

**Phil 2, March 31, 2011**  
**Locke, *Second Treatise*, Book II, Ch. 2–4, 7–9, 19 (sections 211–228 only)**

*Natural Freedom and Equality in Locke*

Men are *naturally free and equal* in that, prior to some decision that they make, they have (i) *a duty to abide by the law of nature*, which is God's will, but (ii) *no duty to obey other men*. They can do as they think best, within the bounds of the law of nature, without having to ask for any human being's permission.

*The property argument for the law of nature:*

- (i) If X creates Y, then Y is X's property.
- (ii) God created all human beings.
- (iii) Therefore, human beings are God's property.
- (iv) If Y is X's property, then X has the claim-right to decide whether Y will be destroyed. This is a claim-right. It entails that others have corresponding duties not to destroy Y, unless X consents to their doing so. X's right is not a mere "liberty": an absence of a duty to refrain from destroying Y, like's Hobbes's "right of nature."
- (v) Therefore, God has a claim-right to decide whether human beings will be destroyed.
- (vi) If God had at some point wished to delegate to some particular person the exercise of this right, then He would have communicated this wish either naturally—i.e., through creation—, or through revelation.
- (vii) The fact that all human beings are roughly equal shows that God did not communicate this fact naturally.
- (viii) Scripture shows that God not communicate this grant through revelation.
- (ix) Therefore, God has not delegated the exercise of this right to some particular person.
- (x) Therefore, God retains this right.
- (xi) Therefore, everyone has a corresponding duty to God *not to destroy* him/herself and then not to destroy other people.
- (xii) Therefore, the law of nature: Everyone has a duty to God to *preserve* him/herself and a duty to *preserve* other people, unless this duty conflicts with (a) his/her duty to preserve him/herself or (b) his/her duty to enforce the law of nature by punishing violators.

*Comments on the property argument:*

- Notice that we owe our duty not (say) to kill one another *to God*, not to one another.
- Our duty not to kill ourselves limits the kinds of contracts that we can enter into. "This *Freedom* from Absolute, Arbitrary Power, is so necessary to, and closely conjoined with a Man's Preservation, that he cannot part with it, but by what forfeits his Preservation and Life together. For a Man, not having the Power of his own Life, *cannot*, by Compact, or his own Consent, *enslave himself* to any one, nor put himself under the Absolute, Arbitrary Power of another, to take away his Life, when he pleases. No body can give more Power than he has himself; and he that cannot take away his own Life, cannot give another power over it" (IV, 23).

*The argument for the right to punish*

- (i) The law of nature would be impotent, if there were no means to enforce it.

- (ii) God did not intend for the law of nature to be impotent. (How could He intend that? The law of nature is His will.)
- (iii) Therefore, God intended *someone* to have the right to enforce the law of nature.
- (iv) Since we are all equal, however, we know that God did not intend only some of us to have natural rights that the others lacked.
- (v) Therefore, God intended *each of us* to have the right to enforce the law of nature. (It must, therefore, be a liberty-right, compatible with the liberty-rights of others.)
- (vi) If God intends X to have a right to Y, then X has a right to Y.
- (vii) Therefore, each of us has the right to enforce the law of nature: to punish offenders for the purpose of *restraint* (i.e., deterrence).

“I doubt not but this will seem a very strange Doctrine to some Men,” Locke admits. But he observes that it makes sense of certain of our practices. After all, a judge has the right to punish a foreigner who breaks the law of nature, even though the judge and foreigner are still in a state of nature with one another. The foreigner has not consented to the judge’s authority. So the judge must be exercising a natural right that he has to punish the foreigner.

### *The state of nature*

A state of war between you 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.

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 applications 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. (Pole-cats v. lions.)
- (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. (See above.)

### *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 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 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.

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 changes her rights or duties in the relevant way and (ii) be free not to do X. Does Locke's example of “tacit consent” meet these conditions?

### **Review Questions:**

1. What does Locke mean when he says that each of us is bound “not to quit his Station willfully”? Why is each of us so bound? Why does this limit the kinds of contracts in which we may enter?
2. The following policy was announced on the first paper topic:  
We may circulate to the rest of the class a few papers, *with the authors' names removed*.... We would be grateful if you would allow us to do this.... However, if you do *not* feel comfortable with this, then *please say so at the top of your paper*. Suppose did not you say so. Why did this count as a case of “tacit consent”? Come up with imaginary **two** changes to the announcement and/or your situation that would have made your not saying so *not* a case of tacit consent.