

# Locke and the Right of Resistance

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## 1. Introduction

In this essay, I will identify the grounds on which Locke justifies the right of resistance in the *Second Treatise of Government* (1690). My argument unfolds in two parts:

In the first part, I will introduce some basic concepts (section 2) that Locke appeals to in order to run his argument for the right of resistance (section 3). The second part consists of a criticism by John Mabbott (1973), which turns on the distinction between political society and government (section 4), and my interpretation of Locke that evades it successfully (section 5).

## 2. Some Basic Lockean Concepts

Before being able to expound Locke's argument for resistance, I have to introduce some basic concepts. In what follows, I will therefore briefly characterize the notions of the state of nature and its law of nature, the state of war, civil or political society and the ends of government.

According to Locke, the *state of nature* represents the original condition of mankind, the condition of men living without governments or political superiors in general.<sup>1</sup> It is conceived as a state of perfect *freedom* and *equality*. While freedom amounts to the 'perfect freedom to order [one's] actions, and dispose of [one's] possessions and persons [...]',<sup>2</sup> equality means that 'all the power and jurisdiction is reciprocal, no one having more than another [...]'.<sup>3</sup> Equality derives from the fact that all human beings are of the same species and in principle endowed with the same faculties.<sup>4</sup> Most notably, all human beings are capable of getting insight by reason.

Freedom in the state of nature is not perfect, however. There are limits to it, imposed by the *law of nature*. The law of nature is the rule of 'reason and common equity, which is that measure God has set to the actions of men, for their mutual security [...]'.<sup>5</sup> It forbids that anyone 'ought to harm another [or herself] in his life, health, liberty or possessions', since all men are made by God.<sup>6</sup> In case of violation, the community has the right to punish the transgressor 'to such a

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<sup>1</sup> Cf. Mabbott 1973: 143, Locke 1690: §4

<sup>2</sup> Locke 1690: §4. Henceforth, I will omit '§' when citing Locke. Thus, the number indicates not the page, but the paragraph in which the quoted sentence can be found.

<sup>3</sup> *ibid.*

<sup>4</sup> *ibid.*

<sup>5</sup> Locke 1690: 8

<sup>6</sup> Locke 1690: 6

degree, as may hinder its violation<sup>7</sup> in the future and reestablish natural equality. Additionally, the injured person has the right of reparation,<sup>8</sup> the compensation received making sure that the victim's self-preservation is henceforth guaranteed (since not looking after oneself amounts to violating the law of nature, too).

Moreover, if the law of nature is violated, we are presented with an instance of 'force without right, upon a man's person',<sup>9</sup> which alters the status of the transgressor: he is no longer in the state of nature, but puts himself into the *state of war* with the rest of the community. He remains in the state of war until the transgression is (collectively) punished, (individually) repaired and the state of nature thus reinstated.

The state of nature imagined by Locke is not as idyllic as it might look at first sight, though. Rather, it suffers from certain 'inconveniences [. . .], which necessarily follow from every man's being judge in his own case [. . .].'<sup>10</sup> In particular, the state of nature is flawed with respect to three features: it lacks law based on common consent, it fails to provide a universally known and indifferent judge, and it cannot guarantee the power of executing sentences according to the law of nature.<sup>11</sup>

Certainly, the law of nature is intelligible to all men as rational creatures. Coming up with a consistent interpretation in every case and applying it impartially, however, might prove to be very difficult an undertaking.<sup>12</sup> This holds especially if one happens to be involved in the violation, either as injuring or injured party. Due to that, the state of nature is inclined to transform into a permanent state of war.

For Locke, the solution to the state of nature turned into a state of war consists in founding a *civil* or *political society*. Men are social animals by divine design,<sup>13</sup> so this might be achieved by setting up a social contract, transferring one's natural rights of punishment and reparation mentioned above to a mutually agreed authority or government.<sup>14</sup> Consequently, one ceases to be personally responsible for the observation and execution of the law of nature. Instead, the political institutions appointed by the civil society take care of it. Since the law of nature essentially regulates and protects property, conceived in the broad sense as covering 'life, liberty and estate'<sup>15</sup>, the *end of civil society* or *government* consists in the preservation of property of its members.

