

John Locke

Introduction of John Locke as a thinker.

- Locke is the Father of liberalism.
- Locke's ideas in practice can be seen in USA, its constitution & its political practices.

What is liberalism? What is liberal state?

Every political philosophy, represents interest of a particular class. Liberalism is a philosophy of capitalist class. Capitalism has not been a static approach. It has evolved over a period of time.

Essence of Capitalism: - Free Market Economy.

- Justification of absolute right to property.

Liberal state is a limited state. In liberalism,

it is believed that a state does not possess any original powers. Human beings possess original powers.

Source of power is human being. Govt/State uses the power delegated by the people to the govt.

Govt is a trust, people are trustees. Govt cannot act against the wishes of trustees. Liberal constitutions

give fundamental rights to the citizens. For liberals

man is rational by nature. Liberals also believe

that man has passions. For liberals, reason dominates

passion in most of the situations. Man is capable

of social life on its own. It is reason in man that

teaches him to respect the rights of other persons.

Central value of liberalism is liberty. To protect

liberty he prescribes fundamental rights as well

as separation of powers among 3 branches of govt.

Liberal state is a secular state & liberal society is tolerant society.

Liberal politics is politics of reason, liberals do not support violent methods. They suggest constitutional means to achieve objectives.

Liberal societies are open societies. In liberal societies people have freedom of speech & expression. Ideas are not suppressed. Liberal societies respect merit. Liberal societies permit social mobility.

He is considered as a scholar of possessive individualism.

Who is a possessive individual.

- Possessive individual represents the interest of the propertied class.

He is also social contract thinker.

He has witnessed a better phase of British history.

He has witnessed Glorious Revolution 1688. Hence he has a positive impression about human nature which is reflected in his work.

"Two treatise on Civil Government"

In the first treatise he has criticised Filmer's 'Patriarcha'

Second book deals with social contract.

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Locke's objective was to justify limited state. Hence he first attempts to criticise works which justified Absolute State Filmer's Patriarcha & Hobbes' Leviathan were the 2 books justifying absolute authority of the state. Filmer on religious grounds & Hobbes on utilitarian ground. Locke preferred to criticise Patriarcha over Leviathan.

Essence of Patriarcha:

- State is also a family. It is a family of god. Like the authority of father in a family, authority of state is absolute over citizens & subjects.

View of Locke

- Like Aristotle, he also believes that the authority of a statesman is different from that of master.

State & Family are 2 different institutions. Some principles cannot be applied. Family is natural.

State is contractual.

- Authority of father in a family may be absolute, but authority of a ruler has to be based on the consent of the governed. No rational person would ever create a system that takes away his rights which are essential for his wellbeing. Though he does not mention Hobbes but he believes that; there should be a balance of power betⁿ the governors & the governed.

- If state has sovereignty, people should have rights.

- He carries forward the views of Hobbes by modifying

them. If a state expects that people obey the laws or perform their duties towards the state, people can also expect ruling class to respect the rights of the people & work in the interest of the people.

Absolute power to sovereign may not necessarily take man out of painful situations. He may create a system which is also painful. Hence a rational person will always agree to only such contracts which provide much secured basis of his pleasure.

Locke's Social Contract

His views on Human nature:

- He takes a more balanced view of human nature.
- Man is self centered as well as social at the same time.
- Out of these 2 self interest predominates.
- Man has both passion & reason. In most of the situations reason controls passion, but in some situations reason may fail.
- He does not believe that through moral teachings man can be controlled. Religion is not enough to control. We need an institutional arrangement that checks the pessimistic aspect of human nature.

- Acc

According to him, reason in man teaches him to be good to others. If man expects others to respect his life & property he has to respect others' life & property.

o Mind is tabula Rasa (clean slate)

Above statement shows the perspective of Locke as a thinker. It also provides a basis for justification of his political theory.

This state reflects ^{his} epistemology & ontology
(source of knowledge) (end/purpose)

His position is in contrast to the position of Socrates & Plato. Socrates believed that soul has a reason. Knowledge not to be imported. A teacher should help in enlightenment of the soul by engaging a person in dialectics. Plato also believed that understanding the idea or gaining right knowledge by the use of reason can deal with the problem of corruption.

- Locke suggests that man is not born with reason.

Human mind is a clean slate. Our knowledge is based on our experience. Like Hobbes Locke is also empiricist & materialist. It means we learn by experience.

