

CHAPTER – III

LOCKEAN CONCEPTION OF SOCIAL CONTRACT

John Locke (1632 – 1704) secured a prominent place in the history of English political thought. He is well acclaimed as a champion of natural rights, and also popularly known as the father of philosophic liberalism. The political ideas of Locke are to be found in his very important work *Two Treatises on Civil Government* (1690). The first *Treatise* is a logical refutation of the political and social philosophy of Sir Robert Filmer's work *Patriarcha* (1654). In the second *Treatise* Locke discussed his views on political philosophy. It is a comprehensive work explaining the origin, authority and purpose of civil government. Also, it deals with the state of nature, social contract, political society, forms of government, and right to property. The most important feature of Locke's work is that it analyses the various aspects of state and government. Locke not only opposed the divine rights of kings advocated by the Church of England, but also opposed the doctrine of absolute sovereignty advocated by his predecessor Hobbes. He ridiculed the view that all government is absolute monarchy that kings have a divine right to absolute power, and that mankind has no right to natural freedom and equality.

Locke adopted the technique of social contract to explain that legitimate political authority is derived from the consent of the people, which can be withdrawn when the freedom of the individuals is violated or infringed. The three cardinal principles that the *Two Treatises* exposed and defended were freedom, consent, and

property. Men are naturally in a state of perfect freedom to order their actions and dispose of their possessions according to their will and wish within the bounds of the law of Nature.

HUMAN NATURE

Locke developed his social contract theory on the basis of his views on human nature. A detailed discussion on Locke's conception of human nature is found in his *Essay concerning Human Understanding* (1690). He assumed that human beings are naturally endowed with certain basic instincts such as decency, goodness, socially inclination, and capability of ruling themselves. Unlike Hobbes, Locke held that men are capable, efficient, and considerate beings. In fact, Locke's conception of social contract revolved around this idea that the individual was quiet dependable and rational.

Locke believed that man is not as selfish and anti-social as portrayed by Hobbes. He held that man is social and rational being capable of and interested in living in a society. It is not a rule but only an exception that man is selfish, competitive, and aggressive. On the contrary, men are naturally able to govern themselves by the law of nature, or Reason. According to Locke, men are born free and equal. Their freedom is governed on the basis of reason, which guides them how to govern themselves. Men become morally equal as long as the reason in them recognizes the natural laws. Human

beings are disposed to be rational in their character, because of the presence of reason, which is a dominant factor. He maintained that men are moral because they are by nature rational and can therefore discover how they ought to behave. Thus Locke sounds Aristotelian in recognizing rationality as an essence of human beings. With the help of reason, human beings learn to control their emotions, anger, love, and so on. Since men are social and good, they possess sympathy, love and affection towards one another. Consequently, claimed Locke, the first instinct of man was to live in peace and harmony with others. To quote Locke in this context: "men living together according to reason, without a common Superior on Earth, with authority to judge between them, is properly the state of nature".¹

THE STATE OF NATURE

Locke endorsed the view of Hobbes that before man's entry into the civil state, he was living in the state of nature. However, unlike Hobbes, he held that man was living in the state of nature where there was law, order, peace, and property. Like Hobbes, Locke too discussed the state of nature in order to show that the political power is derived from the state of nature. However both Hobbes and Locke held contrasting positions with regard to the conditions prevailing in the state of nature. Thus Locke began his political argument with a profoundly paradoxical assertion, namely, the political power. This is derived from the unpolitical state. To quote Locke's words here:

To understand political power aright, and derive it from its original, we must consider, what state all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man.²

From the above quotation of Locke it is very clear that since the political power originates from and culminates in the state of nature. Locke held that to understand the nature of right as a political power, and the original source from which it is derived, it is necessary to understand the state in which people were living. According to him, such a state is a state of perfect equality and freedom in which people can guide their own actions, and dispose of their possessions within the bounds of the law of nature, without seeking or depending upon the will of any other man. Locke wrote:

A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another, there being nothing more evident than that creatures of the same species and rank, promiscuously born to all the same advantages of Nature, and the use of the same faculties, should also be equal one

amongst another, without subordination or subjection.³

Locke opined that state of nature is a state of equality that promotes the equality of right and freedom. In short, it is a state of equality. The power and jurisdiction in the state of nature are reciprocal to each other. Since all men are equal by birth, all of them have equal powers (rights) to exercise. So, one has to get recognition of the state to exercise power. For example, 'A' can exercise his power as long as the other members in the state of nature recognize it. Similar is the case with every member of the state of nature. He further stated that in the state of nature no individual is superior or inferior to any other individual in terms of exercising ones power, for all created by God. Since God created all men, everybody has equal right to make use of the nature and faculties. As regards the state of nature, Locke further held that:

Though this be a state of liberty, yet it is not a state of license; though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession.⁴

Locke clearly pictured that the state of nature is a state of liberty, but it is not a state of license. The point he wanted to drive home is that although man is endowed with uncontrollable liberty, he is not

authorized to destroy himself or any creature in his possession. Thus his uncontrollable liberty is checked. The state of nature has a law of Nature to govern it, which obliges every one. Thus for him liberty is not the freedom to do whatever one wants to do, but to act within the framework of the law of nature. Therefore, he defended personal independence and freedom as man's fundamental right. Thus, the law of nature is nothing but the reason. In short, reason teaches entire human kind to consult the fact that all human beings are equal and independent before indulging in any type of action. Thus Locke opined that since all men are equal and independent, no one ought to harm another in his life, health, liberty, and possessions. In a way, he demolished the view that some men are superior to some other men. Indirectly he opposed the Aristotle's master-slave distinction. If all are created by the same God and equal to one another in all respect, then no one has to obey the dictates of other. This amounts to saying that, no man has a right to coerce or dominate any other man in the state of nature. Locke emphasized that everyman possesses an equal right to his natural freedom without being subjected to the will or authority of any other man.

