

Notes on John Locke's *Second Treatise on Government*

1. Locke's primary aim in the *Second Treatise* is to show that absolute monarchy is an illegitimate form of government, lacking the right to coerce people to obey it. The theory of government defended by Sir Robert Filmer, which Locke attacked in the *First Treatise*, held that:

- a) the king's authority/right to rule his subjects derives from the right that a father has to command obedience from his children, a right that is divinely ordained,
- b) that right is unlimited; the king has an unlimited right over the lives and property of his subjects, as a father has an unlimited right over the lives and property of his children (as long as they remain children).
- c) hence, government does not require the consent of those subjects to restrict their liberty or seize their property, and
- d) those subjects do not have a right to revolution, to replace the king with someone who will better serve their interests.

2. What type of government does Locke believe individuals have a duty to support and obey? To answer this question we need to see what rights Locke thinks man enjoys in the "state of nature" and the reasons why men leave the state of nature and establish civil society/government. The "state of nature" is what society would be like if all political and legal institutions (legislature, police, judges and court system, prison system, etc.) were to disappear. Hobbes argued that this state would be one of lawless anarchy, that everyone would be so miserable there, so eager to escape it, and so intent on making sure that they never returned to it, that they would set up an absolute sovereign to maintain law and order. (Locke's reply to this argument is found at the end of P. 93: "This is to think that Men are so foolish that they take care to avoid what Mischiefs may be done them by Pole-Cats, or Foxes, but are content, nay think it Safety, to be devoured by Lions.") Hobbes also held that there could be neither justice nor injustice in the state of nature, because these require the existence of government and laws.

Locke claims that the state of nature is a state of perfect freedom and equality. In saying this, he means to deny that the relation of political "superior"/political "inferior," where the latter has a duty to obey the former, is "natural." Where that relationship does exist, it exists because it has been created by a free and voluntary consent of the "inferior." There is a "natural" relation of "superior"/"inferior," namely, the one between a father and his minor-aged children. Young children have a duty to obey their father whether or not they ever consented to do so. But the authority of political superiors to inferiors is not like that of father to children. It rests on consent.

Locke holds that in the state of nature there is a "law of nature" which is plain to everyone who will use his reason: "don't harm another in his life, liberty, health, or possessions." (P. 6) Natural law forbids us to violate others' natural rights. To say that a right is "natural" is to say that it is a self-evident, pre-legal or moral right. This means that it exists prior to and independently of the legal and political institutions of any given society and that it is neither necessary nor possible to derive it from some allegedly more basic moral principle (e.g. the principle of utility). Locke also holds that the rights to life and liberty are "inalienable" (cf. P. 23), meaning that they cannot be waived or transferred.

(They can, however, be “forfeited.” The execution of a murderer does not violate his right to life, because he forfeited that right when he committed a murder.) The reason why they are inalienable, Locke thinks, is that we belong to God. To kill ourselves or allow ourselves to be killed, or to submit to slavery, would be to violate God's property rights in us.

As well as rights to life, liberty, and property, there are two other rights that everyone enjoys in the state of nature: the right to punish anyone who transgresses the law of nature (including those who violate the rights of others), and the right to exact redress or compensation from those who have violated one's own natural rights.

3. The main drawback to life in the state of nature is that our lives and property are not safe or secure there, because violations of the law of nature are not fully and consistently punished. Part of the problem is due to there being several vigilante forces working independent of each other instead of a centralized, coordinated police force. Another part of the problem is that those who seek retribution and compensation from others who've violated their rights will be acting as judge and jury in their own case, and so, will exaggerate how much compensation they are entitled to and/or how severe a punishment the malefactor deserves. (P. 124-126). To solve these problems we need to leave the state of nature and set up civil society. This requires transferring/alienating to government the right to enforce the law of nature. We enter into a contract with government whereby we agree to obey it and surrender to it our right to punish transgressors of natural law in exchange for it agreeing to respect and protect our natural rights to life, liberty, and property.

