with the same indifferency and attention to the one as to the other of these sciences.

In this paragraph, Locke seems to be convinced that morality has a sound demonstrable basis. But he expresses some hesitancy with the words "would, I suppose, if duly considered and pursued, afford such foundations of our duties and rules of actions as might place morality among the sciences capable of demonstration". Locke's empiricism, if he is true to his principles, logically causes this hesitancy. It is his dogmatic rationalism which clears the ground for his theory of morality as it appears in his main political work.

When one turns to Locke's Treatises on Civil Government, he finds the philosopher assuming many of the dogmatic positions on morality noted above. Locke does not seem to be bothered by the logical implications of his doctrine. We shall study Locke's theories as found in the Treatise, with occasional reference to

15. Ibid., IV, 3, 18.
the epistemological inadequacies.

Locke, as was seen above,\textsuperscript{16} started with natural law, or reason, as the basis of natural rights. By the use of reason all men were capable of arriving at a knowledge of all their rights and duties. Locke does not clearly explain this "use of reason". For one author incorrectly accuses Locke of resorting to innate ideas.

Now, if there ever was an innate idea, it is the law of nature, as expounded in the \textit{Civil Government} of Locke. It springs fully armed from the brain of man, at the very dawn of history. It owes nothing to experience. It is the gift of intuition, pure and simple.\textsuperscript{17}

This criticism is severe and inexact. It is true that in the \textit{Treatise}, Locke does not explain how man comes to know the law of nature. But in the \textit{Essay}, Locke has already acknowledged that intuitive knowledge is not clearly the same as innate. He affirms that the law of nature is "knowable by the light of nature". This light of nature is reason without the help of revelation.

So clearly, a law of nature learned by reason is not the same as an innate law.

The law of nature, as Locke points out, is knowable by each individual who will but consult it.\textsuperscript{18} Most commentators

\textsuperscript{16} cf. above, page 16.

\textsuperscript{17} C. E. Vaughn, \textit{Studies in the History of Political Philosophy}, London, 1925, I, 163.

\textsuperscript{18} Locke, \textit{C.G.}, II, 6.
have understood Locke's natural law as highly individualistic. However, one modern interpretator disagrees. Kendall says that Locke begins with an authoritarian and collectivist definition of political power. Locke's state of nature, he maintains, is a group of highly socialized men. Finally, Kendall interprets Locke as saying that men acquire their rights from the positive law of the state. This interpretation is certainly contrary to the traditional one, as Gough points out. However, Kendall is correct in saying that the state of nature is a social state. But it was not so highly organized that it was just one step away from political society. True, man according to his nature has certain tendencies toward political society and the consequent rights of a life therein. But the political state was created to insure and protect these rights. The rights of the individual and the rights of the state, though Locke does not clearly see this, come from the same source, man's nature. Therefore, they are not radically opposed, but are in harmony. For the law of the state "is not so much a limitation as the direction of a free and intelligent agent to his proper interest, and


prescribes no farther than is for the general good of those under
the law." 21

In discussing man's natural rights under political
government, Gough shows that Locke had a tendency to identify
public and private interests. Locke did not overlook the interest
of the individual and concentrate on collectivist interests,
as Kendall would hold. But Locke, in his naive concept of
human nature, thought that man, at least the majority of them,
would be guided by reason. So he failed to consider the possibility of conflict between public and private interests. Though
Locke clearly limited the purpose of government, as when he
said, "Their (the legislators) power in the utmost bounds of it
is limited to the public good of the society," 22 he did see that
man would necessarily have to limit the exercise of his personal
rights so as not to come in conflict with the public good. Man
would have to submit to the will of the majority. We cannot
blame Locke, as Kendall seems to do, for failing to set up the
proper political machinery for consulting the will of the major-


22. Ibid., 135.
The time-honored criticism of Locke as an individualist can be more fully understood if we consider one purpose he had in mind. In his all too brief statement\(^2\) of natural law in the state of nature and the consequent manifestation of natural law in political society, Locke attempted to take a safe middle course between two dangerous extremes. Locke wished to avoid the theory of the divine right of kings on the one hand, and, on the other, the compact theory of government as a completely artificial device. The middle course that Locke followed was this: man by nature was a social being, and consequently a political being. In a few places Locke emphasizes the political nature of man. Kendall calls attention to these places and over-emphasizes their importance. But in many other places in his Treatise, Locke stresses the individual man and his right. Con-

