

Social And Political Philosophy

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Social and Political Philosophy: Block Two

Political Obligation & The Beginnings of the Social Contract

Two important concepts that we need to consider in this module, and which we shall be looking at in some depth are 'political obligation' and the 'social contract'. To do this thoroughly I think we have to look at the work of two famous 17th/18th century philosophers. Therefore, in this block I want to look at the contributions to political philosophy made by John Locke (1632-1704) and David Hume (1711-1776). We will look in some detail at Locke's 'Essay Concerning the True Original, Extent and End of Civil Government' in his, *Two Treatises on Civil Government*, first published in 1690. Specifically I will ask you to read Chapter VIII of the Essay, which is entitled 'Of the beginning of political societies' and in which Locke's **contractual model of political obligation**. However, we will also be covering a critique of the idea that government is founded on a contract provided in Hume's essay 'Of the Original Contract' first published in the 1748 edition of his *Essays, Moral and Political*.¹

I

The Origin Of Political Societies

Locke held a particular view of the 'state of nature' in that no one individual possessed authority over other in. In this sense political societies are constructed from, & may detract from, a natural pre-political state. Locke has it that '*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.*' (John Locke, (1690) *Two Treatise of Government*, § 4)² For Locke the state of nature is one in which complete freedom is possible for all. Nevertheless, it is freedom with responsibility as it takes place 'within the bounds of the law of nature' and, therefore, not 'a state of licence'. As Locke puts it:

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. (Section 6)

This entails that while individuals have natural rights, there is also an obligation (moral) to recognise that others too have the same rights. This is encapsulated in the idea that, for Locke, such rights, include the right of punishing others for any violation of the law of nature. A right he refers to as '*the executive power of the law of nature*'. This seems reasonable and, one could even say necessary, that such rights should

¹ Both these works are to be found in the University library, however, there are e-copies of both online with easy access for which I will provide the addresses.

² See <http://socserv2.mcmaster.ca/econ/ugcm/3ll3/locke/government.pdf>

involve the right to use force and even to kill, to protect these rights. An interesting digression here may be to ask oneself whether it can be as self-evidently 'natural' as Locke believes if, for example, we see such violations as threats not against the 'person' but against private property? Nevertheless, any such use of force in this state of nature readily leads to 'the state of war' for Locke, and these states are to be differentiated. He claims:

Men living together according to reason without a common superior on earth, with authority to judge between them, are properly in the state of nature. But force, or a declared design of force upon the person of another, where there is no common superior on earth to appeal to for relief, is the state of war; and 'tis the want of such an appeal gives a man the right of war.
(§19)

However, Locke accepts that 'one great reason of men's putting themselves into society, and quitting the state of nature' (§21), is necessary to avoid this state of war. Here, of course, 'society' means civil or political society. Locke thus explains how civil or political societies come into being:

Wherever therefore any number of men are so united into one society as to quit everyone his executive power of the law of nature, and to resign it to the public, there and there only is a political or civil society. And this is done wherever any number of men, in the state of nature, enter into society to make one people, one body politic under one supreme government: or else when anyone joins himself to and incorporates with any government already made. For hereby he authorizes the society, or which is all one, the legislative thereof, to make laws for him as the public good of the society shall require, to the execution whereof his own assistance (as to his own decrees) is due. And this puts men out of a state of nature into that of a commonwealth, by setting up a judge on earth with authority to determine all the controversies and redress the injuries that may happen to any member of the commonwealth; which judge is the legislative or magistrates appointed by it. And wherever there are any number of men, however associated, that have no such decisive power to appeal to, there ' they are still in the state of nature. (§ 89)

It is from this passage that we can identify a Lockean notion of 'political obligation'.

Do you agree? (Think about this before going on!)

We can take it from this passage that an individual has an obligation to value the law, that is, to comply with the decisions of courts, etc., which result from the agreement of the individual to recognise and abide by such an obligation.

