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Second Treatise of the Social Contract: A Comparative Analysis of Locke and Rousseau

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BACKGROUND

When examining the history of political philosophy and its role in shaping real-world political systems, few have been as influential to the canon of American political thought as the philosopher John Locke (1632-1704). The impact that his writings had on the formation of the United States Constitution and on the evolution of the idea that the consent of the governed is necessary for legitimizing a political system is indisputable. In the world of political philosophy, however, Locke represents a certain tradition of justification; the state of nature and contract-based arguments he used, which built on those of Thomas Hobbes (1588-1679), still influence the way that many individuals today view politics. Likewise, the writings of Jean-Jacques Rousseau (1712-1778) helped to inspire an era of political discontent leading to (temporary) democratization, specifically with respect to the French Revolution. Locke and Rousseau make use of a number of the same terms (state of nature, social compact, etc.), but these terms' place in Rousseau's theory of society, particularly with respect to justification, is markedly different. Both are concerned with the same question — what makes a political society legitimate?¹ — but their answers, while similar in some respects, vary in important ways.

This paper will lay out the two authors' conceptions of political legitimacy in order both to highlight their similarities and accentuate the places where the two diverge. To do so, it will first look at what Locke's notion of consent actually means, and then examine Rousseau's conception of the general will and the role it plays in making a government legitimate. This paper is primarily exegetical, but this does not mean that it is not arguing for specific understandings of Locke and Rousseau. Specifically, the view I take of Rousseau in this paper

¹ “To this purpose, I think it may not be amiss, to set down what I take to be political power...and shew the difference bewtwixt a ruler of a commonwealth, a father of a family, and a captain of a gallery” (Locke 7-8).

“I want to inquire whether there can be some legitimate and sure rule of administration in the civil order, taking men as they are and laws as they might be” (Rousseau 17).

treats him as less of a contract theorist than other interpreters of his works have at times considered him to be. The view articulated — both through my own analysis and through interpretations by academic authors — are the ones that I hold, but I cannot strictly call them “my” views. They have been heavily shaped both by the classes I have taken and by other interpreters of the works. Further, I hope this paper, merely by its content, will continue to encourage thought on what I believe to be one of the most important questions: namely, what makes political society legitimate? By examining the themes of Locke and Rousseau — consent and property, freedom and the general will — I hope to engender thought on this topic.

LOCKE

Locke begins his normative assertion of how a legitimate political society functions through an examination of a hypothetical “state of nature” (essentially a time prior to the existence of political society) and what the condition of natural man in that state would be. Central to Locke’s argument is the natural self; only when abstracted from the contingencies of modern sociological systems can one determine what rights government ought to protect because only then can one determine what rights inhere in the human condition. He seeks to determine what natural rights man has to determine what ends government should take. Specifically, Locke posits that in the state of nature man has “a power ... to preserve his property; that is, his life, liberty and estate, against the injuries and attempts of other men” (Locke 46). Locke says that these rights results from “the law of nature² ... which obliges every one” (Locke 9), under which

² It is beyond the scope of this paper to give a full summary of what Locke means when he discusses natural law. A quick summary of the idea is as follows: “The natural law concept existed long before Locke as a way of expressing the idea that there were certain moral truths that applied to all people, regardless of the particular place where they lived or the agreements they had made. The most important early contrast was between laws that were by nature, and thus generally applicable, and those that were conventional and operated only in those places where the particular convention had been established. This distinction is sometimes formulated as the difference between natural law and positive law” (Tuckness).

there is an “*equality of men*” (8). By equality, he means that all are “*equal and independent*” with respect to “life, liberty, and possessions” (Locke 9).³

Accompanying this right is the necessary power of being able to punish violators of such rights, and each holder of rights wields that retributive power. In the State of Nature, each is judge, jury, and executioner of those who infringe on his or her property, constrained only by the limits of what he or she is able to do and by reason; one ought not go farther in punishing an offender than their crime deserves. However, Locke acknowledges that the conditions in the state of nature are far from perfect, saying that the very purpose of political society is to “avoid, and remedy those inconveniencies of the state of nature, which necessarily follow from every man’s being judge in his own case” (Locke 48). When each is the judge in his or her own case, there is a high probability that he or she will be biased in the punishment that he or she gives out. This is why the political state is vested with power. Though there are rights in the state of nature, “the enjoyment of [them] is very uncertain” and there “wants *a known and indifferent judge*, with authority to determine all differences according to the established law” (Locke 66). Thus, political society’s main aim is to protect the rights that exist in the state of nature while placing retributive power in a more neutral body.

