

The Essential

# JOHN LOCKE



by Eric Mack

FRASER  
INSTITUTE



# The Essential John Locke

by Eric Mack

Fraser Institute  
[www.fraserinstitute.org](http://www.fraserinstitute.org)  
2019

Copyright © 2019 by the Fraser Institute. All rights reserved. No part of this book may be reproduced in any manner whatsoever without written permission except in the case of brief quotations embodied in critical articles and reviews.

The author of this publication has worked independently and opinions expressed by him are, therefore, his own, and do not necessarily reflect the opinions of the Fraser Institute or its supporters, directors, or staff. This publication in no way implies that the Fraser Institute, its directors, or staff are in favour of, or oppose the passage of, any bill; or that they support or oppose any particular political party or candidate.

Printed and bound in Canada

Cover design and artwork: Bill C. Ray

---

**Library and Archives Canada Cataloguing in Publication Data**

The Essential John Locke / Eric Mack

Includes bibliographical references.

ISBN 978-0-88975-545-1.

# Contents

Introduction / 3

The State of Nature and the Law of Nature / 11

Natural Freedom / 19

Natural Rights / 23

Property Rights / 31

Inconveniences of the State of Nature and Their Remedy / 39

The Obligation to Obey Legislation and Its Radical Limits / 45

Toleration / 53

Resistance against Unjust Force / 61

References / 69

Suggested Further Reading / 70

About the author / 71

Acknowledgements / 71

Publishing information / 72

Supporting the Fraser Institute / 72

Purpose, funding, and independence / 73

About the Fraser Institute / 73

Editorial Advisory Board / 74



To Friends of Liberty,  
Wherever They Are





# Introduction

[M]agistrates or polities ... are only made to preserve men in this world from the fraud and violence of one another; so that what was the end of erecting of government ought alone to be the measure of its proceeding.

John Locke (1667/1997), “An Essay on Toleration”:135.

No single individual is ever the sole founder of any major stance in political philosophy—or in any other field of human inquiry. For, knowingly or unknowingly, every theorist makes important use of ideas and contentions previously developed by other thinkers. Nevertheless, if one were forced to name the founder of the classical liberal perspective in political thought, one would have to point to the English philosopher John Locke (1632–1704). Locke’s two most important and best-known works in political philosophy are the *Second Treatise of Government* (published as part of his *Two Treatises of Government*) and *A Letter Concerning Toleration*. (All passages from the *First* or *Second Treatise* will be cited as *FT* or *ST* along with its paragraph number. All pages from *A Letter Concerning Toleration* will be cited as *LCT* along with page number.)

In this short book, I shall offer a sympathetic account of the key and most striking contentions and arguments that add up to Locke’s classical liberal political philosophy. I do not maintain that every claim Locke makes within political philosophy fits comfortably within the classical liberal paradigm. Nor do I assert that every policy stance Locke took was consistent with the abstract principles of his political doctrine. Nevertheless, I believe that the picture that I draw of Locke as the fountainhead of classical liberal political thinking both captures the essence of Locke as a normative political theorist and reveals a good deal of the character and plausibility of the classical liberal vision. Unfortunately, in such a condensed presentation I will not be able to pause to deal fully with all the interesting complexities within the doctrines I discuss.

This introduction sets the stage for my presentation of Locke as a philosophical exemplar of classical liberalism in two ways. First, I will spell out the core elements of the classical liberal perspective. This provides a preview of the basic shape and spirit of the Lockean doctrines presented throughout the rest of this book. Second, I provide a much too brief sketch of the historical and intellectual context within which Locke developed his political principles. The political conflicts and philosophical disputes that raged in Britain throughout most of the 17<sup>th</sup> century were, of course, different in their details from the conflicts and disputes of our early 21<sup>st</sup>-century world. Yet, the fundamental issues are remarkably similar. They include the nature and sanctity of human freedom, the relationship between respect for freedom and the maintenance of social order, the basis and scope of justified toleration, the justifying purpose of government, and the fundamental limits (if any) on governmental authority. Locke's classical liberal political philosophy speaks to each of these issues (and more). This short work leaves to the reader the crucial task of working out how Locke's principles and insights should be applied in our troubled times.

Classical liberalism is the view that the primary political principle is that individual liberty is to be respected and protected. Individual liberty ranges across both "personal" and "economic" choices. It includes the liberty to decide for oneself what religion one will follow, what aesthetic or cultural values one will prize and pursue, and what personal interactions one will enter into with others (who also choose those interactions). Individual liberty also includes one's liberty to develop one's economic capacities as one chooses, to pursue a career of one's choice, to acquire property as a means of carrying out one's life plans, and to use one's acquired property as one chooses—again with the proviso that one's actions do not deprive others of their like liberties.

Classical liberalism sees each individual as having a moral sovereignty over his or her own life that no individual or group may properly invade or nullify. This does not mean that classical liberalism celebrates a world in which everyone lives in splendid isolation. Rather, it celebrates a world in which individuals freely develop and voluntarily enter into mutually advantageous and enriching relationships and associations. It celebrates society as a voluntary association of individuals each of whom is free—singly, but much more likely, in cooperation with others—to pursue his or her own chosen ends in his or her own chosen, albeit liberty respecting, ways.

A key component of classical liberalism is the view that individual liberty—liberty that protects each individual in his or her voluntary association with others—is at the least the primary source of desirable social and economic order. Desirable social and economic order arises from the ground up. Since ground up order will reflect the diverse desires, ambitions, knowledge, and capacities of the individuals who make up such an order, such order will necessarily be more complex, vibrant, and dynamic than any top down order, for example, any order that might be imposed by social engineers and state planners.

Coercion is the great enemy of liberty and of the benefits of freely chosen cooperative endeavors. From the classical liberal perspective, the only acceptable coercion is coercion that is provoked by and directed against unprovoked coercion. Coercion—especially understood as the use of physical force or the threat of such use—may be employed only in defence of the liberty of individuals and the associations they voluntarily form. The distinctive feature of political institutions, that is, of governments, is their possession and use of coercive power. Hence, the classical liberal’s endorsement of respect for and protection of individual liberty as the primary political principle yields a demand for radical limits on state power and action.

State use of coercive measures must be limited to actions and policies that protect the liberty of individuals and their voluntary associations. At least as a general rule, any coercive state action or policy that does not protect liberty or seek to nullify the effects of violations of liberty is itself illicit. Thus, the most extensive state that classical liberalism may endorse is a minimal (or nearly minimal) state. Moreover, classical liberalism insists that the state and its officials are to be held to the same basic moral standards as ordinary citizens. Coercive state behavior that infringes upon people’s personal or economic liberties—by, say, jailing people for their peaceful use of drugs or their non-standard sexual preferences or their voluntary economic interactions—is nothing but criminality writ large.

When Locke was born in 1632, he entered a world riven by intense religious and political conflict. This conflict reached its greatest intensity in the Civil Wars of 1641–1649 and the rump Parliament’s trial and execution of Charles I in January 1649. It re-emerged in the political and conspiratorial challenges to Charles II from the mid-1670s to mid-1680s, and continued through the Glorious Revolution of 1688 that drove Charles II’s successor, the Catholic James II, from the throne and brought about the dual monarchy of William and Mary. Through

the 1670s and early 1680s Locke—as a physician and intellectual aide—was a member of the household of the Earl of Shaftesbury, who became the leader of the political forces opposed to the authoritarian tendencies of Charles II.

The *Two Treatises of Government* were drafted around 1680 in support of Shaftesbury’s attempts to limit monarchical authority. Locke fled to Holland in 1683 after the Rye House plot to assassinate Charles II and his brother James was discovered. *A Letter Concerning Toleration* was written while Locke was on the lam in Holland and probably working to support continued resistance in England to the rule of James II (who had succeeded Charles II in 1685). Both works were published toward the end of 1689 after Locke returned to England following the Glorious Revolution of 1688. They were published anonymously and Locke never acknowledged his authorship of either book out of concern about prosecution if the Revolution itself were overturned.

Unfortunately, in setting the intellectual context for Locke’s key political writings, I must limit myself to a few overly broad generalizations about the conflictual six decades leading up to the Glorious Revolution. To begin with, throughout the 17<sup>th</sup> century, there was profound conflict across Britain about which religious doctrines and practices were to be mandated by state authority. Many favoured and fought for maintaining the Church of England as the mandated religion. Many favoured and fought for replacing the Church of England with a leaner, purer form of Protestantism, such as the Puritans favoured. Some, including Charles II and James II, schemed to reinstall Catholicism as the required religion for all British subjects. (Compare this to disputes in our day about what form of marriage or what type of schooling political authority should mandate for everyone.)

Most of the parties to disputes concerning religion and the state accepted the premise that the head of state had the right to decree what religion his or her subjects would follow—as long as the sovereign chose the true religion. The only question among these disputants was which religion was the true one that should be imposed by the sovereign. However, further disputes arose between those who accepted the premise that rulers have the right to enforce religious uniformity and advocates of principles of toleration who maintained that rulers must respect the liberty of conscience of their subjects. The sovereign might have his or her own view about what religion was the true one; but it was not the sovereign’s role to impose his or her favoured religion on his or her subjects.

During the central decades of the 17<sup>th</sup> century, Britain was also convulsed by a parallel but more general dispute about who possessed ultimate political authority. Was it the monarch? Or was it Parliament? Or was authority somehow divided among different political bodies? Taxation was often the heated focus of this dispute. Who had the right to levy taxes, the monarch or Parliament? Most of the parties to these disputes shared the premise that whoever has political authority has absolute, unlimited political authority. Once we know who has the right to rule, we know who has the right to rule without constraint. A common argument was that monarchical authority must be unlimited because a monarch with limits on his or her authority would not be a true sovereign.

However, the premise that political authority must be unlimited in its scope came under attack as theorists developed or refined the idea that political authority exists only for certain limited purposes and that, when rulers pursue other purposes—for example, burning heretics, establishing and enforcing economic monopolies, and imposing censorship—their actions transgress those limits. Not surprisingly, the contention that the scope of political authority is limited—even radically limited—was opposed by defenders of the idea that all sovereigns must have unlimited authority. More specifically, defenders of this authoritarian view maintained that, no matter what command any sovereign issues, that command will be lawful and any disobedience or resistance to that command will be unlawful.

The two most influential advocates of this authoritarian view in 17<sup>th</sup> century Britain were Robert Filmer (1588–1653) and Thomas Hobbes (1588–1679). To understand Locke's arguments in his *Second Treatise of Government*, one often needs to see how those arguments are directed against Filmer or, especially, Hobbes. Both Filmer and Hobbes began their systematic defences of the absolute and unlimited authority of sovereigns in the tumultuous years preceding and during the English Civil Wars. Although they supported their conclusions in very different ways, both men held that the ultimate cause of social and political disorder is the idea that subjects can legitimately question the legality or the justice of their ruler's actions or commands.

According to both Filmer and Hobbes, sovereigns do sometimes act impulsively and impose unexpected and costly injuries on some of their subjects. Nevertheless, to describe any such actions as unlawful or unjust

legitimizes unending complaints and resistance to authority. To legitimate complaints or even resistance against the sovereign invites continuous factional conflict—indeed, anarchy. It has far worse effects than dutiful submission to occasional untoward behavior on the part of the sovereign. Given the fragility of social and political order and the fractiousness of people, peace and order will be maintained only if everyone else is kept firmly under the thumb of a single, unlimited and unquestionable ruler.

In contrast, Locke’s political philosophy fundamentally rejects the doctrine of unlimited, unchecked, political authority. In his *Second Treatise of Government* and his *A Letter Concerning Toleration*, Locke synthesizes the arguments for religious toleration and the more general contention that toleration must be extended to all peaceful activities. Especially in *A Letter Concerning Toleration*, Locke argued that liberty and not authoritarian control is the basis for a peaceful and prosperous society. As we shall see, the ultimate ground for Locke’s anti-authoritarian advocacy of toleration and liberty is his affirmation of each individual’s possession of natural rights that all other persons—especially political sovereigns—are obligated to respect.

Although this book is only about the essentials of Locke’s classical liberal political philosophy, the essentials cannot be conveyed by merely providing a list of Locke’s conclusions. One can only understand and appreciate the force of Locke’s philosophical conclusions by delving into the reasoning that Locke offers for them. Moreover, to appreciate Locke’s reasoning one often needs to identify the doctrines that he is reasoning against and how his arguments work as critiques of those doctrines. I have already alluded to the endorsement of absolute political authority by Filmer and Hobbes and to Locke’s contrasting insistence on radical limits upon political authority. We shall see more of the substance of this and related disputes between authoritarian and classical liberal stances in the chapters that follow.

Locke’s basic theory of natural rights will be articulated in chapters 1, 2, and 3. Chapter 1 presents Locke’s view of the state of nature by contrasting it with the Hobbesian view of the state of nature. Chapter 2 presents Locke’s view of natural freedom by contrasting it with the Hobbesian view of natural freedom. Chapter 3 presents Locke’s arguments for a natural right to freedom. Chapter 4 explains Locke’s doctrine of property rights. Chapter 5 discusses the “inconveniences” that Locke takes to characterize the state of nature and the governmental institutions Locke believes are needed to overcome those

inconveniences. Chapter 6 focuses on two Lockean explanations: why there is an obligation to abide by enacted law and why that obligation holds only for a narrow range of legislation. Chapter 7 lays out Locke's core arguments for the right of every individual—or almost every individual—to affirm and practise the religion of his or her choice and explains why Locke's defence of religious freedom exemplifies his overall defence of individual liberty. Chapter 8 explicates Locke's doctrine of rightful resistance to unjust rulers or their minions.

I close this Introduction with four comments about Locke's language. First, Locke is writing in the English of the 1680s with spelling, punctuation, and sentence structure that probably is a bit strange to 21<sup>st</sup> century readers. Don't be disturbed by this; be charmed. Second, some of Locke's old-fashioned terminology—for example, his speaking of “the law of nature”—may suggest to you that his ideas are old-fashioned. Please do not get caught up in such terminological impressions; give the ideas (which I do my best to explain) a fair trial. If, as you read about Locke's views, you begin to see how they are vitally important for our own times, you will be right. Third, since I present a particular interpretation of Locke, I provide a good number of passages from Locke in order to substantiate my interpretation. Fourth, Locke follows the conventions of his time and wrote about *men's* rights, *his* reaching the age of reason, and the rights that *he* has in the state of nature. Nevertheless, Locke is offering doctrines of *human* rights, of limits on any *person's* authority over any other *person*, of toleration that is owed to every *individual*, and so on. Confident that the reader can abstract away from Locke's use of 17<sup>th</sup>-century conventions, I have not felt any need to rewrite Locke's sentences to protect him against the charge of toxic masculinity.





## Chapter 1

# The State of Nature and the Law of Nature

To understand political power right and derive it from its original, we must consider, what state all men are naturally in, and that is, *a state of perfect freedom* to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man.

...

The *state of nature* has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that *being all equal and independent*, no one ought to harm another in his life, health, liberty, or possessions.

John Locke (1689/1980), *Second Treatise of Government*: §4, §6.

