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Recommended Citation

Fritz, Samantha () "Political Obligation and Lockean Contract Theory," *Acta Cogitata: An Undergraduate Journal in Philosophy*. Vol. 7 , Article 6.

Available at: <https://commons.emich.edu/ac/vol7/iss1/6>

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POLITICAL OBLIGATION AND LOCKEAN CONTRACT THEORY

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Abstract

In John Locke's *Second Treatise of Government*, he presents his notion of social contract theory: individuals come together, leave the state of perfect freedom, and consent to give up certain rights to the State so the State can protect its members. He grounds duties and obligations to the government on the basis of consent. Because one consents to the State, either tacitly or expressly, one has consented to taking on political obligations owed to the State. Locke also notes that individuals can withdraw consent and leave the State. This paper challenges the view that political obligation can exist under Locke's social contract theory. This paper first provides background for the argument by explaining Locke's position. Then, it examines what consent actually is, ultimately coming to the conclusion that tacit and hypothetical consent are not true forms of consent and cannot justify political obligation, leaving only express consent. Finally, using Isaiah Berlin's notions of coercion and positive and negative freedoms, this paper looks at whether the current political system allows one to exit the State, leading to the conclusion that if individuals are coerced into consenting to the State, that consent cannot justify political obligation.

Introduction

For social contract theorists, political obligations stem from a group of people consenting, at least initially, to give up certain rights to the government. This requires that individuals are free from coercion in order to actually consent. Locke specifically allows for individuals to either expressly or tacitly consent to government in order to ground that political obligation. Throughout this paper, I will argue that consent is a faulty basis for political obligation under Locke's social contract theory. First, I will argue that tacit consent cannot be a solid grounding for political obligations. Then I will argue that express consent can no longer justify political obligation because there is not a legitimate right to exit in the current geopolitical climate. Individuals cannot consent to government because there is not an ability to not consent. In other words, there is no choice other than to consent to a government, which is a form of coercion. Ultimately, I come to the conclusion that there can no longer be legitimate political obligation under Locke's notion of social contract.

Locke's Position

In Locke's *Second Treatise of Government*, he puts forth his own version of the social contract theory. Within his position, he believes that people begin in a state of nature which is a state of perfect freedom and equality. In the state of nature, every person is free to do anything within the bounds of nature, and every person is equal to one another.¹ Locke notes that this is not license to do anything and everything. The law of reason binds all people, even in the state of nature and "teaches anyone who takes the trouble to consult it, that *because we are all equal and*

¹ Throughout this paper, I will be substituting gender neutral pronouns where others use masculine pronouns.

*independent, no-one ought to harm anyone else in his [or her] life, health, liberty, or possessions.*² In other words, Locke's view of the state of nature is much more positive than the state of nature according to social contract theorists like Thomas Hobbes.³ People, acting according to their own reason, will not be in a constant state of war.

While Locke's view of the state of nature is fairly positive, individuals will still want to leave the state of nature to come together and form a state that protects their life, liberty, and property. Within the state of nature, individuals must be their own judge, jury, and executioner. This leaves room for biases due to the fact that the individuals affected by the situation are the individuals making decisions regarding the situation. Because of these biases, individuals cannot fairly judge these situations, and that pushes individuals to give up those rights (to be judge, jury, and executioner) to the State. This mutual agreement ends the state of nature for those individuals and allows them to form a community and creates a neutral arbitrator. Locke is also very clear, "[T]hat all [persons] are naturally in the state of nature, and remain so until they consent to make themselves members of some political society."⁴ Unless individuals give their consent, they have not left the state of nature.

With this in mind, Locke also explains where political obligation comes from and under what circumstances citizens continue to be bound by it. First, the governments citizens consent to are those of majoritarian rule (unless they consent to some other form of governance).⁵ "Thus every [person], by agreeing with others to make one body politic under one government, puts [themselves] under an obligation to everyone in that society to submit to the decisions of the majority, and are to be bound by it."⁶ Citizens' obligations to the government come from their consent and nothing else. Locke finally notes, "Thus, what begins a political society and keeps it in existence is nothing but the consent of any number of free [persons] capable of a majority to unite and incorporate into such a society. This is the only thing that did *or could* give a beginning to any lawful government in the world."⁷ The government cannot derive political obligation from a minority, and if, at any point, a majority does not consent to the government, that government no longer derives political obligation and is an illegitimate (unlawful) government.

