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## LOCKE'S STATE OF NATURE

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THE STATE OF NATURE is in many ways the central concept at work in Locke's *Two Treatises of Government*. It is the concept with which Locke chooses to introduce the *Second Treatise*.<sup>1</sup> And it is only against and by means of the state of nature that Locke offers us accounts of political obligation and authority, the limits on political power, and the occasions for justified resistance. But the state of nature is probably also, as John Dunn has observed,<sup>2</sup> the most misunderstood idea in Locke's political philosophy. Progress has been made, of course, largely because of Dunn's own work<sup>3</sup> and an influential paper by Richard Ashcraft.<sup>4</sup> It is, as a result, no longer fashionable to simply dismiss Locke's claims about the state of nature as bad history or bad psychology.<sup>5</sup> Nor is it as easy as it once was to accuse Locke of blatant inconsistency or deceptiveness in his descriptions of the social conditions men would endure in the state of nature.<sup>6</sup>

In spite of this progress, however, widespread obscurities and errors persist in discussions of Locke's state of nature, mistakes that often conceal the nature and virtues of the concept with which Locke chose to work. Most of these mistakes, I will suggest, stem from two sources: running together (in various ways) Lockean and Hobbesian conceptions of the state of nature and taking as *definitions* of the state of nature in Locke, his statements of mere *conditions* (necessary or sufficient) for men's being in the state of nature. I will try in this article to remedy those mistakes, but I have three more general aims. First, I want to (finally) present a clear account of and definition of Locke's state of nature. With this definition in hand, many of the familiar worries about Locke's account are much easier to unravel. Second, I will point to what I believe are Locke's true confusions about the state of nature, which lie in rather different areas than is generally supposed. Third, I hope to cast some light on the point and the virtues of the particular concept of the state of nature we find Locke employing in the *Two Treatises*.

## I.

Locke begins Chapter II of the *Second Treatise* by asking us to "consider what state all men are naturally in," the state of nature. If we come to Locke fresh from a reading of Hobbes (as students often do), it is perhaps natural to suppose that Locke means by the state of nature roughly what Hobbes meant. For Hobbes (to simplify a bit), the state of nature can be defined as the state men are (or would be) in living together without effective government over them. "Effective government" here means something like "government able to provide its citizens with adequate security against domestic and foreign assaults on their persons or property." To be sure, Hobbes fills out his picture of life in the state of nature in a way no one would confuse with Locke's picture.<sup>7</sup> But it is easy enough to believe that in their *definitions* of the state of nature, Hobbes and Locke simply agree.

Let me be more precise. We can distinguish in Hobbes the *definition* of the state of nature (as life without effective government) from the *social* and *moral* characterizations of that state and from claims about that state's *historical* instantiations. The social characterization of the state of nature in Hobbes is familiar (and quite different from what we find in Locke). Life in the state of nature is "solitary, poor, nasty, brutish, and short," a condition of war "of every man against every man," a war in which there is no industry, no culture, and no real society.<sup>8</sup> The moral condition of persons in the state of nature for Hobbes is less clear, though it seems fair to say that they have no moral rights or obligations at all in the ordinary sense—"the notions of right and wrong, justice and injustice, have there no place."<sup>9</sup> As for historical instantiations of the state of nature (that is, actual occasions where men lived together without effective government), Hobbes mentions savages in America, "civilized" men during a civil war, and (at the international level) independent sovereigns.<sup>10</sup> Now Locke, of course, would accept little of this. His social characterization of the state of nature seems considerably less bleak than Hobbes's; his moral characterization includes individuals with full-blown moral rights and obligations; and in Hobbes's list of historical instantiations of the state of nature, Locke would certainly make changes. But for all of these disagreements, it is not difficult to suppose that Hobbes's and Locke's *definitions* of the state of nature are roughly the same.

This supposition is a common one among Locke scholars, who frequently claim that for Locke the state of nature is the condition of men without (effective) government.<sup>11</sup> That view is, however, mistaken in both obvious and more subtle fashions. In the most obvious case, men can for Locke be living under effective, highly organized governments and still be in the state

of nature—provided only that those governments are illegitimate with respect to them. Prominent instances mentioned by Locke are men living under arbitrary, tyrannical governments (§§ 17-20) and under foreign powers which have dissolved their society by conquest (§ 211). In both cases effective government and the state of nature are consistent. At the very least, one wants to build into a definition of the state of nature that it is the condition of men living together without *legitimate* government. Even this addition, however, will not suffice, for Locke mentions several classes of persons who can live under legitimate governments while remaining in the state of nature—visiting aliens (§ 9), minors under the age of consent (§§ 15, 118), and those of defective reason (§ 60). What is clearly needed in any adequate definition of Locke's state of nature is some element that captures the distinctive moral component of that state. I will suggest such a definition momentarily.

But there is a second set of problems confronted in approaching the Lockean state of nature from a Hobbesian direction. For Hobbes, the state of nature is a condition men are either in or out of (*simpliciter*).<sup>12</sup> He virtually always writes of it as a condition that only *groups* of persons can be in or out of. Neither of these points squares well with Locke's concept of the state of nature (though Locke's own language is sometimes misleading). In the first place, Locke often writes of people being in the state of nature with respect to certain people and out of it with respect to others (at the same time). Thus, the princes of (legitimate *or* illegitimate) independent governments are in the state of nature with respect to each other (§ 14), though legitimate princes are (at the same time) out of that state with respect to fellow citizens of their commonwealths. A visiting citizen of an alien legitimate state is in the state of nature with respect to the state he visits (§ 9), but out of that state with respect to citizens of his own state. This suggests that the state of nature must for Locke be a *relational* concept, something not at all obviously true of Hobbes's parallel notion.<sup>13</sup> Second, where Hobbes virtually never writes of individuals being in the state of nature while those around them are not<sup>14</sup> (making his state of nature essentially a property of groups of persons), Locke's individuals are frequently in that position. Visiting aliens are, of course, in that position, and since every person for Locke is born into the state of nature (§ 15), it is impossible to imagine a realistic society (no matter how legitimate) within which there are not *many* persons in that position.<sup>15</sup> Locke's state of nature is, then, both a more individualistic and a more relational concept than that of Hobbes. The more closely we pattern our analysis of Locke's state of nature on Hobbesian notions, the more completely we will miss these essential features.

