

Dissent as political legitimacy

A discussion of the relation between power and freedom in *Two Treatises of Government*

Daan Van Cauwenberge¹

Abstract – This paper argues that Locke develops a new conceptualization of both power and freedom in the *Two Treatises of Government*. Unlike his predecessors, Locke claims that freedom is a necessary rather than a conditional property of men. Therefore, power must be understood as a relationship of consent between radically free actors. However, instead of critically examining power structures in society, Locke uses this new definition as a tool of political justification. Locke emphasises the power of people to rebel against their conditions in order to legitimise the authority of states in which the people do not revolt. Although the individual is a theoretically important player, they are reduced to cogs in the political machine. The right to revolt, this paper will argue, is but a rhetorically strategic device to validate the power of the state.

1. Introduction

When discussing the work of John Locke, one must go against, but cannot ignore, his status as a cultural symbol. He is a symbol of individual rights, an early defender of liberalism and to some the father of contemporary democracy (Locke & Shapiro, 2003, p. 172). His influence on our modern political structures is immense and especially the American constitution owes a great debt to his thinking (Lutz 1984, p. 189).

This symbolic association with freedom, democracy and emancipation can however cloud our reading of his texts. There is a danger of assuming precariously that Locke's concepts align with our modern interpretation of power and freedom.

This paper will be an in-depth analysis of Locke's conceptualization of power and freedom in the *Two Treatises of Government*, his most influential political work. After a brief overview of Locke's famous argument for the existence of a government, I will analyse both concepts with a focus on the authoritarian under-

1. Daan Van Cauwenberge is predoctoral researcher at Ghent University. Contact: daan.van Cauwenberge@ugent.be. This article is freely available under the Creative Commons license Attribution-NonCommercial-NoDerivs (BY-NC-ND).

tone in his work. I will put special emphasis on the famous ‘right to revolt’ for which this work became famous.

2. Locke: a methodological anarchist

Unlike most analyses of *Two Treatises of Government* this paper will argue that the first treatise is of crucial importance to understanding the implications of Locke’s political theory. The first treatise was largely written as a rebuttal of the work of Sir Robert Filmer, a political philosopher and a contemporary of Locke. Filmer’s philosophy of patriarchal power was a common defence of absolutist monarchies during Lockes lifetime (Locke & Shapiro, 2003, pp. 7-8).

Nowadays this discussion is left largely unexplored. One reason for this omission is the fact that Filmer’s theories have been banished to the realms of obscurity. No one seems to be particularly interested in the detailed arguments against a theory without any influence. Neither do these discussions seem to be philosophically intriguing, because most of their arguments can be boiled down to technical discussions of Bible excerpts.

Yet, I would argue that the first treatise provides important context for the claims made in the second. It should be noted that the historical research of Peter Laslett and Richard Ashcraft has shown that it is very likely that Locke wrote the first treatise after the second (Locke & Shapiro, 2003, p. x). This means that the first treatise is not, as has been unduly assumed, a first attempt at explaining his political ideas, but rather an application of his philosophy. By looking at his arguments we can gain new insights into the kind of problems that Locke was trying to solve by devising his theory.

The main thesis in Filmer’s philosophy is the assertion that “every government has absolute power” (Locke & Shapiro, 2003, p. 8). He argues that no one is born free, because we are always subjugated to the authority of others (Cohen 1986, p. 313). The first authority is that of the father, who has an absolute power over his children. In Filmer’s words this patriarchal power was given by God (Locke & Shapiro, 2003, p. 17). Filmer claims that the British monarchs are the direct descendants of Adam and Eve, which grants them a similar parental power over their subjects. This means that we are never free, but always have to obey both our fathers and our monarch.

Locke takes issue with the idea that any government should have absolute power. The idea of power as a right, which he ascribes to Filmer, strikes him as utterly absurd. If power is a right, it would be possible to possess it without having any subordinates. For instance if Adam’s power was given to him by God that means that there must’ve been a time when Adam was the king of a not-yet-existing species.

‘Adam was a king from his creation;’ a king, says our author, ‘not in act, but in habit,’ i.e. actually no king at all (Locke & Shapiro, 2003, p. 17).

