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Locke

The reader who turns to John Locke's (1632-1704) political philosophy after Hobbes's or Rousseau's is bound to notice a diminution in philosophical rigor and depth. But readers are also likely to find Locke more "reasonable" than Hobbes or Rousseau, more inclined to adopt positions that seem workable and right. I would venture that this reaction, the sense that with Locke we finally enter the real world of politics, is, at least in part, an historically conditioned response. Locke was an influential political thinker - with the founders of the United States, of course, but also with their British counterparts and with early liberal thinkers generally. His political philosophy therefore speaks directly to the political arrangements those political actors whom he influenced helped to shape; institutional forms under which people in liberal democratic countries live. Hobbes's authoritarian statism and Rousseau's vision of moral and collective bodies moved by a general will have much less connection to our lived experience. What follows here, however, will not address many of the aspects of Locke's political philosophy that continue to resonate today. I will concentrate instead on two distinctively philosophical innovations of his: the first, having to do with the use Locke made of a notion already found in Hobbes, the idea of extra-legal *rights*; the second with Locke's way of combining liberal and democratic concerns. It was not until the mid-nineteenth century that full-fledged liberal democracies, regimes devoted both to liberal and democratic values, came into being, even in those parts of the world where Locke's political philosophy was most influential. Inasmuch as political ideas follow political forms and practices, it was not until Locke had been dead nearly a century and a half that mainstream political theory took an unequivocal liberal democratic turn. But the general strategy liberal democrats would assume was

anticipated in Locke's political theory and, more importantly clarified by Locke in a way that continues to merit close attention. In this regard, I will also look briefly at Locke's defense of representative government. Twenty-first century readers will find what Locke had to say about political representation highly anachronistic. But his views about democratic governance do contrast instructively with Rousseau's and also with the views of many contemporary liberal democrats. My discussions of Locke's account of rights and of his anticipations of liberal democratic theory will focus, particularly, on the way Locke's ideas have come to be appreciated and developed in influential, contemporary strains of political philosophy. I will therefore have little to say about Locke's disputes and alliances with his own contemporaries. In Locke's case, even more than in Hobbes's, it can be instructive to disengage some of his ideas - specifically, those that are of the most contemporary philosophical interest - from the historical specificity of his own immediate concerns.

Rights

Individuals have rights relative to one another. Rights therefore cannot exist outside societies. As remarked in chapter 1, a Robinson Crusoe, alone on his island, would be utterly without rights, for there would be no one to whom he could make rights claims. Very generally, then, rights are addressed to others and imply what legal scholars call *correlative obligations* on the part of others to do or forbear from doing certain things. In this sense, rights talk is *forensic*; it has an irreducibly legal or adversarial dimension. To assert a right is to make a claim that one believes societal institutions ought to respect and also, in one way or another, to enforce. In legal contexts, rights talk is relatively unproblematic; it is a way of articulating the rules that regulate individuals' conduct, "the rules of the game." In a real game, like chess, a player has a right, say, to move a bishop only diagonally and only in specifiable circumstances - for example, when it is the player's turn. Similarly, within a legal framework, one has a right to demand certain behaviors on the part of others, including the state, in virtue of the laws under which one lives. This understanding derives from Roman jurisprudence. Until the seventeenth century, it was the only use of *rights* that the political culture acknowledged. The extension of rights talk beyond strictly legal contexts, to articulate non- or extra-legal demands, is a distinctively modern innovation. Like so many other political ideas current today, it was a creature of the English revolutions of the seventeenth century. Locke,

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however, was the first to make the idea the centerpiece of a distinctive political philosophy.

In Hobbes's state of nature everyone had an unlimited right to everything. No one, then, had particular rights. Thus Hobbes's state of nature was ruleless, inasmuch as rights claims specify rules that constrain individuals' behaviors. Even so, Hobbes could have used rights talk to articulate his view of life in political communities or "commonwealths." He could have maintained that, within political communities, individuals have legitimate claims against others to do or forbear from doing certain things. But, then, these rights would follow from the social contract that puts the state of nature to an end. For Locke, however, rights come first. They precede the social contract. Legitimate political institutions must therefore accommodate to these rights, not follow from them. Put metaphorically, for both Hobbes and Rousseau, particular rights are *theorems*; for Locke, they are *premises*.

To claim that rights already exist in the state of nature is not just to say that people believe that they do. It is to maintain that the rights in question are unalterable moral facts. This is why Locke and his followers spoke of "inalienable" rights. To claim that a right is inalienable is to say that, unlike the unlimited right to everything that Hobbes ascribed to individuals in a state of nature, individuals have particular rights that cannot be alienated or, as Hobbes would say, "laid down." A Lockean social contract will therefore be a contract of partial, not total, alienation. As such, it underwrites the idea that sovereignty is limited in principle, that subjects are immune from certain kinds of state interferences. Specifically, the sovereign's power is limited by the rights that individuals retain. In this respect, Locke differed significantly from both Hobbes and Rousseau, for whom the sovereign's power is unlimited in principle because the contract that establishes sovereignty is a contract of total alienation. When they institute sovereignty, individuals in a Hobbesian or Rousseauian state of nature hold nothing back. But in a Lockean state of nature, they must hold *inalienable* rights back. They therefore cannot alienate everything, and where they have not alienated rights that were antecedently theirs, they remain sovereign over themselves, just as they were in the state of nature. Lockean rights therefore establish a *space* into which the state cannot rightfully intrude. As we will see (in chapters 4 and 5), there are other, perhaps better ways to defend limited sovereignty. Liberalism can do without Lockean rights. But Lockean rights claims do limit the sovereign's power, and therefore do succeed in making a theory of sovereignty liberal.