Now it may seem that in concentrating on the Hobbesian leanings of some scholars' accounts of Locke's state of nature, I have thus far managed to ignore Locke's most important claims about that state. Indeed, many take Locke to have given us a clear *definition* of the state of nature. "Want of a common judge with authority, puts all men in the state of nature" (§ 19). "Men living together according to reason, without a common superior on earth, with authority to judge between them, is properly the state of nature" (§ 19).<sup>16</sup> Here (and elsewhere) Locke claims that wherever no one is entitled to settle controversies between two persons, wherever there is no authorized umpire to judge between them, those persons are in the state of nature. This appears to be believed by most of the scholars who are not influenced by Hobbesian notions to be (at least the essence of) Locke's definition of the state of nature.<sup>17</sup>

It is worth noting, first, that Locke's claims about the "common judge with authority" do not have the *form* of a definition; they have, rather, the form of a statement of a *sufficient condition* for being in the state of nature. Locke never, for instance, claims that it is *only* when there is no common judge that men are in the state of nature (he never, that is, claims that this condition is a *necessary* one). For all we know (on the strength of these passages alone) there may be many quite different conditions also sufficient to put men in the state of nature. A statement of a sufficient condition need not even approach a definition.

But lest this seem an idle, academic point, of no relevance to intelligent interpretation of Locke's text, I believe there is good reason not to *want* Locke to be offering his claims about the common judge as a definition of the state of nature. This is most easily seen if we remember Locke's claims about private contracts in the state of nature:

For 'tis not every compact that puts an end to the state of nature between men, but only this one of agreeing together mutually to enter into one community, and make one body politic: other promises and compacts, men may make one with another, and yet still be in the state of nature. . . . For truth and keeping of faith belongs to men as men, and not as members of society. (§ 14)

In other words, people may make promises and contracts with one another, transfer rights and undertake obligations, without leaving the state of nature. Only one particular and very special agreement takes men out of the state of nature. Is that "special agreement" simply any agreement to set up a judge between persons? Is it simply any instance of one person transferring to another his natural right to judge for himself and punish violators of the law of nature (what Locke calls the "executive power of the law of nature")? It

is hard to see how either of these claims could be plausibly maintained. If it is possible for a large group of persons to surrender (in creating a commonwealth) the rights necessary to make a "common judge with authority," surely it is possible for a small number of people, *without* creating a commonwealth, to erect a common judge with equally legitimate authority. Why may not two persons in the state of nature authorize a third to settle conflicts between them (that is, both surrender to the third their rights to judge for themselves)? I can see nothing in the nature of the rights or the transaction that would preclude this for Locke. Yet if two persons thus agreed to set up a common judge, surely this would be a purely *private* contract, after which they would still be in the state of nature. Simply erecting an authorized umpire would not be sufficient to constitute creation of a commonwealth or civil society. Among other things, this "common judge" would lack the right to make law for those he judges between (a right governments receive in Locke as a result of transfers in trust of other rights that citizens relinquish, *in addition to* the executive right [§§ 128-130]). Nor would there be a sufficient number of people involved in the agreement to create a functioning commonwealth.<sup>18</sup> The one very special agreement that creates a commonwealth is considerably more complex, and involves the surrendering by citizens of far more rights, than an agreement to set up a common judge with authority. Thus, while the absence of a common judge between persons is clearly a sufficient condition for those persons being in the state of nature, it does not appear to be a necessary condition. Common judges with authority may be present even in the state of nature (a fact presupposed in Robert Nozick's well-known discussion of these issues).<sup>19</sup> Nothing Locke says conflicts with this possibility, nor is there any compelling reason to suppose that he would want to outlaw private contracts to create common judges.

Exactly when an agreement is an agreement that creates a commonwealth, and when sufficiently many people are involved to create one, are questions to which Locke provides only the frameworks for answers. He rightly concentrates his attention on one particular aspect of the agreement (the creation of an authorized judge) in his discussion of the state of nature, for it is this aspect of the agreement that solves the fundamental problems of life in the state of nature. It is, however, still only one aspect of the special agreement that creates a civil society. Without the rest of the agreement, men remain in the state of nature. Thus, any acceptable definition of Locke's state of nature must make reference to (or otherwise capture the significance of) the full agreement that alone creates civil society and removes men from their natural condition. Reference only to a part of that agreement, the creation of a common judge with authority, will not suffice.

## II.

We might try to give an account of Locke's state of nature that refers to the full agreement as follows:

A person (A) is in the state of nature if and only if A has not voluntarily agreed to join some legitimate political community.

This definition (in the non-technical sense of "definition"), while exceedingly simple, succeeds where the others we have considered failed in capturing the crucial element distinguishing the civil from the natural state—the voluntary agreement by an individual to perform according to the special terms of the contract that alone creates a commonwealth. This definition leaves open the precise content of the contract necessary to create a civil society (Locke, of course, fills in some of that content for us). It also preserves the individualistic character of Locke's concept, since it allows that a single person may be in the state of nature (in virtue of not having agreed to join) while those around him are out of it.

But this definition is still flawed in two regards. First, it does nothing to capture the relational character of Locke's concept of the state of nature. Second, this definition does not account for the cases of those who are returned to the state of nature from civil society. I propose, then, as an acceptable definition of Locke's state of nature the following:

A is in the state of nature with respect to B if and only if A has not voluntarily agreed to join (or is no longer a member of) a legitimate political community of which B is a member.

And then as a special case, falling under this account, we can say:

A is in the state of nature (*simpliciter*) if and only if A has not voluntarily agreed to join (or is no longer a member of) any legitimate political community.

Obviously, my definition has a great deal in common with those we considered earlier and rejected, but it squares with claims made by Locke for which they cannot account. Thus, while on my definition those not living under legitimate governments are, of course, in the state of nature, the definition accounts as well for Locke's claims that aliens, children, and madmen are in the state of nature even within legitimate political communities (their having either not agreed at all or not agreed voluntarily to join).<sup>20</sup> Although those who retain their executive rights and thus erect no judge over

them are, of course, on this definition in the state of nature (the transfer of those rights being essential to any agreement to join a political community), the definition allows as well that private transfer of the executive rights leaves one in the state of nature.