It is clear from this passage that Locke proposes a radically new concept of power. Filmer saw power as an individual right. To him it is an attribute possessed by a single person, such as a father or a king. Locke, however, rejects this individual notion of power and argues that power is a certain relationship between multiple actors. This relationship of authority is either one of war or of consent. But the state of war reduces the loser to an object (Locke & Shapiro, 2003, p. 107), which the winner can possess, and this is thereby not the kind of relationship that characterizes a government.

By identifying power as a relationship of consent Locke emphasises that all men are fundamentally free.² Locke argues that freedom is a natural property possessed by all men. This fundamental freedom is a necessary consequence of his opposition to Filmer. By negating Filmer’s premise that ‘we are never free’ Locke concludes that the opposite must be true (Locke & Shapiro, 2003, p. 316). As no one has a natural duty to obey somebody else, this obedience can only be explained as a voluntary acceptance of authority, i.e. consent (Dunn, 1980, p. 160).

Another consequence of this new conceptualisation of power is that the existence or even the necessity of a government can no longer be taken for granted. If power implies consent, then the existence of a government is a choice. For this reason John Simmons argues that Locke is a methodological anarchist (Simmons, 2000, pp. 742-743). This anarchism is not, as in certain political ideologies, a system of values, but rather it is a methodological framework in political philosophy. A methodological anarchist does not assume the utility of the state. Therefore, the point of departure in Locke’s philosophy is a state of nature or stateless situation.

All men in the state of nature are fundamentally free, meaning that there is no one who has any natural authority over them. They are free to use their body and property however they like.³ But although they are free, they still have to obey the will of God, revealed to them by their reason in the form of natural laws (Locke & Shapiro, 2003, p. 102). Interestingly most of these laws, as explained by Locke, focus on property. People are not allowed to harm the property of others, because property is understood to be an extension of the body. And they are not allowed

2. I have chosen to use the word ‘men’ instead of the word ‘humans,’ because I believe this reflects the intended meaning of Locke’s philosophy in a better way. In *Two Treatises of Government* it is rather ambiguous whether he sees his theory as being applicable to women and non-white people. I avoid this discussion not because I believe it to be irrelevant, but because I believe it to be too important to be settled by a short remark in a paper on a different subject.

3. Locke’s famous theory of property characterizes owning as a pre-political act. None of the criteria presuppose the existence of a political state (Cohen, 1986, p. 305).

to harm the body of another human, because these in turn are the property of God.

In the state of nature God can clearly be seen as the legislative power and the people as the executive power. Locke claims that the lack of a central organization of the executive power results in an incorrect application of the rules. All people are judge, jury, and executioner (Locke & Shapiro, 2003, p. 105). This means that if people want to truly defend their property, they have to band together and organize their divine executive power according to a centralized authority. This collective of people who have ceded their right to practice their executive power is called a community (Locke & Shapiro, 2003, pp. 156-157). This community has some very interesting characteristics.

A first aspect of the community to keep in mind is that the members of this group consent to obey the central authority of the group, but they do not transfer their power (Locke & Shapiro, 2003, pp. 201-202). Locke does not believe that power is the result of a one-off transfer of control. He argues that people are fundamentally free and that therefore the only true form of power is a relationship of consent. This consent and power in general is always conditional. In this matter he greatly diverges from his predecessors. Hobbes for instance sees the accession of people in a group as a transfer of one's autonomy (Hobbes, 1651).

A second aspect is the fact that Locke distinguishes between a community and a political state as separate entities. A community is a group of people that have banded together and act according to the will of the majority. It is thereby important to understand that this original entity to which one consents is not yet the political state. In order for the community to become the latter, one must first draft a constitution. When this constitution is adopted the community cedes its power to the political state, in a similar manner to the individual granting its consent to the community (Tunick, 2014, pp. 54-55).

An interesting consequence of this theory is that it seems to propose a division of power and sovereignty. Generally speaking the sovereign is the entity with legitimate political power in a society.⁴ In Locke's political state the community seems to fulfil this role most clearly (Grady, 1976, p. 283). But this sovereign, at least as characterized by Locke, does not seem to be able to execute this power. Therefore the community needs a representative government, established by a constitution, to carry out this function.