Firstly, then, the creation of a civil society out of a state of nature is formed from contract (what Locke calls a *compact*). That is, each individual must relinquish the 'executive powers' of the state of nature and agree to transfer these powers to the legislative which will ensure natural rights of all. Thus, a contract is put in place or emerges from the agreement of all who wish to participate in the construction of a civil society. In the above passage, then, Locke seems to be claiming that the 'legislative' is given the authority to make laws '*as the public good of the society shall require*' and this is no different from that of securing natural rights. Authorized government is thus for Locke set out in the following way:

But though men, when they enter into society give up the equality, liberty, and executive power they had in the state of nature into the hands of the society, to be so far disposed of by the legislative as the good of the society shall require, yet it being only with an intention in everyone 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), the power of the society or legislative constituted by them can never be supposed to extend farther than the common good, but is obliged to secure everyone's property by providing against those . . . defects . . . that made the state of nature so unsafe and uneasy. And so, whoever has the legislative or supreme power of any commonwealth, is bound to govern by established standing laws, promulgated and known to the people, and not by extemporary decrees, by indifferent and upright judges, who are to decide controversies by those laws; and to employ the force of the community at home only in the execution of such laws, or abroad to prevent or redress foreign injuries and secure the community from inroads and invasion. And all this to be directed to no other end but the peace, safety, and public good of the people. (§ 131)

This undertaking, which individuals make to obey the law in forming civil societies, however, is thus not unrestricted. No more than it is the right of governments to the unconditional respect of their citizens. If a government acts contrary to those ends for which it has been instituted, it is no longer a lawful government.³

³ It is interesting to note the influence of Locke on the formulation of the American Declaration of Independence of 1776. For example 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are....'

A second point to note here is that Locke recognizes the difficulties of forming 'social contracts' and that such compliance to the law is not to the preference of all. Nevertheless, despite this, in recognition of its 'benefits' (as alike the benefits of promise keeping) an individual, according to Locke, concedes by consent to the political power of such an agreement, as '*when anyone joins himself to and incorporates with any government already made*'. In other words, where there is already a government, an individual undertakes the obligation to respect its law by consenting to an arrangement which already exist. But there are difficulties for Locke's account. Firstly, one could argue that political societies have seldom, if at all, originated in the way Locke describes. Secondly, individuals born into such societies do not obviously have the freedom of dissenting from their already existing 'political arrangements'. Indeed, many would object that political societies have rarely, in fact, been begun by a contract. One such objector was David Hume.

Hume and 'Original Contract'

In his essay, 'Of the Original Contract', Hume raises objections against (I will assume you have now read paras 4-20 of this essay⁴) Locke. Locke has it, '*that which begins and constitutes any political society is nothing but the consent of any number of freemen capable of a majority, to unite and incorporate into such a society*'. (§99) In other words, government can have no other foundation than consent. Hume thinks that this just doesn't correspond to what really happens in political societies. Hume agrees with Locke that, '*nothing but their own consent could, at first, associate them together, and subject them to any authority*'. Nevertheless on the form 'political society' such agreement is much weakened. That is, it is in a much weaker sense that Hume agrees that it is by the consent of its individuals that a stable political society survives. Indeed, Hume implies that an individual may 'acquiesce' in what a government does without either having a choice or being willing to approve of what it does. Thus, for example, if individuals are not consulted on the policies of a government they cannot be seen to be genuinely 'endorsing' them. On the other hand, an individual's or individuals' failure to rebel or escape its government's influence might be taken as 'acquiescence' but it is not clear that it is, or that such individuals are free.

More specifically, Hume cites the foundation of governments as being usurpation or conquest or both without, he says, any '*pretence of a fair consent*'. It is not just that exceptions to the contractual model are more frequent than those to where we can identify conformity to the model: but even where government can be said to be formed by consent, the existence of such consent does not necessarily confer on it authority.⁵

⁴ <http://www.constitution.org/dh/origcont.htm>

⁵ See para. 15

Moreover, even a government, which is established by consent, does not necessarily proffer the right to give or withhold that consent to subsequent generations. Locke, as we will see, had anticipated such objections. And while Hume had the benefit of knowing of Locke's anticipation to such objections he still wanted to raise them. His reasons may become clear as we consider Locke's treatment of these objections.

