The Government's Role of Governing over the Free

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This article by **Kaiden Zahra** was previously submitted as an assignment for PHI1014 and is being published with the author's permission. The article analyses the government's role of regulating over the free persons by referencing Locke's Second Treatise. The author examines how, according to Locke, one is deemed to be independent and, by nature, live in freedom and equality. After assessing what Locke considers the three inalienable rights, the author proceeds to answer how one can truly be free under governance. He examines how Locke writes on the separation of powers, a characteristic of democracy, and the justification to the right of rebellion, and connects Locke's writings to subsequent events. Finally, the author concludes by assessing what Locke considers to be a legitimate government's role and where its power originates from.

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1. Introduction

Growing up as a Protestant Christian in England, philosopher and physician John Locke went to Westminster School in London and Christ Church in Oxford, a university that was directly linked as a joint foundation to Christ Church Cathedral by King Henry VIII. Nevertheless, in his later years, he had a low opinion on the authority of the Church to the extent that he hesitated and outright refused to be ordained. He only got away with it since the King, through the Secretary of State, wrote to the college to not enforce holy order on Locke in 1666.[1] In 1684, he was ejected from his fellowship at Christ Church at the insistence of King Charles II.

Locke is best known for the *Two Treatises of Government*, which were written with the aim of persuading the public to start a revolution. This ended up being a retrospective justification of what is now known as the Glorious Revolution of 1688 as the treatises had to be published in 1689; he had to go into exile in Holland after being accused of aiding political disidents.[2] The Second Treatise titled, *An Essay Concerning the True, Original, Extent, and End of Civil Government*, is far more relevant when it comes to this article since it regards the key points of his political philosophy.

2. Man's State of Nature

Locke, in his Second Treatise, writes that all men are naturally in 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'.[3] In addition, he also states that men, by nature, are also equal, therefore 'no one having more than another', everyone having the same natural rights, and every person being in the same position to know the law of nature since the latter is known through reason.[4] The word 'should' from the phrase 'should also be equal one amongst another' shows his understanding that, at the time of writing, and some might say even to this day, men's capacities were, or are, different from each other's.[5] Man is also deemed by nature as

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[1] Graham Alan John Rogers, 'John Locke and the Authority of Church and State' (2005) 17 Anglophonia/Caliban 289, 289-296.
[2] David Adrian Lloyd Thomas, *Routledge Philosophy Guidebook to Locke on Government* (Routledge 1995).
[3] John Locke, *Two Treatises of Government* (Peter Laslett ed, Cambridge University Press 1988) 269.
[4] ibid 269.
[5] Martin Seliger, *The Liberal Politics of John Locke* (George Allen & Unwin Ltd 1968) 50.

independent while emphasising that these qualities that men naturally have must not lead to harming another man's 'Life, Health, Liberty, or Possessions'.[6] If, in being in this state, the three natural rights are respected, men can live in freedom and equality.

Contrary to this, while agreeing with Locke that man is by nature equal 'in the faculties of body and mind',[7] the father of modern political thought, Thomas Hobbes, describes the state of nature as a state where self-interest prevails in 'a mere war of all against all'.[8]

3. Man's Natural Rights

Locke bases his philosophy on the idea that every man is born with three inherent and unalienable natural rights: the right to Life, Liberty, and Property. The first right is the basis for all other rights. Every man has the right to live and no man should harm another man's life. The second is the right for man to do as he pleases as long as he does not harm others which, according to Locke, is crucial for taking decisions. The third is the right to own and protect one's possessions, which is crucial for personal security and stability.[9] Such possessions are deemed to be one's own if they use unused physical material to create something, making that thing their property.

These three rights inspired the Maltese Declaration of Rights of 1802 which states that 'no man whatsoever has any personal authority over the life, property or liberty of another; power resides only in the law and restraint, or punishment, can only be exercised in obedience to law'.[10]

According to Locke, every decision taken by the government must be justified to safeguard and maximise the people's liberty. This principle, highly opposed by Hobbes, would see liberty being given superiority over security.