To gain a better understanding of what Lockean rights are, it will be

instructive, again, to turn to the international arena, as we did in chapter 1. The comparison is apt because, in that domain, no world sovereign rules over sovereign states, just as in a state of nature, no national sovereign rules over individuals. On what might be called a Hobbesian view of international affairs, because moral constraints can only follow from antecedent agreements, states are always in principle at war with one other, even if they are not in overt conflict. In the international arena, therefore, anything goes. However, on a Lockean view, because states, like individuals in a state of nature, have morally primary rights, anything does not go; there are some things that states cannot rightfully do to one another. If, for example, there is a morally primary right not to have one's territory invaded, a state that invades another's territory acts wrongly. If this moral fact is known, it might to some degree constrain the behavior of potential aggressors, diminishing the likelihood of overt conflicts. If so, hostilities would likely erupt only infrequently at the international level, not just for the Hobbesian reason, because otherwise warring parties are able to establish relatively stable balances of power, but also in consequence of this moral fact. Even so, the temptations of national interest always threaten to overwhelm the dedication to act rightfully. Then, in the absence of a suitable rights-enforcement mechanism, battle would erupt anyway, and there would be no effective redress. There is, therefore, a Lockean way to argue for a world sovereign that is nearly as compelling as the Hobbesian way. A world sovereign is needed to enforce rights that already exist. With respect to international affairs, this argument may or may not be decisive. But it is instructive. As we will see, individuals are motivated to leave a Lockean state of nature for just the reason that underlies this (putative) Lockean case for world sovereignty. They will want to leave the state of nature because they recognize a permanent need to have their morally primary rights enforced.

But even if the existence of rights in a Lockean state of nature does not preclude the need for sovereignty, it does change the sovereign's role. A Lockean sovereign makes laws, just as a Hobbesian or Rousseauian sovereign does. In this sense, a Lockean sovereign too assigns rights. But the extra-legal, particular rights that matter most, the rights that the social contract aims to protect, already exist before a sovereign comes onto the scene. A Lockean sovereign is therefore not, in the main, a rights maker in the way that a Hobbesian or Rousseauian sovereign is. A Lockean sovereign is mainly a rights enforcer. Because individuals' interests often lead them to violate even those rights claims that they acknowledge, they need a rights enforcer to maintain order, even if they do not need one to establish rules that constitute order. Just as in Hobbes's state of nature,

therefore, rational, self-interested individuals will, if possible, contrive a mechanism that represses their natural disposition to act in ways that, left unchecked, would lead to a war of all against all. The only such mechanism conceivable is, again, one that uses or threatens force to assure compliance to its rules. On this point, then, it hardly matters that Locke, unlike Hobbes, thought that the most important rules that the state should enforce are specified by rights that individuals in the state of nature already enjoy. What matters more is that there be a coercive apparatus in place to assure that compliance is widespread and, therefore, that order is maintained.

But if Locke and Hobbes were of one mind on the need for states, their views of the nature of the authority the state wields differed considerably. For Hobbes, the rules under which individuals ought to live are just those that the sovereign commands, whatever they happen to be. Rules have normative force because they are enforceable, because the sovereign, the peoples' authorized representative, is powerful enough to issue enforceable commands. For Locke, on the other hand, enforcement is necessary mainly to secure rights that pre-exist the establishment of sovereignty. It is their presence in the state of nature, not the fact that the sovereign's police stand ready to enforce them, that gives these rules normative force. Therefore, political authority *de jure* and political authority *de facto* do not necessarily coincide. Might and right were distinct notions for Locke, just as they were for Rousseau. But might is indispensable if right is to prevail, just as Rousseau thought it was.

The first liberals were concerned to protect individuals from state interference with religion, a cause that animates liberal politics to this day. But the morally primary rights that Locke and other early liberals cared about most were property rights. Locke sought to protect against state interferences with commerce, and to defend private property and the right of individuals to accumulate wealth virtually without limitation. However, what makes a position liberal is not *what* it seeks to protect from state interference, so much as the fact that it seeks to protect *something*. From Locke's time to our own, the focus of liberal concerns has evolved. Today, it is only "libertarians" who view property rights in the way that Locke did. Mainstream liberals nowadays are more concerned, say, with privacy than with property. But even if contemporary liberals would reject Locke's unabashed defense of private property rights and commerce, their positions too are susceptible to a Lockean rationale. Locke's idea was that rights claims, whatever they may be, morally *precede* political arrangements. Thus the social contract does not ground the most important of the rights that it protects. Quite the contrary. The rights that

in individuals retain when they enter into the social contract lie beyond the scope of the sovereign's rightful authority. The sovereign is a protector of these rights, and nothing more.

