1958

The Foundations of Political Society According to John Locke

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THE FOUNDATIONS OF POLITICAL
SOCIETY ACCORDING TO
JOHN LOCKE

by
Thomas Joseph Curran

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

February
1958
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CHAPTER I

INTRODUCTION

The sixteenth, seventeenth, and eighteenth centuries constitute one of the most fascinating periods in the history of European thought. This period saw the rise of an individualism that scorned feudal notions of birth and rank. Nationalism and empiricism made their stand against the dogmatic supremacy of the Catholic Church and challenged from both natural and theological grounds every tenet on which its infallibility is based. The Holy Roman Empire was replaced by independent political units which became the breeding grounds for the development of its citizens of a national pride and patriotism that have, until the recent communist scourge, been largely responsible for the cultural, economic, and intellectual growth of the people of the world.

Nor has nationalism ceased to be felt even today. How recently have countries like India, the Philippines, Egypt, Libya and Ghana asserted and achieved their independence? The effect, therefore, of the political thoughts of the centuries mentioned have, even today, their effects for good and bad.

John Locke was an influential political thinker and writer
of this period. His work, The Second Treatise of Civil Government, represents a serious attempt to inaugurate a society governed by and for the people with its basis in the natural law. It is true that Locke himself was influenced by the political upheavals of his day and that many of his ideas seem antique when viewed by those who have the advantage of three centuries of historical and political-philosophical experiences and writings.

Nevertheless, it was Locke and other beginners in the field of political thought who were read and improved upon by subsequent and present-day thinkers. It seems therefore worthwhile to study and interpret John Locke and try to explain just where his ideas on the origin and workings of government fit in the over-all picture of political theory.

As stated above, however, Locke was influenced by the political upheavals of his day. To better explain and interpret his thoughts on government, it may be well to consider his position in the England of his day, to consider Locke, the politician, before considering him as the political philosopher, and perhaps even before doing this, to take a brief look at Locke as the philosopher. By doing this latter, the reader will be more easily

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1This is the usual way of referring to Locke's major political work. Formally it would read: Of Civil Government, Book II: An Essay Concerning the True Original, Extent and End of Civil Government.

2Just exactly what Locke means by "natural law" will be seen in Chapter II of this thesis.
able to understand what in the end will appear a rather favorable interpretation of Locke's basic notions on government.

According to Locke words do not, as is ordinarily supposed, signify things. We say that words are manifestative of ideas and ideas are signs of the things themselves. But words in Locke's view stand only for the ideas in the mind of the one using them and have no objective, immediate or universal signification.3

It is easy to see the logical consequences of such a philosophy of language and knowledge. You never really know when you are agreeing or disagreeing with the man who holds such a philosophy. The only convenient way, then, to consider Locke's writings is to divorce his political philosophy from his philosophy of language and knowledge and treat his political writings as epistemologically valid expressions of his ideas on society and government.

As for John Locke, the politician, it was through his appointment as personal physician to Anthony Ashley Cooper, afterwards the famous Earl of Shaftesbury, that Locke first came in close contact with the contemporary political picture.4 In 1672,

3This conclusion is drawn from Locke's statement: "Since the mind, in all its thoughts and reasonings, hath no other immediate object but its own ideas, which it alone does or can contemplate ..." John Locke, An Essay Concerning Human Understanding, ed. A. J. Pringle-Pattison (Oxford, 1924), p. 255.

4For the brief treatment of historical activities, the author has relied on A. E. M. Murray, An Introduction to Political Philosophy (New York, 1953), pp. 108-120.
when Lord Ashley received an earldom and became Lord Chancellor, Locke was appointed Secretary of Presentations, that is, director of all Church matters coming under the Chancellor's control. A year later he was appointed Secretary to the Council of Trade and Foreign Plantations. In all probability his experience in these two offices gave him the motivation to write his Letters on Toleration, which amounted to a denunciation of the prevalent English policy of persecution of anything non-Anglican.

But Locke's patron was soon to engage in an ill-advised conspiracy that forced him into exile. Though Locke took no part in the plot to place the Duke of Monmouth upon the throne, his connection with Shaftesbury caused him to be suspected and he deemed it advisable to quit England. It was from the vantage point of his asylum in Holland that Locke was able to view impartially the happenings in England from the years 1683 to 1689. Their culmination was provided by the Glorious Revolution in 1688 and eventually with the accession of William of Orange to the English throne.

It was during this period of exile and freedom from the cares of office that Locke found the time to embark on his essay, Of Civil Government. Though its value as a work in political philosophy rests for the most part on Book II, An Essay Concerning the True Original, Extent and End of Civil Government, Book I: An Essay Concerning False Principles, had in Locke's day its place of importance. The false principles referred to were those of
Robert Filmer, a royal theologian of the Stuart court. He and not Thomas Hobbes was the man to be refuted. For though Hobbes and Filmer were both absolutists, the former had met with disfavor due to his atheistic approach to the justification of absolute sovereignty. Filmer's influence however was much more acceptable. He pleased by his theory of patriarchal donation of sovereignty both royal and ecclesiastical circles. By a devious and involved concatenation of scriptural texts, Mr. Filmer arrived at the impossible conclusion that the Stuarts were the solitary heirs to Adam's God-given right to rule.

It seems that, after the Glorious Revolution met with success, Locke concentrated on the positive side of government and what he thought should be the principles according to which people may submit to a form of government and at the same time retain their natural rights and freedoms. These principles Locke develops in Of Civil Government, Book II.

These principles, or at least the basic ones from which others naturally flow, are what will form the subject matter of the subsequent chapters of this thesis. In preview it may be noted that the starting point of Locke's philosophy of government is the natural law. Its preservation in the transitus of

5 Filmer's book was entitled Patriarcha and was published in 1680.

6 On this point see William S. Carpenter, "Introduction," John Locke, Of Civil Government (New York, 1924), xiii.
people from the society of the state of nature to the society of a people united under a common government constitutes the theme of Locke's treatise. Just what the natural law is will be seen in Chapter II. Before any definition of the law, however, consideration will be given to three points: first, that the law exists; second, that it can be known by man; and third, the means by which it is known by man.

After determining what Locke means by the law of nature, the reader will be more easily able to understand one of the highlights of Locke's political philosophy, the state of nature, the condition of all human beings prior to the formation of political society. Is this condition of mankind a real or hypothetical society, or is it no society at all? What significance does the state of nature have in Locke's philosophy of government? The answers to these questions also will be given in Chapter II.

After treating of the natural law as evidenced prior to society uniting under a government, Locke goes on to consider the formation of government and stresses the importance of the individual's rights in every move the government makes. In Chapter III therefore will be brought out Locke's great concern over the form of government which will best secure protection of individual rights and also his concern over the manner in which the power

7This is the terminology Locke uses to express the state of society prior to the existence of any common government.
of the government should be divided. Locke uses one term, property, to express individual rights. This term he defines as life, liberty and estate. He lays great stress moreover on the fact that a man's entrance into political society is by no means a denial of his individual rights.

Just how the protection of individual rights is achieved is treated in Chapter IV of this thesis. Government by consent of the governed is Locke's answer to property protection in civil society. The consent he recommends is that of the majority. It is necessary then to distinguish between the individual consent required on one's entrance into political society and the majority rule principle that applies in the operation of the government-elect. Again the source of validity of majority-rule must be shown, as well as its controlling influence over the legislative and executive bodies of the government. The answers to the immediately foregoing questions will be treated of in Chapter IV.

To many present-day political philosophers, however, Locke's words on majority-rule, as well as on the state of nature, private property and the accumulation of riches, fell far short of definitive solutions to the problems involved. In the last chapter of this thesis, the writer will attempt to provide possible explanations of passages of the Second Treatise which because of either omission or alleged misstatement have encouraged men like Willmoore Kendall, J. w. Cough and John C. Rager to take up their pens in criticism. Kendall labels Locke's doctrine on government
by the consent of the majority as an ineffective control over the legislative and executive. He also describes Locke's treatment of majority-rule as incomplete. Gough accuses Locke of lack of thoroughness in his treatment of capital and wage labor. Hager, however, chooses a much more basic issue for criticism—the failure of Locke to clearly enough define the political sovereignty and authority belonging to man in the state of nature.

Hager seems to have realized how basic to Locke's political philosophy was his doctrine of the state of nature. For this reason the state of nature and the law of nature governing men in that state will be treated in the following chapter of this thesis.
CHAPTER II

LAW AND STATE OF NATURE

The state of Nature has a law of Nature to govern it, which obliges every one, and reason, which is that law, reaches 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; 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 one another's pleasure.1

The above quotation is a typical example of the way John Locke describes the state of nature in the Second Treatise. The state of nature is never mentioned without some mention of the law of nature. But nowhere in the Second Treatise is there found a satisfactory definition of the law of nature.

It is therefore necessary to go to Essay on the Law of Nature2 to find not only a definition of the law but also to consider how Locke establishes: first, that the law exists; second, that it can be known by man; and third, by what means it is known by man.

1John Locke, Of Civil Government, Book II (London, 1924), pp. 119-120.

After ascertaining the answers to these problems, it will be much easier to understand: 1) what the state of nature is, whether a real or hypothetical society, or no society at all; and 2) what significance the state of nature has in Locke's philosophy of government.

To the question, "Is there a rule of morals, or law of nature given to us?", Locke answers, "Yes." Before he embarks on his five arguments in proof of his answer, he does two things, however. First, he establishes the existence of God. Second, he states what he means by the law of nature.

Since God shows Himself to us as present everywhere and, as it were, forces Himself upon the eyes of men as much in the fixed course of nature now as by the frequent evidence of miracles in the past, I assume there will be no one to deny the existence of God, provided he recognized either the necessity for some rational account of our life, or that there is a thing that deserves to be called virtue or vice. This then being taken for granted, and it would be wrong to doubt it, namely, that some divine being presides over the world.3

Here in brief is Locke's argument for the existence of God. How he ties in the existence of God with law of nature and at the same time gives additional arguments for God's existence will be seen below.4 At this point, however, the existence of God is known from two objective facts, the order of the universe and miracles. Neither fact is given precedence over the other.

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3Ibid., p. 109.
4infra, pp. 11-13
Before one can fully admit the fact of God’s existence, moreover, Locke prescribes that one must recognize the necessity for some rational account of life as well as a thing that deserves to be called virtue or vice.

That one must recognize the necessity of some rational account of life as well as that there is a thing called virtue or vice before one can come to know the existence of God seem somewhat unique prerequisites to knowledge of the existence of God. For in the mind of this writer knowledge of the existence of God is no different than knowledge of any other natural fact. In such knowledge there are conditions to be fulfilled before one can know.

The external sense organ which takes the initial step in the knowing process must be physically sound and sufficiently exercised and alert to perceive the sense object it is meant to detect. People with serious congenital eye diseases, for example, could hardly pass judgment on matters which require perfect eyesight. The sense object moreover must be proportionate to the organ perceiving it. The eye, for example, by which vision perceives its object, color, could not be expected to perceive such an object at a distance beyond the scope of the human eye. Nor could the eye be expected to perceive color through intense smoke or fog.

After these requisites for external sensation are fulfilled, the internal senses of the common sense, the phantasm, the memory
and the instinct must be considered. The internal senses must be those of a healthy man. For the external and internal senses work together in providing to the active intellect the material on which the passive intellect will judge.

The intellect properly so called; that is, the passive intellect, in every judgment it makes, implicitly knows certain other facts besides the fact about which in its signate act it makes an affirmation or negation. By the passive intellect is understood the man who by means of his intellect affirms or denies the conformity of one thing to another. The other facts then that man implicitly knows with every judgment he makes are being, the principle of identity and contradiction, his own existence and the ability of his intellect to know a fact.

But when Locke says that knowledge of the existence of God requires the recognition of the necessity of some rational account of life as well as of the fact that there is a thing called virtue or vice, he appears to be talking less of the epistemological and psychological bases of knowledge as such, but rather of the realizations necessary for a profound philosophical study of the science of natural theology of which the proof of the existence of God is the cornerstone.

Locke moreover considers a proof of the existence of God as the cornerstone of his exposition on the law of nature when he says:

"For it is by His order that the heaven revolves"
In unbroken rotation, the earth stands fast and the stars shine, and it is he who has set bounds even to the wild sea and prescribed to every kind of plant the manner and periods of germination and growth; it is in obedience to his will that all living beings have their own laws of birth and life; and there is nothing so unstable, so uncertain in this whole constitution of things as not to admit of valid and fixed laws of operation appropriate to its nature—it seems just therefore to inquire whether man alone has come into the world altogether exempt from any law applicable to himself, without a plan, rule or any pattern of his life.5

Locke here gives the substance of his proof for the existence of God. It is for the most part the proof from design. From the facts that the heavenly bodies rotate in orderly measure about the earth, the plants and sentient beings have their respective laws of germination and growth and birth and life, Locke proves that a God must exist who is responsible for this design. In the latter portion of the quotation he also poses man as an example of this design. At the same time, he formally poses the question of whether there is a law of nature specifically ordered to the realm of mankind. But in so doing, Locke has at once accepted as answered what he proposes as his problem in this portion of the Essays. For whether man is governed by a law or not is at this point a bona fide problem. Like all philosophical problems, it demands proof by inductive or deductive reasoning. The answer to the problem cannot be assumed to be one way or the other until proof is provided.

It is clear to the writer that Locke intended the one clause to serve both purposes. However, he does not rule out his other treatment of the law of nature in which he gives five proofs for its existence. For following the above, he says: "No one will easily believe this, who has reflected on Almighty God, or the unvarying consensus of the whole of mankind at every time and in every place, or even upon himself or his conscience. But before we come to speak of the law itself and those arguments whereby its existence is proved, it seems to me worth while to indicate the various names by which it is denoted."