In his *Second Treatise of Government*, Locke follows Hobbes in approaching political philosophy through state-of-nature theory. According to both Hobbes and Locke, a group of individuals are in a state of nature (relative to one another) if they are not subject to a common governmental authority. Being in a state of nature is our original, baseline condition because no one is born subject to political authority. Our birth—or, to put matters more precisely, our entrance into adulthood—does not brand us with an obligation to obey those who aspire to rule over us. Nor does their birth—or their entrance into adulthood—bestow on them the right to rule us. Although we are not literally born *as* “free and independent” (*ST* §6) beings, we are born *to* freedom and independence in the sense that we each attain this status when we reach adulthood (*ST* §55).

In our original natural condition, we are equally and perfectly free. There is no natural hierarchy of ruler and subjects. This view was dramatically expressed by Richard Rumbold before his execution on June 26, 1685 for his participation in the Rye House plot: “No man is born marked by God above another, for none comes into the world with a saddle on his back, neither any booted and spurred to ride him”. Since there is no natural political authority, it seems that, if some party has a right to rule while others have correlative obligations to obey, that right and those obligations must have been created by the individuals in the course of exiting from the state of nature. State-of-nature theory investigates whether people have good reason to exit the state of nature by creating and placing themselves under the sway of governmental power.

State-of-nature theorists ask: Why exactly would rational individuals choose to exit the state of nature? What problems within the state of nature would rationally lead people to enter into a social contract that subjects them to a common political regime? By what process would a common political authority be created? And has that process actually taken place among us? Perhaps most importantly, if there would be significant problems in the state of nature that call for the establishment of political authority, *what degree or kind of political authority would rational people establish?*

State-of-nature theory is primarily an analytical device for determining what sort of political authority—if any—is justifiable. State-of-nature theorists often envision a period of time during which our distant ancestors lived in a state of nature and a time at which they exited that condition by entering into a social contract with one another. Nevertheless, this historical perspective is not essential to the core motivating idea of state-of-nature theorizing. For that core motivating idea is that the way to determine what degree or kind of political authority is justified is to see what problems people *would* encounter in the absence of government and what degree or kind of political authority rational and well-informed people *would* agree to in order to overcome those problems. According to state-of-nature theorists, the sole proper purpose of political authority, that is, of coercive authority, is to deal with the problems that would exist in the state of nature and can only be successfully dealt with by political authority.

To appreciate the significance of Locke’s state-of-nature theory, we need to contrast it with that offered by Hobbes. Hobbes held that the state of nature amounts to a war of all upon all. In his 1651 masterwork, *Leviathan*,

Hobbes asserted that “during the time men live without a common power to keep them all in awe, they are in that condition which is called warre; and such a warre as is of every man against every man” (Hobbes, 1651/1994: ch. xiii, 8). According to Hobbes,

[i]n such condition there is no place for industry, because the fruit thereof is uncertain, and consequently no culture of the earth, no navigation nor the use of commodities that may be imported by sea, no commodious building, no instruments of moving and removing such things as require much force, no knowledge of the face of the earth, no account of time, no arts, no letters, no society, and which is worst of all, continual fear and danger of violent death, and the life of man, solitary, poor, nasty, brutish, and short. (Hobbes, 1651/1994: ch. xiii, 9)

Is it true that the state of nature is a state of war of all upon all? Hobbes’ most basic argument for why it is turns on two premises. As we shall see, Locke accepts the first of these premises but rejects the second. Locke denies that the state of nature is a state of war of all upon all precisely because he rejects Hobbes’ second premise.

The first premise for Hobbes’ view that the state of nature is a war of all upon all is that, for peace and life-enhancing social interaction to exist, people need to comply with certain moral or legal rules. All (or almost all) agents need to be disposed to abide by certain norms at least as long as they expect that others are also disposed to abide by them. For instance, peace requires that all (or almost all) individuals need to comply with the rule against engaging in unprovoked physical attacks on others at least as long as they expect that others also will obey that rule. And the existence of life-serving industry and commerce requires that all (or almost all) comply with a rule against seizing the possessions of others that they have acquired through peaceful production and trade. People will regularly invest their time and energy in productive industry and trade only if they have confidence that there will be general compliance with this rule.

The second premise for Hobbes’ conclusion that the state of nature is a state of war of all upon all is that there are no moral or legal rules—no principles of justice—in the state of nature. The state of nature, according to Hobbes, is a moral free-for-all. In the state of nature, each person knows that nothing he might do to another is unlawful or unjust; and each person knows that each

other person knows that nothing she might do to him is unlawful or unjust. Hobbes expresses this idea by saying that in the state of nature everyone has a right to do anything; and nobody has a right against anything being done to him. Each person has a right to try to hold on to her life and her peacefully acquired possessions. However, each other person has a right to destroy that life and to seize those possessions.

When Hobbes says that in the state of nature people possess unlimited “rights” to do anything whatsoever, he is actually simply saying that in the state of nature no action is wrong or unlawful; no action runs contrary to any obligation or any principle of justice. There are no rights “properly speaking” in the state of nature because nothing is naturally wrong or unlawful or unjust. Hence, in the state of nature, no one can expect anyone’s impulse to impose her will on others or to make off with the products of others’ labour to be checked by that person’s belief that such actions are wrong or unlawful or unjust. In fact, in the state of nature each person can expect each other person to be disposed to seize his possessions before her own are seized and to rush to kill him before she herself is killed. Since each person is aware of this disposition in others, each is rationally drawn to the policy of plundering before being plundered, and killing before being killed. And each person’s recognition that each other person is drawn to this policy reinforces each person’s motivation to follow this policy.

On Hobbes’ view, we can overcome this profound deficiency in the state of nature only by establishing a political sovereign who issues commands that are backed up by a credible threat of punishment for disobedience. For, according to Hobbes, such commands and only such commands *create* rules of law and justice and the expectation among the sovereign’s subjects that there will be general compliance with these rules. Indeed, according to Hobbes, whatever a political sovereign commands is the law and whatever a sovereign forbids is unlawful. The issuance of a command makes that command lawful. Moreover, according to Hobbes, whatever is lawful is just and whatever is unlawful is unjust.

So, the sovereign’s command that you attack any of your neighbours that speak ill of the sovereign *makes* such attacks lawful and just. The sovereign’s command that you turn over all your cattle and crops to the sovereign’s favourite courtier *makes* it a requirement of law and justice that you do so. The sovereign’s command that you to attend a certain church *makes* it unlawful and unjust for you not to attend that church. The will of a sovereign—backed up by his sword—*creates* legality and illegality, right and wrong, and justice and injustice.

The sovereign's authority is absolute and unlimited precisely because no natural principles of right or justice exist outside of the sovereign's will that can serve as standards for assessing the lawfulness or justice of the sovereign's commands or for justifying resistance to the sovereign, no matter what he commands. When people establish a sovereign in order to escape the horror of the state of nature, they cannot limit the sovereign's authority by stipulating that the sovereign must act in accordance with independent principles of law or justice. For, there are no such independent principles of law or justice. On Hobbes' view, if the sovereign commands that no subject engage in unprovoked attacks on another subject, a right will be bestowed upon each subject against unprovoked attacks by another subject. However, no subject can have such a right against a sovereign. For it is an absurdity to think that the sovereign will command himself not to do what he wills to do.

According to Hobbes, it is crucial that both sovereign and subjects recognize that the sovereign's word is law and is justice and that, if subjects forget this, the sovereign is to remind them of it good and hard. For otherwise people will continually be appealing to their own idiosyncratic views about what is lawful and what is just; and this will simply stoke the fires of conflict and civil war.

Locke accepts the first premise of Hobbes' argument. There must be sound and known rules that guide human interaction in the state of nature if the state of nature is not to be a war of all upon all. However, he rejects the second premise of Hobbes' argument. For Locke held that "[t]he *state of nature* has a law of nature to govern it, which obliges every one ..." (*ST* §6). By "a law of nature" Locke means a set of moral rules about how one person should or should not treat another that is based upon some crucial facts about human nature. Since these rules rest upon basic facts about human beings, these rules provide guidance to people in the state of nature. They apply to all people antecedent to any social contract among them or to any commands issued by a political sovereign. Indeed, no social contract or command by a sovereign is justifiable unless it is consistent with the original moral norms that make up the law of nature.

One example that Locke gives of a moral norm that holds in the state of nature is the principle that those who enter into voluntary promises or agreements are morally bound to fulfill those promises or agreements (*ST* §14). Imagine two individuals, Abe and Bea, who have each survived a shipwreck and have each managed to swim to a previously uninhabited island. Relative

to one another, Abe and Bea exist in a state of nature. Suppose that they each proceed somewhat warily with their own separate life-supporting endeavours. Still, they each can envision gains from cooperation. So they voluntarily enter into an agreement. Today Abe will help Bea pull a stump out of the field that she is clearing for cultivation in exchange for Bea helping Abe tomorrow put a beam in place for the hut he is building. Suppose now that Abe fulfills his part of the bargain today; there is no question of his welshing on the deal.

Locke's claim is that within their state of nature, if Abe helps Bea today, Abe has a moral right that Bea assist him tomorrow; Bea has a moral obligation to provide that assistance. If Bea has reason to believe that Abe has or will fulfill his part of the bargain, justice demands that she fulfill her part. Moreover, it is because people generally recognize the rights that agreements generate and are disposed to abide by those rights that people do often enter into such agreements and, thereby, coordinate their conduct toward one another in ways that are mutually advantageous.

One strand of the law of nature is the moral rule that, when people enter into agreements, each party has a right properly so-called that the other person perform as agreed. The moral validity of *this principle* does not depend upon people having agreed to *it*. Nor does its validity depend upon some political authority commanding that people fulfill their agreements. Abe and Bea have natural rights that the voluntary agreements that others enter into with them be fulfilled.

Locke holds that there are other natural rights in the state of nature. If on their isolated island Bea cuts off Abe's head for the fun of it or forces Abe to clear stumps from her field, Bea's treatment of Abe is naturally unjust; it violates Abe's natural right not to be killed for the fun of it or not to be enslaved. According to Locke, the injustice of such actions is an objective fact. It is not necessary that there be a political sovereign around to command that such actions not be performed in order for these actions to be unjust. Such conduct violates rules of conduct that govern "men, as men" (*ST* §14).

Locke also describes such killing and enslavement as *unlawful* because they are contrary to the law of nature even though there are no laws on that isolated island in the sense of commands issued by a political sovereign. Moreover, Locke holds that such conduct *remains* unjust and unlawful even if it is commanded by someone who has gotten hold of a crown and a large number of armed followers (*ST* §176).

Hence, for Locke, the state of nature is not a moral free-for-all. We do not need to escape from the state of nature in order to have a set of rules that enable us to distinguish between just and unjust conduct toward others and to govern our interaction with one another. Indeed, we do not need to escape from the state of nature in order to have law—in the sense of the law of nature. In the state of nature, people are able to comply with the law of nature because its basic rules are “as intelligible and plain to a rational creature, and a studier of that law, as the positive laws of commonwealths; nay, possibly plainer” (*ST* §12).

Moreover, in the state of nature most individuals are disposed to abide by others’ rights. What motivates most people not to kill others for the fun of it—whether they be within a state of nature or within political society—is not their fear of punishment. Rather, it is their sense that this would be a morally awful thing to do. In chapter 3 we will deal more systematically with what Locke takes to be the content of the law of nature and with how, through the exercise of our reason, we can identify the crucial elements of that law.





## Chapter 2

# Natural Freedom

[L]iberty is, to be free from restraints and violence from others; which cannot be, where there is no law: but freedom is not, as we are told, *a liberty for every man to do what he lists*: (for who could be free, when every other man's humour might domineer over him?)

John Locke (1689/1980), *Second Treatise of Government*: §57

The main goal of this chapter is to spell out Locke's understanding of freedom and highlight how it differs from the view that freedom is a matter of doing whatever one wants to do. Locke, as a classical liberal, holds that everyone has a right to freedom—but not a right to do whatever one wants to do.

Hobbes and Locke *seem* to agree that all individuals (who have reached the age of reason) are naturally equal and free. However, for Hobbes, this natural equal freedom is a matter of no one being naturally subject to any other person or to any constraining principles of law or justice. For Hobbes, to be free is to be able to do whatever one desires to do. Any constraint on how one may act constitutes a denial of freedom. In contrast, Locke holds that our natural equality and freedom is a matter of each of us having a natural right against being subordinated to the will of others. Our freedom consists in others not subordinating us to their will. The freedom of others is not compromised when they are required not to subordinate us to their will—even if they desire to engage in such subordination. The freedom of others is compromised only if they are subordinated to our will. A corollary of each person's right to freedom is each other person's obligation not to infringe upon that freedom.

Locke tells us that there is, “nothing more evident, than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another

without subordination or subjection” (*ST* §4). Echoing Rumbold’s scaffold speech, Locke adds that the only thing that could overturn the natural hypothesis that creatures who are born to the same species, advantages, and faculties are born to equal status and freedom would be if God, “the lord and master of them all [would] by ... manifest declaration of his will, set one above another, and confer on him, by an evident and clear appointment, an undoubted right to dominion and sovereignty” (*ST* §4). God, however, has not made any such “manifest declaration”. He has not, for example, arranged for some people to be born with saddles on their backs and others born with boots and spurs to ride them. Hence, the plausible hypothesis of natural equality and freedom among all persons stands.

Still, this natural equality is not an equality of “virtue” or “excellency” or “merit”. Rather, our natural equality consists in “that equal right, that every man hath, to his natural freedom, without being subjected to the will or authority of any other man” (*ST* §54). We are all “born to” this freedom, not born with it (*ST* §55). We each come into possession of our full moral rights when our reason matures to the point that we are able to appreciate and conform to the law of nature (*ST* §59).

If one turns back to the Locke passages at the outset of chapter 1, one is reminded that, for Locke, “a state of perfect freedom” is a state in which persons can “order their actions, and dispose *of their possessions and persons*, as they think fit” (*ST* §4, emphasis added). For each person, freedom is his “*liberty* to dispose, and order as he lists, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not be subject to the arbitrary will of another, but freely follow his own” (*ST* §57). Freedom is not, as Hobbes (and Filmer) hold, “*a liberty for every man to do what he lists* [that is, desires]” (*ST* §57).

Bea is rendered subject to Abe’s will and, hence, is rendered unfree if (without her consent) Abe cuts off her head for the fun of it. For this action on Abe’s part deprives Bea of discretionary control over her own person. However, on Locke’s understanding of freedom, Bea does not subject Abe to her will and, hence, does not render Abe unfree if Bea flees from Abe and thereby avoids having her head cut off. Bea’s flight does not deprive Abe of discretionary control over his own person or possessions. Bea’s flight merely denies Abe discretionary control over Bea.

Consider another example that similarly illustrates Locke’s distinction between actions that deprive another of freedom and actions that do not.

