

Introduction to John Locke, *Second Treatise of Government*
 Chapters 1-4.
 For Philosophy 13 Dick Arneson

John Locke's *Two Treatises of Government* were written to defend armed resistance to the English king by English subjects in the years preceding the Whig revolution, the Glorious Revolution of 1689 (as it's called). Involved in plots, Locke fled from England to Holland in 1683 and stayed there until 1689. The *First Treatise* is an attack on the theory of absolute monarchy defended by Sir Robert Filmer. The Filmer theory traces the rights of the monarch to the establishment of monarchical power in Adam (the first man of the Bible) by God. This absolute authority to rule then gets passed along down to the present king of England. So the king is answerable only to God and the subjects are obligated to obey the king's commands come what may. So says Filmer.

Locke in both of his treatises on government asserts a theory that sets moral limits on the authority of rulers over their subjects. The moral basis of these limits is a doctrine of natural law and natural rights. This is a theological doctrine. God proclaims the natural law to all humans, and ought to be accepted, in Locke's view, because what God commands, the recipients of the commands ought to do. The natural law doctrine includes a doctrine of natural rights.

Why we are reading Locke in this course: Locke is interested in political questions that other course authors including J. S. Mill and Judith Thomson and others are not concerned about. So we are switching gears, in a way, in moving to Locke. His doctrine of natural moral rights provides a worked-out example of a nonconsequentialist ethics, and offers a useful contrast to Mill's utilitarianism and to the broader family of consequentialist moral principles. Also, Locke addresses basic questions about the justification and limits of political authority that arise also for us in modern times. Locke appeals to theological premises to support his political principles. These appeals raise interesting questions. Can Locke's position succeed as a freestanding doctrine, independent of his theological premises? Locke's position aside, must the principles underlying a legitimate government be justifiable by reasons that all can share regardless of their sectarian convictions?

Although Locke is clearly responding to the issues of his place and time, his arguments are not limited in that way. He does not say, my arguments and conclusions are intended to apply only to English people in the 1680s. They claim universal validity. I take Locke's words at face value and assess them as applying across the board, including to us, now.

According to Locke, natural rights are moral rights that each person has independently of social arrangements, conventions, or common beliefs. You might live in a society whose institutions do not accord people natural rights. You still possess the rights, and people still ought to respect them. Social conventions and social norms entrenched in the society one inhabits may contradict Locke's claims about rights or presume their falsity. No matter, according to Locke. Nor according to Locke is any person's status as a moral rightholder conditional on the acceptance of these claims about moral status in common opinion. Common opinion on these matters may be just false.

These basic moral rights are claimed by Locke to be natural as opposed to artificial. They are not brought about by human creation and no person or group of persons can abolish or amend them.

Laws generally, according to Locke, are rules of conduct whose conduct is promulgated, made known to those whose behavior they regulate. The laws must be promulgated by a legitimate authority, not just anyone can make something a law by assertion. But laws must be made known to those who are claimed to be subject to them; the king's merely whispering a command into his empty closet does not establish a law. Same goes for natural laws. Their content is available to any (adult) person. To know what the natural laws command, all one has to do is consult one's conscience. The natural laws as it were are written on everyone's heart. God does the writing, and promulgates natural laws by giving humans the capacity to reason our way to knowledge of them. Locke clearly supposes the natural laws are simple and easy to understand, but this point does not seem to me to be essential to his doctrine, and is anyway dubious.

You could hold that we learn about natural laws/natural rights by consulting conscience, that is by reason and reflection, but hold also that the content of natural laws might be complicated not simple, and the process of coming to understand them might require a long historical process, decades or centuries of discussion and argument. On this picture (which is not Locke's), different cultures and societies might arrive at different understandings of natural moral rights. Maybe there is gradual growth of moral knowledge just as there is gradual growth of scientific knowledge. A problem of Locke's view as stated is that it seems to neglect the fact that the natural rights as he interprets them are not available in some cultures, or available only in truncated or inchoate form. And there seems to be learning, or at least change of views, within any single culture across time.

Rights, what are they? Locke doesn't give a full account, you have to piece together his ideas from sideways comments here and there in his writings.

Some assertions of right may just amount to denials of obligation. To say I have a right to defend myself may just mean that I am under no moral obligation not to defend myself from attack. Such a right need not involve others being under any obligations or duties in this regard. These are sometimes called *liberty-rights*.

Most basic natural rights in Locke's scheme are what are sometimes called *claim-rights*—here rights and duties are two sides of the same coin. My right to acquire property in unowned land corresponds to duties to me owed by all other persons, duties not to interfere with my attempts to acquire property in certain ways. (Maybe the right to acquire property includes both a liberty right (I am under no obligation not to seek to acquire property) plus the claim right just described.)

Some other natural rights may have their source in underlying moral duties. Parents are under moral duties to care for their children, says Locke. This duty generates subordinate natural rights of parents to care for their children without interference on the part of others. You have the claim right (based on the duty) to perform the duties and others are under a duty not to interfere (unless your parenting falls below some threshold level of competence and good will; below that we intervene or call in the cops).