The following picture, then, flows from this definition. Each person is born into the state of nature (*simpliciter*), and, barring a universal community of man, each person *stays* in the state of nature with respect to at least some (and possibly all) others. Those incapable of consent (voluntary agreement) and those who choose never to consent remain in the state of nature (*simpliciter*). Those whose communities are dissolved (for example, by foreign conquest) and those who are abused by otherwise legitimate governments are returned to the state of nature (*simpliciter*).<sup>21</sup> Persons who enter civil society (including princes) leave the state of nature with respect to fellow citizens, but remain in it with respect to all alien nations and with respect to all noncitizens (that is, those still in the state of nature [*simpliciter*]). All of these consequences of the definition I have offered seem to square precisely with Locke's claims about the state of nature.

Perhaps the most important point to note about this definition is its strong *moral* flavor. We have already distinguished between the definition of the state of nature and the social, moral, and historical characterizations determined by it. Locke's definition clearly leans toward the moral characterization, making prominent use of distinctively moral notions (like legitimacy and voluntary agreement). No obvious social characterization flows from this definition, the state of nature being consistent for Locke with many different social circumstances. Hobbes's definition of the state of nature, by contrast, clearly leaned toward the social characterization; it was primarily the brute fact of absence of physical security that defined the state of nature for Hobbes, and an obvious social characterization (of life without security) follows immediately from his definition (given his account of human nature). It might be fair to say that for Hobbes, the moral dimension of interpersonal life rests on and follows from the social dimension.<sup>22</sup> The sharp contrast between the social character of Hobbes's account of the state of nature and the moral character of Locke's illuminates, as we shall see, some major controversies in the literature on Locke's state of nature.<sup>23</sup>

### III.

Locke's state of nature, then, is a concept with strong moral content. But thus far our account of that content has been purely *negative*—that is, the



state of nature is the state a person is in with respect to another when he has *not* consented to join with him (or has subsequently left) a legitimate commonwealth. Can we not give a full and positive moral characterization of Locke's state of nature? What is the moral condition of a person in the state of nature, and what are his rights and duties? Locke often talks as if the moral condition of men in the state of nature is reasonably simple to summarize: (1) Persons have all (and only) the duties defined by the law of nature, that law being eternal and immutable (for example, § 135) and there being in the state of nature no legitimate commonwealth that could impose on them any other duties. While the "particulars" of the law of nature are not discussed by Locke (§ 12), the general form of the duties it defines are briefly elaborated—duties to preserve oneself and others (by, for instance, not harming others in their lives, liberty, health, limbs, or goods [§ 6]). (2) Persons enjoy in the state of nature their full complement of natural rights (which correlate with the natural duties of others to respect those rights). Each person is "born to" this set of rights and possesses them fully on reaching maturity (§§ 55, 59). A person's natural rights are a "grant or gift from God,"<sup>24</sup> which he possesses intact until (if ever) he consents to enter a legitimate civil society, surrendering some of these rights in the process. While Locke is again sketchy on the particular rights we possess, they include rights to freely pursue harmless activities, to do what is necessary to preserve oneself and others, and to "execute" the law of nature (§§ 4, 129). This is the account of man's moral condition in the state of nature that can be drawn most easily from Locke's texts.

But it simply cannot be the *whole* account, nor do I think Locke intends it to be. This account is perfectly adequate as an account of (what we might call) the "original" state of nature in which a newly mature individual finds himself.<sup>25</sup> But if my claims about Locke's state of nature have thus far been even reasonably accurate, a full moral characterization of the state of nature would seem to be impossible. In the first place, we must specify at least two sorts of moral conditions for persons in the state of nature—the conditions of mature, rational individuals, and the conditions for children and incompetents. Where mature persons in the state of nature may possess the "full complement" of rights and duties, those who are not fully rational (and are thereby also in the state of nature) clearly do not. Because a law only binds those to whom it is promulgated, and because the law of nature is promulgated by reason, those deficient in reason are not properly under the law of nature at all (§§ 57-60). Presumably, this means that children and incompetents lack at least some (and probably all) of the duties and rights defined by the law of nature.<sup>26</sup>

But even leaving aside children and incompetents, it is easy to see that the moral characterization of the state of nature offered above cannot be adequate. We need only remember our earlier observation about private contracts being consistent with Locke's state of nature. Since the point of contracts is precisely to alter the existing structure of rights and duties, mature persons in the state of nature are perfectly capable of changing the rights and duties that were their "original" grant from God. Originally free to pursue any harmless activity, I may by promise or contract transfer a portion of this right to another and undertake a duty to respect that right (as when I promise to help you on Friday, thereby giving you the right I initially possessed to determine how I shall spend Friday). The one to whom I make my promise has greater right and less duty toward me than he had before the promise. My point is not that the law of nature somehow ceases to bind; there is a clear sense in which it is eternal, as Locke claims. The point is rather that the specific rights and duties granted originally to each under natural law may be altered. Consent, as it were, carves the boundaries of natural law. Any rights that can be transferred in the trust that creates civil government can in principle be transferred in private transactions within the state of nature. As we have seen, this includes our natural executive rights. The only rights that could not be transferred would be those which are in principle inalienable (though Locke's position on that subject is far from clear<sup>27</sup>).

If this is correct, there is no specific moral characterization of the state of nature that can be given even for mature adults. No adult in the state of nature will necessarily possess any particular set of rights or duties. Which rights and duties he possesses will follow from his specific moral history (the nature of his promises, contracts, and other morally relevant activities). The best we can do is this: since being in the state of nature consists in not having made (or having been released from) one special sort of transaction (that one which alone creates a legitimate civil society), each person in the state of nature lacks the one distinctive sort of moral obligation that transaction creates—what we normally refer to as "political obligation."<sup>28</sup> All persons in the state of nature, then, have no political obligations. That moral characterization of Locke's state of nature, however thin and negative, is, I think, the best we can offer.