Finally, Locke takes a unique approach to what actually constitutes consent. His notion of consent is not just express consent. His account of consent also includes tacit consent, which is an indirect way to derive political obligation.⁸ For an individual to expressly consent, they must give their explicit permission to be subject to the State. John Simmons condenses Locke's analysis of actions that give express consent: "First, there are promises; second, there are written contracts; and third, there are acts of consent which are essentially authorizations of the actions of others."⁹ While there are those ways in which one can expressly consent to something, tacit consent is different. Tacit consent arises, according to Simmons, "when it is given by remaining

2 Bennett, Jonathan. "Second Treatise of Government John Locke." March 2008, 4. Accessed December 10, 2018. <https://earlymoderntexts.com/assets/pdfs/locke1689a.pdf>.

3 See Thomas Hobbes, *Leviathan*.

4 *Ibid.* 7.

5 *Ibid.* 32.

6 *Ibid.* 32.

7 *Ibid.* 33.

8 Franklin, Julian H. "Allegiance and Jurisdiction in Locke's Doctrine of Tacit Consent." *Political Theory* 24, no. 3 (1996): 407. <http://www.jstor.org/stable/191921>.

9 Simmons, A. John. "Tacit Consent and Political Obligation." *Philosophy & Public Affairs* 5, no. 3 (1976): 275. <http://www.jstor.org/stable/2264884>.

silent and inactive; it is not express or explicit, it is not directly and distinctly expressed by action; rather, it is expressed by the failure to do certain things.”¹⁰ Regardless of whether consent is given either expressly or tacitly, according to Locke, the individual who consented has a political obligation to the State, or government, in which they are residing.

Tacit and Hypothetical Consent

The first argument against consent grounding political obligation comes from problems arising from tacit consent. Though Locke never addresses conditions under when it is appropriate for one to give tacit consent, Simmons gives his account when tacit consent is appropriately given. First, the person consenting must be aware that the situation calls for consent. Second, there must be a period of time when objections can be given. Third, that period of time ends. Fourth, there is ease or reasonableness for someone to object, and finally, there cannot be “extremely detrimental” consequences for objections.¹¹ Only if all five conditions are met has one consented tacitly by remaining silent.

This account of tacit consent has several issues. First, when applying this to tacit consent of the government, seemingly none of the five conditions are met. Governments, or at least current governments, do not give citizens a situation in which they can consent to their rule, and even if they did, very few citizens would be aware that they have the ability to consent or object to the government. The fact that citizens do not have a platform where the government essentially asks, “do you consent?” prevents conditions one, two, three, and four from being met. In regards to condition five, Simmons runs into the issue of what constitutes “extremely detrimental,” but if citizens withdrew consent from the government, they likely would face the possibility of being put into prison which most likely would fall well within the bounds of “extremely detrimental.”

Setting aside Simmons’ conditions for when tacit consent is appropriately given, there is still the issue of whether tacit consent is really consent at all. For consent, either express or tacit, an individual must give their permission. If Jane tells Geoff to throw a ball to her, Geoff has her permission, her consent, to throw a ball to her. If Geoff throws a ball to Jane, and Jane does not stop Geoff from throwing the ball to her, Geoff does not have Jane’s permission to throw a ball to her. Jane’s inaction does not constitute permission to have a ball thrown to her. In other words, inaction, tacit consent, is not actually giving permission to have an action occur. The only type of consent that genuinely gives Geoff permission to throw a ball to Jane is express consent. Applying this to the government, individuals’ inaction does not constitute permission to take on certain obligations to the government. Inaction (tacit consent) is not truly a form of consent; inaction as a form of consent cannot ground political obligation.

Even if tacit consent is a form of consent, it is not enough to ground political obligation under Locke’s social contract theory. Locke explains that the only way for a government to maintain its legitimacy is through the majority’s consent, but as Hanna Pitkin notes, when *tacit consent*, that is, inaction, is the basis of political obligation, nearly everything can be taken as a sign of tacit consent.¹² So while the notion of consent seems to grant certain privileges and obligations to the government, that rests on the idea that consent is something special that individuals give to show their approval of the government. Pitkin explains that something as small as use of money

10 *Ibid.* 279.