Suppose Abe enslaves Bea (without asking her leave and receiving her permission). On Locke's understanding of freedom, Abe's act deprives Bea of freedom, for it precludes Bea doing as she sees fit with her own person. Now suppose that Bea escapes from Abe's enslavement. Is this exercise of her freedom a denial of Abe's freedom? According to the Hobbesian conception of freedom, the answer is, yes. For Bea's escape precludes Abe's doing what he desires to do, *viz.*, continue to control and exploit Bea. However, on Locke's understanding of freedom, Bea's escape does not infringe upon Abe's freedom. For, Bea's escape—like Bea's flight in our previous example—does not deprive Abe of discretionary control over his own person. It merely denies Abe discretionary control over Bea. Since Bea does not impose restraint or violence on Abe when she flees from head-hunting Abe or escapes from the enslaving Abe, he cannot legitimately complain that Bea's flight or escape diminishes his freedom. If one agrees that Abe cannot legitimately complain that Bea's escape comes at the expense of his liberty, one should accept Locke's understanding of liberty.

Locke points out that, if liberty is a matter of doing whatever one wants to do, then each person's right to liberty would make it permissible for that person to deprive others of liberty whenever that person desires to do so. For instance, Abe's right to liberty would make it permissible for Abe to cut off Bea's head for the fun of it and to enslave Bea whenever he wants to do so. Locke argues, however, that no individual can genuinely possess freedom, if it is permissible for every other person to deprive that individual of freedom whenever that other person wants to do so.

As Locke rhetorically asks, "who could be free, when every other man's humour might domineer over him?" (*ST* §57). Locke concludes that freedom is not "*a liberty for every one to do what he lists, to live as he pleases, and not to be tied by any laws*" (*ST* §22). Rather, "*where there is no law, there is no freedom*" (*ST* §57). More specifically, "[t]he *natural liberty* of man is to be free from any superior power on earth and not to be under the will or legislative authority of man, but to have only the law of nature for his rule" (*ST* §22).

We must be very careful here about how we understand Locke's pronouncements about the nature of freedom. Locke may seem to be endorsing the doctrine that each individual's freedom consists in that individual abiding by the law of nature (or the enacted legislation that accords with the law of nature). On this view, one's freedom paradoxically consists in one's obedience! However, the crux of Locke's view is that one is free to the extent that *others*

abide by the law of nature (or enacted legislation that accords with the law of nature) in their conduct towards one. For liberty “is, to be free from restraints and violence *from others*; which cannot be, where there is no law” (*ST* §57, emphasis added).

The crucial point here is that your respect for my freedom requires only that you leave me to the peaceful enjoyment of my own person and possessions. To respect my freedom, you do not have to submit to my chopping off your head for the fun of it or to my enslaving you or to my seizing one of your possessions because I want to do something that requires my use of that possession. If I have a right to freedom, that right requires only that you leave me in peace to do as I see fit with what is mine. My right not to be subjected to your will is not a right to subject you to my will.

We are now in position to appreciate more fully the striking difference between Hobbes and Locke concerning life in the state of nature. For Hobbes, each person’s natural freedom to do whatever he sees fit is pervasively in conflict with each other person’s freedom to do whatever she sees fit. At root, the war of all upon all is a manifestation of this pervasive clash of our natural freedoms. Hence, the root solution to the war of all upon all requires the elimination of our natural freedoms and our subjugation to the artificial rules that an absolute sovereign will pronounce and enforce.

In contrast, for Locke, each person’s natural freedom to do as he sees fit *with his own person and possessions* is compatible with each other person enjoying her like freedom. Whatever conflict and disorder may exist in the state of nature will be less deeply rooted than Hobbes’ war of all upon all; for that conflict and disorder will not be rooted in our natural freedom as such. For Locke, natural freedom is not the core human problem. Indeed, our natural freedom provides the initial framework for peaceful and cooperative relations among individuals even if (as Locke maintains) individuals have to enter into political society to further codify and secure that framework.

However, before examining what Locke calls the “inconveniences” of the state of nature and the ways in which our freedoms can be better delineated and protected by exiting the state of nature, we must examine in chapter 3 the arguments that Locke offers for why all individuals are born to a natural right to freedom and in chapter 4 the account that Locke provides for people’s acquisition of *just* possessions, that is, for property rights.

## Chapter 3

# Natural Rights

Man being born ... with a title to perfect freedom

...

[M]an in the state of nature [is] absolute lord of his own person and possessions, equal to the greatest, and subject to no body

...

[N]o body can desire to *have me in his absolute power*, unless it be to compel me by force to that which is against the right of my freedom, *i.e.*, to make me a slave. To be free from such force is the only security of my preservation; and reason bids me look on him, as an enemy to my preservation, who would take away the *freedom* which is the fence to it ... .

John Locke (1689/1980), *Second Treatise of Government*: §87, §123, §17.

In chapter 1, I contrasted Locke's view that the state of nature has a law of nature to govern it with Hobbes' view that the state of nature is a moral free-for-all that results in the war of all against all. On Hobbes' view, we need to escape the state of nature by establishing a sovereign whose commands—no matter what they are—define what is lawful and just. On Locke's view, there are natural objective standards of lawfulness and justice that are independent of any sovereign's commands and that morally bind all individuals—including any sovereign who may arise.

In chapter 2, I contrasted Locke's understanding of our freedom with Hobbes' understanding. On Hobbes' view, freedom is a matter of doing whatever one desires to do. In contrast, Locke holds that freedom is a matter of doing as one sees fit with one's own person (including one's liberty, limbs, and labour) and one's possessions. On Hobbes' view, each person's freedom is likely to come into conflict with the freedom of others. On Locke's view

each person's genuine freedom is compatible with the like freedom of all other persons. Hence, peaceful social order does not call for the comprehensive surrender of freedom. Rather, it calls for more finely articulating the boundaries between our respective spheres of freedom and more reliably enforcing those boundaries.

In this chapter, I present Locke's arguments for each person possessing a natural right to freedom. Locke's view is that each person's right to freedom takes the form of each person's rights over his or her own person and his or her possessions. The right to freedom and the right not to be deprived of discretionary control over one's person and possessions are two sides of the same coin. In addition, Locke equates infringements on one's freedom with being subordinated to the will of others. Thus, Locke's arguments for respect for individual freedom sometime focus on the reasons we each have to demand freedom for ourselves and to acknowledge others' like demand for freedom; sometime focus on the claim that each of us has against being harmed "in his life, health, liberty, or possessions"; and sometime focus on the reasons that it is unjustified for any individual to be subordinated to the will of *another* (*ST* §4, §6).

I will explicate three strong arguments that Locke offers for ascribing to all persons a natural right to liberty that do not depend on contentious theological premises. I shall also discuss one weaker argument that does depend on the theological premise that human beings are the "workmanship" of God. I explain why this argument does not yield the core conclusion about human rights that Locke himself seeks to establish.

However, an explication of Locke's arguments for a natural right to freedom must begin with a crucial moral contention that provides the background for these arguments. In an unpublished note written in the late 1670s, Locke writes: "Morality is the rule of man's actions for the attaining of happiness. ... For the end and aim of all men being happiness alone, nothing could be a rule of law to them whose observation did not lead to happiness and whose breach did [not] draw misery after it" ("Morality"; in Locke, 1997: 267).

In his *Essay Concerning Human Understanding*—which was published in 1689, the same year as the *Two Treatises* and *A Letter Concerning Toleration*—Locke maintains that all happiness is "the proper object of desire in general". However, each individual is moved only by those realizations of happiness "which make a necessary part of his happiness. ... All other good, however great in reality or appearance, excites not a man's desires who looks not on it to make

a part of that happiness wherewith he, in his present thoughts, can satisfy himself” (Locke, 1959, *Essay Concerning Human Understanding*, vol. 1: 341). And in another unpublished note composed shortly before the publication of the *Two Treatises*, Locke writes: “’Tis a man’s proper business to seek happiness and avoid misery” (“Thus I Think”; in *Locke*, 1997: 296.) So, the core background premise for Locke’s arguments for natural rights is that each person rationally pursues personal happiness.

The idea that it is rational for individuals to seek their individual good—whether that be spelled out in terms of happiness or self-preservation or preserved liberty—reappears in the *Second Treatise* when Locke tells us that people will enter into society, “only with an intention in every one the better to preserve himself, his liberty, and property; (for no rational creature can be supposed to change his condition with an intention to be worse) ...” (*ST* §131).

However, in the *Two Treatises*, Locke does not focus directly on the rationality of the pursuit of personal happiness. Rather, he focuses on the rationality of the pursuit of self-preservation and the rationality of each individual’s demand that her freedom be respected. Self-preservation comes to the fore because it is the key condition for each individual’s attainment of personal happiness. This is why the law of nature includes a “fundamental, sacred, and unalterable law of self-preservation ...” (*ST* §149). Freedom comes to the fore because freedom from restraint and violence by others is the key condition for each individual’s attainment of self-preservation: “To be free from such force is the only security of my preservation; and reason bids me look on him, as an enemy to my preservation, who would take away the *freedom* which is the fence to it ...” (*ST* §17). Respect for freedom is the interpersonal principle that each individual rationally calls upon others to obey and each individual recognizes the rationality of all others calling upon him to obey.

Let us now consider four particular arguments on behalf of the natural right to liberty that can be extracted from Locke’s text: the *Generalization Argument*, the *Workmanship of God Argument*, the *Not Made for Others’ Purposes Argument*, and the *By Like Reason Argument*.

### *The Generalization Argument*

Locke presents a long passage from the theologian and political thinker, Richard Hooker. In this passage, Hooker argues that, if you make a claim to

receive benefits from others, you must recognize that others have a like claim to receive benefits from you. For, we are by nature moral equals and “those things which are equal, must needs all have one measure” (*ST* §5). This passage has to be read in the context of Locke’s assertion that the claim that each rational individual makes against all other persons is the claim to freedom (*ST* §17). Since each person rationally advances a claim to freedom against every other person and each other person is his moral equal “in respect of jurisdiction or dominion one over another”, (*ST* §54) each person is rationally committed to recognizing each other person’s like claim to freedom.

### *The Workmanship of God Argument*

In the midst of his other arguments for a natural right to freedom, Locke fairly abruptly declares, “for men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not one another’s pleasure ...” (*ST* §6). The key non-theological premise here is one that will be crucial to Locke’s subsequent account of human property rights. It is that, if one creates something through one’s labour upon previously unowned material, one has a right to that created object. Within the Workmanship argument, the theological premise is that God is the creator and human beings are His products.

The main problem with this argument for Locke is that it does not have the conclusion that Locke himself seeks. For the conclusion of this argument is that it is wrong for Abe to kill Bea for the fun of it because doing so would violate *God’s property right* in Bea. The argument, if sound, establishes *God’s* right over everyone, not everyone’s right over his or her own person. Rather than establishing human rights, it implies that there are no fundamental human rights. It implies that the permissibility of any action by any person depends upon God’s granting permission for that action. Although someone may want to endorse this view, it is not compatible with the Lockean view that human beings have moral rights against one another on the basis of the sort of beings we are and not on the basis of God’s will.

### *The Not Made for Others’ Purposes Argument*

This argument is expressed in the clauses that immediately precede and immediately follow the statement of the *Workmanship Argument*.



The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all *equal and independent*, no one ought to harm another in his life, health, liberty, or possessions: ... [the Workmanship of God argument is inserted here] ... and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such *subordination* among us, that may authorize us to destroy one another as if we were made for one another's uses ... . (ST §6)

We are equal *and independent* beings—beings each of whom rationally pursues his or her own preservation and happiness. Each of us has a fundamental purpose of our own and, hence, none of us exist to serve the purposes of others. We are, so to speak, made for our own purposes and not for one another's purposes. If Abe subordinates Bea to his will, if he treats Bea not as a being with a guiding purpose of her own but, rather, as a bit of material morally available for his use, Abe's conduct contravenes the fact that Bea is an independent being with a guiding purpose of her own. Any such subordinating action is contrary to reason and is unjustified.

If we take full account of the fact that each person is naturally an equal and independent being, we have to conclude that each “man in the state of nature [is] absolute lord of his own person and possessions, equal to the greatest, and subject to no body ... ” (ST §123). Note that even though the *Workmanship of God Argument* does not yield human beings having rights over themselves, Locke may have seen this argument as supporting the *Not Made for Others' Purposes Argument* because, if we are all made for God's purposes, we are at least not made for one another's purposes.

### *The By Like Reason Argument*

Immediately following the *Not Made for Others' Purposes Argument*, Locke contends (in a heck of a sentence) that

[e]very one, as he is *bound to preserve himself*, and not to quit his station willfully, so by the like reason, when his own preservation comes not in competition, ought he, as much as he can, *to preserve the rest of mankind*, and may not, unless it be to do justice on an offender, take away, or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another. (ST §6)

At first blush, Locke seems to be saying that, just as each person should preserve himself, he should also preserve everyone else—at least, when the preservation of others “comes not in competition” with his own preservation. Yet this reading of Locke’s *By Like Reason Argument* must be mistaken.

For one thing, such a positive duty to “preserve the rest of mankind” would be inconsistent with Locke’s view that we are naturally independent beings who are not born to serve one another’s purposes. Moreover, Locke never characterizes the duty to “preserve the rest of mankind” as an affirmative duty to promote everyone else’s preservation. Rather, he explicates the duty as a negative requirement not to “take away, or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another” (*ST* §6). It is a duty to “be restrained from invading others rights, and from doing hurt to one another” (*ST* §7). In short, Locke himself takes the duty to “preserve the rest of mankind” to be the duty to respect their rights to discretionary control over their own persons and possessions, that is, to respect their rights to liberty.

How, then, can Locke’s *By Like Reason Argument* be understood as an argument for this right to freedom? I suggest that the argument goes as follows: Just as one ought to preserve oneself, so too ought every other person to preserve him or herself. You have reason to seek your commodious preservation and each other person *by like reason* properly seeks her commodious self-preservation. What is the import of this striking fact about *other* people for *your* conduct toward them? The import for you cannot be that you should include everyone’s ends in your own ends. For that would construe you—and every other individual—as existing (almost entirely) for everyone else’s purposes.

Rather, the import for you of each other person having their own commodious preservation as their respective proper end is that you *allow* all other persons to employ themselves and their possessions as they choose in their pursuit of their own ends. Others having—like oneself—ends of their own provides each of us with reason not to interfere with others’ (non-interfering) efforts to achieve their ends. One recognizes the status of others as independent beings with ends of their own by not pursuing one’s own ends in ways that treat others as mere means to one’s own ends.

According to Locke, the basic right to freedom does not exhaust the natural rights to which all persons are born. In the state of nature, if someone is about to violate your right to freedom, you may do more than request that she desist. You have a right to require her—through coercive action if necessary—to

respect your right to freedom. Locke supports this natural right of self-defence by arguing that rights violators have themselves abandoned the law of nature, that is, the rule of reason, and hence, they can no longer claim protection under that law. Rights violators use or seek to use “force without right” and thereby they put themselves in a state of war with their intended victims (*ST* §19): “one may destroy a man who makes war upon him ... for the same reason that he may kill a *wolf* or a *lion*; because such men are not under the ties of the common law of reason, have no rule, but that of force and violence, and so may be treated as beasts of prey ...” (*ST* §16).

