

## Philsoc Student Essay Prize, Trinity term, 2020 – 3rd Equal Prize

### Locke & The Social Contract: Issues with Justifying the State through Voluntary Acts of Consent

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Human beings are perceived as being born free and independent. However, to accept that there is a natural equality between men poses an issue regarding how the state can be justified. People cannot be born under the subjugation of another; thus, John Locke argues that voluntary consent is necessary to legitimise political obligations and the state's authority. Social contract theory holds the view that our duty to obey the state originates from giving tacit or express consent. Therefore, its purpose is to reconcile individual autonomy with the state's authority. Despite this it provides little indication of how we can withhold consent and fails to clarify the circumstances in which it can lead to political obligations. In this essay, I will examine issues regarding Locke's argument of how tacit and express consent creates political obligations and conclude that his theory does not support individual autonomy nor the historical formation of states. Ultimately social contract theory is insufficient at justifying political obligations and the state.

Locke's concept of tacit consent is extensive in that almost everyone can be inferred to have consented to the state's authority. Locke reasons that "possession or enjoyment of any part of the dominions of the government" (Rosen and Wolff 60) constitutes tacit consent to the state, therefore one's presence in a country warrants political obligations such as to obey laws or pay taxes. However, critics maintain that residency cannot equate to consent as the only means of tacit dissent would be "physical withdrawal" and the "abandoning of all property" (Pitkin 995). Hume asserts that a poor peasant who knows "no foreign languages or manners" has no choice in where he inhabits and cannot "incorporate himself into any other commonwealth" (Rosen and Wolff 61) as Locke suggests. Additionally, Blackstone maintains that emigration does not necessarily terminate one's obligation to their native country, since a natural-born Englishman living overseas is made to believe that he still "owes the same allegiance to the king of England" (358). Thus, if residency is not always a voluntary act, or if previous residency is binding on an individual, then it is irrational to conclude it as a valid form of tacit consent.

A further contention against consent as necessary to a state's legitimacy is that most states are established through violence instead of a covenant. Locke argues that it is "consenting with others to make one body politic" which leads to a state's formation, but if this is true, then most communities labelled as states are illegitimate. For example, Hume argues that historically governments are founded upon "usurpation or conquest... without any pretence of a fair consent" (Rosen and Wolff 66) and that individuals acquiesce because of "fear and necessity" (66). If the latter point demonstrates the predominant reasoning behind people's obedience, then it seems unreasonable to suggest that any consent has been given. Hence, if few states have ever relied on a contractual agreement with its subjects, it appears that political obligations are not voluntaristic.

However, some philosophers concede that the social contract isn't supported by history but instead argue that it is a hypothetical argument. If contemporary individuals returned to the state of nature, they would "freely join in a contract to bring about the state" (Wolff 44), since voluntary subjection is rational. By everyone consenting to be united and subjected to the state then it can be sufficiently justified. However, consent would not be the rational choice for all. Erde maintains that "most subjects believe that they are property" and would interpret contract theory as "an act of a delirious person". Additionally, Hume asserts that man believes that "by his birth he owes allegiance to a certain prince" (Rosen and Wolff 67), versus thinking that his consent creates political obligations.

Such people might recreate the state without voluntaristic obligations. Furthermore, some who deliberate the hypothetical contract may conclude that they “distrust centralised power” (Wolff 46) and will not engage in the state’s creation at all. Theorists argue that this conclusion is irrational but there is still no evidence of consent being given. Even if the social contract is evaluated hypothetically there is no guarantee that everyone would consent to the state, therefore this device does not prove that there are universal political obligations.

It is argued that one of the consequences of Locke’s conditions of tacit consent is that there might be an obligation to obey tyrants. Although he disapproves of the use of unlawful power, Locke does not specify which types of governments can lead to political obligations. According to Gough the use of a “watered down” definition of tacit consent means that a tyrant can be said to “govern with the consent of his subjects” (139). Even if their laws are oppressive, by remaining within a tyrant’s territory you have a duty to obey them. This would infringe individual liberty which Locke seeks to protect. However, his defenders maintain that this conclusion overlooks how tyrannical governments are, “being directed not at the common good” (Zaller 609), which Locke regards as the purpose which guides any government. If a government employs power for other purposes, then the notion of tacit consent is inapplicable, and no political obligations are made. In this way Locke’s social contract does not compromise individual liberty by preventing individuals from being obliged to obey oppressors.

However, Locke’s doctrine allows obligations to be made to usurpers. This is because their power may be exercised for the common good, thereby creating conditions in which they are permitted to “be confirmed by consent” (Zaller 609). This suggestion prompts critics to maintain that consent theory encourages “resistance and overthrow of constituted monarchy” (Kernan 156). The implication is that individuals have an equal duty to obey a ruler and his usurper because the tacit consent given to the latter is the same as to the previous sovereign. Therefore, it appears that the social contract cannot distinguish between lawful and unlawful sovereigns. In contrast, Hume contends that there is a distinction if we disregard consent theory. Even though people live in the usurper’s territory they may “in their hearts, abhor his treason” (Hume and Miller) because they believe their initial sovereign to be the lawful sovereign by birth. It would be difficult to assert that consent is given despite the people’s beliefs about the usurper. This suggestion supports the criticism I gave that residency is not a valid indicator of consent, yet also demonstrates that legitimacy confers consent as opposed to the converse.

Another objection to Locke’s social contract is that express consent should not be the only condition for membership of a society. Locke contends that nothing makes someone a full member of society except by “entering into it by positive engagement” or “express promise” (Rosen and Wolff 61). However, this would imply that societies have barely any members because giving one’s express consent is rare. Additionally, it would be unreasonable for me to argue that foreigners and native-born subjects then have the same legal status. Locke’s supporters therefore maintain that express consent should be considered hypothetically. They argue that people’s “settled disposition to identify themselves as [members]” (Russell 405) equals express consent, thus most individuals are members. First of all, this device cannot give proof of an express compact because “hypothetical acts of consent are not acts” (Wolff 44). It also generates the issue of aliens identifying as members, potentially allowing everyone in a country to become members. Express consent is problematic in defining membership, as when perceived as a specific event then membership becomes too exclusive, but when considered as a hypothetical device it becomes too broad.

In conclusion, I think that Locke’s social contract, as a way of justifying the state, is inadequate because it compromises individual autonomy through its extensive definition of tacit consent and makes claims about government which contradict historical or established conventions; few people

give express consent to the state, many perceive legitimacy as conferring consent and most states are not formed around voluntary compacts. However, there are merits to Locke's doctrine, including how neither consent nor political obligations can be made to tyrants, thus protecting liberty in this regard.

Alternatively, other theories attempt to justify political obligations without prioritising individual autonomy. Utilitarianism argues that the state is justified if and only if it maximises utility more than any other option. Since the state is perceived as more favourable than the state of nature, then those within its boundaries must obey its laws. Yet even if utilitarian reasoning illustrates that life with the state is better, if we regard voluntary contracts as what legitimises the state and recognise that political institutions do not take consent into account, then it appears that we reach a conclusion of philosophical anarchism.

1,446 words

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