23. In a recent work, Gough makes use of an unpublished set of essays written in Latin by Locke on the Law of Nature. In these essays, as Gough points out, Locke brings forth five separate proofs for the existence of a law of nature; rejects knowledge of it by innate ideas or human consent; says that man knows of the law of nature by reflection on sense perception; and states that natural law is perpetual, universal, and obtains its obligation from God as its author. From Locke's correspondence with Tyrrell we learn that Locke intended to publish these essays separately. Perhaps this accounts for the lack of any extended treatment of natural law in his Treatise. It is unfortunate that these Latin essays are still in publication and so cannot shed any light on the problem in this thesis.
sequently most commentators have high-lighted the individualism of Locke. Gough, however, concludes to an individualism of a qualified sense. For "he did not imagine the state to be an artificially fabricated combination of naturally separate individuals; he did not champion the individual against the community, and barely considered the possibility of conflict between them." 24

After what is now admitted to be an individualistic interpretation of natural law, Locke sets out to prove that man possesses natural rights based on natural law. As we saw above, 25 the two main arguments Locke used to prove his case were, first, the equality of all men, and second, the fact that all men are alike creatures of God. These two arguments are correct as far as they go. But the main criticism against Locke's statement of natural rights is this: he failed to prove these rights from a correct analysis of human nature. This he was unable to do because of his empiricism and rationalism. With his knowledge limited to ideas based on sense experience, Locke could not arrive at an adequate concept of human nature. 26

25. cf. above, page 44.
sequently, there could be no epistemological basis for knowing a human nature, common to every man. Therefore, though Locke did prove the existence of God from contingency, he could not form a complete estimate of man's relationship to God, since he could not have the knowledge of a common human nature with which to begin.

Locke gives no general proof for natural rights. In reality he could not, because of his inadequate epistemology. When he does come to discuss individual rights, he holds a doctrine of natural rights common to all men. Therefore, in our criticism of Locke's treatment of specific natural rights, namely, life, liberty, and property, we must accept what he writes in the light of common sense doctrine according to which he wrote it.

The first natural or inalienable right of man is the right to life. Locke's proof of this right is very brief. He adduces two arguments; first, "men (are) all the workmanship of one omnipotent and infinitely wise Maker; and . . . are His property"; secondly, men "share all in one community of nature." and therefore, no one man's life is subject to the will of another. Both of these arguments are correct, even though they are outside the boundaries of Locke's epistemology. In Locke's further discussion of the right to life, we can detect a tinge

of rationalism. Though Locke held that all men had an equal right to life, there was one situation in which he admitted arbitrary power over life. That was in the case of conquest, in which the conquerors had power over the lives of the vanquished. This error arises from Locke's original misconception of the individual power of the execution of the natural law. In the state of nature man, according to Locke, possesses as a natural right, the executive power of the law. Each man may punish criminals and exact indemnities. From this concept of executive power, it is a brief step to attributing to conquerors the right of life and death over the conquered.

Liberty was the second natural right about which Locke wrote in his *Treatise on Civil Government*. The liberty that Locke discusses is twofold. First, liberty in the state of nature.

The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of Nature for his rule. 28

Secondly, the liberty of man in political society.