In Locke’s view, then, political society involves all laying down the right to judge, but unless this is done consensually, it is not legitimate. Locke writes,

Men being, as has been said, by nature, all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent. The only way whereby any one divests himself of his natural liberty, and puts on the *bonds of civil society*, is by agreeing with other men to join and unite into a

In short, it is a law that applies to all simply by nature of their existence as humans.

³ It is contestable to what extent Locke maintains equality in his state of nature and to what extent he introduces a number of “civil” power relations carried over into political society, but the scope of this paper is not such that it can address such a topic in depth. It is enough for the purposes of this paper that Locke posits these specific rights and that he does so on the basis of a certain type of natural equality that he may or may not later abandon prior to the institution of political society.

community for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any, that are not of it (Locke 52).

In other words, political society does not result until the individuals themselves have agreed to come together into some form of association. Consent is essential to this conceptualization of political society. As Jules Steinberg writes, “the transformation from a nonpolitical existence to a political one can only legitimately be accomplished by the individual consent of each individual in the state of state of nature” (Steinberg 60). Consent is central to Locke’s political doctrine. As Steinberg argues, though, Locke’s doctrine of consent goes further than a mere agreement between individuals in the state of nature. He contends that “Locke does not use the idea of consent as a means of establishing a doctrine of real or actual consent” (Steinberg 61). Rather,

Locke uses this idea as a means of indicating the rationality of particular kinds of actions. That is, Locke relates consent to rationality in the sense that he is able to express his rational approval and/or disapproval of specific kinds of acts by metaphorically suggesting that individuals either consent or do not consent. ... Locke’s doctrine of consent is more hypothetical than it is real (Steinberg 62).

More than simply deriving its legitimacy from the actual consent of the governed, government must fulfill certain ends in order to be legitimate.⁴ The relevant question is whether individuals in a state of nature *would* agree to the societal conditions that exist, not whether they themselves have specifically consented, and the answer to this question is provided by determining whether a society has been constituted in accordance with specific normative ends. Specifically, Steinberg points to governmental protection of property. If the government is working to protect

⁴ Steinberg relies heavily on the claim that Locke is responding to Filmer’s doctrine of paternalistic power first and foremost, and his contention that consent is largely a metaphorical conception is grounded in such a reading. He says, “Locke uses the idea of consent as a figurative means of drawing the distinction between a child and an adult. That is, Locke’s assertion that only a person’s consent can be the basis of citizenship and that the only legitimate basis of submission to government is individual consent constitutes an allegorical way of arguing that legitimate government must entail treating adult citizens as adults and not as children” (Steinberg 65). By this he means that political authority cannot be unconditional “because adults do not have an absolute and unconditional moral obligation to any person ...” (*Id.*).

its citizen's property, then that government is legitimate and individuals have an obligation to obey it.

Steinberg continues to develop this idea in his discussion of tacit consent. According to him, Locke makes "the occurrence of tacit consent an unavoidable event," explaining further that "any significant characteristic of voluntariness or willingness is absent" (Steinberg 68). This is because all persons who continue to exist in a society past the age when they are able to consent agree to obey the laws of that society for as long as that society remains legitimate (Steinberg 68-69). Legitimacy is not contingent on consent; rather, a legitimate government is a form to which an individual would consent. For Steinberg, the subtle advent of consent is problematic; individuals need do nothing more than live in a society to agree to be subject to its laws. As such, he conceives of Locke's notion of consent instead as a "trust" (69), a notion Locke himself explicitly develops. Government exists for certain ends, and it is legitimate as long as those ends are achieved. When the government fails to achieve these ends, it is dissolved. Locke writes, "The reason why men enter into society, is the preservation of their property; ... it can never be supposed to be the will of the society, that the legislative should have a power to destroy that which every one designs to secure, by entering into society" (Locke 111). Locke uses the notion of consent to explain the form of government that he believes to be legitimate. It must protect the property of those who contract into it, even if they only do so tacitly through their residency.