#### IV.

What, then, of the *social* characterization of Locke's state of nature? By contrast with Hobbes's thoroughly bleak characterization (to which any form

of effective government at all would be preferable), the Lockean state of nature receives mixed reviews. It is a state of limited safety and considerable uncertainty, a state of significant but not desperate "inconveniences," a state to which only certain limited forms of political society will be preferable. The state of nature is one of "uncertain peace" in which people are able to follow the law of nature, but do not always do so,<sup>29</sup> a state caused by the "tension between man's natural sociableness and his equally natural desire for personal happiness."<sup>30</sup> Indeed, even if there were not this natural tension in human nature, it would be surprising if Locke's social characterization of the state of nature were not "mixed," for in both *Treatises* there are ample suggestions that the state of nature might take many different forms.<sup>31</sup> At the lower end of the spectrum, the state of nature could be a reasonably primitive state, with no ownership of land and few moveable possessions. For the inconveniences of this state of nature, where there is so little to covet, Locke allows that monarchical government would be appropriate (§ 107). At the upper end of the spectrum, the state of nature could be quite civilized, with property in land, money, commerce, cities, and so on (all things that would be impossible in Hobbes's state of nature and things that, in Locke's view, call for greater safeguards in government than a simple monarchy could supply [§ 111]). It would be surprising if all points on this spectrum involved the same kinds of social problems and benefits, and Locke never suggests that they do. What he does suggest is that the state of nature will always have one specific kind of social problem, and it is on this problem that he concentrates his attention. In every state of nature there will be the problem that men are judges in their own cases. Where there is no common judge with authority, men may be partial or vengeful in exercising their natural executive rights, possibly leading to feuds, conflicts, and war (§ 13). This kind of social problem plagues all forms of the state of nature, and the insecurity it causes is the primary reason for seeking the protection of a (properly limited) civil government (§§ 13, 21).

Just how bad will this problem be? On his answer to that question, of course, Locke has taken something of a beating. He seems to describe the state of nature first as "a state of peace, good will, mutual assistance, and preservation" (§ 19) and then as a state we should be very eager to escape (§ 21). The first description leaves us wondering why a civil society would seem a desirable alternative to the state of nature at all; the second leaves Locke looking like Hobbes after all, and the inconsistency leaves Locke looking confused. The range of explanations for these passages, sympathetic and unsympathetic, is familiar to any student of the literature on Locke's political philosophy: Locke's real position is like Hobbes's,<sup>32</sup> a position to

which he was converted as he wrote;<sup>33</sup> Locke is deliberately inconsistent in order to conceal gaps in his argument;<sup>34</sup> he has different views of the state of nature before and after the invention of money;<sup>35</sup> this last hypothesis is mistaken, and Locke was just inconsistent;<sup>36</sup> Locke is not inconsistent at all and there is no confusion.<sup>37</sup>

What is puzzling about the various charges of confusion and indecision is that they charge Locke with a particularly silly and shallow sort of confusion. This is not a deep, theoretical problem on which even a very intelligent man might be expected to become muddled. Indeed, the charges often amount to a claim that Locke was inconsistent or changed his views over the course of three or four paragraphs of text. Only the strong antecedent desire to defend a particular interpretation of the text would make such a reading attractive. In fact, the apparent inconsistencies are strikingly easy to explain. Locke never really characterized the state of nature as "a state of peace, goodwill, mutual assistance, and preservation" any more than he describes it as a state of "enmity, malice, violence, and mutual destruction" (§ 19). Both descriptions are of *possible* states of nature, but neither is of *the* state of nature. The contrasting descriptions in § 19 are quite plainly intended as descriptions of the best and the worst that the state of nature can be. Where persons almost always abide by the laws of nature, the state of nature will be one of peace, goodwill, and the like; where persons disregard the law, the state of nature will be a state of enmity, malice, and so on.<sup>38</sup> But since people will almost always behave in a way that falls between these extremes, the social characterization of the state of nature that dominates the *Treatises* is also a mixed account of the sort with which we began. No amount of struggling will make other passages in Locke yield anything but a "mixed" social characterization.<sup>39</sup>

Whatever stand we choose to take on that question, however, it is worth noticing that *any* social characterization of the state of nature given by Locke would represent a confusion on his part. The problem is not that the state of nature might be either very primitive or reasonably civilized and so no one description applies uniformly. As we have seen, Locke tried to isolate that "inconvenience" that would plague *any* state of nature—namely, the want of a common judge with authority. But what Locke seems not to keep carefully in mind in his descriptions is that his state of nature is not just (as Hobbes's was) a state without government. It is rather a state where one is not a member of the same legitimate commonwealth as another. It follows from this, of course, that the want of a common judge characteristic of the state of nature will not create anything like the same problems for various state of nature situations. *Prepolitical* men, of course, and men whose society has collapsed,

will suffer the kinds of insecurity and inconvenience Locke describes in the *Second Treatise*. Persons living under a depressive and tyrannical government will face a quite different set of problems. They are equally in the state of nature and equally lack a common judge with authority, but they *do* have a common judge *without* authority. Illegitimate governments may nonetheless be highly structured with complex legal systems. The social problems of life in such a state will be very different from those of that state of nature in which all men are judges in their own case (and in which the outbreak of war between private individuals is the primary worry). Others living in the state of nature (without a common judge with authority) may face no serious problems at all. Children or aliens living in a commonwealth that is legitimate with respect to most of its citizens will presumably be living in a moderate, peaceful society. Although they have no judge over them (with authority to settle disputes between them and citizens of the commonwealth), they will probably be treated well, leading lives burdened with few of the inconveniences Locke describes. Life in *this* state of nature may be quite acceptable. The point here is only that Locke's concept of the state of nature is compatible with an extremely wide range of possible social circumstances.<sup>40</sup>

For Hobbes, the definition of the state of nature was social in character. It was thus compatible with only a very limited range of social characterizations. For Locke, however, the state of nature is a moral condition of man (and a relational one). Locke's concept of the state of nature, unlike Hobbes's, does nothing to limit the possible social descriptions of persons in that condition. When Locke attempts a social characterization of the state of nature in response to the social characterizations offered by others, he succumbs to a confusion, for he is entitled to no particular social characterization. The state of nature is not necessarily characterized by the inconvenience of having no common judge. There is only the inconvenience of having no *legitimate* common judge, which may or may not be a *social* problem (and where it is a social problem, it will not always be of the same sort). The best Locke can do is to describe the social position of persons in one kind of state of nature. We can, I suppose, take Locke to be intending to do just that in the *Second Treatise*. But it surely seems more likely that Locke was simply confused on this point, either by the genetic account he offers of the formation of political society (which concentrated his attention on the social condition of prepolitical and nonpolitical states of nature), or by the fact that earlier theorists who employed a concept of the state of nature had offered social characterizations of it (which they, unlike Locke, were entitled to do).

