

The Right of Revolution: An Analysis of John Locke and Thomas Hobbes' Social Contract Theories

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The Right of Revolution:
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Contract Theories

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Table of Contents

Table of Contents.....	2
Abstract.....	3
Introduction.....	4
Chapter I.....	7
Chapter II.....	21
Chapter III.....	49
Chapter IV.....	75
Chapter V.....	90
Conclusion.....	109

Abstract

The right of revolution in the social contract theories of Thomas Hobbes and John Locke is a curious topic. This paper discusses the differences and similarities between the two philosophers' discussions of this topic. It is argued that Hobbes and Locke differ most drastically on the notion of who the sovereign is. While Hobbes prefers to establish the sovereign as a demigod, Locke understands the sovereign as a mortal, and thus fallible, man. It is because of this distinction that Hobbes and Locke disagree on the notion of the right of revolution. Furthermore, the American Founding Fathers, including James Madison and Thomas Jefferson, inherited Locke's perspective on this matter when arguing for the independence of the colonies. Finally, it is the conclusion of this paper that this notion of the right of revolution continues today, when observing the numerous political revolutions around the world.

INTRODUCTION

The question of the right of revolution is an interesting dilemma. In a particular society, should the people reserve the right to revolt against the established order? Should the sovereign or ruler constantly fear the loss of power? Is this an effective means of restraining a tyrant? Who knows the best course of action for a particular society – the people or the ruler? Does the right of revolution result in chaos and instability? What conditions are necessary for this right to be exacted? These are some of the questions I hope to pursue in my study of the right of revolution.

Two of the most important political theorists regarding this idea are Thomas Hobbes and John Locke. While the two disagree substantially on this right, it is my hope that some similarities can be seen between the two. I have outlined the basic arguments in Hobbes' and Locke's social contract theories, as well as elaborated upon the specific doctrines each proposes regarding revolution. While Hobbes regards the sovereign as all powerful and immune from revolution, Locke does permit the people to revolt in circumstances of long, sustained abuse. This permission is allowed because of Locke's notion of the social contract as based upon consent. While Hobbes agrees about the initial consent regarding the beginning of the social contract, he also believes that the sovereign must remain independent and autonomous in order for him to be able to enforce the laws of the land. Furthermore, Hobbes argues that man's natural state is one of a "war of all against all." In such a state, there needs to be a sovereign who can readily correct this natural imperfection in man. Without supreme, unconditional power, the society would disintegrate. Locke, however, believes man to be more peaceful. While each man is free to pursue his own course of action, the original natural state of man is not pure chaos.

Thus, the difference in the way in which these two philosophers portray the natural state of man influences the decision of whether the people should be able to revolt. It was my main finding that, in particular, the way in which the people view the sovereign, as either supreme and immortal or human and flawed, ultimately determines whether the people retain the right of revolution.

In particular, I believe this finding is applicable to modern political life. Whenever the sovereign is viewed as a fallible human being, no more extraordinary than any other man, the people retain a right to revolt against him. For example, the contemporary political strife in many countries around the world can be viewed as a response to tyrannical leadership by a leader who is seen as merely arbitrarily in power. Without any sort of concept of his qualifications or his supreme ability to lead, the sovereign loses his ultimate control over the people. And, when the abuses become excessive, revolution ensues. Thus, while this investigation involves the thought of two thinkers from centuries ago, I believe the lesson is highly relevant in today's political climate.

I first began by treating Hobbes' *Leviathan*, then turning to Locke's *Second Treatise on Government*. It is here that the most explicit investigations into the right of revolution can be found. After outlining the arguments, and comparing the two theories, I turned to connections to the American Founding. It is clear that these two thinkers, but particularly Locke, had incredible influence on the Founding Fathers. The Declaration of Independence, a clear, concise document explicitly outlining the right of revolution, resonates very much with Locke's political theory. The Bill of Rights and The Federalist Papers, too, can be seen as bolstering the right of revolution. Furthermore, these

documents seek to ensure that the people do not suffer the abuses of a tyrannical sovereign ever again. After highlighting some of the connections between the political theory and the American political strife, I summarize my argument for the idea that the way in which one interprets the sovereign ultimately determines the right of revolution. It is my hope that this argument is both clear and engaging.

Long live the revolution.

CHAPTER I – Hobbes, “On Man”

In order to initiate a discussion of Hobbes’ state of nature, it is important to begin with exactly how Hobbes defines man’s nature. He begins the first part of his work, “Of Man,” with an explanation of the mental and physical processes at work in man. Thoughts, in man, derive from sense impressions from external objects. Thought processes are distinguished between those that are regulated and those which are unguided. Guided thoughts are further divided into those that seek to explain causes for given effects and those which inquire into the numerous effects possible from any given action.¹ Central to Hobbes’ definition of man is the distinction between man and beast and man and God. Many of the qualities of man that separate him from other animals proceed from the human capacity to utilize speech. Hobbes notes, “For besides sense, and thoughts, and the train of thoughts, the mind of man has no other motion, though by the help of speech and method the same faculties may be improved to such a height as to distinguish men from all other living creatures.”² Furthermore, he notes, “Whatsoever we imagine is *finite*. Therefore, there is no idea or conception we call *infinite*. No man can have in his mind an image of infinite magnitude.”³ God, then, is that being which man acknowledges as incomprehensible, yet quantifies in a word so as to honor his existence. This distinction is prevalent to Hobbes’ state of nature; it helps to equate all humans as beings that are capable of creating a commonwealth but, without such a society to restrain each man’s will, all men live in a state of war where each person is entitled to fulfilling his self-interest.

¹ Hobbes, p. 13

² Hobbes, p. 15

³ Hobbes, p. 15

Hobbes then discusses human speech which, as previously noted, is one of the central aspects of the human essence. He elaborates on the importance of speech, “SPEECH, consisting of *names* or *appellations*...whereby men register their thoughts, recall them when they are past, and also declare them one to another for mutual utility and conversation, without which there had been amongst men, neither commonwealth, nor society, nor contract, nor peace, no more than amongst lions, bears, and wolves.”⁴ It is clear that speech is not only one of the qualities that distinguish men from beasts, but it is also a necessary part of man’s rejection of the state of nature and the formation of a commonwealth. Speech is also necessary for one to reason and to understand science. Hobbes defines reason, as “nothing but *reckoning*...of the consequences of general names agreed upon for the marking and signifying of our thoughts.”⁵ And, the purpose of reason is to begin as first principles and to proceed to establish logical consequences. Furthermore, reason requires one to question the commonly established first principles because certainty is not the same as unanimity. And, whenever a controversy arises, the conflicting parties must, “by their own accord set up for right reason of some arbitrator or judge to whose sentence they will both stand.”⁶ It is already clear that Hobbes intends to demonstrate the way in which the commonwealth, as established by the public, is the reasonable solution to the problems posed by the state of nature. Hobbes summarizes, “To conclude, the light of human minds is perspicuous words, but by exact definitions first snuffed and purged from ambiguity; *reason* is the *pace*; increase of *science*, the *way*; and the benefit of mankind, the *end*.”⁷

⁴ Hobbes, p. 16

⁵ Hobbes, p. 23

⁶ Hobbes, p. 23

⁷ Hobbes, p. 26

In addition to speech and reason, man is also comprised of many passions which influence his actions. Within man is a capacity to endeavor towards things he desires or to avert things he would prefer to avoid. Pleasure is defined as the appearance or sense of good, while displeasure is the appearance of sense of evil.⁸ Hobbes then lists a number of states and passions that men are capable of, including hope, valor, curiosity, and vanity. What is most important about these passions, however, is that they indicate the irrational aspect of human behavior. Furthermore, Hobbes elaborates on man's capacity for deliberation as the ability to evaluate future consequences in making a decision. But, he also notes that man cannot have absolute knowledge of the future, indicating that his choice is risky. He notes, "In deliberation, the last appetite or aversion immediately adhering to the action, or to the omission thereof, is that we call the WILL."⁹ The will, then, is the choice man ultimately makes. This intertwines the rational and irrational aspects of the human person. Man seeks pleasure by willing that course of action which is most likely to bring positive consequences. But, in selecting a course of action, he uses his reason in order to evaluate alternative courses of action. Thus, man is constituted as both a rational and irrational creature.

Hobbes then moves to discuss man's capacity for knowledge. There is, as has been previously noted, a judgment which arises from the final action of the will. Hobbes notes that there is a particular degree of uncertainty associated with our knowledge. He explains, "No discourse whatsoever can end in absolute knowledge of fact, past or to come...No man can know by discourse that this or that is, has been, or will be, which is to know absolutely, but only that if this be, that is, if this has been, that has been, if this

⁸ Hobbes, p. 29

⁹ Hobbes, p. 33

shall be, that shall be, which is to know conditionally.”¹⁰ Man, then, cannot enjoy any particular degree of certainty, but can only use his capacity for reason to evaluate first principles and derive conclusions. That is not to say, however, that one should simply accept uncertainty as the end of knowledge. Hobbes indicates that science is the knowledge of consequences that rests upon first definitions, while opinion rests upon one’s beliefs. Similar to opinion, belief and faith are grounded on the opinions of another. In indicating the level of uncertainty central to man’s knowledge, it can be seen that there is little hope for perfection or an ideal. This detail will be important in Hobbes’ justification of the commonwealth as a best case scenario against the state of nature.

Another topic central to both the state of nature and the formation of the commonwealth is man’s power. Man is driven by a desire to acquire power, riches, and honor. He defines the value or worth of man as, “his price...so much as would be given for the use of his power; and therefore is not absolute, but a thing dependent on the need and judgment of another.”¹¹ It is important to note the way in which Hobbes incorporates interpersonal relations. It is important to understand the state of nature and the commonwealth as communities, or contexts, in which multiple peoples must learn to live amongst others. Hobbes notes that the greatest power, amongst men, is the civil power, “which is compounded of the powers of most men, united by consent in one person, natural or civil, that has the use of all their powers depending on his will, such as is the power of a commonwealth.”¹² It is the significant difference between the ways in which men interact with others that constitutes the major difference between the state of nature and the commonwealth. Finally, Hobbes defines worthiness as that which consists in, “a

¹⁰ Hobbes, p. 35

¹¹ Hobbes, p. 51

¹² Hobbes, p. 50

particular power or ability for that whereof he is said to be worthy; which particular ability is usually named FITNESS or *Aptitude*.¹³ Thus, it is not true to say that all people are equal in all ways. Rather, there are ways in which individuals have a right, or even deserve something, before others. While all men may be worthy of riches or power, only particular people actually deserve these things. It must be, then, that there be a civil way in which these rights are distributed, presumably by the sovereign of the commonwealth, in order to ensure that these interpersonal relations remain civil.

Hobbes continues, in his chapter entitled “Of the Difference of Manners,” to discuss the ways in which men may live together in peace. It is here that Hobbes really begins to indicate the chaotic nature of men when there is no authority present to restrain each man’s will. He notes, “I put for a general inclination of all mankind, a perpetual and restless desire of power after power, that ceaseth only in death.”¹⁴ Self-interest is central to Hobbes’ understanding of man’s nature. He does note, however, that man’s reason for acting like this is not purely to accumulate riches. He states, “the cause of this is not always that man hopes for a more intensive delight than he has already attained to, or that he cannot be content with a moderate power, but because he cannot be assure the power and means to live well, which he hath present without the acquisition of more.”¹⁵ The competition between men arises not from greed but, rather, from a fear that another man will use his power to subjugate those who are weaker than him. Thus, the main motivation in competing with another to accumulate as much as he can is mainly a concern for self-preservation.

¹³ Hobbes, p. 57

¹⁴ Hobbes, p. 58

¹⁵ Hobbes, p. 58

Hobbes continues to discuss traits natural in man that cause all men to seek refuge under a sole authority. He notes, “Desire of ease and sensual delight disposeth men to obey a common power, because by such desires a man doth abandon the protection might be hope for from his own industry and labour. Fear of death and wounds disposeth to the same, and for the same reason.”¹⁶ Furthermore, fear of oppression by another drives men into society. Thus, Hobbes argues here that society is a necessary end. It is the only way men can ensure safety for all. With the absolute authority of one power, each man can guarantee that the law will be upheld. Assuming that law is derived from the Natural Law, it will aim to establish equality for all men. And, as such, the society will be the only thing that will guarantee men safety, while simultaneously maintaining the equality of the state of nature.

After discussing the numerous characteristics of man, Hobbes finally addresses the natural condition of man. He begins by noting that Nature has created men equal. As equals, there is also a similar desire in all men to achieve his goals. When two men desire the same thing, the result is enmity. To overcome one’s enemy, man must either destroy or subdue his competitor. All men are capable of anticipating the danger ahead, so Hobbes understands that it is rational for all men to overcome any threat he perceives to his life or liberty. Hobbes explains, “So that in the nature of man we find three principal causes of quarrel: first, competition; secondly, diffidence; thirdly, glory. The first maketh men invade for gain; the second, for safety; and the third, for reputation.”¹⁷ Thus, without a common power to oversee the actions of all men, the state of nature is actually a state of war. Hobbes elaborates, “For WAR consisteth not in battle only, or the act of fighting,

¹⁶ Hobbes, p. 58

¹⁷ Hobbes, p. 76

but in a tract of time wherein the will to contend by battle is sufficiently known.”¹⁸ It is not that Hobbes believes all men to constantly be thrashing at each other or usurping another’s land. Rather, it is the possibility of this occurring that throws man into a state of fear such that he may preemptively act upon another in order to defend himself. Hobbes, however, does not condemn men for acting this way. He clarifies, “neither of us accuse man’s nature in it. The desires and other passions of man are in themselves no sin. No more are the actions that proceed from these passion, till they know a law that forbids them – which till laws be made they cannot know. Nor can any law be made, till they have agreed upon the person that shall make it.”¹⁹ Until all men have established a commonwealth where a sovereign enjoys absolute power, all men have a right to all things. As a result, neither safety nor security may be enjoyed and man must defend himself through his own force. He summarizes, “To this war of every man against every man, this also is consequent: nothing can be unjust. The notions of right and wrong, justice and injustice, have there no place. Where there is no common power, there is no law; where no law, no injustice.”²⁰ Thus, without a common power, all men are subject to all other men, without a guarantee of life or liberty.

Hobbes, after briefly introducing the natural state of man, establishes two fundamental Laws of Nature. He begins, “The RIGHT OF NATURE...is the liberty of each man hath to use his own power, as he will himself, for the preservation of his own nature, that is to say, of his own life, and consequently of doing anything which, in his own judgment and reason, he shall conceive to be the aptest means thereunto.”²¹ As was

¹⁸ Hobbes, p. 76

¹⁹ Hobbes, p. 77

²⁰ Hobbes, p. 78

²¹ Hobbes, p. 79

previously established, all men are created inherently equal. Here, Hobbes goes further and guarantees that man has the right to defend his life by *any means* he believes necessary in order to achieve that goal. To differentiate from a right of nature, Hobbes then defines a Law of Nature as, “a precept or general rule, found out by reason, by which a man is forbidden to do that which is destructive of his life or taketh away the means of preserving the same, and to omit that by which he thinketh is may best be preserved.”²² It is clear that self-interest and self-preservation are the main principles of the state of nature. Yet, all the men who live in the state of nature are entitled to the same rights, as found in the Laws of Nature, given that all men have the capacity for reason. He continues, “For though they that speak of this subject use to confuse *right and law*, yet they ought to be distinguished, because RIGHT consisteth in liberty to do or to forbear, whereas LAW determineth and bindeth to one of them; so that law and right differ as much as obligation and liberty.”²³ It is sensible for Hobbes to make this distinction. Hobbes has previously indicated that society works because it has laws which a sovereign utilizes to order and restrain the people. Thus, it is clear that, in the state of nature, one operates under a universal right to all things. And, while it is not accurate to say that the Law of Nature restrains man anymore than his natural universal right, it is the word *law* that must be redefined to mean something less extreme than *right*. For, without this distinction, civil law would not permit the sovereign absolute authority.

Hobbes, having established the state of war men naturally find themselves in, then formulates the first Law of Nature. He begins, “And therefore, as long as this natural right of every man to everything endureth, there can be no security to an man of living

²² Hobbes, p. 79

²³ Hobbes, p. 80

out the time which nature ordinarily alloweth men to live. And consequently it is a precept, or general rule, of reason *that every man out to endeavour peace, as far as he has hope of obtaining it, and when he cannot obtain it, that he may seek and use all helps and advantages of war.*"²⁴ While Hobbes recognizes that men would prefer peace to a state of war, he also acknowledges that all men must universally agree to this pursuit. Without the consent of all men, the attempt is thwarted. If I cannot guarantee that you will not try to take my life, then I cannot sacrifice my right to defend myself. But, at the same time, I would prefer to live peacefully than to constantly face the threat of war. Thus, Hobbes presents the First Law of Nature: to seek peace. From this, the Second Law of Nature can be derived: "*that a man be willing, when others are so to, as far-forth as for peace and defence of himself he shall think it necessary, to lay down this right to all things, and be contented with so much liberty against other men, as he would all other men against himself.*"²⁵ It is here that Hobbes begins to develop the social contract which is so central to his political theory. Man reserves the right to sacrifice part of his natural right, should all other men do the same, in order to forfeit this power to a sovereign who will then ensure the safety and security of all his subjects. If all men do not hold up their end of the contract, it would be foolish for any man to do so for he would merely be exposing himself to danger. Thus, Hobbes establishes two Laws of Nature, to seek peace and to make contracts, which will help to understand the beginnings of the commonwealth.

After indicating that a man must sacrifice some of his natural right to seek peace, Hobbes details exactly how one might approach this task. He notes, "To *lay down a*

²⁴ Hobbes, p. 80

²⁵ Hobbes, p. 80

man's right to anything is to *divest* himself of the *liberty* of hindering another of the benefit of his own right to the same."²⁶ It is not that one gives any other man a right he had not before, but only that he no longer impedes the other in his enjoyment of his original right. One may set aside this right either by renouncing it or transferring it to another. Hobbes explains, "By *simply* RENOUNCING, when he cares not to whom the benefit thereof redoundeth. By TRANSFERRING, when he intendeth the benefit thereof to some certain person or persons."²⁷ It will be the transferring of this right which will be most important to the discussion of the sovereign, for it is he who all men trust to sustain the commonwealth. Hobbes continues, "And when a man hath in either manner abandoned or granted away his right, then is he said to be OBLIGED or BOUND not to hinder those to whom such right is granted or abandoned from the benefit of it; and that he *ought*, and it is his DUTY, not to make void that involuntary act of his own, and that such hindrance is INJUSTICE."²⁸ Hobbes had said earlier in his discourse that ideas of justice were only relevant when laws were present. Thus, when one transfers some of his natural right to the sovereign, it begins the creation of laws such that one is obliged to act in accordance with the law, or else commit injustice.