Locke thus concludes his treatment on the existence of God. Let us consider now what Locke means by the law of nature. He states:

First, then, we can equate with our law that moral good or virtue which philosophers in former times searched for . . . that single good which Seneca says man ought to be content with . . . . Secondly, there is the title of right reason, to which everyone who considers himself a human being lays claim . . . . By reason, however, I do not think is meant here that faculty of the understanding which forms trains of thought and deduces proofs, but certain definite principles of action from which spring all virtues and whatever is necessary for the proper moulding of morals. For that which is correctly derived from these principles is justly said to be in accordance with right reason . . . a law which each can detect merely by the light planted in us by nature, to which also he shows himself obedient in all points and which, he

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6 Infra, pp. 19 - 25.

7 Locke, Essays, p. 109.
perceives, is presupposed by the principle of his obligation . . . .

Here Locke delineates several opinions as to what the law of nature is. His division of the definitions into three different classes reveals an approach to the meaning of the natural law from three different aspects. In first considering the law of nature as virtue, Locke is considering the law in its concrete expression; namely, good acts or a habit of performing good acts. When he mentions "moral good," it is possible he is speaking of the end of virtuous acts, happiness or natural beatitude. If such is the case, the philosophers he refers to must in all likelihood include Aristotle who in the Nicomachean Ethics talks of man as rational, seeking happiness through virtuous acts.

In considering the second opinion on the law of nature, Locke seems to be approaching much more closely to the law itself. Although we have no clear picture of what he means by right reason, he may be referring to the law of nature as the proximate norm or principle according to which men's actions are measured.

He does not mean reason as the faculty of understanding. He is speaking not of the speculative but of the practical intellect (to borrow scholastic terms). By right reason he means

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8Ibid., pp. 109-111.
the specific aptitude or habit of the mind to form judgments concerning the goodness or badness of human acts. This appears to be the natural law formally considered. For Locke is speaking not of the faculty alone but of the principles from which moral acts spring. And this can only be the right order which the faculty of reason has uncovered and according to which man by his will must choose to act in order that the ends of human existence may be attained.

In considering the third opinion, Locke considers the law as discernible by the light implanted in man. Another element, however, is added: that of obligation to observe this light or law. This additional element rounds out a very comprehensive consideration of the law of nature. For without obligation, the law of nature or any law is meaningless.

Locke, then, has chosen these three opinions with a definite purpose in mind. While reserving the real definition of the law of nature to the second position, he has on the one side considered the end toward which the law is directed and on the other, stressed the obligation entailed in its observance. This latter consideration gives force to the law itself and convinces one that Locke is not talking in pious platitudes.

"Hence, this law of nature can be described as being the decree of the divine will discernible by the light of nature and indicating what is and what is not in conformity with rational
nature, and for this reason commanding or prohibiting."10 Here is stated Locke's ultimate choice of terms for the definition of the law of nature. In his consideration of the third opinion, mention was made of "the light planted in man" which could have inspired him here to say that the law is discernible by the light of nature. Already mentioned, also, was the notion of obligation as part of the law when in the third opinion he stressed obedience to the law. Consideration will be given to what Locke meant by the light of nature when the writer treats of the manner in which the law is known by men. However, in view of the preceding consideration of the three ways of viewing the law, this final statement by Locke seems a bit confusing, especially his mention of it being the decree of the divine will.

To understand why Locke refers to the law as the decree of the divine will, we need but recall the interlocking treatment in the proof of the existence of God. There one statement is used both as a proof for the existence of God and as the question to be solved in the section following, which treats of the existence of the law of nature. Even at the outset of the Essay the reference, although in a rather haphazard fashion, of the relationship between the order placed in all created things, including man, and the Creator Himself. The

10 Locke, Essaye, p. 111.
11 Supra, p. 10.
degree could in this light be considered to be human nature which
God created with the order to Himself contained in it.

Why Locke does not bring the law to the more proximate and
less ultimate level, is not clear. He might have feared that any
definition which mentioned human nature or ordo finalis or resta
ratio without the mention of a divine source would result in an
omission of God from the law of nature as well. That this is so
seems to be borne out by the following:

It appears to me less correctly termed by some people
the dictate of reason, since reason does not so much
establish and pronounce this law of nature as search
for it and discover it as a law enacted by a superior
power and implanted in our hearts. Neither is reason
so much the maker of that law as its interpreter, un-
less, violating the dignity of the divine legislator,
we wish to make reason responsible for that received
law which it merely investigates; nor indeed can
reason give us laws, since it is only a faculty of our
mind and part of us.12

This, then, is Locke's explanation for the omission of right
reason, that is, the faculty, from his definition of the law of
nature. In spite of the fact that he mentions order as one of the
obvious constituents of all created beings and recognizes reason
as the faculty which perceives order, in no place does he consider
the law of nature in terms of a proximate norm of morality. It
is not clear, moreover, whether the decree is something super-
added to the act of creation in the sense of being a positive

12 Locke, Essays, p. 111.
mandate of God. Certainly, the terminology seems to rule out any and every attempt to bring the norm from its ultimate origin even though the distinction be one of reason and not necessarily real.

That his definition fulfills all essential elements of the definition of a law, is established. "For, in the first place, it is the decree of a superior will, wherein the formal cause of a law appears to consist . . . . Secondly, it lays down what is and what is not to be done, which is the proper function of a law. Thirdly, it binds men, for it contains in itself all that is requisite to create an obligation . . . . it is sufficiently known by men because it can be perceived by the light of nature alone." 13

After thus explaining his meaning of the law of nature, Locke takes in hand what is to constitute the major part of his first essay from Essays on the Law of Nature; namely, the proof that such a law exists. He writes:

The first argument can be derived from a passage in Aristotle's Nicomachean Ethics, Book I, Chapter 7, where he says that 'the special function of man is the active exercise of the mind's faculties in accordance with rational principle.' For since in the preceding passages he had shown by various examples that there is a special sort of work each thing is designed to perform, he tried to find out what this might be in the case of a human being, also. Thus, having taken account of all the operations of the vegetal and sentient faculties which men have in common with animals and plants, in the end he rightly concludes that the proper function of man is acting in conformity with reason,

13Ibid., pp. 111-113.
so much so that man must of necessity perform what reason prescribes. Likewise, in Book V, Chapter 7, where he draws a distinction between legal justice and natural justice, Aristotle says 'A natural rule of justice is one which has the same validity everywhere.' Hence it is rightly concluded that there is a law of nature, since there is a law which obtains everywhere.\textsuperscript{14}

Locke is here utilizing Aristotle's statements concerning the natural law as authority for the fact that the law exists. It is true that he also refers to the process of reasoning Aristotle used to arrive at his conclusion that man's special function is the active exercise of the mind's faculties in accordance with rational principle. By so doing, however, Locke recognizes a rational principle as the law of man's nature and by quoting Aristotle again, he emphasizes the point by saying that this natural rule of justice is one which has the same validity everywhere. What the proof comes to, however, is a proof based on the order observed in all created beings. Since man is a created being, he must have within him a principle according to which his actions are directed. This principle is the law of nature. It is interesting to note that by acceptance of Aristotle's reasoning at this point, Locke has reverted back to the second opinion of what the law is and by-passed the definition of it as the decree of the divine will which he set up with so much labor. "But, it is objected, there is no such law in existence at all, since it can nowhere be found, for most people live as though there were no

\textsuperscript{14} Ibid., p. 113.
rational ground in life at all nor any law of such a kind that all men recognize it . . . . If indeed natural law were discernible by the light of reason, why is it that not all people who possess reason have knowledge of it?\textsuperscript{15}

To this objection Locke makes some very practical replies.\textsuperscript{16} The fact that people do not act in accordance with the law of nature does not necessarily mean that there is not a law. For even in the matter of civil laws, how often do we see wholesale violation of laws through lack of knowledge? This knowledge could in the case of positive laws easily be ascertained if the violators would have taken the time and interest to read the notice boards on which the laws were posted. The same applies to the natural law. Though all men are endowed with reason, that does not necessarily mean that men make proper use of the faculty. The violence of passions, carelessness, bad habits acquired through weakness of character or the too-easy acceptance of a poor environment, often blind men not only to the law of nature which is not posted on notice boards but even to the positive laws of their community.

Moreover, it is also objected, ". . . the more rational of men do not absolutely agree among themselves as to what the law of nature is and what its true and known precepts are."\textsuperscript{17}

\textsuperscript{15}Ibid., p. 113.
\textsuperscript{16}Ibid., pp. 113-117.
\textsuperscript{17}Ibid., p. 115.
Such an objection to the existence of the natural law bears in Locke's mind no validity at all. For as in the case of positive law, there can be many interpretations of its various facets, so in the case of the law of nature. The fact that people are disputing about the law proves beyond a doubt that a law exists. 18

"The second argument which proves the existence of a law of nature can be derived from man's consciences; from the fact, namely, that no one who commits a wicked action is acquitted in his own judgment." 19 This argument from man's conscience is obviously considering conscience as subjective and the norm of morality which an individual man relies on when placing a single moral act. In view of this, therefore, the proof here put forward by Locke for the existence of God is one from experience both of himself and of all men as revealed by their words, writings, and actions.

The third argument is derived from the very constitution of this world wherein all things observe a fixed law of their operations, and a manner of existence appropriate to their nature. For that which prescribes to every thing the form and manner and measure or working, is just what law is . . . it does not seem to fit in with the wisdom of the Creator to form an animal that is most perfect and ever active, and to endow it abundantly above all others with mind, intellect, reason, and all the requisites for working, and yet not assign to it any work or again to make man

18Ibid., p. 115.
19Ibid., p. 117.
alone susceptible of law precisely in order that he
may submit to none. 20

This argument brings up many thoughts already encountered
in this chapter. Here Locke seems to be reiterating the doc-
trine he set forth in his proof for the existence of God and
to interweave in as close a pattern the doctrine of creation
with that of the order placed in created things by the Creator.
And this order Locke refers to as the law of nature. There is
also a marked similarity of this proof to the first proof he pro-
posed for the existence of the law of nature. For there as here,
he adverts to the principle or order according to which all
beings are governed and govern themselves. Why, then, should
not man, as Aristotle said in the first argument, be ruled and
rule himself by the faculty which places him above all other
creatures; namely, his reason?

"The fourth argument is taken from human society, since
without this law men can have no social intercourse or union
among themselves. Indeed, there are two factors on which human
society appears to rest, i.e., firstly, a definite constitution
of the state and form of government, and, secondly, the ful-
fillment of pacts. 21 To fortify this argument Locke treats
the chaos that would result both in public and private life. 22

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20 ibid., p. 117.
21 ibid., p. 119.
22 ibid., p. 119.
In public life, a ruler could arbitrarily make laws with complete
disdain of the governed for whom the laws should be enacted.
The rulers, moreover, would be in no better state than the sub-
jects. For without an objective law, license alone would govern
all members of society. The only alternative of the supreme
authority of the state would be to rely on force of arms to com-
pel obedience. But such force would in no sense create the
obligation which in fact is essential to the law of nature.
The only possible foundation of positive civil law, therefore,
is the law of nature.

Private life would also revert to a "dog eat dog" variety
of existence. For the foundation of social life would be under-
mind. Man would not be bound to fulfill contracts, nor even
to tell the truth. For both of these obligations flow from the
law of nature and not from the velleity of individual human
beings.

These two phases of the fourth argument seem to rely on
a conception of what would be if there were no law of nature.
But Locke goes no further, nor does he give any examples of
tyrants who ignored all moral precepts. He assumed perhaps that
the English reader of his day would be able to supply a suffi-
cient number of examples both of regal tyrants and headstrong
populaces to make of his argument a proof derived from experi-
ence.

"The fifth argument is that without natural laws there
would be neither virtue nor vice, neither the reward of goodness nor the punishment of evil; there is no fault, no guilt, where there is no law."23 Locke here merely states a fact. He does not speak of the repugnance of utility and pleasure being the sole rulers of men's actions. Men's consciences and experiences should evidently be able to fill in the gaps left between such statements as those quoted immediately above and "whatever honour or baseness our virtues and vices possess they owe it all to this law of nature."24

Up to this point we have seen the proofs Locke offers for the existence of the law of nature prefaced by his proof of the existence of God and by his definition of the law of nature. The next points of major concern are: whether this law can be known by men, and by what means it is known.

Since some principle of good and evil is so-, knowned by all men, and since there is no nation so savage and so far removed from any humane feelings that it does not have some notion of virtue and vice, some consciousness of praise and blame, it seems we must next inquire in what ways men come to know that law of nature to which they pay deference by so general a consent, and of which they cannot eradicate all feeling without at the same time eradicating humanity itself; for nature must be altogether negated before one can claim for himself absolute liberty. Now we maintain that the way in which we arrive at the knowledge of this law is by the light of nature as opposed to other ways of knowledge.25

23 Ibid., p. 119.
24 Ibid., p. 121.
25 Ibid., p. 123.
Locke thus makes his transition from the existence of the law of nature to the fact that it is known by men. The means by which it is known is the light of nature. The first sentence of the above quotation can be said to constitute the primary proof of the proposition, the law of nature can be known by men. The argument he uses seems to be based on the principle that a conclusion concerning the possibility of a fact is valid when the fact itself is an actuality. For the actions of all men in accord with the law of nature indicate a universal consensus that men know the law and a fortiori are able to know the law. In the treatment of what Locke means by the light of nature which is given to all men and by which the law of nature is known, it will become even clearer how Locke proves that the law can be known.

By the light of nature is not meant an inward light implanted in men's hearts by which they would unerringly follow what is right and avoid what is wrong. Nor can it be said that the law is imprinted on tablets, as it were, and when the tablets within the individual are touched by this light of nature, the will is compelled to choose the good. Rather, by saying that something can be known by the light of nature, we mean nothing else but that there is a sort of truth to the knowledge of which a man can attain by himself and without the help of another, if he makes proper use of the faculties he is endowed with by nature.
... there are three kinds of knowledge ... inscription, tradition, and sense-experience. 26

Ruled out as a source of knowledge is supernatural or divine revelation since the inquiry here is not of divine inspiration but of natural knowledge which a man endowed with understanding, reason and sense-perception can by the help of nature and sagacity attain. This natural knowledge which a man acquires would have to come to him in one of three ways: by inscription or innate ideas, by hearsay or tradition, by sense-perception. No mention is made of reason as a way by which the law of nature is known because consideration is given only to the primary approaches by which knowledge comes to man. Strictly speaking Locke could also just as well have eliminated tradition from his division of basic sources of knowledge. For as we shall see later, 27 he excludes tradition on the grounds that it is only a source when the one drawing from it makes use of his senses and reason.

