

John Locke - a forerunner of the liberalism and contemporary constitutionalism

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Abstract:

Many authors may consider that there is no longer of interest the resuming of the issues of the social contract doctrine, as the contemporary realities appear to have been departed from the principles sustained in the works of the XVIII - XIX centuries philosophers and politicians, who supported and argued the key aspects of this theory and, much more, there no longer exist new theoretical elements whose specific issues be continued and developed.

In our opinion, the bases of philosophical and political doctrine of the social contract are of immediate relevance, because, compared with the theory's classical principles resumed and developed in the modern and contemporary law philosophy and some other branches of constitutional law, represent possible solutions to the fundamental problems of the State's existence and of society, but also with regard to the complex relationships between man - society - state.

In his writings, John Locke gave expression to the political and social ideals of the English bourgeoisie of his time. His treaties on the governance are considered the basic texts of the modern democratic liberal doctrine and, we may say, prefigure the constitutionalism and supremacy of the rights in their contemporary meanings. Together with other authors, we state that the capital significance of John Locke's work for the juridical will and thinking and the modern policy is linked to the ideal of eliminating the discretionary power and arbitrariness of state's power exercising and the establishing of a state society, based on rules in which, the principles of law supremacy and respecting of man's natural rights, to represent the basis for building the social institution.

Keywords: *The concept of experience in philosophy / the sensitivity and reason / man's natural rights / the social state continuator of the natural State / the limits of state's powers / individual liberty / democratic individualism*

1. EXPERIENCE, THE SOLE SOURCE OF OUR KNOWLEDGE

Any incursion into the history of philosophy notes the dualism of the conceptions regarding the knowledge. On one hand, the empiricists who claim the priority of the sensation of the direct contact between man and nature as the unique source or primary means to reach formulating the knowledge, even of a theoretical character, and on the other hand, the rationalism followers, whose argumenting aim the defined priority or even absolute of ideas, of the rational constructions, sometimes independent of any form of sensory knowledge, a priori, which underlies the human knowledge.

This dialogue between the empiricist and rationalist concepts is rooted in antiquity and involves the formation of a way of understanding reality. Aristotle said that what exists is only the individual, but we can only know the general.

John Locke's philosophical work is traditionally framed by commentators of the history of philosophy in empiricist conceptions. However, at a closer analysis of the great English thinker's philosophical concept we note that the sensorial is not the unique source of any knowledge, but only the background from which one starts to develop concepts, categories and laws of thinking.

Even the followers of the rationalistic conceptions, an outstanding representative being Immanuel Kant, did not exclude the material world and the importance of sensation in the process of knowledge. In the Critique of Pure Reason outstanding passages are encountered that illustrate the limitations of implementing the rational knowledges a priori, beyond which they become a pure speculation that has nothing to do with a true knowledge of reality. Here's how Kant expresses plasticly, but suggestively: "The light dove, enjoys in its free flight the air whose opposition it feels and this could have meant that it should manage better in the void space. Likewise, Plato left the sensitive world, as it sets too narrow limits to the intellect, and he ventured beyond it on the wings of ideas into the void space of pure intellect (Kant, 2009: 74)." Emphasizing the duality between the sensitive factor and the rational in the process of knowledge, the same philosopher remarked: "Our nature is such that intuition can only be but sensitive, ie it contains nothing else but only how we are affected by objects. On the contrary, the ability to think, the object of sensitive intuition, is the intellect. Neither of these two properties is preferred to the other. Without sensitivity we would not be given any object and without the intellect, neither would have been thought. The ideas without contents are empty, intuitions without concepts are blind" (Kant, 2009: 95-96).

These considerations are, in my view, necessary to find a key to interpret the general philosophy and social philosophy that has been developed by John Locke, beyond a sensorial and empiricist limiting interpretation.

To better understand the essence of the great philosopher's ideas, especially his theory on the social contract, a brief incursion into his life and work is needed.