In his fifteenth chapter, Hobbes details several other Laws of Nature that are important in order to understand more about the state of man. The third law, which requires man to perform any covenant made, indicates that man must observe his obligations. It is this third law which is the basis for justice. He explains, "For where no covenant hath preceded, there hath no right been transferred, and every man has right to everything; and consequently no action can be unjust. But when a covenant is made, then

²⁶ Hobbes, p. 81

²⁷ Hobbes, p. 81

²⁸ Hobbes, p. 81

to break it is unjust.”²⁹ Hobbes defends that justice is not contrary to reason, for one must perform his obligations in order to sustain the commonwealth. The society, which was meant to preserve peace, must rely on men to act reasonably so as to prevent dissolution of the commonwealth and a return to the state of war. Hobbes goes even further and argues that rebellion is actually contrary to reason. He affirms, “And for that instance of attaining sovereignty by rebellion, it is manifest that...because it cannot reasonably be expected...and because (by gaining it so) others are taught to gain the same in like manner, the attempt thereof is against reason.”³⁰ For Hobbes, the violations of the covenant have damaging consequences. If men learn that violations of the covenants and dissolution of the commonwealth is justified, then at every slight annoyance, rebellion will occur. This creates a dangerous pattern, and thus he must claim that rebellion is contrary to reason for all it leads to is a return to the state of war. He concludes, “The names of just and unjust...when they are attributed to men...signify conformity or inconformity of manners to reason. But when they are attributed to actions, they signify the conformity or inconformity to reason, not of manners or manner of life, but of particular actions.”³¹ Thus, reason is necessary for the enactment of justice and the sustaining of the commonwealth.

After explicitly detailing the rest of his Laws of Nature, Hobbes summarized his discourse into one general principle. This general rule is merely a reformulation of the “Golden Rule.” He states, “[the Laws] have been contracted into one easy sum, intelligible even to the meanest capacity, and that is *Do not that to another, which though*

²⁹ Hobbes, p. 89

³⁰ Hobbes, p. 92

³¹ Hobbes, p. 93

wouldst not have done to thyself.”³² What is interesting about this form of the principle, though, is that it is stated negatively. So, while man is free to do anything in a state of nature, one must consider the repercussions of that action. It is this self-restraint that can induce all men to form a commonwealth. Hobbes continues to assert that, while these Laws act in man’s conscience at all times, they are not necessary rules unless the situation is one of concern to a man’s security. While the Laws are eternal, they are not necessarily applicable unless one can guarantee that all other men are acting according to the Laws. Furthermore, these Laws simply require man to attempt to follow them, and this attempt makes him just. Thus, to use Hobbes’ language, if one can endeavor to pursue the morally good path and can seek peace, then he can also act in accordance with the Laws of Nature.

In his final chapter of Part I, Hobbes finally formulates his concise summary of the definition of the person. He defines the person as follows: “A person is he *whose words or actions are considered either as his own, or as representing the words or actions of another man, or of any other thing to whom they are attributed, whether truly or by fiction.*”³³ This is a somewhat ambiguous definition, for it appears that by the term “person,” Hobbes does not just mean the individual actor. Rather, the person could also be a representative of some other author. In this final chapter, he begins to develop the relationship between an actor and an author, which will be important as he begins to focus on the relationship between the sovereign and the subject in Part II. Hobbes details that, through a covenant, an actor may act on behalf of the author. But, the author, should this action require a breach of the law, should be held responsible. Thus, it is the author

³² Hobbes, p. 99

³³ Hobbes, p. 101

of the act who must assume responsibility, not necessarily the person who actually performs the action itself. The author, however, need not be one individual. Rather, Hobbes argues, “A multitude of men are made *one* person, when they are by one man, or one person, represented so that it be done with the consent of every one of that multitude in particular.”³⁴ Thus begins Hobbes’ theory of the multitude represented by the sole sovereign. The multitude of people, in this situation, is the author, while the sovereign is merely the actor. He must act on behalf of the will of each individual in order to maintain his authority. But, Hobbes walks a very fine line here. He notes, “every man giving their common representer authority from himself in particular, and owning all the actions the representer doth, in case they give him authority without stint; otherwise, when they limit him in what, and how far, he shall represent them, none of them owneth more than they gave him commission to act.”³⁵ Thus, when sacrificing his own personal authority, each man transfers part of his own authority to the representative. But, it is not exactly clear whether this authority is absolute, or if it is checked. Hobbes does not refer to the representative as an author, so it is unclear, at this point, whether he merely represents the will of the people, or if his personal will can be seen as a reflection of the people’s own. This discussion of the sovereign’s power will be important when examining the rights the subjects retain, even in civil society.

In order to fully appreciate Hobbes’ political theory, one must understand how exactly he defines man and the state of nature. As the previous discussion has indicated, Hobbes believes the natural state of man to be plagued by chaos and disorder. He understands all men as equals, distinct from beasts with capacities for speech, thought,

³⁴ Hobbes, p. 104

³⁵ Hobbes, p. 104

reason, and knowledge. At the same time, men are viewed as power-hungry and competitive. In order to attain some sort of order, Hobbes believes all men must agree to transfer some right to a sole representative who will act on behalf of the will of the multitude. Only with this action can men ensure security and peace. In Part II, entitled “Of Commonwealth,” Hobbes will elaborate on the origins and structure of the commonwealth, the position of the sovereign, and the relationship between the sovereign and the subjects. With this introduction to Hobbes’ theory on the state of man, it should be clear how his political theory logically follows.

CHAPTER II – Hobbes, “On Commonwealth”

Hobbes begins the second part of his *Leviathan* by introducing the origination and the development of the commonwealth. Hobbes begins, “The final cause, end, or design of men...in the introduction of that restraint upon themselves in which we see them live in commonwealths is the foresight of their own preservation, and of a more contented life.”³⁶ Men, thus, form commonwealths as a necessary way to avoid the state of war. But, as he briefly indicated in Part I, Hobbes asserts that there *must* be a sovereign to oversee the actions of all men and to punish those who do not act in accordance with the law. Without fear of punishment, men will view the society as meaningless and will return to a state of war. Hobbes elaborates, “For the laws of nature (as *justice, equity, modesty, mercy* and (in sum) *doing to others as we would be done to*) of themselves, without the terror of some power to cause them to be observed, are contrary to our natural passions, that carry us to partiality, pride, revenge, and the like.”³⁷ As Hobbes noted previously, man may always be obliged to the Laws of Nature in his conscience, but not necessarily in his actions. If there is no authority to ensure the peace and security of all, then each individual cannot guarantee that no other man will forego his part of the covenant. As such, man may as well be in the state of war, and thus his security could be threatened. Hobbes noted that man was *not* obliged to act in accordance with the Laws of Nature should his personal security be threatened. Thus, the authority is a necessary part of the commonwealth, for without this central figure, men would not feel bound to the civil laws.

³⁶ Hobbes, p. 106

³⁷ Hobbes, p. 106

After indicating the necessity of a sovereign power, Hobbes describes the way that men may establish this power. He states:

“The only way to erect such a common power as may be able to defend them from the invasion of foreign and the injuries of one another, and thereby to secure them in such sort as that by their own industry, and by the fruits of the earth, they may nourish themselves and live contentedly, is to confer all their power and strength upon one man, or upon one assembly of men, that may reduce all their wills, by plurality of voices, unto one will, which is as much as to say, to appoint one man or assembly of men to bear their person, and every one to own and acknowledge himself to be author of whatsoever he that so beareth their person shall act, or cause to be acted, in those things which concern the common peace and safety, and therein to submit their wills, every one to his will, and their judgments, to his judgment.”³⁸

Thus, in order to form a commonwealth, each man must sacrifice his individual right and transfer it to the sovereign. In the final chapter of Part I, Hobbes had explained that men must transfer their rights to a sovereign power so he could act upon the common will of the people. But, this statement in Part II appears stronger. Hobbes is now willing to permit the sovereign to use his own authority, in matters of common peace and safety, as representative of the authority of the people. It is only through this sacrifice, Hobbes believes, that a commonwealth can be established. He explains, “This is more than consent...it is real unity of them all...made by covenant of every man with every man, in such manner as if every man should say to every man *I authorize and give up my right of governing myself to this man, or to this assembly of men, on this condition, that thou give up thy right to him, and authorize all his actions in like manner.*”³⁹ While Hobbes had previously referred to his leader as a representative, it appears he is now willing to grant this sovereign his own authority. While this authority must derive from each man’s individual sacrifice, it still gives the position of the sovereign much greater power.

³⁸ Hobbes, p. 109

³⁹ Hobbes, p 109

Hobbes continues to strengthen the will and power of the sovereign as he elaborates upon the structure of the commonwealth. He explains:

“This done, the multitude so united in one person is called a COMMONWEALTH. This is the generation of that great LEVIATHAN, or rather...of that *Mortal God* to which we owe, under the *Immortal God*, our peace and defence. For by his authority, given him by every particular man in the commonwealth, he hath the use of so much power and strength conferred on him that by terror thereof he is enabled to conform the wills of them all to peace at home and mutual aid against their enemies abroad. And in him consisteth the essence of the commonwealth, which (to define it) is *one person, of whose acts a great multitude, by mutual covenants one with another, have made themselves every one the author, to the end he may use the strength and means of them all as he shall think expedient, for their peace and common defence.* And he that carrieth this person is called SOVEREIGN, and said to have *Sovereign Power*; and every one besides, his SUBJECT.”⁴⁰

Hobbes uses very strong language when he begins to describe the commonwealth and the sovereign. He compares the representative to a god, implying some sort of infallibility or reverence such that the subjects must always support his will. Furthermore, Hobbes grants the sovereign such unlimited power. When defining the commonwealth, he notes that the sovereign, “may use the strength and means of them all as he shall think expedient.” It is clear that Hobbes instills much trust within the sovereign himself, for he is permitted to act according to his own will, assuming that his will is in line with that of the people. It does not appear to be a concern for Hobbes that the sovereign himself could, in fact, be corrupt. For Hobbes, this absolute authority is better than the chaos of the state of nature, and thus the sovereign is permitted such strong power.

After indicating the initial need for a sovereign, Hobbes moves on to elaborate on the particular rights of the sovereign. The first of these rights is eternal obedience of the subjects to the sovereign. Hobbes details that the people, “cannot lawfully make a new

⁴⁰ Hobbes, p. 109

covenant amongst themselves to be obedient to any other...without his permission.”⁴¹

This appears to be Hobbes’ attempt to justify absolute authority. It should be kept in mind, however, that the sovereign does have a duty to maintain the peace and security of his people. Thus, Hobbes notes, “because the right of bearing the person of them all is given to him they make sovereign by covenant only of one to another...there can happen no breach of covenant on the part of the sovereign.”⁴² So, it then seems that the sovereign does have some limits to his power. He must act in accordance with the covenant all his subjects made with each other that initially transferred their individual rights to him in the pursuit of peace. But, Hobbes then moves in the other direction. He explains, “That he which is made sovereign maketh no covenant with his subjects beforehand is manifest, because either he must make it with the whole multitude, as one party to the covenant, or he must make a several covenant with every man.”⁴³ Thus, it appears that the sovereign does not actually have to formulate a covenant with each of his subjects. As such, he cannot commit any unjust act, for none of his actions could be against the covenant which he did not form. If the sovereign cannot do anything unjust, then there appears no way that could justify the subjects in dissolving his power. And, without a covenant between him and his subjects, it seems like there can be no limits to his power.

Hobbes, having established that the sovereign does not participate in a covenant, then moves to demonstrate that no man can legitimately protest against the sovereign himself. He explains, “because the major part hath by consenting voices declared a sovereign, he that dissented must now consent with the rest, that is, be contented to avow

⁴¹ Hobbes, p. 110

⁴² Hobbes, p. 111

⁴³ Hobbes, p. 111

all the actions he shall do, or else justly be destroyed by the rest.”⁴⁴ Each man must now conform to the will of the universal and subject himself to the authority of the sovereign if he wishes to preserve the society. Thus, the commonwealth operates under the authority of the majority. And, furthermore, the subject cannot question the authority of this power. Hobbes states, “because every subject is by this institution author of all the actions and judgments of the sovereign instituted, it follows that, whatsoever he doth, it can be no injury to any of his subjects, nor ought he to be by any of them accused of injustice.”⁴⁵ Thus, Hobbes not only grants the sovereign absolute power, he also does not allow the subjects to question his use of such power. He elaborates, “no man that hath sovereign power can justly be put to death, or otherwise in any manner by his subjects punished.”⁴⁶ Again, it is clear that Hobbes has a deep trust in the good moral fabric of his sovereign. For Hobbes, order and stability are the most important goals, and it appears that he will allow any means necessary to attain that goal.

After introducing the sovereign’s power in general, Hobbes details the exact powers that the specific institution of the sovereign enjoys. The sovereign can decide the boundaries of property, he is the impartial judge in situations of controversy, he decides when a commonwealth goes to war, and he can decide whom to reward and punish. Most important, Hobbes notes, “These are the rights which make the essence of sovereignty, and which are the marks whereby a man may discern in what man, or assembly of men, the sovereign power is placed and resideth. For these are incommunicable and inseparable.”⁴⁷ Thus, it is not permissible for a sovereign to transfer any of these powers

⁴⁴ Hobbes, p. 112

⁴⁵ Hobbes, p. 112

⁴⁶ Hobbes, p. 113

⁴⁷ Hobbes, p. 115

to others, for the authors of the commonwealth, being the people, specifically transferred their right to him. After indicating all the powers of the sovereign, it is the final section of Chapter XVIII which demonstrates Hobbes' attempt to justify his granting the sovereign unlimited power. He attempts to address the concern that, in his political model, the subject is left miserable and powerless against the sovereign. One might object that the sovereign, being a man or assembly of men, could just as easily succumb to his passions and act out of self-interest. Hobbes' response is not very comforting. He states, "And commonly, they that live under a monarch think it the fault of monarchy, and they that live under the government of democracy or other sovereign assembly attribute all the inconvenience to that form of commonwealth...not considering that the estate of man can never be without some incommodity or other."⁴⁸ For Hobbes, the reason to permit the sovereign to have limitless power is simply because the alternative, a return to the state of war, is much worse. He dismisses the concerns of the subject as merely a projection of his own personal unhappiness onto the commonwealth itself. Rather, Hobbes suggests, one should consider how much worse things could be. Thus, Hobbes justifies the sovereign and the commonwealth as merely the best solution to a problem that simply has no perfect answer.

After detailing the specific rights of the sovereign, Hobbes addresses the different forms this sovereign power can take. The commonwealth can take three forms: monarchy, democracy, and aristocracy. He defines these as follows: "When the representative is one man, then is the commonwealth a MONARCHY; when an assembly of all that will come together, then it is a DEMOCRACY, or popular commonwealth;

⁴⁸ Hobbes, p. 117

when an assembly of a part only, then it is called an ARISOCRACY.”⁴⁹ Whichever form of commonwealth the people establish, it is this institution that has unlimited power. There is, however, a difference between these three types of commonwealth. Hobbes defends that under monarchy the will of the sovereign is the same as the will of the people. He states, “Now in monarchy the private interest is the same with the public...For no king can be rich, nor glorious, nor secure, whose subjects are either poor, or contemptible, or too weak...whereas in democracy, or aristocracy, the public prosperity confers not so much to the private fortune of one that is corrupt, or ambitious, as doth many times a perfidious advice, a treacherous action, or a civil war.”⁵⁰ The monarch, then, necessarily depends on the success of the people in order to thrive. The assemblies involved in democracies and aristocracies do not depend as much on the interests of the whole public in order to succeed. In addition to this, the monarch also enjoys the counsel of experts and a lack of inconstancy in opinion since he is the sole decision maker. Hobbes admits that the monarch can overstep his bounds by depriving any subject of his possessions. But, Hobbes is also quick to defend that a sovereign assembly can perform a similar action, and thus the fault is one attributable to the sovereign instead of the specific monarch. The only other issue posed for monarchies is the right of succession. Hobbes defends that the right of deciding a successor is determined by the sovereign himself. While one could maintain that the right should be given back to the multitude, Hobbes argues that, with the death of the present sovereign, the multitude returns to a state of nature. As such, each individual can subject himself to who he believes should be sovereign. Since this is clearly a chaotic process, Hobbes prefers to just grant the right to

⁴⁹ Hobbes, p. 118

⁵⁰ Hobbes, p. 120

the sovereign himself. He notes, “Therefore, it is manifest that by the institution of monarchy the disposing of the successor is always left to the judgment and will of the present possessor.”⁵¹ Thus, after establishing the specific rights of the sovereign himself, Hobbes has defended that there are no inherent flaws within the system of monarchy.

Hobbes, after establishing the rights of the sovereign, addresses the rights of the subjects. He begins, “a FREE-MAN is he that in those things which by his strength and wit he is able to do is not hindered to do what he has a will to.”⁵² The free man, then, is one who can, at liberty, pursue his own free will. Hobbes goes further, joining necessity and liberty. He states, “in the actions which men voluntarily do, which, because they proceed from their will, proceed from liberty, and yet, because every act of man’s will and every desire and inclination proceedeth from some cause...they proceed from necessity.”⁵³ This necessity, which derives from God, determines the will of man, which he is at liberty to utilize. But, this natural liberty is not the same as civil liberty. Since man has created the commonwealth, he has also created new laws to which he must subject himself. But, these laws, in order to be effective, must have an effective means of execution. The limit on the subject’s liberty, then, depends on the sovereign’s determinations in what actions are permitted. Hobbes then turns to determine exactly what rights the subjects retain in the commonwealth, even if it does not conform to the will of the sovereign. He explains, “For in the act of our submission consisteth both our obligation and our liberty, which must therefore be inferred by arguments taken from thence, there being no obligation on any man which ariseth not from some act of his own; for all men equally are by nature free. And because such arguments must either be drawn

⁵¹ Hobbes, p. 125

⁵² Hobbes, p. 136

⁵³ Hobbes, p. 137

from the express words *I authorize all his actions*, or from the intention of him that submitteth himself to his power...the obligation and liberty of the subject is to be derived, either from those words or else from the end of the institution of sovereignty, namely, the peace of the subjects within themselves, and their defence against a common enemy.”⁵⁴ Thus, through the transferring of rights to the sovereign for the creation and preservation of the commonwealth, there remain some rights which man cannot actually transfer. Specifically, the subjects cannot be ordered to injure or kill themselves, to confess to crimes he has committed, or to participate in wars. Furthermore, Hobbes emphasizes the greatest liberty as the silence of the law. He explains, “As for other liberties, they depend on the silence of the law. In cases where the sovereign has prescribed no rule, there the subject hath the liberty to do or forbear, according to his own discretion.”⁵⁵ Thus, Hobbes obliges each subject to act in accordance with the civil laws, but still grants the multitude an absolute right to the preservation of their lives.

