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1. AGENCY USE ONLY (Leave blank)	2. REPORT DATE Aug 1993	3. REPORT TYPE AND DATES COVERED THESIS/DISSEMINATION	
4. TITLE AND SUBTITLE A Comparison of Hobbes and Locke on Natural Law and Social Contract		5. FUNDING NUMBERS	
6. AUTHOR(S) Dean A. Steele			
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) AFIT Student Attending: University of Texas at Austin		8. PERFORMING ORGANIZATION REPORT NUMBER AFIT/CI/CIA- 93-127	
9. SPONSORING / MONITORING AGENCY NAME(S) AND ADDRESS(ES) DEPARTMENT OF THE AIR FORCE AFIT/CI 2950 P STREET WRIGHT-PATTERSON AFB OH 45433-7765		10. SPONSORING / MONITORING AGENCY REPORT NUMBER	
11. SUPPLEMENTARY NOTES			
12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for Public Release IAW 190-1 Distribution Unlimited MICHAEL M. BRICKER, SMSgt, USAF Chief Administration		12b. DISTRIBUTION CODE	
13. ABSTRACT (Maximum 200 words)			
		93-23209	
93 10 4 0411			
14. SUBJECT TERMS		15. NUMBER OF PAGES 51	16. PRICE CODE
17. SECURITY CLASSIFICATION OF REPORT	18. SECURITY CLASSIFICATION OF THIS PAGE	19. SECURITY CLASSIFICATION OF ABSTRACT	20. LIMITATION OF ABSTRACT

**A COMPARISON OF HOBBS AND LOCKE ON
NATURAL LAW AND SOCIAL CONTRACT**

by

DEAN ALLEN STEELE, B.S.

REPORT

**Presented to the Faculty of the Graduate School of
The University of Texas at Austin
in Partial Fulfillment
of the Requirements
for the Degree of**

MASTER OF ARTS

THE UNIVERSITY OF TEXAS AT AUSTIN

August 1993

**A COMPARISON OF HOBBS AND LOCKE ON
NATURAL LAW AND SOCIAL CONTRACT**

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For
my mother, Sally,
and
my father, Ron

Acknowledgments

I would like to acknowledge all of the people who supported me while I was preparing for and writing this report.

I owe a great deal of gratitude to Professor Al Martinich who showed tremendous patience with me and guided me throughout this endeavor. I extend my appreciation to the Philosophy Department of the University of Texas, especially the Graduate Coordinator Jill Glenn. Jill always makes time in her busy schedule to listen to students and help them with whatever problem they have, whether it be personal or academic. I would also like to thank Professor Jay Budziszewski who unknowingly inspired me through his class on "Early American Thought" to include John Locke in my report.

During my stay in Texas I endured some personal hardships which I feel would have prevented me from finishing my studies if not for the support I received from the terrific friends I have made here in Austin. Reinato Olivas was virtually my therapist considering how often he had to listen to me work out my problems. Thank you. I have several friends such as Linda, Scott, Izabela, Dean and Jan, Otto, Reymundo, Hiram and Corina, and Aurelio and Rosa, all of which helped me in countless ways. I thank you all very much. Additionally, Maria and her son Joe Manuel made my last few weeks in Austin special ones.

Finally, and most of all, I would like to thank my mother, my father, and my three brothers, Dana, Rob, and Rich. All of you helped

me in numerous ways and continually encouraged me to follow my dreams and to never quit something once I have started. Thank you and I love you.

Dean Allen Steele

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July 23, 1993

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Introduction

The study of social and political states has linked philosophers across the ages. Some questions that have occupied these philosophers' discussions are *Was there ever a period of time when men lived outside of societies and what was it like?*, *How did men escape that period and enter into a new time of societies?*, *Was it through force or mutual agreement?*, *Once a form of government is chosen, or appointed, who rules and is the rights of the individual preserved?* Several of these questions are addressed by both Thomas Hobbes in *Leviathan*, and by John Locke in *Two Treatises of Government*.¹

Both Hobbes and Locke wrote of that period prior to the formation of societies, referred to as the *State of Nature*, when individuality, rather than collectivity, described mankind. Each also wrote of how mankind was able to leave the State of Nature and form civil societies. This transition from the State of Nature to government was considered a contract by both of these 17th century philosophers. Hobbes is traditionally labeled as having an *alienation* theory, while Locke is considered as having an *authorization* theory.²

1 Thomas Hobbes: *Leviathan*, ed C.B. Macpherson (New York: Penguin Books, 1985); *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1991). References to *Leviathan* will be page numbers in Macpherson's edition. Those references to the *Two Treatises* will be corresponding treatise number, page number, chapter and line numbers to Laslett's edition.

2 Locke is considered here to have a revocable theory because he allows society to legitimately revolt against the government. This topic will be discussed in more detail in the conclusion.

The fundamental difference between *alienation* and *authorization* theories concerns what happens to an individual's rights once the contract is executed. *Alienation* theory considers the contract as irrevocable. Jean Hampton wrote in *Hobbes and the Social Contract Tradition* that the individual's rights are surrendered to the Sovereign.³ The only justifiable way to retrieve one's rights after the contract is initiated is to form a new contract. *Authorization* theory, on the other hand, considers the contract as revocable. The individual, as opposed to the Sovereign, retains the authority to terminate the contract at any time. Hampton called it an *agency theory*, retaining Hobbes' terms, where the rights of each subject are only loaned to the Sovereign.⁴ In 17th century England, topics such as whether the people can legitimately terminate a king's rule were important; and Hobbes and Locke were both trying to justify particular answers to these types of questions.

The intent of this paper is to look more closely at what Hobbes and Locke wrote concerning the pre-political or pre-social state called the State of Nature; and the transition from the State of Nature to society, referred to as the social contract. The discovery of Locke's papers comprising the Lovelace collection has provided a better understanding of Locke's views on the State of Nature and Natural Law. Since this material became available philosophers have been

³ Hobbes and the Social Contract Tradition, Jean Hampton (Cambridge: Cambridge University Press, 1986), p. 3.

⁴ Hampton, p. 3.

trying to disassociate Locke with Hobbes altogether. I agree with the few philosophers who have actually found evidence that Locke had more in common with Hobbes than others would like to admit. Whether or not the similarities are common beliefs held by Locke's contemporaries or material taken from Hobbes' works directly is another matter. My intent is to show that they exist and that further research is needed into that period to resolve the issue. Furthermore, the similarities between these two philosophers may hold the beginnings of another political theory.

I will begin my discussion with the State of Nature as each philosopher described it. Then I will examine their contract theories. Finally, I will discuss similarities and differences between the two philosophers, such as the types of governments which are consistent with each theory. Throughout the paper, I will consider Hobbes as having written the *Leviathan* from a religious perspective. I realize that this is a controversial issue; however, I do not think that his work can be interpreted correctly otherwise. I will now turn to the first chapter of my discussion, that on the State of Nature.

Chapter I

The State of Nature.

The State of Nature is the conditions under which men lived prior to the formation of societies, which may be considered as an historical fact or a hypothetical claim. It is not important if this pre-contractual situation ever actually occurred, nor does it matter if there are actually men living in it still today or that societies will collapse back into this pre-social condition once the contract terminates. What is important is that assuming a State of Nature existed allows one to analyze society in such a way as to provide a direction for suggesting what are the ends of the state which will remedy the problems illustrated in the State of Nature. As regards explanatory power, the hypothetical claim is just as valid as the actual historical fact. In fact, Hobbes did not consider the State of Nature as having existed generally throughout the world.⁵ Locke on the other hand says that it is a state men are naturally in and will remain so unless men consent to form a civil society.^{6,7} Nevertheless, both did claim that some examples of pre-contractual groups did exist, such as the *savages* of America for Hobbes and the Peruvian Indians for Locke.⁸ The State of Nature was

5 Leviathan, p. 187.

6 Locke seems to consider the State of Nature and the social contract as an historical fact rather than merely an hypothetical claim. In fact, he goes as far as to argue contrary to Hooker. Locke usually cites Hooker to add credibility to his claims, and Hooker does not think that the social contract is ever an actual occurrence.

7 Second Treatise, p. 276-78; ch.14, lns. 1-6, and ch.15, lns. 13-14. Locke, like Hobbes, considers governments in the State of Nature with respect to each other.

8 Leviathan, p. 187; Second Treatise, p. 277, ch. 14, lns. 12-19.

described quite differently by Hobbes than by Locke. I will discuss what Hobbes considered to be the State of Nature and then I will provide Locke's view.

Ia. Hobbes' State of Nature.