The State

Could rights be enforced *privately* - that is, without the state? One might, at first, think so. There could be, for example, a division of labor in which those who are good at, say, commerce, engage in commercial pursuits, while those who are good at fighting become rights defenders - and maybe also, when the occasion arises, rights aggressors. A good merchant and a good fighter, working together, might be able to accumulate more wealth than either could independently, doing everything for themselves. Those who hit upon this scheme might do very well indeed, at first. But then, as in the story Rousseau told in the *Second Discourse*, others would follow their example. In time, therefore, the problem everyone faced in the state of nature, how to have their property rights protected, would reemerge - but at a higher and more dangerous level of violence. Individuals would find themselves mired in a civil war with rival gangs, private armies, fighting to mutual ruin. In these circumstances, there is a compelling reason for private armies to confederate or even to merge, again solving the rights enforcement problem temporarily, but only by reanimating a process of imitation that will again inevitably make the original problem worse. Ultimately, therefore, the logic of the situation requires that there be a single rights enforcer. This, of course, can only be the state, the form of political authority that *monopolizes* the means of legitimate violence.

Locke would have individuals in a state of nature arrive at this solution to the enforcement problem they all confront by means of a social contract. But as the thought experiment just sketched suggests, he could also have had them "back into" a state - by allowing the logic of private rights enforcement to unfold.¹ By looking at the contractarian idea this way, and then by focusing, as Locke did, on rights enforcement rather than on rights creation, we can gain a better understanding of what is essential to the contractarian program, and what is superfluous to it. We can see, for example, that a social contract is less central to contractarianism - or, at least, to Locke's version of it - than one would suppose.

¹ This alternative route to a statist conclusion was first proposed by Robert Nozick in *Anarchy, State, and Utopia* (New York: Basic Books, 1974), chapter two.

And we can see more clearly than in traditional contractarian accounts why only *one* supreme authority can rule over a particular territory or population. The rights enforcement business is a natural monopoly. The state, therefore, must be One. If it is to serve its purpose, political authority cannot be diffused; it must be concentrated into a single institutional nexus.

A Lockean state is not limited to the enforcement of pre-existent rights claims. As remarked, in addition to this core task, states can rightfully make rules, and therefore ascribe rights that individuals did not already possess in the state of nature. No doubt, states must do so to some extent, if they are to operate effectively. And because Locke, like nearly everyone else, was a Hobbesian statist, he also thought that states may rightfully do whatever is required to supply those public goods that everyone, or nearly everyone, wants (see chapter 1). However, in the execution of these tasks, there is one overriding constraint: states may never exceed their rightful authority by impinging upon morally primary rights. Inasmuch as states are contrived to protect morally primary property rights more than any other, these rights limit what states may do. To better understand the Lockean state, therefore, it is necessary to fathom Locke's position on private property.

In general, it is easy to fault Locke's political philosophy for its arbitrary rights ascriptions. Locke, it can seem, assumed what he wanted to establish, and then hid this circularity, even to himself, by building his conclusions into the rights claims he asserted. The strategy of ascribing morally primary rights to individuals in a state of nature invites this charge. I would submit that it is largely justified. But, with respect to property rights, it must be said that Locke did try to defend the rights he invoked. It is even fair to say that, in the course of doing so, he developed a *theory* of private property. To this day, this effort of Locke's to justify private ownership and market exchange represents perhaps the most sustained attempt ever contrived to defend capitalist property relations.

The State and Society

Locke's account of limited sovereignty and also his defense of private property and market exchange imply a distinction that is characteristic of liberal political philosophy - a sharp separation between the state and *civil society*. This division would have been unthinkable for Rousseau. For him, as for political philosophers in the classical tradition generally, politics is a component of the human good; one that permeates all aspects of human life. But Locke, like Hobbes, falls on the side of those for whom politics is a necessary evil. To be sure, just as Locke's account of the state of nature was more benign than Hobbes's, so too was his understanding of the evils of political life. But it is nevertheless plain that, for Locke just as for

Hobbes, the state is in no way an indispensable part of the good for human beings. Its role is to superintend civil society, especially the commercial sphere; not to make people realize their special excellence or to become more of what they potentially are. Thus the state is necessary, in Locke's view, for Hobbesian reasons: because civil society cannot reliably take care of itself, given human nature and the human condition.

