

John Locke: *A Philosopher of Freedom and Natural Rights* - by Jonathan Dolhenty, Ph.D.

It is an undisputed fact of history that the germs of the American Declaration of Independence are contained in the writings of British philosopher John Locke, specifically the second of his *Two Treatises on Government*. This tract was published in 1690 in order to justify the British Whig Revolution of 1688 and laid some of the main foundations for the American Revolution of 1776. Additionally, the constitutional and cultural life of the United States was also deeply influenced by Locke's *Letter on Toleration* (1689), which argued for the necessity of separating Church and State.

The key elements in Locke's political theory are natural rights, social contract, government by consent, and right of revolution. Locke was very concerned with the "property right" and derived property right from higher law, although for Locke that higher law remained natural rather than the result of Divine Revelation. He declared that natural law remained operative in civil society as the fundamental measure of men's rights. For Locke natural law essentially begins and ends with the natural right of property. The true end of civil government is protecting property and the right of property is the effective limitation upon the powers of the government. Locke interpreted natural law as a claim to innate, indefeasible rights inherent in each individual. Both government and society exist to preserve the individual's rights, and the indefeasibility of such rights is a limitation on the authority of both.

According to Locke, primitive man existed in a "state of nature," which was one of peace, good will, mutual assistance and preservation. He defends this latter concern on the ground that the law of nature provides a complete accoutrement of human rights and duties. The defect of the state of nature lies merely in the fact that it has no organization to give effect to the rules of right, such as judges, written laws, and fixed penalties. Locke maintains that whatever is right or wrong is so eternally and "positive law" adds nothing to the ethical quality of different kinds of conduct; it merely provides an apparatus for effective enforcement.

In the state of nature every man must protect his own as best he can. His right to his own and his duty to respect what is another's are as complete as ever they can become under civil government. Moral rights and duties are intrinsic, morality makes law and not law morality, and governments have to give effect to what is naturally right prior to its enactment.

Locke believed that property was common in the state of nature in the sense that everyone had a right to draw subsistence from whatever was offered in nature. He asserted that a man has a natural right to that with which he has "mixed" the labor of his body, for instance, by enclosing and tilling land. His argument was that the right to private property arises because by labor a man "extends" his own personality into the objects produced. By expending his internal energy upon them he makes them a part of himself. Generally speaking, their utility depends upon the labor expended upon them.

From his theory of the origin of private property, Locke concluded that the right to property is prior even to the primitive society which he described as the state of nature. This is a right which each individual brings to society in his own person. Therefore, society does not create the right of property and, except within certain limits, cannot justly regulate it. At least in part, both society and civil government exist to protect the prior right to private property.

It needs to be said at this point that Locke did not believe that the right to property was the only natural right, although he spent most of his time examining the property right. The expression which Locke uses to identify natural rights was "life, liberty, and estate." This expression, of course, should be familiar to all Americans; except in the Declaration of Independence it became "life, liberty, and the pursuit of happiness."

Regardless of the fact that Locke tended to concentrate on the property right, he conceived all natural rights as of the same import, as attributes of the individual person born with him, and hence as indefeasible claims upon both society and civil government. These claims can never justly be set aside because society itself exists to protect them. These rights can be regulated only to the extent it is necessary to give them effective protection. The "life, liberty, and estate" of one individual can be limited only to make effective the equally valid claims of another individual to the same rights.

Once Locke had described the state of nature as a condition of peace and mutual aid and having defined natural rights as prior even to society, he then went on to derive civil society from the consent of its members. Political power he defined as "the right of making laws with penalties of death, and all less penalties, for the regulating and preserving of property, and of employing the force of the community in the execution of such laws, and in the defense of the commonwealth from foreign injury, and all this only for the public good." Such a power can arise only by consent and it must be the consent of each individual for himself.

Political power, according to Locke, can have no right except as this is derived from the individual right of each man to protect himself and his property. The executive and legislative powers used by civil government to protect property are nothing except the natural power of each man resigned "into the hands of the community," or "resigned to the public," and they are justified merely

because it is a better way of protecting natural rights than the self-help to which each man is naturally entitled. This is the original "compact" by which individuals incorporate into one society and is a bare agreement to unite into one political society.

The setting up of a civil government is much less important, according to Locke, than the original compact that makes a civil society. Once a majority has agreed to form a civil government, "the whole power of the community is naturally in them." The specific form or structure the government takes really depends on the disposition of the majority of the community. In any case, the legislative powers of the civil government are limited, cannot be exercised in an arbitrary manner, and cannot be composed of extemporary decrees. Furthermore, legislative powers cannot take property without consent (interpreted as majority-vote by Locke) and they cannot be delegated since they fundamentally reside in the community in the first place.

Having made a the distinction between civil society and civil government, Locke continues on to discuss the right to resist tyranny. Civil government exists for the well-being of civil society and a government which seriously jeopardizes social interests is rightly changed. Locke distinguishes between just and unjust warfare. A mere aggressor gains no right, and even a conqueror in a "just" war can never establish a right which contravenes the liberty and property of the conquered. Moral validity and force are two distinct things, says Locke, and the latter is incapable of giving rise to the former. Therefore, a civil government which begins in force can be justified, as all governments are justified, only by its recognition and support of the moral rights inherent in individuals and communities. The moral order is permanent and self-perpetuating. Governments are only factors in the moral order.

A civil government is dissolved either by a change in the location of legislative power or by a violation of the trust which the people have reposed in it. Any invasion of the life, liberty, or property of individuals is ipso facto void and a legislature which attempts these wrongs forfeits its power. In this case, power reverts to the people, who must provide by a new act of legislation for a new legislature.

Locke's defense of resistance in the name of inalienable rights of personal liberty, consent, and freedom to acquire and enjoy property had a profound effect on the apologists of the American Revolution. His sincerity, his deep moral conviction, his genuine belief in liberty, in individual rights, and in the dignity of human nature, united with his moderation and good sense, made Locke an ideal spokesman of a middle-class revolution. He was an important philosophical force in the promotion of classic liberal ideals and Americans who are still believers in the right to life, liberty, and private property owe him a debt of thanks for providing no small justification for the inalienability of these rights.

A SHORT BIOGRAPHY

John Locke was the son of a country attorney and grew up amid the civil disturbances which were plaguing 17th century England. He attended Christ Church, Oxford, where he remained a student for many years, becoming increasingly disenchanted with the scholastic curriculum offered there.

Locke became interested in the great philosophical and scientific questions of his time and this interest brought him into contact with distinguished scientists such as Robert Boyle. He was elected a fellow of the Royal Society in 1668 and it was then he began to form his views on politics and religion.

An accidental meeting with Lord Ashley in 1666 led to a lifelong friendship with the man who would later become the first Earl of Shaftesbury. This association would change the whole course of Locke's career. He became a secretary and confidante of Lord Ashley's and held a number of government posts while Ashley was in office.

In 1675, Locke became ill and was forced to leave his employment, choosing to recuperate in France for nearly four years, spending his time in studying and writing. He reentered Ashley's service upon his return to England but four years later Ashley had to flee to Holland because he supported the wrong leader during the Monmouth rebellion in 1685.

Shortly after Ashley left England, Locke followed him and remained there until the Revolution of 1688. Returning to England, Locke began to rapidly issue a number of his works, the result of years of study and meditation.

Chief among these were his Essay Concerning Human Understanding, Two Treatises on Government, and Letters on Toleration. These exerted an immediate and profound influence on English thought and helped to provide a philosophical foundation for the American Revolution.