

Phil 114, February 17, 2012
John Locke, *Second Treatise of Government*, Ch. 7–9, 10–12, 14–19
The Declaration of Independence

The state of nature

The state of nature is *not* necessarily a state of *war*. It becomes a state of war only when someone violates the law of nature. “*Want of a common Judge with Authority, puts all Men in a State of Nature: Force without Right, upon a Man’s Person, makes a State of War*, both where there is, and is not, a common Judge” (III, 19).

Nevertheless, there are certain “*inconveniences*” of the state of nature from which only political organization promises relief. Recall that in the state of nature everyone retains the right to punish violators of the law of nature and to the right to exact reparations from them.

- (i) Even if everyone knows the law of nature, they may disagree about who did what. This is so, in particular, because of self-love. People will tend to underestimate the injuries they do to others, and overestimate the injuries others do to them.
- (ii) People also tend to get carried away in punishing those who they believe have injured themselves. For reasons (i) and (ii), score-settling and vigilantism threaten to spiral out of control.
- (iii) On the other hand, people are less conscientious about punishing those who have injured others (but not themselves). For this reason, violators are less reliably punished in the state of nature than in civil society. This means that punishment is less of a deterrent, which in turn means that violations are more frequent.
- (iv) The law of nature is indeterminate, and therefore *bona fide* disagreements may arise about what the law of nature requires (over and above any disagreements about who did what).

The purpose of political institutions

To remedy these inconveniences, we need:

- (1) Clear and determinate *laws* that spell out what the law of nature requires of everyone.
- (2) A recognized and impartial *judge* for resolving disputes about the application of the law of nature.
- (3) A reliable, known *executor* of the judge’s decisions. A large part of the executor’s responsibility, of course, is exercising our natural right to punish violators of the state of nature.

Contrast with Hobbes:

- (1) First, the inconveniences can be remedied *without* unlimited and unconditional authority. Indeed, also without *unique* authority; Locke imagines a separation of powers.
- (2) Second, if remedying the inconveniences required unlimited and unconditional authority, then it would *not be worth* remedying them. “Much better it is in the State of Nature wherein Men are not bound to submit to the unjust will of another” (II, 13). Recall the bit about trading “pole-cats” for “lions.”
- (3) Finally, if remedying the inconveniences required unlimited and unconditional authority, then it would be *impossible* to remedy them. The point is not that we have an absolute right over ourselves that we cannot alienate, but instead that we have no such right over

ourselves in the first place—that’s why we can’t alienate it. We are God’s property, so what right do we have to sell ourselves into slavery?

Two social contracts:

Locke imagines a two-stage process for remedying these inconveniences of the state of nature. The *first* stage is a *social compact*: a unanimous agreement to join in one commonwealth for the purpose of establishing a political order that will remedy the inconveniences of the state of nature. All of the people living in a particular area, including all of those who own the land in which it consists, agree with one another to form a community in order to establish a government that will remedy the inconveniences of the state of nature. Each of us

- (i) gives up to the community part of his right to preserve ourselves and mankind in whatever way the law of nature allows,
- (ii) agrees to preserve himself and mankind only in the ways permitted by the community’s positive laws, which may be more constraining than the law of nature,
- (iii) gives up to the community his individual right to punish, and
- (iv) agrees to assist the community in its execution of that right.

The community’s decisions (about what laws to have, how to punish, etc.) are simply those of a majority of its members.

The *second* stage is an agreement between the people—the community constituted in the first stage—and its government. We, the people, decide, by majority vote, what our government should be and who should occupy which offices within it. We, the people, *loan* to this government our collective right to punish. We agree to assist this government in its execution of that right.

This government’s rights are *limited*. Why? (a) It has not acquired any right to take our life, liberty, or property, since we had neither reason, nor power to transfer to it such a right, and (b) its laws must, in any event, respect the laws of nature.

This government’s rights are *conditional*. We, as a people, only *loan* our rights to government, on the condition that it uses these rights solely for the purpose of remedying the inconveniences of the state of nature.

This government’s rights are *divided* between the legislative and executive-*cum*-“federative” (i.e., foreign-policy) branches. But isn’t the legislative supreme? Not quite: “Between an Executive Power in being... and a Legislative that depends on his will for their convening, there can be no *Judge on Earth*” (§168).

Right of revolution

Locke insists that the people (or community) reserves the right to change the government, by violence if necessary—or, as Locke euphemistically puts it, by “appeal to heaven.”

There seem to be two distinct grounds for dissolving government, which Locke does not distinguish very clearly.

First, the government can *violate the law of nature by seeking to take* the lives, liberties, and estates of the people. In this case, the right of revolution is simply the right to preserve oneself and mankind.

Second, the government can *do a poor job of protecting* the lives, liberties, and estates of the people (without necessarily violating the law of nature against them—the government, for example, might make a stupid and dangerous treaty with neighboring states). Why do we have the right to dissolve such a government? Recall that we do *not alienate* our rights; we merely *loan* them to the government on the condition that it use them to protect our lives, liberties, and estates. If the government violates this condition, then it loses its rights. We, so to speak, foreclose on the loan. Who judges whether the government has forfeited its rights? The community, that is, a majority of us.

