```
[08]
      John Locke » Individual Rights and Majority Rule
      last time
0001
0002
      we began
0003
      to discuss Locke's state of nature
0004
      his account of private property
      his theory of legitimate government
0005
0006
      which is government based on consent and also limited government
0007
      Locke believes in certain fundamental rights that constrain what government can do
0008
      and he believes that those rights are natural rights
0009
      not rights that flow
0010
      from law
0011
      or from government
0012
      and so Locke's great
      philosophical experiment is to see if he can give an account
0013
0014
      of how there could be
0015
      aright of private property
0016
     without consent,
0017
      before government
0018
      and legislators arrive on the scene to define property
0019
      that's his question
0020
      that's his claim.
0021
      there is a way,
0022
      Locke argues,
0023
      to create
0024
      property,
0025
      not just in the things we gather and hunt
0026
      but in the land itself
0027
      provided
0028
      there is enough and it's good enough for others
0029
      today I want to turn
0030
      to the question
      of consent
0031
      which is Locke's second big idea, private property is one
0032
0033
      consent
      is the other
0034
0035 what is the work of consent
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0036
      people here
      have been invoking the idea of consent
0037
0038
      since we began
0039
      since the first week you remember when we were talking about
      pushing the fat man off the bridge someone said but he didn't agree
0040
      to sacrifice himself
0041
      it would be different if he consented
0042
0043
      or when we were talking about the cabin boy
0044
      killing and eating the cabin boy
0045
      some people said well if they had consented to a lottery it would be different then it
0046
      would be all right
0047
      so consent has come up a lot
0048
      and here in John Locke
0049
      we have one of the great
0050
      philosophers
0051
      of consent
      consent is an obvious, familiar idea in moral and political philosophy
0052
0053
      Locke says that
0054
      legitimate government is government founded on consent and who nowadays would disagree
0055
      with him?
      sometimes when ideas of political philosophies are as familiar as Locke's
0056
0057
      ideas about consent
      it's hard to make sense of them or at least to find them very interesting
0058
0059
      but there are some puzzles some strange features
0060
      of Locke's account of consent as the basis of legitimate government
0061
      and that's what I'd like to take up today
0062
      one way of
0063
      testing
0064
      the possibility of Locke's idea of consent
0065
      and also probing some of its perplexities,
0066
      is to ask just what a legitimate government
0067
      founded and consent
0068
      can do
0069
      what are its powers according to Locke,
0070
     well in order to answer that question
0071
     it helps
0072 to
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0073
      remember what the state of nature is like.
      remember the state of nature is the condition
0074
      that we decide to leave
0075
      and that's what gives rise to consent
0076
      why not stay there why bother with government at all?
0077
      well, what's Locke's to answer to that question
0078
      he says there's some inconveniences
0079
      in the state of nature but what are those inconveniences?
0080
0081
      the main inconveniences is
0082
      that everyone
0083
      can enforce the law of nature
0084
      everyone is an enforcer or what Locke calls the executor
      of the state of nature
0085
0086
      and he means executor literally
0087
      if someone violates the law of nature
0088
      he's an aggressor
0089
      he's beyond reason
0090
      and you can punish him
      and you don't have to be too careful or fine
0091
      about gradations of punishment
0092
      in the state of nature you can kill him
0093
0094
      you can certainly kill someone who comes after you
0095
      tries to murder you
0096
      that's self-defense
0097
      but the enforcement power the right to punish everyone can do the punishing in the state of
0098
      nature
0099
      and not only can you punish with death people who come after you
0100
      seeking
0101
