

## THE NOTION OF CIVIL DISOBEDIENCE ACCORDING TO LOCKE

The notion of resistance to the state has come to be bandied about a great deal, and a great many political movements place themselves under its sign. This intrusion of violence into the realm of the law seems to be spreading since the advocates of insurrection, who accuse the state of betraying its mission, are not those who consider revolt to be the necessary first step towards any kind of enfranchisement. Where the partisans of revolution believe that violence is, in Marx's words, "the midwife of every old society that carries a new one within it" and that it is "the instrument by which the social movement sweeps it away and breaks to pieces the political forms that are fixed and dead,"<sup>1</sup> the partisans of the right to resist the state do not share these

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<sup>1</sup> F. Engels, *Anti-Dühring*, part II, ch. IV, p. 157. Cf. also *Das Kapital*, vol. I, ch. XXIV, sect. 7., p. 728.

hopes for political and social upheavals.<sup>2</sup> Marxist theory, which praises revolutionary insurrection, stands opposed to a kind of philosophy that admits of armed opposition to the state, but can nevertheless be called liberal in two respects: formally, from its present perspective, where it appears opposed to Marxist thought, and also historically, in the evolution of political ideas, where it is opposed to absolutist conceptions of the state. For, as R. Derathé remarked, the question of the right to resist “cast light on the chasm that separated the theologians from the legal experts.”<sup>3</sup> The doctrines of divine right left no room for envisaging a limitation on the duty of obedience, without turning such a limitation into the equivalent of a revolt against God. Bossuet, in his *Politique tirée des propres paroles de l'Écriture sainte*, asserts that “God has made the kings and the princes his lieutenants on earth so as to render their authority sacred and inviolable.”<sup>4</sup> The result is unconditional obedience to the kings and to all those who hold a parcel of authority: “Declared impiety and even persecution do not exempt the subjects from the obedience they owe to their princes.”<sup>5</sup> The only possible attitude in the face of “the violence of the princes” is to submit “respectful remonstrances, without mutiny and without a murmur, and with prayers

<sup>2</sup> The authors of the Declaration of Rights and of the Constitution of the year I do nevertheless constitute an exception. Their articles expressed a certain idea of the state, “that of a social democracy which intervenes in order to establish, to the profit of the poor, the equilibrium that was destroyed by money” (G. Lefebvre, *Les Thermidoriens*, p. 165). The Constitution of the year I is the only French constitution that proclaims the right of resistance, in its Article 35: “When the government violates the rights of the people, insurrection is for the people and for each portion of the people, the most sacred of rights and the most binding of duties.” Similarly, in the projected declaration presented by Maximilien Robespierre to the society of the Jacobins on April 21, 1793, and adopted by this society, Article 25 stipulates that “the resistance to oppression is the consequence of other rights of man and of the citizen.”

<sup>3</sup> R. Derathé, *J.-J. Rousseau et la science politique de son temps*, p. 36.

<sup>4</sup> *De l'obéissance due au Prince*, bk. VI, art. II, prop. I.

<sup>5</sup> *Ibid.*, bk. VI, art. II, title of prop. 3.

for their conversion.”<sup>6</sup> It is also necessary to ban “remonstrances full of bitterness and grumbling” since these “are the beginnings of sedition, which must not be tolerated.”<sup>7</sup>

On the other hand, the school of natural law, in formulating its theory of the social contract in order to “combat and replace the doctrine of the divine right,”<sup>8</sup> could be led to conceive of the possibility of forcible opposition to the established authority. Among the theorists of the school of natural law, Locke was one of those who, in the seventeenth century, saw most clearly how harsh and negative laws could under certain conditions engender opposition and thus turn into something foreign to their nature. It is true that a few years before the publication of Locke’s *Treatises of Civil Government*, Algernon Sidney, the youngest son of an illustrious family and one of the leaders of the Whig party, who was executed in December, 1683, for having been involved in Rye-House’s plot, had written a manuscript, which was published in 1698,<sup>9</sup> where he allowed for the right to resist. The courageous death of one of their rank must have convinced the English aristocracy that resistance to the state was no vulgar insubordination, but had some affinity with legitimate war.<sup>10</sup> More than a hundred years before, Calvin had seen in war God’s way of achieving the restoration of legitimate power.<sup>11</sup> With

<sup>6</sup> *Ibid.*, title of prop. 6.

<sup>7</sup> *Ibid.*, prop. 6.

<sup>8</sup> R. Derathé, *op. cit.*, p. 33.

<sup>9</sup> A. Sidney, *Discourses Concerning Government*.

<sup>10</sup> G. N. Clark, *The Later Stuarts*, vol. I, p. 101.

<sup>11</sup> Calvin admits that God “evidently calls up some of his servants and arms them with his mandate to mete out punishment for unjust oppression and to deliver the people who suffer iniquities from their calamity” (*Institution de la religion chrétienne*, text of 1541, reprinted under the direction of Abel Lefranc, p. 781). This was the case with Moses, when he delivered the people of Israel, and with Othniel, when he delivered them from the Syrians. In this case, God inspires just men, “called by God and by legitimate vocation, to undertake such matters: in rebelling against the kings, not to violate by any means the royal

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Locke, the notion of resistance became definitely independent and distinct from the notion of war.

This metamorphosis of violence into a right has often been considered a means to "justify to the world the people of England."<sup>12</sup> The date of publication of the *Treatises of Civil Government* (1690), the allusions to contemporary events, the attention to constitutional questions that were specifically English, the fact that Locke's thought became the inspiration of the Whig party, all this has militated in favor of a partisan interpretation of Locke's work: that it was a work dictated by the circumstances, destined to justify a revolution and to render it legitimate, and that Locke had the mien of a realistic thinker, who analyzed contemporary political facts and was too much at one with his time not to elevate the facts into a right.