11 *Ibid.* 279-280

12 Pitkin, Hanna. “Obligation and Consent--I.” *The American Political Science Review* 59, no. 4 (1965): 995. <http://www.jstor.org/stable/1953218>.

or residence within a certain territory is enough for an individual to have tacitly consented to the State.¹³ She continues, “But now there no longer seems to be much power in the concept of consent, nor any difference between legitimate government and mere coercion.”¹⁴ When consent is boiled down to essentially encompass any action (or lack thereof), it takes away the weight of having consent and blurs the line between consent and coercion.

Here, there are two different ideas of what actually constitutes tacit consent, and Locke never addresses what exactly tacit consent would be. Simmons’ account is a more rigorous version of tacit consent, while Pitkin’s account is more in line with what is traditionally meant. Simmons’ account leads to the problem of whether even under certain conditions tacit consent is consent, and Pitkin points out that when a weaker idea of tacit consent is used, anything can be tacit consent. Regardless of whether a stronger or weaker idea of tacit consent is used, there are problems with using tacit consent to ground political obligation.

There is also the concern of hypothetical consent, which Locke does not address but is important to note nonetheless. Hypothetical consent runs into a similar issue that tacit consent does, that is, it is not truly a form of consent. Returning to Jane and Geoff, say that Geoff throws a ball to Jane without her permission, but if Geoff had asked her, she would have said yes. The fact of the matter still is that Jane did *not* say yes. She would have given her permission, yes, but that still recognizes that she did not *actually* give her permission. If an individual would have consented to government action if the government had asked, that individual did not give their consent even though they would have given their consent. A person who hypothetically would have consented to the government has not consented, and the government cannot claim that that individual has political obligations to it.

Express Consent

From the previous section, it seems clear that hypothetical and tacit consent are not enough to garner political obligation. Though the problems with consent based political obligations frequently stop at hypothetical and tacit consent, I will argue in this section that express consent has its own problems that should prevent it from being grounds for political obligation. Express consent occurs when an individual performs an action that gives consent, and typically, that means that the individual consenting is free from coercion. (Unlike tacit consent where it is inaction that gives consent.)

In “Two Concepts of Liberty,” Isaiah Berlin gives his account of positive and negative liberties. Negative freedoms are the traditional ideas of being free from coercion. One is free if “no [person]... interferes with my activity.”¹⁵ As long as no one interferes, I have my freedom to do a certain action. His idea of positive freedom, however, is more than that. “The ‘positive’ sense of the word ‘liberty’ derives from the wish on the part of the individual to be [their] own master.”¹⁶ If individuals are internally constrained in any way, they do not have their positive liberty. In terms of acting to expressly consent to the government, an individual should be both positively and negatively free to act, or free from internal and external coercion. They must be internally free so

13 *Ibid.* 995.

14 *Ibid.* 995.

15 Berlin, Isaiah, “Two Concepts of Liberty,” (London: Curtis Brown Group Ltd., 1997), quoted in Diane Jeske and Richard Fumerton, eds., *Readings in Political Philosophy: Theory and Applications* (Peterborough, Ontario: Broadview Press, 2012), 389.

16 *Ibid.* 393.

they can rationally evaluate the government they are consenting to, and they must be physically free from coercion to consent to the government.

Using these two notions of liberty, Locke's allowance of political obligation relying on explicit consent runs into problems. This section will mostly focus on freedom from external coercion, but there is an element of internal coercion to consider when individuals give their explicit consent to the government. Psychologically, individuals feel pressure to conform to those around them. "Interpersonal conformity also happens outside of small-group situations. By Cialdini's (1993) 'principle of social proof,' people tend to view behavior as correct to the degree that they see others doing it; when more people are doing something, additional people will do the same thing."¹⁷ This applies to consent to the State. Very few individuals withdraw consent to the State, and when individuals either do not consent to the State or do not have a State to consent to because of various political factors, they "may have difficulty accessing basic rights such as education, healthcare, employment and freedom of movement."¹⁸ The internal pressure one naturally faces to conform and the threat and knowledge of negative societal ramifications of not consenting to the State are harsh enough that individuals may feel pressure to conform to consenting to the State.

