

last time
we began
to discuss Locke's state of nature
his account of private property
his theory of legitimate government
which is government based on consent and also limited government
Locke believes in certain fundamental rights that constrain what government can do
and he believes that those rights are natural rights
not rights that flow
from law
or from government
and so Locke's great
philosophical experiment is to see if he can give an account
of how there could be
a right of private property
without consent,
before government
and legislators arrive on the scene to define property
that's his question
that's his claim.
there is a way,
Locke argues,
to create
property,
not just in the things we gather and hunt
but in the land itself
provided
there is enough and it's good enough for others
today I want to turn
to the question
of consent
which is Locke's second big idea, private property is one
consent
is the other
what is the work of consent
people here
have been invoking the idea of consent
since we began
since the first week you remember when we were talking about
pushing the fat man off the bridge someone said but he didn't agree
to sacrifice himself
it would be different if he consented
or when we were talking about the cabin boy
killing and eating the cabin boy

some people said well if they had consented to a lottery it would be different then it would be all right
so consent has come up a lot
and here in John Locke
we have one of the great
philosophers
of consent
consent is an obvious, familiar idea in moral and political philosophy
Locke says that
legitimate government is government founded on consent and who nowadays would disagree with him?
sometimes when ideas of political philosophies are as familiar as Locke's ideas about consent
it's hard to make sense of them or at least to find them very interesting
but there are some puzzles some strange features
of Locke's account of consent as the basis of legitimate government
and that's what I'd like to take up today
one way of
testing
the possibility of Locke's idea of consent
and also probing some of its perplexities,
is to ask just what a legitimate government
founded on consent
can do
what are its powers according to Locke,
well in order to answer that question
it helps
to
remember what the state of nature is like.
remember the state of nature is the condition
that we decide to leave
and that's what gives rise to consent
why not stay there why bother with government at all?
well, what's Locke's answer to that question
he says there's some inconveniences
in the state of nature but what are those inconveniences?
the main inconveniences is
that everyone
can enforce the law of nature
everyone is an enforcer or what Locke calls the executor
of the state of nature
and he means executor literally
if someone violates the law of nature
he's an aggressor
he's beyond reason

and you can punish him
and you don't have to be too careful or fine
about gradations of punishment
in the state of nature you can kill him
you can certainly kill someone who comes after you
tries to murder you
that's self-defense
but the enforcement power the right to punish everyone can do the punishing in the state of nature
and not only can you punish with death people who come after you
seeking
to take your life
you can also punish a thief who tries to steal your goods because
that also counts as aggression against
the law of nature
if someone has stolen
from a third party
you can go after him
why is this
well violations of the law of nature are an act of aggression
there's no police force there are no judges,
no juries
so everyone is the judge in his or her own case
and Locke observes that when people are the judges of their own cases they tend to
get carried away
and
this gives rise to the inconvenience in the state of nature
people over shoot the mark there's aggression there's punishment
and before you know it
everybody is insecure in their enjoyment of
his or her
unalienable rights to life liberty and property
now he describes in pretty harsh and
even grim terms
what you can do to people
who violate the law
of nature
one may destroy a man who makes war upon him
for the same reason
that he may kill a wolf or a lion
such men have no other rule, but that of force and violence,
listen to this
and so may be treated as beasts of prey
those dangerous and
noxious

creatures
that would be sure to destroy you if you fall into their power
so kill them
first
so
what starts out
as a seemingly benign
state of nature where everyone's free and yet where there is a law
and the law respects people's rights
and those rights are so powerful that they're unalienable
what starts out
looking very benign
once you look closer
is pretty fierce
and filled with violence
and that's why people want to leave
how do they leave
well here's where consent comes in
the only way
to escape from the state of nature
is to
undertake
an active of consent where
you agree
to give up the enforcement power
and to create a government
or a community
where there will be
a legislature
to make law
and where everyone
agrees in advance
everyone who enters
agrees in advance
to abide by whatever the majority decides
but then the question and this is our question and here's where I want to get your views then the
question
is
what powers
what can the majority decide
now here it gets tricky
for Locke
because you remember
alongside the whole story about consent
and majority rule

there are these natural rights, the law of nature these unalienable rights
and you remember
they don't disappear
when people
join together to create a civil society
so even once the majority is in charge
the majority can't
violate you' re
inalienable rights
can't violate your fundamental right to life liberty and property
so here's the puzzle,
how much power does the majority have
how limited is the government
created by consent?
it's limited by
the obligation
on the part of the majority to respect
and to enforce
the fundamental
natural rights of the citizens
they don't give those up we don't give those up when we enter government
that's this powerful idea taken over
from Locke
by Jefferson
in the Declaration
unalienable rights
so let's go to our two cases
remember Michael Jordan, Bill Gates libertarian objection
to taxation for redistribution well what about Locke's limited government
is there anyone who thinks that
Locke
does give grounds
for opposing
taxation
for redistribution
anybody?
if you, if the majority rules that there should be taxation
even if
the minority should still not have to be taxed because that's
taking away property which is
one of the rights of nature
so
and what's your name? Ben
so
if the majority taxes the minority