History or not of 'contract' in the Forming of Political Societies

Locke states a version of the above first objection in this way:

...there are no instances to be found in story of a company of men, independent and equal one amongst another, that met together, and in this way began and set up a government. (§100)

Locke, in this passage is discussing the forming of government by reasonable and rational means, which he takes to be the 'natural' way to proceed when forming political societies. He, nevertheless, concludes these remarks importantly by saying that he will have '*occasion, in another place, to speak of conquest, which some esteem a way of beginning of governments*'. This 'other place' is Chapter XVI of his Essay. Thus, to Hume's objection that '*conquest or usurpation, that is in plain terms, force, by dissolving the ancient governments, is the origin of almost all the new ones which were ever established in the world.*' (para.16) Locke's answer is somewhat predictable. It is that government who govern without allegiance of those whom they govern is not legitimate government. As allegiance can never be won by force only acquired through consent. Consent that is not elicited by the use or threat of force, but that is freely given. Locke writes:

The conqueror, 'tis true, usually by the force he has over them, compels them, with a sword at their breasts, to stoop to his conditions, and submit to such a government as he pleases to afford them; but the inquiry is, What right he has to do so? If it be said they submit by their own consent; then this allows their own consent to be necessary to give the conqueror a title to rule over them. It remains only to be considered whether promises, extorted by force, without right, can be thought consent, and how far they bind. To which I shall say, they bind not at all; because whatsoever another gets from me by force, I still retain the right of, and he is obliged presently to restore. (§186)

Locke's reasoning, then, is concerned with what gives those who govern the right to the obedience of those whom they govern. And he answers that such a right is acquired only through the consent of the latter. Hume, on the other hand, it seems is not so much interested in the question of what gives a ruler the right to allegiance from his subjects. In

his essay, he treats consent as 'one just foundation' government: what he objects to is that it is typically the actual foundation of government.⁶

This may, of course, be the result of Locke and Hume holding differing conceptions of authority. For Locke, the authority of a government involves its having a right to the allegiance of those it governs and, consequently, only consent can give rise to such a right; thus, only consent, on Locke's account, can be the origin or foundation of government. On the other hand, for Hume, authority is 'the effect of established government' (para. 4). A government 'acquires it through accustoming them to the habit of obedience it does not have its authority conferred in it by the consent of the people, (see para. 5).

Locke is concerned with this question '*What right have governments to the obedience of those subject to their laws?*' Hume was not concerned with this normative question. And, therefore, we can say that Hume's objections do not work against Locke's position, for the view that the right of governments to the obedience of their subjects can only be acquired through consent, does not contradict the view that such obedience is attained even where no such consent has been given.

II

Is there, nevertheless, more to of an understanding to be gained on this matter through further pursuance of Locke's claims? . Well Locke is clearly concerned to argue, in the passage we are considering, that '*all peaceful beginnings of government have been laid in the consent of the people*'. This does seem to be offering a descriptive (factual) analysis and not simply advancing a normative (ideological) thesis. Therefore a criticism of this position could be that he is not making a clear distinction between situations where individuals are governed **lawfully** from situations under which they can be governed peacefully.

This could be because Locke's depiction of his 'state of nature' is slightly ambiguous and could be seen either as a morally ideal state or merely as the state of individuals in a pre-political society. Locke, I think, seems to be thinking of 'the state of nature' as an amoral ideal state. Certainly, it seems from our initial readings⁷ Locke could be giving a normative account; it could in be a state of equilibrium where no one individual is subject to the power of another and each has natural rights, that is, those rights prescribed by the law of nature. It is possible for equilibrium is disturbed by the irrational behaviour of those who violate the 'natural rights' of others by assuming authority through some kind of force. And if this happens the state of nature thus becomes a state of war. It is to avoid the threat of such an unfavourable state, according to Locke, that men forego the state of nature for 'civil' society, thus consenting to a worldly authority to which they become subject and which offers

⁶ para. 20

⁷ see again §§4&6

protection from the irrationality of others. If we interpret Locke this way, it would seem to be self evident that the only way such a government could begin is by consent. For a government attempting to propagate such freedom could not do so by initially infringing the freedom that all have in the state of nature. Indeed such an infringement denies the consent of those concerned, and thus for that very reason such a government would immediately create a state of war. However, if Locke is so interpreted that his version does become 'ideological' rather than factual (devoid of empirical content) and thus it no longer, of course, becomes susceptible to Hume's objection.