4. Among the rights which Locke claims we have in the state of nature is a right to "property." What Locke means is a right to enjoy exclusive control over and enjoyment of certain external goods (one's "private property"). If someone has such a right, it follows that others have a moral duty not to interfere with her use of the good. What are the goods to which we have or can acquire a private property right for Locke? First, all men have a natural and inalienable right to their bodies and labor power. (Though Locke doesn't use the term, this is commonly referred to as the right to "self-ownership"). Since slavery violates self-ownership, it violates the law of nature (unless it is punishment imposed on someone who himself has violated that law). Second, we can acquire a right to "personal" property like clothing, books, or a car. Most importantly, we can acquire a right to natural resources like land or minerals and capital goods like factory equipment. One way of acquiring a right to something is by having it transferred to you *via* gift or exchange by someone who already owns it. But if the good in question is not already owned by anyone else, then you can "appropriate" it by "mixing" your labor with it. Appropriation of what is in "the commons" is something that we can do both in the state of nature and under government.

Locke simply asserts that men have natural rights to life, liberty, and health. He thinks it is self-evident to anyone who confers reason that such rights exist. Hence, it is unnecessary to try to derive these rights from any more fundamental rights, because they are fundamental rights. He treats the right to private property differently inasmuch as he tries to justify or argue for it.

1) Men have a right to life and a right to their bodies. (P. 27) But such rights would be worthless if one didn't also have a right to what is absolutely necessary to stay alive, namely, food. If we needed the unanimous consent of others before we could

legitimately appropriate any food or land from “the commons” to feed ourselves, then we would all die of starvation, because it is impossible ever to get unanimous consent. Hence, the appropriation of food and land for one's exclusive, private use must be legitimate. (P. 26 & P. 28) This argument infers private property rights in external goods from the right to self-ownership.

2) The right to one's labor power is a right to the value one creates by means of one's labor. If one considers anything that has been transformed by having been labored on, 99% of its value was created by the person who labored on it, while only 1% of its value is natural. (P. 40) Hence, the right to one's labor power implies that one owns 99% of whatever one labors on (provided it was previously unowned, of course). It might as well be a right to the whole thing.

3) Since labor is intrinsically unpleasant and is undertaken only in expectation of enjoying the value one creates by it, it would be unjust to thwart the expectation. One should enjoy private property in the good as a reward or compensation for the pain of laboring on it. To let others have the “benefits of another's pains” (P. 34) would be unjust. This is an argument for private property that appeals to the principle of *just desserts*.

An objection to 1) is that land and other natural resources could be exploited to create wealth in ways that don't give anyone a private property right to them. For example, a community of farmers could agree that any use to which the community's land is put has to be approved by a committee, elected by the majority; everyone works and is paid in proportion to how hard he works or how much he produces. No one would starve to death within such a system, but no one farmer would own and control the land. “Public” ownership of the major means of production may be less economically efficient than private ownership, but it is not necessarily a system under which people are doomed to starve.

Another objection to Locke's argument is that a private property right to x includes:

- 1) a right to exclusive control over or use of x; others cannot use x without one's permission.
- 2) a right to dispose of x as one sees fit, that is, to give it away, trade it, sell it, rent its use to others, etc., and
- 3) a right to dispose of x after one dies in a manner specified before one's death in one's will—a right to bequest.

These are distinct, independent components of our ordinary concept of a private property right. One can imagine an economic system which granted individuals 1) but not 2); since 2) is essential to capitalism, such a system would not be capitalist. 3) is one part of what is meant by a right to private property, and Locke clearly believes that our right to property includes it. The problem is that his arguments only seem capable of justifying the first and maybe the second parts of a private property right, not this third one.

Locke held that there are limits to how much one can appropriate by mixing one's labor with it. First, one must leave “enough and as good” (P. 27) land, etc. for others to acquire. Second, one must make not let any of it go to waste. (“Nothing was made by God

for Man to spoil or destroy" P. 31). This second condition implies a limit on the right described in 2) above; as private property is normally understood, it implies the right to destroy one's property. It is hard to see what the rationale for this second condition could be, especially if the first one is satisfied. As long as I leave enough and as good land for others to appropriate, then I don't harm them by appropriating more than I can use and letting it go to waste. Why should others care that much of my land lies fallow, if there's plenty of equally good, unclaimed land for them to make use of?

