# [TOC16] NC Locke

## Locke 1NC

### 1nc – f/w

#### I value morality. Normative evaluations can be divided into two dimensions – justification and legitimacy. If I witness a crime, that alone does not allow me to justly punish the criminal. While punishment of the crime is justified, I lack legitimacy to be the agent of that punishment. Thus the nc precludes since legitimacy is a prior question to the justification of the aff.

#### Why do we even have the agent called the state in our normative evaluations? Notions of governmental authority can only be explained against the backdrop of a natural executive right, or the right to punish.

Simmons 1: (John Simmons. Locke and the Right to Punish. Philosophy & Public Affairs, Vol. 20, No. 4 (Autumn, 1991), pp. 311-349)

**When we ask what makes it just for** a particularperson or group, rather than another, to **punish** some person, **the answer** that seems most natural **concerns neither utility nor desert.** **It is not that our governments deserve to punish** us, or that their doing so maximizes happiness; it is rather **that** they have authority or **the right to do so.** Locke put the point thus: "To justify bringing such evil [i.e., punishment] on any man two things are requisite. First, that he who does it has commission and power to do so. Secondly, that it be directly useful for the procuring of some greater good.... Usefulness, when present, being but one of those conditions, cannot give the other, which is a commission to punish.", **The natural answer** to our question **makes central reference to authorization** and rights, and it has been the natural rights tradition in political philosophy that has emphasized this point most forcefully. According to that tradition, one person (A) may justly punish another (B) only if either (i) A has a natural right to punish the crimes (wrongs) of B, or (2) B has alienated to A or created for A by forfeiture a right to punish B for B's crimes (wrongs). This position cannot, I think, adequately be characterized as either purely utilitarian or purely retributivist.2 It will not be my purpose here to evaluate the entire natural rights position on punishment, or to explore its relations to other views (e.g., whether it is consistent with or even reducible to retributivist or deterrence views).3 I wish to concentrate on only one aspect of natural rights theory's claims about punishment, a position shared by classical natural rights theorists (such as Grotius and Locke) and contemporary ones (such as Nozick and Rothbard). All persons in a state of nature, these authors claim, have a moral right to punish moral wrongdoers. This "natural executive right," of course, plays a central role in Locke's account of how a government can come to have the right to punish its citizens (as it must in any Lockean account of these matters), and Locke's defense of the executive right is the best known of the classical defenses. I will, accordingly, focus much of my attention on Locke's arguments and possible extensions or developments of them. But any theory of punishment must either accommodate or reject this right, so my discussion of Locke's views should prove of more than purely historical interest. The motivation for defending the natural executive right seems reasonably clear. **Locke** and other philosophers in the natural rights tradition **have** normally **want**ed **to** **claim** that all **political authority** (or "power") **is artificial, and so must be explained in terms of** more basic, **natural** forms of **authority.** **Governments have rights** to limit our liberty, for instance, **only insofar as they have been granted those rights** by us; we, however, possess these rights naturally (or, rather, are "born to" a basic set of moral rights). **Governmental rights**, then, **are simply composed of the natural rights** of those who become citizens, transferred to government by some voluntary undertaking (e.g., contract, consent, or the granting of a trust). **This transfer** of rights may go unobserved by some (as when consent is "tacit" only), but it **must take place if government is** **to have any de jure power.** **However beneficial** and fair the practices and **policies** a government enforces, **it has no right** or authority **to enforce them against an uncommitted "independent."**4 The same story can be told about a government's right to punish criminals. This right, like all governmental rights, must be composed of the redistributed natural rights of citizens, rights that the citizens must therefore have been capable of possessing in a nonpolitical state of nature. It is hard to deny that governments do, at least sometimes, have (or are capable of having) the de jure authority or right to punish criminals. But if they do, the argument continues, persons in a state of nature must also, at least sometimes, have the right to punish wrongdoers. From what other source could a government have obtained its right?

#### This contractual origin places significant reciprocal obligations on the government, fulfillment of which is a contractual necessity to maintain social legitimacy.