What comes to mind is the COVID-19 pandemic and how it was handled by governments just a couple of years ago. In a time when the world was overloaded with fear, the Maltese Government, through the Superintendent for Public Health, gave the authority to the Police, which authority was then also delegated to five other agencies, to enter and inspect private

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[6] Locke (n 3) 271.
[7] Thomas Hobbes, *Leviathan* (John Gaskin ed, Oxford University Press 1998) 82.
[8] Thomas Hobbes, *De Cive or the Citizen* (Sterling P. Lamprecht ed, Appleton-Century-Crofts 1949) 13.
[9] Locke (n 3) 350.
[10] John Joseph Cremona, *The Maltese Constitution and Constitutional History since 1813* (Dom Communications Ltd 2016) 64.

households upon acting on a report or on reasonable suspicion.[11] This measure went against the people's natural right to freedom and to property.

4. Consent and the Social Contract

The question that arises is, how can one be truly free if they are governed by another? Locke holds that this revolves around the idea of consent. Any number of people could unite into a community which acts as one body by giving up some of their freedom to that of the majority to ensure that natural law and its benefits to the individuals prevails.[12] Decisions are to be taken by the consent of the majority since the consent of the majority is the second-best option, beaten only by 'the consent of every individual' which is 'next to impossible'.[13]

The concept of majority rule is no new concept. Ancient Greece, although lacking the principle of everyone being free, equal, and independent, used this method through direct democracy, derived from the Greek words 'demos' meaning 'people' and 'kratos' meaning 'power', hence referring to the power of the people. In this system of government, every citizen had a vote and decisions were taken upon a simple majority.

Nevertheless, Locke's theory is not necessarily linked to the characteristics of a democracy, although it did influence the foundation of the United States of America, an idealised example of a functioning democracy. The people do not have to choose a democratic government as long as the government is chosen through a majority. The majority may opt to choose a monarch with absolute power but, once the people retract their consent, that government must fall since the majority is supreme under a more supreme natural law.

The idea of people coming together and entering into an agreement with others was suggested by Hobbes through the social contract theory. He writes that, 'Where there is no common power, there is no law: where no law, no injustice'.[14] Both Locke and Hobbes agree that the state rises out of an agreement between individuals, otherwise known as a social contract, in recognition that a sovereign would safeguard them from the state of nature described to be dangerous and insecure. In section 123, Locke admits that it is this that leads man to give up

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[11] Kristina Abela, 'COVID Rules: Police, LESA, Agencies Have Authority to Inspect Private Homes' *Times of Malta* (Birkirkara, 1 April 2021) <https://timesofmalta.com/article/covid-rules-police-lesa-agencies-have-authority-to-inspect-private.861919> accessed 3 January 2025.
[12] Seliger (n 5) 69.
[13] Locke (n 3) 332.
[14] Hobbes (n 7) 85.

his absolute liberty, specifically referring to the high risk of the 'Invasion of others'.[15] Nevertheless, Locke writes that the society one joins and its governing power as one body must, in its actions, preserve and protect the three inherent and unalienable natural rights.

The principle established is as follows: if the Government protects and preserves every man's natural rights, every man is obliged to obey whilst if it does not, people have the right to overthrow it. This inspired one of the Founding Fathers of the United States of America, Thomas Jefferson, and was later adopted and written into the Declaration of Independence which reads:

> *That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness*.[16]

Hobbes, on the other hand, as an absolutist, favoured the idea of an individual ruler having absolute power over his subjects, an absolute monarch, with the aim of defending the subjects from each other since he held that free men cannot be relied on. This power is also portrayed in the cover of Leviathan, produced by Abraham Bosse, showing the figure of a crowned sovereign emerging from a mountain, whose body is made up by the bodies of his subjects, whilst holding a sword in one hand and a bishop's crozier in the other, personifying the idea that it is the sovereign that is supreme.

5. The Separation of Powers

In the Second Treatise, Locke writes that a legitimate government is based on a system of separation of powers to allow checks and balances to take place. He divides the government into three powers. Supreme above the others is the power of the legislative which should be 'placed in collective Bodies of Men' to equally share the responsibility of having chosen the laws that they are subject to.[17] It passes laws, together with the executive, and has the power to dissolve the government. The legislative's supremacy doesn't mean that it is supreme over the ruler but that 'what can give Laws to another, must needs be superior to him'.[18] The power of the executive is vested in the ruler who is also part of the legislative. This branch is

