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SOCIAL CONTRACT II

The Lockian version

JOHN LOCKE

Locke was born in 1632 and grew up with the seventeenth-century scientific revolution. He came from an upwardly mobile Somersetshire family who made it into the gentry class. Though not particularly forward at his books, Locke decided early on an academic career. He became a don at Christ Church College, Oxford, until he was illegally ejected for his allegedly subversive opinions in 1684. (The Tory university had burned banned books the previous year.) Locke was outwardly not much concerned with philosophy and political theory during his Oxford years, teaching some law and a lot of medicine. The young Locke even seems to have been a bit of a Tory, believing that non-resistance to established authority was the just price of political and social stability.

His friendship with the first Earl of Shaftesbury, whose life he saved with a miraculous operation on the liver, changed Locke from a mildly subversive Oxford don into a meddler in high politics as adviser and confidant to highly placed plotters against the Divine Right monarchy of the Stuarts. Locke no doubt provided Shaftesbury with arguments to use in the everyday political battle of the Exclusionist Whigs (who wished to exclude James II when he was still only the Duke of York from the succession to the throne on the grounds that he was a Roman Catholic) against their Tory opponents in the last years of the reign of Charles II. It was probably inevitable either that Shaftesbury would eventually ask Locke's opinions on the most important political question of all, the question of the grounds for legitimate resistance to government, or that Locke's own position in Shaftesbury's circle would eventually lead him without prodding to consider that question. It was in these circumstances that Locke wrote his famous *Two Treatises of Government* (the exact date of the works is still not certain, but a good guess would be 1679–80). It was while enjoying the patronage of Shaftesbury that Locke worked on the ideas which would see the light of day as *An Essay Concerning Human Understanding*. It was also about this time that Locke turned his attention to economics, education and questions of colonial government.

Locke's *Two Treatises* were published (though not written) to justify the

Glorious Revolution of 1688, in which Locke was involved as the friend and adviser to a leading Whig, Lord Somers. Locke's own attitude to his famous political treatises appears to have been decidedly odd, not to say shifty. He never acknowledged his authorship of the treatises, but was very keen that they should be available in a true text. Editions were mangled by printers, and it may also be that Locke was worried that opinions more radical than his own would be attributed to him. On the other hand, it may simply be that there was an impenetrably secretive side to Locke's character which will always hide his true reasons for publicly denying his authorship of such famous books.

HOBBS, FILMER AND LOCKE

A political thinker can influence another in a number of different ways. One thinker can influence another's substantive political conclusions, as with Plato and Aristotle, or one thinker can come to his political conclusions by thinking through another's political thought and attempting to go beyond it, as with Marx and Hegel. Hobbes and Filmer influenced Locke in neither of these ways. Hobbes bequeathed to Locke a particular language of social contract and a particular view of the structure of social conduct itself, while Filmer influenced Locke in a purely negative sense: by attacking Filmer, Locke's own political theory turns out to be everything that Filmer's is not. We used to think that Locke's political thought was very different from Hobbes's, at least in its conclusions, but recent work on both Hobbes and Locke has made us re-think exactly what those differences are. No-one claims that there are no differences, but there is at least some disagreement about how deep those differences go.

It is easy to read Locke's *Second Treatise of Civil Government* (1681–3) as a straight attack on Hobbes, and perhaps it is, but there can be no doubt that Locke's *First Treatise of Civil Government* is a direct attack on Filmer. Sir Robert Filmer's *Patriarchia or the Natural Power of Kings* (1680) was probably the most systematic exposition to date in English of what has come to be known as the theory of the Divine Right of Kings. Across the Channel, the Sun King Louis XIV was making absolute monarchy shine brighter than ever before and was implicitly inviting other kings in Europe to imitate him. English kings might dare to follow his example, not Charles II perhaps, but certainly his brother who eventually became James II in 1685. Locke may have thought that absolute monarchy was becoming the prevailing political style, and that Divine Right theory was becoming the prevailing way of explaining political obligation. Locke makes fairly easy meat of Filmer in the *First Treatise*, but behind Filmer there was always Hobbes, with his much tougher arguments for absolute sovereignty.

The theory of Divine Right scores very high marks for intelligibility. Also one tends to forget how comparatively modern it is. Medieval kingship, like any other, had wrapped itself round with a certain mystique, but its grounds for the theory of sovereignty were not nearly as clear as in the later theory of Divine Right. Ideas of God's anointing, feudal

contract, popular election and hereditary succession jostled one another about in what was an essentially messy theory of sovereignty. It was not a theory of *sovereignty* in the modern sense at all. Feudal societies lacked the sovereign centres of ancient republics and modern states. Medieval societies were patchworks of overlapping and competing jurisdictions, so that nothing like modern sovereignty was being exercised. Of course, kings tried to be as powerful as they could, but they knew that they were just one of a whole series of law-makers and law-enforcers, not least of which was the Church. And it was not even clear that kings could actually make new laws, as distinct from interpreting and declaring an older and higher law. The theory of the Divine Right of Kings was to change all that because it was very clear about sovereignty. Kings were appointed by God to rule Christian people, therefore they were responsible to God alone for the exercise of their stewardship of what God had given. The right of succession inhered in the heirs of the king's body, or in the collateral branch of his family if issue failed. Because hereditary right was indefeasible, it followed that any challenge to it was a sin (and some Divine Right apologists went so far as to argue that resistance to the commands of the Lord's Anointed was the greatest of all sins). Of course, kings were very special men, but men they still were, and therefore liable themselves to sin. So what were subjects to do if a sinful king were to command them to break God's Laws? The powers that be being ordained by God, the furthest a subject might go was passive resistance, a mute refusal to obey, with the crown of martyrdom as the eventual reward for true Christian humility and fortitude.