John Locke. Two Treatises of Government. Ontario, Canada: McMaster University, Archive of the History of Economic Thought, Vol. 5, 1690. MT

**IF [humans]** man **in the state of Nature be** so free as has been said, if he be absolute lord of his own person and possessions, equal to the greatest and **subject to nobody, why** will he **part with** his **freedom**, this empire, and subject himself to the dominion and control of any other power**?** To which it is obvious to answer, that though in the state of Nature **[s]he hath such a right,** yetthe **enjoyment** of it **is** very **uncertain** and constantly exposed to the invasion of others; for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very insecure. **This makes** him **[her] willing to quit this condition** which, however free, is full of fears and continual dangers; and it is not without reason that he seeks out and is willing **to join in society** with others who are already united, or have a mind to unite **for** the **mutual preservation** of their lives, liberties and estates, which I call by the general name - property. § 124. The great and chief end, therefore, of men uniting into commonwealths, and putting themselves under government, is the preservation of their property; to which in the state of Nature there are many things wanting. Firstly, there wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them. For though the law of Nature be plain and intelligible to all rational creatures, yet men, being biased by their interest, as well as ignorant for want of study of it, are not apt to allow of it as a law binding to them in the application of it to their particular cases. § 125. Secondly, in the state of Nature there wants a known and indifferent judge, with authority to determine all differences according to the established law. For every one in that state being both judge and executioner of the law of Nature, men being partial to themselves, passion and revenge is very apt to carry them too far, and with too much heat in their own cases, as well as negligence and unconcernedness, make them too remiss in other men's. § 126. Thirdly, in the state of Nature there often wants power to back and support the sentence when right, and to give it due execution. They who by any injustice offended will seldom fail where they are able by force to make good their injustice. Such resistance many times makes the punishment dangerous, and frequently destructive to those who attempt it. **§ 127.** Thus mankind, notwithstanding all the privileges of the state of Nature, being but in an ill condition while they remain in it are quickly driven into society. Hence it comes to pass, that we seldom find any number of men live any time together in this state. The inconveniencies that they are therein exposed to by the irregular and uncertain exercise of the power every man has of punishing the transgressions of others, make them take sanctuary under the established laws of government, and therein seek the preservation of their property. It is this that makes them so willingly give up every one his single power of punishing to be exercised by such alone as shall be appointed to it amongst them, and by such rules as the community, or those authorised by them to that purpose, shall agree on. And in this we have the original right and rise of both the legislative and executive power as well as of the governments and societies themselves. § 128. For in the state of Nature to omit the liberty he has of innocent delights, aman **[humans have]** hastwo **powers**. The first is **to do whatsoever [s]he thinks fit for** the **preservation** of himself and others within the permission of the law of Nature; by which law, common to them all, he and all the rest of mankind are one community, make up one society distinct from all other creatures, and were it not for the corruption and viciousness of degenerate men, there would be no need of any other, no necessity that men should separate from this great and natural community, and associate into lesser combinations. The other powera man hasin the state of Nature is the power **[and] to punish** the crimes committed against that law. Both **these [powers] [s]he gives up when [s]he joins** in aprivate, if I may so call it, orparticular political **society,** and incorporates into any commonwealth separate from the rest of mankind. § 129. The first power -viz., of doing whatsoever he thought fit for the preservation of himself and the rest of mankind, he gives up to be regulated by laws made by the society, so far forth as the preservation of himself and the rest of that society shall require; which laws of the society in many things confine the liberty he had by the law of Nature. § 130. Secondly, the power of punishing he wholly gives up, and engages his natural force, which he might before employ in the execution of the law of Nature, by his own single authority, as he thought fit, to assist the executive power of the society as the law thereof shall require. For being now in a new state, wherein he is to enjoy many conveniencies from the labour, assistance, and society of others in the same community, as well as protection from its whole strength, he is to part also with as much of his natural liberty, in providing for himself, as the good, prosperity, and safety of the society shall require, which is not only necessary but just, since the other members of the society do the like. **§ 131.** But though men when they enter into society give up the equality, liberty, and executive power they had in the state of Nature into the hands of the society, to be so far disposed of by the legislative as the good of the society shall require, **yet it being only with** an **intention** in every one the better **to preserve** him**[her]self,** his **liberty and property** (for no rational creature can be supposed to change [her] his condition with an intention to be worse), **the power of the** society or **legislative** constituted by them can never be supposed to extend farther than the common good, but **is obliged to secure every one's property by providing against** those three **defects** above mentioned **that made the state of Nature** so **unsafe** and uneasy. And so, **whoever has the legislative or supreme power** of any commonwealth, **is bound to govern** by established standing **laws**, **promulgated** **and known to the people**, and not by extemporary decrees, **by** indifferent and **upright judges**, who are to decide controversies by those laws; **and to employ** the **force** of the community at home **only in the execution** of such **law**s, or abroad to prevent or redress foreign injuries and secure the community from inroads and invasion. **And** all **this** to be **directed to** **no other end** but the peace, safety, and public good of the people**.**

#### Thus the standard is consistency with the restraints of a Lockean executive contract.

#### I content that the U.S has failed its obligations to justly promulgate law and thus lacks legitimacy to justly disarm those it claims to represent.