Some natural rights are not based on underlying duties in this way. For example, I have the natural right to acquire property; this gives me an option, not a requirement. I may choose not to acquire property. My right involves a duty to me on the part of others not to interfere in certain ways if I do seek to acquire property.

Your full set of rights includes rights to change the rights and duties that you and others are under. To me extent one can do this unilaterally. If I waive my right to ownership of my computer, say by dumping it in the trash bin, then others are no longer under a duty not to take it without my consent; the computer reverts to unowned status.

Of any right, we can ask whether it is **waivable** (the rightholder can at will give up the right), **alienable** (the rightholder has the right to transfer the right in question to another), **overrideable** (the right is not absolute but gives way sometimes or may under pressure of other moral considerations), and **forfeitable** (the rightholder may lose the right by certain lapses into specified bad conduct). In section #11, Locke says that in the state of nature a murderer "may be destroyed as a lion or tyger, one of those wild savage beasts." The murderer has forfeited his right to life.

Locke is not fully explicit, in the early chapters of the *Second Treatise*, as to exactly what rights we have and what duties the rights of other place on us.

Natural rights in Locke's view are binding on us because they have been commanded by God. But it turns out God's commands conform to a kind of rule utilitarianism. The rules God establishes for us such that they are to the maximal benefit of humanity if always followed. This gives us a way to figure out what our rights and duties are—figure out what moral rules would be maximally beneficial to people if generally obeyed.

Locke asserts that all human persons (those with the power of reasoning at a good enough level) are born to equal status. None has natural authority over anyone else, at least, once anyone becomes an adult. Each person is bound by the same natural duties and entitled to the same natural rights. Locke supposes there must be, or must have been, a state of society prior to the establishment of government. In this state people are living together in society, but without government. This may sound weird, but it might be a useful thought experiment to work out what relations people should have to one another, what they owe each other and are owed, in a state of society with no political rulers or government.

In section 4 Locke characterizes the state that all men and women are naturally in a “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.” Locke adds, this is “a state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another.” He’s denying there is a natural hierarchy of lords and serfs, as under feudalism.

The law of nature gives one considerable freedom to live as one wants so long as one does not harm others in certain ways that count as wronging them. In Locke’s view, one does not have what is sometimes called full ownership over oneself. Each person has strong trustee or stewardship rights over her own body, but actual ownership of each of us is held by God, not the individual herself. Nobody has a moral right to damage or destroy herself (so, suicide at will is forbidden).

Locke, section 6: “Every one as he is bound to preserve himself, and not to quit his station willfully, so by the like reason, where 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 to an offender, take away or impair the life, or what tends to the preservation of the life, liberty, health, limb, or goods of another.”

Puzzling passage. It seems to say, I may not harm others, unless my own life is at risk. But suppose I am on the Titanic, the ship sinks, and the only way I can save my own life is to slug you and grab your life preserver. Surely Locke does not think that it is OK for me to do what is necessary here to save my life, but his words suggest just that. These words “where his own preservation comes not in competition, ought he as much as he can to preserve the rest of mankind” are puzzling from another direction also. Locke appears to say that when my own life is not at risk, I must do whatever I can to preserve the rest of mankind. This seems to imply each of us is under very strong good Samaritan duties always to be saving lives except when our own life is at risk. But in the end of the sentence Locke seems to envisage only duties not to harm others, not duties positively to aid them, as implied by this duty to preserve mankind. (In the *First Treatise* and perhaps elsewhere Locke does assert a duty of charity, a duty to give up our surplus goods when others need our goods to live.)

[Aside. I suggest Locke’s denial that each of us is a full self-owner, but instead each has duties to keep himself alive and not harm or damage oneself, is plausible even without invoking Divine command. This duty to self is vague but substantive, something along this line: Being alive, having a human life to live, is in all but extreme tragic circumstances a great valuable opportunity, and each of us has a moral responsibility not to waste this opportunity but to use it to generate good for oneself and others. This duty shrinks but does not entirely swallow up the right to suicide.]

Back to Locke. Locke asserts that in the state of nature each person has executive authority to enforce the law of nature by punishing transgressors. Locke assumes there is a difference in principle between justly punishing an offender for an offense, even an offense against oneself, and merely retaliating or taking revenge against one who has done one harm.

Section 8. So, in the state of nature, if Smith’s rights are violated—say he is beaten and robbed—then (1) anyone may apprehend and punish the offender. It is OK to punish to the point of making the transgressor “repent the doing of it, and thereby deter him, and by his example others, from doing the like mischief.”

And

(2) There is also a right to exact reparation for damages from the transgressor. Only the injured person has this right of reparation (though others may help him enforce it).

It is clear one has the option to help enforce the law of nature. Does one have a duty to do this? I think so, but Locke is not explicit on this point so far as I caeen see.

In sections 13 and 14, Locke explains the relation between being in a state of nature and being in a state of civil government. A state of nature is a relation that holds between persons or groups of persons. You are in a state of nature, with respect to another person, just in case you lack an acknowledged political superior. The agreement that takes people out of the state of nature is agreement to enter into one community and create a body politic—establish an acknowledged political superior.