The liberty of man in society is to be under no other legislative power but that established by consent in the commonwealth, nor under the dominion of any will, or restraint of any law.

but what that legislative shall enact according to the trust put in it. 29

Though Locke makes these statements concerning liberty, at no time in the Treatise does he discuss liberty. This discussion is left for the Essay. Here Locke, by some obscurity, denies freedom to the will, which is a power, and therefore attributes it only to the agent. 30 But these mistakes are more or less based on bad terminology. For Locke does attempt to explain man's freedom. First, he says that liberty consists not in making any preference, but in being able to carry out a preference. 31 This, in reality, is not an explanation of free will, but an explanation of a result of freedom, namely, freedom of execution. This doctrine was very close to the fatal necessity of Hobbes. However, since he condemned Hobbes for "resolving all, even the thoughts and will of men, into irresistible fatal necessity", 32 and since he wanted to protect human freedom because he thought all morality depended on freedom, 33 Locke was led to a second

29. Ibid.
30. Locke, Essay, II, 21; 6, 14, and 16.
31. Ibid., 27.
32. Locke, Works, IX, 256.
33. Ibid.
explanation of human freedom. Liberty 'is a power to act, or not to act, accordingly as the mind directs'.

Therefore,

human freedom consists, not simply in liberty from external control, but in the ability to suspend the operation of the passions until reason has examined the particular desires for specific goods in the light of the general desire for the highest happiness.

Finally reason must be "our last judge and guide in everything!" Locke, in explaining man's freedom, attempted to devise a system of morality, based completely on reason. Now it is true that reason alone is sufficient to give man a fundamental morality and religion. But in order to lead a good moral life man is in need of revelation from God. Locke, however, relied completely on reason. In this we can lead him back to his original epistemological difficulty. If reason is limited to sense experience and reflection, as Locke claims, then moral principles which go beyond this narrow limit would not be valid for Locke. In devising a system or morality, Locke does rely on these moral principles, but by his epistemology he does not arrive at their knowledge.

34. Locke, Essay, II, 21, 73.
The freedom spoken of by Locke in his Treatise leads to errors. For example, Locke who so valued human liberty, was led by his rationalist position to admit the complete justice of slavery. Now slavery might be justified in certain rare conditions, but Locke would justify slavery as a punishment for the conquered in war. For he says:

Indeed, having by his own fault forfeited his own life by some act that deserves death, he to whom he has forfeited it may, when he has him in his power, delay to take it, and make use of him to his own service; and he does him no injury. 37

The "act that deserves death" is participating in an unjust war. Here Locke makes the common guilt, or even the ruler's guilt in waging war, the individual guilt. This point is impossible to prove, especially in concrete circumstances. This mistaken idea about the validity of slavery arises from Locke's original error about natural law. In speaking about the state of nature, Locke, we may recall, gives to each individual man the executive power of the law. Man may punish and exact retribution. Following this error to its logical conclusion, man in a state or nation may punish the vanquished in war by taking them into slavery.

In the Treatise on Civil Government, the natural rights of life and liberty receive a rather brief treatment. What he

37 Locke, C.G., II, 22.
says is scattered throughout the **Treatise**, and can be summarized in a few paragraphs. However, the right to private property, which is the third natural right, takes on a role of great importance, both in the amount of space Locke devotes to it, and in the value it has in Locke's political philosophy.

All through his **Treatise** Locke is at pains to stress both the importance and the dignity of property. Examples are plentiful: the ability to exercise ownership is one of man's points of likeness to God; one of the main purposes of founding civil government is the protection of property; finally, property rights may not be violated by husband, father, legislator, or conqueror.

Before we begin our criticism it is necessary to make reference to Locke's use of terminology. Sometimes Locke will refer to all three natural rights, naming them separately. For example: "No one ought ... take away or impair ... what tends to the preservation of life, liberty ... or goods of another." Other times Locke tends to group these natural rights under one head. Thus: "... he is willing ... to unite for the mutual preservation of their lives, liberties and estates, which I call

by the general name---property."\textsuperscript{39} Since Locke used the word "property" with both a specific and a general meaning, we must carefully examine what he means when he uses the word, and not be too quick to jump to any conclusions.

Locke begins his study of property by showing that dominion is an attribute of man's rational nature. He says: "God makes him (man) 'in his own image and after his own likeness', makes him an intellectual creature, and so capable of dominion."\textsuperscript{40} In general Locke divides this dominion or power into power in the family and power in the political state. For the most part we have already considered family dominion. But it is necessary to recall two references for a point of criticism. First the father exercises paternal power over his children,\textsuperscript{41} but not over their lives and goods.\textsuperscript{42} Secondly, the husband exercises conjugal power over his wife. It is the power that every husband hath to order the things of private concernment in his family, as the proprietor of the goods and land there, and

\textsuperscript{39} Ibid., 123.