The theory of Divine Right was not without little subtleties of its own. There was obviously some kind of parallel between the way God ruled the universe and the way that a good king was expected to rule his people. The image of God the Father ruling in a universe full of his recalcitrant children was mirrored in the image of the king as father of his people. The king had the duties of fatherhood: to feed his people (in emergencies), to defend them, to educate them (in the Faith, a job a wise king left to Mother Church), and justice in the settling of disputes between them. Of course, not all kings, like all fathers, fulfilled these responsibilities equally well, but kings were no less kings if they failed in their duties, any more than natural fathers ceased to be fathers when they failed in theirs. A bad king was still king.

If it was God's intention that king's should rule by Divine Right then he was bound to have mentioned it somewhere. The Old Testament, containing as it does an account of the beginning of the world since the Creation, was the likely place to find the origins of Divine Right, and there the origins were duly found. God must have given the world to Adam, and to the heirs of Adam's body, to rule for ever. Adam was the first king, he ruled by God's choice, so to resist Adam or Adam's posterity was to resist God. (The Old Testament's obsession with genealogy reinforced the claim that Adam's successors had the same rights of kingship as Adam himself.)

Locke's *First Treatise of Civil Government* unravelled the argument for Divine Right from Holy Writ. Locke points out reasonably enough that the book of Genesis does not actually say that God gave the world to Adam to rule; Adam is never referred to as king. Locke then goes on to say: suppose we concede, for which there is no biblical evidence, that Adam really was king by God's appointment. That still leaves the awkward fact that

Genesis makes no mention of the kingly rights of the sons of Adam; there is simply no reference to the right of hereditary succession. Locke then goes on to say: suppose we concede both Adam's title to kingship and the title of the sons of Adam, for neither of which there is biblical evidence, how does that help kings *now* to establish their titles by Divine Right? Despite the biblical concern with genealogy, the line of Adam's posterity has become hopelessly scrambled. How can *any* king at the present time seriously claim that he is in the line of direct descent from Adam? Like Hobbes, Locke meets and beats his opposition on their own ground by showing that the Divine Right argument as presented by Filmer is double-edged as far as kings are concerned. Because the genealogy since Adam is scrambled, it is perfectly possible that all the present kings are usurpers, or all the kings except one. Perhaps somewhere the real, direct descendent of Adam is alive and living in obscurity, cheated of his birthright to universal monarchy by those pretending to call themselves kings in the present world. Having, as he thinks, disposed of the title to government based on the direct gift of kingship to Adam and to succeeding kings, Locke is then faced with a problem: if God's gift is not the basis of legitimate government, then what is? Locke's answer, like Hobbes's, is the free consent of the governed, and this is the position argued in the *Second Treatise*.

Locke wants to argue in the *Second Treatise* that everyone, including the Sovereign, comes into Civil Society, so that all, the Sovereign included, are obliged to obey the law. In arguing this, Locke has to keep in mind the Hobbesian argument that it is impossible for the Sovereign, the law-maker and law-enforcer, to come into Civil Society because he cannot be a party to the social contract. Locke wants to limit government. It seems to him commonsensically absurd that all men but one would come into Civil Society, and leave one of their number still in the State of Nature with the right to terrorise the others if he saw fit. The problem, then, is to invent a new version of social contract by which the Sovereign too can be constrained by contract, something Hobbes thought was logically impossible.

LOCKE'S VERSION OF THE STATE OF NATURE

The most famous sentence in the *Second Treatise* is that 'though this (the State of Nature) be a state of liberty, yet it is not a state of licence'. Like Hobbes, Locke begins with a hypothetical State of Nature, gives an account of it, and then proceeds to show how men got themselves out of it. Locke's State of Nature is very unlike Hobbes's, because life there is recognisably social in a sense Hobbes would never allow, hence Locke's very firm statement that the State of Nature is a state of liberty, not licence. By this Locke means that men in the State of Nature, bound by Natural Law, would be able, on the whole, to recognise and respect the Natural Rights of others. Locke's whole argument in the *Second Treatise* depends upon this first postulate, so it is worth examining it in some detail.