In addition to self-defence, individuals may permissibly use force in the aftermath of rights violations to extract reparation from violators and to punish violators. If you steal my goat, I may forcibly retrieve it by, say, entering your yard without your permission or threatening to beat you up unless you return the goat. If you have already eaten the goat, I may use force to secure some alternative form of reparation, for instance, a dozen chickens. Furthermore, I may use force to punish you: “each transgression may be punished to that degree, and with so much severity, as will suffice to make it an ill bargain to the offender, give him cause to repent, and terrify others from doing the like” (*ST* §16). After collecting those dozen chickens, I may give you a whack or two on the head.

Locke holds that each person in the state of nature has the right to punish any rights violator, not merely those who have violated his own rights. Each violation, “being a trespass against the whole species, and the peace and safety of it, provided for by the law of nature, every man upon this score by the right he hath to preserve mankind in general, may restrain, or where it is necessary, destroy things noxious to them ...” (*ST* §8). However, this right “to preserve mankind in general” only allows one to restrain or, if necessary, destroy violators of rights, that is, those who without provocation take away or impair the life liberty, or possessions of others.



## Chapter 4

# Property Rights

[E]very man has a *property* in his own *person*: this no body has a right to but himself. The *labour* of his body, and the work of his hands, we may say are properly his. Whatsoever then he moves out of the state that nature hath provided, and left it in, he hath mixed his *labour* with, and joined to it something that is his own, and thereby makes it his *property*.

...

This partage [*i.e.*, partition] of things in an inequality of private possessions, men have made practicable out of the bounds of society, and without compact, only by putting a value on gold and silver, and tacitly agreeing in the use of money ...

John Locke (1689/1980), *Second Treatise of Government*: §27, §50.

Locke tells us that the right to freedom includes the right to do as one sees fit with one's possessions. Yet he cannot mean the right to do as one sees fit with whatever one actually possesses for he does not think that one has rights to do as one sees fit with objects one has acquired illicitly, that is, through theft or fraud. Such a right would conflict with the rights of the victims of theft and fraud to do as they see fit with their possessions. So, Locke needs a theory of property rights that explains why certain methods of acquisition engender rights to the acquired objects and why other methods of acquisition do not engender such property rights.

In his *First Treatise*, Locke argues that, since “Man should live and abide for some time upon the face of the Earth”, he must have a right “to make use of those things, that were necessary or useful to his Being” (*FT* §86). If human beings are to have a chance of achieving commodious preservation, they must have the opportunity to use and, indeed, exercise discretionary control over objects that are external to their own persons, for instance, acorns, plows, and fields cleared for cultivation.

However, according to Locke, no one is born with specific rights to particular useful objects. Locke does say that God has given the earth to all mankind in common (*ST* §25). Yet, he does not mean that originally we all are joint owners of the earth. Rather, he means two things. First, contrary to Filmer, the earth was not given to any particular individual; for instance, to Adam and then down the line of Adam's oldest male descendants (*ST* §26). Second, the raw material that is the earth is common to mankind in the sense that it is all originally unowned and all parts of it are available for just individual acquisition. Hence, again, we need a theory of property rights that specifies the procedure through which individuals can convert unowned portions of the earth into their rightful possessions (*FT* §87). This specification is offered in the *Second Treatise's* chapter, "Of Property". It is Locke's famous "labour-mixing" theory of just initial acquisition.

Locke's arguments for a natural right to freedom establish that "every man has a property in his own person" (*ST* §27). Each person is a "master of himself, and *proprietor of his own person*" (*ST* §44). This entails that each person has rights over his own faculties, talents, and labour. In more current terminology, each person has rights over his human capital and his exercise and investment of that capital. Locke then argues that if one "mixes" one's labour with some unowned raw material, one acquires a right to the resulting object. The reason is that this labour is now embedded in the resulting object. It is now "annexed" to the raw material on which the labour has been expended. Hence, if that object is seized or destroyed by another without one's consent, one's labour is seized or destroyed without one's consent. Such a seizure or destruction of the resulting object without one's consent violates one's right to one's labour: "He that in obedience to this command of God [to improve the earth for the benefit of life], subdued, tilled, and sowed any part of it, thereby annexed to it something that was his property, which another had no title to, nor could without injury take from him" (*ST* §32).

It is important to recognize that Locke is not thinking of one's labour as a quantity of physical stuff—a pint or a pound of labour—that one puts into a mixing bowl with some bit of raw material and stirs. Rather, one's labouring on some raw material is a process in which one invests one's time, effort, talent, and insight into some previously raw material with the aim of transforming it to better serve one's life. It is that investment of time, effort, talent, and insight that is expropriated when another seizes or destroys without one's consent the product of that investment.

There are two basic ways in which an individual's time, effort, talent, and insight can be expropriated by another: a prior-to-production way, and an after-production way. In the first way, another party coerces an individual to spend her time, effort, talent, and insight in the way that the coercer demands. Abe comes along, puts a gun to Bea's head, and threatens to shoot her unless she employs her powers to produce a crop of corn for Abe. In the second way, Abe stands aside while Bea invests her time, effort, talent, and insight in raising a crop of corn. He then steps forward, waves his gun, and seizes the crop. Locke's view is that these two acquisitive actions by Abe are morally on a par. Both acquisitions involve at least the partial enslavement of Bea. If one condemns the prior-to-production method of expropriation, one must equally condemn the after-production method. And, to condemn the after-production method is to affirm the producer's right to the product of her investment of her time, effort, talent, and insight.

Of course, most of what individuals justly possess, they do not possess through just *initial* acquisition. Just initial acquisition begins a process in which individuals produce not only for their own consumption but also to trade for products that others have produced for the sake of exchange. Bea, who is especially good at producing corn, produces far more corn than she and her family can consume and exchanges most of that corn for products—like plows and blueberry preserves—that others produce for the sake of trade because they are especially good at producing those products. The more highly articulated the economy is, the more one's just possessions will be acquired through market exchanges, exchanges that all parties perceive to be beneficial to them. (People may also acquire just possessions by extracting reparation payments from violators of their rights.)

Locke does not provide an explicit account of why, when Bea trades some of her corn for some of Abe's blueberry preserves, Bea acquires a right to those preserves that everyone (not just Abe) must respect and Abe acquires a right to that corn that everyone (not just Bea) must respect. I believe that there are two reasons for this lacuna in Locke's doctrine. First, the consensus among 17<sup>th</sup>-century political philosophers was that the hard question concerned how private property *begins*. Having provided an answer to this question, Locke may well have thought he had completed the crucial task for any theorist of property rights. Locke may also have thought each person's right to others

fulfilling their agreements with her was all that is needed to explain each person's right against everyone to the particular goods and services acquired by her through voluntary trade.

Note that Locke's discussion of acquired property rights is part of his state-of-nature theory. The generation of rights through labour-mixing, trade, and just restitution does not require the permission of, or endorsement by, any political authority. On their isolated island, Abe and Bea can acquire property rights through their interaction with natural materials and with one another. Still, as we shall see in the next chapter, Locke thinks these rights will be quite insecure in the state of nature and this insecurity will encourage people to establish a political structure that will enforce these property rights.

According to Locke, there is a further momentous development that does not require governmental action. Money does not first arise through governmental decrees. Rather, it arises through a type of "tacit and voluntary consent" among individuals (*ST* §50). Through people's "fancy and agreement" value is conferred on "gold, silver, and diamonds", which enables them to function as money, that is, as stores of value and as means of exchange (*ST* §46). The existence of money greatly facilitates trade because trade no longer needs to take the form of barter. In addition, money greatly increases the incentive to produce for the sake of trade. For, money enables traders to store up their gains. Money greatly encourages human industriousness:

... what would a man value ten thousand, or an hundred thousand acres of excellent *land* ready cultivated, and well stocked too with cattle, in the middle of the inland parts of *America*, where he had no hopes of commerce with other parts of the world, to draw *money* to him by the sale of the product? It would not be worth the inclosing, and we should see him give up again to the wild common of nature, whatever was more than would supply the conveniences of life to be had there for him and his family. (*ST* §48)

Money enormously increases people's opportunities and motivations to develop and exercise their human capital. In this way, money—combined with the recognition of people's rights to the products of their labour and to the proceeds of their trades—vastly increases wealth.



Indeed, the value of the goods that enhance human life is almost entirely due to the human industry that goes into their production: “labour makes the far greatest part of the value of things we enjoy in this world: and the ground which produces the materials, is scarce to be reckoned in, as any, or at most, but a very small part of [the value] ...” (*ST* §42). Although the raw material furnished to mankind may be fixed, human productivity is not. Productivity can increase; and one person’s increased productivity is entirely compatible with—and, indeed, is likely to engender—increases in the productivity of others. Thus, all parties can gain under a regime that establishes “laws of liberty to secure protection and encouragement to the honest industry of mankind” (*ST* §42). Locke rejects the zero-sum view that one person’s economic gain must be based on some other person’s loss.

Even prior to the existence of money, “different degrees of industry” among men tend “to give men possessions in different proportions” (*ST* §48). When the existence of money increases the scope and intensity of economic activity the differences in wealth among persons is likely to increase. This prospect leads Locke to ask whether “any one may *ingross* as much as he will” (*ST* §31). Locke’s response is that there are two distinct limits on rightful acquisition, although, as we shall see, he holds that these limits are naturally complied with or readily circumvented.

The first limit on rightful acquisition concerns spoilage. Since the purpose of acquisition is to serve human life, if Abe acquires more bushels of strawberries through his labour than he and his family can consume (or barter away) before some of those strawberries spoil, Abe will not have a valid claim to those strawberries. The strawberries that would spoil in Abe’s possession will belong to others at least in the sense that they remain unowned and, hence, they are open to use and appropriation by others (*ST* §31).

Still, violation of the spoilage limit is unlikely. Prior to the existence of money, if Abe is at all rational, he simply will not acquire through labour (or barter) more strawberries than he and his family can enjoy. Once money exists, Abe will be able to avoid spoilage by converting the strawberries that otherwise would spoil into “durable things” such as pieces of metal or shells or sparkling pebbles. When conversion into money is possible, the spoilage restriction turns out to be no restriction at all on the extent of one’s legitimate holdings. For, the person who converts what will otherwise spoil into money, “might heap up as

much of the durable things as he pleased: the exceeding of the bounds of his just property not lying in the largeness of his possession, but the perishing of any thing uselessly in it” (*ST* §46).

Locke’s second, and more important and complex, restriction on individual engrossment of holdings is his requirement that private acquisition of raw material leave “enough, and as good” in common for others (*ST* §27). Prior to the appearance of money, people will naturally comply with this restriction. For people will only engage in modest acquisitions of raw material if there is no prospect of *monetary* gain through expanding their acquisition of raw material in order to increase their production of goods and services that they will offer for sale: “Where there is not some thing, both lasting and scarce, and so valuable to be hoarded up, there men will not be apt to enlarge their possessions of land, were it never so rich, never so free for them to take” (*ST* §48).

Moreover, prior to the introduction of money, households that transition from living as hunter-gatherers upon common (unowned) land to living as cultivators of private parcels of acquired land *increase* the land that is left in common for others. This is because a private cultivator needs much less land for his use than he needs as a hunter-gatherer. A tribe of hunter-gatherers composed of 100 households may need 10,000 acres to live on—that is, 100 acres per household. However, when one household from this tribe settles down as cultivators, it only needs and only has an interest in acquiring 10 acres of that land. Thus, that privatizing household releases 90 acres to the remaining hunter-gatherers. The result is 100.91 acres for each of the remaining hunter-gatherer households, “[a]nd therefore he that incloses land, and has a greater plenty of conveniences of life from ten acres, than he could have from an hundred left to nature, may truly be said to give ninety acres to mankind ...” (*ST* §37).

However, when money appears and, along with it, the prospects of storable gains from industrious production, individuals will have much more incentive to acquire more raw materials for the sake of greater production. The result of this increased acquisition of raw materials may well be that “enough, and as good” raw materials will not be left for others (*ST* §36). Nevertheless, Locke has an explicit argument and an implicit argument for why this development does not violate the “enough, and as good” restriction. The explicit argument is weak; the implicit argument is much stronger.

The explicit and weak argument is that, since everyone has tacitly agreed to the introduction of money, everyone has agreed to the obvious

consequences of money and, since one of the obvious consequences is that not “enough, and as good” raw material will be left for some, the agreement to the introduction of money amounts to an agreement to set aside the “enough, and as good” restriction. After the appearance of money, this restriction is not violated because it is no longer around to be violated.

This argument is weak because only if money were created through a express, intentional, “compact” would it be at all plausible that the creation of money sets aside the “enough, and as good” restriction. Yet, Locke himself insists that money has not arisen through any “compact” (*ST* §50). It emerges through “fancy or [tacit] agreement” (*ST* §46). Moreover, we have no reason to believe that everyone has been a party to the “fancy or agreement” that is supposed to have created money. Hence, even if this agreement would set aside the restriction for those party to it, we would have reason to believe that some people retain their right to invoke this restriction.

Locke’s implicit and stronger argument emerges when we consider the reason that all people have to welcome to the introduction of money, whether or not they actually consent to it. According to Locke, the reason that each individual has for welcoming any development is “better to preserve himself, his liberty, and property” or, more generally, to sustain or enhance his well-being (*ST* §131). If each person has reason to welcome the introduction of money, it must be because *on net* each person’s economic opportunities will be (or will likely to be) enhanced by that development.

We have seen, however, that for some people the introduction of money will have the negative effect on their economic opportunity of there no longer being enough and as good *raw materials* left for them to take possession of through initial acquisition. So, for each person to have reason to welcome the introduction of money, there must be positive and countervailing effects; and those countervailing effects must leave everyone—including those who have less opportunity to be *initial* appropriators of raw material—at least not on net worse off with respect to economic opportunity. That there are such countervailing effects is the empirical claim at the core of Locke’s implicit argument.

We need to remember that almost nobody lives well (or at all) by raw material alone. Almost everybody who lives well does so by taking advantage of an array of economic opportunities created by the extensive development of private property, human productivity, and trade—development that is greatly augmented by the introduction of money. That development is the primary

source of economic opportunity, the opportunity to acquire *produced* materials through trade, to benefit through production for trade, and to hone and sell the diverse labour skills that acquire value in such an economic environment.

Opportunity depends much more on being a participant in the sort of market economic order that emerges with the establishment of property rights and the introduction of money than on being a party to the initial acquisition of raw material. (This is largely a consequence of the fact that the development of human capital and its exercise is vastly more important than raw material in the creation of economic opportunity and wealth.) Any loss of opportunity as a result of one's being less able to be an *initial* acquirer of raw materials will be overbalanced by one's gain in the range of economic opportunities that do not consist in such raw acquisition. Or, to put Locke's conclusion more modestly, no one will have a complaint in justice about a loss of opportunity to be an initial acquirer of raw material unless that person has been excluded from the counterbalancing opportunities that economic development based on extensive privatization and increased productivity and trade normally provides.