From this brief overview of Locke's theory through the lens of his discussion with Filmer we can notice that the notions of power and freedom are central to understanding the central thesis of his work. At first glance his reconceptualiza-

4. I am aware that Locke himself does not use the term 'sovereignty' in *Two Treatises of Government*. I follow Robert C. Grady's analysis that by applying this term, used by other philosophers in the social contract tradition, we can see some interesting ways in which Locke diverges from his predecessors.

tion of both concepts seem to imply a more democratic and even emancipatory vision of politics. In what follows I will try to disprove this original reading by dissecting both concepts and demonstrating their authoritarian usage in Locke's philosophy.

3. Power as consent

In order to explain the nuanced ways in which Locke transforms the concept of power, I'll contrast his vision with those of his predecessors in the social contract theory. Special emphasis will be put on the nature of consent in his philosophy. Later on we will draw on this analysis of power in order to understand the fundamental freedom that Locke places at the centre of his theory.

Consent occupies a central role in the theories of many philosophers in the social contract tradition. This voluntarism can be seen as one of its defining characteristics (Riley, 1973, p. 543). But unlike Locke, most of his predecessors argued that men lose their freedom once they decide to leave the state of nature. Consent is a one-off act in which people from the state of nature give their natural freedom and all its corresponding rights to the sovereign.

Locke does not simply propose a new way of understanding both power and freedom, but as a result he introduces a new vision of consent. Earlier philosophers, like Hobbes, argued that power and freedom are properties of individuals. A transfer of power or freedom was imagined to be similar to the transfer of an object and could be explained in terms of trade. Locke, however, claims that freedom is a fundamental characteristic of all men and can therefore not be given away by a simple act of consent. The act of consent is always conditional and temporary in nature. Therefore, someone who has power is someone to whom people continuously consent (Grady, 1976, pp. 288-289). This consent is not simply a one-off but a repeated act: it is a relationship.

This naturally begs the question of how a member of society could constantly consent to the powers that be. Locke solves this problem by adopting a difference between two different forms of consent: a tacit and an express consent (Locke & Shapiro, 2003, p. 152). The latter is the most obvious example of consent in which one actively agrees to obey. Tacit consent in contrast is a form of passive agreement to an authority. If one simply obeys without giving either explicit consent or dissent, Locke would argue this person has given tacit consent. In short, we could call express consent the presence of a 'yes' and tacit consent the absence of a 'no.'

Almost every act of power only requires tacit consent. Only when one becomes a part of a community or a community becomes a part of a political state, one has to give express consent (Locke & Shapiro, 2003, pp. 169-170). But even this initial express consent seems like a very strict criterium if Locke seems to

imply that children are also supposed to obey the law. Therefore, it is important to understand clearly what Locke means when he says that an initial explicit consent is necessary.

First of all, it is essential to emphasize the ahistorical nature Locke ascribes to his own philosophy (Dunn, 1980, p. 179). Locke's intention is to write a theory devoid of historical claims. Leaving aside the question whether something like an 'ahistorical political philosophy' is even possible, we can reasonably claim that the different stages in the development of the political state are not supposed to be read as historical periods. They are rather an abstract legitimation of the existence of a government. This means that the only act of power to which people have to give express consent, i.e. the accession in a community, refers to a hypothetical rather than a historical moment.

Furthermore if we pay attention to the historical background of Locke's claim, which Locke himself would not have found appropriate, we can see that the idea of 'express consent' has changed a lot since Locke's lifetime. John Dunn notices that the example Locke gives of express consent is an oath of loyalty (Locke & Shapiro, 2003, p. 126). Such an oath was a common practice at the time. Technically everyone could be asked by the authorities at any moment to swear this oath as a sign of loyalty to the crown. This seems to imply that express consent is not, as one could assume, a necessary prerequisite to become part of a society, but rather something that could hypothetically be expected to be given by every member. This example seems to further prove our earlier hypothesis that 'express consent' should be seen as hypothetical in nature (Dunn, 1980, pp. 167-169).

Therefore, we can conclude that tacit consent is the main, if not the only, form of consent with which Locke is concerned (Dunn, 1980, p. 179). So when Locke talks of consent he generally means the absence of a 'no' rather than the presence of a 'yes'.