without the consent of the minority to that particular tax law
it does amount to the taking of their property without their consent
and it would seem that Locke should
object to that
you want some
textual support for your
reading of Locke, Ben
I brought some along just in case you raised it
if you've got, if you have your text look at one thirty eight passage one thirty eight
the supreme power
by which Locke means legislature, cannot take from any man any part of his property without his
own consent
for the preservation of property being the end of government
and that for which men enter into society
it necessarily supposes and requires
that people should have property
that was the whole reason for entering a society in the first place
to protect the right to property and
when Locke speaks about the right to property he often uses that
as a kind of global term
for the whole category, the right to life liberty and property
so that part of Locke
at the beginning of one thirty eight seems to support
Ben's reading
but what about the part of one thirty eight
if you keep reading
Men therefore in society having property
they have such a right to the goods
which by the law
of the community
are theirs,
look at this,
and that no one can take from them without their consent
and then at the end
of this passage we see he said so it's a mistake to think that the legislative power
can do what it will to dispose to the estates
of the subject arbitrarily or take any part of them
at pleasure
here's what's elusive
on the one hand he says
the government can't take your property without your consent he's clear about that
but then he goes on to say and that's the natural
right to property
but then it seems that property, what counts as property is not natural but conventional
defined by the government

the goods which by the law of the community are theirs
and the plot thickens
if you look ahead to
section one forty
in one forty he says governments can't be supported without great charge. Government is expensive
and it's fit that everyone who enjoys his share of the protection should pay out of his
estate
and then here's a crucial line
but still it must be with his own consent
i.e. the consent of the majority
giving it either by themselves or through their representatives
so what is Locke actually saying
property is natural
in one sense but conventional
in another
it's natural in the sense that
we have a fundamental unalienable right
that their be property
that the institution of property exist and be respected by the government
so an arbitrary taking property
would be a violation of the law of nature
and would be illegitimate
but it's a further question
here's the conventional aspect of property, it's a further question what counts
as property, how it's defined
and what counts
as taking property, and that's up to the government
so the consent
here we're
kind of back to our question
what is the work of consent
what it takes for taxation to be legitimate
is that it be
by consent
not the consent of Bill Gates himself that he's the one who has to pays the tax
but by the content that he and we, all of us within the society gave
when we emerged from the state of nature and created the government
in the first place
it's the collective consent
and by that reading
it looks like
consent is doing a whole lot
and the limited government consent creates isn't all that limited

does anyone want to respond that or have a question about that? go ahead, stand up
well I'm just wondering
what Locke's view is on
once you have a government that's already in place
whether it is
possible for people who are born into that government to then leave
and return to the state of nature
I mean, I don't think that Locke
mentioned that at all.
what do you think?
well I think
as the convention it would be very difficult to
leave the government
because
you were no longer
there's because nobody else is just living in the state of nature, everybody else is now
governed by this legislature
what would it mean today, you're asking
and what's your name? Nicola
to leave the state, suppose you wanted to leave
civil society
today, you want to withdraw your consent
and return to the state of nature. Well because you didn't actually consent to it,
you were just born into it,
it was your ancestors
who joined
you didn't sign
the social contract I didn't sign
all right so what does Locke say there
I don't think Locke says that you have to sign anything I think he says that it's kind of implied
consent
by willingly taking government services you are implying you're consenting to the government
taking things from you
all right so implied consent, that's a partial answer to this challenge
now you may not think that implied consent is as good as the real thing is that
what you're shaking your head about Nicola?
speak up stand up and
I don't think that necessarily just by
utilizing the government's
you know various
resources that
we are
necessarily implying that we
agree with
the way that this

government was formed
or that we have consented to actually join into the social contract
so you don't think the idea of implied consent is strong enough to generate any obligation
at all to obey government
not necessarily no,
Nicola if you didn't think you'd get caught
would you pay your taxes
umm
I don't think so
I would rather
have a system, personally,
that I could give money to exactly
those
sections of the government that I support
and not just blanket
support everything. you'd rather be in the state of nature of at least on April fifteenth
but what I'm trying to get at is you consider that you're under no obligation since you
haven't actually entered into an active consent
but for prudential reasons you do what you're supposed to do according to the law. exactly.
if you look at it that way then you're violating another one of Locke's treatises which is that
you can't take anything from anyone else like you can't
you can't take the government's services
and then not give them anything in return
if you
if you want to go live in a state of nature that's fine
but you can't take anything from the government because by the government's terms which are
the only terms under which you can enter the agreement
say that you have to pay taxes to take those things. so you're saying that
Nicola can go on back to the state of nature if she wants to but you can't drive on
Mass Ave. Exactly
I want to raise the stakes beyond using Mass Ave,
and even beyond taxation
what about life
what about military conscription
yes, what do you think, stand up
first of all we have to remember that
sending people to war is not necessarily
implying that they'll die, I mean obviously
you're not raising their chances here,
it's not a death penalty
so if you're going to discuss whether or not military conscriptions is equivalent to
you know suppressing people's right to life
you shouldn't approach it that way
secondly the real problem here is Locke has this view about consent
and natural rights