Locke's implicit argument for why the introduction of property rights and money does not violate the requirement that "enough, and as good" be left for others depends on an equally implicit distinction between two understandings of that requirement. The narrow understanding is that no one is to be left with less opportunity to be an initial appropriator of raw material. The broad understanding is that no one is to be left with less economic opportunity. Locke's implicit argument is that, while the introduction of property and money may well lead to some individuals having less opportunity to be initial appropriators of raw material, the introduction of property and money at least normally enhances everyone's economic opportunities broadly understood.

Locke's view, then, is that the spoilage and "enough, and as good" restrictions express theoretical limits on rightful individual holdings. However, in anything like the normal course of affairs—both prior to and after the introduction of money—holdings that arise through just acts of initial acquisition, trade, and rectification will not violate those limits. More generally, the introduction of property rights, money, and widespread commerce will tend *both* to increase inequality of possessions (compared to a pre-property, pre-monetary state of nature) and to be economically advantageous to all.

## Chapter 5

# Inconveniences of the State of Nature and Their Remedy

If man in the state of nature be so free, as has been said; if he be absolute lord of his own person and possessions, equal to the greatest, and subject to no body, why will he part with his freedom? ... To which it is obvious to answer, that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain, and constantly exposed to the invasion by others: for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very unsecure.

...

I easily grant, that civil government is the proper remedy for the inconveniences of the state of nature ... .

John Locke (1689/1980), *Second Treatise of Government*: §123, §13.

Recall that, besides rights to life, liberty, and estate, each individual possesses by nature rights to engage in self-defence, to extract restitution for rights-violating losses, and to punish rights violators. If Abe attempts to enslave Bea on the isolated island that they inhabit, Bea may use force (or deception) to thwart Abe. If Abe manages to enslave her, Bea has the right not only to escape but also to extract reparations from Abe and to punish Abe for his violation of her right to liberty (*ST* §10). Locke refers to these rights to protect and enforce the rights of life, liberty, and estate as “the executive power of the law of nature” (*ST* §13).

Locke holds that in the state of nature—especially prior to the introduction of money—most people will be inclined to comply with others’ rights

to life, liberty, and estate, at least when they expect reciprocal compliance by others. However, this is not true of all people. People who do not consult reason, which teaches us that we are each equal and independent beings who are not to be subordinated to others, may well not abide by core laws of nature. Others may consult reason and, thus, be aware that each person is “absolute lord of his own person and possessions” (*ST* §123) and yet still tend to behave “as beasts of prey” (*ST* §16). Some people may desire “the benefit of another’s pain” (*ST* §34) and, hence, attempt to seize the labour of others or the products of their labour or the goods these others have acquired through voluntary exchange.

In the state of nature, the prospect of people exercising their rights of defense, restitution, and punishment will tend to deter the violation of rights. And the accurate and effective exercise of the rights to retribute and to punish will counteract rights violations that have not been deterred. However, not every reaction to *perceived* rights violations will be accurate and effective. For, in the state of nature, people will be judges of their own cases and of how much defensive force, restitution, and punishment they may impose on those they judge to be guilty. In addition, “... self-love will make men partial to themselves and their friends; on the other side, ... ill nature, passion and revenge will carry them too far in punishing others ...” (*ST* §13). Individuals may believe they are exercising the executive power of the law of nature while they are in fact engaged in unjust uses of force. And others who anticipate such unjust force may themselves rush to faulty judgment.

Locke believes that inconveniences of this sort will be infrequent prior to the introduction of money. During this pre-monetary stage of the state of nature, “what portion a man carved to himself, was easily seen; and it was useless, as well as dishonest, to carve himself too much, or take more than he needed” (*ST* §51). “The equality of a simple poor way of living, confining their desires within the narrow bounds of each man’s small property, made few controversies, and so no need of many laws to decide them, or variety of officers to superintend the process, or look after the execution of justice, where there were but few trespasses and few offenders” (*ST* §107).

However, the introduction of money greatly increases the forms of property that will exist and the ways in which one person’s use of what is (or seems to be) her property may be thought to infringe upon the property rights (or what seem to be the property rights) of others. After the introduction of money, Bea extends her cultivation to land that requires irrigation and begins

to draw so much more water upstream of Abe's watermill that the watermill ceases to function. Does Bea's impingement upon Abe's endeavours constitute a violation of Abe's right to dispose of his possessions as he sees fit? Does Abe have a right to the flow of water that operates his mill? Or Cici builds a railroad, the noise from which disturbs Dee's cows and lessens their production of milk. More controversies arise, including more *honest* disputes about who has injured whom and about what the appropriate compensation for that injury should be. Moreover, the general increase of wealth enhances some individuals' incentives to engage in more sophisticated forms of theft and fraud. So, even though everyone stands to benefit from economic life becoming more extensive, complex, and dynamic as long as rights to life, liberty, and estate are duly recognized and enforced, these developments greatly magnify the danger that in the state of nature these rights will not be duly recognized and enforced.

This danger makes each man

... willing to quit a condition, which, however free, is full of fears and continual dangers: and it is not without reason, that he seeks out, and is willing to join in society with others ... for the mutual *preservation* of their lives, liberties, and estates, which I call by the general name, *property*. (ST §123)

...

To avoid these inconveniences, which disorder men's properties in the state of nature, men unite into societies, that they may have the united strength of the whole society to secure and defend their properties, and may have *standing rules* to bound it, by which everyone may know what is his ... . (ST §136)

Note that these inconveniences do not arise from individuals exercising their rights to freedom, that is, rights to do as they see fit with their own persons and possessions. Rather, they arise from lack of clarity about precisely where one person's rights end and where the rights of others begin; and from people's individual, idiosyncratic, inaccurate, or ineffective exercise of their rights of defence, restitution, and punishment. Thus, the natural solution to these inconveniences lies in the establishment of a standardized body of known law that will be applied by impartial judges and effectively enforced by the united power of those subject to this body of law (ST §124–§126).

The first step in the establishment of these legal institutions is for people to transfer their individual rights to defence, restitution, and punishment to a single common agency, which Locke labels “political society”. Each rational individual, “seeks out, and is willing to join in society with others, who are already united or have a mind to unite, for the mutual *preservation* of their lives, liberties, and estates, which I call by the general name, *property*” (*ST* §123 and see *ST* §134). To fulfill its purpose, political society—which, once formed, operates by majority rule (*ST* §95)—creates a structure of legal institutions that will more clearly specify and more impartially and effectively enforce the *retained* rights to life, liberty, and estate of the contracting individuals. This is the second step in overcoming the inconveniences of the state of nature.

A sensible political society will create a mixed constitutional order with an internal division of powers. We would expect this mixture to include three distinct branches, *viz.*, legislative, executive, and judicial. However, when Locke sets out the distinct powers of the well-ordered commonwealth (in *ST*, ch. *xii*), he describes a legislative power and an executive power; but there is no mention of a judicial power. What explains this omission?

Unlike many anti-authoritarian theorists in the 17<sup>th</sup> century, Locke never appeals to evolved customary or judge-made law as a basis for assessing exercises of political power. For instance, Locke never invokes the idea of an evolved “law of the land” to criticize attempts by the monarch to impose taxes without the consent of Parliament. Instead, Locke takes all human law (as opposed to natural or divine law) to be *legislation*, that is, to be enactments by some legislating individual or assembly. Neither custom nor judicial decisions can be sources of law. It follows that the only role for judges is the impartial application of legislation that has been created by the legislative branch of government and is supposed to be enforced by the executive branch. Hence, judges can only be agents of these other branches of the legal order. Indeed, Locke may think of judges (as Hobbes did!) as simply subordinates of the chief of the executive branch.

The legislative branch is responsible for enacting laws that more finely articulate people’s rights of life, liberty, and property, make these more readily known, and establish public mechanisms for their adjudication and enforcement. Locke worries about whether members of the legislature will be “apt to grasp at power” rather than legislate to enhance the security of each individual’s rights. However, he believes that a structural feature of the legislative branch will guard against this. He thinks that, if the members of the legislative assembly



are charged with enacting laws that apply equally to all persons *and* the enforcement of this legislation is placed in the hands of the executive branch rather than the legislature itself, the legislators themselves will be “subject to the laws they have made”. Hence, these legislators will “take care that they make [these laws] for the public good” (*ST* §143, also see *ST* §94). Unfortunately, Locke vastly underestimates the capacity of legislators to formulate legislation that, while perhaps having the form of general rules, will benefit themselves or their sponsors or cronies at the expense of others; and the capacity of the legislators and the executive to collude in the formulation and enforcement of such enactments.

The absence of a judicial branch on an equal footing with the legislative and executive branches seems to leave us with two *distinct* basic branches within a well-ordered commonwealth. However, Locke’s position differs from this in two important ways. First, the legislative and executive branches will not be entirely distinct. For, the monarch, who will be the chief of the executive branch, will have a share of the legislative power. In a well-ordered commonwealth no legislation can be valid without the chief executive’s endorsement.

Second, Locke identifies a *third* power within a well-ordered commonwealth, a power that also resides within the chief executive. This is the “federative” power (*ST* §145–§148). It is the power to conduct foreign policy and to wage war and make peace. Locke holds that this federative power is not subject to legislative control because conducting foreign policy and war and peace are not matters of following or enforcing the enacted rules for regulating the interaction of the members of the society in question. Foreign policy and war and peace cannot be “directed by antecedent, standing, positive laws”. Rather, it “must be *left* in great part to the *prudence* of those who have this power committed to them, to be managed by the best of their skill, for the advantage of the commonwealth” (*ST* §147).

Locke’s position here seems to run contrary to the classical liberal demand for strong constraints on the exercise of all coercive power, especially as it is concentrated in the head of the executive branch. A possible response by Locke is that, although the federative power cannot be constrained by “antecedent, standing positive” legislation, it is subject to constraint by political society, which can appeal to the law of nature when the federative power is not being employed “for the advantage of the commonwealth” (*ST* §147).

Despite the chief executive’s prerogative to conduct foreign policy and war and peace as he sees fit without legislative oversight, Locke maintains

that the legislative branch has “supreme authority” within a well-organized commonwealth. Nevertheless, this supreme authority does not mean that the legislature may rule “by extemporary arbitrary degrees” (*ST* §136). For the legislature “*is bound to dispense justice, and decide the rights of the subject by promulgated standing laws, and known authorized judges ...*” (*ST* §136). The legislature “can never have a right to destroy, enslave, or designedly to impoverish the subjects” (*ST* §135).

To fulfill the role entrusted to it, it is not enough for the legislature to secure each individual’s property from the deprivations by fellow subjects. It is also essential that the legislators (and chief executive) “never have a power to take to themselves the whole, or any part of the subjects *property* without their own consent” (*ST* §139). “And thus the *community* [*i.e.*, political society] perpetually *retains a supreme power* of saving themselves from attempts and designs of any body, even of their legislators, whenever they shall be so foolish, or so wicked, as to lay and carry on designs against the liberties and properties of the subject” (*ST* §149). Not only the legislators but also the chief executive must be subject to enacted law that serves to secure everyone’s rights of life, liberty, and property. “*No man in civil society can be exempted from the laws of it*” (*ST* §94).

Neither individuals in the state of nature nor individuals as members of political society would accede to a sovereign who was above the enacted law. For,

*absolute monarchs* are but men; and if government is to be the remedy of those evils, which necessarily follow from men’s being judges in their own cases, and the state of nature is therefore not to be endured, I desire to know what kind of government that is, and how much better it is than the state of nature, where one man commanding a multitude, has the liberty to be judge in his own case, and may do to all his subjects whatever he pleases, without the least liberty to any one to question or controle those who execute his pleasure? (*ST* §13)

To think, as Hobbes did, that individuals would seek to escape from the problems of the state of nature by agreeing to submit to a sovereign of unlimited authority “is to think, that men are so foolish, that they take care to avoid what mischiefs may be done by *pole-cats* or *foxes*; but are content, nay, think it safety, to be devoured by *lions*” (*ST* §93).

## Chapter 6

# The Obligation to Obey Legislation and Its Radical Limits

Men being, ... by nature, all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent.

...

[T]he *municipal laws* of countries ... are only so far right, as they are founded on the law of nature, by which they are to be regulated and interpreted.

...

The obligations of the law of nature cease not in society, but only in many cases are drawn closer, and have by human laws known penalties annexed to them to enforce their observation. Thus the law of nature stands as an eternal rule to all men, *legislators* as well as others.

John Locke (1689/1980), *Second Treatise of Government*: §95, §12, §135.

In this chapter, I address Locke's view about why individuals are obligated to abide by the legislation that is enacted by government as long as those enactments accord with the purpose that Locke sets forth for governments, *viz.*, to better articulate and enforce their rights of life, liberty, and property.

One of the four or five major themes most commonly associated with Locke's political doctrine is the claim that each individual's obligation to obey the legislation of the government under which he lives rests on that individual's consent. A government's authority to impose its statutes on its subjects must derive from the consent of the governed. Locke tells us that "[m]en being ... by nature, all free, equal, and independent, no one can be put out of this estate, and subject to the political power of another, without his own consent" (*ST* §95).

Similarly, since every person is naturally free, nothing can “put him into subjection to any earthly power but only his own consent” (*ST* § 119). Locke is especially eager to maintain that sons cannot be bound by the consent of their fathers: “a child is born a subject of no country or government ... there is no tie upon him by his father’s being a subject of this kingdom; nor is he bound up by any compact of his ancestors” (*ST* §118).

In this chapter’s section on the *Consent Explanation*, I contend that Locke’s explanation of how everyone dwelling within a given government’s territory tacitly consents to obey that government’s legislation is deeply problematic. However, in this chapter’s section on the *Natural Obligation Explanation*, I show that Locke does not need to appeal to consent (or to territoriality) to explain the obligation of subjects to obey enacted legislation that serves the proper purpose of government. If enacted legislation secures people’s natural rights to life, liberty, and property by more clearly delineating these rights and more reliably protecting them, each individual’s natural obligation to respect the rights of others explains each individual’s obligation to abide by that legislation. In this chapter’s concluding paragraphs, I consider whether Locke can rely upon the Natural Obligation Explanation to vindicate an obligation to abide by tax legislation. This is the *Taxation Complication*.

### *The Consent Explanation*

Of course, Locke does not think that every government arises through the consent of all of its subjects. He is, after all, eager to point out that lots of regimes arise through violent usurpation or conquest; and he holds that, for this reason, those regimes have no valid authority to rule. However, Locke does assert that, if a government has genuine authority, it acquires that authority from the actual and voluntary consent of all of its subjects. Locke also maintains that this governmental authority cannot extend to the infringement of anyone’s rights because no individual can through her consent convey to the commonwealth the right to infringe anyone’s rights (*ST* §23).

Yet, we must ask, does any government ever have the actual and voluntary consent of all of its subjects? Locke defended and served the government that was established in Great Britain after the Glorious Revolution of 1688. But, did that government really have the actual and voluntary consent of all those it governed? After all, the typical subject of the regime of William and Mary was never presented with, and never actually and voluntarily put his (or her!)

signature on, a clearly drafted contract to join political society or to abide by the statutes enacted by the legislature of that political society. We should expect that Locke is going to have to engage in some fancy and precarious footwork in his attempt to show that all regimes that he believes to have genuine authority derive their authority from the consent of their subjects.