Let's distinguish between Hobbes's State of Nature prior to the Laws of Nature and the State of Nature after the Laws of Nature have been discovered through reason. The first has been referred to as the Primary State of Nature, or "mere Nature" to Hobbes, and the latter is the Secondary State of Nature.⁹ I will argue that there is no authority to bind the words of men in the Primary State of Nature, but in the Secondary State of Nature God is the common power Hobbes requires to enforce covenants. Hobbes believed that God reveals the Laws of Nature to us through our reason, which he wrote "is the undoubted Word of God", that is, the Natural Word of God.¹⁰

The Primary State of Nature is a State of War. Hobbes arrives at this conclusion after considering the condition men think that they are in with respect to each other. Men are naturally made so equal in physical and mental abilities taken together that one cannot consider his greater strength or quicker mind alone as sufficient enough to make him superior to others. Hobbes wrote that a man could outmaneuver a stronger opponent by either using his cunning or by

⁹ The Two Gods of Leviathan, A.P. Martinich (New York: Cambridge University Press, 1992), pp. 77-8.

¹⁰ Leviathan, p. 409.

banding together with others who were similarly endangered to overcome the common threat.¹¹ Since men are equal in ability, they are equally similar in hope for attaining the ends of their desires.¹² Furthermore, two people cannot both have the same thing which each desires, so they "endeavour to destroy, or subdue one another".¹³ Hobbes wrote earlier in the *Leviathan*, that men are generally inclined to desire power after power, perpetually, until death brings an end to their struggle.¹⁴ From these strong desires and competition from other men begins a diffidence which Hobbes wrote allows "no way for any man to secure himself", except, "by force, or wiles, to master the persons of all men he can, so long, till he see no other power great enough to endanger him ...".¹⁵ Since all men are basically equal, there is no common power to keep them in check. That is why a State of War exists between them.

A State of War does not need to consist of fighting, according to Hobbes, but in a tendency to do so. He wrote that it can be compared to the weather.

For as the nature of Foule weather, lyeth not in a showre or two of rain; but in the inclination thereto of many dayes together: So the nature of War, consisteth not in actual fighting; but in the known disposition thereto, during all the time there is no assurance to the contrary. All other time is PEACE.¹⁶

11 *Leviathan*, p. 183.

12 *Leviathan*, p. 184.

13 *Leviathan*, p. 184.

14 *Leviathan*, p. 161.

15 *Leviathan*, p. 184.

16 *Leviathan*, p. 186.

The mistrust men have of one another is the foundation of Hobbes' State of Nature. He wrote that even in societies where there are laws to protect one against harm and thieves, men arm themselves when they travel; they lock their doors at night; they even lock their chests within their own homes. He thought that men accuse their fellow man, their servants, and even their families by their actions.¹⁷ What Hobbes is trying to illustrate is that since a man does not know whom to trust, he must fear all men in general. It is this fear which serves as the basis for the State of War which Hobbes wrote of. Fear is the inclination which perpetuates the State of War even though no actual fighting occurs. And, it is the State of War which does not allow man to enjoy any of his life, or whatever he possesses at any given time. The State of War is:

... every man against every man, ..., Where there is no common Power, there is no Law: where no Law, no Injustice. Force, and Fraud, are in warre the two Cardinall vertues, ..., It is consequent also to the same condition, that there be no Propriety, no Dominion, no *Mine* and *Thine* distinct; but onely that to be every mans that he can get; and for so long, as he can keep it.¹⁸

Furthermore, war does not permit societies, nor any cooperation on a large scale. As Hobbes wrote, in war:

there is no place for Industry ... no commodious Building ... no account of Time; no Arts; no Letters; no Society; and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short.¹⁹

17 *Leviathan*, pp. 186-7.

18 *Leviathan*, p. 188.

19 *Leviathan*, p. 186.

As I discussed above, the State of War is lawless, with no common power over all men. Men live according to the Right of Nature and nothing else. The Right of Nature is defined by Hobbes as:

... the Liberty each man hath, to use his own power, as he will himselfe, for the preservation of his own Nature; that is to say, of his own Life; and consequently, of doing any thing, which in his own Judgement, and Reason, hee shall conceive to be the aptest means thereunto.²⁰

Liberty, according to Hobbes is simply the absence of external impediments to motion, which will prevent a person from some actions, but not from all the actions available to him or her.²¹ So, there is not much in the Primary State of Nature to prevent war. However, men are driven to peace because of fear of death, desire for what is necessary for good living, and the hope of attaining the ends of their desires through perseverance.²² What provides an avenue for men to attain peace are the Laws of Nature, which Hobbes considered available to men through reason.²³ With the Laws of Nature begins the Secondary State of Nature.

In the Secondary State of Nature, Hobbes introduces the Laws of Nature. The difference between the two Hobbes explained in that a 'RIGHT, consisteth in liberty to do, or forbear; Whereas LAW, determineth, and bindeth to one of them: so that Law, and Right, differ as much, as Obligation, and Liberty ... "²⁴ So, a right allows a

²⁰ *Leviathan*, p. 189.

²¹ *Leviathan*, p. 189.

²² *Leviathan*, p. 188.

²³ *Leviathan*, p. 188.

²⁴ *Leviathan*, p. 189.

great amount of liberty, while the law incurs obligations. Hobbes laid out nineteen laws pertinent to peace and the formation of civil societies.

A law consists of content plus an authority's command. The Laws of Nature contain the content of the law, while God is the authority who enforces the laws.²⁵ The Law of Nature, generally considered by Hobbes, is a:

... Precept, or generall 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 it may be best preserved.²⁶

From this general definition of a Law of Nature, in addition to the principle contained in the Right of Nature, Hobbes derives the other laws. The First and Fundamental Law of Nature forms the first part of what Hobbes considers a general rule of reason. This precept is, "*That every man, ought to endeavour Peace, as farre as he has hope of attaining it; and when he cannot obtain it, that he may seek, and use, all helps, and advantages of Warre*".²⁷ The first half is considered the Fundamental Law of Nature, that is "*to seek Peace, and follow it*". The second half is simply restating the Right of Nature, that is "*By all means we can, to defend our selves*". How does one seek peace? This is where the Second Law applies by stating:

²⁵ Discussion with A.P. Martinich in Humanities class, HMN 350, Fall Semester, 1992, University of Texas, Austin.

²⁶ *Leviathan*, p. 189.

²⁷ *Leviathan*, p. 190.

*That a man be willing, when others are so too, as farre-
forth, as for Peace, and defence of himselfe 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 allow other men against himselfe.*²⁸

Finally, the Third Law of Nature states "That men performe their Covenants made."²⁹ Although Hobbes considers all nineteen laws as necessary for the formation of society and civil government, these first three are all that I think are necessary for his social contract. Before I discuss Hobbes' contractarian views, I will explain Locke's view of the State of Nature.

Ib. Locke's State of Nature.

Paul Sigmund discusses in his book, *Natural Law in Political Thought*, the idea that Locke has been accused of being a Hobbesian. Sigmund provides two authors, Leo Strauss and Richard Cox, who defended this view that Locke adopted several of Hobbes' ideas while trying to pass them off as having been derived from Hooker.³⁰ Sigmund argues that Strauss' and Cox's arguments are non-conclusive. It is known that Locke owned a copy of the *Leviathan*, but it was lent out in 1674 and not returned until 1691. Since the *Two Treatises* were written sometime between 1679 and 1681, Sigmund suggests that Locke was not influenced by Hobbes. Added to the lack of not having a copy of the *Leviathan* around while he wrote the *Two*

²⁸ *Leviathan*, p. 190.

²⁹ *Leviathan*, p. 201.

³⁰ *Natural Law in Political Thought*, Paul E. Sigmund (Washington, D.C.: Winthrop Publishers, Inc, 1971), p. 82.

Treatises, Sigmund also points out the fact that Locke's *Essays on the State of Nature*, from the Lovelace collection at Oxford, show that Locke took quite a different perspective than Hobbes did concerning the State of Nature and Natural Law.³¹ Whereas Hobbes' Primary State of Nature is violent, lawless, and unproductive, Locke's State of Nature, generally, is composed, regulated, and fruitful. I think that it is clear that Locke was inspired by Hobbes' work, despite Sigmund suggesting that he was not. In *John Locke: Essays on the State of Nature*, von Leyden suggests that Locke was influenced by Hobbes in that Hobbes' ideas caused Locke to explore the idea of Natural Law and Hobbes' extreme views.³² I will address Locke's view of the State of Nature keeping Hobbes in mind.

Locke said that one is not likely to find records of the State of Nature because, generally, the keeping of records begins with civil societies, that is, political bodies.³³ However, Locke tried to show his view of what most likely was the origin of civil society. Locke derived his idea of the State of Nature, in part, from his own social conditions and problems which existed at the time. He then combined his observations with traditional Christian views on natural law and God to arrive at a possible origin of the civil state.