But the ideas compressed into the *Treatises of Civil Government* are much more the outcome of long political reflection than of the desire to legitimize a historical fact—even though this was for the author the only way to return and to enter again into the possession of his estate. There were indeed other ways of looking at the events of 1688. In the same period, Jurieu, for example, in his 9<sup>e</sup> *Lettre pastorale*,<sup>13</sup> and Abbadie<sup>14</sup> were both defending the English revolution by taking the point of view, not of political philosophy, but of the law. It was by showing that the actions of the king were illegal that these French protestants proved the revolution to be well founded: "This is why the English nation

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majesty which was given them by God, but to punish an inferior power by a greater one, in the very same way that a king has the right to chastise his lieutenants and officers" (p. 781). The inspired man becomes an intermediary between God and his lieutenant on earth; or if you prefer, the presence of the inspired man, called by "legitimate vocation," reverses the positions in the hierarchy so as to place the tyrant in relation to him in the position of lieutenants in relation to their princes. Rebellion is no more than the legitimate right of punishment.

<sup>12</sup> *Locke's Works*, vol. V, p. 209, preface to the *Treatises of Civil Government*.

<sup>13</sup> "Examination of the question whether it be permitted to defend one's religion by the use of arms."

<sup>14</sup> *Défense de la nation britannique*.

will not be blamed for the conduct it shows nowadays towards its king, except by people who are full of their prejudices, or slaves of the great under whom they live, or very ignorant of the laws of England.”<sup>15</sup> And Jurieu defends the events of 1688 by listing eight fundamental laws and the corresponding violations of which James II was guilty. Similarly Abbadie, in writing that “popism is opposed to the law of society in England,”<sup>16</sup> in referring to the various efforts of the king to replace the bearers of high office at court and in the universities by popists, and in stressing that the Jesuits were opening colleges,<sup>17</sup> seems much more anxious to keep the problem on the plane of legality than to raise it to the plane of legitimacy. It is much more as jurists, and as fairly simple jurists, than as philosophers that these authors seek to justify the events of 1688.

Locke’s attempt thus rises above all contemporary justifications to put on the mantle of philosophical reflection. His political writings were no occasional pieces, prompted by William of Orange’s crossing, but expressed a certain number of permanent preoccupations in Locke’s life. Although the first of the two treatises was written between 1680 and 1685, and the second during the last year of his exile in Holland,<sup>18</sup> we must not forget that Shaftesbury’s friendship initiated him into political problems, that he undoubtedly took part in the drafting of the constitution of Carolina in the years preceding 1670, and that in his writings on tolerance and religion, published from 1660 on, he himself placed these problems on the political plane, much more so than on the metaphysical one.<sup>19</sup> It appears thus that there is in this English philosopher a continual interaction between practical preoccupations and purely abstract speculations which make his

<sup>15</sup> 9<sup>e</sup> *Lettre pastorale*, p. 208.

<sup>16</sup> *Op. cit.*, p. 336.

<sup>17</sup> *Ibid.*, pp. 372-4.

<sup>18</sup> Fox Bourne, *Life of Locke*, vol. II, pp. 165-7.

<sup>19</sup> Gough, *John Locke's Political Philosophy*, ch. VIII, pp. 172-96.

writings at once the work of the circumstances and the blueprint of a political system.

This system is generally taken to be the doctrine of political liberalism, a doctrine anxious to defend the liberty of the individual against any encroachments by the state.<sup>20</sup> In the eyes of the nineteenth century, it could even contain the germs of democracy. In 1840, a Jesuit, Father Boone, in a little volume entitled *Les mauvais livres, les mauvais journaux et les romans*, mentioned Locke as one of those "famous French or English writers who with their writings prepared the way for the terrible French Revolution and through it, for the alleged reign of enlightenment and liberalism."<sup>21</sup> In particular, the right to insurrection may have appeared to be charged with formidable revolutionary possibilities.

In studying the notion of resistance to oppression in Locke's work, we will do well to ask whether we should attribute to the recourse to violence that virtue of liberation which the theorists of the nineteenth and twentieth centuries claim to see in it, or whether, on the contrary, the right to resist does not take on a very specific meaning, between the tyrannicide praised in antiquity and the revolutionary form of insurrection, a meaning that is symptomatic of liberal thought.<sup>22</sup>

<sup>20</sup> C. E. Vaughan, *Studies in the History of Political Philosophy before and after Rousseau*. Cf. also R. Polin, *La Politique morale de John Locke*, Paris 1960, in particular the appendix: "Locke et le libéralisme," pp. 237-50.

<sup>21</sup> H. J. Reesink, *L'Angleterre et la littérature anglaise dans les plus anciens périodiques français de Hollande de 1684 à 1709*, p. 60.

<sup>22</sup> In view of the actuality of the problem, it is necessary to distinguish sharply between insubordination and resistance. Insubordination is the fact of evading one's military obligations; resistance is the armed challenge to the whole of a government's actions. Whatever the motives of insubordination may be, this attitude implies such a distance from violence that it even constitutes the negation of armed resistance. In Locke, the two concepts remain side by side. It may even be that the extent to which resistance is recognized is proportional to the extent to which insubordination is proscribed. As Léo Strauss has noted (*Droit naturel et histoire*, Plon, 1954, p. 243), the people "still retain a right to revolution. But this power (which lies dormant in normal times) does not attenuate the individual's subjection to the community or to society. On the contrary, it is only just to say that Hobbes insisted more strongly than Locke on the individual's right to resist society or the government when his self-preservation was endangered." And in a

In his second *Treatise of Civil Government*, Locke speaks of an "appeal to Heaven."<sup>23</sup> This is the right to have recourse to violence when the conflict between rulers and ruled has become irreconcilable. The right of civil disobedience is unequivocally affirmed, and Locke criticizes Barclay in ironical terms, who recommends that one "resist with respect." Such an attitude, where one tries "to resist force without striking again," amounts to an imaginary and ineffective resistance. "He, therefore, who may resist must be allowed to strike."<sup>24</sup>

Individuals who have been wronged "have a right to defend themselves, and to recover by force what by unlawful force is taken from them."<sup>25</sup> In the chapter entitled "Of Tyranny," Locke takes great pains to show that the right of individual resistance does not in any way endanger the stability of the government: The state runs no risk of being upset all of a sudden, for the right is rendered ineffective by the weakness of the individual and the strength of the state. Nor does the state risk being upset all of the time, for the individual will hesitate to make use of his right if he feels himself isolated. Similarly, in the following chapters, Locke reassures those who fear that if popular resistance were recognized as a right, "no government will be able long to subsist."<sup>26</sup> Both individual and popular resistance are thus recognized, and whether the individual be alone or in a group, it is he who holds the unchallenged title to the right to resist.