Locke begins his attempt to show that through their individual consent all subjects of a well-ordered commonwealth are obligated to abide by its legislation by distinguishing between “express” consent and “tacit” consent (*ST* §119). Express consent involves explicit, self-conscious, and publicly observable agreement with, for example, written contracts, witnesses, and signatures, while tacit consent turns on less easily identified common understandings, expectations, and informal signals. When consent theorists appeal to tacit consent there is always a danger that the bare fact that someone has not expressly consented will be taken as evidence that this individual has tacitly consented.

Locke acknowledges that relatively few subjects have given their express consent to become part of political society or to obey the enactments of the government to which they are subject. If all individuals within a given nation are to count as consenters, most will have to have tacitly consented. Most people will have to have done something that counts as consent even though it does not much look, smell, or sound like consent.

Indeed, Locke asserts that merely being in the territory of a given government constitutes tacit consent to obey the legislation of that government:

[E]very man, that hath any possessions, or enjoyment, of any part of the dominions of any government, doth thereby give his *tacit consent*, ... whether this his possession be of land, to him and his heirs for ever, or lodging only for a week; or whether it be barely travelling freely on the highway; in effect, it reaches as far as the very being of any one within the territories of that government. (*ST* §119)

How can this be? How can a person merely being “within the territories of [a] government” obligate that person to obey the laws of that government? And why say that this obligation arises from that person’s tacit consent? Notice that, if we accept Locke’s claim that simply being within the territory of a government constitutes tacit consent to it, it seems that every government that has

ever existed has had the consent of every one within its territory. However, this runs contrary to Locke's own view that many governments do not have the consent of many of their subjects and, for that reason, do not have the authority that they claim to have.

Locke understands that he needs to justify his assertion that merely being within the territory of a government constitutes tacit consent to obey the legislation of that government. Here is Locke's justification:

[E]very man, when he at first incorporates himself into any commonwealth, he, by his uniting himself thereunto, annexed also, and submits to the community, those possessions, which he has, or shall acquire, that do not already belong to any other government. ... [His possessions become] subject to the government and dominion of that commonwealth, as long as it hath being. Whoever therefore, from thenceforth, by inheritance, purchase, permission, or otherways, *enjoys any part of the land*, so annexed to, and under the government *of that commonwealth*, must take it with the condition it is under; that is, of submitting to the government of the common-wealth ... (ST §120)

According to Locke, by some point in the distant past every landowner within the area controlled by a given commonwealth will have incorporated himself into that commonwealth and, in doing so, will have submitted all his land "to the government and dominion" of that commonwealth. The totality of that land is now the territory of that government over which it has jurisdiction. Since all the land is now the territory of the commonwealth, the commonwealth now has the right to set conditions on anyone's presence within its territory. And the basic condition that it sets is that its legislative enactments be obeyed.

From a Lockean perspective, there are many problems with this picture. Would Lockean inhabitants of the state of nature, who are deeply concerned about the preservation of their property, really annex and submit their property to the commonwealth? Can individual property owners create such governmental jurisdiction over their lands without radically undermining their property rights? Within this account of consent, Locke presumes that governmental action to better secure everyone's property rights in land requires that all land be under the jurisdiction of the commonwealth. That is the only reason that he gives for thinking that owners of land would all annex and submit their

property to the commonwealth (*ST* §120). However, all landowners have to do to better secure their property rights is to establish a common agent who will be charged with more effectively exercising their rights to protect their property and to impose restitution and punishment on rights violators. There is no need for the landowners to annex or submit their land to the commonwealth in order to establish a commonwealth that acts as such an agent. There is no need for the common agent for the protection of their rights to have territorial jurisdiction over their property.

Nevertheless, let us suppose that a commonwealth established by individuals who exit the state of nature will have acquired jurisdictional rights over the totality of the land owned by those individuals. Would this be a basis for holding that anyone who now dwells within that territory will become obligated to obey that commonwealth's legislation *through her tacit consent*? I think the answer is, no. If we assume that the commonwealth has jurisdiction over the territory that it controls, Bea's dwelling within that territory may obligate her to obey its government. But tacit consent by Bea would play no role in an explanation of that obligation. Let me explain why.

First consider a case that involves Abe's jurisdiction over his own home. Abe invites Bea to spend the evening in his residence. Bea arrives and, to Abe's surprise, she immediately removes all her clothing. This makes Abe uncomfortable, perhaps because he is expecting soon to be nominated for the US Supreme Court. Abe tells Bea that, since the home is his property, he gets to set the conditions under which she may continue her visit and the condition that he sets is that she put her clothing back on. Abe's being the owner of the house justifies Abe imposing this condition on Bea. Abe's setting of that condition is what obligates Bea to put her clothes back on if she stays. Bea's staying involves her *acceding* to Abe's condition. But Abe's imposing that condition on her does not at all depend upon her consenting to that condition or her consenting to Abe's having authority to set the conditions under which people can stay in his house. Bea's consent has nothing to do with it.

Similarly, if in virtue of its (supposed) territorial rights a commonwealth sets a condition on anyone being within its territory (for example, the condition of obeying its statutes), the setting of that condition is justified by the territorial rights. It is not justified by people consenting to that condition. The (supposed) jurisdiction of the government over that territory does all the work. Since consent has nothing to do with the creation of the obligation of people

who remain in the territory to obey the government’s legislation, Locke’s stance here is an *abandonment* of his thesis that the obligation to obey a well-ordered commonwealth’s legislation derives from the consent of the subjects!

Here is another indication of Locke’s abandonment of the view that each person’s obligation to obey legislation derives from his own consent. Suppose that we were to accept Locke’s claim that our ancestors have created a jurisdiction for the government that justifies the government’s setting conditions for inhabiting in its territory. We would then be accepting—contrary to Locke’s own conviction—that we are “bound up” by a compact made by our ancestors (*ST* § 118). We would be accepting that our being bound does not depend upon our consent.

### *The Natural Obligation Explanation*

For Locke, the “great end” that justifies the creation of political societies and their political-legal institutions is “the enjoyment of [men’s] properties in peace and safety” (*ST* §134). The property of individuals—that is, their rights to life, liberty, and estate—are not themselves the product of political society or the actions of its legislature. The governing purpose of political society and its political-legal institutions is to enhance people’s peaceful enjoyment of rights that do not owe their basic moral force to the will of political society, the legislature, or the monarch.

Early in the *Second Treatise*, Locke declares that “... the municipal [*i.e.*, legislatively enacted] laws of countries ... are only so far right, as they are founded on the law of nature, by which they are to be regulated and interpreted” (*ST* §12). Enacted legislation is needed because people’s natural rights have to be more finely specified, so that each can have more confidence that there is a reciprocal understanding of where her rights end and the rights of others begin. (And, there is also a need for the reliable application and enforcement of these more finely tuned, reciprocally understood, specifications.)

To avoid [the] inconveniences, which disorder men’s property in the state of nature, men unite into societies, that they may have the united strength of the whole society to secure and defend their properties, and may have *standing rules* to bound it, by which every one may know what is his. (*ST* §136)

...



[M]en would not quit the freedom of the state of nature for, and tie themselves up under [government], were it not to preserve their lives, liberties, and fortunes, and by *stated rules* of right and property to secure their peace and quiet. (*ST* §137)

“[S]*tanding rules*” are needed to bound—not to create—people’s property so that “every one may know what is his”; “*stated rules*” are needed to preserve—not create—people’s lives, liberties, and fortunes.

The commonwealth may regulate property in the sense of *regularizing* it, that is, clarifying where the boundaries lie between one person’s rights and another’s, how those boundaries are to be detected, and how encroachments across these boundaries are to be handled. However, the power to regularize in this sense is not the power to take all or any of the property (life, liberty, or estate) of any subject. Regularization through enacted legislation must itself be founded on and regulated by the law of nature (*ST* §12).

According to the Natural Obligation Explanation, the process by which legislation arises—specifically, whether it arises through consent or not—is not crucial to a government’s authority to rule. Rather, what is crucial is the substance of the legislation, that is, whether or not it protects the natural rights of those subject to it as those rights are refined by legislation and implemented through judicial and executive action. What explains a subject’s obligation to abide by enacted legislation is its conformity to the law of nature, which retains its moral force over everyone including legislators: “The obligations of the law of nature cease not in society, but only in many cases are drawn closer, and have by human laws known penalties annexed to them to inforce their observation. Thus the law of nature stands as an eternal rule to all men, *legislators* as well as others” (*ST* §135).

In the state of nature each individual is obligated to abide by the demands of others that she respect the rights of others and submit to their enforcement of their rights. No individual need consent to be subject to this obligation. The Natural Obligation Explanation of each individual’s obligation to abide by enacted legislation within a well-ordered commonwealth is that this obligation is simply a more finely tuned and more effectively enforceable form of that individual’s state-of-nature obligation. That is why individuals need not consent to be subject to that legislation. Of course, according to this line of thought, subjects are obligated only to abide by legislation that accords with

and draws closer the law of nature (*ST* §135). If this is a plausible explanation for each individual's obligation to obey legislation that better articulates and secures people's rights, then Locke turns out not to need consent to underwrite that obligation. But does Locke still need consent to underwrite an obligation to abide by legislation that imposes taxes?

### *The Taxation Complication*

Locke believes that a government that protects people's rights to life, liberty, and estate has the right to impose taxes on its subjects to cover the costs of providing that protection (*ST* §140). Can a Natural Obligation Explanation be offered for an obligation to obey legislation that requires subjects to pay for the protection that a commonwealth provides to them? Within the Lockean framework, the answer has to be "no". For, there is no natural obligation to pay for a benefit that has been provided to one if one has not contracted to pay for it. If, in the state of nature, Cici benevolently steps in to thwart Dee's attempt to rob Bea and then presents Bea with a bill for her services, Bea will not have an enforceable obligation to pay that bill. Indeed, Cici's forcible extraction of payment from Bea will be a violation of Bea's rights.

Similarly, for any subject to be obligated to obey a government's demand that she pay for protection rendered by that government it is necessary that this subject have consented to that taxation (at least by authorizing her representatives to enact such taxation). The government's extraction of payment from that subject will be a violation of her rights unless she has consented to make payments to the government in exchange for that protection. However, if we reject appeals to tacit consent of the sort that Locke proposes, we have to conclude that each individual must expressly consent to the taxation imposed upon her for her to be obligated to comply with that taxation. Moreover, that consent must not be made under duress (*ST* §186). It seems that, for a subject to be obligated to obey tax legislation, she must have expressly and voluntarily agreed to the enactment of such legislation.

Yet, has any government ever had the express and voluntary consent of each of its subjects for the taxes imposed on them? Is it possible that any government ever will have such voluntary consent to the charges it imposes on its subjects?

## Chapter 7

# Toleration

If any man err from the right way, it is his own misfortune, no injury to thee: Nor therefore art thou to punish him in the things of this Life, because thou supposest he will be miserable in that which is to come.

...

Laws provide, as much as is possible, that the Goods and Health of Subjects not be injured by the Fraud or Violence of others; they do not guard them from the Negligence or Ill-husbandry of the Possessors themselves. No man can be forced to be Rich or Healthful, whether he will or no. Nay, God himself will not save men against their wills.

...

[I]t does not belong unto the Magistrate to make use of his Sword in punishing everything, indifferently, that he takes to be a sin against God. Covetousness, Uncharitableness, Idleness, and many other things are sins, by the consent of all men, which yet no man ever said were to be punished by the Magistrate. The reason is, because they are not prejudicial to mens Rights, nor do they break the publick Peace of Societies.

John Locke (1689/1983), *A Letter Concerning Toleration*: 31, 35, 43–44.

Locke's *A Letter Concerning Toleration* (1689) is his second best-known work in political philosophy and is one of the great essays on behalf of religious toleration. Locke defends toleration for all Protestant sects and, much more radically, for Jews and Muslims. However, Locke did not advocate full toleration for Catholics and atheists. This was not because of Catholic or atheist doctrine as such but, rather, because Catholics and atheists were politically suspect. According to Locke, Catholics were suspect because of their political loyalty

to the Pope and often to the tyrannical Catholic monarchies in Spain or France. Atheists were politically suspect because they could not take themselves to be bound by their oaths to God.

Locke wrote about religious toleration over a span of more than forty years. His early unpublished essays, “Two Tracts on Government” (1660/61), defended the right of the monarch to establish and enforce religious doctrine and practice within his realm. The conclusion that it is the business of the ruler to establish such uniformity was based on the premises that uniformity of religious belief and practice is essential to social order and that such uniformity can be established and maintained within society through the ruler’s coercive power. The first of these premises was shaken when, as part of a diplomatic mission to Cleves in Germany in 1665, Locke discovered Calvinists, Lutherans, and Catholics living harmoniously with one another. The second of these premises was rejected as Locke came to believe that rulers and citizens had to learn to live with people whose religious views offended them because there was no morally acceptable or effective means of suppressing religious dissent.

Locke explicitly endorsed religious toleration in 1667 when he composed (but did not publish) his “An Essay on Toleration”, which strongly anticipated the classical liberal doctrines of his *Two Treatises* and *A Letter Concerning Toleration*. Moreover, Locke followed up *A Letter Concerning Toleration* with a second *Letter* (1690) and third *Letter* (1692) on toleration (the third runs over 300 pages) in which he further developed and defended the views presented in *A Letter Concerning Toleration*. He was at work on a fourth *Letter* when he died in 1704.

Although *A Letter Concerning Toleration* is devoted to the topic of *religious* liberty, the full range of Locke’s classical liberalism is at work within this essay. Since some men will

... rather injuriously prey upon the Fruits of other Mens Labours, than take pains to provide for themselves; the necessity of preserving Men in the Possession of what honest industry has already acquired, and also of preserving their Liberty and strength, whereby they may acquire what they further want; obliges Men to enter into Society with one another; that by mutual Assistance, and joint Force, they may secure unto each other their Properties in the things that contribute to the Comfort and Happiness of this Life. (*LCT* p. 47)

The genuine authority of “magistrates” (that is, rulers) extends only to the protection of each subject’s “just Possession of [the] things belonging to this Life” (*LCT* p. 26). As we shall see, Locke explicitly rejects the paternalist view that rulers may suppress or punish an individual’s self-harming conduct and the moralist view that rulers may suppress or punish an individual’s immoral (but not rights-violating) conduct. I shall leave it to the reader to work out the full implications of these broadly libertarian stances.

The basic reason that religious belief or worship may not be suppressed or punished by the magistrate is that, even if a religious belief is erroneous or a form of worship is undue, neither the entertainment of that belief nor the practice of that worship violates anyone else’s rights:

one Man does not violate the Right of another, by his Erroneous Opinions, and undue manner of Worship, nor is his Perdition any prejudice to another Mans Affairs; ... Every man ... has the supreme and absolute Authority of judging for himself. And the Reason is, because no body else is concerned in it, nor can receive any prejudice from his Conduct therein. (*LCT* p. 47)

Even the most grievous errors people may make in their religious convictions or practices do not justify their forcible suppression or punishment. For, “[i]f any man err from the right way, it is his own misfortune, no injury to thee: Nor therefore art thou to punish him in the things of this Life, because thou supposest he will be miserable in that which is to come (*LCT* p. 31)”. An individual’s pursuit of eternal salvation may be his most vital business. But, it is *that* individual’s business. And no one is to be suppressed or punished who is minding his own business, even if he is minding it badly.