But in their respective ways of adhering to the non-classical, Christian view of political life, Locke and Hobbes parted ways. As remarked, Hobbes's understanding of human nature was essentially

version of the Christian doctrine of Original Sin. For him, therefore, human self-realization was an ill-conceived goal. Human beings in a state of nature, in their "natural condition," already are self-realized; this is why the state of nature is a state of war. The very last thing one would want, therefore, is for the institutions the sovereign establishes to encourage the free expression of what is essentially human. The best that human beings can hope for, instead, is to accumulate riches and honor in relative security - in other words, to satisfy the desires their natures occasion. For

Locke, however, *outside* the state, in civil society and especially in the commercial arena, self-realization is a feasible and estimable goal. Even more than Hobbes, Locke wanted institutions arranged to facilitate the accumulation of wealth. But, unlike Hobbes, Locke did not defend this goal on the grounds that what matters normatively is only desire satisfaction and that, given human nature, riches are inevitable objects of human desire. He did not expressly defend it at all.

However, given Locke's enthusiasm for the commercial life and his penchant for cobbling doctrines together into a "reasonable," if not altogether consistent, synthesis, it would not be unfair to ascribe to him the view that the accumulation of wealth is a way of realizing an intrinsic human excellence. Locke, it appears, thought of commercial activity in more or less the way that "classical" political philosophers thought of other self-realizing but non-mercantile human endeavors. Locke's political philosophy therefore straddles, or rather confounds, Christian and classical elements. But however inconsistent the various strains of Locke's thinking may be, what emerged, in the end, was a more hopeful, less puritanical, vision of ideal institutional arrangements than Hobbes imagined. Locke was a Hobbesian or Christian in the sense that, for him, no good comes directly from political engagement; only less bad. But because the political sphere is sharply delineated and separated from the rest of human life, especially from the world of commerce and wealth accumulation, Locke effectively maintained that human beings can and should self-realize *outside* the state. Hobbes's political philosophy was based on taking Sin seriously, on the dark side of Christian theology. Locke's thinking reflected the cheerful but confused optimism of popular Christianity. He was the philosopher of Sin Light.

Political Legitimacy

No state can count as legitimate, in Locke's view, if it violates morally primary rights. But there is also another condition for political legitimacy that Locke upholds. No state can rightfully command others if those who fall under its jurisdiction do not *consent* to its authority. In this respect,

Locke endorsed the fundamental contractarian idea - that the source of political authority is ultimately the citizenry itself. Locke's political philosophy therefore stands in the contractarian tradition, as much as does Hobbes's or Rousseau's. But, as was characteristic of his thinking generally, Locke's contractarianism is *softer* than theirs. His understanding of consent has nevertheless come to be the dominant understanding today. As one might expect, it is not an unproblematic un-

derstanding. But like so many other elements of Locke's political philosophy, it does strike a reasonable chord, at least to those accustomed to living under institutions shaped by Locke's ideas.

Not surprisingly, Hobbes and Rousseau occupy extreme positions with respect to consent and therefore political legitimacy. For Hobbes, self-interested, rational individuals have no option but to acquiesce to the sovereign's power wherever it exists, or to concoct it wherever it does not. Beyond that point, questions about legitimacy cannot arise.

Rousseau's conditions for political legitimacy, on the other hand, are so stringent as to turn consent into active, though possibly unacknowledged, agreement with the sovereign's will. For Rousseau, because sovereignty resides in the people assembled together to legislate, citizens are obligated to obey laws only if they have actively participated in their legislation. As discussed (in chapter 2), citizens do not have to have actually voted in favor of particular laws to be obligated by them. But they must have voted and, in so doing, expressed their opinions about what the general will is on the matter in question. Then since the majority discovers the general will, in obeying the majority, citizens do what they really want. Needless to say, neither of these positions correspond to ordinary understandings of consent in the way that Locke's view does.

For both Hobbes and Rousseau, the social contract is a *pact of association*, an "act by which a people becomes a people" (see Chapter Two). For Locke, however, it seems that a people already exists before the social contract; presumably because the rights individuals possess in the state of nature bring them into a form of association. Locke thought of the social contract as a *pact of government*, an "act by which a people selects a king," not a pact of association. This is why Locke's politics is not inherently anti-revolutionary, as Hobbes's was. Unlike Hobbes's pact of association, Locke's pact of government can be broken - as it was said to be, for example, by the British monarchy in its relations with its North American colonies, according to the US *Declaration of Independence*. But we must not exaggerate Locke's differences from Hobbes. Locke was a liberal of a generally conservative bent. His social contract, though breakable, is not easily broken. It remains in force so long as the people collectively consent to the rule of those who govern them or, at least, to the institutional forms through which these rulers came to power. Except in cases of dire tyranny or oppression, the plain expectation is that consent is conferred.

