

RETHINKING THE STATE OF NATURE:
LOCKE'S SECOND TREATISE OF GOVERNMENT

BY NATHANIEL BINZEN
GRADUATE THEOLOGICAL UNION
BERKELEY, CALIFORNIA, DECEMBER 14, 2000

This essay critiques John Locke's ideal construction of human beings in the "State of Nature" of perfect freedom, which provides the theoretical starting point for his *Second Treatise of Government*. Locke's vision of atomistic individuals in a "State of Nature," each a law unto himself, is not intended to be "real" – he does not argue that any such state of being ever existed. But his construction is meant to reinforce the autonomy and dignity of the individual, by which the exercise of executive power in his recommended form of society – government-by-consent – would be constrained. It is an elegant idea, and it proved very effective. We are still Locke's philosophical heirs. However, precisely because this foundational idea has had such a long reach and influence down into our own age, I will argue that we ought to recognize its deficiencies as a way of understanding the nature of humans-in-society. Contrary to the apparent egalitarian spirit of the "State of Nature," its effect is, for the majority of people today, in fact disempowering. We ought to understand how the consequences of Locke's false foundation actually affect us today. My own suggestion for an alternative "state of nature" begins with persons-in-community, or communities-of-persons.

I do not mean to judge Locke's political vision per se by the standards of our time; Overall, I find far more in Locke to praise than to curse. His advanced thinking did much to spur on democratizing benefits in the ensuing centuries. Locke's innovations evidently suggested possibilities that extended farther than he himself was willing to go, for he was more concerned with battling the excessive power of monarchs¹ than with expanding the enfranchisement of citizens. In any case, in speaking critically about Locke, I mean to do so constructively, that is, only insofar as his thinking remains a factor in our times, not in terms of his own era.

I should explain in brief what I mean when I say his vision is disempowering today. Locke presents a dynamic relationship between individuals and their government. Since his day, two other large forces have taken the stage. First, while trade and commerce have never been negligible factors, today business and finance exercise a vast reach in people's lives, so that we must recognize these entities and institutions of our economy as a decisive player on the stage of power. Secondly, civil society – including education, religions, non-governmental organizations, nonprofits, and myriad interest groups – is also growing ever more decisive as an institutional organizing force in the regulative, ordering functions of nations. So there are really three players in the relationship today: government, business, and civil society.² When we think about the meaning of "the consent to be governed," we ought to consider the actual, concrete power exercised by these other powers in our lives. If we limit our notions of citizenship and personhood to our relationship to government, we cut off our awareness of how these powers engage us. To the extent that, because Locke's thought remains foundational for us, we see ourselves as natural individualists, with recourse for our self-determination only through political means in our relationship to our government, we are missing out on a discussion of what the powers of the economy ought to mean for us. Perhaps even more important, we fail to see how we, as people making common cause, can empower ourselves in the public sphere through our involvement in civil society.

I begin with further definitions of Locke's State of Nature. Then I examine its implications for matters of justice and punishment. Next, I review the key interest which drives people out of the State of Nature and into society: the preservation of property. Then I consider Locke's foundational arguments concerning the people's consent to be governed. Finally, I constructively critique Locke's State of Nature and offer alternatives.

Locke begins by establishing "what State all Men are naturally in: "a State of perfect Freedom to order their Actions and dispose of their Possessions as they think fit...without asking leave, or depending upon the Will of any other Man."³ This state is also one "of Equality, wherein all the Power and Jurisdiction is reciprocal, no one having more than another." Locke agrees with Richard Hooker that this equality is "the Foundation of the Obligation to mutual Love amongst Men, on which [Hooker] Builds the Duties they owe one another..."⁴ By the Law of Nature, "all...of Mankind are one Community" – "one Society distinct from all other Creatures." A person in the state of nature has two powers: first, "to do whatsoever he thinks fit for the preservation of himself and others within the permission of the Law of Nature," and, second, "to punish the Crimes committed against that law."⁵