but you're not allowed to give up your natural rights either
so the real question is
how does he himself figure it out between
I agree to
give up my life
give up my property when he talks about taxes
or military conscription for the fact,
but I guess Locke would be against suicide
and that's still you know my own consent I mean. Good. What's your name?
Eric. so I Eric
brings us back to the puzzle we've been wrestling with since we started reading Locke
on the one hand
we have these unalienable rights
to life liberty and property which means that even we don't have the power to give them up
and that's what creates the limits
on legitimate government it's not what we consent to that limits government
it's what we lack the power
to give away
when we consent that limits government
that's the
that's the point at the heart of
Locke's whole account
of legitimate government
but now you say well
if we can't
give up our own life, if we can't commit suicide
if we can't give up our rights to property how can we then agree to be bound by a majority
that will force us
to sacrifice our lives or give up our property
does Locke have a way out of this or is he basically
sanctioning
an all-powerful government
despite everything he says
about unalienable rights
does he have a way out of it? who would speak here in defense
of Locke or make sense
find a way out of this
predicament
all right go ahead. I feel like there's a general distinction to be made between
the right to life
that individuals possess and the
the fact that the government cannot take away an individual's right to life
I think
if you look at conscription as
the government picking out certain individuals to go fight in war

then that would be a violation of the rights their
national right to life
on the other hand if you have conscription of
let's say a lottery for example
then in that case
I would view that as
the population picking their representatives defend them in the case of war
the idea being that since the whole population cannot go out there to defend its own right
of property it picks its own representatives through a process
that's essentially random
and the these
these sort of elected representatives go out and fight for
the rights of the people
it looks very similar, it works just like an elected government in my opinion
alright so an elected government can conscript citizens to go out and defend
the way of life
the community
that makes
the enjoyment of rights possible.
I think I think it can because
to me it seems that it's very similar to the process of electing
representatives the legislature
although here
it's as if
the government
it's electing by conscription
certain
citizens to go die for the sake of the whole
is that
consistent with respect for a natural right to liberty
well what I would say is there's a distinction between picking out individuals
and having
a random choice of individuals.
between let me make sure, between picking out individuals,
well I don't, let me what's your name? Gogol.
Gogol says there's a difference between picking out individuals
to lay down their lives
and having a general law
I think this is
on I think this is the answer Locke would give, actually
Locke is against arbitrary government he's against the arbitrary taking
the singling out of
Bill Gates to finance the war in Iraq
he's against singling out a particular citizen
or group of people

to go off and fight
but if there's a general law
such that the
the government's choice the majority's action is non arbitrary,
it doesn't really amount to a violation
of
people's basic rights
what does count as a violation
is an arbitrary taking because that would essentially say not only to Bill Gates, but
to everyone
there is no rule of law there is no institution of property
because at the whim
of the king or for that matter of the parliament
we can name
you
or you to
give up your property
or to give up your life
but so long as there is a no arbitrary rule of law
then
it's permissive
now you may say this doesn't amount
to a very limited government
and the libertarian may complain
that Locke is not such a terrific ally after all
the libertarian has two grounds
for disappointment in Locke
first
that the rights are unalienable and therefore I don't really own myself after all
I can't dispose of my life
or my liberty or my property
in a way that violates my rights
that's disappointment number one,
disappointment number two
once there is a legitimate government based on consent
the only limits
for Locke
are limits on arbitrary
the takings of life or of liberty
or of property
but if the majority decides or if the majority promulgates a generally applicable law
and if it votes
duly according to fair procedures
then there is no violation
whether it's a system of taxation

or system
of conscription
so it's clear
that Locke
is worried about
the absolute arbitrary power
of kings
but it's also true
and here's a darker side of Locke
that this is great theorist of consent came up with a theory of private property that didn't
require consent
that may
and this goes back to the point Rochelle made last time,
may have had something to do with Locke's second
concern
which was America
you remember
when he talks about the state of nature he's not talking about
an imaginary place
in the beginning he says all the world was America and what was going on in America
the settlers
we're enclosing land
and engaged in wars
with the native Americans
Locke who was an administrator
of one of the colonies
may have been
as interested
in providing a justification
for private property through enclosure without consent
through enclosure and cultivation
as he was
with developing a theory
of government based on consent
that would reign in
kings and arbitrary
rulers
the question we're left with
the fundamental question we still haven't answered is what then becomes of consent
what work can it do
what is its moral force
what are the limits of consent
consent matters not only for governments
but also from markets
and

beginning next time we're going to take up
questions of the limits of consent
in the buying and selling
of goods