

JOHN LOCKE

John Locke's first works were written at Oxford, namely the Two Tracts on Government in 1660-1662, and the Essays on the Law of Nature in Latin in 1664. In both these writings he argued against religious toleration and denied consent as the basis of legitimate government. Locke published his Two Treatises of Government in 1690. The same year saw the publication of his famous philosophical work The Essay Concerning Human understanding. Locke's other important writings were the Letters Concerning Toleration and Some Thoughts Concerning Education. The Two Treatises of Government consists of two parts- the first is the refutation of Filmer and the second, the more important of the two, is an inquiry into the 'true original, extent and end of civil government'. The work was ostensibly written to justify the glorious revolution of 1688. According to William Ebenstein, Locke's two treatises of government is often dismissed as a mere apology for the victorious Whigs in the revolution of 1688. The two treatises exposed and defended freedom, consent and property as cardinal principles of legitimate political power.

Locke saw political power as a trust, with the general community specifying its purposes and aims. STATE OF NATURE In order to explain the origin of political power, Locke began with a description of the State of Nature. Locke's description of State of Nature was not as gloomy and pessimistic as Hobbes'. As all of us know, the State of Nature is the stock in trade of all contract theories of the state. It is conceived as a state prior to the establishment of political society. Locke believes that man is a rational and social creature and as such capable of recognizing and living in a moral order. He is not selfish, competitive and aggressive. The Lockean state of nature, far from being a war of all is a state of 'Peace good will, mutual assistance and preservation". It represents a pre-political rather than a pre-social condition. Men do not indulge in constant warfare in it, for peace and reason prevail in it. The state of nature is governed by a law of nature. This law "obliges every one, and reason, which is that law, teaches all mankind, who will but consult it,

that being all equal and independent, no one ought to harm one 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 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.....”

In the Lockean state of nature men has equal natural rights to life, liberty and property together known as Right to Property. These rights are inalienable and inviolable for they are derived from the Law of Nature which is God's reason. Everyone is bound by reason not only to preserve oneself but to preserve all mankind in so far as his own preservation does not come in conflict with it. Men are free and equal and there is no commonly acknowledged superior whose orders they are obliged to obey. Everybody is the judge of his own actions. But though the natural condition is a state of liberty, it is not a state of license. Nobody has the right to destroy himself and the destroy the life of any other men. Because there is no common judge to punish the violation of natural law in the state of nature, every individual is his own judge and has executive power of punishing the violators of law of nature.

William Ebenstein in his 'Great Political Thinkers' wrote that the law of nature in the Lockean state of nature is deficient in three important points. First, it is not sufficiently clear. If all men were guided by pure reason they would all see the same law. But men are biased by their interests and mistake their interests for general rule of law. Second, there is no second party judge who has no personal state in dispute. Third, in the state of nature the injured party is not always strong enough to execute the law. In other words, in the Lockean state of nature there are some short comings and inconveniences. Absence of a law making body law enforcing agency and an impartial judicial organ in the state of nature where the serious short comings in the state of nature. Thus we find that the state of nature, while it is not a state of war is also not an idyllic condition, and, therefore, it has to be superseded sooner or later. Conflict and uncertainties are bound to arise on account of the selfish tendencies in human nature. The state of nature is always in danger of

being transformed into a state of war. Where everyone is the judge in his own case and has the sole authority to punish peace is bound to be threatened. Natural Rights and Private Property

The conception of Natural rights and the theory of property was one of the important themes in Locke's political philosophy. According to Locke, men in the state of nature possessed natural rights. These rights are: Right to life liberty and property. Liberty means an exemption from all rules save the law of nature which is a means to the realisation of man's freedom. Locke spoke of individuals in the state of nature having perfect freedom to dispose of their possessions, and persons, as they thought fit. He emphatically clarified that since property was a natural right derived from natural law, it was therefore prior to the government. He emphasised that individuals had rights to do as they pleased within the bounds of the laws of nature. Rights were limited to the extent that they did not harm themselves or others. According to Locke, human beings are rational creatures, and "Reason tells us that Men, being once born have a right to their preservation, and such other things as nature affords for their subsistence". Rational people must concede that every human being has a right to life, and therefore to those things necessary to preserve life. This right to life and those things necessary to preserve it, Locke calls it property.

