

Philos 117AC, Fall 2017
Setting the Stage:
Declaration of Independence

Main Text:
John Locke, *Second Treatise of Government*, Ch. 7–9, 16, 19

The inconveniences of the state of nature:

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 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.

Limits, conditions:

- (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). (Better to be surrounded by “pole-cats” than “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 not held by any *unique* agent, but instead are *divided* between the legislative and executive-*cum*-“federative” (i.e., foreign-policy) branches.

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.

Question: 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”?

Does political obligation require consent?

How do we, as individuals, 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 a member in perpetuity.

Objection: 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.

Tacit consent, which occurs by either (i) inheritance or (ii) "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.

Enjoying dominions: Someone tacitly consents for as long as she "enjoys" any part of its "dominions," even if she hasn't inherited anything. This is consent not to be part of the community, but instead only to be subject to the government for only so long as one resides in the territory.

Objection:

- 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?
- For example, 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 the second condition met?