Cottrol and Diamond ’92: (Robert J. Cottrol and Raymond T. Diamond—1992 ("Toward an Afro-Americanist Reconsideration of the Second Amendment," Georgetown Law Journal 80 ~~~[1992~~~]: 309-361).

Twice in this nation's history—once following the Revolution, and again after the Civil War—America has held out to blacks the promise of a nation (pg.361) that would live up to its ideology of equality and of freedom. Twice the nation has reneged on that promise. The ending of separate but equal under Brown v. Board in 1954,287—the civil rights movement of the 1960s, culminating in the Civil Rights Act of 1964,288 the Voting Rights Act of 1965,289 and the judicial triumphs of the 1960s and early 70s—all these have held out to blacks in this century that same promise. Yet, given this history, it is not unreasonable to fear that law, politics, and societal mores will swing the pendulum of social progress in a different direction, to the potential detriment of blacks and their rights, property, and safety. The history of blacks, firearms regulations, and the right to bear arms should cause us to ask new questions regarding the Second Amendment. These questions will pose problems both for advocates of stricter gun controls and for those who argue against them. Much of the contemporary crime that concerns Americans is in poor black neighborhoods 290 and a case can be made that greater firearms restrictions might alleviate this tragedy. But another, perhaps stronger case can be made that a society with a dismal record of protecting a people has a dubious claim on the right to disarm them. Perhaps a re-examination of this history can lead us to a modern realization of what the framers of the Second Amendment understood: that it is unwise to place the means of protection totally in the hands of the state, and that self-defense is also a civil right.

#### This links to the standard because a government that is not grounded within a legitimate and proper social contract loses a) its monopoly on force denying its ability to disarm its citizenry and b) loses its moral justification in coercisively enforcing bans on means to natural ends like self defense.

John **Simmons 2**. *Locke and the Right to Punish*. Philosophy & Public Affairs, Vol. 20, No. 4 (Autumn, 1991), pp. 311-349

The force of this account might be captured more simply as follows. **If it is ever morally permissible to punish wrongdoers**-that is, to coercively control them in certain ways-**in the state of nature** (and, of course, I have argued that, at least often, it is), **then our natural rights of self government must be taken** (as Locke took them) **to be limited** **to** those **areas** of our lives **where we operate within** the bounds of **natural law.** **The government cannot, then, obtain** in the manner suggested in Section III (**by** a **simple transfer of rights** of self-government) **an exclusive right to punish moral wrongdoers.** **If it tries** to forcibly **exclude attempts by private citizens to punish wrongdoers, it invades their natural liberty to use competitive interference in punishing.** **In the absence of a Lockean "contract**" of government, in which this liberty to punish is laid aside by citizens, leaving their governors free to legitimately exercise their liberty to punish (and to force citizens not to punish wrongdoers), **any government's claim to a "monopoly on force"** within its territories **must be morally indefensible.**63 However-badly this account may fit with some of the details of Locke's own presentation, it surely captures the central spirit of his views. On the account I have sketched, the government's exclusive right to punish must be understood to be composed of its exclusive liberty to punish moral wrongdoers, plus its claim right(s) to control individual citizens (collectively) in other designated areas of their lives. Similarly, Locke insisted that governments could rightfully punish only if empowered in a fiduciary transaction between citizen and government-and that the rights transferred to government in this transaction must include both rights to control our lives and rights connected with the punishment of wrongdoers (II, I28-30). My agreement with Locke is, then, quite substantial. I agree that **if there is a natural executive right** (and if it is possible to defend the theories of natural rights and desert on which the executive right depends), **then** this **Lockean transaction** between government and citizens **is necessary for the moral legitimacy of the common practice** of punishment **within political communities**. Since I am further persuaded that there are good reasons to support the natural right to punish, Locke's beliefs about the necessity of this transaction may well be justified.64 The results for which I have argued here seem to square well with the central intuition about the justifiability of "natural punishment" expressed in Section I. But what of the apparently conflicting intuitions (e.g., that private citizens within civil society might also be justified in punishing unpunished wrongdoers)? I suspect that such beliefs arise largely from skepticism about Locke's claims that we have in fact given up our natural right to punish to our government in the kind of transaction he describes. And this skepticism may well be warranted. **The Lockean account** I have just defended **is an account of what must take place if legal punishment is to be legitimate. We must not** confusedly **suppose** that **it is** a **descriptive** account **of what in fact occurs** **in most civil societies** (though Locke himself, of course, seems to have supposed just this). It may be true that punishment in many or most **civil societies is not legitimate**, **and** that **private citizens in these societies are entitled to punish wrongdoers who go unpunished** (either within or without their societies).65 Lockean consent may be necessary for legitimate legal punishment, but not sufficiently in evidence in real political societies to justify our actual practices.