In reality, Locke's doctrine seems more subtle on this point.

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note (note 56, p. 362), Léo Strauss adds: "This is why Locke affirms more clearly than Hobbes the individual's duty to do military service."

<sup>23</sup> John Locke, *An Essay Concerning the True Original Extent and End of Civil Government*, sects. 168 and 176; referred to hereafter under the title: *Essay*.

<sup>24</sup> *Essay*, sect. 235.

<sup>25</sup> *Essay*, sect. 208.

<sup>26</sup> *Essay*, sect. 223.

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An analysis of cases of resistance will show that it may not always be the individual who holds the title to this right.

Locke asserts as an absolute principle that "force is to be opposed to nothing but to unjust and unlawful force."<sup>27</sup> This unjust and unlawful force is what he calls "the dissolution of government." Now there exist two modes of dissolution, in addition to "overturning from without." These modes of dissolution are tied, respectively, to the notion of the form of government and to the notion of trust. On the one hand, there is abuse of power every time the laws by which a political society has organized its government, cease to be respected: Failure to observe the constitution, whether by the prince or by the legislative assembly, leads automatically to the destruction of the government. On the other hand, there is "another way whereby governments are dissolved, and that is, when the legislative, or the prince, either of them act contrary to their trust."<sup>28</sup> Power is entrusted to the rulers for the realization of certain ends. These ends are nothing other than the motives that drive men to "enter into society." Men desire "that there may be laws made, and rules set, as guards and fences to the properties of all the society, to limit the power and moderate the dominion of every part and member of the society."<sup>29</sup> Men enter into society so "that they may have the united strength of the whole society to secure and defend their properties, and may have standing rules to bound it." Thus "the community put the legislative power into such hands as they think fit, with this trust, that they shall be governed by declared laws."<sup>30</sup>

The dissolution of government takes place when the established laws or the entrusted mission fails to be observed. But "law" and "trust" are two notions that belong to different planes. It is easy to determine when the laws fail to be observed, and Locke could draw up an exhaustive list of all the acts that mark

<sup>27</sup> *Essay*, sect. 204.

<sup>28</sup> *Essay*, sect. 221.

<sup>29</sup> *Essay*, sect. 222.

<sup>30</sup> *Essay*, sect. 136.



an alteration or transgression of the rules and laws: To substitute the will of the prince for that of the legislature, to prevent reunions of the assembly, to modify in an arbitrary fashion "the electors or ways of election," to deliver the people into "the subjection of a foreign power," and to neglect and abandon the application of "laws already made;" these are well-defined violations of the constitution which justify the resistance of the people. At this level, it is possible to determine objectively unlawful uses of power or its abuses, by confronting the act of the government with the rule or right. This would be a kind of judgment of constitutionality.

The problem is much more complex at the level of "trust." It is no longer enough to evaluate the concurrence or discrepancy between an act of government and a written law or precedents. In effect, the ruler fails in his mission "when he employs the force, treasure, and offices of the society to corrupt the representatives and gain them to his purposes, when he openly pre-engages the electors, and prescribes, to their choice, such whom he has, by solicitation, threats, promises, or otherwise, won to his designs, and employs them to bring in such who have promised beforehand what to vote and what to enact."<sup>31</sup> This is no longer failure to observe the letter of the law, but failure to observe its very spirit. The apparent conformity of certain acts to the rules of the constitution may cover up a real breach of the law. The decision can no longer be made by comparing the objective elements of political reality, the constitution or the laws on the one hand and a certain particular act on the other. A comparison needs now to be made between an act and the general end of government, this being the protection of the lives, liberties and possessions of the people.

Locke distinguishes thus between the "fundamental positive law of all commonwealths" and the "declared laws." The legality and the legitimacy of the acts of the ruling power result from their agreement with these two kinds of law: The "declared laws" conform naturally to the "fundamental law," but it does not follow from this that every act of the executive or the legisla-

<sup>31</sup> *Essay*, sect. 222.

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ture conforms to the "standing rules," even if these are in the spirit of the fundamental law. Through corruption and other means, the prince could observe the legal forms while at the same time breaking the law of nature. The right to resist bears witness to this possible deviation of acts from the letter of the rules and the spirit of the law of nature. The first of these deviations presents a legal problem which is relatively easy. As to the second of these deviations, the problem becomes a moral one. Gough<sup>32</sup> has shown that the legal notions of contract and trust departed from their original meanings as soon as they became political categories: In particular, if in the course of its development, the notion of trust was used as much in a legal as in a general sense, it is no less true that in the end the moral meaning won out over the legal meaning.

By introducing the notion of "trust" Locke managed to distinguish abuse of confidence<sup>33</sup> from abuse of power. The latter belongs on the plane of legality, but the former on that of morals. Locke's criterion is an internal one, as opposed to the external criterion of abuse of power. It is this internal criterion which comes into play in the dissolution of government, "when the legislative, or the prince...act contrary to their trust." To conclude in this case that there was a neglect of duties or a violation of the entrusted mission, one must put intentions on trial. It is necessary to go beyond the acts committed by the civil authority, to try to grasp the intention embodied in them. To the extent that this intention goes against the ends that have motivated the political association, it sanctions the right to resist. The subjective nature of such a decision is confirmed by the vocabulary used to describe it. Locke speaks of the "general course and tendency of things" which confirms the suspicions about the "evil intention,"<sup>34</sup> or else of a "long train of abuses" which "make the design visible to the people," and in all these cases the people "cannot but feel what

<sup>32</sup> Gough, *John Locke's Political Philosophy*, pp. 136-71.

<sup>33</sup> *Essay*, sect. 238.

<sup>34</sup> *Essay*, sect. 230.

they lie under, and see whither they are going.”<sup>35</sup> It is less by judgment that the people decide whether the prince or the legislature fail in their mission, than by sentiment.