31 Sigmund, 82.

32 *John Locke: Essays on the Laws of Nature*, ed. Wolfgang von Leyden (Oxford: Clarendon Press, 1954), p. 37.

33 *Hobbes and Locke: Power and Consent*, Ramon M. Lemos (Athens: University of Georgia Press, 1978), p. 89.

God is a primary figure for Locke in his theory, just as He is in Hobbes.' According to Locke, God's will is presented in two forms: divine inspiration and the Law of Nature.³⁴ The only difference between the two is how each is disclosed by God and apprehended by men. Men are lead to a realization of God through the design and purpose of Nature. Once men understand that there is a Creator, they come to the belief that He must have some purpose for them just as He does for everything else in Nature.³⁵ They realize that God is just as wise as He is Powerful, and thus He must have a purpose for man relevant to man's nature. Since man can discover God through his natural abilities, he can discover the Law of Nature as well.³⁶

Locke did not think that the Law of Nature was written in the hearts of men.³⁷ In his *Essays on the Law of Nature*, Locke says that if the Law of Nature was written in the hearts of men, then why do so many differ as to the content of that law or even if it exists at all. Locke claims rather that the Law of Nature is discovered through the use of reason. Locke says, "There is a great deal of difference between an innate law and the law of nature; between something imprinted on our minds in their very original and something that we, being ignorant of, may attain to the knowledge of, by the use of and due

34 *Essays on the Laws of Nature, Essay VI*, p. 189.

35 *Essays on the Laws of Nature, Essay II*, p. 133.

36 von Leyden, p. 49.

37 Locke, *Essays on the Law of Nature, Essay III*, p. 137. This entire Essay is a refutation that the Law of Nature is written in the hearts of men.

application of our natural faculties"³⁸. In his *Essays on the Laws of Nature*, Locke confirms his idea that the Law of Nature is not an innate idea.

The Law of Nature, according to Locke, is not acquired by *a priori* knowledge, nor is it *traditional* knowledge, which is second hand knowledge acquired by instruction or as information. Rather, it is acquired through sense-experience and reason, referred to as the Light of Nature. Locke says that

by saying that something can be known by the light of nature, we mean nothing else but that there is some sort of truth to the knowledge of which a man can attain by himself without the help of another, if he makes proper use of the faculties he is endowed with by nature.³⁹

Locke considers reason, needed to discover the truths "necessary for the direction of life and the formation of character," as "the discursive faculty of the mind, which advances from things known to things unknown and argues from one thing to another in a definite and fixed order of propositions."⁴⁰ He says that it is this reason which leads men to the Law of Nature, however, the foundation is sense experience which provides the "entire as well as the chief subject-matter of discourse and introduce it into the deep recesses of the mind."⁴¹

38 John Locke, *Essay Concerning Human Understanding*, Book I, ch 2, sec. 13, in *Great Books of the Western World*, 60 volumes, Editor in Chief, Philip W. Goetz, (Chicago: Encyclopedia Britannica, Inc, 1990), vol. 33, pp. 107-8. This passage was used by Sigmund, p. 87, footnote 15.

39 Locke, *Essays on the Law of Nature*, *Essay II*, p. 123.

40 Locke, *Essay on the Law of Nature*, *Essay IV*, p. 149.

41 Locke, *Essays on the Law of Nature*, *Essay IV*, p. 149.

Locke's position as I have presented it is from his *Essays on the Law of Nature*. In the *Two Treatises*, he does seem to vacillate on whether or not the Law of Nature is written in the hearts of men. In the *First Treatise* he says:

For the desire, strong desire of Preserving his Life and Being having been Planted in him, as a Principle of Action by God himself, Reason, *which was the Voice of God in him*, could not but teach him and assure him, that pursuing that natural Inclination he had to preserve his Being, he followed the Will of his Maker, and therefore had a right to make use of those Creatures, which by his Reason or Senses he could discover would be serviceable thereunto.⁴²

Also, in the *Second Treatise*, Locke mentions that in the book of Genesis in the Bible, after murdering his brother Abel, Cain was worried that upon the discovery of his brother's body, everyone would kill him for the crime. Cain was so convinced because he knew that they had a right to punish such a crime, "so plain was it writ in the Hearts of all Mankind."⁴³

I propose that Locke is not contradicting his previous position, but rather that he is referring to an *inclination* or a *desire* to possibly seek out and learn the Law of Nature. Through reason, God's voice within us, men are provided with a *principle of action*, an inward instinct to discover it.⁴⁴ Nevertheless, the content of the Law of Nature is found in Nature itself through our senses, and what we discover is that the Law of Nature says that:

⁴² *First Treatise*, p. 205, ch. 86, lns. 19-26.

⁴³ *Second Treatise*, p. 274, ch. 11, lns. 28-31.

⁴⁴ I think that this is Locke's position gathering from what he wrote in *Essay IV*.

no one ought to harm another in his Life, Health, Liberty, or Possessions. For Men being all the Workmanship of one Omnipotent, and infinitely wise Maker; ... they are his Property ... to last during his, not anothers Pleasure. And being furnished with like Faculties, sharing all in one Community of Nature, there cannot be supposed any such *Subordination* ... that may Authorize us to destroy one another.⁴⁵

Not only are men to preserve themselves, but they are required to help preserve all of mankind. Locke wrote that as a man "is *bound to preserve himself*, and not to quit his Station wilfully; so by the like reason when his own Preservation comes not into competition, ought he, as much as he can, *to preserve the rest of Mankind*".⁴⁶

Locke's Natural Right, then, is that all men are equal, that is, they are all human beings created by God.⁴⁷ No man has any jurisdiction over any other and each has an equal right to his Life, Liberty, and Property.⁴⁸ Concerning life and liberty, Locke wrote that men are in "*a State of perfect Freedom* to order their Actions, and dispose of their Possessions, and Persons as they think fit, within the bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man".⁴⁹ Men are able to live their lives free from the demands of anyone else. In addition to perfect freedom, men are also equals since they are all "*Creatures*" of the same species, "born to

45 Second Treatise, p. 271, ch. 6, lns. 9-17.

46 Second Treatise, p. 271, ch. 6, lns. 19-22.

47 Lemos, 75.

48 The Political Theory of Possessive Individualism, C.B. Macpherson (Oxford: Oxford University Press, 1964), p. 199. Second Treatise, p. 269, ch. 4.

49 Second Treatise, p. 269, ch. 4, lns. 3-6.

all the same advantages of Nature."⁵⁰ What Locke means by equality is not equality of abilities nor wealth, because these obviously vary from one person to another; he means that men are equal in their right of not being subjected to the will of another with respect to their *perfect freedom*. Locke also says that men are equal with regard to their property.

Concerning property, Locke wrote, "The great and *chief end* therefore, of Mens uniting into Commonwealths, and putting themselves under Government, *is the Preservation of their Property*."⁵¹ However, Locke's idea of property is expressed in both a broad sense and a narrow sense.⁵² The narrow sense only means estates, while the broad sense means all of man's Natural Rights; that is, Life, Liberty, and Estates.⁵³ Locke based the right to property on the natural right to one's life and person, so, he uses both the narrow and the wide sense to develop his theory of property.

At this point I need to introduce C. B. Macpherson's interpretation of Locke's theory on property and the State of Nature. Recall the distinction between the Primary State of Nature and the Secondary State of Nature from the section on Hobbes. The Primary State did not have the Laws of Nature, while the Secondary State did. In the *Two Treatises of Government*, Locke also seems to describe a dual State of Nature. In order to clarify this duality, C.B. Macpherson

50 *Second Treatise*, p. 269, ch. 4, lns. 7-10.

51 *Second Treatise*, p. 350-1, ch. 124, lns. 1-3.

52 Lemos, 80.

53 This is a distinction which Macpherson makes as well (Macpherson, p. 198).

divides Locke's State of Nature into two parts. He discusses his interpretation of Locke in his book titled *The Political Theory of Possessive Individualism*.

Macpherson argues that Locke has two stages in the State of Nature; one prior to the use of money and one after the consent to money and unequal possessions.⁵⁴ His argument follows from the fact that Locke considered men capable of making contracts, based on their consent, prior to the formation of any government. Contracts in the State of Nature are possible because men are obligated to keep their promises.⁵⁵ Locke goes on to say, though, that one of these contracts forms a civil society, putting an end to the State of Nature and forming a commonwealth.⁵⁶ Macpherson says, however, that one of these agreements between men, prior to that which forms the commonwealth, was the formation and use of money. Thus, dividing the State of Nature into two stages. This division is important in interpreting Locke's theory, as I will explain.