The state of nature, claimed Locke, was not a state of war of all against all as advocated by Hobbes. He held that the state of nature was not a state of constant and continuous war because of law of nature that governed the state of nature. In spite of the fact that the

law of nature governed the state of nature, Locke admitted that the state of nature was a state of precarious peace. To quote Locke here:

And that all men may be restrained from invading others' rights, and from doing hurt to one another, and the law of nature be observed, which willeth the peace and preservation of all mankind, the execution of the law of nature is in that state put into every man's hand whereby everyone has a right to punish the transgressors of that law to such a degree as may hinder its violation.⁵

Locke proclaimed that although the state of nature is not a state of war because it has a law of nature to govern it, yet the law of nature needs some authorities to enforce it. He himself raised the question that, suppose there is no authority in the state of nature to enforce the law of nature, what will happen to such a law? He answered that such a law would become vain. This means that some authority is needed to execute the law. Therefore, Locke held that the execution of the law of nature in that state is put into every man's hand. In other words, all the subjects have the right to execute the law of nature. In such a state everyone has a right to punish the transgressors or the violators of the law. The punishment should be so severe to deter others from committing the similar offences by the same person as well as by the others. The punishment given to the transgressors should teach a lesson for others and hinder the violation of similar kind. In a way Locke advocated deterrent theory

of punishment. This is a right of punishment and not merely a right of self-defence. If it were merely a right of self-defence, no one in the state of nature could rightly use force except against persons invading his own rights. But what he wanted to envisage is that every one in the state of nature has a right to punish anyone who launches an offence against the law of nature, whether he is himself the victim of that offence or not. This is possible only when all people are endowed with equal rights in a state of nature.

According to Locke, the right to property in its wider sense refers to right to life, liberty, and property, but in its narrower sense refers to property alone. It is man's right to dispose of himself and of what he sets aside for his own use in whatever ways seem best to him. The right to life, property, and possession is limited only by the obligation to respect the same right in others and it cannot be further limited except with the consent of its possessors. The law of nature allows interference only with aggressors; it does not allow the generality of men to require more of any man than that he should respect that law, which means only that he should respect in others the freedom that he claims for himself. The only law to which all men are subject, whether they like it or not, is not a law made by men. It is not even the undeliberate product of their living in society with one another. It is not custom or convention but the law of reason, which defines the rights and duties that constitute and sustain freedom. The law of nature is therefore the law of freedom. It is a law that men do not make but only discover. The maker of law

requires others for they should submit to his will, and no man can rightly require this of another man without his consent. In the state of nature the right of command belongs only to God. His commands are intended to bring peace, harmony among men, and also to deal justly with one another. In other words, they obey the law of nature, which is obligatory, and dependent on God's will.

Though Locke did not directly criticize Hobbes, he refuted some of the ideas advocated by Hobbes. According to Hobbes, the state of nature is a war of all against all. Locke held that the state of nature is one of "peace, good will, mutual assistance and preservation."⁶ This is defended on the ground that the law of nature provides a complete equipment of natural rights and duties. But the defect of the state of nature is the absence of impartial magistrates, written law, and fixed penalties, to give effect to the rules of right. In the state of nature every man must protect his own interests as best he can, but this is possible only in a government with limited sovereignty.

The state of nature need not be prehistoric, nor a condition peculiar to primitive men, nor even pre-political. Locke held that: "all princes and rulers of independent government are in a state of nature."⁷ What is inferred from this statement of Locke is that the state of nature requires a common judge with authority to regulate all men in the state of nature. Therefore, the state of all men in the state of nature is one and the same. The state of nature is not limited to

any era, prehistoric or historic, for “the world never was, nor ever will be, without number of men in that state.”⁸

NATURAL RIGHTS AND PROPERTY

The conception of natural rights and the theory of property is the third important theme in Locke. He believed that in the state of nature property is common to all men in the sense that everyone has the right to draw subsistence from whatever nature offers. Accordingly, everybody has the right to utilize everything that is offered by nature. In the middle ages it was not uncommon to suppose that common ownership is a more perfect and hence a more “natural” state than private ownership. Another different theory existed in the Roman law, according to which private property begins with the appropriation of things that were commonly used although there was no communal ownership. Locke departed from both these theories. For instance, he advocated that an individual has a natural right to that piece of land that he tills and makes fertile by expending the labour of his body. Further he argued that the right to private property arises because by labour man extends his own personality into the objects produced. By expending his energy upon them he makes them a part of himself. To quote Locke here:

God, who hath given the world to men in common, hath also given them reason to make use of it to the best advantage of life and convenience. The earth and all

that is therein is given to men for the support and comfort of their being.⁹

Locke pointed out that by human reason and revelation, it is apparent that the earth and its fruits belong to God and that He has given it to the human inhabitants in common to enjoy. In fact, Locke tried to answer Filmer's criticism against Grotius by questioning, how can an individual have a private right to any part of a common heritage. God have given the world to men in common and have also given them reason to make use of the world to the best advantage of life and convenience. The world and all that is therein is given to men for the support and comfort of their being. So, everybody has equal right over the content of the world. To put it in the words of Locke:

Though all the fruits it naturally produces, and beasts it feeds, belong to mankind in common, as they are produced by the spontaneous hand of nature; and nobody has originally a private dominion exclusive of the rest of mankind in any of them as they are thus in their natural state.¹⁰

The point that Locke wanted to establish here is that in the beginning no one had exclusive right to own anything in nature. Therefore, the bounty of nature is for the benefit of everybody and everyone in their natural state have the right over the fruits of nature. The beasts

it feeds and the fruits naturally produced are the production of the spontaneous hand of nature. Since fruits and beasts are produced naturally no one has the exclusive right over the enjoyment of these things. Even though the spontaneous hand of nature creates everything in the natural state, there must be a means to appropriate them through some way or other before they can be beneficial to any particular man.