Subscribing to a government and its political institutions addresses the three weaknesses of the state of nature identified above: the legislative powers codify the law of nature in the form of a commonly assented body of positive law, the judiciary provides the members of civil society with an impartial authority to appeal to in legal affairs or controversies and the executive power makes sure that the established law is observed and executed.

Absolutely pivotal to Locke's conception of government (and his argument for the right of

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<sup>7</sup> Locke 1690: 7

<sup>8</sup> Locke 1690: 10

<sup>9</sup> Locke 1690: 19

<sup>10</sup> Locke 1690: 90

<sup>11</sup> Locke 1690: 126-26

<sup>12</sup> Locke 1690: 124

<sup>13</sup> Cf. Locke 1690: 77

<sup>14</sup> I'm aware of the potential distinction between political society and government. I will discuss its relevance and related issues in the second part of the paper. For now, there is none.

<sup>15</sup> Locke 1690: 87

resistance) is the fact that it is always based on the people's consent.<sup>16</sup> The people trust the government with their natural rights only because they expect it to fulfil better the task of protecting property and because it seems to provide against the defects of the state of nature. Thus, the government's power 'can never be supposed to extend farther, than the common good [...]'.<sup>17</sup> Its authority is restricted to enacting the law of nature. If the government counteracts this restriction, it loses its legitimacy.

### 3. Locke's Argument for Resistance

In chapter 19 of the *Second Treatise* Locke puts forward an argument for the right of resistance by elaborating on the conditions under which governments dissolve and it is justified to establish a new one. Initially, Locke distinguishes between two cases:<sup>18</sup>

*Either* the legislative undergoes a change without approval of the people. In this case, the government violates the people's native right of self-preservation, since preserving oneself '... can only be done by a settled legislative, and a fair and impartial execution of the laws made by it.'<sup>19</sup> There are not less than five different ways of altering the legislative, all of which Locke attributes to the executive. They read: replacing laws with its arbitrary will, interfering with the assembling of the legislative, manipulating representatives or elections, delivering the people into the subjection of a foreign power, and neglecting the execution of made laws.<sup>20</sup>

Or the government acts contrary to the people's *trust*. This happens if political superiors 'endeavor to invade the property of the subject, and to make themselves [...] masters, or arbitrary disposers of the lives, liberties, or fortunes of the people.'<sup>21</sup>

And, in fact, this case seems to be more fundamental. For, as mentioned in section 2, the legitimacy and power of government stem directly from the people's trust in its ability to preserve property and thus execute the law of nature.<sup>22</sup> If the government fails to guarantee preservation and falls short of enacting the law, it breaches the people's trust. And if it breaches the people's trust, it loses its legitimate authority. Henceforth, the government uses *force without authority*, which puts itself in a state of war with the people. In the state of war, the people obtain the right of resisting the government by force as well as the right of establishing a new legislative, which they deem better suited for the preservation of property. In short, '...in all states and conditions, the true remedy of force without authority, is to oppose force to it.'<sup>23</sup>

Finally, Locke emphasizes that there is only one party rightfully entitled to judge whether the government acts contrary to the people's trust – and this party is the people themselves: '...for who shall be judge whether his trustee or deputy acts well, and according to the trust reposed in him, but he who deposes him, and must, by having deposed him, have still a power

<sup>16</sup> Locke's concept of consent raises intricate issues on its own. I won't discuss those in this essay, though.

<sup>17</sup> Locke 1690: 131

<sup>18</sup> Locke 1690: 212, 221

<sup>19</sup> Locke 1690: 220

<sup>20</sup> Cf. Locke 1690: 214-19

<sup>21</sup> Locke 1690: 221

<sup>22</sup> Cf. Locke 1690: 149

<sup>23</sup> Locke 1690: 155

to discard him, when he fails in his trust?’<sup>24</sup>

But doesn’t Locke somehow overstate his case by making the ‘body of people’ itself judge over whether the right of resistance can be applied legitimately? Are people not chronically discontented with their government anyway, ignorant of political affairs in general, too mercurial to act strategically, and the right to resistance therefore a permanent threat to social stability?<sup>25</sup>

