

## Locke's Leviathan

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You are in a foreign country, driving down the road. You admire how well maintained the road is, and how clean all of the places that you have visited here have been. You see a police car behind you, so you pull over. The officer comes to your window, ensures that his body camera is activated, and informs you that you were speeding. He advises that the law demands he must now seize your assets. He then points a gun at your head, and executes you point blank.

For those of us accustomed to Western Democracies, this is outrageous. A clear abuse of power, abandonment of proportionality, and a fine example of a totalitarian state run amok. While we might collectively agree as to the veracity of these statements, the next question is harder to answer: why are they true?

Before proposing an answer, we should step back and examine some fundamental questions. In our scenario, we have a police officer, an agent of government, enforcing a law. But what exactly *is* government, and what *is* law? To broadly define these terms in a way that can encompass a wide range of polities, “government” is the constitutional structure which maintains a governing body. In a monarchy, the structure would be the king or queen and their decrees, while in a democracy it would be electing representatives to make decisions. “Laws,” conversely, are the means by which government interacts with the governed.

Why do governments exist at all? Many philosophers have posed theories. Plato argued in his *Republic* that government exists to establish (and impose) societal order, and Aristotle's *Politics* explored the makeup of various ancient governments and used them to justify his general theories of governance. A millennium later, following the English Civil War, Thomas Hobbes, in partial agreement with Plato, proclaimed in his *Leviathan* that a strong government was necessary to quell the savagery of human nature. In response, John Locke, in his 2<sup>nd</sup> *Treatise on Government*, introduced very different views both of human nature and of government.

The first step in examining government and law is to consider the state of society before either have emerged. If human beings exist with no formal laws, what happens? Hobbes, influenced by Thucydides, would argue that we get chaos and war. Locke has a very different take: according to him, the original state of nature is that of both perfect freedom and perfect equality. Every person is born with the same intrinsic rights derived from God: life, liberty, and property. We have a right to life because we exist, and a right to liberty because this is our natural state of existence. We also have a right to anything which results from our labor, thus termed property. For example, if we were to plant crops and then harvest them, we would have an innate ownership of those crops derived from the labor we put into their creation.

How far should we expand the meaning of “property” here? On the surface it seems straight forward, but we could argue that Locke's view is too basic. It assumes we own the field where the crops are planted, and that nobody else has put labor into the process. There are also some assumptions about territorial claims. We must remember that Locke wrote in 1690, when America was still a new place for the Europeans. Locke makes numerous references to America as an untouched, virginal, fertile land, almost Eden-like. Like Plato in his *Republic* (and *Laws*), Locke seems to make the error of assuming that access to land is a given. He does address this issue to a degree, claiming that land is part of nature and thus belongs to all. But is this realistic? It makes one question if these contradictions could be why Thomas Jefferson famously changed “property” to “the pursuit of happiness” when he penned the Declaration of Independence, and whether these ideas may have influenced Karl Marx.

Next, we come to the question of what it means to be in a state of nature. As Locke says in the second chapter of his *Treatise*, “though this be a state of liberty, yet it is not a state of license.” And he continues: “Every one, as he is bound to preserve himself, and not to quit his station willfully, so by the like reason, when his own preservation comes not into competition, ought he, as much as he can, to preserve the rest of mankind (§6).” In other words, in addition to protecting our own life and freedoms, when we are not under threat, we also have a duty to ensure that other peoples’ life and freedoms are protected. It is only when these rights are violated that we enter into a state of war.

Again we find ourselves lifting the curtain. One of Locke’s primary disagreements with Hobbes is on the base nature of man, and he presents a vision of peaceful harmony that can be disturbed by action. But nature itself exists in a state of war and survival— animals are constantly in battles over territory and food. What separates us from animals, as Locke would likely agree, is reason. Is reason part of nature, or is there something supernatural, something divine about it? We can use reason to enter into agreements with others, and the suspension of reason, or the dissolution of agreements, creates the possibility of war. We also need reason to recognize that these rights exist. If reason is supernatural, then the state of nature and the state of war would be identical. If reason is inherent to our nature, then why is it so easily lost or forgotten?