Macpherson argues that it is plain enough that Locke considered men to have a natural right to property, as Locke discusses in the *Second Treatise*. Locke points out in chapter 25 that the Earth was given to men in common, an accepted medieval belief which did not lead to individual ownership of property. However, Locke wrote

54 Macpherson later uses the terms Pre-Monetary and Post-Monetary State of Nature (Macpherson, 242).

55 In the *Second Treatise*, p. 277, ch. 14, lns. 17-19, Locke wrote that keeping promises is a natural obligation and not an effect of society.

56 *Second Treatise*, p. 277, ch. 14, lns. 7-11.

that men have property in their persons.⁵⁷ Since they have property in their persons, their labor is also their property.⁵⁸ Through labor, man removes something from the state nature placed it into and makes it his property. Locke refers to this process as appropriation.⁵⁹

There are three limits to appropriation of property. The first is that when a person removes something from what is considered owned in common, he must leave enough for others to appropriate as well.⁶⁰ Second, a person can only take what he can use without it spoiling.⁶¹ Finally, there is an implied limit that one can only appropriate by his own labor.⁶² In the beginning this was enough to make everyone's share equal, but then the introduction of money allowed men to collect more than they could use directly. This hoarding eventually prevented others from appropriating property. This was acceptable so long as nothing went to waste and everyone was allowed at least a bare subsistence. Even though some people would not own property and would have to rely on their labor to earn a bare subsistence, Locke considered people better off when all the land was used compared to where it was not. Land that is labored upon only increases its value and makes it better than land that is lying in

57 Second Treatise, p. 287, ch. 27, lns. 1-2. Locke originally said that men were the property of God. I can only assume that he meant that men were stewards of their bodies for God, so had ownership in that respect. Otherwise, this is another contradiction for Locke.

58 Second Treatise, p. 287-8, ch. 27, lns. 3-4.

59 Second Treatise, p. 289, ch. 29, lns. 7-10.

60 Second Treatise, p. 287, ch. 27, lns. 12-13.

61 Second Treatise, p. 290, ch. 31, lns. 7-9.

62 Locke treats servants as property in this sense, so their labor belongs to their owners. Second Treatise, p. 289, ch. 28, lns. 21-24.

waste.⁶³ However, everything which Locke argued for in the beginning of the *Treatise* changes. There is no longer any equality, which I will explain.

Prior to the use of money, natural limits disallowed anyone to accumulate more than he or she could use without spoiling. However, after the use of money was consented to, the natural limits were changed. As I mentioned above, the sufficiency limit no longer applied because men have a better standard of living where all the land is appropriated.⁶⁴ Furthermore, the spoilage limit was rendered ineffective when money was considered.⁶⁵ Spoilage only concerned what was bought and sold, or what a parcel of land produced.⁶⁶ Money also allowed Locke to introduce into the State of Nature a market economy beyond bartering.⁶⁷ Macpherson argues that Locke went from a limited ownership of land and possessions to an unlimited ownership. He also considers this "hoarding" as consistent with Locke's views. In *Some Considerations of the Consequences of the Lowering of Interest and Raising the Value of Money* (1691), Locke says that hoarding land and money serves to drive trade and commerce.⁶⁸ All of these results are what Locke introduced into the

63 *Second Treatise*, p. 296, ch. 40. Locke mentions the increase of value in several places beginning in ch. 37, through ch. 45.

64 *Second Treatise*, p. 296-7, ch. 41.

65 *Second Treatise*, p. 300-1, ch. 47.

66 *Second Treatise*, p. 300, ch. 46, lns. 17-30.

67 Macpherson, p. 209.

68 *Works*, 1759, vol. ii, pp. 22-3. Quoted in Macpherson, p. 205.

State of Nature with the introduction of money, which begins the Post-Monetary State of Nature. Locke wrote:

... the same *Rule of Propriety*, (*viz.*) that every Man should have as much as he could make use of, would hold still in the World, without straitning any body, since there is Land enough in the World to suffice double the Inhabitants had not the *Invention of Money*, and the tacit Agreement of Men to put a value on it, introduced (by Consent) larger Possessions, and the Right to them;⁶⁹

The Post-Monetary State of Nature is characterized by unlimited appropriation of goods and property. Men have agreed, outside of society, to this "disproportionate and unequal share" of property, by a tacit agreement to the use of money.⁷⁰ This is possible because money cannot spoil, so people can sell their excess goods without any going to waste. However, not everyone will be able to appropriate property. Some people will have no other recourse but to sell their labor for wages.⁷¹ At this point in time, labor begins as a form of property.⁷² Locke does not consider this stage of nature as full of greedy men. On the contrary, as Macpherson argues, Locke considers the appropriation of money as commerce.⁷³ Added to that, it is morally justified. Since the original right was that men had a right to appropriate what was needed for survival, cultivating the land only increases what is available for others.⁷⁴ Also, people would still be

69 Second Treatise, p. 293, ch. 36, lns. 33-9.

70 Second Treatise, p. 301-2, ch. 50.

71 Macpherson, p. 211.

72 Second Treatise, p. 302, ch. 51, lns. 1-4.

73 Macpherson, p. 205.

74 Second Treatise, p. 294-5, ch. 37.

able to use their labor to obtain their basic subsistence, which Macpherson states "Locke found to be a natural consequence of the introduction of money".⁷⁵

Another characterization of the Post-Monetary State of Nature was that it somewhat resembled Hobbes' State of War. A class distinction develops with the property owners and the working class and this unequal class status creates an insecure environment, eventually leading to a State of War. In the Pre-Monetary State of Nature, men are equally rational, following a traditional Christian natural law view, because they are equally capable of following the Law of Nature.⁷⁶ In the Post-Monetary State, men are no longer equally capable of being fully rational. I will explain Macpherson's position.

Macpherson's reasoning is that there is an unequal distribution of property which forces people who cannot appropriate land to exchange their labor for wages. This introduces a class distinction of property owners and the laboring class. Locke wrote in the *Considerations* that the laboring class has no other property but their labor and have no other resources but their wages; "living generally from hand to mouth."⁷⁷ Furthermore, the laborer never has the time to raise his thoughts above earning his wages, except when some common disaster unites all the workers together in armed force.⁷⁸

⁷⁵ Macpherson, p. 214.

⁷⁶ Macpherson, p. 243.

⁷⁷ *Works* (1759), ii. 13-16. From Macpherson, p. 216-17.

⁷⁸ *Works* (1759), ii. 36. From Macpherson, p. 223.

Macpherson argues that Locke uses this passage to show that the laboring poor do not even have enough rationality to make political decisions. In another passage Locke indicates that the laboring class is less than fully rational.

In *The Reasonableness of Christianity*, Locke says that the laboring class is incapable of following rational ethics without divine help. He requests that moral sanctions be made clearer so that the laboring class can accept them on faith alone, without having to reason about them.⁷⁹ Macpherson says that this belief about the laboring class, which includes the poor, is a common belief for Locke's day and it would be surprising if Locke did not hold it as well. I think that the evidence I have given shows that Locke did indeed consider the Laboring class as less than fully rational.

In fact, the laboring class was unable to be rational because they could not fulfill the Law of Nature. In chapter 34 of the *Second Treatise*, Locke says that the "Industrious and Rational" follow the Law of Nature and subdue the earth by their labor, while the "Quarrelsome and Contentious" only meddle with what another has already labored on.⁸⁰ In the Pre-Monetary stage, "the essence of rational behavior is industrious appropriation."⁸¹ Macpherson argues that this is rational in the moral sense as well as the expedient sense because if it was only the expedient sense, then the "meddling" with

79 *Works* (1759), ii. 585-6. From Macpherson, p. 224-5.

80 *Second Treatise*, p. 290, ch. 32 and p. 291, ch. 34.

81 Macpherson, p. 232.

another's property would be acceptable.⁸² However, in the Post-Monetary stage, there are some who are left with no land and so cannot be rational in this original sense. These are the laborers.

Macpherson goes on to say that Locke's unequal class status and the unequal rational morality, once read back into Locke's State of Nature, provide an unsafe and insecure state. This state needs a civil society with laws to govern and protect it. He also says that Locke's view was the product of his comprehension of his own society. "It reflected accurately enough the ambivalence of an emerging bourgeois society which demanded formal equality but required substantive inequality of rights."⁸³ Locke was able to keep the traditional view of natural law and also to justify a natural inequality as well, both to the satisfaction of his contemporaries.⁸⁴

82 Macpherson, p. 233.

83 Macpherson, p. 247.

84 Macpherson, p. 247.

Chapter II

The Social Contract.

Now that it is clear what the State of Nature is for both Hobbes and Locke, I would like to discuss their theories of social contract.

IIa. Hobbes' Social Contract.

