Locke on Political Society and Consent

Philosophy 322: Modern Philosophy
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POLITICAL SOCIETY DEFINED

1. Consider the anarchist challenge: why do we need political authority to begin with? Locke has give us a state of nature where no one is the boss of you, you are free to act as you see fit, there is a moral law that you and everyone else are obliged to obey, and that you are entitled to enforce as necessary; there are families, with all the rights and obligations they involve; and there is private property. Why do we need a commonwealth and its government?

2. Terminology: political society = civil society = the commonwealth

3. political society = a group of people who have (a) each given up their right to judge and punish violations of the law of nature, and accepted a common authority to (b) make laws, judge when they have been violated, and mete out punishment, and (c) determine "how far injuries from without are to be vindicated" (88). Note that this does *not* involve transferring property rights to the public – merely transferring rights to execute the law of nature.

4. Why should we want this? Because...

   (a) It's better to have a "known authority" to make rules and issue judgments than it is for "every man's being judge in his own case" (Sec. 90)

   (b) By signing over their executive authority, members of the society establish "a community for 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" (Sec. 95)

5. Note that given this definition of political society, absolute monarchy is "inconsistent" with it. For there is no common authority to judge disputes between the monarch and his subjects.

6. The basic structure (Secs. 124-130):

   (a) What's missing from the state of nature:

      i. An established, settled, known law. (Legislative function.)

      ii. A known and indifferent judge. (Judicial function.)

iii. A power to enforce law and execute sentences. (Executive function.)

(b) Members of commonwealth give up two powers they had in the state of nature:

i. Power of acting only within the limits of the law of nature. Now they agree to abide by the law of the commonwealth.

ii. Power of punishing. Now they agree to "assist the executive power of the society," but not to execute law on their own.

HOW POLITICAL SOCIETY GETS STARTED

1. Like Hobbes, Locke proposed a *social contract* theory of the origin and legitimacy of the state.

2. Step 1: the "original compact." This is the agreement to form a commonwealth, and it requires the consent of *all* who will be subject to its laws: "Men being...all free, equal, and independent, no one can be put out of this estate [of nature], and subjected to the political power of another, without his own consent" (Sec. 95).

3. Step 2: the formation of a government. This is where those who formed the society decide how it will be structured. Here, decisions are settled by the majority. The alternative would be to require consensus, but that would be "next to impossible ever to be had" (Sec. 97).

   (a) It's part of the original compact that you agree to submit to the will of the majority. Otherwise, the original contract "would signify nothing." In order to get the benefits of political society, you have to agree to abide by the rules even when you don't like them.

   (b) Note that the majority cannot trump the law of nature.

4. Since property exists prior to political society, the territory of the society will include all of the land of its members.

CONSENT

1. Only by "your own consent" can you be "subject to an earthly power". But what is consent, and what is a sufficient declaration of consent?

2. Requirements of consent. Locke seems committed to the No Force and Natural Legality conditions:

   (a) *No Force.* In his discussion of conquest (Chapter XVI), Locke seems to indicate that one cannot obtain consent through force or violent coercion. However, Locke does not consider whether subtler forms of power may influence whether consent is possible (e.g., widespread sexism and patriarchy; economic inequality; etc.).

   (b) *Natural Legality.* You can't consent to consent to acts that are forbidden by the law of nature. E.g., you can't consent to enslave yourself.

3. Intuitive concept of consent seems to include some more conditions:

(a) *Knowledge*. Consent requires some knowledge and understanding of that to which you are consenting.

(b) *Communication*. You can't silently consent to something; there must be some communication of consent to the other party.

4. Locke distinguishes between *express* consent and *tacit* consent. Express consent is what you give, for example, when you swear an oath of allegiance to the country. Tacit consent is a more difficult concept. To understand it, we should first consider why Locke needs the concept in the first place.

5. Suppose that a person is not among the original compactors of a commonwealth, and has not given his explicit consent to be subject to its authority, but is living within its dominion. Locke has said quite clearly (in Sec. 95) that no one can be subjected to the political power of another without his consent. And yet we can't say that people can live within the commonwealth without being subject to the authority of its government. So there must be a kind of consent that is not express consent.

6. Locke says that anyone who owns, occupies, or uses any of the property within the dominion of the government thereby gives his tacit consent to be subject to it. This includes those who inherit land within the commonwealth, those who lodge within it, and even those "travelling freely on the highway" (Sec. 119). Anyone who "enjoys any part of the land ... must take it with the condition it is under; that is, of submitting to the government of the common-wealth" (Sec. 120).

7. If you subject yourself to the government through express consent, you are "perpetually and indispensably obliged to be, and remain unalterably a subject to it, and can never be again in the liberty of the state of nature" (Sec. 121). Locke is not saying that you cannot ever separate yourself from a commonwealth once you have expressly consented to join it; rather, whether you can do so is no longer up to you, but requires "some public act." However, if your membership in the common-wealth is merely a matter of tacit consent, all you have to do is "quit the land" – i.e., leave the territory and, if you are the owner of the land, sell it – and you are under no further obligation to the common-wealth.

8. Tacit consent may be said to satisfy the No Force condition, because those who have only tacitly consented can get out of their obligation to submit to the government by leaving the territory. However, you might think this possibility is not sufficient for genuine consent. As Hume put is (in 'Of the original contract'):

> Can we seriously say that a poor peasant or artisan has a free choice to leave his country when he knows no foreign language or manners and lives from day to day by the small wages which he acquires? We may as well assert that a man, by remaining in a vessel, freely consents to the dominion of the master, though he was carried on board while asleep and must leap into the ocean and perish the moment he leaves her.

9. Tacit consent clearly doesn't satisfy the Knowledge requirement; you may be within the given government of a dominion without knowing it, and without knowing what the gov-

ernment requires of you. Unless we take it that merely being in the territory is sufficient for communicating your consent, it doesn't satisfy the Communication requirement either.