- He is also utilitarian. Pleasure & pain guides man what he would do or what he has to avoid.

- For Locke the solution of human weakness is not in reason but in creating institutions that offset the negative aspects of human nature.

State of nature

o State of nature is a state of peace, goodwill & mutual assurance.

It is Locke's description of state of nature. State of nature is a hypothetical concept used by social contract thinkers.

to show how our lives will be in the absence of common authority. The description of state of nature varies from thinker to thinker depending on his experiences & his political theory. Locke has witnessed Glorious Rev (1688) which resulted into the transfer of power from Monarch into Parliament. It is known as Glorious revolution because it was completely a peaceful event & not a single drop of bloodshed was shed. Thus his understanding of human nature & state of nature is not as pessimistic as that of Hobbes. Man was able to lead a social life on its own in the state of nature. It implies that creation of state is not a necessity but a matter of convenience in Locke. Hence he does not give absolute powers to the state, Only those powers which are necessary to remove inconveniences.

In the state of nature man has natural rights.

The most important rights are right to life, liberty & property. Sometimes he uses term right to property to include right to life & liberty. It implies

- man's life is man's property.
- my liberty is my property.
- my property is my property.

Why my property is my property?

- Initially everything was held in common. When man has mixed his labour with the products of nature it becomes his property. My labour is a part of my personality. Hence I can claim complete ownership on products of my labour.

What made it possible to enjoy the rights in the state of nature?

- Natural law provides scope for enjoyment of natural rights. Natural law is understood by the use of reason.

- o State of nature is a state of liberty & not a state of license.

Natural law governs the state of nature. Natural law teaches us no one ought to harm the other.

Reason of social contract / What were the inconveniences in the state of nature that man enters into social contract?

- In the state of nature there was no common authority & there was no separation of power.

Each man was a law giver & judge in his own case.

- In the state of nature it may happen that man is guided by passion rather than reason. If this happens it will destroy situation of peace & goodwill. There may be a possibility of Hobbesian anarchy. Hence it is better to create an agency that can ensure that man continues to live peacefully.

- According to Locke "One who injures his brother is not expected to condemn himself".

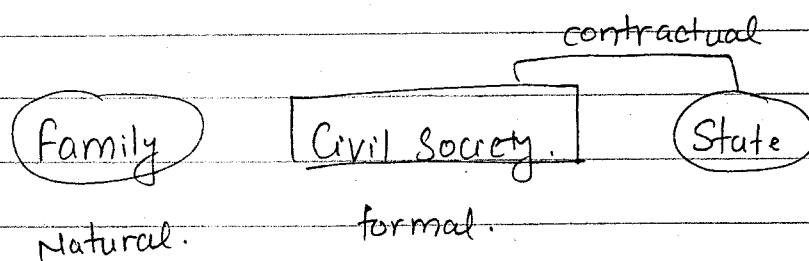
Social Contract :

In Locke there are 2 contracts:

- 1st contract: It results into creation of civil society.

- 2nd : creation of govt.

1st contract : It is a contract of all with all.



Civil society is an intermediate sphere betⁿ family & state. Birth of a civil society marks the beginning of formal recognition of each others' rights. Civil society has lot of relevance in liberal literature. Civil society is defined as a sphere of freedom. Liberal constitutions propose expanding the sphere of civil society & minimizing the space of govt.

2nd contract:

- The members of civil society will elect some among them to represent them in govt.

Govt is chosen by majority & unanimity is not required.

Political ^{minority} majority can not claim that it is not bound to obey the law. According to Locke there is an explicit consent of majority & (implicit) tacit consent of minority.

Terms & Conditions on the government.

- Man has not transferred all rights to the govt.

He mentions that right to life, liberty & property are inalienable rights. (which can't be taken). Sometimes.

he also includes pursuit of happiness as a fundamental right.

- Man transfers only 3 rights, i

- right to make Law

- right to execute law

- right to adjudicate

Thus govt has 3 essential functions & 3 essential branches

Legislature, Executive & Judiciary

- Locke has supported separation of powers. Fusion of power is a threat to rights & liberty.

- Out of all the 3 branches, the most imp is legislature because it directly represents the will of the people.

Least important is executive. He suggests periodic elections. ~~for~~ Legislature need not ~~to~~ continue. He suggests sessions for legislature.

- Locke is a liberal, who believes that less laws means more freedom.

- Executive should continue on a permanent basis.

Executive has to ensure that laws are implemented properly.