Yet if Locke is to avoid Hume's criticisms in this way he just opens up his account to a different criticism, that is, that his account is 'purely normative' and then to avoid this criticism a protagonist of Locke's would have to persuade us to return to such phrases as 'peaceable' and 'war' some of their ordinary empirical content. That is, giving meaning to the phrase a state of 'war' will include "*a state of conflict in which one party attempts to impose its will by the use, threat or display of force.*" And meaning to state of 'peace' which will include will be one in which disagreements are generally resolved by discussion, negotiation or arbitration rather than by the use, threat or display of force. But if this should be done it is difficult to see how Locke can escape Hume's objections. Indeed, Hume's point against Locke can now be expressed more forcefully. We have said above that on Locke's account it would seem to be self evident that the only way such a government could begin is by consent. However, it is not contradictory to claim that it is possible for governments to rule peaceably without the consent of those whom they govern. Hence consent is not *necessary* to peaceful government.

Thus, what has been shown here is that Hume's criticisms can make a case against Locke's position, on certain interpretations of that position. And he can avoid such criticisms, only by reading his thesis as purely ideological and I take it that Locke would not have shied away from ideological commitments altogether. But it is clear that Locke did not in fact distinguish clearly between questions about the proper origins of government and questions about its actual origins. We can now turn to the other difficulty Locke recognizes he needs to deal with if his position is to be at all plausible.

Are we 'born under government'?

The second standard objection of Locke's account, and this has echoes for modern social and political thought, is that individuals, have political obligations thrust upon them and do not have the opportunity to 'contract' to the government to which they are subject. (Again, I will assume you have read §§112 & 122) How, according to Locke, does a person become subject to the laws of the land in which he is born? (Try to give an answer

to this question before moving on). It seems to be the case that advantages endorsed by government, for instance, are conditional on individuals obeying the law.⁸ For to be given rights under the law is conditional on the individual giving tacit consent. The short answer to the question is then that an individual becomes subject to the laws of a country by giving his tacit consent to being governed by those who rule that country. Thus, rights and duties reach '*as far as the very being of anyone within the territories of that government*'.

However, I hope you see that this is not all Locke wants to say. One could even argue that he seems more interested with the question, 'How do individuals become members of a commonwealth?' than he is with the question, 'How does the law of the land extend to every person in it?' For example, for Locke, an alien, while in a given country will agree to giving tacit consent to that country's political administration, nevertheless, he or she could only undertake full citizenship '*by positive engagement and express promise and compact*'. Yet there are offences, in effect which only members of what Locke calls a 'commonwealth' can commit for example, treason. Thus becoming citizens means to undertake certain commitments over and above those that can be undertaken by aliens. Therefore, a consent theorist would need to put forward a further account to cover an individual's inclusion into a commonwealth. And of course there are for Locke, for example, it seems from certain of his remarks, that in order to be a citizen of the commonwealth one must own land.⁹ It is here, for me, that some of the limitations of Locke's account start to become apparent. For we can ask, if this is a condition of 'citizenship', what of the status of those who do not but are not 'aliens'? What does an individual who owns no land do, which an alien does not do, which makes him subject to laws not applicable to aliens? There needs to be some explaining done here to demonstrate more clearly the nature of tacit consent in this context. Yet there are even more radical difficulties with the idea of Locke's 'tacit consent', and we see these again are raised by Hume.

Hume On Tacit Consent

Hume (read carefully paras. 23-29) raises objections against Locke's appeal to tacit consent as committing individuals to compliance with the laws of the country they inhabit. (Is it possible, in your opinion, that a consent theory of government can survive such objections?) On Locke's account, as we have seen, in line with his notion of freedom, as a condition of pledging allegiance to a government it is possible for an individual to consent or withhold consent from being subject to the laws of that government. Nevertheless, the consequence of exercising that freedom is exile from the 'territories' over which the jurisdiction of a government