## V.

I turn now to Locke's historical arguments and his claims about historical instantiations of the state of nature. Like Hobbes, Locke offers us observations about times and places when actual groups of persons have been in the state of nature. Unlike Hobbes, however, Locke spends rather a long time with historical claims. His historical worries about the state of nature begin as early as § 14, and a large part of Chapter VIII (especially §§ 100-115) is devoted to them. In light of the moral character of his state of nature, what (if anything) can these arguments be supposed to add to the support of Locke's position? Locke concerns himself with finding historical examples of groups of people in the state of nature who voluntarily band together to form commonwealths. Why does he bother? What does it matter to his project whether or not he can present such examples?<sup>41</sup> Presumably, all he needs to show to support his claims about the state of nature is that everyone (including those persons born in political society) is in the state of nature originally. He need not show that everyone was in that state at some time or that everyone in each community was in that state at the same time, or even that the *origin* of *any* political community was legitimate (i.e., the voluntary consent of all involved). On the face of things, at least, even if Locke were able to show none of these things, his moral concept of the state of nature would in no way be suspect. He notes himself that "at best an argument from what has been, to what should of right be, has no great force" (§ 103), and his most central arguments in these passages (e.g., § 113) are logical, not historical.<sup>42</sup> So what is Locke up to with his historical arguments?<sup>43</sup>

Undoubtedly, one answer is that Locke wishes to meet Filmer (whose arguments are primarily historical) on his own ground. He wants to respond to Filmer's claims that patriarchal monarchy is the natural (and legitimate) form of government, claims to which Locke actually makes several concessions. He tries to show, against Filmer, that it is just as natural to form other kinds of governments (given other kinds of social conditions), that there is historical evidence of men having done just that, and that even the establishment of a monarchy is evidence that individuals were naturally free to establish a government. Now this would all be well and good if Locke were (oddly) presenting his case as a detached criticism of another author whose positions bore no logical relation to his own, but the arguments of Chapter VIII are *not* presented in this way. They are presented as if they lend support to Locke's own position, and, in particular, they are presented as if they are evidence for the conclusion that men are *naturally free* (that is, born into the

state of nature with the right to determine the course their political, and nonpolitical, lives will take). Because being "naturally free" for Locke does *not* mean being *physically free* to create, join, or remain outside of a commonwealth, but rather means having the *right* to do so, it is hard to see how historical evidence could in any way bear on his conclusion. Is Locke, then, hopelessly confused in these passages?

The more reasonable answer, I think, is that Locke was both rather unclear in his wording and a bit carried away by his arguments. What I believe Locke is really driving at is that history shows that we all *regard* ourselves as naturally free, act as if we are, and have always done so (this belief, then, is not, for instance, simply a product of recent social conditioning or a particular ideological stance). This is in fact the way he puts some of the conclusions he draws from his historical arguments: "Tis plain mankind never owned nor considered any such natural subjection" (§ 114); there is little room for doubt "what has been the opinion, or practice of mankind, about the first erecting of governments" (§ 104). These are conclusions one could be entitled to reach from historical inquiry.

Now, of course, these conclusions *prove* nothing that is logically related to Locke's main position on the state of nature. Even if everyone did believe himself born free of subjection to any government, a fact Filmer and others (e.g., Hume) have denied, this would in no way prove that we are all naturally free. Locke can, perhaps, be excused for excessive enthusiasm in his conviction that the opinion of mankind through the ages shows us "where the right is" (§ 104). Insofar as we believe men to be on the whole rational beings, it would be surprising if the consensus of men throughout history did not point us in at least the general direction of the truth. This is particularly the case where *moral* truth is concerned and where one believes (as Locke, of course, did) that moral distinctions are perceived by reason with relative ease (§ 12).<sup>44</sup> So Locke's historical arguments are at least relevant to the support of his position on the state of nature. They help to show "how *probable* it is, that people . . . were naturally free" (§ 112, emphasis mine). This is a respectable, if not decisive, role for history to play in Locke's arguments.

## VI.

With this understanding of Locke's definition of the state of nature (and of the force of his various claims about that state), the point of using a concept like the state of nature appears more clearly. Its role in Locke's political philosophy can be seen to share some features of its role in Hobbes, for



instance, but to depart from Hobbes in other regards. Both Hobbes and Locke, at the most obvious level, use the idea of the state of nature to offer a vivid portrayal of the stakes in the choice between government and anarchy (in Locke's sense of that word—that is, having “no form of government at all” [§ 198]<sup>45</sup>). For Locke, of course, the only intelligible choice is between some limited form of government and anarchy, the absolute government favored by Hobbes appearing to him clearly worse than the worst consequences of anarchy (perhaps a dubious assumption by Locke). In any event, anarchy loses out for both Hobbes and Locke. Both use the idea of the state of nature to formulate general conditions for governmental legitimacy, the rule being (roughly) that a government is legitimate if it fosters conditions preferable to those in the state of nature. For Hobbes, a government has authority and ought to be obeyed if it passes this test;<sup>46</sup> for Locke, a government is *capable* of having authority if it passes (only citizens' consent gives authority, but arbitrary governments that *fail* the test are ones to which binding consent cannot even be given [§ 23]). We can see now, of course, that in none of this can Locke be taken to be comparing limited government with *the* state of nature, since not all instances of the state of nature are anarchical (i.e., one can be under government *and* in the state of nature). The contrast Locke draws bears not so much on the choice each must make between joining an already existing commonwealth or not doing so, but rather on the choice between having governments at all or not having them (and, in this sense, the point is reasonably close to Hobbes).