Rather than creating more laws, it is more important to implement the existing laws.

Powers of the govt:

o Power of the govt is trust / Govt. ^(contract with sense of honesty.) is fiduciary trust.

Govt is a trust: I

In Hobbes govt has all rights and individual is free only where law is silent. Lockes position is opposite to Hobbes. Rights belong to persons (citizens).

These rights are limitations on the govt. Govt doesn't have any original powers. It enjoys only those powers which are given to govt by the people. Govt is to act as per wishes of the people. Govt is a trust, people are trustees.

Those who are managing the trust, they have to act with complete honesty in their task.

Ex, Govt can't make any laws which takes away man's right to life, liberty & property, as man has not transferred these rights.

Right to resistance:

He gives right to resistance to the ^{citizens against} govt, if govt, if govt breaks the trust.

Conditions of resistance:

- Govt not honoring terms & conditions of contract.
- Govt fails to protect life & liberty & property of people.
- Govt. not allowing legislature to function.
- Govt. not implementing the laws duly passed.
- Govt. putting people under foreign rule.

Nature of resistance:

- He also supports peaceful constitutional methods.

Concept of Natural Law as a check to law of State.

↑
refers to natural law
law, no liberty

17/8/14

o No law, No liberty

Above statement of Locke deals with Natural law. According to him, Natural Law is an essential prerequisite to safeguard the liberty of people.

- Locke believed that man is able to enjoy rights even in the state of nature. This is possible because of the presence of natural law. Natural law can be understood by the use of reason. Peace & goodwill was prevailing in the state of nature as natural law was guiding man that he ought not to harm the others.

Locke view on state of nature & law of nature is in contrast with Hobbes' view on state of nature & law of nature.

Locke gave primacy to natural law. For Hobbes natural law is not law in proper sense. It is nothing more

than "Articles of Peace". According to Hobbes, law is command of sovereign. In a sphere of law a state is sovereign. However, Locke creates checks & balances.

If rights of the people are made limited in certain contexts, rights of state also need to be limited. Natural law limits the law making power of the state. State cannot make any such law which is against the principle of Natural Law. Ex, natural law tells that it is natural for man to possess property. State can not make any such law that deprives man from his natural right. Natural law is a check on power of state. Natural law is known as due process of law. It implies that law must serve its due. The due of law is justice. Any law to be acceptable has to pass the test that it is fair, just & reasonable.

Even following the procedure established by law, such laws may emerge which go against the principles of justice. A comprehensive list of all that will constitute a natural law can't be provided. It depends upon conditions or circumstances. Anything that appears fair & reasonable can be called as natural law. According to Locke, until & unless natural law is not recognized, there is no guarantee of freedom. Hence no law, no liberty.

Critical Evaluation of this concept.

- There are 2 major traditions w.r.t. law

Natural Law & Positive Law

- These 2 traditions are also known as, the tradition of due process of law & the tradition of "procedure established by law".
- Due process of law is American tradition.
- The tradition "Procedure established by law" is a British tradition.
- In USA constitution is supreme, in Britain Parliament is supreme.
- Doctrine of 'Due process of Law' was rejected by Supreme Court of India in AK Gopalan case. However because of many arbitrary laws that came into existence during emergency which resulted into harassment of the rights guaranteed by constitution, SC of India has overruled its judgement as given in AK Gopalan case & gave recognition to the principle of due process of law in Maneka Gandhi case. This shows the realization that Due process of law is

Govt Maki 10 cases
: 10 great Judgements.

basic structure
amendment

due process of law.
fundamental rights.

necessary to protect the liberty. According to SC of India,
the doctrine of due process of law is inherent in
the doctrine of procedure established of law.

Locke's Theory on Right to Property (imp)

o It is for the preservation of property that man
entered into the contract & commonwealth
was created.

o Over his body & over his labour, man has
complete rights. Man also has complete right over
the labour of his slave.

o Locke as a thinker of bourgeoisie class

o Locke as a scholar of Possessive Individualism.

Locke's views on property

- Locke has given absolute right to property.

According to him, right to life, liberty & property
are individual's property. State can not make any
such law that abridges man's right to property.

As per natural law, man has absolute right to property.

After Aristotle Locke was the first person to
provide defence to right to property. However he goes
ahead of Aristotle in justifying absolute right to property.
He does not recommend common use. Locke does not believe
in welfare state. He creates the concept of night watchman state.