The State of Nature, then, is "a State of Liberty, yet it is not a State of Licence" – that is, a person has not the liberty to destroy "any Creature in his Possession, but where some nobler use, than its bare preservation calls for it." Guided by Reason and a Law of Nature, and as "the Workmanship of one...infinitely wise Maker," each person "ought...as much as he can, to preserve the rest of Mankind" – except, "to do Justice on an Offender." As to this justice, "the Execution of the Law of Nature is...put into every Mans hands, whereby every one has a right to punish the transgressors of that Law to such a Degree, as may hinder its Violation. For the Law of Nature would...be in vain, if there were no body that...had a Power to Execute that Law, and thereby preserve the innocent and restrain offenders."⁶ "For in that State of perfect Equality, where naturally there is no superiority or jurisdiction of one, over another," everyone has the right of "Prosecution of that Law."⁷ Now, the right of punishment performs a socially regulative function that goes beyond symmetrical recompense for the crime itself, because it must punish each transgression "with so much Severity as will suffice to make it an ill bargain to the Offender...and terrifie others from doing the like."⁸

Let us consider how justice and punishment operates in the State of Nature: "the execution of the law of Nature is [in the State of Nature] put into every man's hands, whereby every one has a right to punish the transgressors of that law to such a degree as may hinder its violation..."⁹ The Law of Nature demands punishment in a retributive manner. Here again, Locke does not mean to seriously suggest that any such order of person-to-person justice would actually be agreeable to anyone, or that it was ever actually a historical reality. But my objection is that even to propose such a model as an ideal starting point is a denial of a fact that is more fundamentally true: judgements of justice always invoke and involve the larger community. The *community* is the starting point, not the consensual add-on, in determining justice. Even when a person-to-person injustice occurs in the social realm, beyond the scope of law, it is really never a private matter between the two individuals. One or both of them will discuss it with others, turning the situation into a story, a socially shared reality, seeking the justification or redress of others through consultation. As humans, this is simply how we work – this is our state of nature.

The State of Nature is for Locke, of course, a prop to justify a reality that is actually something quite different. While Locke's sovereign individuals are a law unto themselves in the

State of Nature, it is also true that a social structure is intrinsic to that state: “God having made Man such a Creature, that, in his own Judgement, it was not good for him to be alone, put him under strong Obligations of Necessity, Convenience, and Inclination to drive him into Society...”¹⁰ The state of nature, while ideal, carries the seeds of its own undoing. Sounding rather like Hobbes in his assessment of human nature, Locke adjures that, “were it not for corruption, and viciousness (sic) of degenerate Men, there would be...no necessity that Men should separate from this great and natural Community.”¹¹ Locke recognized that this “strange Doctrine” – that “in the State of Nature, every one has the Executive Power” – is highly problematic in practical terms, because individuals are far from impartial, and subject to “Ill Nature, Passion and Revenge.” Therefore, he proposes “that Civil Government is the proper Remedy for the Inconveniences of the State of Nature.”¹²

But a “Political Society” can exist only where that society has “in it self the Power to preserve the Property, and in order thereunto punish the Offences of all those of that Society,” and thus only “where every one of the Members hath quitted this natural Power, resign’d it up into the hands of the Community....And this all private judgement of every particular Member being excluded, the Community comes to be the Umpire.” The result: “Those who are united into one body, and have a common establish’d Law and Judicature to appeal to, with Authority to decide Controversies between them, and punish Offenders are in Civil Society one with another: but those who have no such common Appeal...are still in the state of Nature.” Again, “Where-ever therefore any number of Men are so united into one Society, as to quit every one his Executive Power of the Law of Nature, and to resign it to the publick, there and there only is a Political, or Civil Society.”¹³

The guarantor of security of property in society is majority rule: one consents to enter such a bargain because it makes of the community “one Body, with a Power to Act as one Body, which is only by the will and determination of the majority.” Thus “every Man...puts himself under an obligation to every one of that Society, to submit to the determination of the majority.”¹⁴

For Locke, preservation of property is the key self-interest motivating people to consent to enter into a “Body Politick”: only such a body can ensure “their comfortable, safe, and peaceable living one amongst another, in a secure Enjoyment of their Properties, and a greater security against any that are not of it.”¹⁵ Again, “The great and chief end...of Mens uniting into Commonwealths...is the Preservation of their Property.”¹⁶ Preservation of property is the all-important value or interest that would drive people to leave the State of Nature and consent to enter society. Locke very strongly identifies property ownership with the meaning of citizenship, and, perhaps, of personhood: “By the same Act...whereby any one unites his Person, which was before free, to any Commonwealth; by the same he unites his Possessions.” The distinction he makes is that, because “the government has direct Jurisdiction only over the Land,” and only over the owner of it by virtue of his connection to his property, the owner’s tacit consent ends when he dispossesses himself of the property.

