

Journal of Philosophy, Inc.

Political Freedom

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Source: *The Journal of Philosophy*, Vol. 87, No. 10, Eighty-Seventh Annual Meeting American Philosophical Association, Eastern Division (Oct., 1990), pp. 517-523

Published by: [Journal of Philosophy, Inc.](#)

Stable URL: <http://www.jstor.org/stable/2026870>

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POLITICAL FREEDOM*

THREE hundred years after the publication of the *Two Treatises of Government* and *A letter concerning Toleration*, one aspect of John Locke's thought continues to stand out in sharp contrast to the prevailing conventions of both seventeenth- and twentieth-century political theory. This is his hypothesis that institutionalized forms of government are derived from and perpetually rest upon the prior freedom of the people to exercise political power themselves (summarized at 2.171).¹ Locke had no doubt that it would "seem a very strange Doctrine to some" in his own time (2.9). It is no less unconventional today. In the current debate between liberals and civic humanists, for example, the leading participants share the assumption that political freedom is derived from and rests upon basic institutions and traditions.² The aim of this paper is to enable readers to understand Locke's strange doctrine by drawing attention to its distinctive features, first by means of a synopsis and then by a series of contrasts with more conventional views.

I

Prior to the establishment of institutionalized forms of government, people are capable of exercising political power themselves in an ad hoc manner: "the *Execution* of the Law of Nature is in that State, put into every Man's hands" (2.7). The exercise of political power comprises the abilities to know and to interpret standards of right (natural laws), to judge controversies concerning oneself and others in accordance with these laws, and to execute such judgments by punishments proportionate to the transgression and appropriate for purposes of restraint and reparation (2.7–12). Individuals are free to order their actions within the bounds of natural laws and are equal in the "Power and Jurisdiction" to govern the actions of those who transgress these bounds (2.4, 2.6).

Since "every one is Judge, Interpreter, and Executioner," this ad

* To be presented in an APA symposium on John Locke after Three-hundred Years, December 30. John W. Yolton will be co-symposiast, and Vere Chappell will comment; see this JOURNAL, this issue, 510–6 and 524–5, respectively, for their contributions.

¹ The numbers in parentheses throughout refer to treatise and section numbers of Locke, *Two Treatises of Government*, Peter Laslett, ed. (New York: Cambridge, 1970).

² John Rawls, "Justice as Fairness: Political Not Metaphysical," *Philosophy and Public Affairs*, xiv (1985): 223–252; Richard Rorty, "The Priority of Democracy to Philosophy," in *The Virginia Statute of Religious Freedom*, M. Peterson and R. Vaughan, eds. (New York: Cambridge, 1987); Michael Sandel, *Liberalism and the Limits of Justice* (New York: Cambridge, 1982); Charles Taylor, *Philosophical Papers*, Vol. 2 (New York: Cambridge, 1985), pp. 185–339.

hoc form of self-government, or individual popular sovereignty, does not run smoothly in practice (2.136). People disagree on a “common measure to decide all Controversies between them” and they are reluctant to concede that a law is binding in their own case (2.124). They lack the motivation to participate in the ad hoc adjudication and prosecution of disputes when the case does not concern them, and they tend to participate with passion and revenge when it does (2.125–6).

To overcome these difficulties, people set up institutionalized forms of government by uniting into a community and conditionally placing their political powers in the hands of designated legislators and executives (2.87–9, 95, 132, 144). Accordingly, political communities and governments not only derive from, but also perpetually rest on, the abilities of the citizens to judge and act politically. The members entrust their political power on the condition that the governors will exercise it in accordance with the public good. If the people find that their trustees (either the executive or legislators) abuse the power given to them and “act contrary to the trust reposed in them,” the bond of obligation between governors and governed is forfeited, political power devolves “into the hands of those that gave it,” and they may use it to remove them. “And thus,” Locke emphasizes, “the *Community* perpetually retains a *Supream Power* of saving themselves from the attempts and designs of any Body, even of their Legislators, whenever they shall be so foolish, or so wicked, as to lay and carry on designs against the Liberties and Properties of the Subject” (2.149). As he explains in more detail in the final chapter, when political power devolves to the people, they exercise it in the form of a revolution to remove their untrustworthy governors, just as they would proceed against lawbreakers prior to the establishment of legislative and executive institutions, and “the People have a Right to act as Supreme, and continue the Legislative in themselves, or erect a new Form, or under the old form place it in new hands, as they think good” (2.243).