Locke dispels those worries by specifying the conditions for the legitimate use of the right to resistance and by giving reasons for the people’s reluctance to resist permanently (and hence abuse the right of resistance). They come down to the following four:<sup>26</sup>

First, the scope of application of the right to resistance is fairly narrow, since any well-composed government features the option of relief and reparation by appeal to law. Appealing to the political institutions must always be preferred to deploying violent means. Only if the *institutional way* is blocked, means alien to the political process of decision-making can be taken into consideration. Only unlawful force might be rightfully opposed by force.<sup>27</sup>

Secondly, the government’s unlawful acts have to be of *general concern* to the people, either directly by affecting the majority of them or by posing a potential threat to the society as such. At all events, the misdemeanor has to reach ‘farther than some private men’s cases’.<sup>28</sup> This effectively excludes the scenario that the momentary unhappiness of few individuals amounts to the justification of resistance.

Thirdly, a single unlawful act committed by the government won’t be sufficient for making legitimate use of the right of resistance. Instead, a ‘long train of abuses, prevarications and artifices’<sup>29</sup> is needed to actually trigger resistance.

Fourthly, the people can be characterized by deep-seated apathy, an aversion to quit old customs and constitutions as well as the disposition to suffer through instead of resist political mismanagement.<sup>30</sup> Hence, they are not likely to make use of their right frequently.

Jointly, all those conditions seem to imply that even if Locke places the judgment on the legitimate application of the right of resistance into hands of the people, they are not likely to abuse the right on the very first occasion. Rather, the right to resistance represents the last way out of an otherwise unbearable situation.

## 4. Society and Government

John Mabbott (1973) points out that Locke puts forward two different accounts of the foundation of governments.<sup>31</sup>

The first account conceives of the foundation of governments as the process or move by

<sup>24</sup> Locke 1690: 240

<sup>25</sup> The objection can be found in Locke 1690: 203, 223, 224.

<sup>26</sup> Locke doesn’t seem to distinguish between legitimacy and likelihood of [*cont. overleaf*] resistance. Rather, he thinks that resistance is less likely if it is illegitimate. This is contentious, especially since the people decide on the legitimacy of resistance themselves. However, I won’t discuss this further.

<sup>27</sup> Locke 1690: 204

<sup>28</sup> Locke 1690: 208, 209

<sup>29</sup> Locke 1690: 225

<sup>30</sup> Locke 1690: 223, 230

<sup>31</sup> Mabbott 1973: 151f.

which mankind leaves the state of nature and transfers its natural rights to a government. ‘The constitution of the legislative is the first and fundamental act of society [. . .].’<sup>32</sup> Being a civil or political society means having a government. The first account is the predominant account of Locke’s *Second Treatise*.

The second account is not introduced until chapter 19. It conceives of the foundation of governments not as a single process, but consisting of two separate, independent steps: the creation of political society and the appointment of a government. Locke introduces the account in order to launch his argument for the right of resistance: the dissolution of the government does not necessarily imply the dissolution of the society. If the government crumbles as a result of opposition by the people, the political society remains nonetheless in existence. It is the political society that provides and establishes a new government. Thus, society precedes government.

Basically, the two accounts differ merely in respect to one conceptual commitment: while the second account subscribes to the distinction between *political* society and government, the first does not.

Mabbott argues further that Locke’s theory fails to bolster the second account and its distinction between political society and government. For according to Mabbott, Locke ‘himself repeatedly rejects the view that the creation of a political society is an act independent of and logically preceding the appointment of a government.’<sup>33</sup> If Locke sticks to the distinction nonetheless, he is being inconsistent.

Ultimately, Mabbott’s challenge to Locke can be summarized as follows: if Locke cannot preserve the distinction between society and government, his argument for the right of resistance is flawed. For the distinction is essential to Locke’s argument: only if the dissolution of the government leaves the society intact, can it come up with new political institutions that seem better suited for the preservation of property.