\textsuperscript{40} Locke, \textit{Essay}, I, 4, 30.

\textsuperscript{41} Ibid., I, 9, 101.

\textsuperscript{42} Ibid., I, 6, 52-53; II, 15, 170.
to have his will take place in all things of their common concernment before that of his wife. 43

The point to be noticed in both of the above references is this: Locke was over eager to protect the right of property. In the case of paternal power, Locke clearly is wrong, for a father can have paternal power over the goods of his children. In the case of conjugal power, Locke's statement is correct. 44

In our consideration of Locke's treatment of property in the abstract, we saw that he used valid arguments from reason and revelation. 45 However, when Locke considers property in the concrete, how an individual man acquires ownership, he falls into error. At least the labor theory of property has received the verdict of erroneous by some commentators. We have explained this theory above, 46 but we may briefly repeat it here for the

43. Locke, C.G., I, 5, 48.

44. Locke's idea is similar to one of St. Thomas. S.T., I, 92, 1, ad 2: Est autem alia subjectio oeconomica vel civilis, secundum quam praesidens utitue subjectis ad eorum utilitatem et bonum ... Et sic ex tali subjectione naturaliter femina subjecta est viro: quia naturaliter in homine magis abundat discretio rationis.

45. St. Thomas points out the proof of private property from reason, S.T., II-II, q 57, a 3; q 66, a 2.

46. cf. above, 58-59.
point of criticism. The theory is this: first, man has a right to his own person; next, in order to preserve his life man works with the material goods of this earth; finally, in so doing this, he mixes his labor with the material goods, and he thereby acquires the right of ownership over property. Before we can criticize this theory, it is necessary to clarify a point of terminology. Locke is not exact in the use of terminology. In one place he speaks of "labor",47 while in another he uses the word "gathering",48 and still in a third place, he speaks of "appropriation".49 What does Locke mean by labor? One recent author understands Locke's use of the word labor to be equal to that of occupation.50 Blackstone in his Commentaries says:

Mr. Locke, and others, hold that there is no such implied assent, neither is it necessary that there should be: for that the very act of occupancy, alone, being a degree of bodily labour, is from a principle of natural justice, without any consent or compact, sufficient of itself to gain a title.51

48. Ibid., 27.
49. Ibid., 32.
It may be admitted in a loose sense that occupation entails a certain amount of labor, that is activity, especially in properties of minor value. Locke gives the example of a man picking up apples from the ground. However, in the case where there is no proportion between the labor and the occupation, they would not seem to be the same. Locke uses just such an example, namely, the labor a man expends in cultivating a field. In this case, Locke specifically refers to labor as the title: "And labor was to be his title to it (property)". Locke does not equate labor and occupation, for he puts the emphasis on the labor expended, the change it has made in the value of the property. It is this which gives title, and not mere occupation.

As a basis for criticism of Locke's labor title to property, we may state the requisites which make a title to property valid. According to scholastic doctrine, there are two requisites that constitute a primordial title to property. First, the property must be a res nullius, that is, it belongs to no one; and secondly, the act by which the property is occu-


54. Scholastic doctrine on this point is essentially the same in most textbooks. One reference to a recent textbook can be given: *Philosophia Moralis*, by Iraneus G. Moral, S.J., Santander, 1945, 390 ff.
pied must be such that the will or intention of the person taking possession of the property is clearly known to all concerned.

When Locke speaks of labor as the means by which a person acquires property, he does not call the property a res nullius, but refers to it as common property. Now if Locke meant this common property as property held in common, then each man would have an equal share or right in it. Therefore Locke would have difficulty explaining how one man acquires ownership of common property. But from his subsequent explanation we can conclude that common property was free, and became the property of him who first claimed it by his labor. In regard to the second note, labor does not necessarily declare the intention to take possession and make one's own. One could labor on some property without actually wanting to take possession. In any event the human activity involved would logically be an act of occupation before it was an act of labor. Locke emphasizes the fact and value of labor, as we shall see later on. He does not speak about occupation or taking possession. Therefore, we must conclude that Locke's theory of property title by labor does not provide a primordial title. On the other hand, "occupatio rei nullius" does fulfill the requirements and must be accepted as

the first valid title to private property.