Locke thinks it is obvious to everyone that,

“[i]n private domestick Affairs, in the management of Estates, in the conservation of Bodily Health, every man may consider what suits his own conveniency, and follow what course he likes best. ... Let any man pull down, or build, or make whatsoever Expenses he pleases, no body murmurs, no body controuls him; he has his Liberty (*LCT* p. 34)”.

And Locke thinks that it should be equally obvious that each individual must be afforded a like liberty to follow the courses she thinks best in religious matters.

Each individual should be allowed to behave in ways that (others judge) are harmful to her health or to her estates; and likewise she should be allowed to behave in ways that (others judge) are harmful to her soul.

Laws provide, as much as is possible, that the Goods and Health of Subjects not be injured by the Fraud or Violence of others; they do not guard them from the Negligence or Ill-husbandry of the Possessors themselves. No man can be forced to be Rich or Healthful, whether he will or no. Nay, God himself will not save men against their wills. (*LCT* p. 35)

God himself is supremely anti-paternalist.

Locke observes that, when people do not accept the religion of their more powerful neighbours or depart from its accustomed ceremonies or fail to enroll their children in that religion, “this immediately causes an Uproar. ... Every one is ready to be the Avenger of so great a Crime”. The authorities are aroused and condemn the religious dissenter “to the loss of Liberty, or Goods, or Life” (*LCT* p. 34). Moreover, it is claimed that such punishment is motivated by a benevolent desire to protect the dissenter from God’s yet greater wrath. Yet, Locke rejects this explanation for the “intemperate Zeal” of those who respond to religious dissent with “Fire and Sword”.

For it will be very difficult to persuade men of Sense, that he, who with dry Eyes, and satisfaction of mind, can deliver his Brother unto the Executioner, to be burnt alive, does sincerely and heartily concern himself to save that Brother from the Flames of Hell in the World to come. (*LCT* p. 35)

Rather than it being an act of brotherly love, Locke conjectures that such persecution is part of the persecutors’ program to sustain or reinforce their “Temporal Dominion” (*LCT* p. 35).

Besides rejecting the paternalist justification for suppression and punishment, Locke rejects the moralist justification that, even if erroneous religious belief and undue worship do not violate the rights of others, they may be suppressed and punished because of their *sinfulness*. For, the sinfulness of an activity does not suffice to authorize the magistrate to suppress or punish it:

it does not follow, that because it is a sin it ought therefore to be punished by the Magistrate. ... Covetousness, Uncharitableness, Idleness, and many other things are sins, by the consent [*i.e.*, by the consensus] of all men, which yet no man ever said were to be punished by the Magistrate. (*LCT* pp. 43–44)

It is entirely permissible for anyone to urge others to desist from their self-harming or sinful activities. However, it is central to Locke's perspective that, as long as individuals are not engaged in violence or fraud against others, they must be left free.

Recall that liberty is not a matter of doing whatever one desires to do but, rather, a matter of doing as one sees fit with one's own property, that is, one's own life, liberty, and estate. Toleration is a matter of allowing others to do as they see fit with themselves and their possessions. Thus, one's rightful liberty is not violated when one is prevented from killing another person for the fun of it. And one's religious liberty is not violated when one is prevented from sacrificing an infant in one's religious ceremonies. For killing an infant is a violation of her rights, whether or not it is done in the course of religious observance.

Someone who worships by standing on her head or by sacrificing her own calf is minding her own business as much as someone who exercises by standing on her head or feeds her family by butchering her own calf. In none of these cases is forceful interference by other individuals or the prince justified. In contrast, if that person worships or exercises by standing on your head or by sacrificing your calf, she is not minding her own business and the ruler has the right and the duty to intervene. Religious liberty is simply the right to do for religious purposes whatever everyone in general has the right to do, *viz.*, dispose of one's own person and possessions as one sees fit (*LCT* p. 42).

People often have different views about what ought to be done with a particular resource. Should this field be used to plant corn or to play tennis? Should this calf be sacrificed to please God or should it be fed lots of corn so it can feed many people next winter? Locke sees that we can make an end-run around disputes about how best to use a given resource by focusing on who is the rightful owner of the resource in question. If Abe is the owner of the field, he gets to decide whether to plant corn on it or use it for tennis. If Bea

is the owner of the calf, she gets to decide whether the calf is sacrificed or fed. If you disagree with Abe's or Bea's choice, you can always put your money where your mouth is, purchase the resource, and put it to your favoured use (*LCT* p. 42).

Nevertheless, might not the supreme importance of eternal salvation give people good reason to consent to the magistrate using coercion (when necessary) to nudge his subjects toward salvation? Might not this supreme importance give people good reason to consent to a *special exception* to the rule that coercion be limited to the prevention of rights violations? Locke answers these questions in the negative. It is never rational to consent to being coerced for the sake of one's salvation. For, "All the Life and Power of true Religion consists in the inward and full perswasion of the mind" (*LCT* p. 26). And inward religious conviction can never be instilled in one by means of coercion.

Locke believed that salvation requires genuine inward belief in the salvific role of Christ. But, while threats of torture or execution unless one adopts this belief may well make one say that one has the belief, they can never engender genuine inward belief. Therefore, "no man can so far abandon the care of his own Salvation, as blindly to leave it to the choice of any other, whether Prince or Subject, to prescribe to him what Faith or Worship he shall embrace" (*LCT*, p. 26). Freedom from the coercion by others is essential to our worldly well-being and true autonomy in our religious convictions is essential to our other-worldly well-being.

Furthermore, even if one could entrust the care of one's own salvation to another, it would be very foolish to entrust it to whoever happens to have political power over one. For one's ruler is likely to have very much less concern for one's salvation and what will promote it than one will have oneself. Nor will it help to say that only those rulers who embrace the "orthodox," that is, the true religion, have the authority to dictate religious belief and practices within their domains: "For every Church is Orthodox to it self; to others, Erroneous or Heretical. For whatsoever any Church believes, it believes to be true; and the contrary unto those things, it pronounces to be Error" (*LCT* p. 32). Telling rulers that they may only impose their religious beliefs if they are the true beliefs will simply encourage every ruler to impose the beliefs that he takes to be true (or the views of the Church with which he is allied).



I conclude this chapter with a vital point that Locke makes concerning the supposed danger posed by dissident sects. Locke considers the argument that, since religious dissidents are typically so aggrieved that they gather secretly to scheme against the existing regime, political authorities ought to suppress religious dissent for the sake of social peace and order. Peace and social order can only be sustained through governmental enforcement of uniformity of belief and practice. In response, Locke insists that we ask why dissidents are typically aggrieved and prone to conspire against a given regime. His answer is that dissidents are aggrieved and prone to conspire precisely because they are persecuted:

Oppression raises Ferments, and makes men struggle to cast off an uneasie and tyrannical Yoke. ... [T]here is one only thing which gathers People into Seditious Commotions, and that is Oppression. (*LCT* p. 52)

...

What else can be expected, but that these men, growing weary of the Evils under which they labour, should in the end think it lawful for them to resist Force with Force, and defend their natural Rights (which are not forfeitable upon account of Religion) with Arms as well as they can? ... It cannot indeed be otherwise, so long as the Principle of Persecution for Religion shall prevail. (*LTC* p. 55)

Within the domain of religion, as in all domains of human endeavours and aspirations, social peace is to be achieved not through oppression but, rather, through respect for each person's liberty.



## Chapter 8

# Resistance against Unjust Force

The injury and the crime is equal, whether committed by the wearer of a crown, or a petty villain. The title of the offender, and the number of his followers, make no difference in the offence, unless it be to aggravate it.

...

[W]herever the power, that is put in any hands for the government of the people, and the preservation of their properties, is applied to other ends, and made use of to impoverish, harass, or subdue them to the arbitrary and irregular commands of those that have it; there it presently becomes *tyranny*.

...

Whosoever uses *force without right*, as every one does in society, who does it without law, puts himself into a *state of war* with those against whom he so uses it; and in that state all former ties are cancelled, all other rights cease, and every one has a right to defend himself and *to resist the aggressor*.

John Locke (1689/1980), *Second Treatise of Government*: §176, §201, §232.

This final chapter will describe Locke's bold doctrine of justified forceful resistance against state agents—monarchs, legislators, or their henchmen—that encroach upon the rights of individuals and of political society. Recall that *Two Treatises of Government* was largely composed in the early 1680s. When it was published in 1689, it was seen—and served—as a justification after the fact for the Glorious Revolution of 1688, which deposed James II, the successor to Charles II. However, it was initially composed in support of attempts by Locke's patron, Lord Shaftesbury, to check the power of Charles II.

As was mentioned in the Introduction, a deep premise of Locke's doctrine of justified resistance is that state agents, including heads of state, are subject to the same fundamental moral constraints as ordinary persons. If a certain

type of action by a private individual violates the rights of another individual, an action of the same type performed by a state agent will also violate that individual's rights. If it is a violation of Abe's rights for Bea to lock him up in her backyard shed for entering into economic competition with her or her friends, it is also a violation of Abe's rights for the monarch or the legislators to lock Abe up in the Tower of London for entering into economic competition with the monarch or the legislators or their cronies. If it is criminal for Bea to burn Abe at the stake in her backyard for rejecting the doctrines of Bea's church, it is equally criminal for the monarch to burn Abe at the stake in the town square for rejecting the doctrines of the monarch's church.

The injury and the crime is equal, whether committed by the wearer of a crown, or a petty villain. The title of the offender, and the number of his followers, make no difference in the offence, unless it be to aggravate it. The only difference is, great robbers punish little ones, to keep them in their obedience, but the great ones are rewarded with laurels and triumphs ... . (ST §176)

The two last chapters of the *Second Treatise* lay out Locke's doctrine of the just use of force against unjust state action (or inaction). Chapter XVIII, "Of Tyranny", focuses on the right of the individual as an individual to resist infringements on her rights by ill-behaved monarchs, legislators, or their henchmen. The rights involved here are the original and retained rights of all individuals to life, liberty, and property as those rights are more finely specified "by laws made and rules set, as guards and fences to the properties of all the members of the society" (ST §222).

Chapter XIX, "Of the Dissolution of Government", parallels "Of Tyranny" insofar as it is about the rights of political society and of individuals as members of political society to resist infringements upon the same original and retained rights. However, "Of the Dissolution of Government" also addresses and invokes the rights that political society and its members have acquired through their authorization and establishment of a constitutional structure that aims to secure "*the property of the people*" (ST §222).

Since political society has established the legislative and executive powers and has directly or indirectly entrusted the legislators and the chief executive with their positions within the constitutional order, political society

and its members have acquired certain rights against those who occupy those entrusted positions. These are rights that the legislators and the executive abide by their acquired duty to protect everyone's rights to life, liberty, and estate; and their acquired duty to uphold the legal regime they have pledged to serve, a regime that has been created "to limit the power, and moderate the dominion, of every part and member of the society" (*ST* §222).

In a way, "Of Tyranny" and "Of the Dissolution of Government" offer just one simple argument. Certain exercises of governmental coercive power violate the rights of those subjected to that power. Individuals and political society as a whole have no duty to submit to such violations, since, after all, the only or primary justifying purpose for governmental coercive power is the protection of these rights. So, individuals and political society as a whole are morally at liberty to forcibly resist these violations and it is rational for people to exercise this liberty when the danger of violations is severe and resistance is reasonably likely to be successful.

Still, as with philosophical arguments in general, the strength of this argument is bolstered by Locke's examination of objections to it and his responses to those objections. To convey a fuller sense of Locke's stance I will describe some of these objections and responses. I shall also discuss some of the reasons that Locke's focus shifts from the rights of individuals to the rights of political society as he moves from chapter XVIII to chapter XIX of the *Second Treatise* and the danger that this shift of focus poses for Lockean classical liberalism.

Locke knows that he will be charged with offering a blanket licence to individuals to take up arms whenever they are aggrieved by the behaviour of the government. He imagines a critic asking: "May the *commands* then of a prince be opposed? May he be resisted as often as any one shall find himself aggrieved, and but imagine he has not right done him?" (*ST* §203). Locke notes that, were this his position, "[t]his would unhinge, and overturn all polities, and instead of government and order, leave nothing but anarchy and confusion" (*ST* §203).

However, Locke insists that this is not his position. "To this I answer, that *force* is to be opposed to nothing but to unjust and unlawful *force* ..." (*ST* §204). Resistance is justified only when it really is in opposition to unjust and unlawful force. If you merely "imagine" that the actions that disturb you are unjust and unlawful, your forceful resistance will itself be unjust and unlawful. Individuals are capable of checking and revising their private judgments about political matters. One may start with the belief that the actions of the prince violate one's

rights but then recognize that one is mistaken. Individuals who mistakenly use force against the prince or his henchmen will be subject to “a just condemnation both from God and man” (*ST* §204). Moreover, even if the action of the prince or his henchmen will violate one’s rights, one’s forcible resistance will be justified only when it is one’s last resort, that is, only when no reliable remedy for one’s loss is available within the existing legal system (*ST* §207).

In addition, sometimes even people who do have rights to defend themselves against unlawful force will see that it is not prudent for them to exercise those rights. For, if the prince’s misdeeds, “reach no farther than some private men’s cases, though they have a right to defend themselves, and recover by force what by unlawful force is taken from them; yet the right to do so will not easily engage them, in a contest, wherein they are sure to perish” (*ST* §208). If those private men cannot gather allies, they will not rush into battle against the offending ruler despite the justice of their cause. Locke’s euphemism for engaging in forcible resistance against the ruling legislature or monarch is “appealing to heaven”. And Locke’s point here is that “he that appeals to heaven must be sure he has right on his side; and a right too that is worth the trouble and cost of the appeal, as he will answer at a tribunal that cannot be deceived” (*ST* §176).

Locke considers the argument that even just resisters are to be condemned for the disorder and bloodshed that follows their resistance. Against this, Locke argues the opponents of just resistance “may as well say, upon the same ground, that honest men may not oppose robbers or pirates, because this may occasion disorder or bloodshed” (*ST* §228). Besides, “[i]f any *mischief* come in such cases, it is not to be charged upon him who defends his own right, but *on him that invades* his neighbours” (*ST* §228). And, most of all, passive submission to unjust force on the part of one’s rulers simply paves the way for further robbery and oppression: “If the innocent honest man must quietly quit all he has, for peace sake, to him who will lay violent hands upon it, I desire it may be considered, what kind of peace there will be in the world, which consists only in violence and rapine; and which is to be maintained only for the benefit of robbers and oppressors” (*ST* §228).