Locke seems to think that the only problematic relationship is the relationship between the community and its government. What about the relationship between individuals and the community? What about the “tyranny of the majority”?

Are our obligations to accept our *community’s* decisions unconditional? Do we have the right to resist our community *if it seeks to take our life, liberty, or estate*? On the one hand, the answer seems to be “yes,” since we can never give up our right to preserve ourselves. On the other hand, where would this leave taxation? What if you are in the minority that opposes a tax hike? Why isn’t the majority taking your property? Why don’t you have a right to revolt?

Do we have the right to resist our community *if it makes bad decisions*, say, in whom it selects to govern? It seems not. At very least, such a right cannot be grounded in the way in which the right to resist the *government* is grounded. For we don’t simply *loan* our rights to the community.

Consent

Consent seems to play two roles for Locke. First, consent seems to figure as part of his criterion of *legitimate* government. A political regime is legitimate if and only if (i) it *could* have been consented to from (ii) a position of natural freedom and equality (iii) in a way that does not violate the law of nature. Let us call this kind of imaginary consent “legitimizing consent.”

Legitimacy, for Locke, is a necessary, but not sufficient condition of political obligation. I can have political obligations only to a legitimate government. But the fact that a government is legitimate does not necessarily mean that I have political obligations to it.

How, then, do we, as individuals, acquire obligations to particular governments? We acquire obligations to particular governments in virtue of having obligations to particular communities, which have, by majority vote, decided to institute those governments. But this just pushes the question back: How do we acquire obligations to particular communities?

Given our natural freedom and equality, the answer must lie in our consent. To distinguish this kind of consent from legitimizing consent, let us call it “obligating consent.”

Express consent: Public, explicit announcement. In giving express consent, one joins a community, making oneself a member in perpetuity.

Did I ever agree to join? I was just born here. If not, do I have any obligation to abide by the majority's decisions? Why can't I start my own state, with some of my friends? Perhaps my ancestors, who were immigrants, decided to join this community. But should I be bound by my ancestors' decisions? Is this compatible with my natural freedom? Locke agrees that I am not bound by my ancestors' choices. So it seems to follow that most people do not have political obligations. Is this problematic? If so, how might Locke respond?

Locke has a trick left. *Tacit* consent, which occurs either through inheritance, or by "enjoying dominions."

Inheritance: "[The father] may indeed annex such condition to the Land, he enjoyed as a Subject of any Commonwealth, as may oblige his Son to be of that Community, as may oblige his Son to be of that Community, if he will enjoy those possessions which were his Father's; because that Estate being his Fathers Property, he may dispose or settle it as he pleases" (116). A father cannot bind his son to the community, but he can bind his property (especially his land) to the community. And if the son wishes to inherit this property, he must agree to be part of the community. His acceptance of his inheritance is his tacitly consenting to be a member of the community.

What about people who don't inherit anything?

Enjoying dominions: Someone tacitly consents for as long as she "enjoys" any part of its "dominions."

How then do we distinguish between "denizens" and resident "aliens," who also enjoy dominions? Perhaps they can be understood to have consented to different things, since their purpose in consenting is different. The denizen consents to *membership*, in order to enjoy the full range of benefits of the commonwealth for his lifetime and that of his children. The resident alien, by contrast, consents only to being subject to the regime for only so long as she resides in its territory, in order to enjoy the basic protections of its law during her stay.

What moral difference, then, is there in the *tacit* consent of denizens to be members and in the *express* consent additionally given by some denizens? Locke's answer seems to be that express consent is to be a member in *perpetuity*, whereas tacit consent is to be a member with an option to leave.

Locke's aim is to show how political obligations are compatible with natural freedom. To succeed, therefore, it seems that he must maintain that people *freely* consent to the rule of their governments. When a son accepts his inheritance, is he freely consenting to membership? When someone continues to reside in country (e.g., because she wants to stay close to her family, because she has no money to move, because she would not be able to support herself elsewhere), is she freely consenting to membership?

In ordinary cases of tacit consent, in which a person, by doing X, tacitly consents to something, the person giving her consent must (i) know that her doing X has this normative significance and (ii) be free not to do X. Does Locke's example of "tacit consent" meet these conditions?

Review Questions:

1. Locke writes: "*Force without Right, upon a Man's Person, makes a State of War, both where there is, and is not, a common Judge*" (III, 19). Would Hobbes agree? Must someone violate the law of nature, according to Hobbes, in order for there to be a state of war? Could force in a state of nature, for Hobbes, ever be "without right"?
2. Suppose I say, "I am thinking of canceling the final. Any objections?" What must your response be like to count as a case of valid tacit consent? What sort of conditions might invalidate your consent?
3. What does Locke mean by an "appeal to heaven"? Explain the metaphor.