By Natural Right Locke means an entitlement under Natural Law, which is God's Law. God did not create the world and people it for nothing. He certainly wanted men to get their sustenance, which means that He intended men to live, and to live as long as it

pleased Him. In His original natural state, the Garden of Eden, Adam and Eve did not have to labour for their sustenance. God intended them to live off the land as contented vegetarians, but they rebelled against God, ate of the tree of the knowledge of good and evil, invented sex, were expelled from the Garden, and then all the trouble started. The irruption of desire meant that from thenceforth men would have to get their bread in the sweat of their faces—they would be obliged to plough, sow and reap the land. Although God was extremely angry at the Fall of Man, he none the less, as a merciful God, offered man an opportunity to get bread through useful labour (and he offered woman the chance to bear children through labour pains). Therefore it followed that men had a Natural Right to labour and a Natural Right to the land they tilled and to its produce.

From this alluringly persuasive account of origins, based securely on God's own word, Holy Scripture, Locke derives a fairly sophisticated theory of Natural rights, particularly the Natural Right to property. Like all law, God's Law, as revealed in the Ten Commandments, or found out by human reason, implies a corresponding set of rights. These Natural Rights Locke thinks are of three substantive kinds: the right to life, liberty and property. God means us to live at his pleasure, not another's, therefore no-one may kill me (except in self-defence, which includes war); God commands me to labour in order to sustain and live my life, therefore I have the right to the liberty to do so; and God must mean what I take out of mere nature to be mine, therefore a natural right to property originates in the command to labour: the land I plough, and its fruits are mine. Men, being made in God's image and therefore endowed with natural reason, could easily work out that this was so, and they have Holy Writ to help them.

Men's natural reason also tells them two other very important things. First, it tells each man that all other men have the same rights as he has. All rights have duties attached to them (a right without a corresponding duty, or set of duties, is a privilege, not a right, a sinecure for instance, which carries with it the right to a salary without the duty to work for it). Rational men are capable of working this out for themselves, and they easily recognise that claiming Natural Rights requires that they respect the exercise of those same rights in others, and it is this reciprocity which makes the State of Nature social. If everybody recognises naturally that Natural Rights are universal or they cease to be natural, then plainly this implies that men could live together without government. That is what Locke really means when he says that the State of Nature is a state of liberty, not licence.

However, the State of Nature is still the state of fallen man. Sinful men, alas, will sometimes invade the Natural Rights of others. From this it follows that men have another Natural Right, the right of judgement (and punishment) when they think their Natural Rights have been violated by others. This right is not a substantive right, a right to *something*; rather it is an energising right, or a right which gives life to the other Natural Rights. Rights are useless unless there is a right to judge when rights have been violated, and so the right to judgement completes the package of Natural Rights.

Therefore, for Locke, the State of Nature could be social, even if it was not completely harmonious because there would be occasional violations of Natural Rights. In particular, men in the Lockian State of Nature would be able to make contracts with each other, even contracts of buying and selling. God's command to tell the truth, and not to bear

false witness implies that a man has a right to expect another man to keep his word, and to expect others to bear witness as to what that promise was. Looking around for evidence in the real world that men can come to make very generalised agreements with each other, Locke fastens on to two things: language and gold. Language is an agreement that certain sounds mean certain things, and the invention of language pre-dates the invention of the state (and survives after states collapse). Similarly, men agreed to put a value on intrinsically worthless gold which actually goes up in value when states begin to totter. Locke uses these as paradigmatic examples of what kinds of agreement are possible between men without government. Agreement to put a value on gold makes buying and selling possible, perhaps even the buying and selling of labour, and it certainly makes inequalities of property likely in the State of Nature. Men's slight inequality of natural capacity, which Hobbes had thought valueless in the State of Nature, is important for Locke precisely because it would lead to inequalities of fortune. Not all men are equally enterprising or industrious, and to the winner go the spoils of competition.

Agreement to put a value on gold alters the original State of Nature by removing the natural constraints on the accumulation of property. Originally, no man was entitled to more land than he could actually cultivate, the land he had actually 'mixed his labour' with. Laying claim to uncultivated land was an infringement of the Natural Right of others to take property out of nature by their own labour. Tracts of uncultivated land in ownership, or even land half-cultivated or occasionally cultivated, was waste, and in the absence of a currency, and therefore a market, it would be impossible for a man to get rid of any agriculture surplus profitably, and that surplus would spoil. The circulation of a currency in the form of gold changed this. Men could now buy, sell and make profits to their hearts' content. Gold does not spoil, or go to waste, so there can be no natural limits to its accumulation. Gold therefore effectively abolishes the natural limitations set on property accumulation, hence inequality of property in the State of Nature.

For Locke, then, life in the State of Nature is naturally sociable, because the State of Nature contains what we can easily recognise as the beginnings of economic interdependence and social stratification between rich and poor. And all this happens, thinks Locke, before the invention of the state, and it would continue to happen if all law-making and law-enforcement were to disappear. Therefore, a return to the State of Nature is not the terrifying possibility which Hobbes had thought it was.

THE STATE OF NATURE AND GOVERNMENT

Locke's picture of a social State of Nature profoundly affects the way he invites us to think about government in five different but related ways.

1 Locke seems to be saying that man should not be over-grateful for government. A return to the State of Nature would no doubt be attended by its inconveniences in the matter of law-making and law-enforcement because men would have to begin again to do these for themselves, but it is not unthinkable. *Any* state is certainly not better than