What guarantees the value of this sentiment? The sentiment comes indeed less from a comparison of objective elements than from a revelation of hidden designs. One could not lay it down as the foundation of the right to resist if it were only arbitrary, or only expressed an individual attitude. It gains in value to the extent that it is shared by the people “universally.”<sup>36</sup> The universality of the sentiment guarantees its truth. To be more precise, in a given political society, it is less the universality than the generality of the sentiment that bears witness to a breach of trust. The participation of “the greater part” of the people establishes the objective reality of an evaluation which is in appearance subjective and arbitrary.

The concept of “public opinion” furnished Locke with the means of disengaging the sentiment of injustice from everything that might be subjective about it. An individual opinion becomes valuable by being extended to the majority. This was the only means of bestowing a certain objectivity on judgments of political intentions. To generalize such a judgment is to make it independent of all psychological forces foreign to the sentiment of justice. “I grant that the pride, ambition and turbulence of private men have sometimes caused great disorders in commonwealths, and factions have been fatal to states and kingdoms.”<sup>37</sup> If the government is charged with failing in its mission merely by a private person or by a group of them, the charge is open to doubt and attributable to every motive other than the sentiment of justice. But if the charge is made by the majority of the people, it can be taken to be objective and just.

It is then the “opinion...of the people” or the people “who shall be judge,”<sup>38</sup> which is to say that the citizens as a whole can

<sup>35</sup> *Essay*, sect. 225.

<sup>36</sup> *Essay*, sect. 230.

<sup>37</sup> *Essay*, sect. 230.

<sup>38</sup> *Essay*, sects. 223 and 240.

pronounce on the legitimacy of the present government and decide on resistance in case of iniquity. The same notion is to be found in Jurieu under the name of "public notoriety."<sup>39</sup> Both thinkers consider that there is a connection between government and the judgments of men. If the government is dependent on the judgments of individuals, it must be safeguarded against movements due to humor, caprice and the inconstancy of men. If the Calvinist theory of "the providential man" is abandoned, or that of natural protectors instituted by God,<sup>40</sup> and if every political or divine function is attributed to the private individual, and he is given back the power to judge the acts of government and the right to resist them, the value of human protestations must be placed on a solid footing. It is not the quality of the subject that guarantees the judgment to be well founded, but the number of the subjects who formulate or share it. In *John Locke and the Doctrine of Majority Rule*, Willmoore Kendall remarks that Locke abandons all terms referring to individuals and introduces collective terms ("the people," "society") as soon as he comes to the question of deciding whether the government has betrayed its mission. The use of these collective terms proves that resistance "operates not till the inconvenience is so great that the majority feel it, and are weary of it, and find a necessity to have it amended."<sup>41</sup> Just as it is necessary to justify the legitimacy of the government and of settled rules, so the principle of the majority is necessary to assure the legitimacy of resistance.

Thus the distinction between abuse of power and abuse of confidence enables us to determine who precisely enjoys the right to resist: Insofar as there has been an abuse of power, it is the individual who has the right; but his exercise of this right is limited in fact by certain conditions. If the injustice extends only to isolated individuals, these have, no doubt, the right "to defend themselves, and to recover by force what by unlawful force is

<sup>39</sup> G. H. Dodge, *The Political Theory of the Huguenots of the Dispersion*, p. 112.

<sup>40</sup> See above, our note on Calvin.

<sup>41</sup> *Essay*, sect. 168.

taken from them.”<sup>42</sup> When there has been an abuse of confidence, it is the majority who has the right to resist.

The use of the right to resist by the individual or by the people is translated into fact as a test of strength which calls in question the actual government and may establish a new power. In granting the subjects the initiative for insurrectionary action, is Locke not threatening every society with anarchy in the name of respect for the liberty of the individual? In fact, the limitations imposed on the right to resist give to insurrection the sense of a restoration of the state much more than of a liberation of the individual.

The individuals who have been wronged have theoretically the right to resist, “yet the right to do so will not easily engage them in a contest wherein they are sure to perish.”<sup>43</sup> The conditions of fact limit in consequence not only the right to resist, but the use of this right. These conditions of fact are characterized by a disproportion between the strength of the isolated individual and that of the government. This irreducible disproportion which would assure him to “perish” is at the bottom of the hesitation which suspends the exercise of his right to resist. His regard for his own interest comes to supplement his awareness of an injured right and, when his case is dismissed, to annul any decision to resist. Psychology limits the exercise of the right to resist and its social consequences.

But if this psychological factor does not intervene, the objective situation, characterized by the disproportion of strength, plays the same role: “It being as impossible for one or a few oppressed men to disturb the government...as for a raving madman or heady malcontent to overturn a well-settled state.”<sup>44</sup> Objectively, the injured individual finds that he resembles a malcontent or a madman, who is absolutely inoffensive to the government. Thus the exercise of the individual’s right to resist is limited either by the objective situation or by psychology. In a similar manner, a certain number of factors come to limit the exercise

<sup>42</sup> *Essay*, sect. 208.

<sup>43</sup> *Essay*, sect. 208.

<sup>44</sup> *Essay*, sect. 208.

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of the people's right to resist. We have seen that in the case of abuse of confidence, the individual no longer held the title to the right to resist; only the majority of the people were qualified to decide whether insurrection was justified. This denial of the individual's right to resist in favor of a popular right of resistance is, as Kendall has pointed out, a certain limitation of that right. But to this formal limitation come to be added factual restrictions which diminish still further its extent and efficacy. In the chapter in which he tries to reply to the most important objection of the enemies of insurrection who fear the governmental instability it would necessarily entail, Locke maintains that the people are at bottom conservative. They are, according to him, attached to their ancient institutions and will abandon them only with "slowness" and "aversion." Just as a certain psychological make-up came to limit the individual's right to resist by restraining its use, a sociological make-up limits the people's right to resist. In the individual, the instinct of self-preservation is the decisive reason for his hesitation to revolt. Between his subjective evaluation of the injustice and his revolt always comes the taking into consideration of an essential factor, which is his own interest. The people are not held back by the same motive. In fact, assurance or at least probability of success is not a factor that encourages them to revolt, and the dread of failure and the fear of risking one's life play no part. In place of the instinct of self-preservation we find an inertia characteristic of the masses which makes it difficult to incite the people "to amend the acknowledged faults in the frame which they have been accustomed to."<sup>45</sup> There is then, beside this attachment to ancient forms, or this conservatism, a perhaps more important attitude: that of becoming accustomed to injustice. The people are "more disposed to suffer than right themselves by resistance."<sup>46</sup> Sensibility is more acute in the individual than it

<sup>45</sup> *Essay*, sect. 223. Cf. the Declaration of Independence, voted for by the representatives of the United States of America, assembled in congress at Philadelphia, on July 4, 1776: "All experience has shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed."