The introduction of money allowed people to appropriate more than they could make use of themselves without running afoul of the "no waste" condition. Someone who grows more apples than he himself can eat but then sells the surplus does not let any of it go to waste, since the money he acquires is nonperishable. Locke says in P. 50: "But since Gold and Silver, being little useful to the life of Man in proportion to Food, Rayment, and Carriage, has its value only from the consent of Men, whereof Labour yet makes, in great part, the measure, it is plain that Men have agreed to disproportionate and unequal Possession of the Earth, they having by a tacit and voluntary consent found out a way, how a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus, Gold and Silver, which may be hoarded up without injury to any one, these metalls not spoiling or decaying in the hands of the possessor."

5. The purpose of government—the reason why we enter into the "social contract" that creates it—is to protect our natural rights, especially our property rights. A contract becomes void if either side reneges on its terms. A government that violates our rights reneges on the contract and thus releases us from our duty to support and obey it. That is, we have a right to rebel against it. (Cf. P. 168 and 208). The "Absolute, Arbitrary Power" (P. 137) claimed by absolute monarchs violates subjects' rights to liberty. Further, by taxing their subjects without their consent, they violate their property rights (P. 140). Hence, there is a right to revolution against absolute monarchs.

6. Locke's social contract theory implies that protecting our natural rights and not violating them is a *necessary* condition of a government's having legitimacy, or of our having a duty to support and obey it. But it is not a *sufficient* condition. Another necessary condition is that the people have "consented" to the government. The alien who visits a country is not obligated to obey its positive laws, because he has not consented to them. If he is punished for committing a criminal act, it must be because he has violated natural law, and the government, being in the state of nature with respect to him, has the right to punish such violations. (P. 9)

7. In consenting to leave the state of nature and establish government, we put ourselves under an obligation to submit to the will of the majority, even when we are in the minority. P. 98: "If the consent of the majority shall not in reason, be received, as the act of the whole, and conclude every individual; nothing but the consent of every individual can make any thing to be the act of the whole; But such a consent is next impossible ever to be had, if we consider the Infirmities of Heath... which in a number... will necessarily keep many away from the publick Assembly."

Locke also says that by consenting, one binds only oneself, not others, not posterity. P. 116: "whatever Engagements or Promises any one has made for himself, he is under the

Obligation of them, but cannot by any Compact whatsoever, bind his Children or Posterity. For this son, when a Man, being altogether as free as the Father, any act of the Father can no more give away the liberty of the Son, than it can of any body else.”

8. Locke distinguishes explicit consent (saying "I do" or "I agree") and "tacit" consent (you don't explicitly agree to whatever is at issue, but it is, supposedly, reasonable to infer from your behavior that you do actually consent). Express consent is necessary for one to be a “member” of a Commonwealth, and anyone who gives such express consent is forever subject to that Commonwealth, unless it frees him of the obligation to submit to it. (Cf. P. 121 and 122). One tacitly consents to obey the laws of a government just by owning property that is under the government’s jurisdiction or “barely travelling freely on the Highway” (P. 119). That is, one tacitly consents just by virtue of accepting the benefits of protection of one’s property or person provided by government. This obligation, in contrast to that of the person who expressly consents, is not perpetual, lasting only as long as one continues to accept the benefits. (P. 121: “whenever the Owner, who has given nothing but such a tacit consent to the Government, will, by Donation, Sale, or otherwise, quit the said Possession, he is at liberty to go and incorporate himself into any other Commonwealth, or to agree with others to begin a new one...”)

Presumably, “members” of the “Commonwealth” have a right to vote, while nonmembers don’t. Nowhere does Locke say that everyone born in a society should have the right to become a “member” of it, with the voting rights that membership includes.

CONSENT AND THE LEGITIMACY OF THE STATE

To say that a form of government is *legitimate* is to say that it has a *right* to enact laws and enforce them *via* coercion. If a form of government is legitimate, then citizens have a *duty to obey* it—its police, judges, laws, etc.