In addition to this, Hobbes details some specific rights that the subjects have in regard to their relation to the sovereign. Hobbes details a strange doctrine whereby the subject is capable of suing the sovereign if the sovereign takes the property of the subject or is indebted to a subject *only* if the sovereign acted in accordance with legal precedent. If he did so by virtue of his own sovereignty, then the subject *cannot* retaliate against the sovereign. After introducing this peculiar idea, Hobbes elaborates on when the subjects are no longer obliged to follow the sovereign. He begins, “The obligation of subjects to the sovereign is understood to last as long, and no longer, than the power lasteth by which he is able to protect them. For the right men have by nature to protect themselves, when

⁵⁴ Hobbes, p. 141

⁵⁵ Hobbes, p. 143

none else can protect them, can by no covenant be relinquished.”⁵⁶ This absolute right to self-preservation is central to the understanding of the power of the sovereign. Without this guarantee, the sovereign loses his power over his subjects. The reason why men enter into a commonwealth is to escape the state of war. As a result, if war infiltrates the commonwealth itself, then there is no sense in limiting the natural rights of humans anymore; all will have returned to a state of war. Hobbes continues, “And though sovereignty, in the intention of them that make it, be immortal, yet is it in its own nature, not only subject to violent death by foreign war, but also through the ignorance and passions of men it hath in it, and from the very institution, many seeds of a natural mortality by intestinal discord.”⁵⁷ While Hobbes had previously indicated that the sovereignty was eternal, he recognizes that there is some degree to which it depends on the preservation of peace. And, when that preservation of peace is no longer guaranteed, man returns to his state of nature and can pursue any means necessary to preserve his life. Furthermore, there are three other conditions under which a subject is no longer required to honor the sovereign: first, if the monarch relinquishes his sovereignty without an heir apparent, then the multitude is able to return to its natural state and establish a new sovereign; if a subject is banished from the commonwealth, then he is no longer required to follow the sovereign; and, if a sovereign is subdued by another ruler, then his subjects must honor their new ruler. While Hobbes does accept particular circumstances in which the subjects are permitted to reject the authority of the sovereign, it is usually only when external circumstances, in particular war, have disrupted the ruling of the sovereign.

⁵⁶ Hobbes, p. 144

⁵⁷ Hobbes, p. 145

After establishing the rights of the sovereign and the liberties of the subjects in the commonwealth, Hobbes then turns to the different structures of the government itself. He begins first by defining systems which are groups of men who share some mutual interest. He defines regular systems as, “those where one man or assembly of men is constituted representative of the whole number. All other are irregular.”⁵⁸ The political systems are those which contain some sovereign who maintains authority over the members of the system. The sovereign, who is the absolute representative, can permit lesser representatives to have some limited power within the system. And, this lesser representative derives his rights from either explicit direction of the sovereign or by the established laws of the commonwealth. Whether the representative is one man or an assembly, it does not matter except for the determination of the responsibility of the actions committed by the representative. If the representative is one man, then, naturally, he alone is held responsible for the actions he performs on behalf of the subjects of the commonwealth. But, if the representative is an assembly of men, only those who supported any action are held responsible. Hobbes, in an effort to differentiate the representative from the sovereign continues, “It is manifest by this that in bodies politic, subordinate and subject to a sovereign power, it is sometimes not only lawful, but expedient, for a particular man to make open protestation against the decrees of the representative assembly...But in a sovereign assembly that liberty is taken away, both because he that protesteth there denies their sovereignty, and also because whatsoever is commanded by the sovereign power is as to the subject...justified by the command.”⁵⁹ Thus, since the representative does not enjoy absolute power, he may also be subject to

⁵⁸ Hobbes, p. 146

⁵⁹ Hobbes, p. 149

protest. But, because the sovereign does enjoy this type of power, except in a few particular cases previously mentioned, it is unjust to resist the will of the sovereign. Again, it is clear the power and prevalence Hobbes places in the sovereign.

Hobbes, through the text, has compared to the commonwealth to the human body. It is no surprise, then, that he dedicates one chapter to the “Nutrition and Procreation of a Commonwealth. He emphasizes that the growth of a commonwealth depends on the, “plenty and distribution of materials conducing to life; in concoction (or preparation); and (when concocted) in the conveyance of it, by convenient conduits, to the public use.”⁶⁰ Thus, the success of a nation depends partly on the natural resources of the commonwealth, as well as how those resources are distributed. Hobbes focuses more on the latter part of this distinction. He notes, “For where there is no commonwealth, there is...a perpetual war of every man against his neighbour; and therefore everything is his that getteth it, and keepeth it by force; which is neither propriety, nor community, but uncertainty...Seeing therefore the introduction of propriety is an effect of commonwealth, which can do nothing but by the person that represents it, it is the act only of the sovereign, and consisteth in his laws, which none can make that have not the sovereign power.”⁶¹ Without a commonwealth, private property cannot exist. It is part of the office of the sovereign, then, to distribute this property and delegate property rights. In doing so, Hobbes notes that there are some regulations by which he must abide. He notes, “the first law is for division of the land itself, wherein the sovereign assigneth to every man a portion, according as he...shall judge agreeable to equity and the common

⁶⁰ Hobbes, p. 159

⁶¹ Hobbes, p. 160

good.”⁶² With this private land, each man is then able to exclude all others, except the sovereign from what is determined to be his property. Because anything the sovereign does cannot be unjust, it is the sovereign’s judgment of equity and the common good that are taken as the standard. But, what is peculiar, is that Hobbes notes that the sovereign *can* act out of self-interest. He explains, “It is true that a sovereign monarch, or the greater part of a sovereign assembly, may ordain the doing of many things in pursuit of their passions, contrary to their own consciences, which is a breach of true, and of the law of nature; but this is not enough to authorize any subject, either to make war upon, or so much as to accuse of injustice or any way to speak evil of, their sovereign.”⁶³ Again, while Hobbes notes that the sovereign can overstep his boundaries and pursue his personal desires, he cannot be thwarted in his pursuit. Because each man sacrifices part of his own natural right to the sovereign so he can preserve the common good, each man cannot subsequently deny the sovereign any of his rights. Thus, Hobbes continues to bolster the power of the sovereign.

Hobbes concludes his chapter “Of the Nutrition and Procreation of a Commonwealth” by discussing the role of money in the commonwealth. This doctrine is important particularly as it relates to Locke’s doctrine on the relationship between property and money. Hobbes begins, “For gold and silver, being (as it happens) almost in all countries of the world, highly valued, is a commodious measure of the value of all things else between nations; and money...is a sufficient measure of the value of all things else, between the subjects of that commonwealth.”⁶⁴ Money is the means through which people can perform commercial transactions. Furthermore, it can also be used across

⁶² Hobbes, p. 161

⁶³ Hobbes, p. 162

⁶⁴ Hobbes, p. 164

different nations. He details, “The conduits and ways by which it is conveyed to the public use are of two sorts: one that conveyeth it to the public coffers; the other that issueth the same out again for public payments.”⁶⁵ He compares money to the blood of the commonwealth and he notes that the inflow and outflow of money parallels the operations of the human heart. This allusion to the human body permits Hobbes to conclude this chapter with a discussion on the procreation of the commonwealth. He notes, “The procreation of a commonwealth are those we call plantations or colonies, which are numbers of men sent out from the commonwealth, under a conductor or governor, to inhabit a foreign country, either formerly void of inhabitants, or maid void then by war.”⁶⁶ Thus, the commonwealth can grow so much that it can flow beyond its bounds and conquer new territories. Now, what is interesting here, though, is that, if the commonwealth remains tied to the sovereign, the inhabitants of the commonwealth must necessarily be expatriates of the commonwealth itself or the subjects of a commonwealth that was displaced by war. If they are not, then it would appear that the sovereign has no right over these people, since they never agreed to subject themselves to this sovereign. Again, it is clear that Hobbes hopes to keep building up the powers of the sovereign.

With the relationship between the sovereign and his subjects established and some of the details of the commonwealth itself worked out, Hobbes turns to a discussion of civil law. He defines the laws in general as those laws that men must observe as members of a commonwealth. He offers a fuller explanation when he states, “CIVIL LAW is to ever subject, those rules which the commonwealth hath commanded him (by word, writing, or other sufficient sign of the will) to make use of, for the distinction of right and

⁶⁵ Hobbes, p. 164

⁶⁶ Hobbes, p. 164

wrong, that is to say, of what is contrary, and what is not contrary to the rule.”⁶⁷ The law, then, is a command that is meant to be clear and unbiased. The legislator of these laws, as one can probably guess, is the sovereign himself. But, it is Hobbes’ next claim which appears most disturbing. He notes, “The sovereign of a commonwealth, be it an assembly or one man, is not subject to the civil laws. For having power to make and repeal laws, he may, when he pleaseth, free himself from that subjection by repealing those laws that trouble him and making of new.”⁶⁸ The sovereign, then, can create laws for all his subjects but does not need to be subject to these laws. Again, it is clear that Hobbes trusts the actions of the sovereign such that he permits him such limitless power. He must believe that the sovereign will act in accordance with the universal will, which his personal will subsequently reflects, in order to guarantee that this state could actually exist. In support of this point, he elaborates, “The law of nature and the civil law contain each other, and are of equal extent. For the laws of nature, which consist in equity, justice, gratitude, and other moral virtues on these depending in the condition of mere nature...are not properly laws, but qualities that dispose men to peace and obedience. When a commonwealth is once settled, then are they actually laws.”⁶⁹ Thus, since the sovereign creates laws that are in accordance with the laws of nature, and the laws of nature are based on moral virtues, then it must be that the sovereign only makes laws that are good. As a result, Hobbes can permit the legislator to hold such extensive power. Hobbes continues to differentiate between the natural and civil law. He notes that civil laws require a sovereign to execute the ideas consistent in the laws. He notes that the moral principles are the basis for the civil law. Furthermore, the civil law is part of the

⁶⁷ Hobbes, p. 173

⁶⁸ Hobbes, p. 174

⁶⁹ Hobbes, p. 174

natural law. Since justice is a natural law, and justice is defined as following the covenant with the sovereign, then the adherence to the civil law has, within it, a subjection to natural law. The biggest difference between the two, then, is that the civil law is explicitly expressed and can restrain the natural liberty of man, while the natural law is found by reason and necessarily assumes the use of natural liberty.

In determining what constitutes laws, Hobbes develops several criteria. He notes, “the law is a command, and a command consisteth in declaration or manifestation of the will of him that commandeth (by voice, writing, or some other sufficient argument of the same), we may understand that the command of the commonwealth is law only to those that have means to take notice of it.”⁷⁰ Thus, the civil law must explicitly be made known to the people. Otherwise, the distinction between the civil law and the natural law is no longer. He furthers his argument by stating, “And first, if it be a law that obliges all the subjects without exception, and is not written, nor otherwise published in such places as they may take notice thereof, it is a law of nature.”⁷¹ If the law is known to all, and it is not part of a specific document of laws, then it must be a law of nature. Furthermore, men know these laws through the capacity for reason. Hobbes defines another condition of a law of nature, saying, “if it be a law that obliges only some condition of men, or one particular man, and be not written, nor published by word, then also it is a law of nature, and known by the same arguments and signs that distinguish those in such a condition from other subjects.”⁷² Therefore, the laws of nature are those that can be derived from the human capacity for reason and, as a result, must be accessible by all without an explicit explanation.

⁷⁰ Hobbes, p. 177

⁷¹ Hobbes, p. 177

⁷² Hobbes, p. 177

Just as civil law must be known through explicit declaration, it also requires a known legislator. Hobbes details, “The author, or legislator, is supposed in every commonwealth to be evident, because he is sovereign, who having been constituted by the consent of everyone is supposed by everyone to be sufficiently known.”⁷³ Because each man had a part in establishing the sovereign, his authority is already known to all men. Thus, it is necessary for the establishment of a commonwealth, which requires a sovereign to be created, that there will be civil laws. And, as has been discussed previously, because the sovereign derives his power from the consent of each individual, he cannot be resisted. But it is not just the mere existence of the authority that makes these laws applicable. Furthermore, the law, being just words, is capable of many interpretations. Hobbes notes, “For it is not the letter, but the intendment, or meaning in which the nature of the law consisteth; and therefore the interpretation of all laws dependeth on the authority sovereign, and the interpretation can be none but those which the sovereign shall appoint.”⁷⁴ Thus, not only does the sovereign reserve the right to establish the law, he also has the power to interpret the actual meaning of the law. And, in cases of the natural law, the interpretation is reserved to the judge whom the sovereign appoints. Hobbes states, “The interpretation of the law of nature is the sentence of the judge constituted by the sovereign authority to head and determine such controversies as depend thereon, and consisteth in the application of the law to the present case.”⁷⁵ Thus, the sovereign indirectly has control over the application of the natural law, too. The power, for Hobbes, must be consolidated in this sovereign in order to ensure the stability of the commonwealth.

⁷³ Hobbes, p. 178

⁷⁴ Hobbes, p. 180

⁷⁵ Hobbes, p. 181

Hobbes, after indicating that judges maintain the privilege of interpreting the natural law, declares that judicial rulings do not establish precedence. It is interesting that, with the consent of the sovereign, the judge's decisions do not require all other judges to rule similarly. Hobbes explains, "But because there is no judge, subordinate nor sovereign, but may err in a judgment of equity, if afterward, in another like case, he find it more consonant to equity to give a contrary sentence, he is obliged to do it. No man's error becomes his own law, nor obliges him to persist in it."⁷⁶ Perhaps, because this judge is not the actual sovereign, Hobbes is recognizing that the human capacity for error will infiltrate the commonwealth itself. It is interesting that Hobbes allows the decisions of the judges on the natural law to be temporary and amendable. He does defend that the natural law is eternal, and thus the decisions of judges that act contrary to this law cannot be accepted. Yet, Hobbes continues to defend the sovereign. He explains, "For though a wrong sentence given by authority of the sovereign, if he know and allow it, in such laws as are mutable, be a constitution of a new law in cases in which every little circumstance is the same, yet in laws immutable (such as are the laws of nature) they are no laws to the same or other judges in the like cases for ever after."⁷⁷ While the sovereign has some leeway in regards to civil laws, he cannot legislate something that disagrees with the laws of nature. This is understandable for the sovereign derives his power only when men enter into a commonwealth. The sovereign, then, cannot misinterpret the law of nature when in a commonwealth. But, the end of the commonwealth is to prevent men from reverting to a state of nature and living under the law of nature. Thus, while it appears

⁷⁶ Hobbes, p. 181

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that Hobbes is limiting the rights of the sovereign, it is only because the sovereign does not exist except in regards to the civil law.

Concluding his section “Of Civil Laws,” Hobbes details the different types of laws and distinguishes between a law and a right. He begins, “Another division of law is into natural and positive. Natural are those which have been laws from all eternity...Positive are those which have not been from eternity, but have been made laws by the will of those that have had the sovereign power.”⁷⁸ Thus, civil laws are necessarily positive laws. He divides the positive laws into two categories: the human and the divine. And, of the human positive laws, there are those which are distributive and those which are penal. He notes, “Distributive are those that determine the rights of the subjects, declaring to every man what it is by which he acquireth and holdeth a propriety in lands or goods, and a right or liberty of action; and these speak to all the subjects. Penal are those which declare what penalty shall be inflicted on those that violate the law.”⁷⁹ All these laws must be made known to the people such that they can act in accordance with them, or otherwise face punishment. And, these laws are all enacted by the sovereign to guide the actions of man and to preserve the peace of the commonwealth. Divine positive laws, however, are declared by God. Hobbes explains, “Divine positive laws are those which, being the commandments of God (not from all eternity, nor universally addressed to all men, but only to a certain people, or to certain persons) are declared for such by those whom God hath authorized to declare them.”⁸⁰ If these laws had been addressed to all men, they would simply be natural laws. But, instead, these laws are directed at a specific community. The question that follows is, of course, how can one know if God

⁷⁸ Hobbes, p. 185

⁷⁹ Hobbes, p. 185

⁸⁰ Hobbes, p. 186

has declared a positive law for him? Hobbes believes one cannot be sure that another has had a revelation. But, if the law which is attributed to God's declaration is not in conflict with the natural law, then man should obey it (even though he may not believe it).

Finally, Hobbes defines a fundamental law and distinguishes between law and right. He explains, "a fundamental law in every commonwealth is that which, being taken away, the commonwealth faileth and is utterly dissolved, as a building whose foundation is destroyed...a fundamental law is that by which subjects are bound to uphold whatsoever power is given to the sovereign...such is the power of war and peace, of judicature, or election of officers, and of doing whatsoever he shall think necessary for the public good."⁸¹ The fundamental law can be summarized as any law which is necessary for the sustenance of the commonwealth itself. Thus, the positive laws which the sovereign establishes must be focused on whether or not they are required for the stability of the commonwealth. Hobbes also explains the difference between law and right. He notes, "For right is liberty, namely that liberty which the civil law leaves us; but civil law is an obligation, and takes from us the liberty which the law of nature gave us."⁸² In a state of nature, all men have ultimate and absolute liberty because there are no established laws. But, in a commonwealth, the laws that are established by the sovereign, require a restriction of this natural right and oblige men to follow the civil law. And, furthermore, this law applies to all men in the commonwealth. Thus, the legislator can only establish positive laws under which all subjects renounce some of their natural liberty and follow the civil law.

⁸¹ Hobbes, p. 189

⁸² Hobbes, p. 189

With the commonwealth established and an understanding of the civil laws demonstrated, Hobbes turns to the ways in which the subjects can commit crimes in the commonwealth. He begins by defining sin as follows: “A sin is not only a transgression of a law, but also any contempt of the legislator. For such contempt is a breach of all his laws at once.”⁸³ Again, Hobbes hopes to protect the sovereign from the condemnation of his subjects. Calling this behavior a sin, though, assigns to the sovereign some religious quality. It appears, then, that Hobbes is implicitly defining the sovereign as having some religious or divine property. A crime, which is a form of sin, is defined as, “consisting in the committing of that which the law forbiddeth, or the omission of what is hath commanded. So that every crime is a sin, but not every sin a crime.”⁸⁴ A crime, then, is really just the act of completing the premeditated sin. In order to have crimes or sins, a law is necessary for, without a law, nothing can technically breach the law. Hobbes, however, notes, “But, because the law of nature is eternal, violation of covenants, ingratitude, arrogance and all facts contrary to any moral virtue can never cease to be sin.”⁸⁵ Thus, sin can always exist whenever one breaches the law of nature. Furthermore, if a man claims ignorance of the law of nature, it cannot be permitted as an excuse since his capacity for reason should have granted him access to the law. Similarly, while ignorance of the civil law can sometimes excuse man of a crime, no one can claim to be unaware of the existence of a sovereign. Thus, ignorance of the sovereign or of the potential for penalty is not a valid excuse for a crime. Hobbes does offer an explanation for the cause of crimes. He notes:

⁸³ Hobbes, p. 190

⁸⁴ Hobbes, p. 190

⁸⁵ Hobbes, p. 191

“From defect in reasoning men are prone to violate the laws in three ways. First, by presumption of false principles...Secondly, by false teachers, that either misinterpret the law of nature, making it thereby repugnant to the civil law, or by teaching for laws such doctrines of their own, or traditions of former times, as are inconsistent with the duty of a subject. Thirdly, by erroneous inferences from true principles, which happens commonly to men that are hasty and precipitate in concluding and resolving what to do”⁸⁶

Thus, it is when men operate under an inexact reasoning that causes them to perform crimes. In addition, passions, the possibility of riches, and the desire to rule others are reasons men commit crimes. Ultimately, it is the inaccurate confidence in one’s own wisdom and power that leads him to reject the current sovereign and to commit crimes.