In other respects, however, the distance between the uses of the state of nature in Hobbes and Locke must be greater. It is often said that the point of Locke's use of the state of nature is to elucidate human nature through his account of how life would be (is) in that state.<sup>47</sup> This is certainly part of Hobbes's aim in utilizing his socially defined state of nature. And while to a certain extent this is clearly true of Locke as well, it cannot (or, at least, should not) be Locke's primary intention. Locke's state of nature, as we have seen, simply has no determinate social characterization. There is no one picture that can be offered of what the state of nature is like and so no simple conclusion that can be drawn from that picture about the character of human nature. A point we can draw from this, and one to which Hobbes would have done well to attend, is that human nature is revealed as much in our responses to social and political settings as it is in our responses to social chaos and insecurity. But in Locke the primary point of the state of nature is not to reveal human nature in any of its particular guises, it is rather to describe a certain *moral* condition of man.<sup>48</sup> It is tempting to say that the moral condition in question is the condition into which God placed man (or the condition into



which a mature person rises when he receives his moral birthright) or that the relevant condition is the moral condition of man prior to its modification by his complex social and political interactions. There is no denying that Locke sometimes speaks in these ways, but as we have seen, none of these ideas can be quite right, for Locke's state of nature has no precise moral characterization either. The moral condition the state of nature describes is simply the moral condition of the *noncitizen*—the condition of not being a member (with others) of a legitimate civil society. It is hardly surprising that this should be the point of a central concept in a book whose primary focus is the nature and importance of legitimate government.

A final point about the purpose of Locke's employment of the state of nature device should solidify the desired comparison of Locke and Hobbes on this subject. The idea of the state of nature obviously plays a central role in the voluntarist program in political philosophy. The assertion that each person is born free in the state of nature is one way of asserting that we are not born *into* political communities, however clearly we may be born within their territories. We are not naturally citizens; we must do something to become citizens. The course our lives take should be determined as fully as possible by our own voluntary choices, and birth within the territory of a commonwealth is not the product of any choice we make. This is to stress the *artificiality* of government (however natural it may be for us to create it), and to stress that its moral rights against us (and duties toward us) can only be the sum of what it receives from us in the process that creates it. If we are not naturally citizens, we must be naturally something else, and the state of nature is a way of talking about that "something else," a "something else" we sometimes remain (by disability or by choice) and which we always remain in part.

Both Hobbes and Locke are participants in the voluntarist program in political philosophy and much of the point of "state of nature talk" in both can only be appreciated in light of this fact.<sup>49</sup> But it is worth noticing that the state of nature defined by Locke functions much more naturally within this program than does the parallel notion in Hobbes. This can be seen by attending to their respective moral characterizations of the state of nature. In Locke, persons in the state of nature have full-blown moral rights, rights that correlate with the duties of others to refrain from interfering with their exercise (what, in the by-now-familiar language of Hohfeld, are called "claim rights"). Although only knowing a person's history in Locke's state of nature will tell us *which* rights he has, whatever rights he has will have this character. In Hobbes, by contrast, persons in the state of nature have not full-blown rights, but mere liberties (what Hohfeld calls "liberty rights"). Each person

has the "right of nature," which is a "right to everything, even to one another's body."<sup>50</sup> Competitive rights of this sort (where each person has a right to everything) can only be understood as the moral liberty each person has in the absence of obligation (that is, "person A is at liberty to do act X" means only "A has no obligation not to do X"). What these "rights" lack, which leaves them short of "full-blown" rights, is the duty others have to refrain from interfering with the right's exercise.

But the Hobbesian picture of men in the state of nature, armed only with their "rights of nature," severely undercuts the voluntarist conception of *authorizing* a government (or a community) by transfer of right. Our normal idea of authorization is that it is a way of improving the moral position of another, giving him an authority he lacked—when I authorize your actions I make things permissible for you that were previously forbidden. In Hobbes, however, authorization of the sovereign cannot fit this model. The sovereign (as a person or group that also began in the state of nature) *already* had a right to everything. Everything was permissible for him before the "authorization," so there is no way that the contract with his subjects can improve his moral position. There is no sense in which, for instance, if I had not authorized him he could not have legitimately controlled me (if he had the physical power to).<sup>51</sup> Thus, Hobbes can make no real sense of the voluntarist idea of authority or of the view that a government's rights can only be those that its citizens transfer to it.

In this regard, Locke's state of nature fares much better. Because it is populated by persons with full-blown moral rights, Locke's state of nature can fit with the voluntarist conceptions of authorization and transfer of rights to produce a coherent voluntarist account of the nature of the citizen-state relationship. Its role in this account explains much of the point of Locke's concept of the state of nature. Insofar as we find this voluntarist program compelling, we have reason to take seriously Locke's state of nature as a central concept in political philosophy.

## NOTES

1. John Locke, *Second Treatise of Government*, § 4. Subsequent references to the *Second Treatise* will be by paragraph.

2. John Dunn, *Locke* (Oxford: Oxford University Press, 1984), 46.

3. John Dunn, *The Political Thought of John Locke* (Cambridge: Cambridge University Press, 1969).

4. Richard Ashcraft, "Locke's State of Nature: Historical Fact or Moral Fiction," *American Political Science Review* (September 1968).

5. For criticisms of this sort, see Richard I. Aaron, *John Locke*, 3rd ed. (Oxford: Oxford University Press, 1971), 273; Willmoore Kendall, *John Locke and the Doctrine of Majority-Rule* (Urbana: University of Illinois Press, 1959), 75; J. W. Gough, *John Locke's Political Philosophy* (Oxford: Oxford University Press, 1950), 89.

6. Variants of this attack can be found in C. B. Macpherson, "Introduction" to John Locke, *Second Treatise of Government* (Indianapolis: Hackett, 1980), xiv; Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 224-226; J. D. Mabbott, *John Locke* (London: MacMillan, 1973), 143-146; Richard Cox, *Locke on War and Peace* (Washington: University Press of America, 1982), 76-80; J. J. Jenkins, "Locke and Natural Rights," *Philosophy* (April 1967), 152-153.

7. Claims to the contrary are surprisingly frequent; however, I argue below against such views. Among those who argue for a "Hobbesian" Locke on this issue are Cox, *Locke on War and Peace*, 79, 104, and Mabbott, *John Locke*, 145-146.

8. Thomas Hobbes, *Leviathan*, ch. 13, §§ 8-9.

9. Hobbes, *Leviathan*, ch. 13, § 13. Natural law binds only "in foro interno" in the state of war (*Leviathan*, ch. 13, § 35); however we understand this claim, it does not refer to moral bonds of an "ordinary" sort. Similarly, the "rights" held by persons in this state are mere "liberties" (see Section VI). I refrain here from further comment on what I concede are difficult points in Hobbes scholarship.