As stated earlier Locke used the term 'property' in two senses. In the wider sense, it includes the rights to life, liberty, and external possessions. In the narrower sense, it refers to the right to external possessions alone. As a matter of fact, Locke's account of property in its narrower sense is considered to be an important part of his political theory. According to him:

Though the earth and all inferior creatures be common to all men, yet every man has a property in his own person; this nobody has any right to but himself. The labour of his body and the work of his hands we may say are properly his.¹¹

Locke held that God gave the world to all men in common to make use of to the best advantage to preserve life and liberty. But what God provided is not often, in its natural form, immediately useful to men. It has to be made useful by their labour. So, men exert their labour power to make the world to get the best advantage. Since man

has an original property in his own person, his labour belongs to himself. Therefore:

Whatever he mixes his labour with, he takes out of the common store and makes it his own. Thus, no one has the right to use it without his permission. He alone can make use of it.¹²

Locke clarified that the law of nature gives man the right to acquire property by mixing his labour with what God had provided. This does not mean that men can accumulate as much as possible. He opined that the law of nature sets the limitation to what one could acquire. Locke set the limitation on the acquisition of private property by holding the view that: "As much as anyone can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in."¹³ This clearly shows that one should not aspire for more than what is required for his survival. Indirectly Locke emphasized on the need of cultivating the habit of self contentment. If he does not set any limitation to his personal or private acquisition of property, then the result would be to invade his neighbour's share. It means that by taking that which he cannot use, he prevents someone else from taking it. The notion of spoiling also includes allowing anything to go to waste. Locke argued that: "as much land as a man tills, plants, improves, cultivates and can use the product of, so much is his property."¹⁴

Locke stated that a man can take as much from the common store as he can use to any advantage of life. This means that every man is the sole judge of what he can use to his own advantage. He may not take more than he can use just because God has given the world to all men in common for their use. Filmer raised the question that how can we know that anyone has taken more than he can use; that he has invaded neighbour's share? Locke answered that he has allowed it to spoil or, if it is land, has allowed it to go to waste. Provided you do not allow what you have mixed your labour with to spoil, and provided you go on mixing labour with it, if such mixing is needed to prevent spoiling or waste, you are presumably using your property to some advantage. For instance:

He that is nourished by the acorns he picked up under an oak, or the apples he gathered from the trees in the wood, has certainly appropriated them to himself. Nobody can deny but the nourishment is his.¹⁵

Even though property is common to everybody, the acorns which one picked up under an oak or the apples he gathered from the trees in the wood are certainly appropriated to himself. These are certainly appropriated to himself, because he exerts himself to collect the acorns and apples from the nature. Therefore Locke claimed that

labour put a distinction between property possessed by the individual and the property shared by all men in common. That added something to them more than Nature, the common mother of all, had done, and so they became his private right. And will any one say he had no right to those acorns or apples he thus appropriated because he had not the consent of all mankind to make them his? We see in commons, which remain so by compact, that it is the taking any part of what is common, and removing it out of the state of nature leaves it in, which begins the property, without which the common is of no use. And the taking of this or that part does not depend on the express consent of all the commoners. Thus, the grass my horse has bitten, the turfs my servant has cut, and the ore I have dug in any place, where I have a right to them in common with others, become my property without the assignation or consent of anybody. This means that I will claim the exclusive right over anything, which is only produced by me without the help of any other. The labour that was mine, removing them out of that common state they were in, have fixed my property in them.

Locke answered Filmer's criticism by advancing the view that it is human labour that distinguishes what is privately owned from what is held in common. Labour is the unquestioned property of the labourer and by mixing his labour with a piece of land, a man acquires the right to whatever he has made of that material. In the state of nature, men have initially a limited right to appropriation. It

is limited by the following factors. (1) An individual can appropriate only that much for which he has a need. (2) He has a right to only that for which he has mixed the labour of his body and the work of his hand.

Locke categorically stated that since property is a natural right derived from natural law, it is therefore prior to the government. It's for the protection of property that men enter into an agreement or contract. The government should recognize this right and embody it in a statutory form. Since the state is created for the sole protection of property, consequently no part or the whole of the individual's property can be taken without the latter's consent.¹⁶ Besides, no taxes can be levied without the consent of the individual. Otherwise it invades into the fundamental right to property and subverts the ends of the government.

PATERNAL POWER

Locke pointed out that the first society was between man and woman that paved the way for a society called family or familial society wherein one finds social cohesion between parents and children. This familial society was the foundation of the very social contract proposed by Locke. He viewed that in the course of time, the society between master and servant came to be added. Conjugal society is made by a voluntary contract between man and woman. It exists chiefly in such a communion and right in each other's bodies which

are necessary to its chief end, procreation. However, it carries along with it mutual support and assistance, and a communion of interests too. These elements are necessary not only to unite their care and affection, but also they are necessary to their common offspring, who have a right to be nourished and maintained by them till they are able to sustain on their own. Moreover, the chief end of conjugal association between male and female is not merely for the purpose of procreation, but it is for the furtherance of the species. We, the inferior creators obey this rule as it is the creation of the infinite Wise Maker. This is what is called family.