Due to the different causes of crimes, it also follows that not all crimes are equal. Hobbes explains, “There is a place, not only for EXCUSE, by which that which seemed a crime is proved to be none at all, but also for EXTENUATION, by which the crime that seemed great is made less. For though all crimes do equally deserve the name of injustice...yet it does not follow that all crimes are equally unjust.”⁸⁷ It is not the case that all crimes are equal and, in the case of those crimes which do not have a serious offense, it can be that the punishment be lessened or foregone completely. Hobbes explains, “The degrees of crime are taken on divers scales, and measured, first, by the malignity of the source or cause; secondly, by the contagion of the example; thirdly by the mischief of the effect; and fourthly, by the concurrence of times, places, and persons.”⁸⁸ Hobbes then details several comparative hypothetical situations to demonstrate the difference that contextual details have upon the severity of a crime. For example, if a subject maintains a right that is inconsistent with the power of the sovereign, then the subject should renounce his original liberty and obey the sovereign. If

⁸⁶ Hobbes, p. 193-194

⁸⁷ Hobbes, p. 197

⁸⁸ Hobbes, p. 199

he does not follow the authority of the sovereign *and* proactively resists the sovereign, then he commits a crime. Hobbes does not elaborate on what scale such a crime would fall. But, it is clear that the disobedience of the sovereign is very serious. Thus, the most important aspect of Hobbes' doctrine of crimes can be traced to the definition itself. A crime, defined, is anything that disobeys the laws of the commonwealth. As such, it is an offense against the sovereign himself. While Hobbes permits some cases where crimes are excused or extenuated, the disobedience of the sovereign is not one of such cases.

In contrast to the crimes that the subjects commit against the commonwealth, the sovereign reserves the right to punish and reward his subjects based upon their behavior. He notes, "A PUNISHMENT is an evil inflicted by public authority on him that hath done or omitted that which is judged by the same authority to be a transgression of the law, to the end that the will of men may thereby the better be disposed to obedience."⁸⁹ A punishment requires some act that violates the will of the sovereign and, as a result, threatens the structures of the commonwealth. Hobbes then addresses the question: how did the sovereign assume this right to punish? For, if the sovereign can punish subjects, is that not a form of violence? And, Hobbes has previously stated that men retain the right, even in the commonwealth, to self-preservation. He notes, "In the making of a commonwealth, every man giveth away the right of defending another, but not of defending himself."⁹⁰ If the end of the commonwealth is to preserve the lives of all the subjects, which is the original incentive to enter in the commonwealth, then it is peculiar that the sovereign should be granted the ability to punish, and thus harm, the subjects. Hobbes argues that the sovereign derives his right to punish from the idea of the state of

⁸⁹ Hobbes, p. 203

⁹⁰ Hobbes, p. 204

nature. He says, “before the institution of commonwealth, every man had a right to everything, and to do whatsoever he thought necessary to his own preservation....And this is the foundation of that right of punishing which is exercised in every commonwealth. For the subjects did not give the sovereign that right, but only (in laying down theirs) strengthened him to use his own as he should think fit, for the preservation of them all.”⁹¹ The right to punish, then, is not a right at all. Rather, it is because each man has foregone his right to punish all other men that the sovereign must assume this role in order to sustain order and peace. Furthermore, Hobbes defends that the sovereign will and can only use this right if it is meant to ensure the well-being of all. Again, it is clear that Hobbes’ understanding of the sovereign is he whose will ultimately benefits all other men in the commonwealth.

While Hobbes does permit the sovereign to punish his subjects in certain circumstances, he also outlines the contexts under which punishment is not acceptable. The following situations do not qualify as punishments: private injuries and revenges; pain inflicted by an authority without public hearing; pain inflicted by usurped power; pain inflicted without respect to a future good; if the pain inflicted is less than the benefit of transgressing the law; and, hurt inflicted before the law existed. It is clear that punishment is not the equivalent of pain, nor is it meant to be arbitrary. Rather, it is aimed at teaching a lesson. Hobbes, again, clearly trusts the sovereign to act out of the best interest of all men. Thus, it is expected that the sovereign will not succumb to self-interest and punish those who merely disagree with him. But, Hobbes does argue that those who disagree with the sovereign are actually in the wrong. So, while the sovereign is expected to pursue the interest of all mankind, that interest simultaneously coincides

⁹¹ Hobbes, p. 204

with his own personal self-interest. Hobbes attests, “hurt inflicted on the representative of the commonwealth is not punishment, but an act of hostility, because it is the nature of punishment to be inflicted by public authority, which is the authority only of the representative itself.”⁹² The public authority which inflicts punishment is really only the representative himself. Furthermore, the sovereign is the one who enacts the law. As such, he can never transgress the law, for he could just as easily change the law. The result becomes that one can never oppose he who enacts and enforces the law, making the sovereign immune from resistance.

After indicating what does *not* constitute punishment, Hobbes explains the different types of punishment. He begins, “The first and most general distribution of punishments is into divine and human...Human are those punishments that be inflicted by the commandment of man, and are either corporal, or pecuniary, or ignominy, or imprisonment, or exile.”⁹³ Most of these definitions are obvious. It is clear that corporal punishment signifies any injury directly inflicted upon the body. Pecuniary punishment deprives one of some sum of money, ignominy dishonors someone, imprisonment deprives one of his liberty, and exile is the banishment of one from a commonwealth. Then, Hobbes details the stipulations for issuing punishments. He declares, “All punishments of innocent subjects, be they great or little, are against the law of nature. For punishment is only for transgression of the law; and therefore, there can be no punishment of the innocent...For seeing all sovereign power is originally given by the consent of every one of the subjects, to the end they should, as long as they are obedient,

⁹² Hobbes, p. 205

⁹³ Hobbes, p. 206

be protected thereby, the punishment of the innocent is a rendering of evil for good.”⁹⁴ Thus, the sovereign is not able to punish any subject at any time. He may only punish those men who have violated the civil law. It is unclear, however, whether Hobbes believes the sovereign would ever injure a subject if he did not warrant it. He does affirm that the sovereign may harm those who are not his subjects and those subjects who explicitly rebel against the sovereign. He states, “upon this ground it is that also in subjects who deliberately deny the authority of the commonwealth established the vengeance is lawfully extended...because the nature of this offence consisteth in the renouncing of subjects, which is a relapse into the condition of war, commonly called rebellion.”⁹⁵ It is Hobbes’ belief that rebellion leads to a state of war. The commonwealth was erected to prevent such a state, and thus the sovereign is granted the power to punish those who resist his power. Thus, the power of the sovereign must entail the right to punish those who resist him. For, in doing so, they dissolve the commonwealth and return to a state of war.

Hobbes then moves to describe the ways in which a commonwealth may fail. While this section is important, especially in regard to the question of the right to rebel, it will be better suited to a comparison of Locke’s doctrine on the conditions that warrant resistance of the sovereign. Thus, instead of analyzing this section now, I will dedicate a chapter to a comparison and contrast of the two doctrines on resistance, during which I will focus on this particular section. So, to conclude the section “Of Commonwealth” in Hobbes’ *Leviathan*, it will be helpful to look at the thirtieth chapter entitled, “Of the Office of the Sovereign Representative.” He begins, “The office of the sovereign

⁹⁴ Hobbes, p. 208

⁹⁵ Hobbes, p. 208

consisteth in the end for which he was trusted with the sovereign power, namely, the procuration of the safety of the people, to which he is obliged by the law of nature, and to render an account thereof to God, the author of the law, and to none but him.”⁹⁶ The sovereign, then, need not answer to anyone but God. Furthermore, the sovereign must enjoy these rights as absolute, for if he does not do so, the result will be the dissolution of the government. His subjects must learn that their subjection is necessary for the continuation and stability of the state. Hobbes notes, “[the subjects] ought to be informed how great a fault it is to speak evil of the sovereign representative, or to argue and dispute his power, or any way to use his name irreverently, whereby he may be brought into contempt with his people, and their obedience slackened.”⁹⁷ This commentary almost builds the sovereign up as a religious power, one who requires absolute obedience. As a result, it appears that it is not only unlawful, but perhaps even immoral, for a man to disregard the sovereign. And, if that is the case, then the sovereign becomes even more empowered. In addition to being taxed with organizing the commonwealth and enacting the laws for his subjects, the sovereign also enjoys the status of a leader whose absolute authority cannot be questioned.

Hobbes’ “On Commonwealth” demonstrates a progressive empowering of the role of the sovereign. On numerous occasions, Hobbes alludes to a particular religious property of the sovereign. Furthermore, he emphasizes the absolute right of the sovereign to enact and interpret laws. Subjects are not allowed to condemn or resist the sovereign, except in the case of self-preservation. For Hobbes, the sovereign’s role as preserver of the peace is most important. It is the ultimate fear of returning to a state of war that

⁹⁶ Hobbes, p. 219

⁹⁷ Hobbes, p. 223

causes Hobbes to grant such limitless powers to the sovereign. And, it is this fear that prevents him from condoning any sort of rebellion or resistance of the sovereign.

Hobbes' portrayal of the sovereign as semi-divine in nature, and certainly as virtuous and practically infallible, permits such absolute power. The subjects, who by contrast are fallible and brutish, need this sovereign in order to survive. Without the stability and preservation of the commonwealth, the subjects will return to a state of war and fear their lives. Thus, the right to resist, and certainly the right to revolt or rebel, must be compromised.

CHAPTER III – Locke’s *Second Treatise of Government*

John Locke’s *Second Treatise of Government* was used as a justification for revolution in the late seventeenth century. His work was to be utilized as a means by which resistance to the sovereign could be found reasonable. It is this notion of conditional government that made Locke’s work so infamous. His doctrine of revolution is much stronger than that of Hobbes. For Locke, the sovereign is merely another man who, like all others, is capable of faults. The sovereign does not enjoy absolute or arbitrary authority and he cannot use his prerogative at all times. Furthermore, the civil laws are not directly conformable to the will of the sovereign. Thus, Locke’s form of government relies more heavily upon the consent of the governed. For him, the social contract between the sovereign and his subjects is much more prone to being abused. And, in the cases of such transgression, the people reserve the right to oppose the sovereign without fear of punishment. Thus, in comparison to Hobbes, Locke represents a more “subject-centric” view of the commonwealth, where the subjects sustain the commonwealth and define the boundaries of the sovereign.

Locke begins his work by defining the foundations of civil government. He distinguishes this type of government from the institution of the family. He notes, “Political power, then, I take to be a right of making laws with penalties of death, and consequently all less penalties, for the regulating and preserving of property, and of employing the force of the community, in the execution of such laws, and in the defence of the common-wealth from foreign injury; and all this only for the public good.”⁹⁸ Like Hobbes, Locke understands political power as focusing on the public good. The sovereign, who enjoys such political power, should ensure the stability and order of the

⁹⁸ Locke, p. 8

political society. In particular, Locke notes that property rights are the center of much controversy, so the sovereign must be sure to regulate those disputes. It may be asked, then, from where does this political power come? Is it natural, or does it require the establishment of a commonwealth in order to be enjoyed? Locke answers these questions when he begins to formulate his version of the state of nature.

Locke, in order to establish his doctrine of political power, must first explain his state of nature. He begins, “To understand political power right, 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.”⁹⁹ Thus, as Hobbes argued, each man is fundamentally free in his being to do anything that conforms to the natural law. Locke continues, “A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than the other; there being nothing more evident, than that creatures of the same species and rank...should also be equal one amongst another without subordination or subjection.”¹⁰⁰ Again, Locke continues to agree with Hobbes that men are ultimately all equal and free. Yet, he makes one important distinction. He notes, “But though this be a state of liberty, yet it is not a state of licence...The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions.”¹⁰¹ Thus, for Locke, the state of nature is not one where all men, being equally free, constantly harm one another in pursuit of

⁹⁹ Locke, p. 8

¹⁰⁰ Locke, p. 8

¹⁰¹ Locke, p. 9

self-interest. Rather, while each man is free and equal, he must also act in such a way that his actions do not subsequently harm another. Furthermore, each man reserves the right to punish those who transgress the law. Locke notes, “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 hands, whereby every one has a right to punish the transgressors of that law to such a degree, as may hinder its violation.”¹⁰² Thus, without a political society, there is no one who has the power to execute laws which all must observe. Rather, the state of nature requires equity and freedom of all men. But, without the power to punish those who violate the law of nature, there cannot be any guarantee of peace. Locke, therefore, must grant each man the right to punish those who transgress this law and harm others. Otherwise, we would find ourselves in Hobbes’ state of nature, a war of all against all.

Locke, in discussing the forms of punishment, understands the difficulties posed by allowing each man to judge the law of nature himself. If each man has the right to punish those who transgress the law, it could be that each man would act in a way that favors his own outcome. As a result, the state of nature could be susceptible to personal bias. Thus, Locke notes, “I easily grant, that civil government is the proper remedy for the inconveniences of the state of nature, which must certainly be great, where men may be judges in their own case.”¹⁰³ There must be some impartial judge that can execute the laws without favoring one party. But, this person or sovereign cannot be deemed infallible. Locke notes,

¹⁰² Locke, p. 9

¹⁰³ Locke, p. 12

“but I shall desire those who make this objection, to remember, that absolute monarchs are but men; and if government is to be the remedy of those evils, which necessarily follow from men’s being judge in their own cases, and the state of nature is therefore not to be endured, I desire to know what kind of government that is, and how much better it is than the state of nature, where one man, commanding a multitude, has the liberty to be judge in his own case, and may do to all his subjects whatever he pleases, without the liberty to any one to question or controul those who execute his please.”¹⁰⁴

This point is one of the central differences between Locke’s concept of the state of nature, and Hobbes’ version of the same state. Locke treats the sovereign as equal and free, like all other men. He does not attribute to the monarch or ruler any particular quality which makes him absolutely moral or perfect. Rather, the monarch is like all other men. Locke notes that men can be self-interested, particularly in disputes in which they are involved. As a result, the monarch cannot be trusted to act on behalf of the will or good of the people should he be involved in a particular case. Thus, there remains a particular skepticism about how perfect this commonwealth is compared to the state of nature. Hobbes used the idea that the commonwealth prevents personal injury as a way of justifying the absolute authority of the sovereign. But, if the state of nature is not equivalent to a state of war, then it cannot be assumed that the state of nature is inherently worse than the commonwealth. And, if this is so, then it is more difficult to establish that the sovereign *must* enjoy absolute authority in order to sustain the commonwealth. Thus, Locke’s concept of the monarch as a mere man, just like all other men, raises significant and difficult questions for Hobbes’ political theory.

The next question Locke must tackle, then, regards whether people ever lived in a state of nature. He argues, “It is often asked as a mighty objection, where are, or ever were there any men in such a state of nature? To which it may suffice as an answer at present, that since all princes and rulers or independent governments all through the

¹⁰⁴ Hobbes, p. 12

world, are in a state of nature, it is plain the world never was, nor ever will be, without numbers of men in that state...for it is not every compact that puts an end to the state of nature between men, but only this one of agreeing together mutually to enter into one community, and make one body politic.”¹⁰⁵ The argument, then, is based on the idea that not all agreements we document are necessarily sufficient to dissolve the state of nature and erect a commonwealth. He continues, “The laws which have been hitherto mentioned...do bind men absolutely, even as they are men, although they have never any settled fellowship, never any solemn agreement amongst themselves what to do or not to do...therefore to supply those defects and imperfections which are in us, as living single and solely by ourselves, we are naturally induced to seek communion and fellowship with others: this was the cause of men’s uniting themselves at first in politic societies.”¹⁰⁶ Locke affirms that each man is born into the state of nature and, thus, it must have existed. The only way for men to escape this state is to prefer community over isolation and to explicitly form a commonwealth. This agreement is the foundation of political society. Thus, it is clear within Locke’s beginning discussion of the formation of political society that the necessary action to create such an institution is the explicit consent of the people.

Locke, in contrast to the state of nature, offers an alternative state in which all men do actually feud. Similar to Hobbes view, Locke entitles this the state of war. He explains, “The state of war is a state of enmity and destruction, and therefore declaring by word or action...a sedate settled design upon another man’s life, puts him in a state of war with him against whom he has declared such an intention, and so has exposed his life

¹⁰⁵ Locke, p. 13

¹⁰⁶ Locke, p. 13

to the other's power to be taken away by him."¹⁰⁷ As Locke has previously argued, each man has a right to his own life, liberty, and possessions. Should any man inflict pain on another such as to compromise such rights, he would enter a state of war. Locke continues, "one may destroy a man who makes war upon him, or has discovered an enmity to his being...because such men are not under the ties of the commonlaw of reason, have no other rule, but that of force and violence, and so may be treated as beasts of prey."¹⁰⁸ Thus, any man who enters a state of war immediately foregoes his fundamental rights for he disobeys the laws of reason. The important distinction between Locke and Hobbes on this point is that, for Locke, the state of war is not a part of the state of nature. Hobbes believes all men naturally will impinge upon another's rights; Locke only believes that some men, in some occasions, will disobey the law of reason. Locke explains, "And here we have the plain difference between the state of nature and the state of war...Men living according to reason, without a common superior on earth, with authority to judge between them, is properly the state of nature. But force, or a declared design of force, upon the person of another, where there is no common superior on earth to appeal to for relief, is the state of war."¹⁰⁹ Thus, the difference is reflected in Locke's view of the essential human nature. Men are not brutish and violent, but rather peaceful and reasonable. It is only when someone acts irrational when the state of nature ends and the state of war begins.

The avoiding of the state of nature is one main incentive for all men to enter into society. Locke explains, "To avoid this state of war...is one great reason of men's putting themselves into society, and quitting the state of nature: for where there is an authorit, a

¹⁰⁷ Locke, p. 14

¹⁰⁸ Locke, p. 14

¹⁰⁹ Locke, p. 15

power on earth, from which relief can be had by appeal, there the continuance of the state of war is excluded, and the controversy is decided by that power.”¹¹⁰ It is interesting to note that Locke’s reasoning for the beginning of society very much resembles the logic of Hobbes. But, it should be remembered, that Locke still maintains that arbitrary power over another is never justified. He argues, “for no body can desire to have me in his absolute power, unless it be to compel me by force to that which is against the right of my freedom...To be free from such force is the only security of my preservation; and reason bids me look on him, as an enemy to my preservation, who would take away that freedom.”¹¹¹ Thus, one who uses arbitrary power over another puts himself into a state of war with another, and therefore may be resisted by he who is threatened. He develops his position on slavery, saying, “This freedom from absolute, arbitrary power is so necessary to, and closely joined with a man’s preservation, that he cannot part with it...for a man, not having the power of his own life, cannot, by compact, or his own consent, enslave himself to an one, nor put himself under the absolute arbitrary power of another, to take away his life, when he pleases.”¹¹² Each man is created by God and, as such, is not capable of forfeiting his life. That is to say, man is the property of God and it is only He who can decide when to sacrifice the freedom and life of the individual. As a result, arbitrary power over another is rightfully resisted by those who are enslaved. And, it is not surprising then that Locke will later develop a policy permitting the rebellion of the subjects against the sovereign who goes against his will.