The right to life, he argues, means that every man has property in his own person. This nobody has any right to but himself "Logically, the right to property in person means that all human beings have a right to property in those goods and possessions acquired through labour that are necessary to preserve their person. Locke argues that the "Labour of his body, and the work of his Hands are properly his. What so ever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his won and thereby makes it his property". Since human beings have property in their persons and hence a right to life, it follows that they have property in those possessions that they have legitimately laboured to obtain. In other words, property in both person and possessions is a right that belongs to every human being as human being. It is a right all people

possess whether they be in a state of nature or in political society. Locke thus says that the great and chief end of men's uniting into commonwealths, and cutting themselves under government is the preservation of their property".

Consequently, Government has no other end but the preservation of people 'Lives, liberties, and Estates" Liberty is a property right for Locke because to have property in one's person implies the right to think, speak and act freely. Locke has argued that in the state of nature property is held in common until people mix their labour with it at which point it becomes their private property. A person has right to appropriate as much common property as desired so long as "there is enough and as good left in common for others" It was the social character of property that enabled Locke to defend a minimal state with limited government and individual rights, and reject out right the hereditary principle of government. Locke also wanted to emphasise that no government could deprive an individual of his material possessions without the latter's consent. It was the duty of the political power to protect entitlements that individuals enjoyed by virtue of the fact that these had been given by God.

In short, Locke's claim that the legitimate function of the government is the preservation of property means not just that government must protect people's lives and possessions, but that it must ensure the right of unlimited accumulation of private property. Some scholars have argued that Locke's second treatise provides not only a theory of limited government but a justification for an emerging capitalist system as well. Macpherson argued that Locke's views on property made him a bourgeois apologist, a defender of the privileges of the possessing classes. As Prof. William Ebenstien has rightly pointed out, Lockean theory of property was later used in defense of capitalism, but in the hands of pre-Marxian socialists it became a powerful weapon of attacking capitalism. Limited Government In order to explain the origin of political power, Locke began with a description of the state of nature which for him was one of perfect equality and freedom regulated by the laws of

nature. Locke's description of state of nature was not as gloomy and pessimistic as Hobbes's.

The individual in the Lockean state of nature was naturally free and became a political subject out of free choice. The state of nature was not one of license, for though the individual was free from any superior power, he was subject to the laws of nature. From the laws of nature, individuals derived the natural rights to life, liberty and property (Together known as Right to Property). The laws of nature known to human beings through the power of reason, which directed them towards their proper interests. Locke believes that man is a rational and a social creature capable of recognising and living in a moral order. Thus Lockean men in the state of nature led a life of mutual assistance, good will and preservation. Locke cannot conceive of human beings living together without some sort of law and order, and in the state of nature it is the law of nature that rules.

The law of nature through the instrument of reason, defines what is right and wrong; if a violation of the law occurs, the execution of the penalty is in the state of nature, 'put into every man's hands, whereby everyone has right to punish the transgressors of that law to such a degree, as may hinder its violation' Locke penetratingly notes that in the law of nature the injured party is authorised to the judge in his own case and to execute the judgment against the culprit. In other words, in the Lockean state of nature, there was no organised govt. Which alone can protect and enforce the natural rights. According to William Ebenstein, Lockean law of the state of nature is deficient in three important points. First, it is not sufficiently clear.

Second, there is no third party judge who has no personal stake in disputes. Third, in the state of nature the injured party is not always strong enough to execute the just sentence of the law. Thus the purpose of the social contract is to establish organised law and orders so that the uncertainties of the state of nature will be replaced by the predictability of known laws and impartial institutions. After society is set up by contract, government is established, not by a contract, but by fiduciary trust. For the three great lacks of the state of nature - the lack of a known

law, of a known judge, of a certain executive power – the three appropriate remedies would seem to be establishment of a legislative, of a judicial, and of an executive authority. In civil society or the state, Locke notes the existence of three powers, but they are not the above. There is first of all the legislative, which he calls 'the supreme power of the commonwealth.'

The legislative power was supreme since it was the representative of the people, having the power to make laws. Besides the legislative there was an executive, usually one person, with the power to enforce the law. The executive which included the judicial power has to be always in session. It enjoyed prerogatives and was subordinate and accountable to the legislature. The legislative and executive power had to be separate, thus preempting Montesquieu's theory of separation of powers. The third power that Locke recognises is what he calls the federative- the power that makes treaties, that which is concerned with the country's external relations. Locke realises the great importance of foreign policy, and knows that its formulation, execution and control presents a very special kind of problem to constitutional states. Characteristics of Lockean state The first and foremost feature of Lockean state is that it exists for the people who form it, they do not exist for it. Repeatedly he insists that 'the end of government is the good of the community'.