      to take your life
0102
      you can also punish a thief who tries to steal your goods because
0103
      that also counts as aggression against
0104
      the law of nature
0105
      if someone has stolen
0106
      from a third party
0107
     you can go after him
     why is this
0108
0109
     well violations of the law of nature are an act of aggression
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0110
     there's no police force there are no judges,
0111
      no juries
      so everyone is the judge in his or her own case
0112
      and Locke observes that when people are the judges of their own cases they tend to
0113
0114
      get carried away
0115
      and
0116
      this gives rise to the inconvenience in the state of nature
0117
      people over shoot the mark there's aggression there's punishment
0118
      and before you know it
0119
      everybody is insecure in their enjoyment of
0120
      his or her
0121
      unalienable rights to life liberty and property
      now he describes in pretty harsh and
0122
      even grim terms
0123
      what you can do to people
0124
0125
      who violate the law
      of nature
0126
      one may destroy a man who makes war upon him
0127
      for the same reason
0128
0129
      that he may kill a wolf or a lion
      such men have no other rule, but that of force and violence,
0130
0131
      listen to this
      and so may be treated as beasts of prey
0132
0133
      those dangerous and
0134
      noxious
0135
      creatures
0136
      that would be sure to destroy you if you fall into their power
0137
      so kill them
0138
     first
0139
0140
     what starts out
0141
      as a seemingly benign
0142
      state of nature where everyone's free and yet where there is a law
0143
      and the law respects people's rights
0144
      and those rights are so powerful that they're unalienable
     what starts out
0145
0146 looking very benign
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0147
      once you look closer
0148
      is pretty fierce
      and filled with violence
0149
0150
      and that's why people want to leave
0151
      how do they leave
      well here's where consent comes in
0152
0153
     the only way
0154
      to escape from the state of nature
0155
      is to
0156
      undertake
0157
      an active of consent where
0158
     you agree
0159
      to give up the enforcement power
0160
      and to create a government
0161
      or a community
0162
      where there will be
0163
      a legislature
      to make law
0164
0165
      and where everyone
0166
      agrees in advance
0167
      everyone who enters
0168
      agrees in advance
      to abide by whatever the majority decides
0169
     but then the question and this is our question and here's where I want to get your views then the
0170
question
0171
     is
0172
     what powers
0173
     what can the majority decide
0174
      now here it gets tricky
0175
      for Locke
0176
      because you remember
0177
      alongside the whole story about consent
0178
      and majority rule
0179
      there are these natural rights, the law of nature these unalienable rights
0180
      and you remember
0181
      they don't disappear
0182
     when people
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join together to create a civil society
0183
      so even once the majority is in charge
0184
      the majority can't
0185
      violate you' re
0186
0187
      inalienable rights
      can't violate your fundamental right to life liberty and property
0188
      so here's the puzzle,
0189
0190
      how much power does the majority have
0191
      how limited is the government
0192
      created by consent?
0193
      it's limited by
0194
      the obligation
0195
      on the part of the majority to respect
0196
      and to enforce
0197
      the fundamental
0198
      natural rights of the citizens
0199
      they don't give those up we don't give those up when we enter government
0200
      that's this powerful idea taken over
      from Locke
0201
      by Jefferson
0202
0203
      in the Declaration
0204
      unalienable rights
0205
      so let's go to our two cases
0206
      remember Michael Jordan, Bill Gates libertarian objection
0207
      to taxation for redistribution well what about Locke's limited government
0208
      is there anyone who thinks that
0209
      Locke
0210
      does give grounds
0211
      for opposing
0212
      taxation
0213
      for redistribution
0214
      anybody?
0215
      if you, if the majority rules that there should be taxation
0216
      even if
0217
      the minority should still not have to be taxed because that's
0218
      taking away property which is
0219
      one of the rights of nature
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0220
      so
0221
      and what's your name? Ben
0222
      SO
      if the majority taxes the minority
0223
      without the consent of the minority to that particular tax law
0224
      it does amount to the taking of their property without their consent
0225
      and it would seem that Locke should
0226
0227
      object to that
0228
      you want some
0229
      textual support for your
0230
      reading of Locke, Ben
0231
      I brought some along just in case you raised it
0232
      if you've got, if you have your text look at one thirty eight passage one thirty eight
0233
      the supreme power
      by which Locke means legislature, cannot take from any man any part of his property without his
0234
0235
      own consent
      for the preservation of property being the end of government
0236
0237
      and that for which men enter into society
0238
      it necessarily supposes and requires
0239
      that people should have property
0240
      that was the whole reason for entering a society in the first place
0241
      to protect the right to property and
0242
      when Locke speaks about the right to property he often uses that
0243
      as a kind of global term
0244
      for the whole category, the right to life liberty and property
0245
      so that part of Locke
0246
      at the beginning of one thirty eight seems to support
0247
      Ben's reading
0248
      but what about the part of one thirty eight
0249
      if you keep reading
0250
      Men therefore in society having property
0251
      they have such a right to the goods
0252
      which by the law
0253
      of the community
0254
      are theirs,
0255
      look at this,
0256
      and that no one can take from them without their consent
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0257
      and then at the end
      of this passage we see he said so it's a mistake to think that the legislative power
0258
      can do what it will to dispose to the estates
0259
0260
      of the subject arbitrarily or take any part of them
0261
      at pleasure
      here's what's elusive
0262
0263
      on the one hand he says
0264
      the government can't take your property without your consent he's clear about that
0265
      but then he goes on to say and that's the natural
      right to property
0266
      but then it seems that property, what counts as property is not natural but conventional
0267
      defined by the government
0268
      the goods which by the law of the community are theirs
0269
      and the plot thickens
0270
      if you look ahead to
0271
0272
      section one forty
      in one forty he says governments can't be supported without great charge. Government is expensive
0273
      and it's fit that everyone who enjoys his share of the protection should pay out of
0274
0275
      his
0276
      estate
      and then here's a crucial line
0277
0278
      but still it must be with his own consent
0279
      i.e. the consent of the majority
0280
      giving it either by themselves or through their representatives
0281
      so what is Locke actually saying
0282
      property is natural
0283
      in one sense but conventional
0284
      in another
0285
      it's natural in the sense that
0286
      we have a fundamental unalienable right
0287
      that their be property
0288
      that the institution of property exist and be respected by the government
0289
      so an arbitrary taking property
0290
      would be a violation of the law of nature
0291
      and would be illegitimate
      but it's a further question
0292
0293
      here's the conventional aspect of property, it's a further question what counts
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as property, how it's defined
0294
      and what counts
0295
      as taking property, and that's up to the government
0296
0297
      so the consent
      here we're
0298
      kind of back to our question
0299
      what is the work of consent
0300
0301
      what it takes for taxation to be legitimate
0302
      is that it be
0303
      by consent
      not the consent of Bill Gates himself that he's the one who has to pays the tax
0304
      but by the content that he and we, all of us within the society gave
0305
0306
      when we emerged from the state of nature and created the government
      in the first place
0307
      it's the collective consent
0308
      and by that reading
0309
      it looks like
0310
      consent is doing a whole lot
0311
0312
      and the limited government consent creates isn't all that limited
0313
      does anyone want to respond that or have a question about that? go ahead, stand up
0314
      well I'm just wondering
0315
      what Locke's view is on
0316
      once you have a government that's already in place
0317
      whether it is
0318
      possible for people who are born into that government to then leave
0319
      and return to the state of nature
0320
      I mean, I don't think that Locke
0321
      mentioned that at all.
0322
      what do you think?
0323
      well I think
0324
      as the convention it would be very difficult to
0325
      leave the government
0326
      because
0327
      you were no longer
      there's because nobody else is just living in the state of nature, everybody else is now
0328
      governed by this legislature
0329
      what would it mean today, you're asking
0330
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and what's your name? Nicola
0331
      to leave the state, suppose you wanted to leave
0332
      civil society
0333
0334
      today, you want to withdraw your consent
      and return to the state of nature. Well because you didn't actually consent to it,
0335
0336
      you were just born into it,
0337
      it was your ancestors
0338
     who joined
      you didn't sign
0339
      the social contract I didn't sign
0340
      all right so what does Locke say there
0341
0342 I don't think Locke says that you have to sign anything I think he says that it's kind of implied
consent
0343
      by willingly taking government services you are implying you're consenting to the government
0344
      taking things from you
      all right so implied consent, that's a partial answer to this challenge
0345
      now you may not think that implied consent is as good as the real thing is that
0346
      what you're shaking your head about Nicola?
0347
0348
      speak up stand up and
0349
      I don't think that necessarily just by
0350
      utilizing the government's
0351
      you know various
0352
      resources that
0353
      we are
0354
      necessarily implying that we
0355
      agree with
0356
      the way that this
0357
      government was formed
0358
      or that we have consented to actually join into the social contract
0359
      so you don't think the idea of implied consent is strong enough to generate any obligation
0360
      at all to obey government
0361
      not necessarily no,
0362
      Nicola if you didn't think you'd get caught
0363
      would you pay your taxes
0364
      umm
0365
      I don't think so
     I would rather
0366
0367 have a system, personally,
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0368
     that I could give money to exactly
0369
      those
      sections of the government that I support
0370
0371
      and not just blanket
      support everything, you'd rather be in the state of nature of at least on April fifteenth
0372
0373
      but what I'm trying to get at is you consider that you're under no obligation since you
0374
      haven't actually entered into an active consent
0375
      but for prudential reasons you do what you're supposed to do according to the law. exactly.
0376
      if you look at it that way then you're violating another one of Locke's treatises which is that
0377
      you can't take anything from anyone else like you can't
      you can't take the government's services
0378
      and then not give them anything in return
0379
0380
      if you
0381
      if you want to go live in a state of nature that's fine
      but you can't take anything from the government because by the government's terms which are
0382
      the only terms under which you can enter the agreement
0383
      say that you have to pay taxes to take those things. so you're saying that
0384
      Nicola can go on back to the state of nature if she wants to but you can't drive on
0385
0386
      Mass Ave. Exactly
0387
      I want to raise the stakes beyond using Mass Ave,
0388
      and even beyond taxation
0389
      what about life
0390
      what about military conscription
0391
      yes, what do you think, stand up
0392
      first of all we have to remember that
0393
      sending people to war is not necessarily
0394
      implying that they'll die, I mean obviously
0395
      you're not raising their chances here,
0396
      it's not a death penalty
0397
      so if you're going to discuss whether or not military conscriptions is equivalent to
0398
      you know suppressing people's right to life
0399
      you shouldn't approach it that way
0400
      secondly the real problem here is Locke has this view about consent
0401
      and natural rights
0402
      but you're not allowed to give up your natural rights either
      so the real question is
0403
0404
      how does he himself figure it out between
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I agree to
0405
      give up my life
0406
      give up my property when he talks about taxes
0407
0408
      or military conscription for the fact,
0409
      but I guess Locke would be against suicide
      and that's still you know my own consent I mean. Good. What's your name?
0410
      Eric. so I Eric
0411
0412
      brings us back to the puzzle we've been wrestling with since we started reading Locke
0413
      on the one hand
0414
      we have these unalienable rights
0415
      to life liberty and property which means that even we don't have the power to give them up
0416
      and that's what creates the limits
      on legitimate government it's not what we consent to that limits government
0417
      it's what we lack the power
0418
0419
     to give away
      when we consent that limits government
0420
      that's the
0421
      that's the point at the heart of
0422
      Locke's whole account
0423
0424
      of legitimate government
0425
      but now you say well
      if we can't
0426
      give up our own life, if we can't commit suicide
0427
0428
      if we can't give up our rights to property how can we then agree to be bound by a majority
0429
      that will force us
0430
      to sacrifice our lives or give up our property
0431
      does Locke have a way out of this or is he basically
0432
      sanctioning
0433
      an all-powerful government
0434
      despite everything he says
0435
      about unalienable rights
0436
      does he have a way out of it? who would speak here in defense
0437
      of Locke or make sense
0438
     find a way out of this
0439
      predicament
      all right go ahead. I feel like there's a general distinction to be made between
0440
0441 the right to life
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that individuals possess and the
0442
      the fact that the government cannot take away an individual's right to life
0443
      I think
0444
      if you look at conscription as
0445
      the government picking out certain individuals to go fight in war
0446
      then that would be a violation of the rights their
0447
0448
      national right to life
0449
      on the other hand if you have conscription of
0450
      let's say a lottery for example
0451
      then in that case
0452
      I would view that as
      the population picking their representatives defend them in the case of war
0453
      the idea being that since the whole population cannot go out there to defend its own right
0454
0455
      of property it picks its own representatives through a process
      that's essentially random
0456
      and the these
0457
      these sort of elected representatives go out and fight for
0458
      the rights of the people
0459
      it looks very similar, it works just like an elected government in my opinion
0460
0461
      alright so an elected government can conscript citizens to go out and defend
0462
      the way of life
0463
      the community
0464
      that makes
0465
      the enjoyment of rights possible.
0466
      I think I think it can because
0467
      to me it seems that it's very similar to the process of electing
0468
      representatives the legislature
0469
      although here
0470
      it's as if
0471
     the government
0472
      it's electing by conscription
0473
      certain
0474
      citizens to go die for the sake of the whole
0475
     is that
0476
      consistent with respect for a natural right to liberty
     well what I would say is there's a distinction between picking out individuals
0477
0478 and having
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a random choice of individuals.
0479
      between let me make sure, between picking out individuals,
0480
      well I don't, let me what's your name? Gogol.
0481
      Gogol says there's a difference between picking out individuals
0482
0483
      to lay down their lives
      and having a general law
0484
      I think this is
0485
0486
      on I think this is the answer Locke would give, actually
      Locke is against arbitrary government he's against the arbitrary taking
0487
0488
      the singling out of
0489
      Bill Gates to finance the war in Iraq
      he's against singling out a particular citizen
0490
      or group of people
0491
      to go off and fight
0492
      but if there's a general law
0493
      such that the
0494
      the government's choice the majority's action is non arbitrary,
0495
      it doesn't really amount to a violation
0496
      of
0497
0498
      people's basic rights
0499
      what does count as a violation
      is an arbitrary taking because that would essentially say not only to Bill Gates, but
0500
0501
      to everyone
0502
      there is no rule of law there is no institution of property
0503
      because at the whim
0504
      of the king or for that matter of the parliament
0505
     we can name
0506
     you
0507
      or you to
0508
      give up your property
0509
      or to give up your life
0510
      but so long as there is a no arbitrary rule of law
0511
      then
0512
      it's permissive
0513
      now you may say this doesn't amount
0514
     to a very limited government
0515 and the libertarian may complain
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0516
     that Locke is not such a terrific ally after all
0517
      the libertarian has two grounds
     for disappointment in Locke
0518
      first
0519
     that the rights are unalienable and therefore I don't really own myself after all
0520
      I can't dispose of my life
0521
0522
      or my liberty or my property
0523
      in a way that violates my rights
0524
      that's disappointment number one,
0525
      disappointment number two
0526
      once there is a legitimate government based on consent
0527
     the only limits
     for Locke
0528
0529
      are limits on arbitrary
     the takings of life or of liberty
0530
0531
      or of property
0532
      but if the majority decides or if the majority promulgates a generally applicable law
0533
      and if it votes
      duly according to fare procedures
0534
      then there is no violation
0535
      whether it's a system of taxation
0536
0537
      or system
0538
     of conscription
0539
     so it's clear
0540
     that Locke
0541
      is worried about
0542
     the absolute arbitrary power
0543
      of kings
0544
      but it's also true
0545
      and here's a darker side of Locke
0546
      that this is great theorist of consent came up with a theory of private property that didn't
0547
      require consent
0548
     that may
0549
      and this goes back to the point Rochelle made last time,
0550
      may have had something to do with Locke's second
0551
      concern
0552 which was America
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0553
     you remember
0554
      when he talks about the state of nature he's not talking about
0555
      an imaginary place
0556
      in the beginning he says all the world was America and what was going on in America
0557
      the settlers
     we're enclosing land
0558
0559
      and engaged in wars
      with the native Americans
0560
0561
      Locke who was an administrator
      of one of the colonies
0562
0563
      may have been
0564
      as interested
0565
      in providing a justification
0566
      for private property through enclosure without consent
0567
      through enclosure and cultivation
0568
      as he was
0569
      with developing a theory
0570
      of government based on consent
0571
      that would reign in
0572
      kings and arbitrary
0573
      rulers
0574
      the question we're left with
0575
      the fundamental question we still haven't answered is what then becomes of consent
      what work can it do
0576
      what is its moral force
0577
0578
      what are the limits of consent
0579
      consent matters not only for governments
      but also from markets
0580
0581
      and
0582
      beginning next time we're going to take up
      questions of the limits of consent
0583
      in the buying and selling
0584
0585
      of goods
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