Inscription is ruled out as the source of knowledge of the law. By inscription in relation to the law of nature, Locke means "... any moral propositions inborn in the mind and as it were engraved upon it such that they are natural and familiar to it as its own faculties, the will, namely and the understanding.

26 Ibid., p. 123.
27 Infra, p. 30.
... unchangeable ... and always clear ... known to us without any study or deliberate consideration."

Obviously, if inscription were the true source of man's knowledge of the law of nature, men would as one agree without hesitation as to what the law of nature is and would universally obey it. But it is a fact that men neither agree to a single definition of the law of nature nor do they consequently act as if they agree to one definition. For what is good to some is evil to others and some recognize, or at least admit of, no law of nature at all. To argue that agreement is lacking as to the content of the law of nature because of the fall of Adam does not in the least explain how the law of nature as an innate idea could be variously defined and interpreted. For if the fall of Adam resulted in a partial effacement of the law of nature, all men would still have the same innate imprint of the part of the law remaining because it is clear that all men are of one nature and nature in its works are uniform and the same.

If, moreover, the law of nature were inscribed in the minds of men, why do not minors, illiterates and even altogether primitive peoples have the purest concepts of the law? They are, after all, free from the outside influences which alone could destroy any alleged clairvoyance which they should have. Their

28*Locke, Essays, p. 137.

29Ibid., p. 139.
actions also would reflect behavior the most perfectly conformable to the law. Such, however, is not the case as histories of the old and new world testify. Rather among illiterate and primitive peoples, many immoral practices are not only prevalent but almost deified. How often, also, must not the young be instructed in what to do? This would not be necessary were the law inscribed. The insane, also, would have a clear notion of the law.

To say that all practical principles are innate would make it possible to infer that speculative principles as well were inscribed. The blood, sweat and tears that go into the acquisition of scientific knowledge prove a case much to the contrary.30 "We come now to tradition, which we distinguish from knowledge by the senses, not because tradition does not enter the mind by the senses . . . but because what we receive with our ears is just a matter of sound, whereas when we embrace a thought this is a matter of belief."31

It is not denied that many, almost all, the precepts of the law of nature are learned by children from their parents, which would be by tradition; but it is denied that tradition is a primary and certain way of knowing the law of nature. For by simply acquiescing on the authority of others to precepts of the

30 The arguments delineated against inscription are strictly Locke's, V. ibid., pp. 137-139.
31 Ibid., p. 127.
law of nature, a man would not be following reason, which is his
directive faculty, but merely what other people tell him.

Tradition, moreover, not only varies but is dictated often
by the more, habits, environments and needs of the people trans-
mitting it. In the case of the individual, who is to say how
much of what he declares to be tradition is based on utility and
how much on what the law of nature is? Again, in the case of
differences of opinions, who is to be judged the true custodian
of tradition?

"Thus there are three possibilities: either that in trying
to become acquainted with the law of nature as promulgated by
tradition one has to employ reason and understanding, then the
whole of tradition becomes void, or that the law of nature
cannot become known by tradition, or that it does not exist at
all."33

It has already been proved that the law of nature exists.
Since, therefore, to evaluate tradition with regard to the law
of nature, some means other than blind faith in another's word
must be used, it is clear that tradition cannot be the means
whereby the law of nature becomes known to men.

The last way of knowledge that remains to be dis-
cussed is sense-perception, which we declare to be
the basis of our knowledge of the law of nature . . .
this must not be understood in the sense that the law

33 Ibid., p. 131.
of nature appears somewhere so conspicuously that we can either read it off with our eyes, examine it with our hands, or hear it proclaiming itself . . . The foundation of all knowledge of it is derived from those things which we perceive through our senses. From these things then reason and the power of arguing . . . advance to the notion of the maker of those things . . . As soon as this is laid down, the notion of a universal law of nature binding on all men necessarily emerges . . . From what has been said, however, it is quite certain that there is a law of nature that can be known by the light of nature. 34

Locke has already rejected inscriptions and tradition as means whereby the law of nature is known. His argument in this section appears as a conclusion reached by a process of elimination. At the same time Locke clarifies what he means by the light of nature. He does not claim that sense-experience alone enables a man to achieve a knowledge of the law of nature. He says, rather, that the senses provide the food for the intellect which does the actual reasoning on what is observed by the senses. The light of nature then seems to be the light of our human nature, possibly the intellect. This faculty, it appears, looks into the data provided by sense-experience and evaluates it.

Note here the same reversion to the knowledge of God’s existence which was seen earlier in this chapter. 35 The external manifestations of natural order which lead men to realize that there must be a principle or law of nature at the same time prove

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34 Ibid., pp. 131-133.
35 Supra, pp. 10-19.
that there must be a Mind who orders. This Mind is God.

Locke's conclusion from what he says in this section alone does not seem to show too clearly how the senses and reason work together in the attainment of the knowledge of the law of nature, which coordination of faculties is the only way the law can be known.

In Essay IV of the Essays, however, much is clarified:

... since... this light of nature is neither tradition nor some inward moral principle written in our minds by nature, there remains nothing by which it can be defined but reason and sense-perception. For only these two faculties appear to teach and educate the minds of men and to provide what is characteristic of the light of nature, namely, that things otherwise wholly unknown and hidden in darkness should be able to come before the mind and be known and as it were looked into. As long as these two faculties serve one another, sensation furnishing reason with the ideas of particular sense-objects and supplying the subject-matter of discourse, reason on the other hand guiding the faculty of sense, and arranging together the images of things derived from sense-perception, thence forming others and composing new ones, there is nothing so obscure, so concealed, so removed from any meaning that the mind, capable of everything, could not apprehend it by reflection and reasoning, if it is supported by these faculties.36

Here is an elaboration on the function of the senses and the intellect in the process of knowing the law of nature. The senses know perceptible objects as they exist in material things; namely, lightness, heaviness, warmth, coldness, colors and other qualities as presented. Stars turning around in an unbroken and

36Locke, Essays, p. 147.
fixed course, rivers flowing along into the sea, and years and changes of the seasons following one another in definite order, these and infinitely more are, according to Locke, perceived by the senses. The mind, which in a certain sense directs the senses, contemplates the order, array and motion of the objects of the senses. Then it proceeds to an inquiry into their origin, to find out what was the cause, and who the Maker, of such marvelous works; for obviously, they could not have come together by chance. The mind then considers man as a possible creator of the order in the universe. Since, however, he does not find in himself all the perfections he can conceive, he realizes that there must be a cause greater than himself behind these perfections. Man, moreover, would not destroy himself were he the Creator. So there must be a superior power, God, who has command over nature, animate and inanimate, with all their perfections a participation of His own.

Hence it appears clearly that, with sense-perception showing the way, reason can lead us to the knowledge of a law-maker or some superior power to which we are necessarily subject.37

In the second place, then, since on the evidence of the senses it must be concluded that there is some maker of all these things, whom it is necessary to recognize as not only powerful but also wise, it follows from this that he has not created this world for nothing and without purpose. For it is

37Ibid., p. 155.
contrary to such great wisdom to work with no fixed aim . . . ."38

From Locke's preceding arguments,39 one can make the following inferences. Man, the most perfect of God's visible creatures, comes into the world with a purpose. He is provided with faculties which enable him both to know and follow the natural law. And this law can only direct man to the most perfect and wise God who made the law. For it would be a contradiction for God, being all-perfect, to direct his creatures to something or someone else, for he would thus be directing them away from the perfection of Himself, for the realization of which He has provided man with the faculties of will and intellect. Contemplation of God's works and the Wisdom and Power they display by use of his faculties is man's destiny in life. By so doing, praise, honor, and glory are rendered to the great and beneficent Creator.

"Further, he [man] feels himself not only to be impelled by life's experience and pressing needs to procure and preserve a life in society with other men, but also to be urged to enter into society by a certain propensity of nature . . . ."40

This text which follows immediately upon man's basic purpose

38 Ibid., p. 157.
39 Supra, pp. 31-34.
In life, the ordering of his life to God, has significance. For Locke infers that the natural way for man to attain the end for which he was created is as a social being. The normal way for men to unite and live together, to mutually assist one another, is to form political societies.

However,

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.

A state also of equality wherein all the power and jurisdiction is reciprocal, no one having more than that creatures of the same species and rank, promiscuously born to the same advantages of nature, and the use of the same faculties, should also be equal one amongst another . . . .

The estate Locke refers to is the state of nature. In this state men are free to order their actions in any manner they wish, with the one restriction that their actions should be in conformity with the natural law. For though the man has perfect liberty in this state, yet it is not a state of license. No one, therefore, should harm another in his life, health, liberty, or possessions. Nor does a man have dominion over his own life in

the sense that he could without moral infraction take his own
life. God is the Creator of man and the One to whom all crea-
tures are directed. Self-destruction or destruction in any way
of the order or law that He has placed in man is morally wrong.

It is clear that self-interest alone is not the motivating
force of the individual. By mention of equality, another im-
mediately comes into the picture. Since all human beings are
fundamentally endowed with the faculties required by the species,
they all have the same advantages and rights without subordi-
nation or subjection to anyone else. They all have a natural
liberty which consists in being ruled by their own nature. Man
is then a moral entity. That he is a social being is brought
out by the reciprocity mentioned, relative to power and juris-
diction.

"Every one as he is bound to preserve himself, and not quit
his station wilfully, so by like reason when his own preser-
vation comes not in competition, ought he as much as he can to
preserve the rest of mankind, and not unless it be to do justice
on an offender, take away or impair the life, or what tends to
the preservation of the life, the liberty, health, limb or goods
of another."42

Locke then even in the state of nature holds that a man
has the social obligation to help his neighbor and all of man-
kind. Positively his actions must be in accord with the law of

42Ibid., p. 120
nature and never harm another in any respect. Only in the interest of self-preservation or to protect what is his own, may a man do harm to another. "For the law of Nature would, as all other laws that concern men in this world, be in vain if there were nobody that in the state of Nature had a power to execute that law and thereby preserve the innocent and restrain offenders; and if any one in the state of Nature may punish another for any evil he has done, everyone may do so." 43

All positive laws are as good as their enforcement by those who have the authority to do so. Since Locke in his state of nature is speaking of people governed by the law of nature alone and without positive laws, these same people whose duty it is to observe the law must also enforce it. Nor is it just the duty of certain individuals to enforce laws as in the case of present-day society. In the state of nature it is everyone's duty to preserve himself and others from harm. For the offender is a menace not only to oneself but to the universal order placed in all creatures by God. "Each transgression may be punished to that degree, and with so much severity, as will suffice to make it an ill bargain to the offender, give him cause to repent, and terrify others from doing the like." 44

43 Ibid., p. 120.
44 Ibid., p. 122.
The punishment meted out, therefore, must also be governed by the law of nature. For it would be just as grievous an offense on the part of the law enforcer to over-punish as was the crime of the one being punished. There is no doubt that this could be a genuine problem when one considers society today. For human nature itself has not changed. Locke recognizes the difficulties present when, in the state of nature, each individual may enforce the law in his own case, by adding, "I easily grant that civil government is the proper remedy for the inconveniences of the state of Nature, which must certainly be great where men may be judges in their own case, since it is easy to be imagined that he who was so unjust as to do his brother an injury will scarce be so just as to condemn himself for it."45

At this point, however, Locke indulges in a digression on the evils of absolute monarchy.46 How much better than absolute monarchy was even the state of nature? For in the state of nature, the malefactor was clearly known to be such whether in the act of crime or in exacting unjust retribution from another criminal. In the case of absolute sovereigns, however, one man has been legally clothed with power over all subjects. From this favorable position he can under a great many guises deceive the people he governs. For they have ceased to have the concern for

45bid., p. 123.

46ibid., p. 123.
law enforcement that they instinctively had in the state of nature. The unjust ruler can without their knowledge perpetrate wholesale injustices due to the geographical proportions of a country. For in most cases the left hand (i.e., the people) would not know what the right hand (i.e., the Ruler) were doing in parts of the country other than their own. The ruler, moreover, has at his command armies and law enforcement officials. His normal policy would be to cultivate, and make partners of, these and so make it almost impossible for the masses to expeditiously correct the situation. That such situations could be remedied was proven in Locke's day by the Glorious Revolution, but only after much harm had already been done.

Up to this point Locke has explained the law of nature in practice in the state of nature. But the state of nature itself, he has merely described as the estate all men are naturally in, a state of perfect freedom, equality, a state ruled by an application on a social level of the law of nature. He has said nothing of whether or not it is or was a real society, a hypothetical society, or no society at all. The following text however gives a clear picture of just what is meant by the state of nature.

It is often asked . . . where are, or ever were, there any men in such a state of Nature? To which it may suffice as an answer at present, that since all princes and rulers of "independent" governments all through the world are in a state of Nature, it is plain the world never was, nor never will be, without numbers of men in that state. I have named all governors of "independent" communities, whether they are, or are not in league with others; for it is not every compact
that puts an end to the state of nature between them, but only this one of agreeing together mutually to enter into one community, and make one body politic; other promises and compacts men may make with another, and yet still be in the state of Nature. 47

It is apparent that the state of nature both is, was and will be, according to Locke, a real "estate" for some portion of mankind. The fact that many men may live in one area does not necessarily mean that they form one body politic. They may even have their own governors or rulers and yet the people "governed" would be considered in the state of nature. How a man could be a governor of an "independent" community, that is, of people who remain free of any jurisdiction of the governor or in the state of nature, is brought out by references to the Indians of the Americas and the Jews of old.