This helps us to explain why 'the possibility of dissent' takes such a central position in his broader philosophy. When we consider the fact that every act of power has to correspond with an act of tacit consent, it becomes clear that there can be no power where there is no possibility to dissent. The possibility of power presupposes, quite paradoxically, the possibility to rebel against that power.

I want to emphasize that this theory in itself could have an emancipatory application. One could analyse contemporary power structures in order to discover whether they offer a genuine possibility to dissent. But this is not the application Locke has in mind. As mentioned above, Locke argues that his theory is ahistorical. Yet the conclusion of his argument, the power structures of the society he lived in, are obviously historical in nature. By combining this ahistorical argumentation with historical conclusions Locke frames power structures as the result of an abstract reasoning rather than historical contingency (Marcuse & De Bres,

2008, p. 40). Instead of critically examining them, Locke seems mostly interested in abstractly legitimizing the power structures at hand.

Reading the text from this viewpoint it becomes clear why Locke seems pre-occupied with the fabrication of possibilities to dissent. Take for instance this example from the first treatise of Locke's refutation that someone could have power on the basis of possession of land alone rather than consent.

Should anyone make so perverse a use of God's blessings poured upon him with a liberal hand [that is, threaten starvation to those who don't acknowledge sovereignty]; should anyone be cruel and uncharitable to that extremity, yet all this would not prove that propriety in land, even in this case, gave any authority over the persons of men, but only that compact might; since the authority of the rich proprietor and the subjection of the needy beggar began not from the possession of the land, but the consent of the poor man, who preferred being his subject to starving. And the man he thus submits to, can pretend no more power over him, than he has consented to, upon compact. (Locke & Shapiro, 2003, p. 30)

In this example Locke discusses the power a rich proprietor could have over a poor beggar. The obvious explanation of this power dynamic would state that the rich proprietor gains power over the poor man as a result of him owning land, which is crucial to the survival of the beggar. But Locke claims rather controversially that it is the beggar's consent that is the sole ground of power (Cohen, 1986, pp. 308-309).

Essential to Locke's argument is the idea that the beggar could choose not to consent to the landowner. The fact that Locke does not spend too much time on the practical or psychological difficulties of this suggests that he seems to take the existence of a possible 'no' as a given. The possible dissent is only brought up as an argument to legitimize the power the proprietor has over the poor beggar and not to encourage the beggar to exercise his claimed freedom.

This argumentation is very similar to the passages concerning his famous 'right to revolt.' Earlier in this paper, I touched on how the political state acts as the representative of the community. As a result a community has a right, in some interpretations even a duty, to revolt against a government that acts against its interest (Locke & Shapiro, 2003, pp. 180-181). It is important to read this 'right to revolt' as a necessary premise in order to legitimize the power of the government rather than as a call to fight injustice (Levin, 1971, p. 153). In the same way as the beggar needed to be able to rebel in order for the landowner to have legitimate power, the community need to have the possibility to revolt in order to legitimize the government.

Locke's language can be confusing. His examples of striking beggars, emigrating teenagers or revolting nations seem to create an atmosphere of radical emancipation. But underneath this surface-level reading is an author not at all interested in the validity of the moral dimension of his claims. The possibility of a 'no' is presented as the necessary premise in order to legitimize a power structure. The 'no' is only brought up to emphasize the fact that the beggars pay their rent, the teenagers stay at home and the people obey quietly. The existence of power has to be characterized as a choice.

4. The unthinkable freedom

Our discussion of consent and power has led us to Locke's rather paradoxical conception of freedom. A first strange aspect of his conception of freedom is that although it is one of his most central concepts he actually hardly spends any time explaining what freedom exactly is. Keeping this lack of an explicit analysis of freedom in mind, it is still safe to say that Locke's idea of freedom is a freedom of choice (Cohen, 1986, p. 311).

Freedom of choice has been a highly influential way of characterizing freedom. The idea of freedom being a fundamental capacity or skill that people by definition possess is essential to this conceptualization (Ruda, 2016, p. 10). This clearly fits Locke's idea that freedom is a fundamental right, which grants people the capacity to make unconstrained choices (Cohen, 1986, pp. 311-313).

This view has two important implications. The first is the fact that freedom is framed as something which people possess (Ruda, 2016, p. 10). It should be noted that this grants freedom a similar status to the one Locke criticised Filmer giving to power. Freedom is seen as a kind of entity which people possess regardless of external factors.