Steinberg's interpretation of Locke is more than vaguely reminiscent of John Rawls (1921-2002). Locke seems to use the state of nature in the same way that Rawls uses the original position: rational individuals⁵ would agree to a certain society if they could bargain free of restraints that would arise in that later society. Obviously, many differences arise based on what

⁵ The self that Locke posits, though, is far from Rawls' deontological, more-fully noncontingent self.

they believe those individuals would agree to —Rawls is far more redistributive than Locke — but some similarities can be seen between the two, especially with respect to justification.

ROUSSEAU

Rousseau's articulation of political legitimacy bears some resemblance to the view proposed by Locke, but there are marked differences as well. Unlike Locke, he does not begin with natural rights. The end of government is not to protect natural rights that exist in the state of nature. This is because, in his view, rights do not exist in such a state. He writes, "But the social order is a sacred right which serves as a foundation for all other rights. Nevertheless, this right does not come from nature. It is therefore founded upon convention" (Rousseau 17). There are no laws of nature in the sense that Locke speaks of them; rights cannot exist independent of political and social society. Rousseau then demonstrates that nature affords no legitimate reason for one person to have power over another. Political power must have a different origin, and that origin is convention. The idea of convention in many ways resembles the idea of consent, and it derives from a method of association that Rousseau calls the social compact. Persons come together in order to "gain the upper hand" against the "obstacles" that hinder their wellbeing in the state of nature (Rousseau 23). This, says Rousseau, is the only way that the human race would be able to survive (*Ibid.*).

Rousseau, though, articulates an end of government that is different than Locke's conception, which in turn affects his view of what constitutes a legitimate government. Rousseau lays out his aim in the following terms: "Find a form of association which defends and protects with all common forces the person and goods of each associate, and by means of which each one, while uniting with all, nevertheless obeys only himself and remains as free as before"

(Rousseau 24). While he and Locke agree that the state exists to protect persons and property, Rousseau adds the characteristic that it must leave each individual subject only to his or her own will. Rousseau's solution as to how this type of situation can come about is found in the idea of the general will. Rousseau speaks of the general will as "the total alienation of each associate, together with all of his rights, to the entire community. ... *Each of us places his person and all his power in common under the supreme direction of the general will; and as one we receive each member as an indivisible part of the whole*" (Rousseau 24). Political society involves each becoming part of a larger whole; liberty for individuals is maintained by joining together in a way that maintains each individual's sovereignty. As Christopher Bertram explains, "Rousseau claims that a legitimate political order is one where the sovereign people are governed by their own general will: where the people are both rulers and subjects at the same time" (403). This view satisfies Rousseau's question as posed above. The general will allows the people to come together for the sake of protecting their lives and their goods, but it does so in such a way that their freedom is not limited. Everyone "only obeys himself and is as free as before" because each is both subject and sovereign simultaneously (Rousseau 24). As an article in *Harvard Law Review*'s discussion of Rousseau's view summarizes it,

Since this will of the State is the general will, it is the will of all, and accordingly it is in the individuals themselves who create such restrictions upon their own wills. They are not, therefore, in submission to a will superior to their own. They are in submission to a general will formed by their own wills. They thus remain perfectly free (28).⁶

No member of the society is subject to a will other than his or her own; the group of subjects *is* sovereign, and every (legitimate) act of sovereignty is a true act of the will of the people.

⁶ It would be more accurate to claim that the general will is the *true* will of all. Rousseau makes it quite clear the will of all and the general will are not the same things, as "The latter considers only the general interest, whereas the former considers private interest and is merely the sum of private wills" (Rousseau 31).

The general will is what is truly in the best interest of all the people. It will choose those laws that tend to produce the best society overall. They are those that reflect the “fact of the matter, independent of what anyone happens to think, about whether [a] law is genuinely in [the citizen’s] common interest ... and safeguards the freedom of each of them” (Bertram 411). The choices of the citizens acting democratically may or may not reflect what is best for them (*i.e.* the general will), but there will always be a choice that they *should* make on any issue. Whether or not the will of the citizens is correct, the general will (what they should have willed) “is always right and always tends toward the public utility” (Rousseau 31). It will only be realized under certain ideal conditions — citizens must be educated, must deliberate, etc. (Rousseau 32) — but it always exists nonetheless. If a sovereign body is acting in a way that is in accordance with the general will, then it is legitimate. As such, the sovereign is in charge of enacting laws that are general to all.