Locke's labor theory of property leads to a labor theory of value. It is labor "that puts the difference of value on everything". And speaking about land: "It is labor, then, which puts the greatest part of value upon land". As Gough points out, Locke was probably referring to the labor of property owners and not the labor of wage-earners. But he did fail to distinguish between capitalist labor and wage labor. This led later economists to over-emphasize the value of wage-earning labor, and to depreciate capital as non-productive. There resulted, in some instances, a radical socialist position which advocated the confiscation by the state of all capitalist incomes.

Locke's error in stressing the labor value of property arose from his individualism. He was so intent in protecting the rights of the individual that he lost sight of the social

56. Ibid., 40.
57. Ibid., 43. In saying the greatest part, he is acknowledging another source of value besides labor.
59. Ibid.
aspect of property. Locke "nowhere puts the responsibility which should accompany ownership on the same plane as the right to private property itself". There are a few scattered statements to the effect that man ought to help his neighbor "when his own life is not in jeopardy". So we may conclude that Locke did have some idea of the social nature of private property. But in no place in his Treatise does Locke treat of man's duties in regard to private property. The picture that Locke presents is always incomplete, and sometimes incorrect.

There is another point to be noticed about the connection between labor as the title of private property and the labor theory of value. Locke explains how man acquires property by mixing his own labor with property. The property acquires a value proportionate to the amount of labor, to the extent of his own person he mixes in with the labor. Now it is true that labor is one means of acquiring property. But it is not the primary or only means. God made the material world and all the things in it for the use of man. Some goods, such as air and water, are ready for immediate use. But most material goods require long and arduous labors upon them before they are ready

61. Locke, C.G., II, 26 and 40.
for man's use. For example, man must till and plant a field, harvest the crops, hunt animals, prepare their meat and skins, cut down trees to build a house. Now all this labor presupposes a title of ownership. So man must first own property before he can use it. Locke, on the contrary, proposes labor as the main title to property. Labor, in his theory, acquires an abnormal value. Leo XII acknowledges labor as a form of occupation but never as a source of value for lands. True, man's actual possessions are usually in proportion to his labor. But even before he acquires property, he has a right to acquire it. He acquires it by an act of occupation, the intention of which is clear to all.

Just as in his ideas on the origin of private property, Locke began with arguments based on reason but ended up with an illogical concept of the value of labor, so in considering the limitation of property, Locke began with a principle of reason but illogically ended up justifying unlimited possessions. Beginning with a reasonable principle, Locke denied the objection that anyone may accumulate as much property as he will. He said: "The same law of nature does by this means give us property, does also bound that property too."62 Here reason dictated that

62. Ibid., 30.
immediate use of earthly goods before they spoil be the criterion by which man was to limit his possessions. The principle is indefinite and expressed in a clumsy manner. For how much could a man and his family gather together to any advantage of life before it spoils? Though this principle is indefinite, we may still call it a social principle.

But even though Locke begins with a fairly reasonable principle as a means of limiting property, he opens the door for a difficulty when he shifts the emphasis from use or need to perishableness or durability. What is to be said about property that is durable? According to Locke there is no limit.

If he would . . . keep those (durable) by him all his life, he invaded not the right of others; he might heap up as much of these durable things as he pleased; the exceeding of the bounds of his just property not lying in the largeness of his possessions, but the perishing of anything uselessly in it.

From the above quotation one author has taken Locke’s idea of limitation as a premise which will lead later on to a conclusion of "rugged individualism". Previously, reason controlled the amount of property a man could gather together for "any advantage of life". But now, it seems, "Wealth is no longer a means, for

63. Ibid. (Italics mine.)

64. Ibid., 46.
a means is limited by the end to which it is directed, as medicine to health; it has become an end, to be pursued without limit for its own sake." Perhaps this judgment of Johnston is too severe. If we examine the context of Locke's statement, we might be able to save Locke from so severe and destructive a judgment. In the very same paragraph, Locke lays down the principle that amount is to be limited by use.