<sup>46</sup> *Essay*, sect. 230.

is in the people. The latter, on the one hand, have less perspicacity and fail to discern the injustice till "the ill designs of the rulers become visible."<sup>47</sup> It takes a "long train of abuses, prevarications, and artifices" to "make the design visible to the people."<sup>48</sup> On the other hand, "the examples of particular injustice or oppression of here and there an unfortunate man move them not."<sup>49</sup> And this inability to comprehend injustice renders every isolated act of injustice impotent. The popular conscience is not easily roused, but demands a considerable sum of infringements of the laws, neatly labelled. It is not a single governmental act, but a sum of facts which bears witness to the ill designs of the rulers. It follows that a revolt will not be the result of a momentary impulse, but the fruit of a long growth corresponding to the spread in time of the unlawful acts.

The conservative attitude and the more callous conscience of the people limit the use of the popular right to resist. Moreover, by the very fact that this right is explicitly recognized, it becomes the best security for political stability. Its recognition "is the best fence against rebellion and the probablest means to hinder it."<sup>50</sup> If the retainers of power know that every unlawful use of force can provoke an insurrection, they will hesitate to transgress the laws to avoid the dangers of a state of war. The recognition of the people's right to resist induces the rulers to use their power with more prudence. This recognition appears as an element of reason which may counterbalance those elements that tend to incite those who wield the power to abuse it: "The pretence they have to authority, the temptation of force they have in their hands, and the flattery of those about them," may lead "them who are in power" to set up force "in opposition to laws." The dread of insurrection is the most effective psychological instrument for removing the temptations of the prince.

<sup>47</sup> *Essay*, sect. 230.

<sup>48</sup> *Essay*, sect. 225.

<sup>49</sup> *Essay*, sect. 230.

<sup>50</sup> *Essay*, sect. 226.

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One might object that it is not necessary to grant the people a right to resist. For "the people generally ill treated, and contrary to right, will be ready upon any occasion to ease themselves of a burden that sits heavy upon them."<sup>51</sup> The experience of life and history confirms this fact. To enshrine it in the law would be futile. Regard for this simple fact should play the same psychological role as its recognition as a right to resist.

Not so according to Locke, and this shows the real meaning of the right to resist. This right adds nothing to the field of possible action open to the people. The theory that recognizes the right to insurrection lays no more "ferment for frequent rebellion" than "any other hypothesis."<sup>52</sup> The tendency to revolt against the government is a fact of nature, and it is similarly a fact of experience that "the change, weakness, and accidents of human affairs"<sup>53</sup> are not slow to offer opportunities for revolt. Popular psychology on the one hand and historical reality on the other make of revolt an inescapable fact in cases of repeated violations of the law. There is thus a kind of natural law that binds the revolt by the ruled to certain acts of the rulers; insurrection is the necessary consequence of unlawfulness. To act on the effect, we must act on its causes. Now, paradoxically, the best way of acting is to transform the fact into law, and thus to recognize the right to rebel. This right can then become an element in the psychological situation that is the source of the transgression of laws by the rulers. A new factor is introduced beside the three other factors mentioned (flattery, temptation of force, pretence to authority), and comes to modify the situation in such a way as to suppress the political cause of the revolt. The right to resist appears as a substitute for a natural law, destined to weigh on the decision of the rulers so that their acts can no longer provide an occasion for revolt. By transforming the fact of resistance into a right of resistance, Locke hopes to destroy the fact itself. The right of insurrection appears as the surest means of preventing insurrec-

<sup>51</sup> *Essay*, sect. 224.

<sup>52</sup> *Essay*, sect. 224.

<sup>53</sup> *Essay*, sect. 224.



tion. It becomes through its psychological role an element of the social mechanism whose final end is to protect the stability of the political system.

It is curious to note that the right of insurrection plays its role, not inasmuch as it is a right of the people, but inasmuch as it can become a psychological factor in the deliberations of the prince. Its true meaning is not to serve the interests of the people, but to preserve the ruling powers from any gross political errors. It can even be said that the recognition of this right is a typically conservative move. Insurrection has as its goal the maintenance of legal statutes; it never has a revolutionary goal, that of replacing one legal structure by a new one. The distinction between rebellion and resistance is but an attempt to eliminate the revolutionary import of insurrection and to render it impossible. By granting to the people the right to resist, one limits the power of the rulers without ever yielding more power to the people. This right is a piece of political machinery put in its place to assure the respect of legal norms by those who wield the power.

A final consideration will finally exhaust any revolutionary possibilities that the notion of resistance might still retain. The notion of trust invited the individual to compare the general aim of all government with the real meaning of its acts and laws. It was a matter of discerning the intentions of the rulers. The political judgment ceased to be an estimate of the legal type to become an evaluation of the moral kind. One might fear that by placing the debate on the moral plane, and by calling for a pronouncement on intentions and not on acts, the possible cases of resistance would be singularly multiplied. Now, by making intention the object of political judgments, Locke curtailed in fact the right to resist.

Governments are established with a view to realizing the public good. The institutions, laws, rules and acts of those who are in power concur to realize this end. Theoretically, the institutions and the embodiments of political power are means subordinate to the ends of those who lead, and their ends are identical with the ends of those who are governed. In practice, the results attained by the objective embodiments of power may go counter to the goals which called them forth. Political and legal systems bring forth results which no longer coincide with the goals men

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strive for. The philosophers of the nineteenth and twentieth centuries, who have examined the notion of "alienation," invite us to recognize that human intentions are no longer found in the processes that embody them. We are thus led to distinguish two sorts of end: an objective end, where "end" refers to the result to which the application of laws and the acts of government lead, and a subjective end, where "end" refers to the goal consciously pursued by men.