Proceeding further, Locke raised the question: why is that male and female in mankind are tied to a longer conjugal association than the other creatures? He answered that it is only because the female alone is capable of conceiving, and bring forth to a new birth. Hence it is necessary that the male has to take care of both the female and the offspring until the latter becomes independent in every respect. At the same time, the father, who is bound to take care for those he has begotten, is under an obligation to continue in conjugal society with the same woman longer than other creatures. The father has to take care of the child until and unless the latter has the potentiality to take care of him/her. Here Locke was stressing more on obligations than rights. Perhaps he was aware of the fact that one cannot talk of rights without discharging one's obligations towards family and society in general.

Although these obligations are imposed upon human beings in the form of ties, they make the conjugal bonds among human beings more firms and lasting when compared to the other species. As regards these relations Locke wrote:

It would give one reason to inquire why this compact, where procreation and education are secured and inheritance taken care for, may not be made determinable, either by consent, or at a certain time, or upon certain conditions, as well as any other voluntary compacts, there being no necessity, in the nature of the thing, nor to the ends of it, that it should always be for life.¹⁷

Locke maintained that although husband and wife differ with each other in their understanding of certain social phenomena as they possess different wills, yet they share the common concern for the welfare of the family. In order to settle the disputes between husband and wife in a family, Locke felt that the power to restore their relation should not be in the hands of either husband or wife, but it should be in the hands of a third person who can act as an 'impartial judge' by not favouring any one of them. This gave Locke a clue to develop his social contract theory, which protects the larger interests of the people in the state. Thus it has wider application. Even though in the state of nature people have difference of opinions, they have common understanding towards the welfare of the state. And the

power to solve the disputes that originate among them should be in the hands of common judge. His common judge is none other than the limited sovereign in the form of an elected government. Thus Locke opposed the absolute sovereignty because it deprives individuals of their natural rights. As a champion of natural rights he opposed anything and everything that deprived men of their inherent rights.

CAUSES OF CONTRACT

Locke made it very clear that if all men are naturally 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. It is possible if and only if there is a mutual agreement among the individuals to join and unite into a community for their comfortable, safe, and peaceable life on the earth. Locke himself raised the following question:

If man in the state of nature be so free, as has been said, if he be absolute lord of his own person and possessions, equal to the greatest, and subject to nobody, why will he part with his freedom, this empire, and subject himself to the dominion and control of any other power?¹⁸

The question that arises is: if men are born free, how do they agree to become subjects of a government? If the state of nature was a state of peace, what was the need for a state by contract? Locke answered that even though the state of nature is a state of peace and the individuals enjoy such a right, the enjoyment of such a right is very uncertain, and constantly exposed to the invasions of others. If all men are kings in the state of nature, then there is no inequality among the individuals. Consequently, all are treated equally in their claim to rights of all sorts. However, in the absence of a strict observer of equity and justice in the state of nature there is no guarantee for the individuals' enjoyment of property. Thus a sense of uncertainty and insecurity prevails over the individuals. The rights in the state of nature are suffering from certain illusions and inconveniences. In the state of nature the peace was not secure and constant. The state of nature is full of fears and continual dangers. The individual is not sure of the moral obligation of his actions, and there is no one to guide him. The corrupt, vicious, and degenerate men might at any time disturb the peace. Thus there is a continual danger for peace. In other words, the so-called peace is not secured and there is no framed law to control and punish the corrupt, vicious, and degenerate men. To quote Locke here:

The great and chief end, therefore, of men's uniting into commonwealths, and putting themselves under government, is the preservation of their property; to which in the state of nature there are

many things wanting... an established, settled known law, received and allowed by common consent to be the standard of right and wrong, a known and indifferent judge, with authority to determine all differences according to the established law, power to back and support the sentence when right, and to give due execution.¹⁹

By citing above reasons, Locke concluded that the state of nature suffered from three ills. They are: (1) laws are not clearly defined, (2) there is no common authority to enforce the laws and rights, (3) there is no recognized judge to settle disputes, if any, among individual. In other words, there is no legislature to make laws, no executive to implement the laws and no judiciary to interpret the laws. Thus the three major parts of a government are missing in the state of nature. According to Locke, it is the internal and inherent desire of the society to establish a social contract. Locke identified the following reasons for opting for a contract by the people.

1. Individual's inability to keep his natural rights against injustice.
2. Since everybody is competent to punish the other for breach of law, the confusion is found to originate in the state of nature.
3. Since, all are sole interpreters of law, inconveniences and confusions are bound to arise in the state of nature.

Locke held that the people in the state of nature have to 'avert' a war which is round the corner and which might break forth at anytime. To avoid the conditions of continual fear of war and its danger, people opted out of the state of nature and entered into a contract. By the contract among themselves people created a civil society or the state. This social contract according to Locke, is all to all. The individuals did not surrender all the rights they enjoyed in the state of nature.²⁰ This contract is for a limited and specific purpose. In fact, people surrendered only one aspect of their natural rights, that is, the right of interpreting and enforcing the laws. The people surrendered their right to the community as a whole and not to an individual or an assembly of men.

Locke asserted that man is created with such natural tendency that convenience and inclination always attracted him and drove him into society. God endowed man with understanding and language to continue and enjoy it. Since every man is created by God, no one is superior or inferior to any one. Being creations of the one and the same God, they are all equal in every respect. The things that are found wanting in a state of nature are an established, settled, known law; a known and impartial judge with authority; power to back and support the sentence, when right, and give it due execution. In other words, although people are living and leading a peaceful life, there is no authorized and authoritative element to solve the social disputes, which may originate at any times. And there is no authorized

element to execute and direct the subject/s. According to Locke, people can have a political or civil society only when they surrender their executive power of the law of nature to a person or a group of persons. Whenever people enter into such a political or civil society, which is under the control of one body politic or one supreme government, to safeguard their property, they have to surrender their natural rights, which they enjoyed in the law of nature.