And if Joseph Accosta's word may be taken, he tells us that in many parts of America there was no government at all. "There are great and apparent conjectures," says he, "that these men (speaking of those of Peru) for a long time had neither kings nor commonwealths, but lived in troops, as they do this day in Florida -- the Cheriquanas, those of Brazil, and many other nations, which have no certain kings, but, as occasion is offered in peace or war, they choose their captains as they please." (lib. 1, Cap. 25) 48

And thus, in Israel itself, the chief business of their judges and first kings seems to have been to be captains in war and leaders of their armies ... 49

48 Ibid., p. 167.
49 Ibid., p. 171.
Locke therefore holds that a part-time government is no
government at all. The conclusions he reaches concerning the
Indians of North and South America must be based on the prevail-
ing popular opinions of Indian life in his time. The Indians
were savages, and had no stable form of government but only that
unity dictated for self-preservation which was chiefly evidenced
in time of war. Such a unity Locke would definitely declare to
be insufficient to entitle it to the name of political society.
In truth, though, the majority of tribes did have leaders or
chiefs in peace-time as well. The reason a chief would be chosen
however, was due to his qualities of leadership in time of war.

In the case of the Jewish people, God often provided them
with men who would be their leaders in battle. But it can hardly
be said that the Jewish people even from earliest times did not
have some form of government in peace-time, as well. For they
were the chosen people of God and it is inconceivable that God
at any time would have left them in the state Locke declares the
savages of America to have been in. It is interesting to note
that even the Indians have, since Locke's time, been proven to
have had political societies. It is true that the levels of
their civilizations were not as high as many of the body politics
of Locke's time. But Locke's definition of political or civil so-
ciety would certainly be applicable to the Indians as well, for
"wherever . . . any number of men so unite into one society as to
quit every one his own executive power of the law of Nature, and
to resign it to the public, there and there only is a political or civil society.\textsuperscript{50}

Perhaps Locke realized that human beings of their natures always lived in society with others. For to an objection that neither tradition nor history give any example of people in the state of nature and of these same people uniting to form a political society, Locke replies, "that it is not at all to be wondered that history gives us but a very little account of men that lived in the state of Nature. The inconveniences of that condition, and the love and want of society, no sooner brought any number of them together, but they presently united and incorporated if they designed to continue together."\textsuperscript{51}

Following this statement, however, Locke states that merely because history does not give any account of the state of nature, does not necessarily mean that it did not exist. Otherwise, "... we may as well suppose the armies of Salmanasser or Xerxes were never children, because we hear little of them till they were men and embodied in armies."\textsuperscript{52}

The state of nature was to Locke, therefore, a real condition in which men existed prior to the formation of political societies. It was a state in which men, though they may have had

\textsuperscript{50}\textit{Ibid.}, p. 160.

\textsuperscript{51}\textit{Ibid.}, p. 166.

\textsuperscript{52}\textit{Ibid.}, p. 167.
governors, were nevertheless governed not by any positive laws but only by the law of nature as interpreted by each individual. Though the individual was to look as much as possible to the preservation of all mankind and to help his neighbor, his prime obligation was to preserve himself and what was his. What seems to distinguish the man of the state of nature from the member of political society, is the possession or non-possession of the executive power of law. The man of the state of nature retains this power for his own preservation. The member of political society relinquishes this power to the public, that is, the government. There seems little ground to doubt that this was Locke's true concept of the state of nature. From what he says in the Second Treatise, the state of nature did, does and will really exist. Nowhere does he appear to speak of the state of nature as an abstraction in his consideration of man as man. Nowhere does he appear to suggest that the state of nature is a tool or principle he is using to bring out the accidental union of the individual man with others in a body politic.

Right or wrong in his opinion on the state of nature, however, Locke has made it serve a definite purpose. Man as a creature of God is born with certain liberties. He is also born with the obligation to observe a law of nature. Though Locke does not write a treatise on special ethics, he succeeds in his treatment of the law of nature in the Essay and in his application of it in the state of nature in the Second Treatise, in getting to his
reader the idea that God exists and is the one who has not only created man but has placed in him an order to himself. This order is the law of nature which is the basis of rights and obligations and, as we shall see in what follows, has just as much application to man as a member of political society as it does in any abstract consideration of man as man, or man as a member of the state of nature.

In the next chapter, a more detailed treatment will be given to the specific rights for the protection of which men renounce the state of nature in favor of political society. Just what form the political society should take and how the power is divided within the form will also be considered.
CHAPTER III

PROPERTY PROTECTION

Locke sums up very well the transition of men from the State of Nature to political societies and also the reasons motivating such a change.

If man in the state of Nature be so free as has been said, if he be absolute lord of his own person and possessions, equal to the greatest and subject to nobody, why will he part with his freedom, this empire, and subject himself to the dominion and control of any other power? To which it is obvious to answer, that though in the state of Nature he hath such a right, yet the enjoyment of it is very uncertain and constantly exposed to the invasion of others; for all being kings as much as he, every man his equal and the greater part no strict observers of equity and justice, the government of the property he has in this state is very unsafe, very insecure. This makes him willing to quit this condition which, however free, is full of fears and continual dangers; and it is not without reason that he seeks out and is willing to join in society with others who are already united, or have a mind to unite for the mutual preservation of their lives, liberties and estates, which I call by the general name - property.\(^1\)

As already seen in Chapter II, the state of nature was one of equality, of perfect freedom. Men were at liberty to order their actions and dispose of their possessions and persons as they thought fit, but always in accord with the law of nature. There was no asking leave or depending on the will of another.

\(^1\)Ibid., p. 179.
It is no wonder, then, that Locke poses the question, why would men want to leave such a state. Locke answers that there is always the element of insecurity and uncertainty in the state of nature. For men for the greater part are no strict observers of equity and justice. What would happen, for example, if a man, himself a malefactor, were to attempt to punish, and exact retribution of, another malefactor? In such a case, it seems difficult to imagine that punishment would be meted out in accord with principles of justice. Obviously, too, where any sizeable number of men are gathered, human nature being what it is, there are bound to be a goodly number of individuals who believe in not working themselves when they can take the fruit of another man’s labor. It is questionable, also, just how impartial a judge a good man could be in deciding the fate of another who did him some injustice. We know how perilous it is even today to people who live under governments where the judicial and executive powers are administered by one authorized person, even though the laws be made by representatives of the people. How much worse a situation results when there not only are no positive laws but the equivalent of the man on the street judges and administers “justice” in his own case.

To avoid consequences, therefore, which could in truth be chaotic when one reflects on the crime ratios that exist today even under governments recognized as good, men chose to enter political societies. He chose to forego the condition of the
state of nature in spite of its surpassing freedom. For he saw that in joining with those who had already united, or have a mind to unite for the mutual preservation of their lives, liberties and estates (to all three of which Locke refers as property), he could best preserve and enjoy his own property.

This mutual preservation of property is, then, the prime function of political society. Just as every man is bound in the state of nature, "when his own preservation comes not in competition ... to preserve the rest of mankind, and not ... take away or impair the life, or what tends to the preservation of the life, the liberty, health, limbs, or goods of another,"² so here the same protection is sought. In political society, however, the responsibility of protection devolves on the government and not on the individual citizen who relies just as much as his neighbor on the law enforcement agencies, to protect his property.

The better protection of property is, then, the ruling force that drives men to unite in political societies. It is necessary, therefore, in treating of political society to bear in mind that the following questions demand answers before any treatment can be considered complete:

1) What form of government does Locke recommend to secure better protection?

²Ibid., p. 120.
2) How should the power of government be divided so that political society may fulfill its purpose?

Before these questions can be answered satisfactorily, however, one must know Locke's explanation of:

1) Whence comes the right of life, liberty, estate?
2) What, exactly, is meant by property?
3) Does man's acceptance of political society mean a lessening of the rights he had in the state of nature?

Since the answers to these latter three questions are fundamental to the understanding of the former two, they will be answered first in this chapter. The answers to the former two will follow.

In answer to the question, "what, exactly, is meant by property?", Locke, in speaking of man in the state of nature, says: "Everyone . . . is bound to preserve himself, and not . . . take away or impair the life, or what tends to the preservation of the life, the liberty, health, limb or goods of another." 3

Again, he describes that state as one

... 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 . . . .

This equality of men by Nature . . . makes it the

3 Ibid., p. 120.
the foundation of that mutual love amongst men on which he builds the duties they owe one another. 4

The above references treat of man's obligations in the state of nature with regard to the rights of others. In the first test, however, Locke without mentioning property, speaks "of the life, the liberty, limb, goods of another." 5 This phrase contains all the essentials of his definition of property given earlier in this chapter. 6 In the second reference, the reason he gives why one man should respect another's property is equality; again the notion of obligation is stressed in "the duties they owe one another." 7

If, therefore, the obligation to respect another's property is based on equality, the source of equality must be not only the basis of obligation but the foundation and source of rights, as well. Since the "state of Nature has a law of nature to govern it," 8 the law of nature is the fountain whence flow not only men's obligations but also their rights "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

4 Ibid., pp. 118-119.
5 Ibid., p. 120.
6 Supra, p. 45.
7 Locke, Second Treatise, p. 119.
8 Ibid., p. 120.
leave or depending upon the will of any other man."9

Since Locke has defined the law of nature in his *Assays on
the Law of Nature* as "the decree of the divine will."10 God is
the source of men's obligations as well as rights.

All of these rights are contained in Locke's interpretation
of property. For by property is meant man's life, liberty and
estate. Concerning "life", the first part of the definition,
Locke says: "... every man has a "property" in his own "person."
This nobody has a right to but himself."11

By use of quotations about property and person, Locke indi-
cates that neither word is to be taken in the strictly legal or
philosophical sense respectively. For immediately following this
statement, he contends, "The "labour" of his body and the "work"
of his hands, we may say, are properly his. Whatsoever, then,
he removes out of the state that Nature hath provided and left
it in, he hath mixed his labour with it, and joined to it some-
thing that is his own, and thereby makes it his property."12

Here, Locke is speaking of the body and the hands of men.
He is treating of the physical side of man. The "person"

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9Ibid., p. 118.
12Ibid., p. 130.
referred to in the previous quotation therefore, since it seems so closely connected with the above, would seem to mean man's physical well-being, his life in the sense of his "health, limb"\(^{13}\) his right to physically existing and developing in size, age and physical perfections. His use of quotations about property to describe this right seems to indicate that he is speaking not of property as legally construed in his day, but more in the sense of the Latin word, \textit{proprius}, meaning his, hers or its own, belonging to someone.

This right is so inviolable that, "a man, not having the power of his own life, cannot by compact or his own consent enslave himself to anyone nor put himself under the arbitrary power of another to take away his life when he pleases. Nobody can give more power than he has himself, and he that cannot take away his own life cannot give another power over it."\(^{14}\)

That self-destruction is contrary to the law of nature and therefore forbidden to man has already been treated in this thesis.\(^{15}\)

Concerning the second part of the definition of property, "liberty", Locke argues:

The natural liberty of man is to be free from any

\(^{13}\textit{Ibid.}, \text{ p. 120.}\)

\(^{14}\textit{Ibid.}, \text{ p. 123.}\)

\(^{15}\textit{Suora}, \text{ pp. 35-36.}\)
superior power on earth, and not to be under will or
domesticate authority of man, but to have the only the law
of nature for his rule. The liberty of men in society
is to be under no other legislative power but that es-
tablished 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. Freedom, then, is not what Sir Robert Filmer
tells us: "A liberty for every one to do what he lists,
to live as he pleases and not to be tied by any laws,"
but freedom of men under government is to have a stand-
ing rule to live by, common to every one of that soci-
ety, and made by the legislative power erected in it.
A liberty to follow my own will in all things where
that rule prescribes not, not to be subject to the in-
constant, uncertain, unknown arbitrary will of another
man, as freedom of nature is to be under no other re-
straint but the law of nature.16

In speaking of natural liberty at the outset of the above
quotation, Locke is referring to the liberty as it existed in the
state of nature and for that reason a man would be under no legis-
late authority but would have the law of nature as his only
rule of life. In political society in addition to the law of
nature, man has the laws passed by the legislative to abide by,
as well. Liberty, therefore, means the right of a man in in-
different matters to think and act as he sees fit. By indifferent
matters are meant the many occasions a man in a free country has
to choose between different goods. Locke is quick to disown
Filmer's concept of liberty, which amounts to nothing but radical
license.

An example of such a liberty with regard to indifferent goods,

16Locke, Second Treatise, p. 127.
is man's right to worship as he sees fit. This act is certainly
good and in accord with the law of nature and possessed in the
state of nature. Locke in his *Letter Concerning Toleration*
places the right to worship freely high on the list of man's
liberties when he states:

... I esteem it above all things necessary to dis-
tinguish exactly the business of civil government from
that of religion and to settle the just bounds that lie
between the one and the other.

The commonwealth seems to me to be a society of
men constituted only for the procuring, preserving and
advancing their own civil interests.

Civil interests I call life, liberty, health, and
inviolency of body; and the possession of outward things,
such as money, lands, houses, furniture, and the like.

It is the duty of the civil magistrate, by the
impartial execution of equal laws, to secure unto all
the people in general and to every one of his subjects
in particular the just possession of these things be-
longing to this life ... . therefore is the Magis-
trate armed with the force and strength of all his
subjects, in order to punish those that violate any
other man's rights.

Now that the whole jurisdiction of the Magistrate
reaches only to these civil concernsments, and that
all civil power, right and dominion, is bounded and
confined to the only care of promoting these things
... . it neither can nor ought in any manner to be
extended to the salvation of souls... .17

The function of the government of political society is there-
fore to protect man's right to worship, as he sees fit, to save
his soul. The government is to concern itself with the ordering
of things that relate to this world, whereas it is the individual

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17John Locke, "A Letter Concerning Toleration", *Great Books
of the Western World*, ed. Robert Maynard Hutchins (Chicago,
1952), XXV, 2-3.
man's right to worship in the way that he sees will best prepare his soul for the next world. In the protection of this right, the civil magistrate, moreover, may use all the executive powers at his disposal to instill the fear of punishment in anyone who would wish to deprive his neighbor of this right. He would have the power to even deprive such an offender of his own liberties or goods, or both.18

Though Locke does not in the Second Treatise go into great detail concerning liberty as he means it in his definition of property, it would appear safe to infer that besides freedom of worship, he would include many, if not all, of the rights and liberties set forth by the Lords and Commons in the Bill of Rights, a statute in English constitutional history enacted in December, 1689.