Three notions thus emerge: the objective end, the subjective end of the rulers, and the subjective end of the ruled. One could imagine a political community which precipitated a revolution every time a discrepancy or a sequence of discrepancies was noted, be it between the objective end and the subjective end of the ruled, or between this and the subjective end of the rulers.

For the author of the *Essay*, there is no doubt that only the subjective end comes into play in deciding whether an insurrection would be opportune and legitimate. "Great mistakes in the ruling part, many wrong and inconvenient laws, and all the slips of human frailty will be borne by the people without mutiny or murmur."<sup>54</sup> The unforeseen consequences of certain measures may be "inconvenient" or even contrary to the principles of justice; but if the people have the feeling that they are the consequence of an error in judgment and not the deliberate result of an evil intention, they will "bear" them. A distinction is thus made between a political fault and a political error, a distinction which corresponds to the one we made between objective and subjective ends. "Error" is the name given to the possibilities of alienation contained in every human action. It marks the distance that separates the factual end from the strived-for goal. It has its source in "human frailty" and thus shows itself to be an ineluctible consequence of the human condition. On the other hand, a political fault expresses the distance between the intentions of the governors and those of the governed; the will of "them who are in power" is no longer at one with the will of those who have entrusted this power to them. Only in this case do the people have the right to revolt.

Locke imposes thus a singular limitation on political respon-

<sup>54</sup> *Essay*, sect. 225.

sibility, and this limitation is born of the conviction that it is not the objective functioning of the institutions that tells a bad government from a good one, but the intention that presides at the drafting of the laws. Twentieth-century political theories, especially in “popular democracies” where the distinction between error and fault is abolished and where a mistake is treason and an accident becomes sabotage, all agree that any governmental team whatsoever can be eliminated in the name of the public good. The confusion between subjective and objective ends leads one to forget that intention is an element in political responsibility, and to multiply, as a result, the occasions and pretexts for political upheavals. In Locke’s system on the other hand, the need to grasp the evil intention behind the actions of the government, far from enlarging the possibilities of popular action, narrows down the cases where insurrection would be legitimate.

An article of the constitution of Carolina enables us to see in this distinction between two sorts of end a deliberate attempt to restrict the people’s right to insurrection. Even if this constitution was not entirely the work of Locke, who was then confident of Shaftesbury’s future it reflects his ideas. One article of this constitution stipulates that all the laws be repealed every hundred years. This stipulation is evidently to be understood as a means of easing the burden of the laws.<sup>55</sup> It shows that the authors of the constitution were aware of a possible conflict between the aims of a society and the laws it gave to itself. But this conflict would not have to be resolved by insurrection, since a special mechanism was provided for this purpose. To conclude, the right to resist in Locke’s political system comes in only when there is no longer an identity of intention between rulers and ruled to realize the public good. By demanding that intention be always taken into account, Locke decreases the responsibility of the authorities and restrains the area of application of the right to revolution.

The conservative accent of such a theory or of such a fiction is brought out again by the connection between opposition and resistance. Opposition, like resistance, constitutes a legitimate suspension of the duty of obedience. Such legal disobedience is

<sup>55</sup> Edouard Laboulaye, *Locke, législateur de la Caroline*, p. 18.

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not connected with the notion of consent, for even if “the beginning of a politic society depends upon the consent of the individuals to join into and make one society,”<sup>56</sup> it is nonetheless true that “the majority have a right to act and conclude the rest.”<sup>57</sup> It follows that a member of a minority group cannot legitimately oppose a law under the pretext that he did not consent to it. Legitimate opposition makes its appearance when there has been an abuse of power. In the chapter “Of Tyranny,” Locke sanctions disobedience when the conduct of subordinate magistrates conflicts with the prescriptions of the law. “He that has authority to seize my person in the street may be opposed as a thief and a robber if he endeavors to break into my house to execute a writ, notwithstanding that I know he has such a warrant and such a legal authority as will empower him to arrest me abroad.”<sup>58</sup> The infraction of the law momentarily denudes the guilty official of his position of authority in relation to the wronged individual, and the relation that takes the place of that relation, between the functionary and the victim, is no longer that of subordination of citizen to magistrate, but of equality between one individual and another. The function has thus come to be dissociated from the person, and opposition to a magistrate does not mean that his attributes are challenged. Not even the principle of authority is therefore called in question.

Locke makes a similar distinction between orders and authority: One may oppose the orders of the prince without meaning to call his authority in question. Besides, to make it easier to oppose the orders of the prince without prejudice to his authority, “in some countries the person of the prince by the law is sacred, and so whatever he commands or does, his person is still free from all question or violence, nor liable to force, or any judicial censure or condemnation...unless he will...actually put...himself into a state of war with his subjects:”<sup>59</sup> The inviolability of the

<sup>56</sup> *Essay*, sect. 106.

<sup>57</sup> *Essay*, sect. 95.

<sup>58</sup> *Essay*, sect. 202.

<sup>59</sup> *Essay*, sect. 205.

prince or the sacredness of “the person of the chief magistrate” is thus a way of assuring the existence of opposition without endangering the government. The result is on the one hand that opposition to orders does not call in question the principle of authority, and on the other, that opposition transforms the relation of subordination of subject to magistrate into a relation of equality between individuals. At this point, in virtue of the principle that no man has the right to “invade” by force “the right of another,”<sup>60</sup> it is enough to have recourse to justice to obtain satisfaction. The possibility of such recourse marks the line between resistance and opposition. “For where the injured party may be relieved and his damages repaired by appeal to the law, there can be no pretence for force, which is only to be used where a man is intercepted from appealing to the law.” And Locke adds: “For nothing is to be accounted hostile force but where it leaves not the remedy of such an appeal.”<sup>61</sup> The move from opposition to resistance takes place at the precise moment when the authorities refuse to give satisfaction. Opposition and resistance appear then as two stages in the defence of the rights of the individual, opposition being the sign of future resistance.