Characteristically, Locke failed to provide an account of what is required to indicate consent. It is clear, though, that he did not think that consent must be *explicit*. *Tacit* consent will do. But the idea of tacit

consent is desperately in need of clarification. Does simply remaining within a political community suffice? That might be a plausible view if there were somewhere else for a non-consenting citizen to go; somewhere, that is, without the kinds of institutional arrangements to which non-consenters might object. It would be especially compelling if a citizen could somehow go back to a state of nature. But since these exit options are generally unavailable, the fact that an individual has not left a political community would hardly seem a sufficient ground for inferring that consent is given. A more demanding view, reminiscent of the position Socrates put forward in Plato's dialogue *The Crito*, is that consent is conferred when individuals accept benefits from the state that governs them. Something like Socrates' view is probably what Locke had in mind. But a host of questions need to be answered in order to make this thought viable. One would have to specify, among other things, just what kinds of benefits, when accepted, indicate consent. Is simply living under a regime of law benefit enough, as Socrates believed? Or must there be other benefits in addition? And what exactly counts as accepting a benefit? If Jones gives Smith a gift that in some sense benefits him, a gift Smith neither asked for nor wanted but that Smith does not or cannot return, did Smith consent to the transfer? Philosophers who address these questions nowadays, especially if they are liberals, typically do so in the spirit of Locke's political philosophy. But Locke himself had hardly anything to contribute directly to their elucidation.

Locke was not unabashedly committed to the view that consent, even when it is explicitly offered and therefore plainly conferred, establishes right. He even maintained that there are agreements that individuals cannot rightfully make for reasons distinct from the overriding requirement that morally primary rights be respected. Here, too, Locke's position is more plausible than his argument in its behalf. Consider, for example, Locke's discussion of slavery in chapter 4 of *The Second Treatise*. Locke opposed pacts of voluntary slavery. He reasoned that because slavery is based on a right of conquest, which is "a continuation of war," and because individuals cannot "wage war" on themselves, individuals cannot freely become the slaves of others; they cannot sell themselves into slavery. This is an obscure argument, but it does clearly register the view that there are limits to the rights consent can establish, limits that exceed the boundaries fixed by the inalienability of certain rights.

It should be noted that Locke's position on slavery is, in any case, rather odd. On the one hand, one would expect a partisan of the view that consent confers legitimacy to permit pacts of voluntary slavery. On

the other hand, one would expect a self-ownership theorist to forbid them. Locke, however, did neither. What he opposed was *selling oneself* into slavery, not slavery as an institution. Indeed, Locke thought that involuntary slavery, based on a right of conquest, was morally permissible. Thus he joined that longstanding tradition in political and legal theory that Rousseau rejected in Book I, chapter 4 of *The Social Contract*, according to which conquerors can rightfully take slaves among conquered peoples. Locke thought that individuals who acquire slaves by this means or, subsequently, through rights-preserving market transactions, are entitled to own them, just as people generally are entitled to own external things, provided they come by them in the right way. This was how Locke, along with many of the founders of the American republic, his intellectual descendants, were able to rationalize chattel slavery. They held that the African slaves were won in war; that they were a conquered people. But, again, according to Locke, individuals cannot sell themselves into slavery - not for Rousseau's reason, because liberty (autonomy) can never be advantageously exchanged, but because the idea of a pact of voluntary slavery is somehow conceptually flawed. Whatever we make, finally, of Locke's uncertain rationale for this position, it is worth observing that it is compatible with Locke's commitment to the legitimacy-conferring status of consent that consent is not always sufficient for establishing legitimacy. If we generalize this thought, the way is open to proscribing many more transactions than Locke himself did or than his libertarian followers today are wont to do. In Locke's view, doing what slaves do, serving another for an indefinite period of time for no wage, is not wrong in itself. What is wrong is *capitalizing* on one's ability to be a slave. The example is chilling, but it illustrates an important general point. There are a number of activities that in themselves are almost certainly not wrong, but that, following Locke's lead, we might nevertheless want to exclude from the marketplace. Sexual "services" are an obvious example. One does not have to think that sex or, more precisely, sex outside of marriage is morally impermissible to oppose prostitution, the buying and selling of sex. Commercial gestational surrogacy is another example. No one objects on moral grounds to a woman carrying a fetus to term, but some people do think that it is wrong for a woman to do so for a fee. The idea, in short, is that taking advantage of the capacity to X can sometimes be impermissible, even when X itself is not. Locke only broached this subject, and did hardly anything to clarify it. In practice, he was no more disposed to impose limits on market arrangements than his libertarian followers are. Even so, his work provides a focus or, at least, a starting point for thinking about what the limits of consent might be.

Because Locke's sense of what is reasonable accords so well with contemporary sensibilities, his work is a suitable starting point for many questions central to political philosophy as it is practiced today. This is why, in contrast to Hobbes or Rousseau, his general purchase on political legitimacy seems beyond reproach. It anticipates the liberal and democratic commitments of contemporary political philosophers. Unlike Hobbes's or Rousseau's, Locke's theory has both a liberal and a democratic component. It is liberal because it requires that the political sphere be circumscribed, that there be an area of individuals' lives and behaviors that is immune from state interference. In the view of mainstream liberals today, Locke marked the boundaries of this area incorrectly, and he justified his claim for non-interference in an unsatisfactory way. But the idea that political legitimacy depends, in part, on respecting the inviolability of a non- or extra-political sphere of human life is an idea that Locke bequeathed to modern political thought. Locke's theory is democratic too, at least according to contemporary understandings of the term. The point is not just that Locke vested legitimacy in the consent of the governed. Hobbes did too, and Hobbes was no democrat. Locke's innovation was to locate consent in ongoing institutional arrangements, not just in the social contract itself. In this respect, Locke's position resembles Rousseau's. But, for Rousseau, the idea that consent is conferred in each and every act of legislation was a strict consequence of a coherent, well integrated, rigorously developed philosophical theory. For Locke, it is a position taken up almost arbitrarily, because it seems right.