He that gathered a hundred bushels of acorns or apples . . . was only to look that he used them before they spoiled, else he took more than his share, and robbed others. And, indeed, it was a foolish thing, as well as dishonest, to hoard up more than he could make use of.

The principle is obviously reasonable. Therefore, how within the space of a few lines could Locke change his way of thinking so radically that his ideas could be considered ruggedly individualistic? If Locke did not change his way of thinking, why the great difference between these two passages? Perhaps the answer lies in the fact that Locke failed to distinguish between real property and money. In discussing the limitation of property, Locke had been considering real perishable property, property whose value depended more or less upon immediate use. Then

65. Johnston, Locke on Property, 150.
66. Locke, C.G., II, 46. (Italics mine.)
Locke considered the acquisition of durable objects. And he laid down an entirely different principle in regard to their limitation. It was not because his philosophical concepts had changed with the space of a few lines. Rather it was because Locke failed to appreciate the value of these "sparkling pebbles or diamonds". The error is one of economics, not of philosophy. Locke did not realize the great power of the ownership of durable goods and especially of money.

We must remember that Locke published his Treatise in the last part of the 17th century. At that time England was on the verge of the great Industrial Revolution. The landed gentry was coming into its own. In 1668 the bankers of England introduced a system of credit to back William of Orange in his ascent to the throne of England. Therefore, the approaching Industrial Revolution, the progress of science, and colonial discoveries and conquest enabled money and its consequent credit to wield a tremendous amount of influence. So Locke can hardly be blamed for not foreseeing the future, for not being able to know that the wealthy class of England would for the next two centuries exercise vast powers in commerce and government. We must attribute Locke's error to ignorance of economics, rather than to a "rugged individualism".
Next we come to a criticism of Locke's treatment of political power. Locke considered three points: a definition of political power, the origin of it, and its limitation. Locke defines political power as

the right of making laws, with penalties of death, and consequently all less penalties for the regulating and preserving of property (in the broad sense so that it includes life and liberty) and of employing the source of the community in the execution of such laws.67

The definition is not wrong but it is inexact. It shows a trace of individualism in that it makes no mention of a common good but only a private good. Secondly, in speaking about the origin of political power, Locke runs into difficulties. Political power "has its original only from compact and agreement and the mutual consent of those who make up the community."68 This error has several sources. First of all, Locke attributed political power to each individual man in the state of nature. He made this mistake because he confused self-defense and the execution of the law. Secondly, since he was an individualist, Locke made political authority rest upon a compact of the individuals who went to make up the state. This mistake occurred because Locke con-

67. Ibid., II, 3.
68. Ibid., 171.
fused power of designating who should have authority in a state and the actual exercise of the authority. Locke was correct in saying that authority was first in the people. For according to scholastic doctrine authority is in the people when they organize into a group, but not individually. But Locke is incorrect in saying that this primary authority is executive. In reality people could rule themselves in a strict democracy, or they could designate the person or persons who are to rule them. Therefore, Locke erred in attributing the wrong kind of power to the individual persons who originally formed political society.

The third point that Locke considers is the limitation of political power. Since political power arises from a voluntary agreement, "for the benefit of the subjects, to secure them in the possession and use of their properties", the legislative power in the utmost bounds of it is limited to the public good.

69. Sources from three main authorities may be cited: St. Thomas, that people have a right to chose their ruler, cf De Reg. Principum, I 6; Summa I-II q 97, a 3; q 93; II-II q 42, a 2; ad 3; Politics 5, 1; Suarez, that power resides in the people, cf De Legibus III, 4; 2; 4; 4; Defensio III 2, 7 and 9; Bellarmine, De Controversiis, V 3, 6. Professor Alfred O'Rahilly in his "The Sovereignty of the People" in Studies for March, 1921, Dublin, lists sixty scholastic predecessors of Suarez who all held a popular sovereignty doctrine.