In my view, however, Mabbott’s criticism of Locke is misplaced, since Mabbott fails to distinguish himself between two different claims he puts forward above. On the one hand, he claims that Locke cannot account for the distinction between society and government and is therefore being inconsistent. That’s Mabbott’s *first critical claim*.

On the other hand, he claims that the two Lockean accounts of governmental foundation are contradictory. Either societies and governments emerge simultaneously or they don’t. That’s Mabbott’s *second critical claim*.

Due to this conflation, Mabbott looks for evidence in the wrong place. He takes evidence *for* the first account of governmental foundation as being evidence *against* the distinction between society and government.<sup>34</sup> That doesn’t have to be the case necessarily.

In what follows, I will treat Mabbott’s two critical claims separately. This enables me to show how and where one can find evidence for the distinction that is independent of evidence for the accounts of governmental foundation. Moreover, this will eventually lead to an alternative understanding of the accounts as well. Thus, on my reading, Locke refutes both of Mabbott’s critical claims.

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<sup>32</sup> Locke 1690: 212

<sup>33</sup> Mabbott 1973: 152

<sup>34</sup> Cf. Mabbott 1973: 152 ff.

## 5. Resisting Mabbott's Interpretation of Locke

Indeed, one may not find a lot of evidence in Locke's theory that bolsters the distinction between society and government, if one restricts one's search to accounts of governmental foundation.<sup>35</sup> However, this might not be the right strategy to elucidate Locke's understanding of the relationship between society and government. After all, the distinction might be operative in other contexts.

Instead, it might prove promising to have a closer look at how exactly governments *dissolve* according to Locke.

In the first paragraph of chapter 19, Locke states that 'whenever a society is dissolved, it is certain the government of that society cannot remain.'<sup>36</sup> John Dunn (1973) interprets this statement as saying that the dissolution of society is sufficient, but not necessary for the dissolution of government.<sup>37</sup> So, political society and governments might behave differently in case of dissolution. But how can one explain that civil society subsists while the government dissolves?

Given Locke's conception of resistance, it is evident why governments dissolve: by breaching the people's trust they lose their legitimacy or rightful authority and put themselves into a state of war with the people.<sup>38</sup> But does the fact that the state of war breaks out between government and society imply that society itself falls prey to it? It does not seem so necessarily, but it calls for an argument.

Thus, we should reformulate the question posed to Locke: does the state of war break out between the people? If it does, society loses its inner cohesion and dissolves. If society dissolves simultaneously with the government, the distinction between society and government fails to hold. Mabbott's first critical claim would be correct.

Answering the question amounts to finding out whether the distinction operates in contexts other than accounts of governmental foundation.

However, Locke is far from being clear on the issue in question. Rather, his comments on which state obtains between the people after the dissolution of a government remain fragmentary and elusive.

In fact, as far as I can see, there is but one passage in which Locke hints at the possibility of the state of war breaking out between the people after the dissolution of the government. For the government's function consists in being an impartial authority, dissolving it means taking away 'the umpirage, which every one had consented to, for a peaceable decision of all their controversies, and a bar to the state of war amongst them.'<sup>39</sup> As soon as the government dissolves, people lose the sole impartial authority they could appeal to and end up waging war against each other.

Nevertheless, there are at least three features of Locke's argument for the right of resistance implying that the state of war does not break out between the people once the government is

<sup>35</sup> There is some evidence to be found in Locke 1690: 99, 106.

<sup>36</sup> Locke 1690: 211

<sup>37</sup> Dunn 1969: 181

<sup>38</sup> Locke 1690: 151

<sup>39</sup> Locke 1690: 227

dissolved. A charitable reading of the quote above would then be rendered implausible.

Firstly, Locke distinguishes significantly between the concepts of resistance and rebellion. While resistance is a people's right that can be legitimately asserted under certain circumstances, rebellion is the crime of which a government is guilty. Basically, Locke conceives of rebellion in the Latin, literal sense as reintroducing the state of war. A rebellious government violates the law and puts himself in the state of war with the people.<sup>40</sup> Resistance, on the contrary, applies to the people only, not to governments. Presumably, it must be an ordered, purposive process, at whose end a new legislative is established. It does not seem to be associated with the vagaries of the state of war at any rate. Actually, the people resist *because* the governments are rebellious!