John Locke was born in England in 1632 and belonged to a Puritans bourgeois family, being the son of a lawyer. He attended the University of Oxford where he studied chemistry, physics, politics and medicine. He had certain diplomatic and political

assignments since his youth age. From this period dates his earlier writings: *Anatomica* (1668) and *De arte medica* (1669).

The philosopher was not directly affected by the social turmoil that occurred in Britain in the second half of the eighteenth century and had led to civil war in 1649, finishing with the victory of Cromwell, who, as everybody knows, has established a dictatorial regime meant to overcome the resistance of nobility. Cromwell's policy regime collapsed after his death, and monarchy was restored in England. Since Locke took bourgeoisie side, he was forced into exile, settling in 1675 in the south of France and then in Netherlands.

After the establishment in England of the liberal monarchy of William of Orange, John Locke returns home and receives official position such as Commissioner of trade and colonies. This is the most fruitful period of his creative philosophy, when appear his fundamental works: *Tolerance Letters* (1689), *Treaties on Civil Government* (1690) and *Essay on Human Intellect* (1690), which one is considered his fundamental work. In 1695, John Locke published paper *About the Rational Character of Christianity*.

In his writings, John Locke gave expression to political and social ideals of the English bourgeoisie of his time. His treaties on governance are considered as basic texts of the modern liberal democratic doctrine, we may say, they prefigure the constitutionalism and supremacy of the rights in their contemporary meanings. Together with other authors, we assert that the capital significance of the work of John Locke for the thinking and juridical will and modern politics is linked to the ideal of eliminating the discretionary powers and arbitrariness of the exercising of state's power and the establishment of a state society based on rules, in which the principles of law supremacy and respecting of man's natural rights to represent the basis for the construction of a social institution (Popa, Dogaru, Dănișor, Dănișor, 2002: 161-170).

In the history of philosophy, John Locke is considered the founder of English empiricism. Empiricism appeared in England as a reaction to the concepts of substance and causality backed by Galileo, Bacon and Descartes. What is characteristic to John Locke's initial philosophy is that orientation towards the founding of the knowledge towards the experience that signifies the action of man over nature, ie, on the known object.

The philosophical concept is a continuation of the Renaissance thinkers, directed against sterile speculations which Scholastica was practicing a long time. Through artistic, philosophical and literal creation, the renaissance imposed the nature as man's existential environment, object of human knowledge, in relation with which, man manifestes in his genuineness. Therefore, it isn't an abstract nature, detached from man, but a direct relationship of nature with man.

One can notice that the renaissance and modern philosophy, to which John Locke's thinking is included, bring as absolute novelty the link to the two factors that together can establish science: reason and experience. In this period manifested the doubt that senses alone can give a true knowledge of reality and it was refused, on the other hand, the speculation void of sensitive content. The philosophical thinking of that period considered the common sense as a way of inadequate knowledge of some scientific experiments and the scholastic speculative deduction in the dogma as a simple philological game of words (Trandafiroiu, 1998).

Renaissance and later on, modern philosophy raise against the sense and idle speculation the rational approach based on observations and experiences. As stated in the literature, the mistrust of the thinkers of the period, against common sense, didn't have as consequence the denial of the role of experience and senses in knowledge but only the non-acceptance of subjective arbitrariness which these can involve. The reflection on the nature and concept according to which human existence, but also the knowledge have as environment the nature in all its forms, determined Schiller to assert that the existential purpose of man throughout artistic creation, scientific knowledge and, in general, through everything that means creative work, is to "enhance nature admist nature".

The scientific and philosophical discussion problems in John Locke's time group particularly around the concepts of substance and causality that will be criticized from the standpoint of empiricism.

Descartes, like other rationalism followers, believes that the substance is the substrate, the deep essence of things. Substance is that which backs up individual things, having, as the things, an objective character. It is this nature of the substance that will be questioned by the founders of empiricism. John Locke states that the

concept of substance cannot be conceptualized philosophically and Berkeley, seeking to suppress the contradictions that he believed subsisting in the philosophical system developed by Locke, reduced the existence to perception and categorically denied the existence of a material substance, keeping instead his conception of the existence of spiritual substances. Hume is the one making the last step further in the multitude of empiricist philosophers and he denies the existence of a spiritual substances. The substance is, after Hume, a fiction (Bagdasar, 1940:33).