10. Hobbes, *Leviathan*, ch. 13, §§ 11-12.

11. See John Plamenatz, *Man and Society* (London: Longman's, Green, 1963), vol. I, 220-221; John Colman, *John Locke's Moral Philosophy* (Edinburgh: Edinburgh University Press, 1983), 177-178; John W. Yolton, *Locke: An Introduction* (Oxford: Basil Blackwell, 1985), 57; Mabbott, *John Locke*, 142; Richard Cox, "Introduction" to Locke, *Second Treatise of Government* (Arlington Heights, IL: Harlan Davidson, 1982), xxi; Kendall, *John Locke and the Doctrine of Majority-Rule*, 64; W. von Leyden, *Hobbes and Locke* (New York: St. Martin's Press, 1982), 99-100; J.E.J. Altham, "Reflections on the State of Nature," *Rational Action*, ed. by R. Harrison (Cambridge: Cambridge University Press, 1979), 134. To be fair, Colman characterizes the state of nature as the condition of men "living together without civil society" (my emphasis), and "civil" conveys for Locke some notion of minimal legitimacy. Yolton may have something similar in mind. I argue below that this addition is inadequate. Part of the requisite contrast between Hobbes and Locke on this point is captured in Dunn, *Locke*, 46-47.

12. It may seem that the sovereign in Hobbes is a counterexample to this claim, since it (or he) appears to be both in the state of nature (with other sovereigns) and out of it (with the citizens of its own commonwealth). This appearance dissolves when we remember that for Hobbes the sovereign *remains* in the state of nature, even with regard to the subjects who are out of it. See *Leviathan*, ch. 28, § 2.

13. Locke's clearest indication of the *relational* character of the state of nature comes in § 145, where he uses the "in reference to" construction prominently. Since writing this essay, I have found that Gregory S. Kavka makes similar claims about the relational aspects of Hobbes's state of nature (*Hobbesian Moral and Political Theory* [Princeton: Princeton University Press, 1986], 88-89). I am not sure that I see the textual warrant for this interpretive claim, though Hobbes certainly could have held such a view without doing violence to his other positions.

14. Even in those cases where the subject may legitimately resist the sovereign, it appears that this fact is no evidence that the subject is returned to the state of nature. See Hobbes, *Leviathan*, ch. 21, §§ 11-21.

15. It appears that *individuals* within otherwise legitimate states may be returned to the state of nature by governmental violations of their rights. Note § 168 ("any single man") and § 208 ("some private men's cases"). This is an additional instance of persons being in the state of nature while those around them are not. Of course, were it not for Locke's odd account of tacit consent being given by mere residence (§ 119), many more people would be in this position (that is, those who resided in but did not consent to membership in a legitimate commonwealth). The individualistic character of Locke's state of nature is stressed, though in rather puzzling ways, in Hans Aarsleff, "The State of Nature and the Nature of Man in Locke," *John Locke: Problems and Perspectives*, ed. by John W. Yolton (Cambridge: Cambridge University Press, 1969), 101, and in Robert A. Goldwin, "Locke's State of Nature in Political Society," *Western Political Quarterly* (March, 1976), 128-134.

16. See the parallel claims in § 91.

17. See, for instance, Peter Laslett, "Introduction" to John Locke, *Two Treatises of Government*, rev. ed. (Cambridge: Cambridge University Press, 1963), 111; Goldwin, "Locke's State of Nature in Political Society," 126-127; Aarsleff, "The State of Nature and the Nature of Man in Locke," 100. Ashcraft comes closer to what I take to be the proper definition in his "legal statement of the state of nature," but still concentrates solely on establishing a judge ("Locke's State of Nature: Historical Fact or Moral Fiction?" 901). Cox (along with others who are influenced by Hobbes) also uses this definition (*Locke on War and Peace*, 73).

18. Locke does, of course, say that "any number of men" may create a community or civil society (§ 95). I do not find plausible the conclusion that three persons can make a civil society, but this point is not centrally important to my argument here.

19. Robert Nozick offers interesting observations about the possibility of private contracts to create common judges in the state of nature and about when (and how) private associations become states. Much of this discussion is untainted by his peculiar notion of legitimacy and his unfortunate formulation and manipulation of the "principle of compensation" (whose only apparent justification is its necessity for arriving at the desired conclusion). See *Anarchy, State, and Utopia* (New York: Basic Books, 1974), especially chs. 2-6.

20. It is, of course, an embarrassment for Locke that after saying visiting aliens have not joined the community (§ 9), he goes on to say that they have consented to the laws of their host countries in as full a sense as have most permanent residents (§ 119).

21. Locke is careful to distinguish between dissolution of government and dissolution of society (§ 211). In the latter case, men are returned to the state of nature (§ 211), while in the former it appears that the society regains those rights it entrusted to government, but no *individual* citizen returns to the state of nature (§ 243). This is discussed in Richard Ashcraft, *Revolutionary Politics & Locke's Two Treatises of Government* (Princeton: Princeton University Press, 1986), 575-577. I believe Locke *means* to say here that citizens remain *out* of the state of nature with respect to each other, but enter *into* it with respect to those (governors) who have abused their powers. The difficult case, of course, is that in which the government abuses only particular individuals, remaining legitimate with respect to the majority. As I observed in Note 15, Locke appears to say that these individuals *are* returned to the state of nature (*simpliciter*).

22. I mean this only in the following senses: (1) natural law seems only to bind us to perform ("in foro externo") when physical security (a "social fact") is guaranteed (Hobbes, *Leviathan*, ch. 15, § 35); (2) consent (a moral notion) seems to follow from the mere presence of physical security (Hobbes, *Leviathan*, A Review and Conclusion, § 7) and from the ability of others to take our lives when they please (other "social facts," Hobbes, *Leviathan*, ch. 20, §§ 4-11).

23. I have not yet mentioned the most interesting alternative account of what Locke means by the state of nature—the account offered by Dunn. For him the state of nature is:

the condition in which God himself places all men in the world, prior to the lives which they live and the societies which are fashioned by the living of those lives. What it is designed to show is not what men are like but rather what rights and duties they have as the creatures of God. (*Locke*, 47, and parallel claims in *Political Thought of John Locke*, 97, 103).