A covenant is necessary, according to Hobbes, to escape the State of Nature and enter civil society. However, covenants are not possible in the Primary State of Nature. Since it contains neither a law nor a common power, and covenants need a common power to enforce them, an apparent covenant formed in the Primary State of Nature would be void.⁸⁵ Without a common power to enforce compliance with the agreement, whoever performs first is not assured that the other will perform at all and so betrays himself to his enemy, contrary to Right of Nature.⁸⁶

When the Secondary State of Nature is considered, with the Laws of Nature providing the content of the obligation and God as the common power to enforce the Laws, a contract can be made. Hobbes says, "All therefore that can be done between two men not subject to Civill Power, is to put one another to swear by the God he feareth."⁸⁷ Men no longer need to worry that their performance will not be

⁸⁵ Leviathan, p. 196.

⁸⁶ Leviathan, p. 190.

⁸⁷ Leviathan, p. 200.

followed by performance of the other party, or if not, that at least the other party will be held accountable. Hobbes considered it against reason to break a covenant and anyone who thinks that it is reasonable to do so should be barred from entering into the social contract altogether.⁸⁸ Also, the keeping of one's word, his covenant, is the only way of "gaining the secure and perpetual felicity of Heaven."⁸⁹ In chapter seventeen of the *Leviathan*, Hobbes stated the covenant that binds all men to the Common-wealth as follows:

*I Authorize and give up my Right of Governing my selfe, 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.*⁹⁰

Hobbes's language in this passage is ambiguous because he uses the language both of authorizing the Sovereign and alienating one's rights together. It appears that Hobbes wants both senses of *giving up* rights in his theory. Just prior to the above passage, Hobbes wrote that in order for men to have security and to escape the State of War that exists in the State of nature, they must "conferre all their power and strength upon one Man" and that this man will "beare their Person."⁹¹ This passage illustrates that Hobbes wants the strength that an alienation theory provides for the Sovereign, but mixes the language with that of authorizing. At the same time, he wrote that everyone should "... owne, and acknowledge himselfe to be

88 *Leviathan*, p. 205.

89 *Leviathan*, p. 205.

90 *Leviathan*, p. 227.

91 *Leviathan*, p. 227.

Author of whatsoever he that so beareth their Person, shall Act ...".⁹²

This passage illustrates that Hobbes wants the control an authorization theory provides for the individual within society.⁹³

Before I try to sort out just what Hobbes was saying, I will explain covenants, alienation, and authorization.

A covenant, for Hobbes, is a contract where at least one party performs his part of the contract in the future. Until the time when the other party acts, he is to be trusted.⁹⁴ A contract is considered a mutual transferring of rights.

Hobbes wrote that covenants are just words and that the force of words is not sufficient to hold men to their actions. However, it is possible to strengthen that bond with either, the "... Feare of the consequence of breaking their word; or a Glory, or Pride in appearing not to need to breake it."⁹⁵ The latter rarely occurs. Men seldom keep their word simply to show that they can so. So, Hobbes considered fear to be the "Passion to be reckoned upon ..."⁹⁶ This fear has two forms: fear of the "Power of Spirits Invisible" and fear of the "Power of those men they shall therein Offend."⁹⁷ Hobbes believed that God's power was the greater power, but men feared the collective power of other men more.⁹⁸ Hobbes seemed to think that men are afraid of

92 *Leviathan*, p. 227.

93 *Leviathan*, p. 227.

94 *Leviathan*, pp. 192-3.

95 *Leviathan*, p. 200.

96 *Leviathan*, p. 200.

97 *Leviathan*, p. 200.

98 Since men feared the wrath of other men more than God, the Sovereign had more apparent power to enforce the laws than God Himself.

immediate threats more than the remote threat of angering God and possibly losing eternal life. Hobbes wanted to make sure that even though men swore an oath, it was not the oath that bound them to act according to the covenant, but God Himself. The oath adds nothing to the obligation of a valid covenant, just as an invalid covenant is not obligatory even though it was sworn to by an oath.⁹⁹

Covenants are relevant to both Hobbes's alienation and authorization theories. In the case of alienation, the covenant is made between all men in society. The Sovereign is considered a third party beneficiary. This interpretation is traditionally considered Hobbes's theory. However, Hobbes also uses authorization language in his discussion of covenants, which is why his theory is inconsistent.

In alienation, rights are laid down, and to "*lay downe a mans Right to any thing, is to deuest himselfe of the Liberty, of hindering another of the benefit of his own Right to the same.*"¹⁰⁰ In effect, the person removes himself as an external impediment to another person exercising his own right. No additional rights are created for others, since they already have a right to everything in the Primary State of Nature. There are two forms of laying down one's rights: *transferring* a right and *renouncing* one. *Transferring* a right is laying it down, or giving it up, so that the benefit is intended for a particular person. *Renouncing* a right occurs when the benefit falls on no person in particular. In making covenants, Hobbes seems to

⁹⁹ *Leviathan*, p. 201.

¹⁰⁰ *Leviathan*, p. 190.

refer to the definition of *transferring* rights since the Covenant is between each man, with the Sovereign receiving the benefit of the alienated rights of all his subjects. Alienation does not permit a person to retrieve the transferred rights unless a new covenant is made, or the old one is voided. Hobbes considered covenants void by either compliance or being forgiven by the other party.¹⁰¹ Also, no one can covenant in such a way as to violate the Law of Nature. If a person said something to that effect, he or she must be considered as not understanding the consequences of his or her actions. Trying to covenant something which is impossible to comply with is also not considered a covenant. Finally, any new covenant takes precedence over an old one that is in conflict with the latter.

I have been discussing alienation, which is the easier part of Hobbes' theory to understand. In chapter eighteen, he states very clearly that the subjects only covenanted with one another and not with the Sovereign himself, indicating alienation. Hobbes wrote that:

... the Right of bearing the Person of them all, is given to him they make Sovereigne, by Covenant onely of one to another, and not of him to any of them; there can happen no breach of Covenant on the part of the Sovereigne ...¹⁰²

Since the covenant is not with the Sovereign, but between each individual, the Sovereign remains in the State of Nature and retains his right to all things. He is the powerful ruler which Hobbes wants his theory to establish. However, he tries to keep the Sovereign free

101 *Leviathan*, p. 198.

102 *Leviathan*, p. 230.

from any responsibility for his actions. To do this he also uses authorization language in his theory. Authorization requires more explanation than Hobbes' alienation theory.

Before explaining it, I need to introduce some basic terminology. First, a *person* is someone "... whose words or actions are considered, either as his own, or as representing the words or actions of an other man ..." ¹⁰³ Second, a "*Natural Person*" is one who uses his own words, while an "*Artificial Person*" is one who represents the word or actions of another person. ¹⁰⁴ Finally, an *Actor* is an artificial person who contracts by "License from him whose right it is". The person who owns the right is called the "*Author*". ¹⁰⁵ Hobbes uses these terms to describe the roles that citizens and the Sovereign play with regard to authorization theory.

Hobbes's theory of authorization appears to involve a covenant between all of society and the Sovereign. The evidence I use to support this claim comes from chapter sixteen, seventeen, and eighteen of *Leviathan*. He wrote in chapter eighteen:

A Common-wealth is said to be Instituted, when a Multitude of men do Agree, and Covenant, every one, with every one, that to whatsoever Man, or Assembly of Men, shall be given by the major part, the Right to Present the Person of them all, (that is to say, to be their Representative;) every one, as well he that Voted for it, as he that Voted against it, shall Authorize all the Actions and Judgements, of that Man, or Assembly of men, in the same manner, as if they were his own, to the end, to live

103 *Leviathan*, p. 217.

104 *Leviathan*, p. 217.

105 *Leviathan*, p. 218.

peaceably amongst themselves, and be protected against other men.¹⁰⁶

This paragraph uses alienation language in the sense that each person agrees with every other person to bestow some power on an individual who is not a party to that agreement. The covenant being described is a transferring of everyone's right to govern themselves to a person, or group, outside of the agreement. However, this person is considered the Representative of everyone in the contract. Referring to the person who is receiving the transferred rights as the representative is comparing him to an actor, or an artificial person acting in behalf of another person. Added to that, Hobbes also uses the word authorize in that each individual authorizes the representative to act in his or her behalf. I consider these two references as indications that Hobbes is using authorization theory in conjunction with his alienation theory. Hobbes also says that the representative is the Sovereign, so there is no mistaking who the representative is. In chapter seventeen, Hobbes wrote that:

And in him consisteth the Essence of the Commonwealth; which (to define it,) is *One Person, of whose Acts a great Multitude, by mutuall Covenants one with another, have made themselves everyone 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 carryeth this Person, is called the SOVERAIGNE, and said to have *Souveraigne Power*, and every one besides, his SUBJECT.¹⁰⁷

Also in chapter sixteen, Hobbes wrote that:

¹⁰⁶ *Leviathan*, pp. 228-9.

