

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.