Persons enter into society to protect their property; therefore, it is absurd that they should be in society and without property, Locke reasonably asserts.¹⁷ But since Locke’s time, the enfranchisement of citizenship has been extended to all, without respect to property ownership. This laudable trend undermines Locke’s basic incentive to consent. In our era, belongingness must confer other benefits as the price for consent. A list of other such advantages is not hard to come by – opportunity, education, national defense, and so on – but, again, it is the original “state of nature” basis that I wish to highlight here: perhaps the state of nature is not an insecure

situation of private property ownership at risk from lack of protection; perhaps the state of nature is something more like shared ownership of property! Then society is the mechanism by which some gain more property at the expense of others.

Let us examine how it is that Locke sees property coming legitimately into the hands of owners. “Great Tracts of Ground...lie waste,” and “Nature and the Earth furnished only the almost worthless Materials, as in themselves.” Labor supplies the value: “Man (by being Master of himself, and Proprietor of his own Person, and the Actions or Labour of it) had still in himself the great Foundation of Property.... Thus Labour, in the Beginning, gave a Right of Property.”¹⁸ What happens next, after people make productive use of their property, is that, if they have a surplus of its (agricultural) produce, which would be “foolish and dishonest” to hoard – for it is perishable – they convert their gains into things which do endure: “Gold, Silver, and Diamonds.” So “as different degrees of Industry were apt to give Men Possessions in different Proportions,” the busy man begins “to enlarge his Possessions.” And thus, “it is plain, that Men have agreed to disproportionate and unequal Possession of the Earth.”¹⁹ Perhaps. But again, it is the mythic State of Nature that purports to deliver the level playing field out of which inequalities can *fairly* grow. Locke’s tale offers little opportunity for those who are actually born with nothing into a thoroughly enclosed, owned world.

Consent is the critical factor by which people to make the move out of the state of nature and into the securities of a self-governed society. “Every Man [is] naturally free,” and only subject “to any Earthly Power [by] his own Consent.” Locke makes a critical distinction between *express* and *tacit* consent. What express consent is, is clear: consent sealed by a declaration. But tacit consent, the unspoken submittal of oneself to government, Locke says, is given by “every Man, that hath any Possession, or Enjoyment, of any part of the Dominion.” This consent “reaches as far as...being...within the Territories of that Government.”²⁰

Now, one might ask, for those who are born and raised under an established government, in what sense is such consent given? For does not consent imply the option to opt out? Locke rather unrealistically argues as follows: given that, if, historically, any one man has been free to establish a monarchy or any other form of government, though they were “born under the Dominion of another,” so anyone “may be so free as to have a right to command others in a new and distinct Empire.” This right may be exercised because men are “at liberty to separate themselves” and “set...up new Governments in other places.”²¹ Perhaps Locke was inspired by casting his glance backwards through history – to the Israelites, or to the Trojan War veterans – certainly he was looking across the ocean in his own day, to the new settlers of America. However, for all practical purposes, the option of finding open space to form a new society would be foreclosed once and for all within a few generations of Locke’s day.