In the criticism of the concept of substance, John Locke starts to study human intellect, the approach of this concept being epistemological, not ontological. Thus, he criticizes the conceptions with regard to the born ideas, stating that all our concepts and categories are of empirical origin. This epistemological orientation had consequences on the social philosophy of the great philosopher. The literature stated that: "through this, the feudal principle of the birth climate is denied and it is imposed the principle of the essential role of experience and education into human spiritual formation."

Here it is what John Locke said in this respect: "It is a view rooted in some people that in the intellect reside certain principles, certain primary notions, characters, so to speak, embedded in the human mind which the soul receives from the first moment of its existence and brings them with him into the world. To convince the readers that are deprived of preconceived conceptions, about the falsity of these allegations, it would be enough if I show (...) that people can acquire by the simple use of their natural faculties, all the knowledge possessed without the help of a born embedding and they can reach to certitude without such notions or original principles" (Locke, 1961:18).

According to this view, the great philosopher says that our only source of knowledge is the experience. At birth, the mind is considered as a blank sheet on which nothing is written. "How does it reach to be endowed? Where does the mind get all reasoning and knowledge elements from? To this I answer in one word: from the experience" (Locke, 1961:81). Therefore, the source of knowledge is formed by senses, sensation being the first source of knowledge. This doesn't mean an identification of sensation by the common sense, because the sensation only can not form the experience. To the sensation the reflection is added. In philosopher's concept,

sensation and reflection are the only ways through which ideas can be obtained. "I say that these two, meaning the material things, as objects of sensation, and processes inside our own minds, as objects of reflection, are for me the only original elements in which all our ideas find their beginnings (...) we have nothing in our mind that shouldn't come otherwise but through one of these two ways" (Locke, 1961:82-83).

Some explanations are needed in regard to philosopher's experience concept. Analyzing his fundamental work "Essay on the Romanian intellect" comes out that his understanding on experience has a dimension primarily subjective. This was noted in the literature, "Locke's experience consists solely of sensations and ideas of reflection. From it is missing just what is really important in the real experience: the objectivity side" (Trandafiroiu, 1998: 32). John Locke believes that even though our knowledge is imperfect it is sufficient to enable us to meet the demands of life on earth, "God has made our organs such as it is best for us in our present status" (Locke, 1961: 69).

Regarding the causal relationship, it is closely linked to the notion of substance. Locke believes that things are subjective to a relationship, but the understanding was confined only to external relations that exist among things. The causal relationship is treated subjectively starting from his conception on experience "the notions of cause and effect have their roots in the ideas received via sensation or reflection and that this relationship, no matter how comprehensive would it be, ends finally in these ideas. For, to have ideas of cause and effect, it is enough to consider that some simple idea or substance begins to exist due to the action of another, without knowing the kind of that action" (Locke, 1961:307).

The space and scope of this study does not allow us a more comprehensive analysis of John Locke's general philosophy and of its importance for the contemporary scientific and philosophic thinking. Nevertheless, we underline the importance of the 'experience' concept which, even if being subjectively treated, does not identify itself with the common sense, because the connotation of the concept includes the thinking activity, "the reflection". It is important to remember that modern science, the exact ones, but also the social ones and the positivist contemporary philosophy came into being and are based on experience, the foundations of this concept being shown by John Locke.

2. THE LIBERTY, LEGITIMACY OF CONSENSUS AND SUPREMACY OF LAW

The fundamental concepts of John Locke's social philosophy are the liberty and equality which, in philosopher's concept, are part of human nature.