Consequently, if Locke had thought that the dissolution of governments leads to a state of war between the people themselves, he would probably have refrained from distinguishing between rebellion and resistance in the first place. He would have characterized the people as prone to rebellion as well.

But how does Locke exactly characterize the people anyway? Let's have a look at a further feature:

Secondly, Locke views the people as the supreme political power, since they appoint the government for certain ends on a strictly fiduciary basis. This is true especially, however, if the government is dissolved: 'And thus the community may be said in this respect to be always the supreme power, but not as considered under any form of government, because *this power of the people can never take place till the government be dissolved.*'<sup>41</sup>

Additionally, and once more, Locke expects the people to come up with a new legislative. This expectation is met only in case having supreme power amounts to being a political actor. And acting politically, according to Locke, can be achieved but by a body that is sufficiently unified.<sup>42</sup> Thus, the people are not only the supreme power, but also the sole political actor in times of dissolution. That certainly distinguishes them from the government.

Thirdly, Locke puts forward the anthropological claims that human beings are social animals by nature and that trust or 'keeping of faith' essentially belong to human practice.<sup>43</sup> Mabbott is quick to point out that Locke doesn't think these dispositions to be sufficient for establishing a civil society.<sup>44</sup> Certainly, this is true if one considers the very beginnings of civil societies, the stage when human beings appoint governments for the first time in their history in order to evade the inconveniences of the state of nature. But once a society has existed for a while and the government gets dissolved, why shouldn't those human characteristics prevent the people from falling back into the state of war with one another?

The point is emphatically made by John Dunn (1969). He introduces a distinction between *formal* and *substantive* social order: 'The order which can be erased through such a desertion by the executive is the formal legal order of the English Body Politick, not the substantive social

<sup>40</sup> *ibid.*

<sup>41</sup> Locke 1690: 149, my italics.

<sup>42</sup> Locke 1690: 96

<sup>43</sup> Locke 1690: 77, 14

<sup>44</sup> Mabbott 1973: 155, cf. Locke 1690: 14

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order of the village or even perhaps the county.<sup>45</sup> After all, it just seems implausible that, if the government dissolved, the experience of being a political society would vanish overnight! Something would have to subsist, be that elementary social or more sophisticated political structures. At all events, there would be no state of war breaking out between the people themselves.<sup>46</sup>

Eventually, the distinction between society and government seems to hold. Mabbott's first critical claim is rendered implausible and Locke's argument for resistance is secured. What about Mabbott's second critical claim, though? If the distinction really holds, then Locke appears to operate on two different, contradictory accounts of governmental foundation. How can we deal with this problem?

The solution hinges on an idea anticipated above: the second account is actually no account of governmental foundation, but an account of governmental dissolution. The two accounts explain different things, and are therefore not contradictory!

The first account explicates the origins of legitimate political authority. Thus, it seems plausible that the distinction between society and government is not in play yet: when the first civil society is founded, a government is appointed simultaneously. The second account, on the contrary, accounts for governmental dissolution and reinstatement. Hence, it makes sense that civil society and government are told apart, for the former has to resist and replace the latter.

In this sense, the accounts can be read as being temporally successive. While the first account covers the early chapters of human political history, the second account accommodates social phenomena characteristic of more developed societies, like dissolution of and resistance to governments.

## 6. Conclusion

In my essay, I have specified the conditions under which the people, according to Locke, might legitimately assert the right of resistance. Subsequently, I have presented Mabbott's (1973) criticism of Locke's argument, which says that he fails to account for the distinction between society and government. By disentangling two different claims from Mabbott's criticism, I was able to show that there can be evidence found for the distinction in Locke's argument if one looks for it in 'non-foundational' contexts. Thus, Locke evades Mabbott's criticism.

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<sup>45</sup> Dunn 1969: 184f.

<sup>46</sup> My argument leaves it open what the terms 'people' or 'society' actually mean for Locke. It just shows that they are distinct from 'government' in certain cases.



## References

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