In any case, Locke explains how it is that individuals born under an already existing government come to be participants in its continuance: a son cannot enjoy the inheritances from his father except under the same terms that his father did – for he cannot separate his property from its place within the commonwealth. Thus the son too chooses to become “a Member of the Society....And thus [because] the Consent of Free-Men, born under Government, which only makes them Members of it, [is] given separately in their turns, as each comes to be of Age, and not in a multitude together; People take no notice of [this tacit consent], and...conclude they are naturally Subjects as they are Men.”²² I would note three facts which illustrate how the world has changed. First, we see here Locke’s assumption, basic also to the early days of the American experiment in democracy, that it was property that conferred membership in the society. Second,

we might consider how Locke's conception of property *as land* has withered: international investment and capital flight allows today's wealthy to separate their property (wealth) from any particular location within the nation-state to which they belong! Finally, and most salient to the point of this paper, Locke's perceptive rendering of "consent" as, in fact, an unnoticed *background* event makes sense when it is merely a ticket to the rewards of inheritance. But, when tacit consent is given like infant baptism, and when it is not materially rewarded, its individualized, unspoken, unacknowledged character removes any semblance of power from the hands of the citizen. This fact, I am suggesting, contributes to the "divide-and-conquer" reality of atomized citizenship: when membership in society is invisible, so too is its empowerment.

Any express declaration of consent to a commonwealth obliges a person "perpetually and indispensably...to be and remain unalterably a Subject to it."²³ These, surely, are the practical realities of statehood and citizenship, but, with respect to the human person, such principles are built on a foundation which assumes a natural state that offers other alternatives – and that opportunity simply is not there. In reality, that which Locke calls express consent, let alone tacit consent, is a given at birth. One cannot be born and grow up without benefiting, in some sense, from the property of the land and society. By that act, according to Locke's logic, one has irrevocably consented.

Clearly, everyone who is born into the world today inherits a governing state; and, in fact, even under the most democratic of regimes, the power to change the structures and institutions of governance can be quite limited, carried along as such structures are by inertia, tradition, interests invested in the status quo, and the patriotic assurance that everything is okay. How likely is it, for example, that any significant change in the laws and procedures of election and representation in the United States will occur, even in the wake of the notorious recent presidential election? Our received notions prevent us from pursuing the possibility that the real power resides to effect change in society today may reside more than anywhere else in the *civil society* – a force which Locke did not even recognize. The Lockean individual, having chosen consent over the dangerous freedom of a fictional state of nature, does not yet grasp that her influence – her power to change an order which is given at least as much as or more than it is consented to – may find its fullest force in uniting with others *outside* of the political arena.

Locke's ideal State of Nature is, to repeat, a state of perfect freedom to act as we will, without the consultation of others. I would propose instead that we begin in a state of *community* – in a web of mutual dependencies and obligations. All our freedom is balanced with responsibilities, all our freedom is bound by the limits of obligation and reciprocity. We are free to choose what is best for ourselves, but, if we absolutize that freedom, we ignore the downstream consequences of our free choosings. In our freedom, we cannot ignore the relational effects of our actions. Furthermore, we are bound not merely by our relationships and our context; we are biologically bound, in the very interplay between our genes and our context (nature and nurture). All of this lends a great poignancy to our freedom, making it yet more valuable, for our freedom is not an imagined sovereign island of total control, a charmed separateness, but, rather, both a constant struggle and an expression of a deeper unity within community.

Perhaps one of the reasons why a community context surrounding free acts is missing from Locke's thinking is that he begins from the problems of transgression and punishment. These needs – to regulate the wicked and to protect against outsiders who would threaten the established order – are undoubtedly important, yet they have never told the whole story: there *is*

also mutuality and mutual benefit, reciprocity and even, remarkably, altruism. Locke does recognize such a power in community, by which, though “the Members of it are distinct Persons...the whole Community is one Body in the State of Nature.” But the interesting thing about this unity is its reason for being: for Locke, it is strictly in service of a defensive posture, “in respect of all other States or Persons out of its Community.” In this unity is found “the Power of War and Peace.”²⁴ Locke’s ground for a sense of human community is a negative one – the circling of the wagons against a common enemy. We would do well to consider the positive aspects of community, those that bring people together in common bonds when no threat, internal or external, is pressing them towards each other.