Locke's notion of consent is fraught with difficulties, many of which Locke seems barely even to have recognized, let alone resolved. But in this instance good sense again came to Locke's rescue. Like nearly everyone today, Locke was partial to the method of majority rule. Because he was, many of the difficulties that attend his notion of consent are neutralized or obscured. For it seemed to Locke, as it does to many people nowadays, that a state in which the majority rules is unquestionably legitimate because its laws reflect the will of its people. The situation is in fact more complicated, as we will see, but the idea that democratic procedures confer legitimacy has become part of the common sense of our political culture. This too is Locke's legacy. Locke passed this notion on as part of a larger vision of proper governance, a theory of representative government, that effectively joins all the elements of his political philosophy together into a workable, if not entirely coherent, institutional framework.

Representative Government

For Rousseau, when citizens vote they express their opinion as to what the general will is and then, if all the necessary background conditions obtain, the majority discovers the right answer. For Locke, however, votes represent preferences for alternative outcomes in contention, not opinions about a putative matter of fact. Thus Locke's view, though bland and unmotivated, is, by contemporary standards, mainstream and sensible, while Rousseau's position is exotic, if it is intelligible at all. For Locke, as for Hobbes, politics is driven by private, not general, interests. Like Hobbes, Locke had no notion of a general will. For him, therefore, preferences for alternative outcomes straightforwardly represent the only kind of interest there is, and the method of majority rule combines these interests fairly. Majority rule voting is therefore an ideal decision procedure, one that should be modified or overridden only if there are compelling reasons for insulating some kinds of decision-making from the vagaries of public opinion and collective choice.

Locke did not quite argue the case, but something like the following rationale seems to have been what he had in mind. Individuals establish sovereignty because it is in their interests that it exist, that there be a political community governed by a supreme authority. More specifically, individuals' interests in rights enforcement lead them to establish a universal rights enforcing agency, the state. But if interests prescribe that there be states, should not interests also dictate the form of the state or, more precisely, its method for making social choices? Unlike Hobbes, Locke thought that the answer to this question is Yes. The state's reason for being implies a commitment to collective choice rules that maximize preference satisfaction, and therefore to the method of majority rule.

It would therefore seem to follow that Locke should favor direct democratic rule, just as Rousseau did, for it is only by combining individuals' votes on matters of concern to them that overall preference satisfaction is maximized. However, Locke did not think that citizens ought to enact the laws that govern them. Rather, he would have them vote periodically for representatives who would then, in turn, do the requisite law making. Majority rule voting is, of course, the preferred decision procedure at both levels of this process. But it is only in representative assemblies or legislatures that votes on particular issues are directly combined. In the election of representatives, citizens only decide who will combine interests on their behalf.

In the governing structure Locke envisioned, representatives represent

their constituencies poorly if they vote as mere delegates, beholden to the views of the constituents who elected them. The best representatives are those who do what they think right, without undue concern for their constituents' preferences. Of course, representatives are accountable to their constituencies, and beholden to them for their electoral success. They therefore cannot ignore their constituents' views altogether. But it was not Locke's intent that constituencies first decide what they want, and then transmit this information to their representatives, who then legislate accordingly. His preference instead was for representatives to act independently. Indeed, a bias for independence is built into the very structure of representative government. When citizens select representatives, usually at intervals of several years, they can only make overall choices between a handful of candidates, often no more than two. How a representative voted on a particular issue, or how a proposed candidate is likely to vote, is therefore unlikely to have a significant effect on individuals' decisions about how to cast their ballots, except of course, for those comparatively few citizens for whom a particular issue or set of issues is of overriding importance.

Despite his own involvement in the emerging party politics of his day, Locke's account of representative government ignores the role of political parties. There is no doubt, however, that political parties affect relations between representatives and their constituents profoundly. The overall impact of this institutional form on popular control of the legislative process is, however, unclear. To the degree that representatives are accountable to their parties and not just to their constituencies, the party system probably distances political representatives from the citizens they represent even more than they would otherwise be. On the other hand, insofar as citizens are able to participate in the political process indirectly by participating directly in the activities of political parties, they do gain a measure of control over the legislative process that they might not otherwise enjoy. But whether, on balance, one or another sort of party structure makes citizens more or less involved in law-making, the basic fact remains - representative government, as it exists today, is anything but a straightforward preference aggregating mechanism.