Individuals also face external coercive measures affecting their negative freedom because there is no legitimate right to exit. Locke does not explicitly discuss a right to exit, however it can be inferred from the rest of his argument. When the government individuals have consented to fails to perform and represent as expected, individuals can withdraw their consent and form a new government. Additionally, according to Locke, an individual must consent to leave the state of nature and consent to a specific government.¹⁹ That means that first, a person must consent to leave the state of nature and agree to be a part of society, and second, a person must consent to a specific government. At any time, a person can withdraw their support and exit a State, and a person can opt out of political society. This, however, cannot happen in the current geopolitical climate. The current structure coerces individuals externally into consenting to government and prevents people from being able to withdraw their consent to society completely.

Currently, nearly all habitable land in the world is claimed by a government, and places that are not claimed are inaccessible for the vast majority of people seeking to exit society. As Jason Brennan puts it:

You have no reasonable way of opting out of government rule. Governments control all the habitable land, and most of us don't have the resources or even the legal permission to move elsewhere. Governments won't even let you move to Antarctica if you want to. At most, a privileged few of us can choose which government we live under, but the vast majority of us are stuck with whatever government we're born with.²⁰

The fact of that matter is that external factors coerce individuals to consent to being a part of the government and the lottery of birthplace typically coerces individuals to consent to a specific type

17 Coleman, Stephen. "The Effect of Social Conformity on Collective Voting Behavior." *Political Analysis* 12, no. 1 (2004): 77. <http://www.jstor.org/stable/25791755>.

18 United Nations. "Ending Statelessness." UNHCR. Accessed December 11, 2018. <https://www.unhcr.org/stateless-people.html>.

19 Jonathan Bennett. "Second Treatise of Government." 33.

20 Brennan, Jason. "Jason Brennan: Our Relationship to Democracy Is Nonconsensual." Princeton University. January 26, 2016. Accessed December 11, 2018. <http://blog.press.princeton.edu/2016/01/26/jason-brennan-our-relationship-to-democracy-is-nonconsensual/>.

of government. Financial, political, and societal pressures make exiting a specific government and exiting society as a whole an unrealistic option for the vast majority of people. This means that regardless of the government one is living under and regardless of whether they consented or not, there is an element of external coercion to consent to government that exists constantly. No person has their negative liberty to freely consent to the government, which means that every single person has been coerced to be a part of government and society as a whole.

Other Concerns

This paper focuses on the problems Locke runs into with deriving political obligations from consent, either express, hypothetical, or tacit. There are also various other issues Locke runs into that I do not discuss. For example, there are questions of whether people can individually decide to leave the State under Locke's position, or whether there must be some sort of injustice occurring in order for people to withdraw their collective consent. There are also questions regarding other bases for political obligation such as a benefits-burdens argument and pragmatically what a government can do without the consent of the governed. All of these concerns are valid and worth discussing. This paper rests on several assumptions. First, it relies on the assumption that there is in fact a political obligation. Second, it assumes that, under Locke's position, individuals can choose to leave the State individually and regardless of the actions of the government. Third, this paper relies on the assumption that there is in fact a distinction between positive and negative liberties. Finally, it assumes that Simmons' account of Locke and tacit consent are both correct. I use each of these assumptions to ultimately come to the conclusion that governments need to look to non-consent based theories to derive political obligation.

Conclusion

Locke grounds political obligation on the idea that individuals consent to the government they are being governed under. People leave the state of nature, consent to give up certain rights to the government, and then create a government to be ruled under majority rule. Prior to creating a government, however, people must consent to leave the state of nature. Due to the nature of tacit and hypothetical consent, the only true form of consent to look to for this political obligation is that of express consent. However, people can never be free from internal and external coercion, which means that they cannot even truly expressly consent to the State. Finally, the lack of unclaimed land prevents people from being able to opt out of the State, meaning that individuals are coerced into consenting to a State in the first place, and other factors (such as economics and politics) coerce individuals into consenting to the State they are born under. Because of this, under Locke's idea of social contract theory, consent can no longer be a legitimate basis for political obligation to rest.

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