Locke’s position on property is, perhaps, the most significant distinction between his social contract theory and that of Hobbes. Locke begins by understanding the world to

¹¹⁰ Locke, p. 15

¹¹¹ Locke, p. 14

¹¹² Locke, p. 17

be granted to men, by God, for productive use. Originally, this property is given to men in common. But, then Locke hopes to also defend that private property may also exist in the state of nature. He affirms, “Though the earth...be common to all men, yet every man has a property in his own person; this no body has any right to but himself. The labour of his body, and the work of his hands...are properly his. Whatsoever then he removes out of the state of nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property.”¹¹³ While Hobbes believes that all private property in the state of nature is merely temporary, Locke believes that labor translates the common land into private possession. This is the case, Locke argues, because when someone adds his labor, the object is fundamentally changed. No longer is it the natural creation of God; it is something which I have personally labored upon and thus becomes my own. But, Locke is careful to limit such accumulation. He defends, “The same law of nature, that does by this means give us property, does also bound that property too. God has given us all things richly...But how far has he given it to us? To enjoy. As much as any one can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in: whatever is beyond this, is more than his share, and belongs to others.”¹¹⁴ Thus, the limit of the accumulation of property depends on the proper usage of the land. A person who has a large farm but whose crops spoil should consider forfeiting some of that land so another can make proper use of it. Thus, Locke successfully avoids the clear objection of excessive accumulation. While Hobbes argues that each man will inevitably consume as

¹¹³ Locke, p. 19

¹¹⁴ Locke, p. 20

much as he can and hold this property for as long as possible, Locke believes each man can retain as much property, naturally, as he can properly use.

Locke then takes up the concept of money. His doctrine on this both serves to show how mutual consent can create society, as well as to show that there are particular cases where the limits of property are overlooked. He explains that money is used so men can exchange a perishable good for some value, agreed upon by all men in a society, which is represented by some imperishable item. Locke explains, “if he would give his nuts for a piece of metal....and keep those by him all his life, he invaded not the right of others, he might heap up as much of these durable things as he pleased; the exceeding of the bounds of his just property not lying in the largeness of his possession, but the perishing of any thing uselessly in it.”¹¹⁵ Thus, money is used mainly as a justification for the disproportionate allocation of goods. The other important aspect of money is that it requires the mutual consent of all people. That is to say, the money itself does not have an inherent value unless men believe it does. He explains, “And thus came in the use of money, some lasting thing that men might keep without spoiling, and that by mutual consent men would take in exchange for the truly useful, but perishable supports of life.”¹¹⁶ While money, in itself, does not provide any satisfaction, it is the perishable things which it can purchase that gives it value. And, it is only when one is compensated with money for this disproportionate allocation of goods that Locke can justify such an unbalanced distribution.

Locke spends much time throughout the *Treatise* discussing the difference between paternal power and civil power. His main motivation in doing so is to explain

¹¹⁵ Locke, p. 28

¹¹⁶ Locke, p. 28

how it can be that absolute monarchy has been justified. Locke hopes to dissolve this policy and to acknowledge the limitations of paternal power. He begins first by redefining equality, saying, “Though I have said above, That all men by nature are equal, I cannot be supposed to understand all sorts of equality...equality I there spoke of, as proper to the business in hand, being that equal right, that every man hath, to his natural freedom, without being subjected to the will or authority of any other man.”¹¹⁷ It is important for Locke to maintain that each man is born naturally free. While this does not mean that all men are similar in all capacities, each man does have a right to his liberty. Locke does admit that children are particular case. They are born subjugated to the will of their parents, but he affirms that this is only temporary. The reason why children are initially not totally free is because they do not have access to the law of reason. It takes time to develop the capacity for rationality, and it is only at this point that man can fully enjoy his freedom. Locke explains, “The power, then, that parents have over their children, arises from that duty which is incumbent on them, to take care of their offspring, during the imperfect state of childhood.”¹¹⁸ It is the duty of the parents to guide children in the right direction until they are capable of understanding how to live independently and in accordance with the law of reason. The power of the parent does not reach the life or property of the child, nor is it eternal or absolute. Locke argues, “[parental power] is but a help to the weakness and imperfection of their nonage, a discipline necessary to their education.”¹¹⁹ When a child reaches an age of reason, the relationship between a parent and child resembles that of any two men in a commonwealth. But, children must always respect and honor their parents, for it is they

¹¹⁷ Locke, p. 31

¹¹⁸ Locke, p. 32

¹¹⁹ Locke, p. 36

who cared and raised the children. And, it is this obligation to honor the parents that oftentimes leads to the father assuming an absolute monarchical role in commonwealth. He explains, “Thus it was easy, and almost natural for children...to make way for the father’s authority and government. They had been accustomed in their childhood to follow his direction...It is no wonder that they made no distinction betwixt minority and full age...and they could no where find a greater security to their peace, liberties, and fortunes, than in the rule of the father. Thus the natural fathers of families...became the politic monarchs of them too.”¹²⁰ Locke, in distinguishing between childhood and adulthood, aims to make sure that the people do not blindly accept a doctrine of divine right of kings. He notes that if one traces paternal power back far enough, then all princes should properly be priests as well. Thus, it is necessary to distinguish between paternal power and civil power in order to prevent the arbitrary will of the father being interpreted as the natural, or civil, law.

After differentiating the two types of societies, Locke then begins his discourse on the nature of political, or civil, society. He understands all men to be free to operate in accordance with two natural laws. The first dictates that each man has the right to preserve his life, liberty, and possessions against others; the second permits each man to punish any other who transgresses the law of nature. But, this is not political society. Locke defines civil society as, “those who are united into one body, and have a common established law and judicature to appeal to, with authority to decide controversies between them, and punish offenders.”¹²¹ Civil society *must* have this impartial authority in order to succeed. Furthermore, the sovereign has a twofold power: it makes laws and it

¹²⁰ Locke, p. 42

¹²¹ Locke, p. 47

enforces them. Thus, each man must forfeit part of his natural right to a sovereign power who then has the duty of protecting each subject in this society. Each man no longer reserves the right to punish those who disobey the law; that duty now belongs to the sovereign. Locke elaborates, “Where-ever therefore any number of men are so united into one society, as to quite every one his executive power of the law of nature, and to resign it to the public, there and there only is a political or civil society.”¹²² By establishing a sovereign authority to judge all disputes and to enforce the preservation of personal property, men enter into a civil society with each other. And, it is this authority which is supposed to resolve all the inconveniences of the state of nature.

Locke, in defining the power of the sovereign, does not permit absolute authority. He begins, “For he being supposed to have all, both legislative and executive power in himself alone, there is no judge to be found... whenever his property is invaded by the will and order of his monarch, he has not only no appeal, as those in society ought to have, but as if he were degraded from the common state of rational creatures, is denied a liberty to judge of, or to defend his right.”¹²³ Locke understands absolute authority to be even worse than the state of nature. In the state of nature, each man is capable of defending his own life, liberty, and possessions. He has the right to punish, even by death, any one who disobeys the law of nature. Civil society is meant to secure peace and preservation for those in society. The sovereign is supposed to be an impartial ruler who will justly intervene in disagreements. But, if this sovereign is guaranteed absolute rights, and is thus not subject to the civil laws, then he can act dangerously. And, Locke argues, that this limitless power of the sovereign is even worse than the state of nature itself. This

¹²² Locke, p. 47

¹²³ Locke, p. 49

attack is clearly against Hobbes' justification of the sovereign's absolute power. Hobbes permitted the sovereign's authority for two reasons: first, he really didn't think the sovereign would transgress the law; second, even if the sovereign did something immoral or unjust, that society would *still* be better than the state of nature. It is this disagreement which will be central to each philosopher's doctrine on the right of revolution.

After developing the civil society itself, Locke turns to a discussion of the beginning of political societies. He begins, "Men being...by nature, all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another without his own consent...When any number of men have so consented to make one community or government, they are thereby presently incorporated, and make one body politic, wherein the majority have a right to act and conclude the rest."¹²⁴ The doctrine of consent is crucial to the understanding of Locke's social contract theory. Without the consent of the people, the sovereign does not hold any legitimate power. Furthermore, it is not the arbitrary will of the sovereign who determines authority, but the majority of the people. Locke asserts, "Whosoever therefore out of a state of nature unite into a community, must be understood to give up all the power, necessary to the ends for which they unite into society, to the majority of the community, unless they expressly agreed in any number greater than the majority."¹²⁵ Thus, without the trust of the majority, the commonwealth will dissolve. For, unless all dissenters follow the will of the majority, then two commonwealths will be created. And, it is the unification of civil society which is required for the stability of commonwealth itself.

¹²⁴ Locke, p. 52

¹²⁵ Locke, p. 53

Locke does address two objections that have been found to his theory on the beginning of civil society. The first objection is that, historically speaking, this event of all men living together in the state of nature suddenly uniting together and consenting to follow a specific ruler has never actually happened. The second objection is that, since each man is born under the rule of a specific government, it cannot be the case that he can consent to follow a different ruler. Locke attacks this first argument by noting great societies, such as Rome and Venice, stating that they did, in fact, arise from the common consent of all men. He affirms, “these [peoples of America]...were actually free...by consent were all equal...So that their politic societies all began from voluntary union, and the mutual agreement of men freely acting in the choice of their governors, and forms of government.”¹²⁶ Locke believes it quite clear that the examples of history have shown that governments do, indeed, arise from the voluntary consent of the people. He then addresses the issue of monarchical power. It would seem that the structure of a monarchy would include absolute authority, thus rendering Locke’s doctrine of consent futile. But, Locke defends that this type of government follows naturally. He argues, “First then...the father’s government of the childhood of those sprung from him...it was sufficient to procure and preserve to men all that political happiness they sought for in society. It was no wonder they should pitch upon, and naturally run into that form of government...the monarchy being simple, and most obvious to men.”¹²⁷ Since children are accustomed to the rule of the father, it is understandable that the power would be invested in such a figure when political society began. Furthermore, none had experienced this father as a tyrannical power, making his sole authority more appealing. Thus, Locke logically

¹²⁶ Locke, p. 55

¹²⁷ Locke, p. 57

explains why it came to be that the structure of inherited monarchy began. But, this type of limitless power was only permitted because no previous king had overstepped his bounds. Locke notes, “But though that golden age...had more virtue...when ambition and luxury in future ages would retain and increase the power, without doing the business for which it was given...men found it necessary to examine more carefully the original and rights of government, and to find out ways to restrain the exorbitances and prevent the abuses of that power.”¹²⁸ While the original ruling fathers did not act out of self-interest, it is the recent breed of rulers that have extended their prerogative. And, it is such abuses that have changed the expectations, and limitations, of the sovereign power. Thus, for Locke, it is not that monarchy itself has always been inherently bad, but rather that the societal changes have perverted this type of government such that it can no longer enjoy the same limitless powers it once had.

The second objection Locke must overcome is the idea that all men are actually born as subjects to a specific society and, thus, have no right to choose a new commonwealth. Locke begins his rebuttal by noting, “I ask, how came so many lawful monarchies into the world? for if any body, upon this supposition, can shew me any one man in any age of the world free to begin a lawful monarchy, I will be bound to shew him ten other free men at liberty, at the same time to unite and begin a new government under a regal, or any other form.”¹²⁹ If all men are bound to a specific society, how could it be that there exist so many different monarchies? For, in the beginning, there was one society and I am bound to that society, and so are all my children, then should it not also be that all other men are also bound to that law? If that is not the case, then why is it that

¹²⁸ Locke, p. 60

¹²⁹ Locke, p. 61

I am not free, but some other men enjoy such liberty? Locke continues, “it being demonstration, that if any one, born under the dominion of another, may be so free as to have a right to command others in a new and distinct empire, every one that is born under the dominion of another may be so free too, and may become a ruler, or subject, of a distinct separate government.”¹³⁰ Because Locke believes all men to be both free and equal, it cannot be that some members of a society enjoy certain rights while others do not. Thus, if one is to explain the existence of multiple societies, then it must be because, at some point, one man left the original society to create his own. And, if he had the right to do so, then all other men must also have this right. While one might defend that each child is subject to the will of his father, Locke rejects this claim saying, “for his son, when a man, being altogether free as the father, any act of the father can no more give away the liberty of the son.”¹³¹ Each person, therefore, reserves the right to join any society he sees fit. It is only the person’s consent which necessarily attaches him to a specific society.

Now, the question still remains, what exactly Locke understands as sufficient consent. He begins, “There is a common distinction of an express and a tacit consent...No body doubts but an express consent, of any man entering into any society, makes him a perfect member of that society...The difficulty is, what ought to be looked upon as a tacit consent, and how far it binds...And to this I say, that every man, that hath any possessions, or enjoyment, of any part of the dominions of any government, doth thereby give his tacit consent.”¹³² Tacit consent, then, depends on the subject enjoying the protections and services of the government. This tacit consent is temporary; whenever

¹³⁰ Locke, p. 61

¹³¹ Locke, p. 62

¹³² Locke, p. 64

one forfeits these protections from the government he is free to join another society. Express consent, however, is eternal unless the government is dissolved. Locke concludes his chapter, “Of the Beginnings of Political Society and Government,” by clarifying his doctrine on consent. He explains, “But submitting to the laws of any country, living quietly, and enjoying privileges and protection under them, makes not a man a member of that society...Nothing can make any man so, but his actually entering into it by positive engagement, and express promise and compact. This is that, which I think, concerning the beginning of political societies, and that consent which many any one a member of any commonwealth.”¹³³ It is not, then, that tacit consent can make you a member of society. It must be an express consent, for an extended period of time, which qualifies as the true beginning of any political society.

After discussing the beginnings of political society, Locke turns to the ultimate ends, or goals, civil society must pursue. He begins with the question of why, in any case, one would depart from the ultimate state of freedom. He understands that in the state of nature there is some risk of being exposed to the danger of others. Locke affirms, “it is not without reason, that he seeks out, and is willing to join in society with others, who are already united, or have a mind to unite, for the mutual preservation of their lives, liberties, and estates, which I call by the general name of property.”¹³⁴ The end of the commonwealth is the preservation of peace and property. Locke understands three conditions to be a necessary part of this state. He explains, “First, There wants an established, settled known law...Secondly, In the state of nature there wants a known and indifferent judge...Thirdly, In the state of nature there often wants power to back and

¹³³ Locke, p. 65

¹³⁴ Locke, p.66

support the sentence when right, and to give it due execution.”¹³⁵ The set up of the commonwealth requires each of these conditions in order to be effective. It is interesting to note the difference between Hobbes’ view on the beginnings of society and Locke’s opinion on the same action. Hobbes believes the ultimate beginning of society depends on the mutual fear each man has of all other men. And, Hobbes believes society is created to ensure the preservation of each man’s life. Locke, who also recognizes the importance of fear, goes a step further. He argues that the ultimate end of society is to ensure the preservation of not only each man’s life, but also of his property. Thus, Locke concludes, “And so whoever has the legislative or supreme power of any common-wealth, is bound to govern...to no other end, but the peace, safety, and public good of the people.”¹³⁶

Locke’s commonwealth depends on a structure which separates the executive and the legislative powers. Unlike Hobbes, no one person or institution is given all the power. Locke’s main distinction is between the legislative and executive powers. He explains, “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 establish in that society; the first and fundamental positive law of all commonwealths is the establishing of the legislative power.”¹³⁷ After establishing this power, though, it is unclear to what extent Locke permits the legislative to rule. He recognizes that the legislative should have supreme power, and he emphasizes, “all the obedience, which by the most solemn ties any one can be obliged to pay, ultimately terminates in this supreme power, and is directed by those laws which it enacts.”¹³⁸ Thus, it appears that Locke is

¹³⁵ Locke, p. 66

¹³⁶ Locke, p. 68

¹³⁷ Locke, p. 69

¹³⁸ Locke, p. 70

favoring a Hobbesian view of the sovereign, in that he grants him such supreme power. But, Locke quickly qualifies his statement. He notes, “it is not, nor can possibly be absolutely arbitrary over the lives and fortunes of the people: for it being but the joint power of every member of the society given up to that person, or assembly, which is legislator; it can be no more than those persons had in a state of nature before they entered into society.”¹³⁹ Because no person had the right to injure or invade another’s life or property in the state of nature, it is impossible for the sovereign to exercise an arbitrary right to another’s life or possessions. The sovereign can only act in accordance with the public good, and thus cannot pursue private interests that injure others. Along these same lines, Locke continues, “The legislative, or supreme authority, cannot assume to itself a power to rule by extemporary arbitrary decrees, but is bound to dispense justice, and decide the rights of the subject by promulgated standing laws, and known authorized judges.”¹⁴⁰ The sovereign, thus cannot arbitrarily decree laws. Unlike Hobbes, the laws are not derived from the will of the sovereign. Rather, the laws are independently created by the legislative and must be known to the people. And, there must be independent, unbiased judges to interpret and exact the laws. The sovereign also cannot take the property of any man without his consent. Locke explains, “for the preservation of property being the end of government, and that for which men enter into society, it necessarily supposes and requires, that the people should have property...they have such a right to the goods, which by the law of the community are their’s, that no body hath a right to take their substance or any part of it from them, without their consent.” Civil society is meant to ensure the preservation of property of all individuals. Thus, the

¹³⁹ Locke, p. 70

¹⁴⁰ Locke, p. 71

sovereign cannot just arbitrarily take the property of his subjects. Locke continues to defend the idea that the sovereign is still a member of the society, and must act in accordance with the civil laws. Finally, the sovereign may not transfer the power entrusted to him to any other. The majority sacrificed its natural right to a specific sovereign, and thus it is not up to him who receives that power. Locke clarifies, “The power of the legislative, being derived from the people by a positive voluntary grant and institution, can be no other than what that positive grant conveyed, which being only to make laws, and not make legislators, the legislative can have no power to transfer their authority of making laws, and place it in other hands.”¹⁴¹ Thus, Locke establishes a fairly substantive sovereign power, but still maintains that this supreme power must be qualified to ensure that it does not become an arbitrary power.

With the legislative and executive powers qualified, Locke turns to defining the three branches of government he sees suitable for the commonwealth. He explains, “The legislative power is that, which has a right to direct how the force of the common-wealth shall be employed for preserving the community and the members of it...it is necessary there should be a power....which should see to the execution of the laws that are made, and remain in force. And thus the legislative and executive power come often to be separated...There is another power in every common-wealth...Hence it is, that the controversies that happen between any man of the society with those that are outside of it, are managed by the public...and may be called the federative.”¹⁴² Thus, the three powers are charged with making laws, enforcing these laws, and settling disputes over the laws, especially in regard to foreign powers. Locke does believe that the executive and

¹⁴¹ Locke, p. 75

¹⁴² Locke, p. 76

federative powers should be consolidated into one person. He notes, “Though...the executive and federative power of every community be really distinct in themselves, yet they are hardly to be separated, and placed at the same time, in the hands of distinct persons: for both of them requiring the force of the society for their exercise, it is almost impracticable to place the force of the common-wealth in distinct, and not subordinate hands.”¹⁴³ While the executive and federative roles are distinct, particularly in their treatment of domestic versus foreign affairs, Locke believes it practical for the two powers to be consolidated into one being. Yet, it is important to remember that this seemingly robust power cannot be misconstrued as purely arbitrary.