Who has the right to judge when the trust has been forfeited and government dissolved? Locke’s answer is that “*The People shall be Judge*” and by this he means “*every Man is Judge* for himself” (2.240–1). Then, the “Body of the *People*” should execute this judgment by forcefully removing the unjust rulers. If this fails, each person who so judges has the right to act as best one can (2.242–3; cf. 2.168). Locke stresses that “*this Doctrine* of a Power in the People” will not lay “a *ferment* for frequent rebellion” (2.224–230) because people will not actually engage in a revolutionary contest until oppression touches the majority, or touches only a few but seems to threaten all (2.208–210, 2.230, 2.168).

The final claim Locke advances is that his account, in addition to being an explanation and justification of resistance to oppression, is also the best means of hindering oppression in the first place. Under any institutionalized form of government, those in power will be tempted in various ways to abuse the power entrusted to them: to develop an interest separate from and in violation of the good of the people (2.209–210, 2.228). This theme is emphasized even more emphatically in *A Letter concerning Toleration*³ where he analyzes the post-Reformation case of government imposing a uniform religion and persecuting religious dissenters. The “properest way to prevent the evil, is to show them the danger and injustice of it”; that is, to confront power holders with a citizenry who know the popular basis of government, who constantly judge the public actions of their trustees, and who are always ready and willing to exercise political power themselves when it is abused (2.226; cf. 2.228).

II

The distinctive features of Locke’s portrayal of political freedom can now be thrown into clear relief by contrasting them with a number of seventeenth-century alternatives. First, the conventional means to check the abuse of institutionalized forms of political power are all found by Locke to be insufficient. The argument, advanced by proponents of mixed and balanced government, that representative institutions, the division of powers, and the rule of law constitute sufficient checks was falsified in practice by the ability of seventeenth-century absolute monarchs to override these limitations (2.107, 2.111–2, 2.163). Further, these institutional arrangements, while important, are not always sufficient to stop an oppressive representative body (2.138, 2.149, 2.221–2). Locke is skeptical of the republican belief that participation in government fosters citizens oriented to the public good and impervious to the temptations of power (2.156, 2.223). He also rejects the claim that, as long as citizens are free to appeal to courts and parliaments, they will be able to hinder oppression and thus render revolution unnecessary. Locke learned from the unsuccessful attempts by religious Dissenters in the 1660s and 1670s to gain civil and religious liberties by legitimate means that those in power could block the Dissenters’ appeals, stigmatize them as “seditious,” and introduce repressive legislation (2.218). In *A Letter concerning Toleration*, he argues that the separation of church and state, and a clear distinction in law between politics and religion, along with representative institutions and a Bill of Rights, while necessary, are not sufficient to defend a free and tolerant society from oppression. The ultimate guardian is again said

³ James Tully, ed. & intro. (Indianapolis: Hackett, 1983).

to be the ability of the people to judge if their governors are ruling in accordance with the public good and to be ready to remove them if they are not (*ibid.*, pp. 52–5).

Second, Locke's location of political power in the people contrasts sharply with the customary beliefs of his contemporaries. The rebellions of early modern Europe were standardly understood to be nonpolitical acts of self-defense by the people against a ruler who had attacked them. They were not thought of as political acts, because, on the conventional view, political power was never originally in the hands of the people and, consequently, could not devolve back to them. In addition, the "people" was interpreted as either a single person acting in self-defense or an established representative of the people (usually a parliament or an estate) defending them against an attack by a monarch. Theorists of mixed and balanced government could not claim that the representative bodies, let alone the people, exercised political power in a rebellion without undermining their theory that political power always exists in a mix or balance between monarch and representative bodies. Republicans could not say that the people exercise political judgment and power outside of political institutions, because they held that political judgment and power come into being with the establishment of an authoritative political community. And all these authors agreed that the worst conceivable basis for government would be the judgment of the multitude.