It is not the writer's intention, however, to bring out these thirteen liberties at this point. Locke, himself, in his Second Treatise did not in any one place make a listing of man's various liberties which political society was instituted to protect. Rather, he treated them in the course of his exposition of the divisions of political power both explicitly by mentioning the rights that his proposed recommendation was intended to guarantee, and implicitly by stating evils that his proposed

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divisions of power were supposed to remedy.19

After what is actually in the *Second Treatise* a very gen-
eral reference to liberty, the second part of his definition of
property, Locke comes to "estate", the third part.

The "labour" of his body and the "work" of his hands,
we may say, are properly his. Whatever, then, he
removes out of the state that Nature hath provided and
left it in, he hath mixed his labour with it and makes
it his property. It being by him removed from the
common state Nature placed it in, it hath by his labour
something annexed to it that excludes the common right
of other men. For this "labour" being the unquestion-
able property of the labourer, 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.20

Man's estate, then, consisted in any goods that he himself
had made. For his labour "added something to them more than
Nature, the common mother of all, had done, and so they became
his private right."21

The fruits of nature, therefore, which the author of nature

19 It is interesting to note that the year in which the *Bill
of Rights* was enacted was also the year of the accession of
William of Orange to the English throne and the year in which
John Locke returned from his voluntary exile in Holland. Since,
however, a comparative study of the *Bill of Rights* and Locke's
*Second Treatise* would be entirely outside of the scope of this
thesis, the writer will not embark on such a study. For the
reader's leisure consideration, though, a brief historical
preface to the *Bill of Rights* and the entire *Bill of Rights* it-
selves, as taken from *Encyclopedia Britannica*, appears in the
Appendix.

20 Locke, *Second Treatise*, p. 130.

21 Ibid., p. 130.
had provided became man's when mixed with his toil. For, "the chief matter of property being now not the fruits of the earth and the beasts that subsist on it, but the earth itself, as that which takes in and carries with it all the rest, I think it is plain that property in that, too, is acquired as the former. As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property."22

Here is given the second consideration of "estate". This would be the equivalent of what we know today as real property. What Locke in his first consideration was speaking of was not so much land itself but what was made with man's labor and became his personal property or chattel. Here, however, the distinction is clearly made between fruits of the earth and the earth itself.

The source of these rights is expressed in these terms:

The law man was under was rather for appropriating. God commanded, and his wants forced him to labour. That was his property, which could not be taken from him wherever he had fixed it. And hence subduing or cultivating the earth and having dominion, we see, are joined together. The one gave title to the other. So that God, by commanding to subdue, gave authority so far to appropriate. And the condition of human life, which requires labour and materials to work on, necessarily introduce private possessions.23

Here Locke gives the answer to the question, "Whence comes the right to life, liberty and estate?" The command of God,

22Ibid., p. 132.
23Ibid., p. 133.
therefore, is the source of this right of man and, since Locke defines the law of nature as the decree of the divine will, this right can be said to be founded on the law of nature. Such being the case, this right of estate, both personal and real, as well as the rights of life and liberty, are had by man in the state of nature. Political society, therefore, does not create man's rights but is itself created by man to better preserve them.

That man should have the right to real and personal property can certainly be traced without much trouble to the law of nature, for it is inconceivable that God would create a man and command him to rule the earth and not at the same time give him the right to appropriate the necessary means. Man's right to property, therefore, is necessary to his nature and must be guaranteed by the law of nature.

But as seen at the outset of this chapter, the law of nature was not sufficient in the state of nature to guarantee man's life, liberty and estate. Because of the existence of the un-savory elements of humanity that threatened man's enjoyment of his rights, man quit the condition of the state of nature and joined with others in political society. What effect does this transition from the state of nature to political society have on man's natural rights? As for the question, "Does man's acceptance of political society mean a lessening of the rights he had in the state of nature?" Locke answers:

And thus, every man, by consenting with others to make
One body politic and under one government, puts himself under an obligation to every one of that society to submit to the determination of the majority, and to be concluded by it; or else this original compact, whereby he with others incorporates into one society, would signify nothing, and be no compact if he be left free and under no other ties than he was in before in the state of Nature . . . . This would be still as great a liberty as he had before his compact, or any one else in the state of Nature, who may submit himself and consent to any acts of it he thinks fit. 24

Any man, therefore, who elects to join in a political society and enjoys the privileges of the safe and secure possession of his property is obliged to obey the positive laws of the country. For it would certainly be unreasonable for those outside the fold to have the freedoms of the state of nature and expect to profit by the extra protection of their rights which the sacrifices of the majority had achieved.

Whosoever, therefore, out of a state of nature unite into a community, must be understood to give up all the power necessary to the ends for which they unite into society to the majority of the community, unless they expressly agreed in any number greater than the majority. 25

For in the state of Nature to omit the liberty he had of innocent delights, a man has two powers. The first power is to do whatsoever he thinks fit for the preservation of himself and others within the permission of the law of Nature . . . . The other power a man has in the state of Nature is the power to punish crimes committed against that law. 26

24 Ibid., p. 165.
25 Ibid., p. 166.
26 Ibid., p. 131.
The major sacrifices a man makes in the move from the state of nature to political society are two. He gives up to the legislative the power he has of free regulation of his actions. For in political society positive laws are enacted which may in some cases confine an individual man's liberty even though they are always passed for the common good. He gives up to the executive the power he has to enforce the law of nature on his own authority. Moreover, "the power of punishing he wholly gives up, and engages his natural force, which he might before employ in the execution of the law of nature, by his own single authority, as he thought fit, to assist the executive power of the society as the law thereof shall require."27

As a citizen of political society, therefore, man is merely to assist, when the occasion offers, the duly constituted officers of law enforcement who now possess the executive power he has given up. Locke says, therefore, that the executive power of enforcing the law was bad by man in the state of nature. whether he would say that man independent of society had this truly political power is not too clear. For as we saw, Locke held the state of nature to be a society of some sort though not a political society. He held that men in the state of nature were social beings; and in the two examples of people who lived in this state, the Indians and the Jews, he mentioned the fact that they

27 Ibid., p. 171.
had leaders at least in time of war. If he had stated definitely that these leaders were leaders in peace-time as well, a political society would have existed among them. But Locke rules out any suggestion that political society existed. These people were definitely in a state of nature. Although there existed the social obligation of helping one's neighbor, this came directly from the law of nature. Since help of one's neighbor consisted of the use of one's executive power of enforcing the law of nature on those who violated another's rights, man in Locke's mind, was born with political power. The executive power of his recommended Government would almost consist, it seems, of a stock pile of individual powers. The same could be said of the powers of the legislative.

The individual powers must not be considered to be given up unconditionally. Man, it is true, on entering political society, gives up the free regulation of his actions and obliges himself to the laws passed by the legislative. He also turns over to the executive his power to enforce the law of nature. As will be seen shortly in the treatment of the divisions of government, however, the legislative and executive possess their powers for the better protection of the property of the members of political society. Only when they use them toward this end are they entitled to retain them. Only on these conditions did men surrender their rights.

For being now in a new state, wherein he [man] is to
enjoy many conveniences from the labour, assistance, and society of others in the same community, as well as protection from its whole strength, he is to part also with as much of his natural liberty, in providing for himself, as the good, prosperity, and safety of the society shall require, which is not only necessary but just, since the other members of the society do the like.

But though men when they enter into society give up the equality, liberty, and executive power they had in the state of Nature into the hands of the society, to be so far disposed of by the legislative as the good of society shall require, yet it being only with an intention in every one the better to preserve himself, his liberty and property (for no rational creature can be supposed to change his condition with an intention to be worse), the power of the society or legislative constituted by them can never be supposed to secure every one's property by providing against those three defects above mentioned that made the state of Nature so unsafe and uneasy.

Conditional yielding of rights or no, however, Locke does say that the authority of the government is constituted of powers derived from individuals. These powers are actually rights flowing from the law of Nature and had by man in the state of nature. To protect his rights, then, man gives them up.

The paradox is apparent. But Locke does not seem to notice it. In his consideration of dissolution of government, some light is thrown on what he would consider an answer to the problem. Locke treats of revolution and holds that it is justifiable when either the legislative or executive act contrary to

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28 Ibid., pp. 181-182.
29 Ibid., pp. 224-242.
the trust placed in them. The proper use of this trust consists in the use of their powers for the common good. Such an interpretation would mean that the people have given up the use of their powers but not the right to them. For, upon dissolution of the community, the powers revert back to the individuals who can, if they choose, resume the condition of the state of nature.

Another possible explanation of the paradox may lie in the implied distinction Locke makes between individual rights such as freedom of worship and political rights such as the executive power to enforce the law. As seen earlier in this chapter, the government can never interfere with a man's right to worship God as he sees fit. This could be considered, therefore, an individual right which man retains both before and after the formation of political society.

Perhaps, also considered an individual right would be man's right to real and personal property earned by his own labor. But Locke did not actually make a distinction between real and personal property and, as pointed out earlier in this chapter, he did not in any place specify what he actually meant by liberty except to say that it "is to be free from any superior power on earth and not to be under will or legislative authority of man." And even the second part of this definition seems to imply that when a man consents to legislative authority, he is without

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31 Ibid., p. 128.
liberty. Yet Locke habitually speaks of political society as the protector of the individual's life, liberty, and estate, as has already been seen.

The writer realizes that at this point no clear-cut reconciliation has been offered to explain how Locke can in one breath propose that men give up his rights to, and at the same time is better protected by, political society. Locke, however, offers nothing further himself for the simple reason, in the writer's opinion, that he did not realize there was anything paradoxical or even calling for further elaboration in the idea of people giving up their rights for the better protection of their property.

Locke merely continued:

The majority having, as has been showed, upon men's first uniting into society, the whole power of the community naturally in them, may employ all that power in making laws for the community from time to time, and executing those laws by officers of their own appointing and then the form of government is a perfect democracy; or else may put the power of making laws into the hands of a few select men, and their heirs and successors, and then it is an oligarchy; or else into the hands of one man, and then it is a monarchy; if to him and his heirs, it is a hereditary monarchy; if to him only for life, but upon his death the power only of nominating a successor, to return to them, an elective monarchy. And so accordingly of these make compounded and mixed forms of government, as they think good.32

This is the answer to one of the two major questions mentioned at the outset of this chapter: "What form of government does

32Ibid., pp. 182-183.
Locke recommend to secure this better protection? Locke answers that it does not matter whether the form of government of political society be a perfect democracy, an oligarchy or a monarchy, hereditary or elective. The form of government then is determined by the repository of the legislative power. If this be placed in the majority, the form of government is a democracy; if it be placed in the hands of a few, an oligarchy; if in one man, a monarchy. The all-important consideration, however, is not so much the form of government but the proper direction of it toward the end for which it was instituted. This proper direction is best accomplished in Locke's mind by a division of the powers of the government.

The following is Locke's answer to the second major question at the beginning of this chapter: "How should the power of government be divided that political society may fulfill its purpose?"

The great and chief end, therefore, of men uniting into commonwealths, and putting themselves under government, is the preservation of their property; to which in the state of Nature there are many things wanting.

Firstly, there wants an established, settled, known law, received and allowed by 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 creatures, yet men being biased by their own interest, as well as ignorant for want of study of it, are not apt to allow of it as a law binding to them in the application of it to their particular cases. 

33Ibid., p. 180.
Here is proposed the first need of men uniting to form a political society, the need of positive laws which will definitely state the law of nature as applicable to the different circumstances that may arise and cause controversies among the members of the society.

Therefore, "the first and fundamental positive law of all commonwealths is the establishing of the legislative power, as the first and fundamental natural law which is to govern even the legislative."34

Locke’s first division of the power of government, then, consists in establishing the legislative to make law to govern all members of society, including themselves.

"Secondly, in the state of Nature there wants a known and indifferent judge with authority to determine all differences according to the established law. For every one in the state being both judge and executioner of the law of Nature, men being partial to themselves, passion and revenge is very apt to carry them too far, and with too much heat in their own cases, as well as negligence and unconcernedness, make them too remiss in other men’s."35

The second need of men uniting to form a political society is that of an impartial judge of infractions of the law. For,

34 Ibid., p. 183.
without such a body, some men governed by emotions would judge
too severely without consideration of reasons and extenuating
circumstances which might possibly mitigate the apparent physical
wrong done, if not altogether nullify it. On the other hand--
which would be especially true in the case of misdemeanors--some
men though guilty, would go completely free because the offended
would not want to take the trouble to search out and punish the
criminal.

"Thirdly, in the state of Nature there often wants power to
back and support the sentence when right, and to give it due exe-
cution. They who by any injustice offended will seldom fail when
they are able by force to make good their injustice. Such re-
sistance many times makes the punishment dangerous, and frequent-
ly destructive to those who attempt it."36

Even if he be an impartial judge, therefore, it is often
difficult for the man of the state of nature to properly enforce
the law of nature in the case of injury done him. Either the
criminal is stronger than he, or he does not have the time or
resources to search for him and bring him to punishment. More-
over, should a man be deprived of some of his rights not by one
criminal but by a band of them, we can see what chance a farmer,
for instance, would have who might be living miles from his near-
est neighbor.

"Because the laws that are at once, and in a short time made have a constant and lasting force, and need a perpetual execution or an attendance thereto, therefore it is necessary there should be a power always in being which should see to the execution of the laws that are made, and remain in force." 37 Here, Locke proposes the executive branch of the government to handle law enforcement. Strangely, Locke does not propose a separate branch to handle the judicial function.