Don’t individually mediated legitimacy

State doesn’t protect all white people – Relate to individuals – give the individual a veto power over the state that doesn’t seem to make any sense.

Can’t change moral relationship with state by promising never to call 9-11 ---

## 2nr

Venkatesh ’11: (Sudhir Venkatesh, sociology professor at Columbia University, “When, and how, citizens should take action is a pressing question.” The Slate Book Review, Nov 21, 2011//FT)

Last year, residents in Chicago’s Washington Park neighborhood asked for my advice about a local gang problem. Their leader and block club president, Marla McCoy—a teacher’s aide, homeowner, and mother of three—noticed that drug dealing in the local park was starting up after a yearlong hiatus. Her opponent, an 18-year-old upstart named Filly, had orchestrated a successful and violent coup d’etat. He controlled a $2,000 per week criminal enterprise based in the park. When Marla called to ask, “When do I call the police?” I understood their hidden agenda. Few among her neighbors expected the police to do much. And so the group wondered whether they should engage in street diplomacy themselves—and only then notify the police of their efforts. They wanted Marla to ask Filly not to sell drugs in the park after 3 p.m., when kids walked home from school. Given that the gang was armed and she was not, and police were not responding, Marla felt this was the best possible outcome. A few of her neighbors brazenly called for Marla to impose a “tax” on the thugs’ weekly receipts: The money could be used for kids’ activities in the park. For most Americans, a dangerous gang boss would produce an instantaneous 911 call rather than a series of reflective dialogues and creative regulatory schemes. But as residents of a predominantly black, inner city, low-income neighborhood, Marla’s neighbors were used to neglectful police and inadequate law enforcement service. Negotiating with police was as much an everyday activity as dealing with the local gang.

## Offense

#### If we win that civil society is anti-black – independently vote neg. Blacks cannot be forced to put their lives in the hands of white law – self-defense is a right.

Curry and Kelleher 15, Tommy J. Curry AandM prof and Max Kelleher “Robert F. Williams and Militant Civil Rights: The Legacy and Philosophy of Pre-emptive Self-Defense”, Radical Philosophy Review, 10 Mar 2015, FT

Contrary to the popular imagination, “When Robert F. Williams seriously questioned the concept of non-violence over a decade ago he was a lone voice with very little support. He posted this question during the early part of the Martin Luther King era that had started with the Montgomery Bus Boycott in 1955; the historic decision of the Supreme Court on school segregation announced that previous year had set in motion the possibility that Black Americans were now on the road to full citizenship. All of them did not indulge in this illusion, knowing that it would take more than court decisions to change their condition.”55 Black citizenship was illusory. As Williams said “To us there was no Constitution . . . the only thing left was the bullet.”56 Throughout Negroes with Guns, Williams describes the normalized violence and the death of Black people during the Civil Rights movement which inspired him to create a philosophy of armed resistance. Contrary to the popular ideas of our day, desegregation had failed. Throughout the 1950s and the early 1960s, Black Americans were being killed, brutally raped, and lynched. The moral plea of King did not singularly arrest the death of Black people. This demanded a response other than appealing to the murderers of Blacks and their courts and laws for justice. Williams recognized that white supremacy and the rule of law were inextricably woven together such that the supposed rights guaranteed to Blacks by the Constitution, and the then recent Brown v. Board of Education decision would always be denied. Negroes with Guns was written as a response to this violation and is rooted in the recognition that “In civilized society the law serves as a deterrent against lawless forces that would destroy the democratic process. But where there is a breakdown of the law, the individual citizen has a right to protect his person, his family, his home and his property. To me this is so simple and proper that it is self-evident.”57

#### The aff is unjustified since the structure of the state categorically fails to protect minorities.

Congress of Racial Equality ‘99: (Subimtted by Stephan Bijan Tshmassebi “The Congress of Racial Equality as amicus curiae US v. Timothy Joe Emerson US Court of Appeals, Fifth Circuit Filed December 17, 1999.”//FT)