These commonplaces began to appear questionable in the light of the English Civil War. In the latter phase, the people took up arms against their own representatives and they presupposed the right to exercise political power, not just to defend themselves, in trying and executing Charles I and in setting up a new form of government. Either one held to the conventional understanding, and thereby deemed this exercise of popular sovereignty illegitimate, as Kant was classically to do, or one reconceptualized the power of the people, and thereby deemed this judicial proceeding legitimate, as Locke did. Furthermore, Locke wrote and published the *Two Treatises* to justify revolt against the persecution of religious Dissenters during the Restoration. Since the Dissenters were excluded from public office and lacked sufficient support in Parliament, he needed to ground the right to judge, initiate revolt, and reform government in the people themselves. The extent to which Locke deviated from orthodoxy can be measured by the widespread repudiation of the *Two Treatises* in 1690 because it presented an unacceptably radical interpretation of the Glorious Revolution.⁴

⁴ See Julian Franklin, *John Locke and the Theory of Sovereignty* (New York: Cambridge, 1978); Richard Ashcraft, *Revolutionary Politics and Locke's Two Treatises of Government* (Princeton: University Press, 1986); Mark Goldie, "The

III

A contrast with the current debate between liberals and civic humanists can now be used to complete this survey of Locke's understanding of political freedom. Both sides start from the assumption that the foundation of a modern democratic society is the basic structure of post-Reformation institutions of representative government, the rule of law, religious toleration, and civil liberty. Accordingly, the role of the political philosopher, as John Rawls typically states, is to explicate or articulate the "basic intuitive ideas that are embedded in the political institutions of a constitutional democratic regime and the public traditions of their interpretation" (*op. cit.*, p. 225). This consists in making explicit the implicit consensus on conceptions of political agency and social cooperation which underlie surface disagreements and accord with the basic institutions. Despite their disagreement on what forms of political agency and cooperation best serve to support and enhance a democratic society, civil humanists are just as concerned to grant priority to political institutions, practices, and communities. Political institutions and public traditions of their interpretation, one might say, are taken to be sovereign.

The leading writers in the debate have not considered Locke's opposite hypothesis that political institutions and traditions rest upon the political freedom and popular sovereignty of the people. Instead, they have misinterpreted Locke from within their very different conceptual framework and, as a result, assimilated him to either Hobbes or Benjamin Constant, both of whom share their premise of institutional sovereignty. With Locke's hypothesis elegantly disposed of in this preemptive fashion, the conventional institutional theories, which Locke found insufficient to explain how concentrated political power can be held in check, have been recirculated as the solutions to contemporary problems.

This anti-Lockean consensus can be partly explained by the theoretical sources of the debate. Liberals draw on Kant, who lays it down that the basic structure of law and its agents is sovereign, not the consent of the governed, and can never rightfully be disobeyed.⁵ Civic humanists draw on Aristotle, Cicero, Machiavelli, Rousseau, and Hegel, all of whom concur that the necessary precondition of

Roots of True Whiggism 1688-94," *History of Political Thought*, 1, 2 (1980): 195-236; Mark Goldie, "The Revolution of 1689 and the Structure of Political Argument," *Bulletin of Research in the Humanities*, LXXXIII (1980): 473-564; and my "John Locke," *The Cambridge History of Political Thought: 1450-1700*, James Burns, ed. (New York: Cambridge, 1990).