It is hard to argue with claims that capture so much of the true spirit of Locke's account, but Dunn's position seems to me not quite accurate. Men can be in the state of nature long after they have changed the condition God set them in. As I argue below, there is no particular set of rights and duties possessed by all persons in the state of nature. Perhaps we can say that Dunn's claims give a fair characterization of that "original" state of nature to which each person is born, leaving aside later instantiations of that state.

24. This phrase is used by Locke several times in the *First Treatise of Government*, for example, § 116.

25. This, I believe, is what Dunn's analysis adequately captures. See Note 23.

26. This is, I think, a particularly difficult point in interpreting Locke's *Treatises*. Locke talks only occasionally of immature children having rights (e.g., *First Treatise*, §§ 88-90; *Second Treatise*, §§ 78, 183, 190), and even then almost exclusively of rights that they have against their parents. He almost never speaks of immature children having duties (again with the exception of duties of obedience to their parents [e.g., *Second Treatise*, § 65]). I confess to puzzlement as to how a child can have natural rights and duties without being under the law of nature, and I suspect that Locke's best position might be to simply deny that young children and incompetents have such rights and duties. To see that this need not be so callous a position as it first seems, see, e.g., H.L.A. Hart, "Are There any Natural Rights?," *The Philosophical Review* 64 (1955), p. 181.

27. See my discussion of this question in "Inalienable Rights and Locke's *Treatises*," *Philosophy & Public Affairs* (Summer 1983).

28. I explain this concept and discuss Locke's theory of political obligation in *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979).

29. Ashcraft, "Locke's State of Nature: Historical Fact or Moral Fiction," 902-903.

30. Colman, *John Locke's Moral Philosophy*, 185. A similar version of this tension is described in Geraint Parry, *John Locke* (London: George Allen & Unwin, 1978), 61.

31. See the suggestions throughout *Second Treatise*, chs. 5 and 8.

32. Strauss, *Natural Right and History*, 224-232.

33. Cox, *Locke on War and Peace*, 74-79; Mabbott, *John Locke*, 143-146.

34. Jenkins, "Locke and Natural Rights," 152-153.

35. David C. Snyder, "Locke on Natural Law and Property Rights," *Canadian Journal of Philosophy* (December 1986), 745-748.

36. C. B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford: Oxford University Press, 1962), 240-246.

37. Ashcraft, "Locke's State of Nature: Historical Fact or Moral Fiction," 901-907; Colman, *John Locke's Moral Philosophy*, 180-185; Aarsleff, "The State of Nature and the Nature of Man in Locke," 99.

38. The state of war, while not a necessary feature of the state of nature, is consistent with it. See Parry, *John Locke*, 60, and Colman, *John Locke's Moral Philosophy*, 183.

39. Even the "worst" of Locke's other descriptions (e.g., § 123) in no way contradict his claims that the state of nature is preferable to many possible forms of political life (e.g., § 93), and do not even approach the descriptions offered by Hobbes. I take my position in this section to be thus far broadly consistent with those defended by Ashcraft and Colman (who offer further support for the claims I make here).

40. This may be part of what Dunn is driving at when he writes that the state of nature has no "empirical content" (*The Political Thought of John Locke*, 103, 110). See also Ashcraft, *Revolutionary Politics & Locke's Two Treatises of Government*, 581.

41. Worries about this portion of Locke's argument have often led to quick claims of a basic confusion on his part. See, for example, Thomas I. Cook, "Introduction" to Locke, *Two Treatises of Government* (New York: Hafner, 1947), xv-xvi, and Kendall, *John Locke and the Doctrine of Majority-Rule*, 75.

42. Locke seems extremely sensitive to the dubious value of historical argument to his project. Not only does he offer the reminder in the midst of his historical arguments in the *Second Treatise* (§ 103), but the *First Treatise* is full of such warnings (e.g., §§ 58-59, 106). This care makes his use of such arguments even more curious.

43. One response that has been offered is that Locke was not really up to much of anything of importance. See Aarsleff, "The State of Nature and the Nature of Man in Locke," 103.

44. Exactly how easy this perception is, of course, is a point on which Locke was not obviously consistent. Later in the *Second Treatise*, for instance, he says that the state of nature lacks a "known law" that is accepted as the "standard of right and wrong" (§ 124). In other works he emphasizes the "great labor" (*Essays on the Law of Nature*) and "the long and sometimes intricate deductions" (*The Reasonableness of Christianity*) required for knowledge of morality.

45. See Ashcraft's discussion of Locke on "anarchy" in "Locke's State of Nature: Historical Fact or Moral Fiction," 901-902.

46. Hobbes, *Leviathan*, ch. 21, § 21. Consent is also necessary for authority in Hobbes, of course, though it can be acquired simply by sufficient exercises of force. For an argument that Hobbes really relies here on *hypothetical* contractarian ideas, see Kavka, *Hobbesian Moral and Political Theory*, chs. 5 and 10.

47. See, for instance, Cook, "Introduction" to Locke, *Two Treatises of Government*, xv-xvi; Aarsleff, "The State of Nature and the Nature of Man in Locke," 100; M. Seliger, *The Liberal Politics of John Locke* (London: George Allen & Unwin, 1968), 83, 90, 93-94, 99-100.

48. It is on this point that Dunn's account is most helpful, though I go on here to disagree with his claims, in part. See Note 23.

49. The voluntarist character of both of their theories is diminished by certain aspects of their positions—Hobbes's by his belief that coerced consent is binding, Locke's by his view that (tacit) consent can be given passively (by mere residence, for instance). See my discussion of these matters in "Voluntarism and Political Associations," *Virginia Law Review* (February 1981), 19-21.

50. Hobbes, *Leviathan*, ch. 14, §§ 1-5.

51. The only moral effect of authorizing the sovereign in Hobbes is to convert his liberty right to everything into a *protected* liberty right (or *claim* right) to everything; that is, the subjects undertake the obligation to allow the sovereign exercise of his right (*Leviathan*, ch. 28, § 2). Nothing new becomes morally permissible for the sovereign as a result of the contract which gives him his new "authority."

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