Often Locke engages in semantic maneuvers to avoid quite accurate but radical expressions of his doctrine of just resistance. For example, since Locke does not wish to express his doctrine as a defence of *rebellion*, he argues that his is actually an anti-rebellion doctrine. For, he says, those who justly resist are not the rebels; rather the *rebels* are those who are justly resisted: “whoever they be, who

by force break through, and by force justify their violation of [the constitution and laws], are truly and properly *rebels*". Rather than instigating rebellion, the doctrine that the people have a right to provide for their safety "*is the best fence against rebellion*" (ST §226) because it discourages rulers from engaging in unjust force.

Similarly, Locke does not wish to say that his doctrine justifies *regicide*, that is, the killing of the king (or prince or chief magistrate). So he argues that, when the king (or prince or chief magistrate) behaves in a way that justifies armed resistance against him—when he has “put himself in a state of war with his people”—he is “no king”; he “has dethroned himself” (ST §239). Hence, to justify the killing of such a man is not to endorse *regicide*. In reality, Locke does justify rebellion and regicide, even if he provides rebellion and regicide with some linguistic camouflage.

In another paragraph, Locke seems to offer a genuine limit on subjects resisting mischievous princes. He tells us that “in some countries, the person of the prince by law is sacred” (ST §205). In those countries, if a mischievous scheme of the prince endangers only “some few private men”, the prince himself may not be forcibly resisted, though his henchmen may be. The prince himself is not to be attacked because doing so may disrupt “the peace of the public, and security of the government” and it is better that those few men suffer than that this disruption take place (ST §205).

This paragraph is puzzling for a number of reasons. First, Locke never tells us what countries he has in mind. Second, any law that partially exempts the prince from laws against murder, assault, and theft violates the fundamental Lockean principle that: “*No man in civil society can be exempted from the laws of it*” (ST §94). Third, the argument that Locke actually offers for the prince being partially exempt from the laws has nothing to do with the prince being sacred. Instead, it is a bit of utilitarian calculation that requires individuals to submit to the violation of their rights if resistance would be too socially disruptive. Fourth, the special immunity for the prince suggested by Locke is in direct conflict with Locke’s fundamental claim that,

*where-ever violence is used, and injury done, though by the hands appointed to administer justice, it is still violence and injury, however coloured with the name, pretenses, or forms of law, the end whereof being to protect and redress the innocent, by an unbiassed application of it, to all who are under it.* (ST §20, emphasis added; also see §176, §201, §232 above)

My own guess is that cautious Locke included this paragraph in the *Second Treatise* so that, if he ever were to be charged with advocating regicide, he could parry this charge by pointing to this disavowal of regicide.

As mentioned at the outset of this chapter, Locke argues that political society can demand more from legislators and the chief executive than that they not violate its members' rights to life, liberty, and estate. It can also demand that the legislators and the executive fulfill their acquired duties to protect the rights of the members of political society and to support and maintain the constitutional structure that political society has created to better secure the rights of individuals. When, without the consent of the people, the legislature is prevented from acting or is altered or the supreme executive "neglects and abandons" his duties, the government is *dissolved* (*ST* §216). Those who take up arms against such violations of the rights of political society do not take up arms against the government but, rather, against those who pretend to retain governmental authority.

Crucial to Locke's doctrine of resistance is his claim that, except when political society is cut up by a conqueror's sword (*ST* §211), it persists through the dissolution of government. It is political society that comes to the defence of its members' rights and that restores or reconstructs governmental institutions that serve the ends for which political society exists. Thus, justified armed resistance against the remnants of a dissolved government does not involve a reversion to the state of nature. It does not reinstate the chaos of a Hobbesian state of nature or even the inconveniences of a Lockean state of nature. In addition, political society will only engage in armed resistance if this is endorsed by a majority of its members (*ST* §96). Hence, armed resistance by political society will not be a matter of a few individuals too quickly deciding that their grievances justify an appeal to heaven.

In addition, Locke's appeal to political society as the ultimate bearer of political authority enables him to tap into another important strand of anti-monarchical thought. This is the doctrine of popular sovereignty according to which political authority originally resides in the people and not in the monarch. Since the people originally possess all political authority, any authority possessed by the monarch must arise through a voluntary grant from the people. And, most advocates of popular sovereignty held that, since the grant of authority to the monarch was limited, the extent of the monarch's authority must also be limited. Nevertheless, the more Locke taps into the rhetoric of



popular sovereignty, the more he edges toward upholding the “the public will” (*ST* §212) or “the will of society” (*ST* §214) as the ultimate measure for assessing governmental action. Yet, such an embrace of popular sovereignty would be philosophically incompatible with Locke’s core doctrine and antithetical to his classical liberal program.

It would be philosophically incompatible with his view that the original (and pre-political) sovereignty is each individual’s sovereignty over him- or herself and that all individuals retain their original rights of life, liberty, and estate that are at the core of this sovereignty. It would be antithetical to his classical liberal program because appeals to “the public will” or “the will of society” suggest that the collectivity has unlimited authority over individuals, that individuals do not have rights to life, liberty, and estate against “the people” but, rather, must submit to anything that “the people” choose to do.

My view is that, although Locke seeks to draw upon the rhetoric of popular sovereignty, he does not subscribe to the actual doctrine. Political society (the people) is the creation of individuals who can only confer on it the authority that they themselves have as individuals to use force against other individuals. That authority is limited to the rights of individuals to act as executors of the law of nature. In turn, political society (the people) can confer on government only the authority that it has derived from individuals. Since individuals retain their rights to life, liberty, and estate, neither the people nor any government created by the people may infringe upon those rights. As Locke declares in “Of the Dissolution of Government”: “The reason men enter into society, is the preservation of their property; and the end why they chuse and authorize a legislative, is, that there may be laws made and rules set as guards and fences to the properties of all members of the society ...” (*ST* §222).

For Locke, “the public will” or “the will of society” is the commitment of individual members of society to common institutions for the specification and enforcement of each member’s individual rights: “it can never be supposed to be the will of society, that the legislative should have a power to destroy that which every one designs to secure by entering into society” (*ST* §222). For Locke, the formation of political society (the people) is a step toward the better articulation and protection of each individual’s freedom; it is not an act of self-enslavement to the collectivity.



## References

To pursue Locke's political thought further, readers should first consult Locke's own *Second Treatise of Government* and *A Letter Concerning Toleration*. I have also listed below further information about Locke's writings and some recommendations for a first phase and a more advanced phase of further study.

### *Locke's own works*

Locke, John (1823). *The Collected Works of John Locke*, vol. 6. London: printed for Thomas Tegg *et al.* Contains all Locke's *Letters* on toleration.

Locke, John (1689/1959). *Essay Concerning Human Understanding* (two volumes). A.C. Frazer, ed. Dover.

Locke, John (1689/1960). *Two Treatises of Government*. Peter Laslett, ed. Cambridge University Press. The scholarly edition of the *Two Treatises* with a helpful introduction.

Locke, John (1689/1980) *Second Treatise of Government*. C.B. Macpherson, ed. Hackett Press. The edition of the *Second Treatise* quoted in *The Essential John Locke*. Beware, however, of Macpherson's introduction.

Locke, John (1689/1983). *A Letter Concerning Toleration*. James Tully, ed. Hackett.

Locke, John (1997). *Locke: Political Essays*. Mark Goldie, ed. Cambridge University Press. Contains the lesser known works of Locke cited in *The Essential John Locke*.

### *Other references*

Hobbes, Thomas (1651/1994). *Leviathan*. Edwin Curley, ed. Hackett.

## Suggested further reading

### *For further study*

Ashcraft, Richard (1986). *Revolutionary Politics and Locke's Two Treatises of Government*. Princeton University Press. Classic account of Locke's radical politics.

Grant, Ruth (1987). *John Locke's Liberalism*. University of Chicago Press. Locke as classical liberal.

Mack, Eric (2013). *John Locke*. Bloomsbury Academic. Goes a bit beyond the essentials.

### *For more advanced study*

Nozick, Robert (1974). *Anarchy, State, and Utopia*. Basic Books. Outstanding and challenging philosophical explorations of themes within Lockean political philosophy.

Simmons, A. John (1992). *The Lockean Theory of Rights*. Princeton University Press. A detailed and sophisticated discussion of Locke on rights, which differs some from my own.

Simmons, A. John (1993). *On the Edge of Anarchy: Locke, Consent, and the Limits of Society*. Princeton University Press. The title says it all.

Zuckert, Michael (2002). *Launching Liberalism: On Lockean Political Philosophy*. University of Kansas Press. Locke within the history of liberal political theory.

## About the author

Eric Mack is Emeritus Professor of Philosophy at Tulane University. As a member of the Department of Philosophy and a faculty member of the Murphy Institute of Political Economy at Tulane, he taught courses in ethical theory, the philosophy of law, political economy, political philosophy, and the history of political theory. His primary scholarly project has been the refinement and extension of the sort of natural-rights doctrine that John Locke advocated in his political writings.

To that end, he has published about 100 scholarly essays on the moral foundations of natural rights, the basis and nature of property rights, economic justice, the nature of law and of spontaneous economic and social order, the scope of legitimate coercive institutions, and the exploration of these topics by 17<sup>th</sup> and 19<sup>th</sup> century classical liberal and libertarian theorists. He is the editor of Auberon Herbert's *The Rights and Wrongs of Compulsion by the State and Other Essays* (Liberty Press) and Herbert Spencer's *The Man versus the State* (Liberty Press). He is also the author of *John Locke* (Bloomsbury Press) and, most recently, *Libertarianism* (Polity Press).

He exercises his freedom and rugged self-reliance by hiking and backpacking in the mountains and canyon country of the American West.

## Acknowledgements

I thank Aeon Skoble, Mary Sirridge, and an anonymous reader for their helpful editorial advice. I thank Ben Bryan and Bas van der Vossen for coaxing me away from claims I have previously made about Locke on consent.

### Publisher's Acknowledgments

The Fraser Institute would like to express its gratitude to the Lotte and John Hecht Memorial Foundation for its support for *Essential Hayek* (2015) and *Essential Adam Smith* (2018), which established the foundation for the extended Essential Scholars series. We would also like to thank the John Templeton Foundation, along with the Lotte and John Hecht Memorial Foundation, for their support of this specific volume, *The Essential John Locke*, the fourth book in the Essential Scholars series.

## Publishing information

*Distribution* These publications are available from <<http://www.fraserinstitute.org>> in Portable Document Format (PDF) and can be read with Adobe Acrobat Pro® or Adobe Acrobat Reader®, versions 8/9 or later. Adobe Acrobat Reader DC®, the most recent version, is available free of charge from Adobe Systems Inc. at <<http://get.adobe.com/reader/>>. Readers having trouble viewing or printing our PDF files using applications from other manufacturers (e.g., Apple’s Preview) should use Adobe Acrobat Reader or Adobe Acrobat Pro.

*Ordering publications* For information about ordering the printed publications of the Fraser Institute, please contact the publications coordinator via: e-mail: [sales@fraserinstitute.org](mailto:sales@fraserinstitute.org) or telephone: 604.688.0221 ext. 580 or, toll free, 1.800.665.3558 ext. 580.

*Media* For media enquiries, please contact our Communications Department at 604.714.4582 or e-mail via [communications@fraserinstitute.org](mailto:communications@fraserinstitute.org).

*Copyright* ©2019 by the Fraser Institute. All rights reserved. No part of this publication may be reproduced in any manner whatsoever without written permission except in the case of brief passages quoted in critical articles and reviews.

*ISBN* 978-0-88975-545-1

*Citation* Mack, Eric (2019). *The Essential John Locke*. Fraser Institute.

## Supporting the Fraser Institute

To learn how to support the Fraser Institute, please contact:

- Development Department, Fraser Institute,  
Fourth Floor, 1770 Burrard Street,  
Vancouver, British Columbia, V6J 3G7 Canada
- telephone, toll-free: 1.800.665.3558 ext. 586
- e-mail: [development@fraserinstitute.org](mailto:development@fraserinstitute.org).

## Purpose, funding, and independence

The Fraser Institute provides a useful public service. We report objective information about the economic and social effects of current public policies, and we offer evidence-based research and education about policy options that can improve the quality of life. The Institute is a non-profit organization. Our activities are funded by charitable donations, unrestricted grants, ticket sales, and sponsorships from events, the licensing of products for public distribution, and the sale of publications.

All research is subject to rigorous review by external experts, and is conducted and published separately from the Institute's Board of Directors and its donors. The opinions expressed by the authors are those of the individuals themselves, and do not necessarily reflect those of the Institute, its Board of Directors, its donors and supporters, or its staff. This publication in no way implies that the Fraser Institute, its trustees, or staff are in favour of, or oppose the passage of, any bill; or that they support or oppose any particular political party or candidate.

As a healthy part of public discussion among fellow citizens who desire to improve the lives of people through better public policy, the Institute welcomes evidence-focused scrutiny of the research we publish, including verification of data sources, replication of analytical methods, and intelligent debate about the practical effects of policy recommendations.

## About the Fraser Institute

Our mission is to improve the quality of life for Canadians, their families, and future generations by studying, measuring, and broadly communicating the effects of government policies, entrepreneurship, and choice on their well-being.

Notre mission consiste à améliorer la qualité de vie des Canadiens et des générations à venir en étudiant, en mesurant et en diffusant les effets des politiques gouvernementales, de l'entrepreneuriat et des choix sur leur bien-être.

## Peer review—validating the accuracy of our research

The Fraser Institute maintains a rigorous peer review process for its research. New research, major research projects, and substantively modified research conducted by the Fraser Institute are reviewed by a minimum of one internal expert and two external experts. Reviewers are expected to have a recognized expertise in the topic area being addressed. Whenever possible, external review is a blind process.

Commentaries and conference papers are reviewed by internal experts. Updates to previously reviewed research or new editions of previously reviewed research are not reviewed unless the update includes substantive or material changes in the methodology.

The review process is overseen by the directors of the Institute’s research departments who are responsible for ensuring all research published by the Institute passes through the appropriate peer review. If a dispute about the recommendations of the reviewers should arise during the Institute’s peer review process, the Institute has an Editorial Advisory Board, a panel of scholars from Canada, the United States, and Europe to whom it can turn for help in resolving the dispute.

## Editorial Advisory Board

### Members

Prof. Terry L. Anderson  
Prof. Robert Barro  
Prof. Jean-Pierre Centi  
Prof. John Chant  
Prof. Bev Dahlby  
Prof. Erwin Diewert  
Prof. Stephen Easton  
Prof. J.C. Herbert Emery  
Prof. Jack L. Granatstein

Prof. Herbert G. Grubel  
Prof. James Gwartney  
Prof. Ronald W. Jones  
Dr. Jerry Jordan  
Prof. Ross McKittrick  
Prof. Michael Parkin  
Prof. Friedrich Schneider  
Prof. Lawrence B. Smith  
Dr. Vito Tanzi

### Past members

Prof. Armen Alchian\*  
Prof. Michael Bliss\*  
Prof. James M. Buchanan\* †  
Prof. Friedrich A. Hayek\* †  
Prof. H.G. Johnson\*

Prof. F.G. Pennance\*  
Prof. George Stigler\* †  
Sir Alan Walters\*  
Prof. Edwin G. West\*

\* deceased; † Nobel Laureate