For Locke there are two separate conditions that a government has to satisfy in order for a citizen to have a duty to obey it:

1. It must respect and protect its citizens' natural rights to life, liberty, and property.
2. It must enjoy the *consent* of that citizen.

Each condition is necessary; neither is by itself sufficient. Hence, if you consent to a form of government that violates either your own or other people's natural rights, you have no duty to obey it (no more than you have a duty to commit a murder that you have promised to commit). Nor do you have a duty to obey a government that does a wonderful job of protecting everyone's natural rights but whose authority you have never consented to.

Is Locke correct in claiming that consent occupies this central role in rendering the state's power legitimate? Here are three different views about this:

1. Locke's view—a constitutional monarchy with a Parliament elected by wealthy landowners satisfies the consent requirement. Parliament must control taxation, otherwise the Commonwealth's "members" (those who have the right to vote in parliamentary elections) will be taxed without their consent. Nonmembers without the right to vote are obligated to pay taxes and obey the laws because they "tacitly" consent to do so just by "walking along the highway."
2. (The democratic view). Locke's two conditions are correct. But what Locke calls tacit consent isn't genuine consent; it's not reasonable to infer someone's consent to society's laws just from his walking down the street. The way that one consents to one's government and its laws is by voting. Since liberal-democracy with a universal suffrage is the only form of government that respects everyone's natural rights and gives everyone the right to vote, it is the only form of government that satisfies both of Locke's conditions and obligates all citizens to obey it.

Note that the democrat cannot say that only explicit consent is genuine consent, while "tacit" consent isn't real consent at all. After all, the democrat believes that if I vote for candidate A but B wins the election, then I've "tacitly" consented to accept B, because by voting one tacitly consents to the principle of majority rule. (If you join a game of poker, don't you "tacitly" agree to play by the rules of the game?)

An objection to the democrat's claim that liberal-democracy (and it alone) satisfies Locke's two conditions is: what about the people who don't vote? Some don't vote from apathy, while others don't vote from conviction ("I think both parties are the same; they're all a bunch of liars and crooks"). Aren't those who never vote morally required to submit to/obey the legislation enacted in a

just democracy even though they haven't "consented" to it?

3. In the real world, no form of government will be such that *all* of its citizens give genuine consent to it. But *some* form of government (e.g. liberal-democracy) has to be legitimate; otherwise, we would have a moral duty to settle for anarchy. Therefore, Locke was mistaken: being consented to by all of society's adult members is *not* a necessary condition of a government's being legitimate.

Salient events of English history from Civil War to Glorious Revolution (from *Concise Dictionary of World Dictionary*, compiled by Bruce Wetterau).

The English Civil War, from 1642-49, was an armed conflict between forces of the English Parliament and the monarchy under the Stuart king Charles I. Charles and James I before him defended royal absolutism. Attempts to impose religious uniformity aroused Puritans and Independents against the government, also. In general, the war pitted the Royalists, composed of the aristocracy, the Anglicans, and the Catholics, against the Parliamentarians, including the Puritan gentry, merchants, and artisans. The Parliamentarian army, led by Oliver Cromwell, defeated the Royalists. King Charles was beheaded after a trial in 1649, the monarchy was abolished, and a Commonwealth proclaimed with Cromwell as head of state.

The Restoration is the period in English history from 1660-88 that included the reigns of Charles II and James II. The reign of Charles II was marked by a reaction against the Puritans and the policies of austerity they imposed on English life during the Protectorate, the enactment of the Clarendon Code (meant to ensure religious uniformity under the Church of England), and a rising anti-Catholic sentiment. Under James II, this anti-Catholic sentiment and resistance to his absolutism quickly brought about the Glorious Revolution of 1688.

The Clarendon Code consisted in four laws enacted between 1661 and 1665, requiring: i) all municipal officers must be Anglican, ii) all clergymen adopt and use the Anglican Common Book of Prayer, iii) no assembly of more than 5 persons, for faiths other than Anglican, and iv) no Nonconformists permitted within 5 miles of any town. Charles II tried unsuccessfully to moderate these laws and protect his fellow Catholics from persecution by declaring Indulgences.

