

Phil 2, March 31 and April 2, 2010

The state of nature

A state of war between us and some person arises when that person violates the law of nature. For Locke, the state of nature is not necessarily a state of war *of all against all*, as it is for Hobbes, but it is (almost?) invariably a state of war of some against others. (Why?)

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.

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 law of nature.
- (3) A reliable, known *executor* of the judge’s decisions.

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. (Pole-cats v. lion.)
- (3) Finally, if remedying the inconveniences required unlimited and unconditional authority, then it would be *impossible* to remedy them. Since we are God’s property, we don’t have the right to submit to such authority.

Two social contracts:

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. 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 *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 and agree to assist it in its execution of that right.

This government's rights are

- (1) *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.
- (2) *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.
- (3) *divided*: between the legislative and executive-*cum*-“federative.”

Right of revolution

Locke insists that the people (or community) reserves the right to change the government, by violence if necessary—as Locke euphemistically puts it, by “appeal to heaven.” The Declaration of Independence: “That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government.”

There seem to be two distinct grounds for dissolving government. 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. 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 simply forfeits its rights.

Consent

How, then, do we, as individuals, acquire obligations to particular governments? By having obligations to particular communities, which have, by majority vote, decided to institute those governments. But how do we acquire obligations to particular communities? Given our natural freedom and equality, the answer must lie in our *consent*.

Express consent: Public, explicit announcement. In giving express consent, one joins a community, making oneself subject to the decisions of its majority in perpetuity.

But did I ever agree to join? I was just born here. Perhaps my ancestors, who were immigrants, decided to join this community. But why should I be bound by my ancestors' decisions? Is this compatible with my natural freedom?

Locke has two tricks left. First, *inheritance*: 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 consent to be part of the community.

But: When a son accepts his inheritance, is he freely consenting to the rule of the government?

Second, *tacit consent*: Even if someone is not a member of a commonwealth, she still tacitly consents to the rule of its government for as long as she “enjoys” any part of its “dominions.” In giving tacit consent, one makes oneself subject to the regime for only so long as one resides in its territory.

But: 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?