This function is handled by legislative and executive branches. For, "whoever has the legislative or supreme power of any commonwealth, is bound to govern by established standing laws promulgated and known to the people, and not by extemporary decrees, by indifferent and upright judges, who are to decide controversies by those laws." 38

There is also another power given consideration by Locke. For though people be united in a political society, there is always the need to deal with people outside of their commonwealth who can, and do, injure members of the society. In such a case the injured party would be identifiable with the whole community and reparation would be sought. "This, therefore, contains the power of war and peace, leagues and alliances, and all the transactions with all persons and communities without the commonwealth

37 Ibid., pp. 190-191.
38 Ibid., p. 182.
and may be called federative . . . . 39

Thus Locke proposes the last branch of his government in
which the man of the state of nature has freely elected member-
ship for the preservation of his rights of property, life, libe-
ry and estate. Consideration has been given to what motivated
man to enter into political society and what rights this move was
directed to protect. Though a paradox was found to exist in
John Locke's doctrine of man giving up his rights, yet a paradox
it must remain. For Locke in no way adverts to it and the writer
could give only what in his mind might help to solve this basic
illogicality on a concept most fundamental to Locke's entire
treatise on civil government.

Nor will any further clarification appear in what follows.
The only way to read what follows, therefore, is to try to
abstract from this confusion of man giving up his rights in order
that these very same rights might be protected. For, as said
previously, 40 in treating of the interaction of the divisions
of government, Locke both implicitly and explicitly defines what
some of these rights specifically are. Consideration will also
be given in the subsequent chapter to the follow-up doctrine of
the majority vote required in the formation of political society;
namely, whether such a vote controls the operation of the powers

39Ibid., p. 191.
40Supra, p. 54-55.
of government so that the rights of every individual are protected, and in what way it does.
CHAPTER IV

GOVERNMENT BY CONSENT

In speaking of the beginnings of political societies, Locke makes perfectly clear the role consent plays on the individual man's entrance and perseverance in political society when he says:

And thus every man, by consenting with others to make one body politic under one government, put himself under an obligation to everyone of that society to submit to the determination of the majority, and to be concluded by it; or else this original compact, whereby he with others incorporates into one society, would signify nothing, and be no compact if he be left free and under no other ties than he was in before in the state of Nature. For what appearance would there be of any compact? what new engagement if he were no farther tied by any degrees of the society than he himself thought fit and did actually consent to?

... whosoever, therefore, out of a state of Nature unite into a community, must be understood to give up all the power necessary to the ends for which they unite into society to the majority of the community, unless they expressly agreed in any number greater than the majority.¹

Man, therefore, freely consented to join into a political society with other men in order to better protect the rights he had received from God. The law of nature was the force that

¹Locke, Second Treatise, pp. 165-166.
guaranteed these rights in the state of nature. As seen in the previous chapter, however, the law of nature and the individual himself were not of themselves strong enough to cope with the unruly elements of mankind. Man, therefore, was willing to forsake some of his liberties of the state of nature and join into a political society with other men. There the government became the repository of the rights and powers that the individuals had surrendered and was authorized to use them for the common good.

Looke did not specify any particular form of government that men passing from the state of nature into political society should recognize. It did not matter whether it were a perfect democracy, an oligarchy, a monarchy. He did, however, prescribe that the power of the government should be divided into two major divisions, the legislative and executive, which were to handle the tasks of making laws and enforcing them respectively. The judicial function of judging those accused of violating the law was to be exercised by both bodies. No separate judicial division of government was provided in Looke's separation of powers. Also added as a division of power was the federative, which was to handle foreign affairs, the relationships, that is, between the commonwealth and its members with those outside the commonwealth. This division, however, was treated by Looke as part of the executive power.²

²Ibid., pp. 191-192.
All the powers of each division of government, however, were
directed toward one end, the common good, the protection of the
life, liberty, estate of each individual citizen. For, these
rights had come to man from God and were guaranteed by the law
of nature. Not even man himself could give up these rights. 3
Man could, however, by his consent authorize the government to
protect these rights by giving up his executive power of the law
of nature and his freedom to do as he pleased, to the govern-
ment-elect. "For, when any member of men have, by the consent
of every individual, made a community, they have thereby made
that community one body, with a power to act as one body, which
is only by the will and determination of the majority." 4

Each man, therefore, gives his individual consent to enter
into a political society with other men. Once a member of that
society, he by agreement moves whatever way the majority of the
members of that society elect.

3Supra, pp. 52, 53, 60, 61, 62, 68. This statement is the
writer's and is based on Locke's doctrine of dissolution of
government (Locke, Second Treatise, pp. 224–242) which holds
that man has a natural right to revolt when the government to
which the people have given up their powers misuses its trust.
As stated in the foregoing pages of this thesis, above noted,
Locke does not make any clear-cut distinction between the type
of rights given up and the type of rights retained. It seems
safe to assume, however, that since the people under a govern-
ment have the power to revolt when the government does not
operate for their good, they must certainly have within them
rights belonging to their natures and not transferable. Such
rights would be what the writer has denominated individual as
opposed to political rights.

4Locke, Second Treatise, p. 165.
The problems, then, to be decided in this chapter are as follows:

1) What does Locke mean by consent?
2) How is the consent of the majority in the operations of government reconciled with the individual consent requisite on the formation of political society?
3) Does consent by the majority guarantee man's natural rights, and whence does the majority-rule derive its validity?
4) Granted that consent of the majority concludes the governed, what controlling influence does it have over the governing bodies themselves, the legislative and executive?

In answer to the first question, "What does Locke mean by consent?", Locke says:

"... it is fit to consider that every man when he at first incorporates himself into any commonwealth, he, by his uniting himself therunto, annexes also and submits to the community those possessions which he has, or shall acquire, that do not already belong to any other government."

Here, then, is the way a man becomes a perfect member of a political society. He must make an express declaration of his

Sibid., pp. 177-178.
willingness to become a member of the body politic. Such a declaration at once subjects both the individual and his possessions to the jurisdiction of said government. For, it would be a contradiction for one to join into a political society for the better protection of himself and his property and to expect at the same time that they would be free from the jurisdiction of the government providing this protection. Whatever enjoyment or advantages a person may derive from inheritance or purchases and sales or from any other good, it must be taken under the condition it is under; namely, according to the laws of the government which has jurisdiction over the commonwealth where these enjoyments or advantages are appreciated.

This submission of one's person and goods to the government, however, is not to be understood as a recommendation of totalitarian control. For,

the community perpetually retains a supreme power of saving themselves from the attempts and designs of anybody, even of their legislators, whenever they shall be so foolish or so wicked as to lay and carry on designs against the liberties and properties of the subject. For no man or society of men having a power to deliver up their preservation, or consequently the means of it, to the absolute will or arbitrary dominion of another . . . they will always have a right to preserve what they have not a power to part with . . . .

Express consent is therefore the way to become a perfect part of a commonwealth.

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6Ibid., pp. 192-193.
Nobody doubts but an express consent of any man, entering into any society, makes him a perfect member of that government. The difficulty is, what ought to be looked upon as a tacit consent, and how far it binds — i.e., how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expressions of it at all. And to this I say, that every man that hath any possession or enjoyment of any part of the dominions of any government doth hereby give his tacit consent . . . .?

A man, therefore, who is within the territorial boundaries of a country is usually there for some reason. The case Locke seems to refer to is that of an individual who at the time of formation of political society did not give express consent to the government. He would, however, be enjoying the same protection of his rights as a sworn citizen. Moreover, he would be buying or selling either services or goods and reaping the benefits. He might even inherit more goods. Such an individual is subject to all the laws of the country in which he lives for by such acts he has tacitly given consent to the government which makes possible the enjoyment of such benefits. He would pay taxes on his land, purchases and inheritances. Even a foreigner visiting the country would have to abide by the laws of the country governing his use of highways and other facilities he might enjoy during his stay within the territorial bounds of the country.

However, "the obligation any one is under by virtue of such enjoyment to submit to the government begins and ends with the

Ibid., p. 177.
with the enjoyment; so that whenever the owner, who has given nothing but such a tacit consent to the government will, by donation, sale or otherwise, quit the said possession, he is at liberty to go and incorporate himself into any other commonwealth. 8

The individual who gives tacit consent is not considered a citizen in the strict sense. He is at liberty to leave the country when he pleases and join into political society elsewhere as a citizen, or unite with others of his own status and form in some other place a distinct government. However, "he that has once, by actual agreement and any express declaration, given his consent to be of any commonweal, is perpetually and indispensible obliged to be, and remain unalterably a subject to it, and can never be again in the liberty of the state of Nature, unless by any calamity the government he was under comes to be dissolved." 9

The bona fide citizen of a country, however, is a citizen forever. In Locke's mind, he is bound by the compact or promise he made on entering into a certain political society. Locke's reasoning is founded on the principle that "keeping of faith belongs to men as men." 10 The consent a man gave on entering a political society is binding by force of the law of nature.

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8 Ibid., p. 178
9 Ibid., p. 178.
10 Ibid., p. 124.
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; or else this original compact, whereby he with others incorporates into one society, would signify nothing . . . 11

With these words, Locke begins his answer to the second question posed at the outset of this chapter, "How is the consent of the majority in the operations of government reconciled with the individual consent requisite on the formation of political society?" Here, then, is brought out a heretofore unmentioned consideration of the consent a person gives in becoming a citizen. When he consents, he not only places himself and his liberties and estate under the government but he also agrees to be governed with respect to his life, liberty and estate by the majority of the community of which he is a member.

Are one's rights guaranteed by the vote of a majority? Is there a conflict between the ideas of individual consent at one's entrance into political society and the majority consent which suffices in Locke's mind for the just operation of the government established?

Actually, there is no contradiction in the two notions. This conformity can best be brought out by an understanding, 11Ibid., p. 165.
first, of the idea of consent of the majority itself and how it came to mean what it meant to Locke; and second, by an understanding of just exactly what it meant to Locke. This latter can be best accomplished by a rather thorough treatment of the circumstances which constitute an abuse of consent of the majority, and of the remedies that the people may apply to correct such abuses.

Locke, it must be remembered, borrowed the idea of consent, like most, if not all, of the tools of his workshop, from his predecessors and contemporaries in sixteenth and seventeenth-century England, where it was already as well established, and as variously and loosely used as it has been ever since. The idea of consent had descended to Locke's generation from the Middle Ages in which it had grown up as a regular part of the doctrine of the functions of parliament, receiving then as now little critical consideration as to its real meaning.

"Consent" in the early days of its history was closely allied to the idea of the sanctity of property, and developed largely as part of the mechanism by which medieval property-owners were induced to submit to taxation, or of other legislation as well, was thought of as the consent of individuals is

12 This and other comments on the origin and growth of the notion of consent are derived from, and are often a paraphrase of, J. W. Gough, John Locke's Political Philosophy (Oxford, 1959, pp. 47-72.)
hard to say. At first, unanimity was required. In the course of time, the notion of consent became involved, in its parliamentary setting, with the companion doctrine of representation and as both of these developed, their meaning became obscured by much looseness of phraseology, if not of thought, and a considerable element of fiction.

We know that consent is not an absolute guarantee of the sanctity of private property or rights to life and liberty when it ceases to be personal or individual. The practice nevertheless grew by which electors appointed representatives or proxies to give consent in their name. Once this step was taken, the individual element inevitably lost ground. It would soon be argued that representatives chosen by the majority of constituents including those whose representatives had voted for unsuccessful candidates. One reason why such conclusions were possible was that they were propounded by lawyers accustomed to the use of legal fictions.13 The legal fiction in this instance would be that the representative selected by the people represented the minds of one hundred percent of his constituents.

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13Fiction (legal). An assumption or supposition of law that something which is or may be false is true . . . These assumptions are of an innocent or even beneficial character and are made for the advancement of the ends of justice. They secure this end chiefly by the extension of procedure from cases to which it is applicable to other cases to which it is not strictly applicable, the ground of inapplicability being some difference of an immaterial character. Henry Campbell Black, "Fiction", Black's Law Dictionary (St. Paul, Minn.), 1951, p. 751.
The final form taken in this evolutionary process of the notion of consent was therefore the equation of the action of a representative with the action of his constituents because the constituency was regarded as a community rather than as a collection of individuals, and the notion of consent was connected with the idea of organic continuity, binding on all the members of the political society.

One point in the above study of "consent" should be made clear. The fact that lawyers made use of legal fictions, does not mean that a populace was duped into government by majority vote. It is absurd to think that individual property owners through history would allow themselves and their rights to be manhandled by lawyers. The explanation of why such an evolution was allowed to, and did in fact, take place is given by Locke:

For if consent of the majority shall not in reason be received as the act of the whole, and conclude every individual, nothing but the consent of every individual can make anything to be the act of the whole, which, considering the infirmities of health and avocations of business, which in a number though much less than that of a commonwealth, will necessarily keep many away from the public assembly; and the variety and contrariety of interests which unavoidably happen in all collections of men, it is next to impossible ever to be had. And, therefore, if coming into society on such terms, it will be only like Cato's coming into the theatre, tantum ut exiret. Such a constitution as this would make the mighty Leviathan of a shorter duration than the feeblest of creatures, and not let it outlast the day it was born in, which cannot be supposed till we can think that rational creatures should desire and constitute societies only to be dissolved. For where the majority cannot conclude the rest, there they cannot act as one body, and consequently
will be immediately dissolved again. 14

Loocke's answer to any question as to whether or not majority rule and individual consent are reconcilable is a practical one. And individual consent means the voice of the citizen concerning matters relating to the individual rights which the man of the state of nature placed under the protection of the government. Nevertheless, the answer to any proposed objections to irreconcilability is that it would be practically impossible for every citizen in a country to represent himself. Individual representation is inconceivable even today. People of the twentieth century society have to be reminded to vote. Radio and television announcers almost beg American citizens to "get out and vote" as if people were being asked to take a medicine to cure an ailment, as if voting for their representative in government in free elections by secret ballot were not one of their rights but rather, a most odious obligation.