The Glorious Revolution saw the overthrow of James II and the crowning of William of Orange (from Holland) and his wife, Mary II. James II's Catholicism and the birth of his Catholic son and heir, James Edward, aroused a united Whig and Tory opposition to his rule. Mary II was James II's Protestant daughter. The throne was offered to William and Mary under the conditions set forth in the Declaration of Right, which they signed in 1688.

The English Bill of Rights, enacted in 1689, largely a restatement of the Declaration of Right, is one of the key documents of English constitutional law. It establishes the supremacy of Parliament. It required the monarchy to obtain parliamentary consent to suspend laws, raise taxes, or maintain an army. It provided for the free election and operation of Parliament, established royal succession, and barred Roman Catholics from the throne.

The Toleration Act of 1689 denied freedom of worship to Roman Catholics and unorthodox dissenters from the Anglican church (i.e. dissenters like Locke who denied the Trinity) and granted it to Protestant Trinitarian dissenters (e.g. Baptists, Presbyterians, and Quakers) who took the oath of allegiance and obtained a license to meet. But it denied the latter the right to hold public office, thus rendering them second-class citizens and legally dividing the nation for 150 years, until religious and civil liberty was established.

These are some of the arguments related to religious toleration that John Locke gives in his *First Letter Concerning Toleration*:

1. The *persecution of unbelievers is unchristian*, contrary to the Gospels. Christianity commands that we love our enemies, not violently persecute them.

2. Those who torture or execute unbelievers are not really motivated by a desire to save souls, as they claim to be. Rather, they are motivated by a desire for the worldly goods of power and money. (This is not an objection to persecution *per se* so much as an *ad hominem* attack of those who engage in it).

** 3. *Such persecution is necessarily ineffectual*. Only sincerely held religious faith can save one's soul. By coercing people, you can get them to *say* that they accept the true faith when they really don't (i.e. they will make insincere professions of faith), but you can't get them to really accept it. For belief is under the control of the intellect, not the will. Since you can't *decide* to believe that my religion is the true one, my threat to punish you unless you believe it cannot possibly work.

4. The *function of the state is to protect our "civil interests," not save our souls*. The latter is the job of the church, which is necessarily, by definition, a "free and voluntary association." This argument is probably best understood in conjunction with the "social contract" argument of the *Second Treatise*. When we leave the state of nature and set up the state, we only give it the power to protect our interests in life, liberty, and property. We do not give it the power to promote/protect our interest in eternal salvation.

5. If subjects had a duty to obey their princes in matters of religion, then, since the princes of different nations belong to radically different religions, and since those who follow the bad, false ones are damned, it would follow that some subjects have a duty to do what will lead to their eternal damnation, which is absurd.

6. *Religious persecution and intolerance inevitably lead to social conflict*, sometimes even civil war. Civil war is obviously a very large moral evil, inasmuch as it causes death and misery for large numbers of innocent people. (This is a "utilitarian" argument for toleration).

7. The *argument from a liberal, ecumenical Christianity*. What distinguishes different Christian sects from each other is their commitment to different rites or rituals and the belief that those rituals are necessary for salvation. The Christian ecumenicist claims that God doesn't care about such things: as long as one is a Christian of some sort, one is saved. Hence, any Christian sect that claims that only its own members are saved and all other Christians aren't is mistaken, and any defense of religious persecution that appeals to such a mistaken, theologically intolerant Christianity rests on a false premise.

Like #1, this argument assumes that Christianity of some sort is true. But it differs from #1 in the following important way. #1 implies that it's wrong for Christians to persecute nonChristians, even if such persecution is intended to and actually has the effect

of saving the souls of the nonChristians. #7 only implies that it's wrong for Christians to persecute each other. The two arguments are perfectly compatible, however, and probably most of those who accept one will accept the other as well.

Incidentally, don't confuse liberal, ecumenical Christianity with either: a) a religious skepticism which holds that it's impossible to know whether Christianity or some nonChristian religion is true, or b) a weaker religious skepticism which claims that we can know Christianity is true, but we can't know which version of it is: Unitarianism, Roman Catholicism, Calvinist Protestantism, etc.