Locke, once he has determined the three different powers which constitute a civil society, turns to discuss the subordination of these powers. It is here that he openly and emphatically supports the idea of the peoples’ right to revolt. He begins, “there remains still in the people a supreme power to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them: for all power given with trust for the attaining an end, being limited by that end, whenever that end is manifestly neglected, or opposed, the trust must necessarily be forfeited, and the power devolve into the hands of those that gave it, who may place it anew where they shall think best for their safety and security.”¹⁴⁴ While it does not appear that Locke has a bloody or violent revolution in mind, he clearly does not portray the sovereign as an infallible figure. Hobbes justified the absolute authority of the sovereign by noting the terrifying state of nature. But, for Locke, this absolute power can never justly become arbitrary. He continues, “And thus the community perpetually retains a supreme power of saving themselves from the

¹⁴³ Locke, p. 77

¹⁴⁴ Locke, p. 78

attempts and designs of any body, even of their legislators, whenever they shall be so foolish, or so wicked, as to lay and carry on designs against the liberties and properties of the subject.”¹⁴⁵ No one can neglect his personal right to self-preservation. Men enter into community in order to establish peace and to ensure the preservation of property. But, if the sovereign transgresses the law and starts acting out of private interests, then the people reserve the right to reject the sovereign and to establish a new legislative power.

Locke, who to this point has been opposed to arbitrary power, permits the executive power the right to prerogative. While he still maintains a doctrine against the use of arbitrary power, he does understand that the civil laws may not be applicable to all situations. And, it is in these types of contexts, that the executive must use his best judgment to pursue the public good. He explains, “Many things there are, which the law can by no means provide for; and those must necessarily be left to the discretion of him that has the executive power in his hands, to be ordered by him as the public good and advantage shall require.”¹⁴⁶ This does provide some complications. If Locke trusts that the executive will act in accordance with the public good when no law dictates explicitly the action to take, then why can he not also be permitted to dictate the specific laws at all times? Furthermore, how can one prevent the sovereign from assuming the public good to be his own private interest? Locke attempts to answer this question by saying, “if there comes to be a question between the executive power and the people, about a thing claimed as prerogative; the tendency of the exercise of such prerogative to the good or hurt of the people, will easily decide that question.”¹⁴⁷ Thus, Locke still permits the people to be the final judge in questions regarding the excessive and arbitrary use of

¹⁴⁵ Locke, p. 78

¹⁴⁶ Locke, p. 84

¹⁴⁷ Locke, p. 85

authority. He continues, “prerogative can be nothing but the people’s permitting their rulers to do several things, of their own free choice, where the law was silent, and sometimes too against the direct letter of the law, for the public good.”¹⁴⁸ Locke, as can be predicted, maintains that the use of prerogative depends upon the consent of the people. Finally, Locke poses the question of who can determine whether an executive or legislative is depriving any one of his property or rights. Locke defends that each man is born free and thus cannot be enslaved by another. As such, if a legislative or executive power infringes upon a man’s natural right, he may resist them. While Locke argues that men may not decide if a legislative or executive oversteps his bounds, all men reserve the right to defend themselves.

It may be said that the alternative method of establishing a civil society is through conquest of another people. Locke explains that this does not, in fact, constitute a commonwealth. He begins, “the aggressor, who puts himself into the state of war with another, and unjustly invades another man’s right, can, by such an unjust war, never come to have a right over the conquered.”¹⁴⁹ Again, it is clear that the consent of the majority is required to establish any sort of political society. Locke does permit the victor in a lawful war to retain some dominion over his enemies. He only retains a right over those who actually resisted him in the war itself, and this power is despotic. He explains the conqueror, “has an absolute power over the lives of those, who, by putting themselves in a state of war, have forfeited them; but he has not thereby a right and title to their possessions.”¹⁵⁰ It is quite peculiar that Locke would permit the conqueror to have total rights over another’s life, but not over his property. This doctrine is strange especially

¹⁴⁸ Locke, p. 86

¹⁴⁹ Locke, p. 91

¹⁵⁰ Locke, p. 93

since Locke has advocated that no man can sacrifice his own life, and therefore may not give his life to another. He defends this new position, however, by noting that the aggressor initiated a state of war with the conqueror, and thus this right to the captive's life is permitted. But, this right to another's life is only permitted if it regards those who participated in the aggression and if the war itself was just. Locke concludes his chapter on conquest by noting that rebellion against an unjust conqueror is allowed. He notes, "Whence it is plain, that shaking off a power, which force, and not right, hath set over any one, though it hath the name of rebellion, yet is no offence before God, but is that which he allows and countenances, though even promises and covenants, when obtained by force."¹⁵¹ Thus, the conqueror does not enjoy quite as many rights as he who rules by consent. And, his power is limited only to those who actually fought against him.

In contrast to foreign conquest, Locke does not believe domestic usurpation is ever justified. He notes, "usurpation is a kind of domestic conquest...[but] an usurper can never have right on his side."¹⁵² Because the original freedoms of the people are divested and given up to a specific sovereign, it can never be that a person can simply, without the consent of the people, take over this power. He elaborates, "Nor can such an usurper, or any deriving from him, ever have a title, till the people are both at liberty to consent, and have actually consented to allow, and confirm in him the power he hat till then usurped."¹⁵³ Again, it is clear that legitimate government depends upon the people. In addition to the violation of usurpation, Locke also addresses tyranny. He explains, "As usurpation is the exercise of power, which another hath a right to; so tyranny is the

¹⁵¹ Locke, p. 100

¹⁵² Locke, p. 100

¹⁵³ Locke, p. 101

exercise of power beyond right.”¹⁵⁴ Thus, tyranny can be deemed this absolute and arbitrary power Locke has continuously been wary of. This tyrannical power is not only an error committed by monarchies. Rather, Locke explains, “Where-ever law ends, tyranny begins, if the law be transgressed to another’s harm; and whosoever in authority exceeds the power given him by the law...may be opposed, as any other man, who by force invades the right of another.”¹⁵⁵ There is a particular level of trust that the subject grants the sovereign, and should he break this sort of agreement, then he forfeits this power. Locke does ask if the sovereign may be opposed, to which he affirms, “force is to be opposed to nothing, but to unjust and unlawful force.”¹⁵⁶ Thus, the subjects may not simply rebel against the authority for each petty grievance. They are only permitted to use force against the sovereign if he commits an act against them that involves unlawful or unjust force. He rejects the doctrine of infallibility of the sovereign, saying, “this privilege, belonging only to the king’s person, hinders not, but they may be questioned, opposed, and resisted, who use unjust force.”¹⁵⁷ Thus, he maintains that unjust force is never permitted, and may be resisted. But, the resistance often takes the form of an appeal to the law, and thus each resistance does not ultimately dissolve the government. Locke emphasizes this point to prevent the objection that his doctrine leads to utter anarchy and disorder. It is only when the majority are offended by a severe and unjust action that the dissolution of the government can occur. Thus, the tyrannical powers must necessarily be resisted for it is consent, and only consent, that can legitimize a government. And, when this power is abused on a large scale, a full revolution may occur.

¹⁵⁴ Locke, p. 101

¹⁵⁵ Locke, p. 103

¹⁵⁶ Locke, p. 103

¹⁵⁷ Locke, p. 104

Locke's position differs significantly from that of Hobbes. Not only does he have a much more positive notion of the natural state of human beings, he is also much more wary of the actions of the sovereign. He begins by noting that all men are born free and with the capacity to ultimately operate under the natural law of reason. Furthermore, each man has the right to punish anyone who transgresses this law of nature. And, each man can enjoy private property in the state of nature. Thus, Locke portrays men as much less violent and inconstant as Hobbes. In regards to his theory of the commonwealth, Locke does try to provide some historical examples. He believes, similar to Hobbes, that there is a contract created by all men to sacrifice some of their natural rights in order to preserve and regulate individual property, including life, liberty, and possessions. But, it is Locke's idea of the sovereign which differs most strongly from Hobbes' theory. While the legislative power is supreme in his commonwealth, he does not permit either the legislative or executive access to arbitrary power. Hobbes argued that the sovereign's will was necessarily good and, thus, he could not be resisted. The sovereign, for Hobbes, always acted in a way that was in accordance with the public good. Locke is much more skeptical of the sovereign power. On numerous occasions, he emphasizes that the sovereign is merely another man, who is subject to the same faults as all other men. Thus, he cannot be trusted to always act in line with the public good. Thus, the legitimacy of government depends upon the people's consent. Hobbes argues that resistance from the people will only result in a reverting to the state of nature. And, for Hobbes, the state of nature and the state of war are equivalent. But, it is Locke's distinction between these two states, as well as his recognition of the fallibility of the sovereign, which permits him to place the ultimate power in the hands of the people.

CHAPTER IV – The Right of Revolution

The social contract theories of Thomas Hobbes and John Locke differ greatly on the subject of the right of revolution. As has been discussed in previous chapters, Hobbes would prefer a sovereign who exacts arbitrary and inhumane punishments before he permits the subjects any right of revolution. This doctrine stems from Hobbes' own portrayal of the sovereign as sacred and infallible. Locke, on the other hand, believes the sovereign is merely just another man who is entrusted with the power to rule the commonwealth. But, it is important to note that this trust depends heavily upon the consent of the people. Thus, it is never acceptable for a sovereign to exercise arbitrary power. Furthermore, Locke separates the powers of government between the legislative, executive, and federative in an attempt to prevent power from accumulating too much in the hands of one person. Thus, the significant difference between the two social contract theories depends on how each philosopher portrays the nature of the sovereign. And, it is this difference in portrayal that ultimately leads to the permitting, or non-permitting, of a right of revolution.

Hobbes discusses his doctrine on the right of revolution in his chapter entitled, "Of those things that Weaken or tend to the Dissolution of a Commonwealth." He begins by outlining some principles by which a commonwealth may prevent itself from dissolution. His first principle, the want of absolute power, is justified as necessary because it allows the sovereign to use any means in order to ensure the stability of the commonwealth. He notes it is a fault, "that a man, to obtain a kingdom, is sometimes content with less power than to the peace and defence of the commonwealth is

necessarily required.”¹⁵⁸ With checks on the power of the sovereign, the peace and security of the commonwealth cannot be guaranteed. He furthers his argument by noting that private parties may not be the judges of matters of good and evil. He notes, “I observe the diseases of a commonwealth that proceed from the poison of seditious doctrines, whereof one is: That every private men is judge of good and evil actions. This is true in the condition of mere nature...But otherwise, it is manifest that the measure of good and evil actions is the civil laws, and the judge the legislator, who is always representative of the commonwealth.”¹⁵⁹ Thus, it is clear that Hobbes contends that the sovereign is infallible, that his judgments are established as the civil laws, and that his commands should be obeyed.

Hobbes also rejects the claim that the sovereign should be subject to the civil laws. He explains, “A fourth opinion repugnant to the nature of a commonwealth is this: That he that hath the sovereign power is subject to civil laws. It is true that sovereigns are all subjects to the laws of nature...But to those laws which the sovereign himself, that is, which the commonwealth maketh, he is not subject. For to be subject to laws is to be subject to the commonwealth, that is, to the sovereign representative, that is, to himself, which is not subjection, but freedom from the laws.”¹⁶⁰ Hobbes explicitly notes that being subject to the commonwealth is being subject to the sovereign himself. Furthermore, the laws of commonwealth are created by him. As such, to subject himself to his own laws is redundant, and Hobbes just permits the sovereign to be free the civil laws. But, this is a dangerous move since it allows the sovereign to use his will without any limitations. It is easy to see how absolute, arbitrary power can be extrapolated from Hobbes’ theory. He

¹⁵⁸ Hobbes, p. 211

¹⁵⁹ Hobbes, p. 212

¹⁶⁰ Hobbes, p. 213

continues to bolster the power of the sovereign when he permits him to usurp the property of his subjects. Hobbes notes, “A fifth doctrine that tendeth to the dissolution of a commonwealth is That every private man has an absolute propriety in his goods, such as excludeth the right of the sovereign. Every man has indeed a propriety that excludes the right of every other subject; and he has it only from the sovereign power...But if the right of the sovereign also be excluded, he cannot perform the office they have put him into, which is to defend them both from foreign enemies and from the injuries of one another.”¹⁶¹ While Hobbes portrays this right as necessary to the benefit of the subjects, it is still disconcerting. If the sovereign has access to his subjects’ property at all times, and he is not subject to the civil laws, then there appears to be little protection from the will of the sovereign. Hobbes does not develop the idea that the sovereign could be potentially dangerous with so much power. He justifies this absolute power by arguing that the state of nature is, ultimately, much worse than the arbitrary will of the sovereign. And, as a result, the lesser evil should be preferred. Still, if this sovereign is a mere mortal man, it should be expected that he will abuse his newfound power. And, while the state of nature is nasty and brutish, all men are subject to the same treatment. By exempting one person, the sovereign, from the civil laws, he enjoys preferential treatment, all while establishing his own person will as the rule of the commonwealth.

Another point which worries Hobbes is when the power of the sovereign is divided. He begins, “There is a sixth doctrine plainly and directly against the essence of a commonwealth, and it is this: That the sovereign power may be divided. For what is it to divide the power of a commonwealth, but to dissolve it; for powers divided mutually

¹⁶¹ Hobbes, p. 213

destroy each other.”¹⁶² Again, Hobbes hopes to ensure that the power of the sovereign is unwavering. Hobbes even opposes a separation of powers into an ecclesiastical and temporal power. He elaborates, “seeing it is manifest that the civil power and the power of the commonwealth is the same thing, and that the supremacy, and the power of making canons and granting faculties, implieth a commonwealth, it followeth that where one can make laws and another make canons, there must needs be two commonwealths...which is a kingdom divided.”¹⁶³ If men are to follow two separate, and potentially opposing, doctrines of how to live, it is impossible for a cohesive kingdom to remain. He continues, “When, therefore, these two powers oppose one another, the commonwealth cannot but be in great danger of civil war and dissolution.”¹⁶⁴ In addition to a separation between earthly and spiritual powers, Hobbes warns against a mixed government. This model is similar to the separation of powers which Locke recommends. He notes, “this endangereth the commonwealth...the truth is that it is not one independent commonwealth, but three independent factions.”¹⁶⁵ If each faction is granted absolute power, which Hobbes has argued the sovereign must have, then there must necessarily be three separate factions. Thus, Hobbes affirms that the sovereign power must be contained in one institution, or person, in order to be used appropriately.

Hobbes concludes that it is not permissible for the subjects to dispute against the sovereign. He notes, “the liberty of disputing against absolute power by pretenders to political prudence, which, though bred for the most part in the lees of the people, yet animated by false doctrines, are perpetually meddling with the fundamental laws, to the

¹⁶² Hobbes, p. 213

¹⁶³ Hobbes, p. 215

¹⁶⁴ Hobbes, p. 216

¹⁶⁵ Hobbes, p. 217

molestation of the commonwealth.”¹⁶⁶ Thus, it does not appear that subjects can ever be justified in disobeying the will of the sovereign. Hobbes then indicates that a commonwealth is ultimately dissolved when a foreign power takes over. He explains, “when in a war...the enemies get a final victory...there is no farther protection of subjects in their loyalty, then is the commonwealth dissolved, and every man at liberty to protect himself by such courses as his own discretion shall suggest onto him. For the sovereign is the public soul, giving life and motion to the commonwealth, which expiring, the members are governed by it no more...For though the right of a sovereign monarch cannot be extinguished by the act of another, yet the obligation of the members may.”¹⁶⁷ The subjects are only permitted to disobey the sovereign when his power is dissolved. But, this dissolution does not come from the will of the people themselves. Rather, it is an external act, such as conquest, which suppresses the rule of the sovereign, rendering him unable to protect the people from outside threats. Because the end of the commonwealth is the preservation of the lives of men, and because the sovereign can no longer provide that protection, the people are free to return to a state of nature. Thus, it is never the willful act of revolution which is permitted. Rather, the dissolution of the sovereign can only come from external circumstances. And, as such, the sovereign can rightfully suppress any act of revolution his subjects commit. Thus, because Hobbes views the sovereign as infallible and sacred, he does not permit the subjects any right of revolution against their leader. Any act of revolution would immediately dissolve the commonwealth and revert back to a state of nature. And, it is Hobbes’ ultimate goal to prevent men from re-entering the state of nature ever again.

¹⁶⁶ Hobbes, p. 218

¹⁶⁷ Hobbes, p. 219

While Hobbes is reluctant to permit any sort of right of revolution, Locke develops a different view. In his chapter entitled, “Of the Dissolution of Government,” he outlines his argument why he believes that man has a right to dissolve an illegitimate form of government. He begins with a distinction between the dissolution of society and that of government. He states, “Whenever the society is dissolved, it is certain the government of that society cannot remain...The usual, and almost only way whereby this union is dissolved, is the inroad of foreign force.”¹⁶⁸ Thus, if a society succumbs to the force of another, the government must necessarily also be dissolved. But, Locke notes that governments may also be dissolved from within. He notes several ways in which this might occur. The first cause is when the legislative is altered. He explains, “it is in the legislative, that the members of a commonwealth are united...therefore, when the legislative is broken, or dissolved, dissolution and death follows: for the essence and union of the society consisting in having one will, the legislative, when once established by the majority, has the declaring, and as it were keeping of that will.”¹⁶⁹ The legislative, in Locke’s political theory, rules by the will of the people. And, it is the will of the people which is central to the operations of the commonwealth. Without this legislative, then, there can be no successful government. He continues, “When any one...shall take upon them to make laws, whom the people have not appointed so to do, they make laws without authority, which the people are not therefore bound to obey; by which means they come again to be out of subjection, and may constitute themselves a new legislative.”¹⁷⁰ Locke’s theory of the commonwealth rests heavily upon the ideas of consent and legitimacy. Without these concepts, government becomes arbitrary. The

¹⁶⁸ Locke, p. 107

¹⁶⁹ Locke, p. 108

¹⁷⁰ Locke, p. 108

sovereign, or the legislative, may not act without being endowed by the will of the people. As a result, the people are capable of dissolving, and replacing, any form of government which does not appear legitimate. Of course, the question becomes, is there an objective system by which to evaluate such a claim?

There are several ways by which the legislative may be altered. Locke initially lists the variety of violations that can be committed by a prince:

“First, That when such a single person, or prince, sets up his own arbitrary will in place of the laws, which are the will of the society, declared by the legislative, then the legislative is changed...Secondly, When the prince hinders the legislative from assembling in its due time, or from acting freely, pursuant to those ends for which it was constituted, the legislative is altered...Thirdly, When by the arbitrary power of the prince, the electors, or ways of election, are altered, without the consent, and contrary to the common interest of the people, there also the legislative is altered...Fourthly, The delivery also of the people into the subjection of a foreign power, either by the prince, or by the legislative, is certainly a change of the legislative, and so a dissolution of the government.”¹⁷¹

It is clear that Locke does not condone the arbitrary will of the executive power. If he uses his power to repress the will of the people, then he ultimately dissolves the commonwealth. Again, the consent of the people is crucial to Locke’s understanding of government. He continues, “There is one way more whereby such a government may be dissolved, and that is, when he who has the supreme executive power, neglects and abandons that charge, so that laws already made can no longer be put in execution...Where the laws cannot be executed, it is all one as if there were no laws.”¹⁷²

Thus, it is clear that whenever the sovereign oversteps his bounds, or does not perform his duties satisfactorily, then the government is dissolved and, ultimately, replaced. He notes, “when the government is dissolved, the people are at liberty to provide for themselves, by erecting a new legislative, differing from the other, by the change of

¹⁷¹ Locke, p. 110

¹⁷² Locke, p. 110

persons, or form, or both, as they shall find it most for their safety and good.”¹⁷³ The people, then, retain the ultimate right to determine the establishment of government. Again, it is consent that ultimately determines the form, stability, and structure of government.