CONTRACT

Locke tried to explain the origin and nature of political authority within the framework of social contractualism. He justified the Glorious Revolution and wanted to establish a constitutional government. He proclaimed that the government should exist for the people to protect their liberty, property and life, but not vice versa. If the government fails to work for the welfare of the society, people have every right to rebel against the government and they can change the government. Locke developed his theory of social contract from the notion of state of nature. For Locke, the state of nature is only a pre-political state. It means that there is existence of an organized society, but there is no established government.

Man gives up his freedom and power, because the enjoyment of it is very uncertain and constantly exposed to the invasion of others. Since, all men are equal in the state nature; there is no strict observer of equity and justice. Consequently, the enjoyment of

property that they possess in the state of nature is unsafe and insecure. This makes the individuals to look for a way out of this condition that is full of fears and continual dangers. If the vicious and degenerate men are forbidden to enter into the contract, then there is need of any society, but the state of nature. The most important end of men's uniting into a commonwealth is for the mutual preservation of their lives, liberties, and estates. Hence the power of society can never be supposed to extend farther than the common good.

It is by means of contract the individuals agree to submit their powers (natural rights) to a majority rule in order to organize themselves as a community. Although people surrendered their natural rights, it should not be understood that they surrendered all aspects of those rights. In fact, they partially surrendered those natural rights to make the contract functional. Once the contract becomes functional, the civil society is established. This facilitates the individuals to form a government in the nature of a fiduciary power, which is supreme for it represents the power of the people. The government thus established enjoys prerogatives. However, it is subordinate and accountable to the legislature. Also, it must be mentioned here that the legislative power is separate from the executive power. The third is the federative powers, whose function is to make treaties and conduct external relation of the state.

TWO CONTRACTS

People enter into a contract among themselves in order to protect their life, property and liberty. Consequently, they enter into a civil society. Locke, unlike Hobbes, spoke of two contracts. The first is a social contract by which the state or civil society is created. It is otherwise known as Express Contract. By this contract, civil society is created to meet the deficiencies of the state of nature. Unlike Hobbes, Locke stated that people surrendered only one aspect of their rights and only a limited surrender. The second is known as a governmental contract or tacit contract. Here the contract is between the community and the rulers by which the society authorizes the government to make positive laws consistent with the laws of nature. As the government enjoys only a judiciary power, this is subordinate to the first contract. The second contract is not openly advocated by Locke. He further observed that the legislative power becomes the supreme power in the commonwealth. This power is based on the consent of the people. This legislative power should be exercised only to promote the peace, safety and public good of the people. According to Locke, the government is only a trust and the governmental contract is to exercise powers for the peace and prosperity of the people. When the government does not function for the good of the people, they have the right to overthrow the government. Thus Locke made the monarch a party to the contract and established a constitutional monarchy. Its authority should be based on the consent of the people and it has to work for the welfare of the people.

INDIVIDUALISM

Locke is one of the greatest individualists in the history of political thought. He preached that the earth and all other institutions are made for the welfare of the individual and not vice-versa. Prof. Vaughan says that “everything in Locke revolves around the individual: everything is disposed so as to ensure the sovereignty of the individual.”²¹ From Locke’s view point individuals have the right to resist the state when it goes against the individuals.

1. For Locke, all individuals are equal. Through this concept of equality other rights such as the rights to life, liberty and property are derived.
2. In the state of nature, people possessed some natural rights, along with that the state’s purpose is to provide better protection for their life. So, Locke’s state is justified on the ground that its existence is only for making rights more secure.
3. The consent of the individuals is the foundation for the state. A legitimate government is one that possesses the consent of all the individuals.
4. His theory of negative state²² is shown as evidence to the ideas of Locke on individualism. Here the functions of the state are very limited to prevent the individuals from violating the rules and regulations.

5. Locke said that the purpose of the matter is the acquisition of pleasure and the avoidance of pain by the individual. So, Locke's idea is that the goal of all human institutions is to substitute pleasure in the place of pain.

Locke recognized and established the sovereignty of the people and emphasized that the state exists only for the sake of people. He defined civil power in the following manner:

The right of making laws with penalties.... For the regulating and preserving of property, and of employing the force of the community, in the execution of such laws....all this is only for the public good.²³

Locke maintained that the civil power is the right of making laws with penalties for regulating and preserving of property, and of employing the force of the community in the execution of such laws. Such a power can arise only by means of consent. Civil power can have no right except as this is derived from the individual right of each man to protect himself and his property. The legislative and executive power used by the government to protect property is nothing but the natural power of each man resigned, 'into the hands of the community', or 'resigned to the public', and it is justified merely because it is a better way of protecting natural rights than the self-help to which each man is naturally entitled. This is 'the original compact' by which men are brought into one society. It is a bare

agreement “to unite into one political society, which is all the compact that is, or needs be, between the individuals, that enter into, or make up a common wealth.”²⁴

CONSENTS

Since men by nature are free, politically equal, creatures of God, subject to the laws of nature, and possessors of an executive power of the laws of nature, they can become subjects of political authority only by their consent. Without consent there can be no political community. As discussed elsewhere, Locke recognized two kinds of consent, express and tacit. The former is an explicit commitment to the commonwealth. In case there is no provision for explicit consent, the people's obligation to obey the commonwealth can be gauged by their tacit consent. The two problems with regard to tacit consent that Locke himself acknowledges are what it is and how far it binds. According to him, tacit consent is demonstrated when “everyman has any possession or enjoyment of any part of the dominion of that government, he has to oblige to the laws of that government for the enjoyment of that possession; whether it is possession of land, to him and his heirs forever, or a lodging only for a week and soon.”²⁵