As C.L. Wayper has rightly pointed out the Lockean 'state' is a machine which we create for our good and run for our purposes, and it is both dangerous and unnecessary to speak of some supposed mystical good of state or country independent of the lives of individual citizens. Locke further insists that all true states must be founded on consent. Further, the true state must be a constitutional state in which men acknowledge the rule of law. For there can be no political liberty if a man is subject to the inconstant, uncertain, unknown, arbitrary will of other man. Government must therefore be established standing laws, promulgated and known to the people, and not by extemporary decrees. The most important characteristic of Locke's true state is that it is limited, not absolute. It is limited because it derives power from the people, and

because it holds power in trust for the people. As only a fiduciary power to act for certain ends, its authority is confined to securing those ends. It is limited moreover, by Natural law in particular. The state should exist for the good of the people, should depend on their consent, should be constitutional and limited in its authority,. Besides, Lockean state is a tolerant state which will respect differences of opinion. It is a negative state which does not seek to improve the character of its citizens nor to manage their lives. Again, Lockean state is also a transformer state, transforming selfish interest into public good.

Limitations of Government John Locke advocated a limited sovereign state, for reason and experience taught him that political absolutism was untenable. Describing the characteristics of a good state Locke said it existed for the people who formed it and not the vice-versa. It had to be based on the consent of the people subject to the constitution and the rule of law. It is limited since its powers were derived from the people and were held in trust. Locke does not build up a conception of legal sovereignty. He abolishes the legal sovereignty in favour of popular sovereignty. He has no idea of absolute and indivisible sovereignty as presented by Thomas Hobbes.

Locke is for a government based on division of power and subject to a number of limitations. His limited government cannot command anything against public interests. It cannot violate the innate natural rights of the individuals. It cannot govern arbitrarily and tax the subjects without their consent. Its laws must conform to the laws of Nature and of god. It is not the government which is sovereign but law which is rooted in common consent. Its laws must conform to the laws of Nature and of God. It is not the government which is sovereign but law which is rooted in common consent. A government which violates its limitations is not worthy of obedience. Most important in terms of limiting the power of government is the democratic principal itself. The legislature is to be periodically elected by the people. It could be no other way, in fact, since legitimate government must be based upon the consent of the governed according to Locke, and direct election of representatives to the legislature makes consent a reality. And since elected representatives

depend of popular support for their tenure in office, they have every interest in staying within legal bounds. A further limitation upon the legislative power recommended by Locke is limiting of the duration of legislative sessions because, he argues constant frequent meetings of the legislative could not but be burdensome to the people”.

In Locke’s mind, the less frequent the meetings of the legislature the fewer the laws passed and consequently, the less chance that mischief will be done. Another crucially important structural principle in limiting the power of government is the separation of powers. Between the legislative and executive, the logic behind this principle, according to Locke, is that “It may be too great a temptation to human frailty apt to grasp at power of the same persons who have the power of making laws, to have also in their hands the power to execute them. .” Locke, however, does not go so far as to make the separation of powers an absolute condition for limited government. Civil Society According to Locke what drives men into society is that God put them “under strong Obligations of necessity, convenience, and inclination”. And men being by nature all free, equal and independent , no one can be put out of this estate (State of nature) and subjected to political power of another without his own consent.

Therefore, the problem is to form civil society by common consent of all men and transfers their right of punishing the violators of natural law to an independent and impartial authority. For all practical purposes, after the formation of civil society this common consent becomes the consent of the majority; all parties must submit to the determination of the majority which carries the force of the community. So all men unanimously agree to incorporate themselves in one body and conduct their affairs by the opinion of the majority after they have set up a political or civil society, the next step is to appoint a government to declare and execute the natural law. This Locke calls the supreme authority established by the commonwealth or civil society. The compulsion to constitute a civil society was to protect and preserve freedom and to enlarge it.

The state of nature was one of liberty and equality, but it was also one where peace was not secure, being constant by upset by the “corruption and viciousness of degenerate men”. It lacked three important wants: the want of an established settled, known law, the want of a known and indifferent judge; and the want of an executive power to enforce just decisions.

=====

PREETI ANSHTH