But it could serve at the same time as a means of preventing insurrection. In speaking of opposition, Locke says that “notwithstanding such resistance, the king’s person and authority are still both secured, and so no danger to governor or government.”<sup>62</sup> Opposition can therefore be regarded as an institutionalized mechanism whose function is to exhaust all possible means short of recourse to resistance. Opposition is thus a safety-valve: It warns the government that one of their orders is unlawful or badly carried out; it signifies unlawfulness and at the same time poses the problem of resistance; and it provides the government with the means of avoiding resistance or else of provoking it. In Locke’s theory, all the wheels are set in motion to prevent entrusting to the people the task of deciding whether a political change

<sup>60</sup> *Essay*, sect. 202.

<sup>61</sup> *Essay*, sect. 207.

<sup>62</sup> *Essay*, sect. 206.

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is called for. Paradoxically, if the right to resist is granted to the people, the initiative to exercise this right is taken away from them. The right is used not with a view to realizing their deepest aspirations, but to defending the established order or restoring it. Such a political philosophy will find in this theory of the right to resist the surest means of safeguarding the state against those who wield the power: The power of the people is kept in abeyance, as a standing warning to the rulers: If these do not heed the warning and betray their mission, this power serves to put the state back on the right road. The recognition of the right to resist is designed to make use of the power of the people by divesting them of the choice of the ends for which it is to be used.

The interest of the state may, no doubt, coincide with the interest of the people, at least theoretically. Now it is obvious that Locke is not concerned to put forward a theory which would make the people sovereign: He "fears as much the sovereignty of the people as that of a despot."<sup>63</sup> And even if he acknowledges that "*Salus populi suprema lex* is certainly so just and fundamental a rule, that he who sincerely follows it cannot dangerously err,"<sup>64</sup> it might be noted that the limits he imposes on the authorities come much more from his recognition of rights of Nature than from his adoption of the Latin maxim.<sup>65</sup> But if the end of the state is to defend the natural rights of the individual, the choice of these rights and the manner in which the relations between them are envisaged may well lead to a discrepancy between the end of the state and the interest of the people.

The state ought to protect the "property" of the individual; for as Locke writes, men form a society for the sake of the "mutual preservation of their lives, liberties and estates, which I call by the general name—property."<sup>66</sup> Now these three elements turn out not to have exactly the same value, and it is property

<sup>63</sup> R. Derathé, *op. cit.*, p. 291.

<sup>64</sup> *Essay*, sect. 158.

<sup>65</sup> *Essay*, sect. 18.

<sup>66</sup> *Essay*, sect. 123; *cf.* also sects. 87 and 173.

in the restricted sense of the term which is the most important element in the *Treatises of Civil Government*.<sup>67</sup>

The end of the state is to protect this kind of property and, by extension, the owners of this kind of property. As Mary Coate has written, "property" and "political power" become once again synonymous terms.<sup>68</sup> It is true that Locke did not explicitly hold what Harrington had, a few years earlier: that political power was a function of economic power.<sup>69</sup> But everything proceeds in Locke's writings as if there was a rule by which power was bestowed in proportion to property. The constitution of Carolina allows a subject to participate in government in a more or less direct manner according to the amount of land he owns; and this might illustrate Locke's desire to defend property. Similarly, whether or not Locke can be shown to have been influenced by the morals of his time, and in particular, by the Calvinist contempt for the poor, the lazy and the vagrant,<sup>70</sup> it is nonetheless true that he seems persuaded that the degree of a man's worth varies more or less with the amount of his possessions: Beggars are corrupt, and laborers have neither the time nor the desire to think of other things besides their own subsistence.<sup>71</sup> Manual labor is even incompatible with reflection, and only reflection allows one to

<sup>67</sup> L. Arénilla, "Propriété et liberté chez Locke," *Cahiers de l'I.S.E.A.* (Recherches et dialogues philosophiques et économiques), No. 99, March 1960, Series M, No. 7.

<sup>68</sup> Mary Coate, *Social Life in Stuart England*: "Finally with the revolution, which a territorial aristocracy, backed by national approval, had effected, the landed interest became still more powerful; once again land and political power were synonymous terms, and, in the writings of Locke, men found a reasoned defence of their most cherished idol, the individual ownership of the land, for property now found itself elevated into a natural right." (p. 12).

<sup>69</sup> Gough, *John Locke's Political Philosophy*, p. 84.

<sup>70</sup> R. H. Tawney, *Religion and the Rise of Capitalism*.

<sup>71</sup> John Locke, *Some Considerations on the Consequences of the Lowering of Interest and the Raising of the Value of Money*.

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become the master of one's liberty and reason.<sup>72</sup> To conclude, even though the word "class" never appears in Locke,<sup>73</sup> there is a very near distinction between the propertied and the propertyless.<sup>74</sup>

It is in this that Locke's work mirrors his times. The political events of the seventeenth century in England did not just constitute a "Puritan revolution," to use Gardiner's phrase; contemporary historians underplay the religious aspect<sup>75</sup> of these events to bring out their economic and social causes. The first revolution under Cromwell favored the birth or the manifestation of democratic tendencies, or even communist ones: The Levellers proclaimed the sovereignty of the people, and the Diggers turned communism into a political program. After the return of Charles II, a republican opposition remained, drawing its support from the laboring classes in London and other big cities, and was responsible for several local uprisings. It was the threat of its continued existence that forced the ruling classes to depose James II and to call William of Orange.<sup>76</sup>

The right to resist in Locke's treatise expressed to perfection the needs and desires of a rising class for a stable state which would protect the property-owners against the despotism of the people. The individual or the people, as the case may be, have the right to judge the conduct of the rulers and, if need be, to resist them. But the conditions of the use of this right are such that it becomes a merely formal and theoretical right, at most a psychological menace hanging over the heads of the authorities

<sup>72</sup> John Locke, *The Reasonableness of Christianity, as delivered in the Scriptures* (*Works*, vol. VI, p. 157): "Where the hand is used to the plough and the spade, the head is seldom elevated to sublime notions."

<sup>73</sup> R. Polin, *La Politique morale de J. Locke*, p. 40, note 5, and p. 272, note 2.

<sup>74</sup> M. Macpherson, "The Social Bearing of Locke's Political Theory," *Western Political Quarterly*, 1954 (vol. VII).

<sup>75</sup> To the extent of incurring the blame of ignoring the religious meaning of 1688. Cf. E. Weil, "La Restauration des Stuarts et les historiens anglais," *Critique*, July 1951 (No. 50), pp. 628-34.