A natural way to think about representative government is to view it as a second-best approximation of direct democracy, where direct democracy is an impracticable ideal. Because it is not* possible, except in very small communities, to assemble the whole people together, much less to have them deliberate, representative government, one might suppose, is the best a democrat can hope to institute. However, this is not what Locke thought, nor is it what many contemporary liberal demo-

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crats believe. If it were, it would follow that the more representatives eschew independence and vote as delegates instead, the better the system of representative government would be, the closer to the ideal. But Locke's view was just the opposite. He supported independence on the part of elected representatives, just as his philosophical descendants do today. Ironically, in this respect, Locke's position resembles Rousseau's. For Rousseau, representative government was less a feasible implementation of an impracticable ideal than a betrayal of it. Thus Rousseau would have societies resort to this expedient warily, if at all. Implicitly, Locke held a similar assessment of the relation between representative and direct democracy. He too denied that representative government is a second-best approximation of an unrealizable ideal. But he then drew the opposite conclusion. For him, representative government, because it differs from direct democracy in the ways that it does, is an ideal in its own right. It, not direct democracy, is the ideal one ought to hold.

The two poles of Locke's political philosophy converge on this conclusion. Because there are morally primary rights that states may not, under any circumstances, infringe, it is crucial, above all, that political institutions make support for morally primary rights, especially property rights, as secure as can be. And because human beings are able to do well for themselves only in civil society, outside the political sphere, it is best that political institutions support civil society; in other words, that they be designed so as to guard against the temptation to expand state power beyond its proper, very limited, confines. Thus it is necessary, above all, to guard against what Rousseau wanted to promote, the democratization of the social order, and to limit, as much as possible, its prerequisite, a highly politicized citizenry. What better way to accomplish these objectives than to put the principal beneficiaries of the institutions of civil society, men of property and those who identify with their interests, in power; to assign the tasks of legislation, execution and also judicature mainly, perhaps even exclusively, to them. Governance is a necessary evil. But if it is to be done well, it is best that only the right people govern, and it is best too that public servants undertake their tasks under conditions favorable to themselves. So far as possible, therefore, members of the political class should face incentive structures similar to those that motivate actors in the larger civil society. Politics should become a career among others, not an affair of the citizenry at large. Contrary to what Rousseau and other political philosophers in the classical tradition believed, political actors ought to be professional politicians. So far from permeating every aspect of human life, it is best that politics be cordoned off and relegated to a political class.

This is, in fact, what has happened in the liberal democracies that began to appear by the middle of the nineteenth century. Liberal democratic states accord with Locke's general vision of proper governance, even if they are not the minimal states of Locke's imagination. Thanks to the revolutionary upheavals in England and then, especially, in France, the *demos*, the popular masses, have entered the political arena irreversibly. Some measure of democracy - of government of, by, and for the people - has therefore become indispensable for the *de facto* legitimacy of any regime that would rule effectively or even survive for all but the briefest period. But Locke's intuitions have proven prescient - a very minimal recourse to democratic decision-making procedures is enough to assure legitimacy. Thus, in liberal democracies today, because the people select their representatives in free, competitive elections, the *de facto* legitimacy of existing institutional arrangements is secure. No matter, then, if all the people really do is ratify choices already made within the political class. The idea, after all, is not to empower the people but to use the idea of popular empowerment to legitimate liberal protections; and, for this end, periodic free elections evidently suffice. This is why the liberal component is robust in contemporary liberal democracies, and the democratic component barely in evidence. This was Locke's idea too; it was how he foresaw proper governance. The contrast with Rousseau is striking, not least in the political implications of their respective positions. Rousseau's just state required a highly politicized citizenry. Locke's requires that the popular masses be as little involved in governance as is feasible, given how deeply entrenched democratic values have become. For Locke, civil society, not a politicized citizenry, ought to dominate the state.

In Locke's view, representative assemblies are better able than the people themselves to protect morally primary rights, especially property rights, and to support civil society because legislators are wiser than ordinary citizens. Political wisdom is a skill to be cultivated. One must know how and when to govern; and, above all, how to govern lightly, lest civil society suffer unnecessary state interferences. These skills, Locke thought, lie beyond the competence of the *demos*, the popular masses. Thus Locke stands closer to Hobbes than to Rousseau; his sensibilities were anti-democratic. Rousseau had faith in the peoples' ability to discover the general will; Locke had little faith in the ability of ordinary people even to attend to their own interests well. Above all, he feared for the enforcement of property rights and the defense of market arrangements. Before the emergence of liberal democratic institutions with their anesthetizing effects on democratic aspirations, this was, no doubt, a reasonable fear.

In any case, it is why Locke favored restricting the franchise to adult male property-holders. Locke offered no arguments against extending the franchise to women. Perhaps it seemed obvious to him, as it did to nearly everyone else in his time, that women's place was in the private sphere of the family, not in public life. But Locke did have a reason for restricting the franchise to property holders. His idea was that only people who have the leisure to cultivate the capacities required to vote competently should be legally entitled to vote. Then, since the requisite degree and type of leisure is available only to those with income from property, especially landed property, only property holders should vote. Plainly, this position reflects both class bias and a view of the condition of agricultural and urban workers that is long out of date, if it ever was even remotely accurate. But, again, Locke's was a reasonable view in his day. Allowing that mental capacities themselves are distributed by nature more or less equally among human beings, as Hobbes thought they were, Locke and his co-thinkers thought that the servile condition of the propertyless masses rendered them unfit either to vote competently or, more evidently still, to govern. Because democratic impulses were still underdeveloped in Locke's day, this observation did not underwrite a call to change society, as we might expect. It did not suggest to Locke that the conditions of labor had to be improved in order better to enlighten and then empower the citizenry. Rather, it seems to have been Locke's view that it is inevitable that the vast majority of human beings be assigned to lives of burdensome toil, that political competence will therefore always be the possession of the fortunate few, and that political institutions must accommodate to this stubborn and inexorable fact.