The same was evidently true in Loocke's day. For he equates the demand for individual representation with a lack of purpose when he says that rational beings could propose individual consent as the means to guarantee their rights under government only if they wished to create the government in order to destroy it. Individual representation in government operation is, therefore, next to impossible.

14Loocke, Second Treatise, pp. 165-166.
Locke's reasoning at this point seems to be that a majority of the people will never countenance the deprivation of their lives, liberties and/or estates and, therefore, government by consent of the majority is the best way to protect the rights of all the citizens. This raises a third question posed at the beginning of this chapter, "Does consent of the majority guarantee man's natural rights, and whence does it derive its validity?"

Is a majority then always the deciding force of a community, and will it always act for the good of all the members of the political society? Does the majority have the natural right to make decisions for all?

... even if majority-rule were the only practical alternative to unanimity, this would not in itself constitute a natural right in majorities to make decisions... As far as nature goes, if it goes anywhere, the only binding decision is a unanimous one, where a minority—where even a single objector—has a liberum veto, as in the Polish diet. 15

When Locke argues that what 'acts' a community is consent, we may agree, if by consent he means not past commitment but present support. And this support is, ultimately, the support of a number of individuals, and the greater that number is, the stronger the support will be. But it does not follow that the consent which 'acts' a particular community at any particular moment is the consent of an actual majority of its members, unless it can be assumed that the members are all equally active in giving or withholding their consent, and unless also the consent of each one is of equal intensity. What Locke declares to be natural is only so if these (unlikely) assumptions are fulfilled; and even if the process by which a majority

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15 Gough, pp. 61-62.
'concludes' a minority were natural, it would not follow that the majority had a natural right to use this process in order to make their will prevail.16

Locke unfortunately says nothing about actual majority nor does he refer to past commitment or present support. He does however hold that majority rule, as understood by him, is founded on the law of nature, when he says, "and therefore we see that in assemblies empowered to act by positive laws where no number is set by that positive law which empowers them, the act of the majority passes for the act of the whole and of course determines as having, by law of Nature and reason, the power of the whole.17

To Locke, therefore, the majority of the people or their representatives did have the power to conclude the rest of the members of a society. This right was based on the law of nature. One must wait a long time, however, before he will get from Locke an explanation of how it came from the natural law. Nowhere does he go into detail on the question. He merely ruled out unanimity as impractical and said the natural method of government operation was by consent of the majority.

As to whether a majority is always the deciding force of a community, Locke merely assumes that it is. As will be seen shortly in the treatment of dissolution of government, it is the


majority that decides when all the people in a political society may revert to the state of nature. Why it is, Locke again does not discuss. Nor does he consider whether a majority will always choose what is to the best interests of the community. It is certain Locke must have known of successful governments where the power of decision is lodged in a minority.18

It must be admitted, then, that no complete study of the doctrine of majority rule is given by Locke. How can this omission be explained? Probably the best explanation can be taken from what was said in the introductory chapter of this thesis. Political philosophers and scientists are expecting of one who wrote almost three hundred years ago to have foreseen the development and emphasis of notions on government that are crystallized today only after the experiences and writings of three centuries have brought them into the limelight.

It may also be remembered, as even Gough19 suggests, that Locke was also a politician. What he and his whig contemporaries were chiefly concerned with was the refutation of the claim of absolute monarchs to arbitrary power. In the seventeenth century, prescription, as propounded by Filmer and James I, did not seem secure enough a foundation for the right of a legitimate government to govern. In the face of disputed

18Gough, p. 61.
19Ibid., pp. 55-56.
successions, something more was needed. Hence, the ready acceptance of the doctrine of the divine right of kings. Hence, too, in opposition the doctrine equally divine, and no less natural than divine, of the sanctity of the individual's rights and its corollary that no man could be deprived of his natural condition of freedom and equality and "subjected to the political power of another without his consent."20

For practical reasons alone, then, Locke chose consent of the majority as the measure whereby the government of society could fulfill its purpose of enacting and enforcing laws for the common good of all members of the society.

In just as matter-of-fact and practical a manner does Locke treat the negative aspect of consent of the majority, its role, namely, as a check on the legislative and executive. Just as Locke proposed consent of the majority as the positive, proximate criterion for the proper working of political society, so he will treat consent from its negative aspect; namely, of being able to dissolve a government when certain conditions exist.

What follows, therefore, is Locke's answer to the fourth question posed in the beginning of this chapter, "Granted that the consent of the majority conducive the governed, what controlling influence does it have over the governing bodies themselves, the legislative and executive?" In the course of this

20Locke, Second Treatise, p. 164.
consideration, many of the rights of man, which heretofore he had only mentioned in passing, will be highlighted. There will, as before, be no mention of the reasoning process employed by Locke to justify the power of the majority. Only his grim determination to write the epitaph of arbitrary power of absolute monarchy makes him say:

For nobody can transfer to another more power than he has in himself, and nobody has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another. ... the law of nature stands as an eternal rule to all men, legislators as well as others. The rules that they make for other men's actions must, as well as their own and other men's actions, be conformable to the law of Nature—i.e., to the will of God, of which that is the declaration, and the fundamental law of Nature being the preservation of mankind, no human sanction can be good or valid against it.

Thus, Locke puts a check on the authority of the legislative. Any positive law that is passed must be conformable to the law of nature and directed toward the end for which the legislative was formed; namely, the protection of the life, liberty, estate of the people. To bring the theory into the concrete, Locke states:

These are the bounds which the trust that is put in them by the society and the law of God and Nature have set to the legislative power of every commonwealth, in all forms of government. First: They are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favorite at Court, and the countryman at plough. Secondly: These laws also ought to be

21Ibid., p. 135.
designed for no other end ultimately but the good of the people. Thirdly: They must not raise taxes on the property of the people without the consent of the people given by themselves or their deputies. Fourthly: Legislative neither must nor can transfer the power of making laws to anybody else, or place it anywhere but where the people have.

Whatever powers that the legislative has, therefore, are only by way of trust for "the community perpetually retains a supreme power of saving themselves from the attempts and designs of anybody." And thus, the community may be said in this respect to be always the supreme power, but not as under any form of government. Though Locke brings in the notion of consent only in relation to the raising of taxes, it may be said that all of the "bounds" mentioned are such only because in joining political society people individually consented to a certain type of government, a government in which through their representatives the consent of the majority of the people ruled. Had they not wished to be governed by a set body of laws to be determined by their designated representatives, they would not have given their consent. That the government could not be directed toward any end but the common good has already been seen. For man could not consent to his own destruction.

Taxation receives special treatment when it is stated:

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22 Ibid., pp. 189-190.
23 Ibid., p. 192.
24 Ibid., p. 193.
It is true governments cannot be supported without great charge, and it is fit every one who enjoys his share of the protection should pay out of his estate his proportion for the maintenance of it. But still it must be with his own consent—i.e., the consent of the majority, giving it either by themselves or their representatives chosen by them; for if anyone shall claim a power to lay or levy taxes on the people by his own authority, and without such consent of the people, he thereby invades the fundamental law of the property, and subverts the end of the government. For what property have I in that which another may by right take when he pleases to himself?25

Locke's special interest in taxation was merely the reflection of an outlook common among men of his age. In the Middle Ages property had been conceived of in a more social and less individualistic sense than was generally the case by the seventeenth century. Such notions as a just price, the condemnation of usury implied some kind of check on the power of the property owner to use his property as he liked. Such a check on use of property automatically became a restriction on the individual himself and his other civil liberties. Locke, therefore, insisted that taxes could be levied only when the consent of the majority of those to be taxed prevailed.

No less a control does the consent of the majority have on the executive branch of the government.

Let us suppose, then, the legislative placed in the concurrence of three distinct persons:—First, a single hereditary person having the constant, supreme, executive power, and with it the power of convoking and dissolving the other two within certain

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25Ibid., p. 139.
periods of time. Secondly, an assembly of hereditary nobility. Thirdly, an assembly of representatives chosen, pro tempore, by the people. Such a form of government supposed, it is evident:

First, that when such a single person or prince sets up his own arbitrary will in place of the laws which are the will of the society declared by the legislative, then the legislative is changed...

Secondly, when the prince hinders the legislative from assembling in its due time, or from acting freely, pursuant to those ends for which it was constituted, the legislative is altered...

Thirdly, when, by the arbitrary power of the prince, the electors or ways of election are altered without the consent or contrary to the common interest of the people, there also the legislative is altered.

Fourthly, the delivery also of the people into the subjection of a foreign power, either by the prince or by the legislative, is certainly a change of the legislative, and so a dissolution of the government.

... There is one way more whereby such a government may be dissolved, and that is: when he who has the supreme executive power neglects and abandons that charge, so that the laws already made can no longer be put in execution; this is demonstratively to reduce all the anarchy, and so effectively to dissolve the government.26

The executive power of the government also, therefore, must fulfill the ends for which it was constituted as the coercive arm of the legislative. That the executive abuses his powers when he makes his will the law, changes the rules of election, subjects his country to a foreign power or absolutely neglects to enforce the law, seems quite apparent.

26Ibid., pp. 226-227.
On his failure to assemble the legislative, Locke has something more to say. Though in general prerogative is the "power to act according to discretion for the public good, without prescription of law and sometimes even against it," 27 Locke singles out only one example of prerogative for anything resembling special attention. It is only common sense that an executive officer of the government could "pull down an innocent man's house to stop the fire when the one next to it is burning." 28

The power of calling parliaments in England, as to precise time, place, and duration, is certainly a prerogative of the king, but still with this trust, that it shall be made use of for the good of the nation as the exigencies of the times and the variety of occasion shall require. For it being impossible to foresee which should always be the fittest place for them to assemble in, and what the best season, the choice of these was left with the executive power, as might be best subservient to the public good and best suit the ends of parliament. 29

Even though this prerogative was actually at the time of the writing of the Second Treatise a prescription of law, Locke considers it worthy of special attention. So many kings like Henry VII, Henry VIII, James I and Charles II had abused it. They did not assemble Parliament unless in need of money and the people, though chafing under many burdens, were unable to have them alleviated through their representative body.

27 Ibid., p. 199.
28 Ibid., p. 199.
29 Ibid., p. 203.
Immediately following the above quotation, Locke states:

The old question will be asked in this matter of prerogative, "But who shall be judge when this power is made right use of?" I answer: between an executive power in being, with such a prerogative, and a legislative that depends upon his will for their convening, there can be no judge on earth . . . the people have no other remedy in this, as in all other cases where they have no judge on earth, but to appeal to heaven . . . . And where the body of the people, or any single man, are deprived of their right . . . , having no appeal on earth they have a liberty to appeal to Heaven whenever they judge the cause of sufficient moment . . . . And this judgment they cannot part with, it being out of a man's power so to submit himself to another as to give him a liberty to destroy him; God and nature never allowing a man so to abandon himself as to neglect his own preservation . . . . Nor let any one think this lays a perpetual foundation for disorder; for this operates not till the inconvenience is so great that the majority feel it, and are weary of it, and find a necessity to have it amended.30

The appeal to Heaven that the people have to correct abuse of the executive power of prerogative consists in their God-given right to dissolve the government.31 The same right is in force when the executive abuses any one of his other powers. Dissolution of government is also legitimate when the legislative abuses any of their powers.

It should be noted, however, that Locke provides against a perpetual state of anarchy. The people have the right to dissolve their government only when consent of the majority is present. As the abuse consisted in neglect of the will of the

30 Ibid., p. 203.
31 Ibid., pp. 224-242.
majority, that same majority holds the trump card in correction of the abuse. "In these and like cases, when the government is dissolved, the people are at liberty to provide for themselves by electing a new legislative differing from the other by the change of persons or form, or both, as they shall find it most for their safety and good."32 Locke, therefore, does not abandon the "governed" after the dissolution. They would immediately elect a new legislative or appoint a new executive, or both, and continue in the pursuit of their mutual preservation under a government ruled by the consent of the majority.

In the course of this chapter, then, we have seen the man of the state of nature gives his individual consent in joining a political society. In his consent, either express or tacit, he expresses his willingness to be governed by the will of the majority since majority-rule is the practical and natural way to run a government for the better protection of the rights of its citizens. Whether a majority will always best protect his rights and how nature gave to the majority-rule doctrine this guarantee of infallibility, are questions Locke's citizen does not consider. One thing he knows, that majority consent rules not only the governed but the governing powers, as well. Should either branch of the government doubt this fact, the majority of the people will resolve the doubt. Abuse of any one of the several powers

32 Ibid., p. 228.
of each will see consent of the majority dissolve the government-elect and set up another. For abuse of these powers constitutes destruction of the individual. This no man or majority can acquiesce in, "God and Nature never allowing a man so to abandon himself as to neglect his own preservation."33
CHAPTER V

CONCLUSION

To conclude. The power that every individual gave the society when he entered into it can never revert to the individuals again as long as the society lasts, but will always remain in the community, because without this there can be no community--no commonwealth, which is contrary to the original agreement; so also when the society hath placed the legislative in any assembly of men, to continue in them and their successors, with direction and authority for providing such successors, the legislative can never revert to the people while that government lasts, because, having provided legislative with power to continue forever, they have given up their political power to the legis­lative, and made this supreme power in any person or assembly only temporary; or else when, by the mis­carriages of those in authority, it is forfeited; upon the forfeiture of their rulers, or at the determination of the time set, it reverts to the society, and the people have a right to set as supreme, and continue the legislative in themselves or place it in a new form, or new hands, as they think good. 1

Thus Looke concludes not only the section on the dissolution of government but the Second Treatise, as well. In so concluding he would emphasize the major points he had treated at length throughout his treatise. Since he does not go into great detail in his conclusion, the writer, for purpose of both elaboration of his conclusion as well as summary of the previous chapters of this thesis, makes the following compendium.