⁸ §119

⁹ §117

extends. One may ask then is this really a choice; is this real freedom? Hume recognizes that an individual may not even have this 'freedom' and he sets out this objection in two examples. Firstly, there is the situation where an individual have the resources economic or otherwise, to quit his native land.¹⁰ Then there is the case where there is a prohibition (on the orders of the prince in Hume's example) on emigration. Hume asks rhetorically, would such a prince, '*forfeit the allegiance of all his subjects by so wise and reasonable a law?*'¹¹ In answer to this second case objection the consent theorist that such a ruling preventing emigration would be the law of the 'tyrant' and thus the 'sovereign' would be surrendering the right to the individual's allegiance. But this is not obviously true, as it could be claimed, and has been claimed in recent history by various regimes that such a prohibition is in the 'public interest'. And it could be demonstrated, in various ways by the regime, by propaganda for example, that the majority of the people approve of a law prohibiting emigration. In such circumstances such a measure, as Hume suggests, might, increase the authority of a government over its people. We see again, if a purely normative thesis is attributed to Locke the objection that the facts are different from what he suggests may be maintained against him. It is not inconsistent to maintain against an assertion as to how things ought to be that they are not like this in actuality.

Hume, then, raises a general difficulty about what is to count as tacit consent. In the first example outlined demonstrates that an individual cannot be held to have tacitly consented to an arrangement if that individual does not have the choice or opportunity of withholding that consent. Also, Hume elsewhere raises a further objection, to the notion of a tacit undertaking. The issue is that there is a qualitative difference in tacitly consenting to something, where this involves one in merely agreeing, to one tacitly undertake to do something. A promise requires, in Locke's phrase, a 'positive engagement', and is only made if he who is thereby bound by it has done something whereby it is made. If I say to someone 'Do you mind if I smoke?' the consent of that other person may in certain circumstances be assumed by her not voicing an objection. But if I'm asked by someone to help her move house, my agreement to do so will not be secured by my keeping silent. And so long as I remain silent, do nothing; I am in no way committed to help her move house. In the political context, so long as I do nothing I cannot be said to have made a promise, there is nothing I have done which can be identified as a promise or construed as consent. If, then, it is claimed that I have an obligation to obey those laws this must be explained by reference to something other than a promise or consent and not by the self-contradictory idea of a tacit promise. I hope you can see then that there are reasons, then, for rejecting the view that political obligation is incurred in the sort of way in which the obligation to keep promises is incurred.

¹⁰ §119

¹¹ §120

Concluding remarks

We have so far considered Hume's remarks in so far as they are relevant as criticisms of Locke. However, it must be made clear that Hume uses these objections as preparation to outline a positive account of the nature of political obligation.¹² It will suffice for now to draw your attention a straightforwardly normative thesis that he puts forward it is that:

The general interests of society are sufficient to establish [the obligation to allegiance].¹³

May we argue here that Hume seems to be putting forward a utilitarian theory of political obligation? That is, the benefits which result from giving allegiance lies in the justification for giving it. Specifically, then, social order is furthered and a common interest aided, when allegiance to the government is pledged. Thus, allegiance is a duty owed to society at large not, strictly, a duty due to those who govern. On this account neither the sovereign nor her government have any right to expect the obedience of her subjects or expect any duty to be owed to them. The purpose of obedience to any is solely to promote the common interest in social order and it is right to promote that interest.

In this we see that Hume has a quite different conception of political obligation from that of Locke. Hume it seems has it that, providing the government maintains law and order, it will be right to give it one's allegiance. But do we not also have other interests in addition to maintaining social order? Imagine a ruler oppresses his people with demand to further his foreign campaigns to the point that the majority are forced to live in abject poverty. Could it not be said that it will be in the common interest to act in ways, which would mean putting aside the priority of maintaining social order? Here, however, to accept the utilitarian principle that it is from the common interest that the obligation to allegiance derives, will mean that in this situation an obligation to revolution would be both justified and demanded by the principle of political obligation?

For Locke the obligation of civil obedience involves the right of the law and the machinery of the legal system to expect obedience. For Locke, it is this in which the authority of the law, and the machinery of the legal system reside. By contrast we see that Hume maintains that the obligation of civil obedience involves it being right to obey the law and the machinery of the legal system but there is no obligation to obedience *per se*. On the contrary, its authority, on Hume's account, devolves to the majority believing it right to obey.

¹² We do not have time in this block to go into them in detail although we will at some point in this module. If you cannot wait to encounter Hume's positive account of political obligation I suggest you read paras. 32-37 of Hume's essay

¹³ see para 36

In the next Block we shall discuss the work of other political whose accounts focus on the nature of political obligation, the 'state of nature' and the social contract.