THE STATE AND THE GOVERNMENT

Locke is a great democrat. He laid the foundation for the concept of Liberal Democratic State. On the whole Locke regarded the setting

up of a government as a much less important event than the original compact that makes a civil society. Once a majority has agreed to form a government, the whole power of the community is naturally in them. The form of the government depends upon what disposition the majority makes of its power. It may be retained or it may be delegated to a legislative body. Following the experience of the English revolution, Locke assumed that the legislative power is supreme in government. Legislative power can never be arbitrary. For the sake of freedom it is important that legislative and executive power should not be in the same hands.

Locke basically believed that body politic and commonwealth came into being for the welfare of the individuals and the community as a whole. Locke therefore assigned the following functions for the Government:

1. The government should attempt to create standards by which the individuals should be in a position to decide as to what is right or wrong. The law of nature which all followed in the state of nature is clear and rational yet selfish interests make men blind of proper understanding. These also influence his judgement of deciding as to what is right or wrong.
2. The government should provide its subjects with an impartial authority to decide the dispute arising out of social misunderstandings in the community. This is essential

because men were usually partial towards themselves. They usually carry their interests rather too far off.

3. Locke believed that it was the duty of the state to safeguard the interests of its individuals and subjects against undue intervention from outside agencies. Locke went to the extent of saying that the state has got a right to declare war if it found that the life and property of its subjects is at stake. Thus the state should not hesitate to sacrifice anything when it feels that the rights of the individuals are being challenged.

As he regards his concept of constitutional government it is worthwhile to note that he is perhaps the first thinker who realised that unless rule of man against man is based on consent it has no legal justification. His stress for constitutional government was physically more in the days when he was expounding his philosophy.

Locke stated that government exists for the well being of the society. He argued against the attainment of power through conquest. Further he made a distinction between just and unjust warfare. A mere aggressor gains no right, and even a conqueror in just war can never establish a right which contravenes the right of the conquered to their liberty and property. Locke is against any theory that a government can derive a just power merely through conquest or from success by using force. Thus, a government which

begins in force can be justified only by its recognition and support of the moral rights inherent in the persons and communities.

The State and Government are created by a contract, to ensure continual peace and right to life, liberty and property. This political institution is just a means to an end namely the good and welfare of people. The state exists for the people and not the people for the state. The government is only a machine which the people create for their own welfare. Locke observes that all true states must be founded on consent and this consent can be expressed through the representatives of the people. Without people's consent through some form or other, no true state can exist. Locke opined that:

Absolute arbitrary power, or governing without settled standing laws, can neither of them consist with the ends of society and government, which men would not quit the freedom of the state of nature for, and tie themselves up under, were it not to preserve their lives, liberties, and fortunes, and by stated rules of right and property to secure their peace and quiet.²⁶

Therefore, an absolute state cannot be a true state for the welfare of people. A true state can only be a constitutional state where the rule of law prevails. Locke held that no political liberty could exist if a man is subject to the inconsistent, uncertain, unknown arbitrary will of another man. Standing laws which are clearly defined and known to the people should rule the society. Secrecy and arbitrary decrees

cannot rule for the good of the people. A true state is always limited by the powers of the people and guarantees all the natural rights to the people. In other words:

The great end of men's entering into society being the enjoyment of their properties in peace and safety, and the great instrument and means of that being the laws established in that society, the first and fundamental positive law of all commonwealths is the establishing of the legislative power, as the first and fundamental natural law which is to govern even the legislative.²⁷

The first and fundamental *natural law*, which is to govern even the legislative itself, is the preservation of the society and of every member in it. The first and fundamental positive law of all commonwealths is the establishing of the legislative power. This legislative is not only the supreme power, but sacred and unalterable. The community has given its power in the hands of legislative. Therefore, no edict of any individual has any force than the obligation of a law, for the individual's edict has no sanction from the legislative that is chosen and appointed by the public. But the legislative power cannot be absolutely arbitrary over the lives and fortunes of the people. It is only limited to the public good of society. The laws of nature do not cease in society, but they stand as an eternal rule to all men including the legislative. Hence, the legislative has no right to enslave, to destroy, or designedly to

impoverish the subjects. Again, the legislative cannot assume itself the power to rule by extemporary, arbitrary decrees. The legislative requires standing laws to cling to power. Further, the supreme power cannot take the subject's property without his consent; and taxes can be levied only by the consent of the majority. Lastly, it cannot delegate the power of making laws to any other hands.

LIMITED SOVEREIGN

Locke advocated for a limited sovereign state for reason and experience guided him to envisage the view that political absolutism is not tenable. Describing the characteristics of a good state, Locke stated that a state should exist for the people who form it and not vice versa. It is to be based on the consent of the majority subject to the constitution and to the rule of law. It is a limited state in the sense that its power is derived from the people and is held in the form of a trust. Apart from that, it is also limited by natural laws and property rights. Locke argued that the state must deal with matters strictly political in nature and has no warrant to interfere in other provinces or demand more powers on the pretext of public safety or welfare. According to him, the supreme power resided in the people and the community had the inalienable right to institute and dismiss off any government if it violates the trust. The supreme power of the people, however, is kept in abeyance when the government is in power. The government that they institute would be under periodic assessment. Hobbes advocated for self-perpetuating sovereign and

non-renewal of the consent. But in Lockean social contract, the performance of the government would be assessed periodically.