Now let us take a closer look at what an alternative “state of nature” might look like. In so doing, I am not now speaking of some mythical state of affairs, or any ideal past before governance. The state of nature is the organic fact that human beings exist in community: no human was ever raised outside of that context, nor was there ever a time without some kind of regulative order, which we would consider “governance,” if not “government.” What I propose is that people-in-coexistence *is* the state of nature, whether any manner of government is overlaid the existing community or not. On this basis, the idea that individual persons could ever consider themselves to be, ideally, a law unto themselves is absurd: we come into adulthood already deeply enmeshed in a web of obligations and mutuality.

What I am suggested, then, is a relational understanding of personhood as the natural state of being: what John Cobb calls “person-in-community.”²⁵ We start our lives already embedded in community; from there, if we lived in a perfect world of consent, we would have the power in each generation to choose our form of government (as Jefferson desired), grounded, of course, in the benefit of precedent and tradition. I have argued here that our consent is today so much a given that that our freedom to choose is in fact severely attenuated. But I must take care in what direction that argument leads. There are many who argue for “limited government,” more in line with the framers’ intentions, but that argument often the implicitly supposes that, by limiting government, we would edge closer to something like Locke’s “State of Nature”: a personal freedom to do as one pleases. I would argue instead that our freedom and our consent lies in the power-to-choose-the-form-of-government-that works-for-us, whether it be large, or small, or “just right.” The true significance of consent matters more than the hope to come ever closer to the freedom of Locke’s State of Nature. The power of consent should be the prerogative of every generation. This process of finding a measure of freedom and mutuality *together* is “liberation” – as opposed to “liberty,” the ideal of a perfectly unfettered state of being. Liberation is the power to remake the world.

So, our state of nature is a balance of freedom and responsibility. The natural authority *is* inter-relation, and a progression from greater dependency to greater freedom is underwritten – we may wish to agree with Locke on this point – by divine authority. We search for a “law” by which our freedom is enhanced by our capacities to take care of each other.

Locke’s State of Nature place the accent, not surprisingly, more on the “either/or” side of the equation of human relations, and less on mutual gain, or the “win-win” situation: “when [a person’s] own preservation comes not in competition, [he ought] as much as he can to preserve the rest of mankind...” I will not quarrel with Locke’s point that self-interest comes first, and he states the priority effectively. But there is more to be said, and he does not say it. What would be salutary for us today is an orientation which give greater weight to the vast range of mutual-gain situations and defines our being more by mutuality than by the limit situations of competition.

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- Perlas, Nicanor, *Shaping Globalization: Civil Society, Cultural Power and Threefolding*. Quezon City, Philippines: Center for Alternative Development Initiatives, 2000.

ENDNOTES

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- ¹ W.T. Jones, *A History of Western Philosophy, Volume III: Hobbes to Hume*, Second Edition (Fort Worth: Harcourt Brace Jovanovich, 1969), 103.
- ² Nicanor Perlas, *Shaping Globalization: Civil Society, Cultural Power and Threefolding* (Quezon City, Philippines: Center for Alternative Development Initiatives, 2000), 4.
- ³ Peter Laslett, *John Locke: Two Treatises of Government, A Critical Edition with an Introduction and Apparatus Criticus* (London: Cambridge University Press, 1960), 4. Note: For quotes from *Two Treatises of Government*, I am referring to the paragraph numbers from the original text.
- ⁴ Ibid, 5.
- ⁵ Ibid, 128.
- ⁶ Ibid, 6.
- ⁷ Ibid, 7.
- ⁸ Ibid, 12.
- ⁹ Ibid, 7.
- ¹⁰ Ibid, 77.
- ¹¹ Ibid, 128.
- ¹² Ibid, 14.
- ¹³ Ibid, 87.
- ¹⁴ Ibid, 95.
- ¹⁵ Ibid, 95.
- ¹⁶ Ibid, 124.
- ¹⁷ Ibid, 138.
- ¹⁸ Ibid, 43-45.
- ¹⁹ Ibid, 47-50.
- ²⁰ Ibid, 119.
- ²¹ Ibid, 113-115.
- ²² Ibid, 117.
- ²³ Ibid, 120-122.
- ²⁴ Ibid, 145-146.
- ²⁵ Herman E. Daly and John B. Cobb, *For the Common Good*, (Boston: Beacon Press, 1994), 159.