¹⁰⁷ *Leviathan*, p. 228.

A Multitude of men, are made *One Person*, when they are by one man, or one Person, [or group], Represented; so that it be done with the consent of every one of that Multitude in particular.¹⁰⁸

Hobbes further explains that the *One Person* refers to the common representative chosen by all of society, while the multitude must always be considered as many "Authors, of every thing their Representative ... doth in their name."¹⁰⁹ I interpret these passages to mean society as a whole has one common representative, the Sovereign. Each subject bears responsibility for all the actions the Sovereign takes, within the bounds set by the covenant and no further. This is explained more in the following passage:

Every man giving their common Representer, Authority from himselfe 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 farre he shall represent them, none of them owneth more, than they gave him commission to Act.¹¹⁰

These four passages support my claim that Hobbes uses alienation and authorization concepts inconsistently. I interpret Hobbes in the quotation from chapter seventeen as saying that everyone authorizes the Sovereign to use the power each of them have to protect themselves; that is their strength and ability to provide for their peace and safety. He uses alienation theory in that each subject covenants with each other to decide who should be their representative. Also, from the second Law of Nature and the very

108 *Leviathan*, p. 220.

109 *Leviathan*, p. 220.

110 *Leviathan*, p. 221.

definition of a covenant, the very act of making this agreement assumes that each member of the covenant is laying down, alienating, his right to everything in the State of Nature. Hobbes tried to make it clear that the right to protect oneself was an inalienable right, so this right is impossible to contract away. At one and the same time it seems that the covenant is both an alienation theory and an authorization theory.

Alienating a right restricts the future actions of the person who alienated his rights. The rights are no longer his to exercise in any way. He has transferred his authority over those rights to the Sovereign. If this is the case, then the Sovereign is responsible for antecedent actions. If, on the other hand, the subjects retain authority and responsibility for the actions of the Sovereign, then the Sovereign has an obligation to his subjects. Neither of these consequences are acceptable for Hobbes. Locke, on the other hand, considers the ruler to have some obligation to the subjects, so he would favor an agreement different than Hobbes in that particular sense. I will now present Locke's social contract theory.

IIb. Locke on Social Contracts.

In the *Second Treatise*, chapters 124 thru 126, Locke wrote that there were three reasons why men could not remain in the State of Nature.¹¹¹ The first was that men are not likely to follow the laws of

¹¹¹ *Second Treatise*, p. 350-1, chs. 124-6.

nature. Some men will follow their own interests and are not always going to observe the Law of Nature. The second reason is that:

every one in that state being both Judge and Executioner of the Law of Nature, Men being partial to themselves, Passion and Revenge is very apt to carry them too far, and with too much heat, in their own Cases;

So, men are not impartial judges because they are lured by self-love and friendships, as well as ill nature, passion and revenge towards others.¹¹² The final reason is that the State of Nature lacks a common power to enforce punishments once the judgment has been decided. These problems exist in both stages of the State of Nature, however, the Post-Monetary State of Nature has the added problem that men are in a State of War.¹¹³ Since the State of War is a primary reason men join together to form civil societies, it warrants some discussion.¹¹⁴

The State of War can exist in both the State of Nature and in civil government. Both Locke and Hobbes define the State of Nature as the absence of a common superior on Earth. The State of War also includes this element. However, it only says that there is no superior power to *appeal to* for relief, so the State of War can exist in society as well as in the State of Nature.¹¹⁵ Locke wrote:

¹¹² Second Treatise, pp. 275-6, ch. 13, lns. 3-9.

¹¹³ I argue that the Post-Monetary State of Nature is a State of War because on several occasions Locke says that the commonwealth collapses back into the State of War again. Ch. 205, lns. 6-9, ch. 226, lns. 13-14; ch. 227, lns. 4-8, 17-18; ch. 232, lns. 1-2.

¹¹⁴ Second Treatise, p. 282, ch. 21, lns. 1-5.

¹¹⁵ Lemos, p. 87.

Men living together 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*...¹¹⁶

A State of War can exist when a person, such as a criminal, quits the Laws of Nature and places himself at war with the rest of mankind, or his victim, and may be killed as one would kill a beast of the field.¹¹⁷ In society, once the actual force stops, then an appeal to the law may be done to remedy the situation, if possible. In the State of Nature, there is no appeal to a common judge, so the State of War continues.¹¹⁸ As I mentioned above, the only way to escape the State of War is to enter civil society by mutual consent.

Just as property provides a reason to enter into the social contract, and the State of War furnishes the motivation to do so, consent is necessary to legitimize the contract. Locke wrote:

Men being, as has been said, 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*. The only way whereby any one devests himself of his Natural Liberty, and *puts on the bonds of Civil Society* is by agreeing with other men to joyn and unite into a Community, for their comfortable, safe, and peaceable living one amongst another, in a secure Enjoyment of their Properties, and a greater Security against any that are not.¹¹⁹

116 Second Treatise, p. 280, ch. 19, lns. 6-10.

117 Second Treatise, p. 274, ch. 11, lns. 21-6.

118 Second Treatise, p. 281, ch. 20, lns. 1-7. There is a common judge for men in the State of Nature; God. However, like Hobbes, Locke does not consider men likely to recognize God in this respect, so they will seek a judge on Earth (Second Treatise, p. 280-1, ch. 19).

119 Second Treatise, p. 330-1, ch. 95, lns. 1-9.

Consent is either express or tacit. But which does Locke subscribe to? The answer is both. Macpherson explained that Locke had developed the State of Nature into an environment of unequal class structure. Originally, when ownership of property applied to everyone, anyone could enter society with some right to transfer. However, once the inequalities were introduced, Locke had a problem, considering his narrow view of property, that is estates only. If the narrow view of property is taken, which I think Locke had in mind, then only property owners could enter into the social contract. In chapter 138 of the *Second Treatise*, Locke says that the end of government is the preservation of property, and so it necessarily requires that the people should have property in order to be members.¹²⁰ What happens with all the laborers?

Macpherson argues that Locke considered everyone still subject to the government as part of the social contract.¹²¹ However, only the property owners were entitled to participate in the ruling of the government. Locke wants everyone to be obliged and bound by the law, so he introduces tacit consent.¹²² Nevertheless, tacit consent does not make everyone a full member of society. The only way to be a full member of society is to enter into an express agreement, and only those that do so are the owners of land.¹²³

120 *Second Treatise*, p. 360, ch. 138, lns. 2-5.

121 Macpherson, pp. 248-9.

122 *Second Treatise*, pp. 347-8, ch. 119.

123 *Second Treatise*, pp. 348-9, chs. 120-22.

Locke considered express consent as an obvious declaration of one's membership into society. He wrote that "No body doubts but an *express Consent*, of any Man, entring into any Society, makes him a perfect Member of that Society, a Subject of that Government."¹²⁴

Furthermore, speaking again of members of a commonwealth, "Nothing can make any Man so, but his actually entering into it by positive Engagement, and express Promise and Compact."¹²⁵

Although Locke did not see express consent as a problem, John Dunn, in *The Political Thought of John Locke*, thought that it is unclear who gives express consent.¹²⁶ Dunn could give examples, such as an oath of allegiance to the king, but Locke does not seem to specify any himself. However, Dunn also suggests that Locke may have thought examples were not necessary since during the 17th Century there were so many example of such oaths.¹²⁷ Although Locke was secure in his use of express consent, he did consider it necessary to explain the use of *tacit consent*.

After introducing express consent, Locke wrote that the "... difficulty is, what ought to be look'd upon as a *tacit Consent*, and how far it binds."¹²⁸ He wrote:

124 *Second Treatise*, p. 348, ch. 119, lns. 17-8.

125 *Second Treatise*, p. 349, ch. 122, lns. 16-8.

126 *The Political Thought of John Locke*, John Dunn (Cambridge: Cambridge University Press, 1969), p. 133.

127 The oaths of Allegiance prescribed by James I in 1606; Engagement Oath of 1650; oaths of Allegiance and Supremacy of 1559; oaths under the Test Acts. (Dunn, p. 138-9).

128 *Second Treatise*, p. 347, ch. 119, lns. 9-11.

... whether this his Possession be of Land, to him and his Heirs for ever, or a Lodging only for a Week; or whether it be barely travelling freely on the Highway; and in Effect, it reaches as far as the very being of any one within the Territories of that Government.¹²⁹

There are two points in this definition of tacit consent that are a problem for Locke, which I have underlined. The latter point concerning residing within the territory I will discuss first.