The three organs of the government, according to Locke, are legislature, executive and federative. Each of these organs holds some primary functions to proceed. Legislature is the first organ that consists of people's representative. It has the right to make laws. In other words, to introduce and make the law is the primary function of the legislator. The next organ is executive. Its primary function is to execute the laws passed by the legislature. Implementation of the laws, which are introduced by the legislature, is the primary function of executive. And the final one is federative. The federative organ has the power to deal with external affairs. The federative organ is subordinate to the legislature, which represents the will and wish of the people.

Locke did not agree with Hobbes that Government had absolute powers and authority. He is of the opinion that the government is bound by certain limitations or restrictions. They are:

1. The government could not have a right to destroy, enslave or designedly to impoverish the subjects.
2. The government should govern not by unknown laws but by the laws that have been promulgated and are known to judiciary.

3. The government had no authority to snatch rightly earned property of any of his subjects without their consent because it does not stand for snatching the property but for preserving that.
4. The legislation is like a trust for the nation and hence that could not be transferred to any other authority.
5. The government could not abrogate the natural rights of the individuals.
6. The state should not act autocratically, but on the other hand it should function for promoting utility.
7. The legislature must act according to the laws of nature.

Locke shared the view of Aristotle that governments could be divided into three forms namely monarchy, aristocracy and democracy, but his strong opinion is that limited democracy is the best form of government. He held that limited democracy is a form of democracy in which the powers had been delegated to the representatives who are guided by the electorates. Thus Locke advocated limited sovereignty.

SEPARATION OF POWERS

Locke assigned a top position to legislature. It has a supreme authority and place. The other two organs namely the executive and the judiciary were subordinate to that. He believed that legislature

and the executive must be separated from each other in functions and personnel. He, however, permitted the executive to issue ordinances when legislature is not in session. But he did not develop this idea further.

Locke asserted that absolute monarchy is inconsistent with civil society. If the Prince is bestowed with both legislative and executive powers, then nothing can stop him in exercising his power on any one. Thus nobody can challenge the power of the Prince. In such an absolute monarchy, the subjects are reduced to the level of slaves. To put it in the words of Locke:

If the Prince holds both the legislative and executive power, there is no common judge who may fairly, indifferently, and with authority to decide, and no standing rule to appeal to, the subject is the slave of one man.²⁸

No individual can be subjected to the political power of another without his own consent. It is only with the help of a majority group of individuals with mutual consent among themselves a community can be formed. This community with a power to act as one body is the creation of the will and determination of the majority of people. But after forming such a society, every man puts himself under an obligation to every one of that society to submit to the rule of the majority, failing which there would be no contract. The government

of the world that came into existence began with peace due to the consent of the people.

It is not well that those who have powers of making the laws should also have power to execute them. He favoured the bifurcation of power. The power in one hand should harm the welfare of the state. The federative power is the power of war and peace, leagues and alliances, and all transactions with all persons and communities without the commonwealth. The federative and executive powers are almost always united, and it is best that they are placed in one hand. The executive has the supreme execution of the laws, and should be exempt from subordination. But the legislative may take both the executive and federative powers out of the hands it has placed them in, when it finds cause, and to punish any misadministration of the laws. The legislative is the supreme power, but it is a fiduciary power to act for certain ends. So the people have a supreme power, a powerful right, to remove and alter the legislative when they find it act contrary to the trust reposed in it. But whilst the government exists, the legislative is the supreme power. Not the prince, as Hobbes taught, but the legislative is the soul of the commonwealth, and the legislative represents the people; the people act as the judge whether the prince or the legislative act contrary to their trust.

DISSOLUTION OF GOVERNMENT

The obligation to obey the government depends on the fact that public power is used for "peace, safety and public good of the

people.”²⁹ Locke stated explicitly that men can't yield to the government more power that they actually possess in the state of nature, which means that they cannot be an absolute arbitrary power over their lives and fortunes which are as much possible to be preserved. Lockean men, therefore, are not committed to unfailing obedience. It is a rational and limited agreement, which assures obedience for the preservation and enhancement of life, liberty, and property. The validity of the contract would depend on the continuation of the benefits. Also, Locke categorically stated that governments could be altered, amended, changed or dissolved legitimately under the following occasions.

1. Whenever such a prince or single person sets up his own arbitrary will in the place of laws.
2. When the prince hinders the legislature from assembling in its due time or from acting freely pursuant to those ends for which it is constituted.
3. When by the arbitrary power of the prince, the elections and the ways of elections are altered without the consent and contrary to the common interest of the people.
4. The delivery of the people into the subjection of foreign power either by the prince or by the legislature
5. When the person, who has the supreme executive power neglects laws already implemented, cannot be executed.

Locke's intention is to defend the moral right of revolution. Hence, at the end of his *Second Treatise* he discussed the right to resist tyranny. He stated that English society and English government are two different things. The second, namely, the government exists for the well being of the society. This argument is supported by a rather lengthy examination of the right that can be gained by conquest. Locke distinguished between just and unjust warfare. A mere aggressor gains no right and even a conqueror in a just war can never establish a right. The argument is directed against any theory that a government can derive a just power merely through conquest or from success by using force. Consequently a government which begins in force can be justified only by its recognition and support to the moral rights inherent in persons and communities. In other words, the moral order is permanent and self-perpetuating, and governments are only factors in the moral order.