⁵ John R. Wallach, "Liberals, Communitarians, and the Tasks of Political Theory," *Political Theory*, xv, 4 (November 1987): 581-611, esp. pp. 587-8.

and limitation on political judgment and action is an established and authoritative political community. Moreover, ever since the Reaction to the French Revolution and the attack on Lockean popular sovereignty by Burke and Bentham, there has been a widespread tendency to take political, social, and economic institutions as foundational and then to ask what forms of freedom are compatible with them. Constant,⁶ for example, set forth this picture of the relation between freedom and institutions in a form that has become the "horizon" of modern political thought for many liberal thinkers. Revolution as well has been reconceptualized as a social movement caused by the underlying social and economic institutions of the modern world, rather than as a political action in response to misgovernment.

The main theoretical argument against Locke is that the abilities to judge and act politically are acquired through practice, and practice presupposes and takes place in the context of practices—political institutions and communities. Therefore, to rest these institutions on the prior abilities of the people to judge and act politically is a philosophical mistake as well as a recipe for anarchy and confusion in practice.

Since Locke wrote extensively on how abilities to judge and act are acquired by practice in practices, it is difficult to believe that he overlooked this point when he came to write the *Two Treatises*.⁷ Rather, the mistake may lie with his opponents. Their assumption appears to be that political abilities are acquired in *canonical* political institutions: namely, exactly those political institutions occupied by members whose overlapping consensus of judgments and actions is said to be authoritative. So, the judgments and actions of those who are outside these institutions, or are critical of them, will be, by definition, unreliable and illegitimate. Locke was, of course, familiar with this form of argument, used for example by Anglican royalists against Dissenters, and he devoted most of book one of *An Essay concerning Human Understanding*⁸ to exposing its self-validating circularity.

The argument is mistaken because people are able to acquire and exercise political abilities outside the canonical institutions and traditions. Indeed, they often acquire them through the experience of

⁶ "The Liberty of the Ancients Compared with That of the Moderns," in *Political Writings*, Biancamaria Fontana, ed. (New York: Cambridge, 1988).

⁷ See my "Governing Conduct," in *Conscience and Casuistry in Early Modern Europe*, E. Leites, ed. (New York: Cambridge, 1988); and John Dunn, "Bright Enough for All Our Purposes: John Locke's Conception of A Civilized Society," *Notes and Records of the Royal Society in London*, XLIII (1989): 133–153.

⁸ Peter Nidditch, ed. (New York: Oxford, 1975), 1.3.20–2; cf. 1.4.22–6. Rorty has carried this form of argument further in "Thugs and Theorists," *Political Theory*, xv, 4 (November 1987): 564–580.

exclusion from and oppression by these institutions. The Dissenters' struggle for religious toleration and political enfranchisement and the European women's movements are well-known examples of this. Further, according to Locke, the faculty of judgment, even though it is always developed in the context of a practice, involves the reflexive ability to suspend and examine the authoritative traditions of that practice itself.⁹ Finally, unlike Locke's hypothesis, this form of argument cannot explain how political institutions are set up or changed. Either they must be taken for granted, as in the current debate, or a mythical legislator is required, as in the republican tradition.

The major pragmatic argument against Locke is that members of modern societies are shaped and constituted by the massive and complex institutions of power and authority. Therefore, from a sociological point of view, their judgments and actions derive from and rest upon these institutions rather than vice versa. The absence of revolutions in Europe since 1850 is often said to support this and to falsify the theory of popular sovereignty.

In reply, one might point to the remarkable revolutions that occurred in Eastern European countries over last winter. These outbreaks of popular sovereignty were neither predicted by, nor did they conform to, the social and economic theories of revolution available in the social sciences. The people involved did not have the background representative institutions that are said to be necessary to foster political freedom and judgment. Nor did they have the experience of participating in republican institutions in order to develop civic virtue and discern the common good. Their activity of civil dissent prior to the revolutions was also insufficient to reform their governments. Yet, for all that, their revolts were not simply acts of self-defense. The people claimed to respond to political oppression by governments whom they judged to have forfeited their trust (often in these terms). They proceeded to overthrow their governors, to put them on trial and punish them, and went on to set up new forms of government and new governors, as they thought good.

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⁹ For one way of working out this line of argument, see my "Wittgenstein and Political Philosophy," *Political Theory*, xvii, 2 (May 1989): 172–204.