The second way a legislative may be altered is when the legislative acts such that the people begin to mistrust the government institution. Locke argues, “the society can never, by the fault of another, lose the native and original right it has to preserve itself, which can only be done by a settled legislative, and a fair and impartial execution of the laws made by it. But the state of mankind is not so miserable that they are not capable of using this remedy.”¹⁷⁴ This appears to be a direct retort to the argument made by Hobbes. Locke, from the beginning, advocated that men, in their natural form, exist as free beings. They do not interact in a brutish or aggressive manner. Thus, men do not have to accept the arbitrary will of their government just because they fear returning to the state of nature. Thus, Locke rejects Hobbes’ argument that absolute authority, even though it may be wrong, must be obeyed nonetheless. Locke explains, “First, The legislative acts against the trust reposed in them, when they endeavour to invade the property of the subject, and to make themselves...arbitrary disposers of the lives, liberties, or fortunes of the people...whenever the legislators endeavour to take away, and destroy the property of the people...they put themselves into a state of war with the people, who are thereupon absolved from any farther obedience.”¹⁷⁵ For Locke, it does not matter if the executive or the legislative commits the crime. Whenever arbitrary power is used, the people are permitted to revolt.

¹⁷³ Locke, p. 110

¹⁷⁴ Locke, p. 110

¹⁷⁵ Locke, p. 111

It may be objected that Locke's policy permits endless rebellion. Without an objective rubric by which to evaluate the actions of the government, it would appear that the subjective interpretation of the acts of the legislative or executive could permit endless revolution. Locke notes, "perhaps it will be said...no government will be able long to subsist, if they people may set up a new legislative, whenever they take offence to the old one. To this I answer...People are not so easily got out of their old forms...This slowness and aversion in the people to quit their old constitutions, has, in the many revolutions which have been seen in this kingdom...still brought us back again to our old legislative."¹⁷⁶ Locke does not believe men care to simply revolt for the sake of it. Rather, there needs to be some strong incentive for the people to make any drastic change in the form of government. He continues, "revolutions happen not upon every little mismanagement in public affairs. Great mistakes in the ruling part, many wrong and inconvenient laws, and all the slips of the human frailty, will be born by the people without mutiny or murmur. But if a long train of abuses, prevarications and artifices, all tending the same way...it is not to be wondered, that they should then rouse themselves, and endeavour to put the rule into such hands which may secure to them the ends for which government was at first erected."¹⁷⁷ It is Locke's belief that men do not just uproot the foundations of government because of occasional disappointments or inconveniences. Rather, it is the excessive use of arbitrary power and the repeated violations of trust that result in revolution. And, for Locke, such revolution is justified.

Locke, in perhaps his strongest argument for the right of revolution, claims that the actual rebel is the sovereign who violates the social contract. He notes:

¹⁷⁶ Locke, p. 113

¹⁷⁷ Locke, p. 113

“this doctrine of a power in the people of providing for their safety a-new, by a new legislative, when their legislators have acted contrary to their trust...is the best fence against rebellion...for if any one by force takes away the established legislative of any society...he thereby takes away the umpirage, which every one had consented to...They, who remove, or change the legislative, take away this decisive power, which no body can have, but by the appointment and consent of the people; and so destroying the authority which the people did, and no body else can set up, and introducing a power which the people hath not authorized, they actually introduce a state of war, which is that of force without authority...And if those, who by force take away the legislative, are rebels, the legislators themselves, as has been shewn, can be no less esteemed so; when they, who were set up for the protection, and preservation of the people, their liberties and properties, shall by force invade and endeavour to take them away; and so they putting themselves into a state of war with those who made them the protectors and guardians of their peace, are properly, and with the greatest aggravation...rebels.”¹⁷⁸

For Locke, the real rebels are the legislators who transgress the laws, which they made, in order to harm the people. The aim of civil society is the preservation of property and the security of the people. But, if the sovereign rejects such laws and does not perform his duties, then he is the one who dissolves the structures of the society and re-establishes the state of war. And, thus, the people, who again seek peace, may consent to operate under a new legislative that is endowed with the responsibilities of ensuring the peace and security of the people.

Locke understands men to be born both equal and free. Furthermore, he does not believe any man has a right to take the property or life of another. This idea is bolstered when Locke attempts to develop a policy of self-defense. The people are granted a right to protect their own interests because, after all, the civil society was originally established to guarantee the protection of certain rights. He notes, “Whosoever uses force without right, as every one does in society, who does it without law, puts himself into a state of war with those against whom he so uses it; and in that state all former ties are cancelled, all other rights cease, and every one has a right to defend himself, and to resist the

¹⁷⁸ Locke, p. 114

aggressor.”¹⁷⁹ He cites Barclay as an example of someone who would normally defend the arbitrary rights of kings, but who also recognizes a right of the people. He explains, “if the king...sets himself against the body of the common-wealth...in this case the people have a right to resist and defend themselves from injury.”¹⁸⁰ Barclay limits this form of self-defense as only against acts currently committed. The people may not use force as a form of justice for past crimes. Furthermore, they may only do so in a dignified manner. Locke mocks these limitations, for it seems implausible for one to resist without force against the king. Furthermore, Barclay protects the king because he is “superior” to his subjects. Of course, Locke rejects this notion, for when arbitrary power is used, the people return to a state of war. And, it is when they return to that state that all men are naturally equal. The only conditions under which a man may strike a king, for Barclay, are when the king forfeits his role as king altogether. He explains, “If he endeavour to overturn the government, that is if he have a purpose and design to ruin the kingdom and commonwealth... he immediately gives up all care and thought of the common-wealth, and consequently forfeits the power of governing his subjects...The other case is, When a king makes himself the dependent of another...and so by this act sets the people free, and leaves them at their own disposal.”¹⁸¹ Thus, the sovereign may only be resisted when he no longer remains the sovereign. While Barclay provides different arguments for why a king may lose his power, it is still this notion that when the sovereign breaches the trust of the people, or forfeits his power in some other way, then he no longer has dominion over the people. And, without this power, he may be resisted.

¹⁷⁹ Locke, p. 117

¹⁸⁰ Locke, p. 118

¹⁸¹ Locke, p. 121

The issue with Locke's doctrine, thus far, is that he does not explicitly detail how the efforts of the legislative or executive will be evaluated. While he addresses the problem of frequent rebellion, there is no reference to an objective assessment of the civil society. In the conclusion of his chapter on the dissolution of government, he asserts that the people are, ultimately, the judge. He notes, "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 his trust?"¹⁸² Since the sovereign has no power without the consent of the people, he cannot have any more rights than those with which the people endow him. And, because Locke already argued that man may not, in any circumstances, will his own maltreatment, the sovereign may not enjoy such a power. Furthermore, because the people endow him with these powers, they must always reserve the right to replace him. He continues, "this question...cannot mean, that there is no judge at all...every man is judge for himself...If a controversy arise betwixt a prince and some of the people...I should think the proper umpire...should be the body of the people."¹⁸³ Locke's position, it is clear, differs greatly from that of Hobbes. While Hobbes would have advocated that the sovereign be judge in all cases, it is the people, for Locke, who ultimately decide in areas of disagreement. And, this difference results greatly from the differing interpretations each has of the role, and nature, of the sovereign.

¹⁸² Locke, p. 123

¹⁸³ Locke, p. 123

Locke concludes his section on revolution by asserting that while the civil society is still established, the individuals do not retain their rights. He explains, “The power that every individual gave the society, when he entered into it, can never revert to the individuals again, as long as the society lasts, but will always remain in the community...so also when the society hath placed the legislative in any assembly of men, to continue in them and their successors...the legislative can never revert to the people whilst that government lasts.”¹⁸⁴ It appears that Locke is qualifying his statements and permitting the legislative eternal power. But, it is important to note that this power is only legitimate when the government lasts. He explains, “But if [the people] have set limits to the duration of the legislative, and made this supreme power in any person, or assembly, only temporary; or else, when by the miscarriages of those in authority, it is forfeited; upon the forfeiture, or at the determination of the time set, it reverts to the society, and the people have a right to act as supreme, and continue the legislative in themselves; or erect a new form, or under the old form place it in new hands, as they think good.”¹⁸⁵ Thus, if the government is ended, for reasons such as a transgression of the law or the use of arbitrary power, then the people retain a right to replace the form of government. That is to say, if the sovereign rebels against the original social contract, he returns the people to a state of war. He forfeits his power over them, and they can then “revolt” and establish either a new form of government or a new person as sovereign. Thus, the people’s consent is necessary to the stability and security of government, and it is the people who ultimately control the status, and form, of the civil society.

¹⁸⁴ Locke, p. 124

¹⁸⁵ Locke, p. 124

Hobbes and Locke offer two very distinct views on the right of revolution. For Hobbes, the people may not revolt against the sovereign. He regards such an act to be not only disrespectful to an authority figure, but also short-sighted. If one dissolves the commonwealth, then all return to a state of nature. And, for Hobbes, this translates into a state of war. Locke, on the other hand, permits a much stronger and substantive form of the right of revolution. He understands government to rest upon the consent of the people. And, in the end, the people must be the judge of legitimate government. Arbitrary power and transgressions of the law by the sovereign power, either by the executive or legislative branches, is not acceptable. This distinction highlights an underlying distinction between the two philosophers' conception of mankind, and the sovereign himself. Hobbes believes life in the state of nature is nasty and brutish. As a result, men require a strong authority figure to ensure that peace and security is established. But, this sovereign, in order to be permitted arbitrary power, must also be at least partially divine. If he is only a man, then he would have to succumb to the same passions and selfishness as all other men. And, as a result, he could not be permitted the arbitrary authority that Hobbes allows his sovereign. Locke, on the other hand, has an opposite view. He views men as generally peaceful. He notes that all men are inherently free and equal. His sovereign, in contrast to that of Hobbes, appears to be mortal. As a result, Locke recognizes that he is fallible, and thus can be persuaded by self-interest. Locke limits his power, then, because he predicts such behaviors. Because all men are both free and equal, no man has a right to harm another. Thus, the sovereign may not be permitted the power to objectify or injure any of his subjects because all men are equal. Locke's recognition of the humanity of the sovereign permits him the ability to give the people the ability to

check the power of this sovereign. The ultimate aim for society is the peace and security of the people, and the only way to accomplish this is protect men from any danger, including the arbitrary and self-interested power of the sovereign. Thus, the right of revolution, for these two philosophers, depends upon the different conceptions each has both of human kind and of the sovereign himself.

CHAPTER V – The American Founding

The previous discussion on the right of revolution is particularly relevant to the American Founding. While the scope of this chapter will be limited, leaving out many of the historical details of the American Revolution, it will consider the notion of the separation of powers as a direct consequence of the political theory of both Thomas Hobbes and John Locke. In particular, James Madison's Federalist Papers, the Declaration of Independence, and the Bill of Rights will be used to help illustrate the idea that, for the Founding Fathers, the English represented a sovereign who had overstepped its bounds. And, as such, the early Americans believed they retained a right to revolt against these imperialist leaders. In particular, it was Hobbes' fear of the natural state of man combined with Locke's skepticism of absolute authority that led to the confederation of American states that united to expel the ruling authority of the English.

Madison begins his discussion of the separation of powers in his Federalist No. 47. In this essay, he addresses the arguments that each department in the federal and state governments should be completely separate and distinct. He begins, "One of the principal objections inculcated by the more respectable adversaries to the constitution, is its supposed violation of the political maxim, that the legislative, executive and judiciary departments ought to be separate and distinct."¹⁸⁶ The argument of the Anti-Federalists, who opposed the development of a federal government to serve as the unifying structure for the individual states, is that any form of federal government would become tyrannical. In particular, if the proposed legislative, executive, and judicial departments of this new government structure were consolidated into the hands of a few men, then tyranny would surely ensue. But, for Madison, there is a distinction between partial overlap and absolute

¹⁸⁶ Madison, p. 261

involvement. He agrees that full consolidation of these powers into one body of people would be problematic. He explains, “The accumulation of all powers legislative, executive, and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny.”¹⁸⁷ Thus, it is clear that the consolidation of all these powers in the same hands would be problematic.

Madison, however, argues that the structure of the federal government does not indicate such a dangerous consolidation of power. He notes that Montesquieu is often the source of the argument against this structure of government. But, Madison’s interpretation of Montesquieu’s argument notes that, while total integration of these departments is inappropriate, there can be partial overlap between these departments. He notes, “[Montesquieu] did not mean that these departments ought to have no partial agency in, or no controul [sic] over the acts of each other. His meaning, as his own words import, and still more conclusively illustrated by the example in his eye, can amount to no more than this, that where the whole power of one department is exercised by the same hands which possess the whole power of another department, the fundamental principles of a free constitution, are subverted.”¹⁸⁸ He argues that, even in British law, there is significant overlap amongst the three branches. For example, the executive magistrate retains some legislative authority, and occasionally the legislative body can serve a judicial purpose, particularly in impeachment cases. And, these instances do not pose a concern for the rights of the individual citizens.

¹⁸⁷ Madison, p. 261

¹⁸⁸ Madison, p. 261

Madison then turns to cite instances within the state constitutions where these powers continue to overlap. Again, his aim is to convince the Anti-Federalists that the existence of a federal government will not necessarily result in tyranny. He notes, “New Hampshire, whose constitution was the last formed...has qualified the doctrine by declaring, ‘that the legislative, executive and judiciary departments ought to be kept as separate from, and independent of each other as the nature of a free government will admit.’”¹⁸⁹ If the legislative must intervene in the operations of the executive in order to ensure the safety of the people, then that action would be permitted by the laws of the state of New Hampshire. But, of course, that would be the only way to justify such an intervention. The legislative body cannot intervene arbitrarily. The state of Virginia, which attempts to take a more decisive position against the blending of political authority, still excuses partial intervention. He highlights:

“The language of Virginia is still more pointed on the subject. Her constitution declares, ‘that the legislative, executive and judiciary departments, shall be separate and distinct; so that neither exercise the powers properly belonging to the other; nor shall any person exercise the powers of more than one of them at the same time; except that the justices of the county courts shall be eligible to either house of assembly.’ Yet we find not only this express exception...but that the chief magistrate with his executive council are appointable by the legislature; that two members of the latter are triennially displaced at the pleasure of the legislature; and that all the principal offices, both executive and judiciary, are filled by the same department.”¹⁹⁰

Thus, even in the strictest state constitutions, there is still an occasional permission of the overlap between these different branches of government. Madison, in emphasizing these examples, hopes to note that total separation of powers isn’t necessary. But, for both Madison and the Anti-Federalists, a total consolidation of these different branches of

¹⁸⁹ Madison, p. 264

¹⁹⁰ Madison, p. 266

government in the hands of one person or a small body of people would be a recipe for tyranny.

Madison is not satisfied just to demonstrate that these three branches of government do not need to be totally distinct. Instead, he hopes to show that these three departments *must* be intertwined, at least partially, in order to protect from the encroachments from the other branches. That is to say, each department requires protections from the other branches of government. It is here that one sees Madison's inheritance of Hobbes' fallible nature of man and Locke's skepticism of the nature of the sovereign. The federal government is capable of acting unjustly and in a flawed manner such that its structure requires built-in protections against such offenses. And, for Madison, these protections take the form of a system of "checks and balances" such that no branch of the government can garner enough power to overwhelm the efforts and responsibilities of the other departments.

Madison begins his Federalist No. 48 by advancing his argument for the necessary degree for these departments to be intertwined. He opens, "I shall undertake in the next place, to shew that unless these departments be so far connected and blended, as to give each other a constitutional controul over the others, the degree of separation which the maxim requires as essential to a free government, can never in practice, be duly maintained."¹⁹¹ Madison is searching for practical and feasible methods by which to enforce the structure of the federal government such that no department can assume enough power to abuse its authority. He argues, "It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it...the next and most difficult task, is to provide some practical security for

¹⁹¹ Madison, p. 268

each against the invasion of the others. What this security ought to be, is the great problem to be solved.”¹⁹² For Madison, this issue is of dire importance. Without a series of regulations, the federal government will be prone to abuses given that it will be operated by self-interested human beings. And, in particular, Madison is concerned with the authority of the legislative body. He notes, “But in a representative republic, where the executive magistracy is carefully limited both in the extent and the duration of its power; and where the legislative power is exercised by an assembly...it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions.”¹⁹³ Much like in Locke’s civil society, the legislative body assumes the largest authority. And, as such, this department is the most likely to abuse such power. Thus, Madison hopes to explore ways in which this department might be restricted in its ability to misuse its authority.

Madison cites Thomas Jefferson’s “Notes on the state of Virginia” as a means to demonstrate that actual and enforceable means must be pursued in order to limit the power of the legislative body. Jefferson explains, “The concentrating these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three depots would surely be as oppressive as one.”¹⁹⁴ Jefferson warns that the numerous people constituting the legislative body do not indicate that the legislative body is infallible. Furthermore, Jefferson warns that no practical measures have been taken to ensure that these three bodies remain independent, even if not totally distinct. He notes, “But no barrier was provided between these several powers. The

¹⁹² Madison, p. 268

¹⁹³ Madison, p. 269

¹⁹⁴ Madison, p. 270

judiciary and executive members were left on the legislative for their subsistence in office...If therefore the legislative assumes executive and judiciary powers, no opposition is likely to be made; nor if made can be effectual.”¹⁹⁵ Thus, both Madison and Jefferson notice that mere laws written in state constitutions are not enough to prevent the strengthening of the legislative body. Rather, productive, applicable methods must be sought to help restrict this department’s already overwhelming power.

Madison begins to develop his position on the separation of powers in his Federalist No. 49. The Anti-Federalists have posed an issue for a federal form of government: how do the people remain sovereign in a federalist system of government? Madison begins to develop his solution to this problem. He notes, “As the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived; it seems strictly consonant to the republican theory, to recur to the same original authority, not only whenever it may be necessary to enlarge, diminish, or new-model the powers of government; but also whenever any one of the departments may commit encroachments on the chartered authorities of others.”¹⁹⁶ For Madison, the people always remain the ultimate source of authority. Each of the departments of government derives its power from the public, so it is unreasonable to suggest that any power, even the legislative body, could assume a greater power over any of the other departments. The social contract that the people agree to with the federal government affirms that the people will always remain sovereign over the government. And, thus, no department of the government may overstep its bounds. Madison elaborates, “The several departments being perfectly co-

¹⁹⁵ Madison, p. 271

¹⁹⁶ Madison, p. 271

ordinate by the terms of their common commission, neither of them, it is evident, can pretend to an exclusive or superior right of settling the boundaries between their respective powers.”¹⁹⁷ Thus, the government cannot be trusted to self-regulate itself. Rather, the people must reserve the right to monitor and judge the effectiveness and judiciousness of the federal government. Madison notes, “and how are the encroachments of the stronger to be prevented, or the wrongs of the weaker to be redressed, without an appeal to the people themselves; who, as the grantors of the commission, can alone declare its true meaning and enforce its observance?”¹⁹⁸ Since the authority of the government is derived from the people, it must be the people who always remain sovereign over the government. This is a very Lockean interpretation of the effectiveness of government, Madison contends that the people maintain a perpetual ability to reconsider and reevaluate their system of government. But, of course, this raises the concern: do the people reserve a right to revolt against the government whenever they please? Are there limitations to this right? If so, what are they? And, if not, how can one guarantee stability?