70. Ibid., 173,
of society". The statement of limitation is correct but we shall examine it again when we consider the function of government.

Locke's theory of property was important not only for the part it played in economics, but also for the influence it exerted in the politics of England in the subsequent centuries. Property played an important part in the foundation of political society. In the original state of nature man found certain things lacking, so he joined with his fellows to form political society. "The great and chief end, therefore, of men uniting into commonwealths, and putting themselves under government, is the preservation of their property." Also in another place Locke writes: "The reason why men enter into society is the preservation of their property." The word "property", we must remember, has been used by Locke with two meanings. In most places Locke means "lives, liberties, and estates". From the context of the above two quotations we can assume that Locke meant property in the loose sense. Therefore, the purpose he

71. Ibid., 135.
72. Ibid., 124.
73. Ibid., 222.
attributed to men founding political society is similar to the "common good" of scholastic doctrine. However, in speaking about the function of government Locke uses the same loose terminology so that commentators greatly disagree as to what is the main function of government according to Locke.

Did Locke's view support a directive state or a doctrine of laissez faire? Czajkowski 74 favors the directive state, and cites the following words of Locke as proof.

I mean, that provisions may be made for the security of each man's private possessions; for the peace, riches, and public commodities of the whole people . . . For the political society is instituted for no other end, but only to secure every man's possession of the things of this life. 75

On the other hand, Lamprecht, calling attention to these words of Locke: "The supreme power cannot take from any man any part of his property without his own consent", 76 says:

Locke may be regarded as the forerunner of the laissez faire school of economic thought: for he considered that men's material prosperity as well as their less tangible ideal interests could best be secured without much governmental action. 77

77. Lamprecht, Moral and Polit., 135.
Another author, Gierke, seems to favor this view also. For he interprets Locke as denying "any other purpose to the state than that of guaranteeing natural rights, particularly the rights of liberty and property". Gough does not think that Locke was an advocate of laissez faire. He says:

He was a mercantilist and believed in the regulation of trade. But he certainly did not realize what inordinate power the possession of great wealth can give, or he would scarcely have placed political control in the hands of a property-owning minority and expected them to exercise it impartially in the interests of all. Gough's words can help us to solve our problem. Locke certainly favored a directive government. Political society was "to secure every man's possession of the things of this life". However, this direction was to have merely a policeman aspect, and nothing about it that was positive action. His mistake was in entrusting the exercise of government to the wealthy minority. Locke thought that men, for the most part, would be governed by reason and would seek the best interests of all their fellows. Locke really cannot be accused of favoring a laissez faire government. The men to whom he had entrusted


the exercise of government were not faithful to their trust. They found it to their best advantage to adopt a laissez faire government. Locke, I think, has been unjustly blamed for this unforeseen result.

Such is our criticism of John Locke's philosophy of natural rights. We have found that, except for his epistemology, Locke's political philosophy had much in it that was true. Locke argued to natural rights by use of reason and revelation. In limiting or explaining these rights he sometimes showed faulty reasoning and a rather muddled way of procedure. However, he usually displayed a sane moderation which protected him from errors which later befell some of his followers. Still, Locke was not a great philosopher. His influence has been widespread, especially indirectly through the writings of Rousseau. Two ideas he propounded in his political philosophy have won him lasting fame. First, the doctrine of majority rule; secondly, that power resides in the community so that the community retains the right of rebellion. The former idea was the basis of constitutional government in England. The latter was the foundation of the American Revolution. However, as far as these ideas were true, neither of them originated with Locke. And to understand them free from the errors which inevitably crept into his ex-
planation we must return to a more profound source than the writings of John Locke.
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**B. ARTICLES**


APPROVAL SHEET

The thesis submitted by Mark F. Hurtubise, S.J., has been read and approved by three members of the Department of Philosophy.

The final copies have been examined by the director of the thesis and the signature which appears below verifies the fact that any necessary changes have been incorporated, and that the thesis is now given final approval with reference to content, form, and mechanical accuracy.

The thesis is therefore accepted in partial fulfillment of the requirements for the Degree of Master of Arts.

Date: Sept 26, 1952

Signature of Adviser: [Signature]