Rousseau is careful to note that any act of the sovereign that addresses a particular individual is outside the scope of the general will. Because each member of society is a part of the sovereign and the general will is the will of the sovereign, the general will cannot take action against a particular member of the sovereign. The sovereign would be ruling against itself in such a situation. Thus, in order to make sure that the laws of the sovereign are carried out, an executive is put into place. To do this, the sovereign sets forth a general law establishing the position. However, because choosing an executive is a particular act, the sovereign does not decide who will fill the position. Doing so is a job of the people *qua* subjects. As Rousseau describes it, an “act of government” occurs “before a government exists” (77). The executive then takes care of executing the laws passed by the sovereign where particulars are concerned. As such, the sovereign is able to maintain its legitimacy only by committing acts that are general

and in accordance with the general will. In this way, each member of the social compact can remain as free within the compact as without; in both instances, he or she is subject to no will other than his or her own.

RESULTING SOCIETIES

Rousseau's conception of the ends of government is different than Locke's, and as such, the society that results is different as well. One area where this comes to the fore is on the subject of property. Locke views property as a natural right existing in the state of nature, so it is a right that political society would then protect. As such, it would seem that only those governments that do not tax past the point necessary to protect the remainder of the property held by the citizens who have consented to the formation of that government would be justified. While some authors have looked to Locke's view and found room for a redistributive conception of property due to his views on the importance of charity, it is likely that "Locke may have believed, as many right-libertarians do, that such taxation [*i.e.* taxation for the sake of redistribution] is unnecessary in a healthy economy because the market provides enough jobs for the able-bodied and voluntary charity provides enough support for the infirm" (Widerquist 8-9). Therefore, it is reasonable to conclude that Locke allows only for minimal taxation, permitting it only to the extent that is needed to protect remaining property. Any greater taxation than this will not exist in a legitimate government because it would not adequately respect property rights.

This is the view that I take of Locke's theory. Widerquist is concerned with addressing various interpretations of Locke's theory that have been proposed, and he summarizes several authors who believe that Locke would have seen redistribution as justified in some circumstances. However, based on the strong emphasis Locke places on the government

protecting the property rights of the people, I do not see room for redistribution in his theory. He does acknowledge that taxation must exist and that any taxation is only legitimate if it has been consented to by the majority, but if one of the primary reasons for which society is formed is to protect property, then it seems unreasonable that a majority of persons would allow a redistributive system to exist. Further, if consent really does serve the function that Steinberg has argued it does in Locke's theory, when Locke says that consent is necessary for taxation, he really means that reasonable individuals would not be willing to consent to a society where they knew that their property, which is what they are attempting to protect via society, may be taken from them and given to another.

As Alex Tuckness has discussed in "Locke's Political Philosophy" in the Stanford Encyclopedia of Philosophy, this is similar to the view taken by Robert Nozick (1938-2002). Tuckness writes, "Nozick takes Locke to be a libertarian, with the government having no right to take property to use for the common good without the consent of the property owner. On his interpretation, the majority may only tax at the rate needed to allow the government to successfully protect property rights" (Tuckness). Because it is difficult to conceptualize a situation in which reasonable individuals would contract into a society primarily for the purpose of protecting their property but would allow for that society to redistribute the property, I agree with Nozick's interpretation.