Madison understands this issue. He notes that referring to the whole society for every issue of national concern poses an issue to the stability and structure of the government. But, at the same time, he is skeptical about entrusting the already empowered legislative body to represent the true will of the people. Yet, the judiciary and the executive departments only represent a very small population of the entire society. Thus, he remains convinced that the legislative body is most fit for this purpose. He explains, “The members of the legislative department, on the other hand, are numerous.

¹⁹⁷ Madison, p. 273

¹⁹⁸ Madison, p. 273

They are distributed and dwell among the people at large...The nature of their public trust implies a personal influence among the people, and that they are more immediately confidential guardians of the rights and liberties of the people.”¹⁹⁹ It appears, then, that the legislative, given its ability to aptly understand and address the concerns of the people, should be consulted regarding issues of constitutionality or government actions. Madison concludes, “it is the reason of the public alone that ought to control and regulate the government. The passions ought to be controlled and regulated by the government. We found...that mere declarations in the written constitution, are not sufficient to restrain the several departments within their legal limits. It appears in this, that occasional appeals to the people would be neither a proper nor an effectual provision, for that purpose.”²⁰⁰ Thus, Madison rejects frequent reference to the public as an effective method for regulating the government. Rather, he is willing to grant such a right to the legislative body, the government body most closely intertwined with the will of the people.

But, perhaps, if the appeals to the people were periodic, or scheduled, then it could simultaneously sustain the order of the government and empower the public as the true sovereign. Madison, however, rejects this claim as still impractical. He notes that if the intervals are too close together, then the complaints become too superfluous. And, if the intervals are too spread out, the issues can never be successfully resolved in a timely manner. The state of Pennsylvania, Madison notes, attempted to formulate a system where political leaders, or censors, would address concerns of the constitutional limits of the several powers of the government. Unfortunately, those men often succumbed to political bias, or were involved in the government themselves, proving the system to be

¹⁹⁹ Madison, p. 275

²⁰⁰ Madison, p. 276

flawed and ineffective. But, Madison concludes this section by developing an interesting and relevant point. He notes, “Is it to be presumed...the same state will be free from parties? Is it to be presumed that any other state, at the same or any other given period, will be exempt from them? Such an event ought to be neither presumed nor desired; because an extinction of parties necessarily implies either a universal alarm for the public safety, or an absolute extinction of liberty.”²⁰¹ It is clear that, while frequent appeals to the people may not be the most effective means for limiting the powers of the government, Madison still very much believes in deliberation and debate as necessities of freedom. The existence of one party, or political body or department, would be detrimental to the liberty of the people. It is this understanding that reflects a Lockean fear of the excessive power of the sovereign, or in this case government, body.

Thus, the problem still remains: if one cannot appeal to the people to enforce the actions of the government, and if laws are not sufficient in theory, then how exactly does one require the government to act in a constitutional manner? For Madison, the only way to effectively guarantee the constitutionality of the actions of the government is by structuring the government in such a way that it is difficult to act otherwise. He begins, “In order to lay a due foundation for that separate and distinct exercise of the different powers of government...it is evident that each department should have a will of its own; and consequently should be so constituted, that the members of each should have as little agency as possible in the appointment of the members of the others.”²⁰² By structuring the government in this manner, it would be difficult for each department to overstep its bounds. Ideally, the people would choose the officers in each department, but Madison,

²⁰¹ Madison, p. 279

²⁰² Madison, p. 280

for the sake of practicality, does permit some form of appointments, particularly in the judiciary. But, he continues, “It is equally evident that the members of each department should be as little dependent as possible on those of the others.”²⁰³ By separating these departments to a considerable degree, it prevents the encroachment of one department upon another. But, for Madison, this is not enough. He explains, “But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of others.”²⁰⁴ Thus, for Madison, each department must be given the proper methods by which to protect itself from the other departments.

Madison’s concern about one department of government encroaching upon another stems from his understanding of human nature. He notes, “It may be a reflection on human nature, that such devices should be necessary to controul the abuses of government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controuls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to controul [sic] the governed; and in the next place, oblige it to controul itself.”²⁰⁵ This is the inherent difficulty within government. The government, given that it is comprised of men, is necessarily fallible. But, the government must assume some authority over the governed. It must be able to enforce laws and oblige the governed to follow particular social norms. Yet, the

²⁰³ Madison, p. 281

²⁰⁴ Madison, p. 281

²⁰⁵ Madison, p. 281

government only retains this ability because each member of the society forewent his own individual rights in order to erect this type of society. Thus, the conundrum stands. The government needs the governed to remain stable, yet the governed need the government just as much to maintain stability amongst personal relations. And, it is clear that Madison inherits both a Lockean and Hobbesian perspective in his analysis. Like Hobbes, Madison agrees that man is inherently selfish and flawed. People require the government to enforce equal rights under the law. But, like Locke, Madison does not exempt the members of government from this doctrine of fallibility. The people who comprise the system of government are just that: people. They contain the same mortal flaws that all other members of society do. Thus, they cannot be unconditionally trusted. Rather, certain measures must be taken to ensure that these members of government act judiciously. Thus, Madison hopes to build these types of limitations into the system of government itself in order to ensure the stability of the state.

Madison, throughout his entire discussion, has noted that the legislative body in a republican government is already given a sufficient advantage. Since it contains the most members, and often the most power, it also has the greatest chance of abusing such power. His solution for this is to divide the legislature into two separate bodies. He explains, “The remedy for this inconveniency is, to divide the legislature into different branches; and to render them by different modes of election, and different principles of action, as little concerned with each other, as the nature of their common functions, and their common dependence on the society, will admit.”²⁰⁶ This division of the two legislatures would come to be the bicameral model of the American legislature. By assigning each department its own responsibilities, and thus effectively dividing the size

²⁰⁶ Madison, p. 282

of the legislature, Madison has successfully weakened the strongest body of the federal government. Furthermore, the structure of the American government poses another question: how do state governments interact with the federal government? He notes, “the power surrendered by the people, is first divided between two distinct governments, and then the portion allotted to each, subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will controul each other; at the same time that each will be controuled by itself.”²⁰⁷ Thus, an effective system of checks and balances must consider this dual structure of the American system of government. Additionally, the American political structure is based on the debates and deliberations amongst particular political parties. Thus, for Madison, one must protect these parties from being overcome or overwhelmed by unfair majorities. He argues, “Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure.”²⁰⁸ But, for Madison, this issue can be resolved by creating a number of factions, thus effectively preventing against an overpowering majority. He explains, “by comprehending in the society so many separate descriptions of citizens, as will render an unjust combination of a majority of the whole, very improbably, if not impracticable...the society itself will be broken into so many parts, interests and classes of citizens, that the rights of individuals or of the minority, will be in little danger from interested combinations of the majority.”²⁰⁹ Thus, for Madison, the federal government must protect against excess. It must not excessively accumulate power, and it must monitor political parties, religious groups, social organizations, and all other groups from becoming oppressive.

²⁰⁷ Madison, p. 282

²⁰⁸ Madison, p. 283

²⁰⁹ Madison, p. 283

Madison concludes his Federalist No. 51 with a strong discussion of the end of government. He begins, “Justice is the end of government. It is the end of civil society. It has ever been, and ever will be pursued, until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign, as in a state of nature where the weaker individual is not secured against the violence of the strong.”²¹⁰ Much like the social contract theorists Hobbes and Locke, Madison recognizes the ultimate goal of society: the protection of all citizens and the surety of justice for all. The only way to accomplish this, however, is by limiting man such that he cannot indulge in arrogant or selfish accumulation of power. The weak and the strong must be treated as equals; both groups maintain equal rights under the law. Madison concludes, “In the extended republic of the United States, and among the great variety of inters, parties and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good...And happily for the republican cause, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the federal principle.”²¹¹ Thus, for Madison, the federalist approach to government provides the guarantees for all people that justice will be pursued. And, it is the only way through which the government can both rule the governed, as well as themselves.

While it was chronologically written prior to The Federalist Papers, the Declaration of Independence also provides sound evidence that the Founding Fathers

²¹⁰ Madison, p. 283

²¹¹ Madison, p. 284

assumed both a Hobbesian and Lockean perspective regarding the English sovereign. The quintessential document regarding the American Founding, it is a clear and explicit declaration of the reasons for the secession of the original colonies. Additionally, it serves as a strong supporting argument for the existence of a right of revolution. For the sake of clarity, I will refer to Jefferson as the author of the Declaration, though I recognize the number of contributors to the actual document. He begins, “When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to separation.”²¹² From the onset, there is a strong indication of the individual rights of man bestowed upon him by both God and Nature. Jefferson continues, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness – That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed – That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or 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.”²¹³ While Jefferson does not necessarily aim to prove *why* he believes that man retains these particular rights, it is clear he believes that these rights are necessarily a part of human nature. And, as such, these rights can never

²¹² Jefferson, Thomas, et. al. “The Declaration of Independence,” *The U.S. National Archives & Records Administration*, 20 March 2011. <http://www.archives.gov/exhibits/charters/declaration_transcript.html

²¹³ Jefferson, “The Declaration of Independence”

be forfeited or removed. Thus, like Locke, Jefferson believes that man retains the ability to alter or overthrow the government whenever it does indeed attempt to limit man's natural rights.

But, much like Locke, Jefferson does not believe that man can overthrow his government for any reason. He notes, "Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariable the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security."²¹⁴ This is a very strong declaration, for Jefferson does not believe that the right to revolt is merely a right. Rather, he believes it is a *duty* of the people when the government has overstepped its bounds and become tyrannical. When repeated abuses have occurred, it is the obligation of the people to overturn the existing government and establish a new system of government.

Jefferson notes the long train of abuses which the King of Britain has committed against the residents of the colonies. It is his view that these qualify as the sort of excessive abuses which would permit the people to reject and overthrow such a government. Jefferson notes that the people have petitioned against such abuses, but have only been treated by further oppression. He argues, "A Prince whose character is thus marked by every act which may define a Tyrant is unfit to be the ruler of a free

²¹⁴ Jefferson, "The Declaration of Independence"

people.”²¹⁵ The people, who are endowed with particular freedoms and rights, are able, then, to reject the authority of a sovereign who repeatedly abuses his power by limiting such liberties. He concludes:

“We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by the Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States, that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.”²¹⁶

Thus, for Jefferson, the abuses of the British Empire have been sufficient for the American colonies to start anew. With this Declaration, they may proceed as an independent and free nation, with the right and the duty to absolve itself from the British rule in favor of a new system of government.

Another example of the inclusion of Hobbesian and Lockean thought regarding the role of the sovereign and the right of revolution can be found in The Bill of Rights. The document begins, “THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution.”²¹⁷ Thus, these particular rights are outlined as a way to

²¹⁵ Jefferson, “The Declaration of Independence”

²¹⁶ Jefferson, “The Declaration of Independence”

²¹⁷ Madison, James. “The Bill of Rights,” *The U.S. National Archives & Records Administration*, 20 March 2011. <http://www.archives.gov/exhibits/charters/declaration_transcript.html

prevent a despotic or tyrannical government from returning. In particular, the First Amendment establishes a set of limitations as a way to limit the actions of Congress. It declares, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assembly, and to petition the Government for a redress of grievances.”²¹⁸ Thus, with this initial declaration, Madison establishes the tone and the goal of the new government to be formulated by the new Constitution.

A few of the other original amendments of The Bill of Rights also indicate a desire to limit the excessive power of the Congress. The Fourth Amendment, which states, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probably cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized,”²¹⁹ very clearly notes the right of man to live a private life. Additionally, the Sixth Amendment guarantees, “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.”²²⁰ Thus, this amendment seeks to protect individuals from the arbitrary will and prosecution of a tyrannical sovereign. The Eighth Amendment, which states, “Excessive bail shall not be required, nor excessive fines

²¹⁸ Madison, “The Bill of Rights”

²¹⁹ Madison, “The Bill of Rights”

²²⁰ Madison, “The Bill of Rights”

imposed, nor cruel and unusual punishments afflicted,”²²¹ further seeks to ensure the freedom and safety of all citizens. The Ninth Amendment and Tenth Amendments seek to ensure that, while certain explicit rights may not be enumerated in the actual Constitution, this does not permit Congress to limit the liberty of the people. The Ninth Amendment states, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”²²² Thus, just because certain rights are explicitly stated in the Constitution does not deny that other rights do exist for the people. And, finally, the Tenth Amendment states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”²²³ Any rights or powers which are not listed in the body of the Constitution will be assigned to the States or the people as a whole. Thus, the process of deciding which rights and powers are constitutional is a continuous process which relies heavily on the will of the people.

The Federalist Papers, The Declaration of Independence, and The Bill of Rights all demonstrate a Hobbesian and Lockean perspective on the role of the sovereign and the right of revolution. The Federalist Papers help to illuminate the way in which the Founding Fathers, in particular James Madison, interpreted the role of the legislative government as an institution which simultaneously governs and must be governed. The sovereign, as a man, cannot be fully trusted, and thus certain limitations must be installed to help ensure that the government does not become tyrannical. This understanding derives from Hobbes’ notion that man cannot be trusted to be altruistic, and from Locke’s

²²¹ Madison, “The Bill of Rights”

²²² Madison, “The Bill of Rights”

²²³ Madison, “The Bill of Rights”

understanding that the sovereign is merely a man among men and, thus, must be accountable to the same laws as the governed. The Declaration of Independence, perhaps the strongest affirmation of the right of revolution, clearly assumes a Lockean perspective. It dictates that the people, when suffering sustained abuses, are permitted to revolt. And, it is from Locke that Jefferson derives his notion of each man being entitled to his life, liberty, and pursuit of happiness. Finally, The Bill of Rights assumes several Hobbesian and Lockean ideas. It is from Hobbes that the entire notion of limiting interpersonal relations derives. Without this fundamental notion of what government's aim should be, The Bill of Rights would not exist. The limitations expressed in this document demonstrate a fear of what man is capable of doing to his fellow man. Furthermore, it is the way in which this document is applied to the government, and particularly Congress, which exhibits a Lockean perspective. The government, since it is comprised of men, is fully capable of being flawed. Thus, it, too, must be governed.

The fundamental difference between Hobbes' and Locke's ideas concerning the right of revolution can be supported by these three documents. The American Founding assumed Locke's concept of the sovereign as being a fallible institution, made of men who assumed the same flawed human nature as those who were to be governed. Thus, to safeguard against tyranny, the Founding Fathers permitted a particular right of revolution to be granted to the people. While Hobbes argued for the infallibility and perhaps the immortality of the sovereign, Locke, Madison, and Jefferson all agree that the sovereign must simultaneously be able to govern the people and be governed by the people.

CONCLUSION

During my initial research, I had hoped to analyze the difference between the right of revolution and the right of rebellion. Additionally, I originally planned to discuss more of the historical aspects involving Thomas Hobbes' and John Locke's life which had contributed to the differences between each philosopher's ideas concerning the state of nature. But, through the course of my reading, I found a significant difference between the two author's philosophies which I thought both interesting and relevant. In particular, it was the difference between the way each philosopher interprets the nature and the role of the sovereign which directly impacts whether or not the people retain a right to revolt. Hobbes, who wrote *Leviathan* during the English Civil War, supports a strong sovereign, perhaps in reaction to the chaotic era during which he lived. It is no surprise that he desired order, and this order, he believed, must come from a demigod sovereign who is granted absolute and unconditional power. Locke, on the other hand, advocates for a sovereign whose powers must necessarily be limited. The state of nature, for Locke, remains a much more peaceful entity, and thus rule by the sovereign cannot be more unbearable than the state of nature. Should this be the case, people would merely revert back to the state of nature. Thus, the sovereign's powers must be limited to the pursuit of the greater good. If the sovereign repeatedly abuses his power, the people may and should rebel against him. Thus, it is the important difference between these two conceptions which allows the people to retain a right to revolt.

In addition, it is this difference which influenced the American Founding Fathers when they drafted the Declaration of Independence, The Bill of Rights, and The Federalist Papers. In these documents, it is clear that the British king was seen as an

abusive sovereign power. And, with a Lockean perspective, the Founding Fathers believed they had an unalienable right and duty to overthrow such a tyrannical power. Furthermore, in The Federalist Papers and The Bill of Rights, it is clear that they believed that they needed to delimit the rights and powers of the sovereign. In The Federalist Papers, Madison outlines specific checks and balances for the three branches of government, going to particular ends to limit the power of the legislative branch. Furthermore, The Bill of Rights serves as a limit on the powers of Congress regarding its interaction with the people. Thus, the American Founding relied upon a very Lockean fear that the sovereign could be trusted in all cases. And, of course, this fear of the nature of man, stems from Hobbes. Thus, it appears that the American Founding Fathers inherited a skeptical view of the nature of man in the abstract, as well as in the role of the sovereign, which permitted them to both revolt against the British Empire as well as establish a government set upon limits of power.

Upon examination, I believe this idea of revolution as the reaction to a long series of abuses is particularly relevant in the current political climate. One need not look beyond the borders of the United States in order to find a revolutionary spirit. For example, the Tea Party movement very much looked to the origins of this nation as inspiration for its political positions. The idea that government should be for the people and by the people, a core ideal for this movement, derives from the very notion of consent, so central to the American Founding and Lockean political theory. When government gets too big, and passes billion dollar legislation or endorses new programs which may not appeal to the masses, it could be viewed as a tyrannical power who is disregarded the will of the people. In the case of a long train of abuses, revolution will

occur. While a total disintegration of the United States government would be apocalyptic, it is possible to interpret the 2010 mid-term elections as a direct reaction, or revolution, against the Obama administration. The American system was built to ensure that no such abuse of power could be possible. And, when such an abuse does, as could be claimed has been the case during the current administration, a political movement or revolution is the only method to resolve the issue. Thus, the spirit of the Founding Fathers still very much lives on.

Furthermore, the recent series of revolutions in the Middle East can be viewed in a similar light. While many of these nations are not built upon Western concepts of liberalism or democracy, it appears that the same ideas hold true. When a sovereign has acted in an abusive manner, the people can only tolerate so much. When it becomes too overwhelming, the people will revolt. The fact that these nations have a very different cultural and political tradition speaks to the universality of this principle of revolution. Whenever a sovereign rejects the will of the people, they no longer consent to be ruled by him. And, when the ruler is seen as a man amongst men, this only adds fuel to the fire. When he is seen as vulnerable and no longer as a demigod aristocrat or divinely-inspired monarch, then the sovereign may be overthrown. Thus, the same revolutionary spirit which has been part of the American fabric has similarities in other areas of the world.

In summary, the right of revolution depends both upon the way in which one determines the right of man and the way one interprets the role of the sovereign. When mankind is conceived to be free, equal, and corrupt, and the sovereign is interpreted as being a mere man amongst men, then the right of revolution is the only way to ensure the peace and the security of the people.

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