In *Hobbes and Locke*, Ramon Lemos also discusses Locke's theory on consent. Lemos gives an example of 100 people living in some region together.¹³⁰ Forty of these people consent to form a government, leaving the other sixty in the State of Nature, with respect to themselves and the newly formed government. Lemos says Locke argued that only those who consented were allowed into the State. This is true. Lemos then argues that all the others within the territory of that State, who have not consented, are not considered a part of that government and do not have to obey the civil laws of that State.¹³¹ Whether or not Lemos has a case for presenting a problem for Locke is another matter. What does matter is that Locke did state that those within the territory of the State did have to obey the laws. Lemos' point, however, is a good one to discuss.

Do those that live within the territory of a particular State benefit from it? Locke infers that they do because they benefit from the

¹²⁹ *Second Treatise*, p. 348, ch. 119, lns. 18-22. Underlining added for emphasis.

¹³⁰ Lemos, pp. 93-4.

¹³¹ Lemos, p. 94.

security and protection which the government provides for its citizens.

Dunn paraphrased Locke very well when he wrote that:

Tacit consent is incurred by anyone who voluntarily takes any advantage of the resources of the country. Simple voluntary presence in the territory of the country is a sufficient condition for being held in this way to have consented tacitly ...¹³²

Lemos' argument is that Locke does not allow for a government to force people within its borders to become citizens. However, he suggests that Locke's theory does not prevent a government from demanding express consent at some time during a person's life. Examples would be military service and the right to vote or participate in government such as voting. It seems that Lemos' observation that there is no difference between members of society and those without membership who reside within the boundaries of the State, is a valid one.

The other point from Locke's definition of tacit consent which is problematic is his reference to property. Recall from his idea of express consent that only property owners were complete citizens. However, in the quotation on tacit consent, Locke includes property owners there also. It seems to me that Locke would want all of the property owners to participate in the social contract since property is the reason they enter into it and property is so important to Locke. Permitting a person who owns property not to participate in the

¹³² Dunn, 131.

original contract seems to detract from Locke's theory. Part of my reasoning concerns taxes.

Taxes are considered a part of a man's property by Locke and no one can take away a man's property without his consent.¹³³ If not all, or at least most, of the property owners are full citizens, then not all of them will pay taxes. The incentive to be a citizen vanishes if a person can own property, yet never having to pay taxes. The problem with this reference to property becomes even more complex considering that Locke also allows a person who did not give his or her express consent to will the land to his or her heirs. Does the family member need to give his or her express consent in order to inherit the land?

I thought perhaps that the person could have it only until he or she dies, then it could not be willed to the children. If it was, then the children would be considered as providing their express consent by accepting it. However, the previously cited passage on tacit consent explicitly mentions that it refers to those having property for themselves and their heirs forever with no mention of express consent. Furthermore, Locke states that children have a right to their parents possessions. In the chapter on conquest Locke says that man is born with a double right; the right to his person and the right to inherit the possessions of his father.¹³⁴ In the succeeding paragraph, Locke continues to say that the child is not required to give consent to the government of his forefathers just because he is born under its

¹³³ Second Treatise, p. 362, ch. 140.

¹³⁴ Second Treatise, pp. 393-4, ch. 190.

rule. Though, his right to inherit the possessions of his father hinges on the his acceptance of it as the lawful government.

This is not enough evidence to suggest that the consent is tacit or express. However, in the section concerning whether or not children are automatically citizens of the nation in which they were born, with respect to inheritance, Locke clarifies his view that accepting an inheritance signifies that the person is giving his or her express consent. He says

... Commonwealths not permitting any part of their Dominions to be dismembered, nor to be enjoyed by any but those of their Community, the Son cannot ordinarily enjoy the Possessions of his Father, but under the same terms his Father did; by becoming a Member of the Society: whereby he puts himself presently under the Government, he finds there established, as much as any other Subject of that Commonwealth.¹³⁵

Summing up, Locke permits some people not to enter into the original agreement to form a civil society, regardless if they have property or not. However, if they continue to reside in the country, then they are understood to have given their tacit consent to the government and must follow its laws. Also, property is passed on through inheritance only if the recipient gives express consent to the government. The problem still exists that there is a fine line between being a citizen and just being obliged to follow the laws of the state.

If the only difference between those that gave express consent and those that gave tacit consent is citizenship, what are the benefits of

¹³⁵ Second Treatise, p. 346, ch. 117, lns. 2-8.

being a citizen? There seems not to be very many and Locke does not discuss this matter directly. Additionally, those that gave their express consent are permanently locked into that agreement unless the government or some calamity that dissolves government releases them from it.¹³⁶ I would consider this a handicap of giving express consent rather than a benefit, since those that only give their tacit consent have more freedom to move about or leave if the government is unfavorable.

I have shown that men enter into a civil society by giving their consent. But what are the people consenting to? What are they transferring to the government? In the state of Nature men have the power to execute the Law of Nature, but, as Locke argues, without a common power over all men, a State of War exists. Through the social contract a common power is established. The people transfer to the government their executive power over the Law of Nature. Locke wrote:

Where-ever therefore any number of Men are so united into one Society, as to quit every one his Executive Power of the Law of Nature, and to resign it to the publick, there and there only is a *Political, or Civil Society*. (lines 1-4). For hereby he authorizes the Society, or which is all one, the Legislative thereof to make Laws for him as the publick good of the Society shall require; to the Execution whereof, his own assistance (as to his own Decrees) is due. And this *puts Men* out of the State of Nature *into* that of a *Commonwealth*, by setting up a Judge on Earth, with Authority to determine all the Controversies, and redress the Injuries, that may happen to any Member of

¹³⁶ Second Treatise, p. 349, ch. 121, lns. 11-8.

the Commonwealth; which Judge is the Legislative, or Magistrates appointed by it.(lines 8-16)¹³⁷

So, men authorize the government to use the combined executive power of all the subjects to keep the peace. I argue that Locke's contract, like Hobbes', is ambiguous; it has elements of alienation theory, yet, it is clear that Locke wants a theory of authorization. As I stated in the section concerning express consent, the consent was irrevocable, suggesting an alienation theory. Also, the quotation above concerning executive power states that the power is *resigned* to the public, emphasizing an alienation type agreement as well in the sense that the individual no longer has the power. However, Locke considers all of the arrangements within the Social Contract as a simple trust, which when violated, can be dissolved by the people and another erected in its place. He wrote:

For since it can never be supposed to be the Will of the Society, that the Legislative should have a Power to destroy that, which every one designs to secure, by entering into Society, and for which the People submitted themselves to the Legislators of their own making;(lines6-10) ... By this breach of Trust they *forfeit the Power*, the People had put into their hands, for quite contrary ends, and it devolves to the People, who have a Right to resume their original Liberty, and, by the Establishment of a new Legislative (such as they shall think fit) provide for their own Safety and Security, which is the end for which they are in Society.(lines 20-26)¹³⁸

This passage provides strong evidence that Locke holds an authorization theory of consent. Furthermore, Locke provides several

137 Second Treatise, p. 325, ch. 89.

138 Second Treatise, pp. 412-14, ch. 222.

examples of breaches of contract, and what follows from those breaches, in the chapter on Dissolution of Government.

Chapter III.

Conclusion: Similarities and Differences

Recall that in the introduction to Locke's State of Nature I mentioned that Locke has been accused of being a closet Hobbesian. Locke draws from the writings of several philosophers throughout the *Treatises*, so it is difficult to say whether or not Locke sympathized with Hobbes' theory or not; especially considering that it was not very fashionable to be a Hobbesian at that time. Traditionally people have focused on the differences between Hobbes and Locke such as having very distinct States of Nature. Remember that Hobbes' State of Nature is very violent, while Locke's Pre-Monetary State of Nature tended to be more congenial. In fact, Locke considered the State of Nature and the State of War to be as different as a "State of Peace, Good Will, Mutual Assistance, and Preservation, and a State of Enmity, Malice, Violence, and Mutual Destruction are from one another."¹³⁹ Locke introduced this phrase with an apparent acknowledgment of Hobbes in that Locke says that some men have confused the two states. While I do not think that Locke subscribed to Hobbes' theory as a whole, it is quite evident that Locke did hold similar views in some areas.

Despite Locke's desiring a calm and agreeable State of Nature, he acknowledges that ultimately the State of Nature develops into the State of War. In this respect, the two philosophers agree that civil society is the remedy for the State of War.¹⁴⁰

¹³⁹ *Second Treatise*, p. 280, ch. 19, lns. 3-5.

¹⁴⁰ *Leviathan*, p. 223; *Second Treatise*, p. 282, ch. 21, lns. 1-4.