Rousseau's theory, on the other hand, has been understood to be much more absolutist. Because each legitimate action of the sovereign is taken according to the general will, and because the general will is in accordance with the (idealized) will of each member of society, no limits can reasonably be placed on sovereign power other than those that can be placed on the general will. Unlike Locke, who allows legitimate sovereignty over a citizen to extend only to a

certain point, for Rousseau, “if the individual retains certain rights in society, he does so in his capacity as a man. As citizen he is bound by the *omnipotence of the State*” (“Jean Jacques Rousseau...” 30, emphasis added). No individual has to act outside of how his or her own will has mandated that he or she act, but each act of the sovereign is an act of his or her will. One way of conceptualizing this is to consider that the original reason for willing association is to promote the good of all. Every act of the sovereign after this original willing must be for that purpose, so even if the particular will at that moment of a certain person is not in accordance with the general will, instead having a particular aim, his or her original will is to promote the general will, and thus he or she is not subjected to any will but his or her own, even if he or she does not agree with the outcome in that particular instance. Thus, hypothetically Rousseau’s society could be extremely redistributive without being illegitimate, with the sole condition that such redistribution actually be for the good of all.⁷ However, if a Lockean proto-libertarian system of securing property were better for society, then a legitimate government would look like what Locke proposed. In other words, Locke’s version of a legitimate society could hypothetically be legitimate in Rousseau’s view as well; it would merely need to be proven that a non-redistributive system was indeed best for society. It is less likely, though, that Rousseau’s “legitimate government” could also be considered legitimate by Locke since there are less restrictions placed on sovereignty (the sole condition being that the will must be general). While their two theories could be actualized in a similar fashion, this is not likely. Locke’s society need not necessarily be best for all; it need only respect the property of its members.

In this way the theories of Locke and Rousseau diverge most evidently. Because the primary focus of Locke’s political society is the protection of property while Rousseau’s political

⁷ This is again reminiscent of Rawls. Redistribution is permissible to whatever degree it benefits society as a whole, which is not dissimilar from his difference principle.

society would allow for such a redistribution, the two theories are operationalized in markedly different ways. This alone serves to demonstrate that the two theories *qua* theories share various aspects of their vocabulary while signifying different ideas. Rousseau talks about the social compact, but for him it is not in the sense of a contract; the validity of the society that results is not measured based on whether individuals would consent to it but on whether it advances the general good of that association. Rousseau assumes that political society will come to exist but that individuals in it will want to be “as free as before” (Rousseau 24). The society is assessed by considering whether individuals can remain free; whether society is shaped according to the general will of all, which in turn advances (whether each recognizes it or not) the good of all.

CONCLUSION

Rousseau and Locke have a number of parallels between their political theories, but there are also major, important differences. For Locke, there exists a metaphorical state of nature in which rational individuals form a society; a government's legitimacy is derived from what reasonable individuals would consent to in such a state. Because individuals would join together to protect their property, they would consent to no government that would affect in any substantive way their ability to gain and maintain property. Rousseau's notion of the ends of government is more robust. He acknowledges that issues that make it difficult to survive do arise in the state of nature. As such, individuals form societies. However, in so doing, each seeks to remain free while also being protected. This influences his conception of the general will, which serves as his standard for legitimate government. Government is only legitimate if it reflects the general will. This will has no limits on it other than that it remain general. If protecting property as vigorously as Locke's conception of government mandates is not in accordance with the

general will, then a government that does so would be an illegitimate government. Conversely, if such a vision of society does accord with the general will, then only those societies that do so would be legitimate. There are no distinct political ends other than life and liberty for Rousseau; thus a society reflecting his theory could take on a variety of forms. Rousseau's view has been accused of absolutism because of the essentially limitless power of the sovereign, which sharply contrasts with Locke's limited role of government.

Just as the works of Locke and Rousseau influenced the political eras surrounding their authorship, the principles embodied in and promoted by their views remain relevant today (if in a slightly different format than the revolutions they inspired). The distinction between libertarian individualists focused on a very specific theory of possession and rights contrasts markedly with theories of society based on communal obligations. For Lockean libertarians, the political obligations we have one to another are only not to infringe on the rights of others. For those who continue in Rousseau's tradition, the political actions of each affect all; each is a member of a sovereign body, and what is in the true interest of all is really in the interest of each. Our political obligations thus extend further than merely respecting rights. We must respect each as a member of the sovereign. At the same time, Rousseau's theory potentially leads to and has been accused of absolutism. It forces some conception of the good that may not be universally held to be practiced by all. In the discussion between Locke and Rousseau, each seems to have something to offer. The questions of how far rights extend and what obligations we have to each other are still relevant political considerations, and understanding Locke and Rousseau helps us better to discuss them.

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