

Locke on consent and tacit consent

Note for Philosophy 13

Locke holds that one becomes obligated to obey political authorities only by one's free and voluntary consent. Or does he? Locke: "The difficulty is, what ought to be looked upon as tacit consent, and how far it binds, i.e. how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expressions of it at all." Locke, later: "And to this I say that every man, that hath any possession, or enjoyment, of any part of the dominions of any government, doth thereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government" (section 119).

Hanna Pitkin on Locke on consent: Consent is ultimately irrelevant to Locke's theory of justified political authority. Consider

1. By residing within their territories, we give our consent even to bad governments.
2. We are not obligated to bad governments.
3. Consent is the ground of political obligation.

Pitkin: Locke suggests all three claims, but we get the best interpretation of his theory if we drop 3. Whether or not you are obligated to obey the governing authorities that claim to rule you legitimately depends solely on whether the government adequately respects and protects your basic moral rights.

John Simmons: Consent for Locke is necessary but not sufficient to ground political obligation.

Simmons on tacit (silent) consent. It can bind exactly as express consent does, provided these conditions hold:

1. The situation must be such that it is perfectly clear that consent is appropriate and that the individual is aware of this.
2. There must be a definite period of reasonable duration when objections or expressions of dissent are invited or clearly appropriate, and the acceptable means of expressing this dissent must be understood or made known to the potential consentor.
3. The point at which expressions of dissent are no longer acceptable must be obvious or made clear in some way to the potential consentor.
4. The means acceptable for expressing dissent must be reasonable and reasonably easily performed.
5. The consequences of dissent cannot be extremely detrimental to the potential consentor.

In the situations Locke has in mind, some of these conditions, especially 4 and 5, are not satisfied, so he is wrong to think that tacit consent adequately grounds political obligation in most actual political societies. Locke seems to be appealing to another possible ground of obligation altogether, a principle of gratitude or reciprocity (fair play). (Simmons does not think this type of consideration grounds political obligation for most people in most societies, but that is another story.)

Charles Beitz's response to Simmons. Tacit consent can ground obligation when Simmons's conditions do not hold. For example, a landowner can say to a trespasser, "Unless you get off my land, you must clean my stables." Here the indicated act of dissent may result in extreme detriment to the trespasser, but the crucial point is that the landowner has a right to require the trespasser to leave his land. After all, it's his land. So by remaining on the landowner's land, the trespasser tacitly consents to clean his stables.

Relevance to Locke: Locke holds that a state is formed when landowners pool their land and make a mutual covenant, hereby this land shall be one nation, and anyone venturing on this land must consent to obey its laws. See sections 116-117 & 120). This is a covenant that runs with the land—so anyone who purchases parts of this land does so on condition it remains under the English (for example) jurisdiction, and may permissibly transfer the land to another person only given this condition. This is controversial, but what Locke holds. In this reading, a lot of weight rests on Locke's account of the rights of legitimate private property owners. One could accept a large part of Locke's story about how individuals can come to acquire permanent full ownership rights over hitherto unowned parts of the earth in a state of nature (absent government) without accepting that these rights include the authority to set in place a covenant that runs with the land (eg, from now on, nobody shall be able to acquire ownership of this land unless she agrees to the terms I set now, namely, A, B, C, etc.). Such a covenant arguably gives the dead too much power over the living, and over future generations.

Notice consent can bind even when one has no reasonable alternative, as when I have a choice between cancer surgery or quick death, and I contract with the only doctor in the vicinity for cancer surgery.

Of course, consent to tyranny does not bind one. Locke says one cannot rationally consent to absolute arbitrary government (but could one not unreasonably but voluntarily consent to such a government?). Also, one cannot sign away to a tyrant rights one does not have, such as the right to allow oneself to be arbitrarily killed. However, the constraint that one cannot voluntarily transfer to a political authority rights over oneself one does not possess seems to leave more room for voluntary consent to tyrannical or near-tyrannical government than Locke seems to want to allow. I could—even if irrationally—voluntarily confer whatever rights over myself and my property I legitimately have over a revered political ruler such as Ghengis Khan. So could everyone else. So Locke's strictures about consent do not seem to rule out legitimate tyranny, contrary to his stated view. If one balks at this implication, it would seem one must downgrade the legitimating force of voluntary consent per se. So are we or aren't we back to something close to Pitkin's view after all: whether one is morally obligated to obey one's government depends on whether it is carrying out its proper function (respecting and protecting rights) or not?

The road Locke hints at but does not take—alternative to the consent and tacit consent argument. Consider the Hart-Rawls principle of fairness: "when a number of persons engage in a just, mutually advantageous, cooperative venture according to rules and thus restrain their liberty in ways necessary to gain advantages for all, those who have submitted to these restrictions have a right to similar acquiescence on the part of those who have benefited from their submission." (Cited from Robert Nozick, *Anarchy, State, and Utopia*.) One might try to argue from the principle of fairness to the obligation to obey and support legitimate political authority.