The obvious effect of gun prohibitions is to deny law-abiding citizens access to firearms for the defense of themselves and their families. That effect is doubly discriminatory because the poor, and especially the black poor, are the primary victims of crime and in many areas lack the necessary police protection. African Americans, especially poor blacks, are disproportionately the victims of crime, and the situation for households headed by black women is particularly difficult. In 1977, more than half of black families had a woman head of household. A 1983 report by the U.S. Department of Labor states that: among families maintained by a woman, the poverty rate for blacks was 61%, compared with 24% for their white counterparts in 1977 ... . Families maintained by a woman with no husband present have compromised an increasing proportion of both black families and white families in poverty; however, families maintained by a woman have become an overwhelming majority only among poor black families .... About 60% of the 7.7 million blacks below the poverty line in 1977 were living in families maintained by a black woman. U.S. Dept. of Labor, Time of Change: 1983 Handbook on Women Workers 118 Bull. 298 (1983). The problems of these women are far more than merely economic. National figures indicate that a black female in the median female age range of 26-34 is about twice as likely to be robbed or raped as her white counterpart. She is also three times as likely to be the victim of an aggravated assault. Id. at 90. See United States Census Bureau, U.S. Statistical Abstract (1983). A 1991 DOJ study concluded that "Ibilack women were significantly more likely to be raped than white women." Caroline Wolf Harlow, U.S. Dept. of Justice, Female Victims of Violent Crime 8 (1991). "Blacks are eight times more likely to be victims of homicide and two and one-half times more likely to be rape victims. For robbery, the black victimization rate is three times that for whites . ." Paula McClain, Firearms Ownership, Gun Control Attitudes, and Neighborhood Environments, 5 Law & Poly Q. 299, 301 (1983). The need for the ability to defend oneself, family, and property is much more critical in the poor and minority neighborhoods ravaged by crime and without adequate police protection. Id.; Don Kates, Handgun Control: Prohibition Revisited Inquiry, Dec. 1977, at 21. However, citizens have no right to demand or even expect police protection. Courts have consistently ruled "that there is no constitutional right to be protected by the state against being murdered by criminals or madmen." Bowers v. DeVito, 686 F.2d 616, 618 (7th Cir. 1982). Furthermore, courts have ruled that the police have no duty to protect the individual citizen. DeShaney v. Winnebago County Dept of Social Serv., 109 S.Ct. 998, 1004 (1989); South v. Maryland 69 U.S. 396 (1855); Morgan v. District of Columbia, 468 A.2d 1306 (D.C. App. 1983) (en banc); Warren v. District of Columbia, 444 A.2d 1 (D.C. App. 1981) (en banc); Ashburn v. Anne Arundel County, 360 Md. 617, 510 A.2d 1078 (1986). The fundamental civil rights regarding the enjoyment of life, liberty and property, the right of self-defense and the right to keep and bear arms, are merely empty promises if a legislature is allowed to restrict the means by which one can protect oneself and one's family. This constitutional deprivation discriminates against the poor and minority citizen who is more exposed to the acts of criminal violence and who is less protected by the state. Reducing gun ownership among law-abiding citizens may significantly reduce the proven deterrent effect of widespread civilian gun ownership on criminals, particularly in regard to such crimes as residential burglaries and commercial robberies. Of course, this effect will be most widely felt among the poor and minority citizens who live in crime ridden areas without adequate police protection. The case of Rebecca Griffin is illustrative. Ma. Griffin awoke to the screams of one of her daughters, a witness in an upcoming criminal trial, being bound and gagged by two kidnappers in her Washington, D.C., home. Although another daughter called the police, they, of course, did not appear until long after the fact. When Ms. Griffin and her other daughters tried to rescue the bound daughter, one of criminals attacked with a knife, slashing Ms. Griffin and one of the daughters. Fortunately, Ms. Griffin was able to break free and retrieve an unregistered .32 cal. revolver and shoot the knife-wielding home invader. The other suspect fled. Brian Reilly, Mother Shoots Intruder, Wash. Times, December 14, 1994, at C3. The very idea that someone like Ms. Griffin should be charged with and prosecuted for possessing an unregistered handgun, possessing ammunition for an unregistered firearm, possessing a loaded firearm and carrying a pistol without a license in the home, and that she should be imprisoned for years, simply for protecting her children from knife-wielding violent criminals that had broken into her home, is unconscionable. The right of defending one's life is one of the most basic rules of nature. (The right to defend oneself from a deadly attack is also a fundamental right. "The right to defend oneself from deadly attack is fundamental." United States v. Panter, 688 F.2d 268, 271 (5th Cir. 1982). In no place should this rule apply more than in one's home. "Inherent in the right to defend one's home, one's castle, is the right to have suitable and effective means to do so. In modern times, effective self-defense implies a handgun." David Caplan & Sue Wimmershoff-Caplan, Postmodernism and the Model Penal Code v. The Fourth, Filth, and Fourteenth Amendments - and the Castle Privacy Doctrine in the Twenty-First Century, 73 U. Missouri-Kansas City School of Law 1073, 1105 (Summer 2005).

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