1Ibid., pp. 241-242.
First, man was created by God with the rights of life, liberty and estate. These rights come to man from God, therefore, and are based on the law of nature from which they flow and by which they are guaranteed. The original condition of man was a state of nature in which all men had the same rights and powers.  

Second, due to the uncertainties and insecurity of this state, man chose to enter political society. For even though every man had the social obligation to help his neighbor, yet the ever-present number of moral and immoral people threatened the peace and safety of the rest. Each individual therefore consented to give up his executive power of law enforcement and his liberty to do as he thought fit without the prescription of positive law. This consent on the part of the citizen was an express consent and bound those so contracting to be ruled by the will of the majority. The powers surrendered were to be divided between two major bodies, the legislative and executive, whose functions were to protect the rights of every individual of the political society.

Third, government by consent of the majority is the natural

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2Ibid., pp. 119-120.
3Ibid., p. 179.
4Ibid., pp. 166, 181.
5Ibid., pp. 165-166.
6Ibid., p. 180.
and most practical manner of operation for the legislative and executive. Businessess and avocations of many citizens would make unanimity not only impractical but anarchical. For, one man could contravert any and every measure of even the best government, making activity for the common good impossible. Majority-rule, moreover, does not contradict the principle of individual consent requisite at the time of the formation of political society. For even at the birth of the society, a majority of people giving individual consent had the ability to conclude those who gave merely tacit consent in the sense of requiring them to show external obedience to the laws even though they were not citizens.

Besides its positive function of controlling the making and execution of laws, the majority was always a check on the representatives they had chosen to make and enforce the laws. Any show of the legislative or executive exercising their own arbitrary wills in place of constituted laws entitled the majority of the people to remove them by force. In such a case, the powers formerly given up reverted back to their original possessors who could again exercise their powers as they did in the state of nature or form a new legislative, executive, or both.

7 Ibid., pp. 165-166.
8 Ibid., p. 177.
9 Ibid., pp. 192-193.
Locke may at this point have felt a certain contentment in the fact that he had seen his political society through all. At first formed by consent of men, it grew through the consent of a majority of these same men to provide protection of their God-given rights, and finally willingly died when the arbitrary will of the elected ignored the purpose for which it was created. But dissolution of the government-elect was not the end. For Locke had provided for the reversion to the men whose trust was abused, of all the powers they needed to either reform their government or give it a new form.

Certain present-day writers, however, would see little reason for any contentment on Locke's part in the theory of civil government proposed in the Second Treatise. In the interest of giving the reader an objective picture of Locke's doctrine on civil government, therefore, it seems reasonable at this point to consider certain criticisms of the Second Treatise by contemporary writers. In fairness to Locke, answers to these criticisms will be given where possible.

The criticisms are directed at three major points in Locke's theory of political society: the origin of political sovereignty and authority, the validity of consent of the majority as an effective control over the legislative and executive, and the role of capital and wage labor in the economics of the society proposed. John Rager says of Locke's doctrine:

... it is to be observed that political power,
considered in general, and without entering into the question of monarchy, aristocracy, or democracy, proceeds from God alone, for it is necessarily annexed to human nature and emanates from Him who made that nature. Moreover, this power exists by the natural law, since it does not depend on the consent of man; for whether they will or not, they must be governed by someone lest they be willing to perish which is not human. Any contrary theory would rob civil authority of every higher origin and sanction. The principles of Rousseau, Hobbes, Locke and Pufendorf, that sovereignty is created in the first instance, by "social compact," is erroneous, absurd in theory, unhistorical and politically dangerous; for, if any individual refused to yield his share of sovereignty and independence, governments would become entirely impossible.\(^ \text{10} \)

It is true that Locke speaks of man in the state of nature as having the executive power of the law and, in treating of tacit consent, in fact admits that a man need not become a member of political society even though obliged to external adherence to the laws. On formation of society, then, the man of the state of nature donates his right of sovereignty and so directly gives authority to government.

This is Hager's conclusion. Admittedly, he has some justification for so concluding. For though Locke repeatedly speaks of man's rights and powers in close conjunction with treaties of God as the author of these rights and the natural law as the guarantee of man's rights, nowhere does he specifically trace the authority of the government to God in as many words. Concerning the freedom that man has in willing or not willing to enter

\(^{10}\text{John C. Hager, } \textit{Bellarmine and Democracy}, \textit{ (Shelbyville, Indiana, 1926)}, \text{ pp. 48-50.} \)
political society, a similar criticism may be made: he does not come out and say it is a natural necessity for man to enter political society.

But the fact that Locke did not trace authority more minutely does not mean that he did not hold that all authority is in God. For he stated that human nature was governed by the law of nature which was the will of God.\footnote{Locke, \textit{Second Treatise}, p. 135.} This comes quite close to Raper's own statement that "political power is necessarily annexed to human nature and emanates from Him who made that nature."\footnote{Ibid., p. 135.}

It is true that Locke leaves the door open when he allows one giving tacit consent to remove himself from the political society and resume the state of nature.\footnote{Raper, p. 48.} He seems to say that a man could remain just as much a man leading an isolationist life outside of organized society.

On the other hand, however, Locke does say that "mankind, notwithstanding all the privileges of the state of nature, being but in an ill condition while they remain in it are quickly driven into society."\footnote{Ibid., p. 178.} This statement approximates a practical admission of the necessity of entering into a political society. In dealing with both the formation and the dissolution of government,
moreover, Locke speaks of individual consent, true, but a majority of individual expressions suffices to form or dissolve.

Rager's conclusion that one man could prevent government formation seems rather extreme.

Rager could well have attacked Locke on the more basic question of rights. How does a man give up his rights and in so doing, guarantee them? A possible solution to this question was given by the writer in Chapter III,\(^\text{15}\) where it was acknowledged that Locke failed to distinguish between what he meant by rights and powers, and by individual and political rights. Yet on this point, also, Locke gives an answer when treating of the reversion of rights to the people on the dissolution of government, stating that the surrender was the placing them in the trusteeship of their representatives to be used only as they designated.

Willmoore Kendall, as was seen in Chapter IV,\(^\text{16}\) did not accept Locke's doctrine on the rule of the majority. For the majority only acts in a community when all participate equally in government and the vote of each is of equal intensity.\(^\text{17}\) That Locke recognized the difficulties inherent in the doctrine of government by consent of the majority, is brought out in these words:

\(^{15}\text{Supra, pp. 61-63.}\)
\(^{16}\text{Supra, p. 82-83.}\)
\(^{17}\text{Kendall, p. 117.}\)
Things of this world are in so constant a flux that nothing remains long in the same state. Thus people, riches, trade, power, change their stations; flourishing mighty cities come to ruin, and prove in time neglected desolate corners, whilst their unfrequented places grow into populous countries filled with wealth and inhabitants. But things not always changing equally, and private interest often keeping up customs and privileges when the reason of them are ceased, it often comes to pass that in governments where part of the legislative consists of representatives chosen by the people, that in tract of time this representation becomes unequal and disproportionate; to the reasons it was first established upon. To what gross absurdities the following of custom when reason had left it may lead, we may be satisfied when we see the bare name of a town, of which there remains not so much as the ruins, where scarce so much housing as a sheepeaste, or more inhabitants than a shepherd is to be found, send as many representatives to the grand assembly of law-makers as a whole country, numerous in people and powerful in riches.18

Locke would certainly then have been in favor of the redistribution of seats in parliament and the disfranchisement of decayed boroughs, in order that representation would be as near to equal as possible. The above quotation seems to show that he was aware of inequities that could result in his recommendation of majority-rule. To him, however, government by the consent of the majority constituted a practical and just solution to the problem of representation. It would certainly have its difficult as well as halcyon days, he would admit. But after all, would not any recommended practice of government have pitfalls to beware of?

18 Locke, Second Treatise, p. 197.
J. W. Gough, who for the most part is quite favorable to Locke's doctrine as a whole, says concerning the all-important treatment of property in the second treatise, "Locke failed to discriminate between capital labour and wage labour, and though he was aware that the labour which goes to the making of a commodity may have been contributed by a multiplicity of persons, he was really thinking primarily of the labour, not of the wage-earners, but of the proprietors who owned the land they cultivated or the material and tools of their trade."19

Locke does maintain a strict labor theory of value when he says:

The measure of property Nature well set, by the extent of men's labour and the convenience of life. No man's labour could subdue or appropriate all, nor could his enjoyment consume more than a small part so that it was impossible for any man, this way, to entrench upon the right of another or acquire to himself a property to the prejudice of his neighbor, who would still have room for as good and as large a possession (after the other had taken his) as before it was appropriated.20

He that gathered a hundred bushels of corns or apples had thereby a property in them; they were his goods as soon as gathered. He 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. If he gave away a part to anybody else, so that it perished not uselessly, in his

19Gough, p. 82.

20Locke, second Treatise, p. 133.
possession, these he also made use of. 21

From such statements as the foregoing, it seems that Locke
would certainly be a die-hard Democrat, almost the original Demo-
crat. For though corporations existed in his day, he says nothing
of the place the capital class has in society.

The only concession he makes to accumulation of wealth be-
yond what one can actually use is that,

... since gold and silver, being little useful to
the life of man in proportion to food, raiment, and
carriage, has its value only from the consent of
men—whereof labor makes in great part the measure—it
is plain that the consent of men have agreed to the
disproportionate and unequal possession of the earth—
I mean out of the bounds of society and compact; for
in governments the laws regulate it; they having, by
consent, found out and agreed in a way how a man may,
rightfully and without injury, possess more than he
himself can make use of by receiving gold and silver,
which may continue long in a man's possession without
decaying from the overplus, and agreeing those metals
should have value. 22

The above quotation represents Locke's recognition of the
capital class in society. His use of the words, "disproportion-
ate" and "unequal", however, seem to indicate that he was in fa-
vor of more equal distribution of the earth's material goods.
Yet in answer to Gough, it may be said that Locke did not com-
pletely ignore the existence of the capital class. It is true
he did not develop at great length the interworkings of labor

21 Ibid., p. 139.
22 Ibid., pp. 140-141.
and capital. For that reason it could be alleged that his outlook was rather limited. For Locke does appear to treat primarily of labor and not the wage-earners, of the laboring man as the proprietor and owner of tools and machines who produced a commodity by his own, not hired, labor. It should be remembered however that society as Locke knew it was still very much an agrarian society. The Industrial Revolution was in Locke's day more than a century away and it did not reach its zenith until two centuries after Locke wrote his Second Treatise. Nor was the Second Treatise intended to treat primarily of economics. It is true that the political and the economic have always and must always be closely associated. That does not mean however that the one must be as exhaustively treated as the other in a given work on either subject. And Locke's subject for the Second Treatise was civil government.

It may then be said in summary that the three foregoing quotations of Rager, Kendall and Gough bring out the opposite views on three major points in Locke's doctrine of government. Rager challenges man's possession of political sovereignty and authority as belonging to man's nature in the state of nature. Kendall questions the validity of the consent of the majority as an effective control of the legislative and executive. Gough brings out Locke's failure in treating of property to sufficiently discriminate between capital and wage labor.

The writer has attempted to give the answers Locke would have
given to what they say. Perhaps he might also have admitted to a certain lack of foresightenedness in not seeing in the seventeenth century all the developments made in the field of political philosophy through three of the most dynamic centuries of history. Perhaps, too, he might have suggested that his Second Treatise could be, in part at least, an apology for the Glorious Revolution\(^\text{23}\) and that its effectiveness as such a work demanded his meeting a dead-line and could have resulted in too hurried a treatment of certain points.

Whether Locke would have made the foregoing admission or not, however, his Second Treatise remains a work of substance in the field of political philosophy. For reasons already given, there are omissions in the development of certain aspects of the philosophy and system of government Locke proposes. Nevertheless, by comparison with the countless tomes existing today on the same subject, he in a brief study has incorporated all the essential elements of what we call today government of the people, by the people and for the people.

Locke's approach to his subject is a scholarly one, a study primarily of causes. At the same time it is practical. Locke describes mankind as created by God and governed by a law of nature. He then gives the practical reasons why men enter into political society. He speaks of man's inviolable rights and the

\(^{23}\text{supra, p. 5.}\)
consent requisite for entrance into the community. He defines the authority of the government-elect, whence its authority is derived, how it is divided and controlled, how it is to be employed. Finally, Locke would place special emphasis on the fact that the chosen representatives of the people in government are public servants and nothing more. By guaranteeing citizens the right to revolt or, in other words, to protect their rights, he sounds the death knell on all forms of political absolutism. Locke's Second Treatise could truly be considered an apology not only for the Glorious but also the American Revolution, in defense of people of all times who arise and take action to preserve their rights as men.
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3. ARTICLES

APPENDIX

BILL OF RIGHTS

BILL OF RIGHTS, an important statute in English constitutional history enacted in Dec. 1689. Its provisions were based upon the Declaration of Right and delivered by the lords and commons to the prince and princess of Orange, afterwards William III and Mary. The act (the full name of which is "An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown"), after reciting the unconstitutional proceedings of James II, the abdication of that king, the consequent vacancy of the crown, and the summons of the convention parliament, declared, on the part of the lords and commons, "for the vindicating and asserting their ancient rights and liberties":

"(1) That the pretended power of suspending of laws or the execution of laws by regal authority without consent of Parliament is illegal. (2) That the pretended power of dispensing with laws or the execution of laws by regal authority, as it hath been assumed and exercised of late, is illegal. (3) That the commission for erecting the late court of commissioners for ecclesiastical causes, and all other commissions and courts of like nature, are illegal and pernicious. (4) That levying money for or to the use of the Crown, by pretence of prerogative, without grant of Parliament, for longer time or in other manner than the same is or shall be granted, is illegal. (5) That it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal. (6) That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law. (7) That the subjects which are Protestants may have arms for their defence suitable to their conditions, and as allowed by law. (8) That elections of members of Parliament ought to be free. (9) That the freedom of speech, and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament. (10) That excessive

bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. (11) That jurors ought to be duly empanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders. (12) That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void. (13) And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, Parliament ought to be held frequently. And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties."