

0001 last time  
0002 we began  
0003 to discuss Locke's state of nature  
0004 his account of private property  
0005 his theory of legitimate government  
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  
0013 philosophical experiment is to see if he can give an account  
0014 of how there could be  
0015 a right 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  
0031 of consent  
0032 which is Locke's second big idea, private property is one  
0033 consent  
0034 is the other  
0035 what is the work of consent

0036 people here  
0037 have been invoking the idea of consent  
0038 since we began  
0039 since the first week you remember when we were talking about  
0040 pushing the fat man off the bridge someone said but he didn't agree  
0041 to sacrifice himself  
0042 it would be different if he consented  
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  
0052 consent is an obvious, familiar idea in moral and political philosophy  
0053 Locke says that  
0054 legitimate government is government founded on consent and who nowadays would disagree  
0055 with him?  
0056 sometimes when ideas of political philosophies are as familiar as Locke's  
0057 ideas about consent  
0058 it's hard to make sense of them or at least to find them very interesting  
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

0073 remember what the state of nature is like.

0074 remember the state of nature is the condition

0075 that we decide to leave

0076 and that's what gives rise to consent

0077 why not stay there why bother with government at all?

0078 well, what's Locke's to answer to that question

0079 he says there's some inconveniences

0080 in the state of nature but what are those inconveniences?

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

0085 of the state of nature

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

0091 and you don't have to be too careful or fine

0092 about gradations of punishment

0093 in the state of nature you can kill him

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

0108 why is this

0109 well violations of the law of nature are an act of aggression

0110 there's no police force there are no judges,  
0111 no juries  
0112 so everyone is the judge in his or her own case  
0113 and Locke observes that when people are the judges of their own cases they tend to  
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  
0122 now he describes in pretty harsh and  
0123 even grim terms  
0124 what you can do to people  
0125 who violate the law  
0126 of nature  
0127 one may destroy a man who makes war upon him  
0128 for the same reason  
0129 that he may kill a wolf or a lion  
0130 such men have no other rule, but that of force and violence,  
0131 listen to this  
0132 and so may be treated as beasts of prey  
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 so  
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  
0145 what starts out  
0146 looking very benign

0147 once you look closer  
0148 is pretty fierce  
0149 and filled with violence  
0150 and that's why people want to leave  
0151 how do they leave  
0152 well here's where consent comes in  
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  
0164 to make law  
0165 and where everyone  
0166 agrees in advance  
0167 everyone who enters  
0168 agrees in advance  
0169 to abide by whatever the majority decides  
0170 but then the question and this is our question and here's where I want to get your views then the  
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

0183 join together to create a civil society  
0184 so even once the majority is in charge  
0185 the majority can't  
0186 violate you' re  
0187 inalienable rights  
0188 can't violate your fundamental right to life liberty and property  
0189 so here's the puzzle,  
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  
0201 from Locke  
0202 by Jefferson  
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

0220 so

0221 and what's your name? Ben

0222 so

0223 if the majority taxes the minority

0224 without the consent of the minority to that particular tax law

0225 it does amount to the taking of their property without their consent

0226 and it would seem that Locke should

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

0234 by which Locke means legislature, cannot take from any man any part of his property without his

0235 own consent

0236 for the preservation of property being the end of government

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

0257 and then at the end

0258 of this passage we see he said so it's a mistake to think that the legislative power

0259 can do what it will to dispose to the estates

0260 of the subject arbitrarily or take any part of them

0261 at pleasure

0262 here's what's elusive

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

0266 right to property

0267 but then it seems that property, what counts as property is not natural but conventional

0268 defined by the government

0269 the goods which by the law of the community are theirs

0270 and the plot thickens

0271 if you look ahead to

0272 section one forty

0273 in one forty he says governments can't be supported without great charge. Government is expensive

0274 and it's fit that everyone who enjoys his share of the protection should pay out of

0275 his

0276 estate

0277 and then here's a crucial line

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 there 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

0292 but it's a further question

0293 here's the conventional aspect of property, it's a further question what counts



0294 as property, how it's defined  
0295 and what counts  
0296 as taking property, and that's up to the government  
0297 so the consent  
0298 here we're  
0299 kind of back to our question  
0300 what is the work of consent  
0301 what it takes for taxation to be legitimate  
0302 is that it be  
0303 by consent  
0304 not the consent of Bill Gates himself that he's the one who has to pay the tax  
0305 but by the content that he and we, all of us within the society gave  
0306 when we emerged from the state of nature and created the government  
0307 in the first place  
0308 it's the collective consent  
0309 and by that reading  
0310 it looks like  
0311 consent is doing a whole lot  
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  
0328 there's because nobody else is just living in the state of nature, everybody else is now  
0329 governed by this legislature  
0330 what would it mean today, you're asking

0331 and what's your name? Nicola

0332 to leave the state, suppose you wanted to leave

0333 civil society

0334 today, you want to withdraw your consent

0335 and return to the state of nature. Well because you didn't actually consent to it,

0336 you were just born into it,

0337 it was your ancestors

0338 who joined

0339 you didn't sign

0340 the social contract I didn't sign

0341 all right so what does Locke say there

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

0345 all right so implied consent, that's a partial answer to this challenge

0346 now you may not think that implied consent is as good as the real thing is that

0347 what you're shaking your head about Nicola?

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

0366 I would rather

0367 have a system, personally,

0368 that I could give money to exactly  
0369 those  
0370 sections of the government that I support  
0371 and not just blanket  
0372 support everything. you'd rather be in the state of nature of at least on April fifteenth  
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  
0378 you can't take the government's services  
0379 and then not give them anything in return  
0380 if you  
0381 if you want to go live in a state of nature that's fine  
0382 but you can't take anything from the government because by the government's terms which are  
0383 the only terms under which you can enter the agreement  
0384 say that you have to pay taxes to take those things. so you're saying that  
0385 Nicola can go on back to the state of nature if she wants to but you can't drive on  
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  
0403 so the real question is  
0404 how does he himself figure it out between

0405 I agree to  
0406 give up my life  
0407 give up my property when he talks about taxes  
0408 or military conscription for the fact,  
0409 but I guess Locke would be against suicide  
0410 and that's still you know my own consent I mean. Good. What's your name?  
0411 Eric. so I Eric  
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  
0417 on legitimate government it's not what we consent to that limits government  
0418 it's what we lack the power  
0419 to give away  
0420 when we consent that limits government  
0421 that's the  
0422 that's the point at the heart of  
0423 Locke's whole account  
0424 of legitimate government  
0425 but now you say well  
0426 if we can't  
0427 give up our own life, if we can't commit suicide  
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  
0440 all right go ahead. I feel like there's a general distinction to be made between  
0441 the right to life

0442 that individuals possess and the  
0443 the fact that the government cannot take away an individual's right to life  
0444 I think  
0445 if you look at conscription as  
0446 the government picking out certain individuals to go fight in war  
0447 then that would be a violation of the rights their  
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  
0453 the population picking their representatives defend them in the case of war  
0454 the idea being that since the whole population cannot go out there to defend its own right  
0455 of property it picks its own representatives through a process  
0456 that's essentially random  
0457 and the these  
0458 these sort of elected representatives go out and fight for  
0459 the rights of the people  
0460 it looks very similar, it works just like an elected government in my opinion  
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  
0477 well what I would say is there's a distinction between picking out individuals  
0478 and having

0479 a random choice of individuals.

0480 between let me make sure, between picking out individuals,

0481 well I don't, let me what's your name? Gogol.

0482 Gogol says there's a difference between picking out individuals

0483 to lay down their lives

0484 and having a general law

0485 I think this is

0486 on I think this is the answer Locke would give, actually

0487 Locke is against arbitrary government he's against the arbitrary taking

0488 the singling out of

0489 Bill Gates to finance the war in Iraq

0490 he's against singling out a particular citizen

0491 or group of people

0492 to go off and fight

0493 but if there's a general law

0494 such that the

0495 the government's choice the majority's action is non arbitrary,

0496 it doesn't really amount to a violation

0497 of

0498 people's basic rights

0499 what does count as a violation

0500 is an arbitrary taking because that would essentially say not only to Bill Gates, but

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

0516 that Locke is not such a terrific ally after all  
0517 the libertarian has two grounds  
0518 for disappointment in Locke  
0519 first  
0520 that the rights are unalienable and therefore I don't really own myself after all  
0521 I can't dispose of my life  
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  
0528 for Locke  
0529 are limits on arbitrary  
0530 the takings of life or of liberty  
0531 or of property  
0532 but if the majority decides or if the majority promulgates a generally applicable law  
0533 and if it votes  
0534 duly according to fair procedures  
0535 then there is no violation  
0536 whether it's a system of taxation  
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

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

0558 we're enclosing land

0559 and engaged in wars

0560 with the native Americans

0561 Locke who was an administrator

0562 of one of the colonies

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

0576 what work can it do

0577 what is its moral force

0578 what are the limits of consent

0579 consent matters not only for governments

0580 but also from markets

0581 and

0582 beginning next time we're going to take up

0583 questions of the limits of consent

0584 in the buying and selling

0585 of goods

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