The relations between people in nature's status are relationships of power, but the right is not an expression of these relationships, yet the link between a free human being with another free being, a relation achieved through equality. These relationships are naturally constituted before any agreement leading to the establishing of civil society. For Locke there is a natural society before any civil society. In this way, the philosopher continues the aristocratic idea, namely that of man as a social being, a natural dimension of that. If man would not have within himself the call for joining other men, as a natural gift, the civil society could not be established. Therefore, there was a natural right, unwritten, previous to the positive law specific to civil society. The main element of this right is freedom. The right to be free makes human happiness and it is reflected in the possibility of possessing goods. Thus, the ownership is another important element of natural right. In philosopher's concept, this right is absolute, and its preservation and defending is essential for human existence, both in its natural status as in its social status. It is important to underline that for John Locke property is based on work.

John Locke's thinking differs in this respect from Hobbes' philosophy, who argued that the central problem in society is the power. For Locke, the essential question is no longer the governance, but the establishing of a civilization based on rules and a legislative system leading to a sound administrative organization and to limit the discretionary power of the state.

It is necessary, says Locke, a government of the owners that should be given the liberty to achieve their own prosperity and of the society in which they live. The philosopher stands against the arbitrary authority of the sovereign, considering it as unacceptable. Everything must be based on rational, freely consented fundamental regulations, which in turn, to come from a sovereign principle, respectively "tolerance": "In the question of the freedom of conscience, which for years has been so much debated between us, which even entangled much more the matter, ignited the dispute and increased the animosity was, I think, the fact that both sides have exaggerated with

the same zeal and even as wrongly, the claims of one of the parties preaching for the absolute power and the other one calling for a universal freedom in matters of conscience, without determining which are the things justified to liberty and without having shown, which are the borders for imposing and submission" (Locke, 1999:65).

The need for such laws existence is vital for society's existence and community's survival: "If it isn't guided by certain laws, and if its members will not accept to follow a certain order, no society – no matter how free will it be or no matter how unimportant would be the occasion for which it has been established ... will not be able to subsist or be kept united, but will fall apart and shatter into pieces" (Locke, 1999:65).

Unlike Hobbes, Locke believes that the status of human nature has some features that bring it closer to civil society and makes possible the transition. Important to stress is that in philosopher's conception "natural state is a rational, natural and prelegal state". The natural state is rational because through the reason life is regulated within bearable limits, so that here dominates freedom and equality. It is natural because people have few rights in accordance with the reason, as natural law: legality, equality, the right to prosperity and paternal rights are among the most important. The natural state is prelegal because here private justice dominates. This right of private justice means essentially, the needed reciprocity of human behavior, and the validity of each individual's right to his defense. Essentially, in philosopher's conception, the natural state is largely based on moral concepts of universal validity and intangible, and also is a state of social peace.

John Locke believes that the transition to civil society took place following a general consensus, because people wanted maximum security and freedom. The transition from the natural state to civil state was done under a contract that is based on mutual consent and free association principles. It is important to specify that, in Locke's conception, the object of the social contract is the guarantee of the natural rights, and not their suppressing in favor of the sovereign, such as Hobbes thought. Besides, the only natural right which the associates make available to the civil society is to do justice, to punish. The sovereign power is by excellence, a purely juridical and limited one. This theory considered as profound and democratic by most authors, is found in the modern doctrine of the liberal state and democratic constitutionalism.

John Locke appreciates that "people by being free by nature, equal and independent, nobody can take them out of this status to be subjected to another one's political power, without their own consent, by which they may agree with other people to unite in society for their preservation, for their safety, for their lives' peace, to enjoy peacefully of what belongs to them and be better protected from the insults of those who want to harm them" (Locke, 1999:89).

The "judicial power" concept used by Locke, but corresponding to the concept of political power, is divided into three components: legislative power, which role is to determine the facts that violate the coexistence and proper penalties, the executive power, which aims actually to execute the laws issued by the legislative power and the confederative power, exercising the state's power in relation to the other states.

We emphasize the idea consistently stipulated by Locke according to which, in philosopher's thinking, the judiciary power, identifies with the political power, can not be absolute, but must have limits. Thus, the social contract that is legitimizing the political power can be terminated if those holding such authority fail to comply with the assumed obligations. The goal of any political power should be in Locke's conception, the preservation of life, liberty and property. If this goal is not met, the government would be in conflict with civil society and will return to the natural status, which the social contract wanted to surpass. It is, in fact, the applying a juridical principle valid to any contract, namely in case when one of the parties does not comply with assumed clauses, the other party is no longer considered to be bound by the contract's stipulations.

Another difference from Hobbes's thought is that, by establishing the political power, the people doesn't give up its part of sovereignty. John Locke states that if the political power will seize in its favor the natural rights of the people, this is no longer bind by the agreement concluded and may even resort to force to replace those that are governing. As a promoter of the idea of justice, Locke recognizes however the right of the governors to legal constraining within law's limits, so that the civil society's members will follow the rules established for reaching the common good

In our opinion, John Locke is one of the first thinkers who legitimized the revolution, which in philosopher's concept, means the social contract's termination by the people in case the governors exercise their power discretionarily or confiscates in

their favor the natural rights or the exercising of power is no longer aiming towards the common good, but to the good of the governors. In order to avoid getting here, Locke gives great importance to the "person" that can provide and guarantee a balance between the parties, ie the people, as owner of the natural rights, liberty, equality and property, on the other hand, the governors, invested by the social contract with the exercise of the political power, with the purpose to guarantee these rights: that is the judge.

For John Locke, the limit of political power is given by the natural rights of the people for whose defending it has been invested.

3. MAN RELATIONSHIP WITH THE STATE AND THE CONTEMPORARY DEMOCRATIC INDIVIDUALISM

The democratic liberalism claims the principles of Locke's conception in regard to individual's relationship with the state. Natural rights are purely individual. This thesis is backed by the contemporary constitutionalism, which states that the holder of the fundamental rights consecrated in the Constitution can be only the man, not human communities. The social state was established with the purpose to protect the individual rights as natural rights, because within the natural State such guarantees are not offered, and man, through by his nature is also a social being.

For Locke the political society identifiable with the social state is only the product of a partial and provisory surrendering of the people of their natural status in the interests of a better organized justice and a more efficient power. The political power always remains limited by the natural rights.

The purpose of the state cannot be other but to ensure the individual freedom and equality for every member of society, but also to guarantee its legality. In order to justify the existence and bring social peace, the state must be just. It is important to emphasize that in John Locke's conception, the political power is not legitimate in itself, but through the moral values it defends, related to which it exercises its duties. In other words, is not the law that legitimizes the power, but its moral purpose. The problem of the power is a problem of moral.

The purpose of the entire theoretical construction in political domain is to limit the power that is favoring and not to inhibit the individual's freedom. Locke supports the

theory of separation of powers within a state as a guarantee to avoid the arbitrariness in exercising of state power. So that "its fundamental purpose is what we call today - taming of power: the purpose for which people choose and authorize the creation of laws and establishing of the rules as milestones and protectors of the goods of all society's members in order to limit the power and moderate the domination of a group or member of society" (Locke, 1999:189).

By his social political thinking, John Locke establishes the liberalism that will inspire modern liberalism, which on behalf of the concept of limiting the power will make important distinctions between public and private, individual freedom and public obligations, scope of state intervention and intervention area of the individual, powers of the institutions and, not least, the establishing of a law regulatory domain.

The issue the great philosopher had considered is an important theoretical opening of what represents the complex dimension of the relations between society and state, on one hand, and on the other hand, the human individual. We note that in his work, Locke stresses on man as a holder of the natural rights, and, therefore, in his relationship with society and the state, he has a dominant role, the other topics of the relationship have a recessive position, even subordinated to human individual.

This concept, we appreciate, corresponds to "democratic individualism" that characterizes the contemporary society by exaggerate limiting of state intervention in managing the complex relationships between society and individual. The consequence is a decline in social cohesion, a fact otherwise noted, by numerous contemporary philosophers and sociologists. Given the social economic and political realities, the man has become a being for himself that understands the freedom refers almost exclusively to his private interests. The man exists besides others - the coexistence of liberties - and not with others. The consequence is the impossibility to find himself in the social environment, the indifference towards the social, even political activities, emphasizing on the spirit of claiming, which more often considers a personal interest and not a social one and last but not least, the major contradictions between man and on the other side, the society and state.

The contemporary man forgets that no one can be free through himself and only with others, while the natural law, which essentially involves absolute moral and

intangible values, has existence only by social recognition and through the isolation in an exacerbated individualism. Such a conception is supported by Kant. In Kantian moral language the universal law principle is the one which states as a right action the one oriented by the assertion according to which the free will liberty of a man can coexist with the freedom of all, according to a universal law (Kant, 2013: 10-14).

The contemporary democratic individualism turns the man into a mere element of a social mechanism statistically subjected to an abstract coercion of juridical and even moral law, without letting the individual to be able to assert himself in relation with the political force of the state. In other words, in contemporary society, the man who exists only as an individual, not as a person, "is full of rights, but lacking powers" because he only has the illusion of freedom, in reality he is under the domination of the abstract and constraining legislative mechanisms, which the state power has.

In another study dedicated to the doctrine of the social contract, we will try a thorough going analysis of certain aspects of the relationship between man's natural status and social status with reference to the philosophical and theological thinking. Here we only resume ourselves to mention that man can find true freedom only if he exceeds his individual status and becomes a spiritual person, which implies his existence in communion, ie not an existence besides others, but together with others, without sacrificing his personality's individuality. We support thus, the transition from the democratic individualism that, together with masses' democracy, as forms of constitutionalism and contemporary democratic liberalism, are the precariousness of the democratic ideal to the "democratic personalism" emphasizing the idea of communion of the free persons, communion that does not identify itself with the abstract, rigid and statistic "social state" of the juridical, economical and moral laws, whose purpose is the man as a free, spiritual and social person, and not the mere supremacy of the law.

The individualism, that characterizes the contemporary society and whose theoretical vein is also found in the works of John Locke, was noticed including in the theological thinking. This individualism is actually an exclusivism which, in the name of freedom, relates man to himself with the exclusion of the other. Father Theophilus Părăian stated on this meaning that, "we are more for ourselves than for others." Prof. Dr.priest Dumitru Stăniloae rightfully stated: "my reality, consisting of soul and body and

activated, is performed through the acts of relationship with other people. I become fully real in Christ, because all are real in Him, because we are real together" (Stăniloae, 2003:263).

I think we can make a distinction between the existence and reality of man. All exist, but not all people exist in the authenticity of their nature. The authenticity of the nature really means the reality of existence that can only be found if man exceeds his individual status and becomes a spiritual person and by this, is free in communion with God and through God, with others.

References:

- Bagdasar, N., 1940. Introduction to David Hume. Research on Human Intellect. Bucharest: Romanian Society of Philology*
- Kant, I., 2009. Critique of the Pure Reason, Bucharest: Gold Encyclopedic Universe Publishing House*
- Kant, I., 2013. Metaphysics of Morals. Bucharest: Antet Publishing House*
- Locke, J., 1961. Essay on human intellect, Vol. 1. Bucharest: Scientific Publishing House*
- Locke, J., 1999. Essay about tolerance, in Foundations of modern political thinking. Iași: Polirom Publishing House*
- Popa, N., Dogaru, I., Dănișor, Gh., Dănișor, D.C., 2002. Fhylosophy of Law. Major Trends. Bucharest: All Beck Publishing House*
- Stăniloae, D., 2003. Orthodox Dogmatic theology. Vol.2, Bucharest: The Publishing House of the Biblic and Romanian Orthodox Missionary Church Institute*
- Trandafiroiu, N, 1998. Substance and causality in interpretation of English empirism. Bucharest: All Publishing House*