The second implication is the fact that freedom is framed as something which people possess by definition. As we have discussed in the previous section Locke often assumes the availability of multiple possibilities, or 'no's' as I have called them, in order to legitimise the authorities in his society. Thereby we can safely state that Locke regards freedom as something to be assumed, regardless of the specific circumstances in which people find themselves.

To better understand why this is an issue it is interesting to describe this framing of freedom as a freedom of choice in Hegelian terms. Traditionally the subject is seen as the most important part of a proposition and a predicate is simply an attribute we ascribe to this subject. Hegel turns this division upside-down by arguing that it is actually the predicate (or substance) which is most important in any proposition. The positive information of a proposition is given exclusively by its substance. Its subject is, to put it in Hegelian terms, but an 'empty gesture' (Ruda, 2016, pp. 144-145).

In Lockean political philosophy ‘freedom’ never adds any content to a statement, but is nevertheless a necessary prerequisite to any meaningful thesis. It is clear that freedom lacks any substance in the logic of Locke’s philosophy. While we have a ‘freedom to revolt’ or ‘a freedom to exercise our divine executive power,’ it becomes rather absurd to ask whether a slave has more freedom than a slave owner. Sentences like ‘the woman is emancipated,’ ‘the slave won his freedom’ or ‘the poor beggar is being oppressed’ become quite difficult to express when freedom is seen as ‘empty.’

In Locke’s philosophy freedom has become a formal characteristic of a proposition. It is a necessary condition in order to discuss power and human actions in Locke’s philosophy, but is itself devoid of meaning. Only when we see freedom as the result of an act rather than a capacity, we can speak coherently about essential concepts like emancipation, oppression or liberation. As long as we see freedom as a capacity these concepts become at best needlessly hard to explain and at worst empty concepts.

5. Confused Agents

In our analysis of power and freedom we have failed to ask one important question: Who are the central agents in this political theory? Locke is often labelled as an individualist in secondary literature based on his defence of individual rights and his characterization of power as consent. But this interpretation fails to grasp that it is not the individual, but the community who is the main player in political society (Tunick, 2014, pp. 55-56).

It is easy to get confused by the many actors that take centrefold in the two treatises. The state of nature, community and political society are three⁵ different layers with each their own agents, duties and acts of consent (Cushing, 2003, pp. 220-221). Every layer has a main actor, which holds power and is the one to give their consent to the next layer. The individual is the main actor in the state of nature, the will of the majority is the deciding actor in the community and the executive and legislative power are the main actors in the political society (Locke & Shapiro, 2003, pp. 142, 158-159).

We can analyse the relationship between the actors in different layers through the perspective of consent or dissent. From the perspective of consent, we can remark that the power of every actor is dependent on the consent given by the

5. One could argue that God acts as a fourth layer in Locke’s philosophy. All of humanity’s rights and attributes were given by God, so one can reasonably say that the layer of the individual is dependent on God’s consent. But a disqualifying factor to call God a layer is the fact that his dissent is transitive in nature. God is the highest authority in every possible layer and always withholds the right to take back his consent. This clashes with Locke’s main conception of dissent as a non-transitive attribute.

previous layer. Power is always fiduciary and therefore consent and power are both transitive concepts. If a community decides to adopt a constitution, the consent all individuals have given to that community, automatically transits to this next layer.

In contrast dissent is a non-transitive concept. Although the individual has to obey the constitution when they gave consent to the community that adopted the constitution, they are not able to revolt legitimately against the constitution. Only the community has the power to draw back the consent they have given to the political society (Locke & Shapiro, 2003, pp. 197-198). Only the entity which has consented to a certain power structure is able to withdraw this consent.

But the central position given to the community is rather problematic for several reasons. Both the individual and the government are positive entities, i.e. things we do not have to theoretically construct in order for them to have an impact on reality. An individual or a government can reason and act coherently. We can visit, talk and argue with them. It is unclear however what 'a community' is exactly outside of the pages of the two treatises. Locke says that on the basis of an evaluation the community has the right to overthrow the government, but how can 'a community' evaluate and how does it act (Grady, 1976, p. 277)?