Locke argued that a political revolution which dissolves a government does not, as a rule, dissolve the community which that government rules. This means that the political revolution dissolve only the government, but not the community. The individual resigns his natural right to the community or the public, which presumably must be some kind of entity if it can receive a grant of power. On the other hand, right is lodged, only in the hands of individuals until they resign it. He regarded this surrender of individual right as conditional against both society and government because the individual power is resigned only with an intention to preserve the

liberty and property of every individual. And society itself is obliged to secure everyone's property.

A government as distinct from society is dissolved either by a change in the location of legislative power or by a violation of the trust which the people have reposed in it. Locke clearly stated that any invasion of the life, liberty and property of subjects is *ipso facto* void, and a legislature, which attempts these wrongs, forfeits its power. In this case power reverts to the people, who must make a new legislature by a new act of constitutional legislation.

REVOLUTION

In Hobbesian theory, people do not have any power to over throw the government except revolution. Revolution is the only alternative to go for other possibility or alteration. They have to obey the rules and regulations of the ruler, the sovereign. They have to be loyal to the rule of the sovereign. But in Lockean social contract, unlike in Hobbesian social contract, the people have the right to over throw the government, which goes against the will of the subject, the people. The government has to go for periodic assessment.

Locke did not command unquestioned obedience to the state. He grants the right to revolt against the state if it is anti-people. When the state goes contrary to the will and welfare of the people, only for which the state is created, the people have a legal, moral,

political and natural right to throw the state out of power. Locke in clear terms says that the dissolution of government does not necessarily lead to the dissolution of the state, created by the first contract, which is supreme, but only the governmental contract breaks.

The right to revolt does not approve of revolutions of any form and any size. A revolution against the state should not be an act of minority. Lockean state is tolerant state honouring difference of opinions. Even though revolution begins with minority, it must through proper propaganda gain the support of the majority. The social support of the majority makes the revolution meaningful, moral, political and legal. A true state should not exercise only the negative means to force the people to obey or to arrest revolutions. It should also be a transformer state. Man should be educated and trained to transform their selfish interests into public good. Punishments and artificial pains may be introduced to prevent the uncontrolled selfishness. In Lockean state the age-old conflicts of authority and freedom get reconciled. Locke observed that there would be no civil society, if men do not understand the aim and significance of the rule of law. The end of law is not to abolish or restrain but to preserve and enlarge freedom.

ESTIMATION

Locke contended that the chief matter of property being now is not the fruits of the earth and the beasts that subsist on it, but the earth

itself. As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. He by his labour does, as it were, enclose it from the common. Nobody can invalidate his right to say everybody else has an equal title to it, and therefore he cannot appropriate, he cannot enclose, without the consent of all his fellow- commoners, all mankind. God, when He gave the world in common to all mankind, commanded man also to labour, and the penury of his condition required it of him. God and his reason commanded him to subdue the earth- i.e., improve it for the benefit of life and therein lay out something upon it that was his own, his labour. By obeying the command of God, man claimed ownership rights only on that land he tilled, sowed and cultivated. He alone can make use of that particular land. Others have no right to enjoy that particular land.

Although Locke is an influential political philosopher, there exists a lot of pit falls in his social contract theory. As a champion of natural rights, Locke should never recommend for the surrendering of the part of natural rights to the commonwealth in order to protect the property and freedom of the individuals. According to Locke, property and freedom are inseparable from each other. In its wider sense, property includes freedom, and in its narrower sense property is a means to freedom. Locke wanted an established social order through a social contract. But the people in that social order lacked property, which is a pre-condition for attaining freedom. Of course, Locke is aware of this fact. Nevertheless, Locke did not bother to

redistribute the property, which is so unequally distributed in the commonwealth. This clearly establishes the view that Locke is interested in the welfare of a small part of the community. Then, what is the use of having natural rights, which do not bring about the equal rights of property? Jean Jacques Rousseau identified these problems and he tried to improve upon the social contract proposed by Hobbes and Locke with some fundamental changes in their doctrine of social contact.



Notes and References

1. John Locke, *Of Civil Government: Two Treatises*, ed., Rhys, Ernest, (London:1940), Second Treatise, chapter. iii, p.126; hereafter cited in text as *CGTT*.
2. *Ibid.*, chapter. ii, p.119.
3. *Ibid.*, p.118.
4. *Ibid.*, p.119.
5. *Ibid.*, p.120.
6. *Ibid.*, chapter. iii, p.126.
7. *Ibid.*, chapter. ii, p.124.
8. *Ibid.*, p.124.
9. *Ibid.*, chapter. v, p.129.
10. *Ibid.*, p.129.
11. *Ibid.*, p.130.
12. *Ibid.*
13. *Ibid.*, p.131.
14. *Ibid.*, p.132.
15. *Ibid.*, p.130
16. Locke discussed two kinds of consents. One is Express consent and another one is tacit consent. Only for the sake of safeguarding their private property, people are entering into the contract. Hence, the government should not take one's own private property without his consent.
17. *CGTT*, chapter. iv, p.132.
18. *Ibid.*, chapter. ix, p.179.

19. **Ibid.**, p.180.

20. Hobbes held that people have surrendered all of their natural rights. But Locke stated that people have surrendered only one aspect of their natural rights, namely, the right to interpret and implement the laws.

21. Eddy Asirvatham, *Political Thought*, (New Delhi: 2000), p.43.

22. A negative state is one that is influenced by the consent of the individuals. However, Lockean state is negative in the sense that its role is minimal.

23. *CGTT*, chapter. i, p.118.

24. **Ibid.**, chapter. ix, p.178.

25. **Ibid.**, chapter. viii, p.177.

26. **Ibid.**, chapter. xi, p.186.

27. **Ibid.**, p.183.

28. **Ibid.**, chapter. xix, p.241.

29. **Ibid.**, chapter. ix, p.182.