One cannot help but suspect that Locke's claim that differential political capacities correlate with class position in the way that he maintained was only a cover for his real concern - the worry that the propertyless masses, if politically empowered, would fail to respect the interests of property holders, the class with whose interests Locke identified. As remarked, this fear was part of the political common sense of Locke's time. It was not until long after Locke's death that the perceived tension between liberalism and democracy became muted in the minds of political philosophers and ordinary citizens. No doubt, a very large part of the responsibility for this sea-change had to do with the development of institutions consistent with Locke's vision of proper governance, with representative government itself. In any case, the transformation has been profound. At the present time, "liberalism" and "democracy" are commonly, if carelessly, used interchangeably. In Locke's day, the idea that respect for rights, especially property rights, and government of, by and

for the people come to the same thing, that liberalism and democracy articulate the same fundamental idea, was unthinkable.

Locke's insistence that the franchise be severely restricted was undemocratic. But, in another respect, his views were potentially more democratic than those current in the mainstream political culture of many contemporary liberal democracies, including the United States. For Locke would permit legislative assemblies, parliaments, to do more or less as they please, unencumbered by judicial or executive "checks and balances."

Within the political sphere, a Lockean legislature, like a Hobbesian or Rousseauian sovereign, exercises supreme authority over the territory or population it governs. A Lockean legislature is therefore potentially a more powerful instrument of popular rule than legislatures with more circumscribed powers. Among other things, the right of judicature ultimately resides within it. Thus its decisions, unlike those of the legislative branch of the US government, are immune from review by extra-legislative, judicial institutions. There are obvious risks, especially for liberals, in diminishing the political independence of the judiciary. But a countervailing consideration, of great importance to democrats, is that the range of what is susceptible to political contestation is enhanced when legislatures alone exercise sovereign power. The American model sharply restricts what legislatures may do, turning many issues that might otherwise be addressed in representative assemblies, into legal questions to be settled by courts. In a Lockean, parliamentary system, the executive apparatus too is a creature of the legislature and therefore ultimately subject to its will. In the American model, on the other hand, the executive branch, like the judiciary, is a distinct and independent division of the government. In short, for Locke, as for Rousseau, sovereignty resides exclusively with those who make laws. This is what one would expect a democrat to think. Of course, unlike Rousseau, Locke channeled authority away from the people into representative assemblies, just as liberal democrats later would. But Locke's theory of representative government, because it gives legislatures free reign over the political sphere, invests more power in the people, at least potentially, than do the representative institutions established by the Constitution of the United States. It should be noted, finally, that the democratic implications of Locke's theory are substantially enhanced by a fairly recent development in the real world of politics; one that, in his own time and place, Locke opposed: the extension of the franchise to all adult citizens.

the institutions of civil society will receive the support they are due? The answer is that there is no alternative but to trust representative assemblies to behave as they should. In the end, democracy, even the pale democracy Locke endorsed, rests on faith in the people. Locke's faith was weaker than Rousseau's. He had no confidence in the capacity of the popular masses to rule themselves. But Locke was confident that a properly cultivated class of professional politicians could rule wisely on their behalf. Thus Locke was, at most, a reluctant democrat. Even so, he realized that the true foundation of a legitimate state in a democratic era can only lie in the democratic dispositions of its citizens, a point Rousseau would later make emphatically clear. This lesson holds even for the liberal democracies we know today; regimes that, despite the extension of the franchise, are, if anything, even paler in their democratic commitments than the state Locke envisioned. Institutional safeguards are important. But they can never substitute for a democratic citizenry.

However, faith in the *demos* is reasonable only if there is reason to think that the people are capable of fulfilling their allotted role. Locke realized that the requisite capability is not automatically present in each and every citizen; competence must be cultivated. In setting forth his views on representative government, he brought this theme to the fore, perhaps without quite realizing its importance. Ironically, this contribution of his to modern political philosophy has come to play a larger role in subsequent liberal and democratic theory than has his core conviction, his belief in the existence of morally primary rights. As we will see, competency thresholds were a central concern for John Stuart Mill. They matter in John Rawls's political philosophy too, and in modern, mainstream liberal theory generally. Both Mill and Rawls, however, rejected the idea of morally primary rights, and so do the mainstream liberal traditions their work has shaped.

If supreme authority resides in representative assemblies, as Locke maintained, how can people be sure that their rights will be protected and that