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[15] Locke (n 3) 350.
[16] Thomas Jefferson, 'Declaration of Independence' (4 July 1776) <https://www.archives.gov/founding-docs/declaration-transcript> accessed 23 December 2024.
[17] Locke (n 3) 329-330.
[18] ibid 367-368.

responsible for enforcing the law after it had been approved by both the legislative and the executive itself. It has the power of assembling and dismissing the legislative through Fiduciary Trust and, unlike the legislative, it never rests.[19] The federative power deals with the transactions of Men within the state and those that are still in a state of nature. Nevertheless, Locke understands that the executive and the federative power 'are always almost united' due to the power struggle that would emerge if they was clearly separated since they both require force, as opposed to the relationship between the executive and the legislative which are often separated.[20]

In *A Letter Concerning Toleration*, he writes about his, what was then considered, liberal idea that the state should be separate from the Church, and therefore from religion in general. Locke added that a legitimate government has no right to impose its religious belief on its subjects.[21] This concept had inspired the Maltese Declaration of Rights of 1802 which stated that 'freemen have a right to choose their own religion. Toleration of other religions is therefore established as a right'.[22]

6. The Right to Revolt

Viewed by many as Locke's main intention of writing the Second Treatise, to initiate rebellion which would ultimately lead to a revolution, he goes on to justify rebelling against a legitimate government and therefore justifying the Glorious Revolution in the process. The people 'have not only a Right to get out of it but to prevent it'.[23] The 'it' refers to a tyrannical government subject to which the people would be no better than slaves. The latter are justified to revolt if the government 'act[s] contrary to their trust' by, for instance, stepping on one's natural rights since by doing so, the government would be putting 'themselves into a state of War with the People'.[24] Locke argued that the justification of rebellion in the appropriate circumstances is crucial for a government to be truly legitimate.

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[19] Chukwuma Joseph Nnaemeka and Uhuo Theophilus, 'Separation of Power in John Locke: A Critique' (2018) 7(2) International Journal of Innovative Research and Development 95, 99 <https://www.internationaljournalcorner.com/index.php/ijird_ojs/article/download/128667/89240/309714> accessed 4 January 2025.
[20] Locke (n 3) 365.
[21] John Locke, *A Letter Concerning Toleration and Other Writings* (Mark Goldie and David Womersley eds, Indianapolis Liberty Fund Cop 2010).
[22] Kevin Aquilina, 'The Legislative Development of Human Rights and Fundamental Freedoms in Malta: A Chronological Appraisal' [2009] Serving the Rule of International Law: Essays in Honour of Professor David Joseph Attard 225, 226.
[23] Locke (n 3) 411.
[24] ibid 411-412.

What is crucial to note is that Locke's concept of the justification of rebellion, although published over 330 years ago, is still present to this day. As the people of Syria rebelled and triumphed over the brutal rule of President Bashar al-Assad's regime on the 8th of December 2024, democratic leaders of first-world countries like Macron, Scholz, and Biden cheered on as what many describe as a dictator fell. The latter is also similar to the situation in Libya in 2011 during the rebellion against Colonel Muammar Gaddafi's reign as dictator since 1969.

7. Conclusion

Basing his philosophy on the concept that Men in a state of nature are in a 'State of perfect Freedom...within the bounds of the Law of Nature',[25] John Locke goes on to delve into the formation and workings of a legitimate government and the latter's role in protecting, preserving, and enhancing men's natural rights.

In Locke's eyes, the government's power revolves around the idea of an agreement between individuals to giving their consent to losing their absolute freedom whilst opting to join forces and moving forward as one body that takes decisions upon the will of the majority. In addition, in his concept of what should be, he decentralises power into a system of separation of powers where the government is made up of the legislative, the executive, and the federative power, contrary to the absolutist philosophy of Hobbes. Nevertheless, this consent can be retracted at any time, and rebelling is justified, if the government fails to respect and protect men's inalienable natural rights.

John Locke's influence on politics and philosophy, especially through his publications including the *Two Treatises of Government*, *An Essay Concerning Human Understanding*, and *A Letter Concerning Toleration*, transcended his homeland of Great Britain and the Enlightenment movement as a whole. As previously mentioned, his thoughts and writings are deemed to have influenced the American and French Revolution and people from around the world to tolerate one another and to come together for stronger, fairer and freer societies.

[25] ibid 269.



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