<sup>76</sup> M. Dobb, *Studies in the Development of Capitalism*, p. 174.



and guiding their decisions. Its role is not to destroy the government, but to assure its continuity. This is the difference between rebellion and insurrection: The former seeks to replace one government by another, and to destroy the state to set up a new political structure. The latter is opposed to any replacement and any change; it seeks to preserve a historical structure with its legal scaffolding. It is, besides, for this reason that this right is a consequence and not the cause of the dissolution of government. For as soon as the prince betrays the mission that has been entrusted to him and becomes guilty of the "alienation of his kingdom,"<sup>77</sup> there is a power vacuum that provides an incentive to resistance. This was incidentally the situation that confronted the Chamber of Commons when it took note on February 23, 1689, of the fall of the king: "that King James having endeavored to subvert the constitution of the kingdom by breaking the original contract between King and people...having violated the Fundamental laws and having withdrawn himself has abdicated, and that the throne is vacant."<sup>78</sup> Alone and to the exclusion of any popular will, the power vacuum becomes the cause of insurrection whose only object is to restore the legal order. Just as the right of resistance was designed to keep the prince within the bounds of lawfulness, resistance itself is designed to rebuild a power for whose destruction the prince himself bore the blame, and to have his mission carried out again after it was momentarily interrupted or forgotten.

This connection of the notion of resistance with the notion of trust brings out the fundamentally anti-popular character of Locke's theory of insurrection. The moral or even religious element that remains within the notion of trust, as in the contemporary use of the word for certain colonial statutes, reveals a distrustful and at the same time protective attitude towards the governed. Besides, there is in Locke no provision for a constitutional recognition of the right to resist. The people do not appear to enjoy explicitly this liberty by which they participate actively in the

<sup>77</sup> *Essay*, sect. 238.

<sup>78</sup> H. D. Foster, "International Calvinism through Locke and the Revolution of 1688," *The American Historical Review*, 1926-7 (vol. XXXII), p. 492.

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march of events in their country.<sup>79</sup> Locke's refusal to institutionalize the right to resist emphasizes its theoretical and ideal nature.<sup>80</sup> To sum up, even though it be the violent reaction of the individual who challenges and disowns his state, insurrection, as Locke conceived of it, offers no revolutionary possibilities.

It should be noted, by the way, that "insurrection" did not appear to have this sense, either to Locke's contemporaries or in the nineteenth or the twentieth century. The *Bibliothèque universelle et historique* of 1690 praises the author of the *Treatises of Civil Government* for having treated "with as much freedom as moderation...the whole of a delicate subject."<sup>81</sup> In 1691, it acknowledges once again that "the author of the book has followed a just course midway between two such dangerous opinions whose consequences appear equally terrifying."<sup>82</sup> In the seventeenth century, Mably in his *Traité de l'étude de la politique* advises his readers to read the *Treatises of Civil Government* with the most careful attention, and to reread them several times to notice the errors which escaped Locke himself as a result of that "respect which every Englishman has for his government." On the occasion of the reprint of its fifth edition, the *Gazette nationale* dedicated

<sup>79</sup> Groethuysen, "Le libéralisme de Montesquieu et la liberté telle que l'entendent les républicains," *Europe*, Jan. 1949.

<sup>80</sup> In this connection it is interesting to note that, at the time of the French Revolution, the thermidorian republicans and the constitutional monarchists, anxious to block the road to democracy and to forestall the coming of a dictatorship, refused to write the right to resist into the constitution. The Commission of the Eleven, nominated on Germinal 29 of the year III (April 18, 1795) to draft bills in accordance with the constitution of 1793, assigned itself the different task of drafting a new constitution, and Boissy d'Anglas's declaration in the name of this commission is worth noting: "You will agree that it is impossible to describe with precision the cases in which insurrection is legitimate and becomes a right, and on the other hand, that if there is an occasion on which vague provisions can be disastrous, it is this. But there is a general truth, which is that when insurrection is general, there is no need for apologies, and when it is particular, it is always blameworthy. We have therefore suppressed Article 35 which was the work of Robespierre and which, on more than one occasion, has been the rallying cry of armed brigands against you."

<sup>81</sup> December 1690.

<sup>82</sup> May 1691.

an article<sup>83</sup> to Locke's treatises, and in a period when the democratic spirit was suffering a setback, the reviewer presented the treatises as a "valuable work to which the present circumstances lend new interest." In the nineteenth century, Edouard Laboulaye saw in Shaftesbury and Locke "enemies of democracy who regarded it as dangerous for the state and incapable of creating anything permanent."<sup>84</sup> Finally, in the twentieth century, Locke's theory has never served as backing for political parties who sought to found new political institutions or to abolish private property by an act of government.<sup>85</sup>

The right of civil disobedience, as it appears in Locke's political philosophy, has as its goal the maintenance of a state of law and order, faithful to the original definitions which gave birth to it. The insurrection it sanctions is at the opposite extreme from the revolutionary form of insurrection which claims to express, through the dynamics of classes, the meaning of history. In this sense, it is characteristic of liberal thought, conceived as an axiomatic system that organizes a universe of right in which private property on the one hand and the right to insurrection on the other, are the primitive propositions. Philosophers and especially Locke will undoubtedly deny the arbitrary and contingent nature of the fundamental principles of the community of men, and instead of presenting them as such, will derive them as the expression of a right that is eminently natural and eternal. Revolutionary insurrection looks towards the future; the right of resisting the state, by proclaiming that certain insurrections are legitimate, has no other purpose than to outlaw them all: on the one hand, by denying their "forward-looking" character, and by posing as infallible respect for intangible forms; and on the other, by reducing its existence and its function to a simple ever-present normative idea in the hope that, one day, it will not have to become real.

<sup>83</sup> *Gazette nationale*, March 26, 1796 (No. 186).

<sup>84</sup> E. Laboulaye, *Locke, législateur de la Caroline*, p. 10.

<sup>85</sup> To our knowledge, the republic of El Salvador is at present the only country whose constitution mentions insurrection as the most sacred of duties against a dictatorship that suppresses the fundamental liberties of man. The republic of El Salvador is not an especially revolutionary republic.