Locke tries to solve this conundrum in one of his most famous passages, which is now regarded as one of the essential tenets of democratic society.

Here, it is like, the common question will be made, "Who shall be judge, whether the prince or legislative act contrary to their trust?... To this I reply, "The people shall be judge;" 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 to discard him, when he fails in his trust? (Locke & Shapiro, 2003, p. 208)

The people shall be judge! But what is 'a people' and how is it supposed to judge? These questions are relevant because the people are not, as one would assume, the community. The people are rather a theoretical entity introduced in the analysis of political society. They are those in the political state who are not part of the government. 'The people' exist only as a theoretical construct in relation to the government.

Yet the people share many similarities with the community. They have the power to overthrow a government (Locke & Shapiro, 2003, p. 194), act according to the will of the majority and their existence seems to be simply theoretical in nature (Grady, 1976, p. 283). One could theoretically construct a legal or political entity which would broadly correspond to the 'community' or 'people' as described in the *Two Treatises of Government*, but these cannot be 'found' outside of the pages of a treatise in the same manner as one can find an individual or gov-

ernment. The people have no counsel, procedures or weekly meetings. Therefore it seems absurd to ascribe to them the capacity to contemplate, judge or act in a coordinated manner.

However, according to an individualist reading of Locke's philosophy, it is often argued that the people is but a collection of individuals. This would imply that it is the individual who holds the power to judge and eventually revolt against the government. But there is one problem with this interpretation. This individualist reading accidentally conflates the individual as a member of the state of nature with the individual as a member of society (Grady, 1976, p. 290).

Central to Locke's philosophy is the implicit dichotomy which he introduces between the fundamentally free individual and the individual as a citizen. The latter one is a cog in the larger machine of the state, who has to obey the law in order for society to function properly (Locke & Shapiro, 2003, pp. 158-159). Meanwhile the idea of the individual as a fundamentally free entity that consents to its own subjugation acts as the legitimacy for that same machine (Cohen, 1986, pp. 311-312).

Herbert Marcuse noticed that this dichotomy is a commonality shared by many theories of modern philosophers. There is the internal, which is fundamentally free and has certain divine rights. The external meanwhile is part of a deterministic world, in which we are reduced to material objects subject to the laws that be (Marcuse & De Bres, 2008, pp. 12-13). This dichotomy can lead to a certain worldly indifference. If no external factor can have any effect on our rights and freedom, why would one bother to evaluate the concrete power structure one happens to be part of (Marcuse & De Bres, 2008, p. 14)?

It is this indifference which captures best the condition of the Lockean citizen. While their right to revolt legitimises the government's authority, they are supposed to simply follow the rules and act 'rational.' This rationality is not seen as a tribunal or a dialectic, but as a mechanistic way of enhancing one's property and safety (Cohen, 1986, pp. 314-315). If they would organize themselves in order to critically evaluate the government they would not, as one would assume, be exercising their political rights, but paradoxically they would be committing a crime of the highest order.

6. Conclusion

This paper has argued that Locke's insistence on freedom actually serves the role of validating the power of the state rather than protecting the liberty of the individual. The first section gave a very brief overview of Locke's main arguments considering freedom and authority. This overview was used to analyse the status of both power and freedom.

I have argued that power is identified as a relationship of consent between the powerful and the subjugated. Instead of using this definition for critical purposes, Locke uses it to legitimise the power structures of his time. In order to do this successfully he has to fabricate the possibility of dissent in every situation where one has to obey an authority.

This production of the possibility of dissent directly results in his conception of freedom as a fundamental human attribute. Freedom has essentially become an empty concept in Lockean philosophy devoid of any positive meaning. This definition of freedom subverts any attempt to use it in a substantial sense and effectively makes political vocabulary, like ‘oppression’ and ‘emancipation,’ meaningless.

The individual, often taken as the main focus of Locke’s philosophy, is essentially split in two. The theoretical individual of the state of nature acts as a central point of legitimacy for the state. The individual as citizen however has to obey the law carefully. The Lockean subject is absorbed into a faceless community and loses its autonomy in order to justify the power of the state. Locke puts forward the community as the main actor in political society, but it is unclear how this new entity is supposed to fulfil this role in any meaningful way.

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