To escape the State of Nature each philosopher uses a contract theory. The contract must be between rational people, because neither Hobbes nor Locke permit children or non-rational adults, such as the insane, to form contracts.¹⁴¹ Although Hobbes desires an alienation theory and Locke a theory of authorization, neither philosopher can seem to completely define his theory in terms of only one form of contract theory. Recall earlier that I discussed how Hobbes uses authorization language to explain his alienation theory, and that Locke uses alienation language to show that the contract is one of authorization.

Another point of agreement is that the majority will make decisions concerning any issue which arises once the contract is agreed to. Hobbes says that the minority voters must stand with the majority once the covenant is made, since they, the minority, originally voluntarily agreed to covenant with the rest.¹⁴² Similarly, Locke argues for a majority to determine the type of government once the contract is accepted.¹⁴³ One of the provisions of the contract is to transfer some power to the government to rule and provide for the safety of its subjects. Both Hobbes and Locke consider the power that is given the Sovereign as man's power to enforce the Law of Nature.

In the *Leviathan*, Hobbes argues that men are the judges in the State of Nature, and this judicial power extends to having the power

141 *Leviathan*, p. 219; *Second Treatise*, pp. 307-8, ch. 60.

142 *Leviathan*, p. 231-2.

143 *Second Treatise*, p. 333, ch. 99.

over life and death.¹⁴⁴ It is this same power of defending others which Hobbes says in the opening paragraphs of chapter 28 of *Leviathan* that is transferred to the Sovereign so that he can punish criminals.

Hobbes also states in that same passage that the end of punishment is "*that the will of men may thereby the better be disposed to obedience.*"¹⁴⁵ In addition, men are bound to help the Sovereign when he needs it. In the *Second Treatise*, Locke also argues that men in the State of Nature have the power to judge and enforce the Laws of Nature.¹⁴⁶ Locke says that this power is contracted away to the government when men enter civil society. Like Hobbes, Locke states that men are also obliged to help the government when necessary.¹⁴⁷

Related to punishment is the fact that Hobbes and Locke both consider a person's body as the workmanship of God and so men are only stewards, as it were, of their bodies. For this reason, Hobbes does not consider it possible to alienate one's right to self-preservation; allowing a person to transfer the right to defend others, but not to alienate their right to protect themselves.¹⁴⁸ Just the same, Locke also considers a man's body as belonging to God.¹⁴⁹ Additionally, men cannot transfer their right to protect themselves to the government either.¹⁵⁰

144 *Leviathan*, p. 189 & 199.

145 *Leviathan*, p. 353.

146 *Second Treatise*, p. 274-5, chs. 12 & 13.

147 *Second Treatise*, pp. 324-5, ch.88, lns. 8-16.

148 *Leviathan*, pp. 199 & 353.

149 *Second Treatise*, p.271, ch.6, lns. 10-14.

150 *Second Treatise*, p. 357, ch. 135, lns. 9-12.

Finally, the types of government consistent with both theories appear very similar, but are actually quite different. Hobbes says in chapter 19 of *Leviathan* that his theory allows for a monarchy when the sovereign power resides in one person only; democracy when the people are represented by an assembly; or aristocracy when the representative is a part of the people only. He then goes on to say that when people are dissatisfied with the government, these three forms of government are referred to by different names; tyranny, oligarchy, and anarchy, respectively. In chapter 10 of the *Second Treatise*, Locke refers to the same three types of government with the exception that he calls an aristocracy an oligarchy; but the definitions are the same. Where the two theories differ is that Hobbes says the sovereign power must be given to one of these types of government and there can be no mixing of the power. Locke, on the other hand, allows for mixes between the three. In fact, he prefers a legislative branch to have the power of making laws, while the executive has the power of enforcing those laws.¹⁵¹ Finally, Hobbes and Locke have similar and contrasting views on the dissolution of government.

Hobbes compares the Sovereign to a mortal god, a Leviathan, in the last paragraph of chapter 28 in *Leviathan*. Then, in chapter 29, he says that the Sovereign is the soul of society. When the government

¹⁵¹ Hobbes desires the power of government to reside in a single person because he considers it stronger and more durable that way. If the power is divided, the different factions will argue and eventually the government will fall. *Leviathan*, pp. 368-73. Locke on the other hand wants to protect the citizen from the government, so he wants the power divided in order to keep any one power from becoming too strong. *Second Treatise*, pp. 364-5, ch. 143-45.

collapses, the soul no longer exists and each member of society must seek a new sovereign to protect them. Likewise, Locke says in chapter 19 of the *Second Treatise*, that the Legislative "is the Soul that gives Form, Life, and Unity to the Commonwealth."¹⁵² Although they use similar language here to describe the power source of their respective governments, Hobbes and Locke have different views about whether or not that power can be legitimately taken back by the people.

In chapter 18 of *Leviathan*, Hobbes says that once the power is transferred to the Sovereign, the process is irreversible. Outside forces, such as a conquering nation, may cause the government to fall, forcing the people back into the State of Nature where they can contract again. However, all internal causes of the dissolution of the government are unjustified, such as the people withdrawing their support of the Sovereign.¹⁵³ They promised their support by contracting to form the government, and so are bound to continue that support until the Sovereign can no longer fulfill his part of the contract. Locke, on the other hand, allows for the contract to be justifiably broken internally.

Locke, contrary to Hobbes, says in chapter 13 of the *Second Treatise* that the power of the legislative is given through a trust. Once that trust is violated, the people retain the *supreme power* to

¹⁵² *Second Treatise*, p. 407, ch. 19, lns. 5-10.

¹⁵³ Discussion with A.P. Martinich, PHL 398r, Summer, 1993, University of Texas, Austin.

remove or alter the legislative.¹⁵⁴ In the end of the *Second Treatise*, Locke is arguing about the dissolution of the government.¹⁵⁵ He says that some people consider the right to form a new government by the people as detrimental to the existence of any government. Locke answers them by saying three things. First, it doesn't matter if they are right or wrong; people will revolt and overthrow the government if they are mistreated. Second, people will tolerate a great amount of poor governing without revolting, so long as the mistakes do not continue. Thirdly, having the reasons which warrant for a revolt by the people written down in the constitution is the best defense against rebellion. Nevertheless, the body of people will be the judge to determine when the government violates its trust.¹⁵⁶ Since the body of people is the judge, Locke's theory must be an authorization theory after all.

What I have been trying to prove is that Locke has a great deal in common with Hobbes, but at the same time he is unwilling to accept man's nature as pessimistic and egotistical as Hobbes does. Since the discovery of the all the material Locke wrote which comprises the Lovelace collection, philosophers have been trying to show that Locke had little, if anything, in common with Hobbes. I hope that I have

154 This is another reason why I think that, basically, Hobbes is an alienation theorist and Locke is an authorization theorist. The two theories just need to be redefined to correct any references to the other.

155 *Second Treatise*, pp. 414-16, chs. 223-226.

156 *Second Treatise*, p. 426-7, ch. 240, lns. 1-5.

made it clear that Hobbes and Locke did hold some very similar views, despite the different objectives each sought to attain.

I am not suggesting that Locke was a Hobbesian, nor that the similarities to Hobbes' work was plagiarized by Locke. I am only saying that either the similarities were prevalent among the philosophers of the time or that Locke arrived at some of the same conclusions Hobbes did. Locke could have been directly influenced by Hobbes through reading his works, or indirectly by being motivated by the notoriety of Hobbes' conclusions. I think that it is very likely that most of the similarities were common assumptions many of the writers of the seventeenth century held. A more detailed study of all of the philosophers of that period is needed to clarify the matter.

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Prepared IAW AFITR 53-1 Paragraph 7-7

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Service: United States Air Force

Year: 1993

No. Pages: 248

Degree: Doctor of Philosophy in Electrical Engineering

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Abstract

The methodical approach to polymer structure design that alters the second-order nonlinear optical properties and the poling induced dipole alignment stabilities is presented. The specific nonlinear optical molecule used to demonstrate the feasibility of the concept is a chromophore with amino-donor and sulfone-acceptor with azostilbene π -conjugated bond separating the acceptor and donor. The spacer units used to de-couple the segmental motion of the chromophores from that of the backbone are either flexible carbon chains, methylmethacrylate segments, or benzene rings with the appropriate substituents [1]. The premise is that we can take a building block approach to construct the prepolymer structure to obtain the desired effects [2].

Sufficient theoretical tools are provided to aid in the analyses given throughout this dissertation. The methods of introducing nonlinearity to

macroscopically amorphous polymer films and the second-harmonic generation and thermal stability studies are presented. The second-harmonic generation coefficients d_{33} as high as 160 pm/V with stable operating temperature as high as 155°C are reported [1-4] We also present the preliminary work on photonic device fabrication using the polymers in this dissertation.

[186 words]

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Vita

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