When we make agreements with others, we form societies. From the smallest societies, such as the relationships between husband and wife or parent and child, we already encounter situations where we negotiate and agree to trade our innate rights and freedoms for a greater good. No one person can do everything: for a healthy society to function, people must perform different roles, each of which contributes to the whole. When we produce goods beyond our needs for the benefit of society, we can exchange ownership of those goods for others.

Here we might step back and ask whether Locke is being overly simplistic. His use of “society” gets quite a lot of mileage, being used to describe a myriad of relationships. Surely we can agree that, by using the same word for the parent/child relationship and the government/citizen relationship, Locke begins to sound dangerously like Hobbes? This argument is also rather atomistic. While it is true that a family consists of individuals who may have their own relationship to society, shouldn’t society recognize the family in addition to every member of the family, albeit in different ways? We could turn around and argue that each family represents a node among equal family nodes in the society, but that in turn denies the individuality of each person.

Now we need to question how well these ideas work in reality, and what happens when such agreements break down. Locke faces this when he introduces the notion of the commonwealth. Such a union, he argues, occurs when each individual, as “a member of any commonwealth, has thereby quitted his power to punish offenses” against his own state of nature, and “given a right to the commonwealth to employ his force. (§88)” That is, while we maintain in nature the right to defend our life and our property, by entering into a common civil community, we cede these rights to what becomes the legislature.

The “first and fundamental positive law (§134)” of government, according to Locke, is legislature. This is because, when individuals come together to form a commonwealth and cede some of their rights to it, they must, in turn, decide on a set of laws to regulate themselves. The law itself is nothing more than a set of formal agreements as to how society should operate, crafted by the members of the society, or by their representatives.

It is of particular interest that Locke identifies a legislature as fundamental because historically this has not been how things have developed. The ancient Greeks invented democracy in contradistinction to the kingdoms which surrounded them. The Romans developed their Republic in rejection of their early days of kingships, and famously refused to call their leaders kings, even as

the Senate slowly lost power to the emperors following Augustus. Locke himself goes into an attempted history of governance, trying to justify his supremacy of legislature, and quickly admits that the historical record is incomplete at best due to the relatively late invention of writing. In other words, to argue that legislature and not monarchy is what emerges naturally from a state of nature is patently false.

We might also note that the way an individual behaves in isolation, or even in a smaller circle of friends, will be radically different than when they present themselves in front of a larger public. How often have we seen our own friends change because “the fame went to his head?” Fame cannot exist without an audience to capture it, and these natural tendencies which emerge from some individuals with exposure to society can be tempered to a degree. Thus in addition to offering up a representation of the will of the people, the legislature also serves as a bulwark, a topic we will address presently.

Although the aim of legislature is to decide upon ground rules, they are useless unless they can be enforced, which is why we need an executive. Every government has an executive, and the degree to which it is formalized determines its shape. When there is an explicitly stated executive power, such as a monarch or an elected official like a president or prime minister, there will be clear defining boundaries, both establishing the reach of said power, as well as mechanisms by which to prevent interference with the legislature. Governing bodies like committees or anarchies which claim no executive usually find such power flows more implicitly, either through tradition, violence, or charisma— it is also much harder to control.

This brings us to an ugly reality of human nature. Locke says that each person has inherent rights and power to enforce them, and when people relinquish some of their rights to a legislature for protection, the legislature gains the corresponding powers. It then follows that the entity which enforces the laws the legislature creates, must wield this power. If human nature is such that we may, given sufficient cause, enter into a state of war with one another, what is to prevent whoever holds this mass of power to use it in a way which, contrary to the will of the people, furthers their own power at the peoples’ expense?

To illustrate this dilemma, imagine a bull in a china shop. The fine china, ever delicate and precious, represents all the negotiations people have made with each other that allows society to grow and prosper. The bull represents the executive: as each person cedes their individual rights and powers to the government, the bull becomes more dangerous, and eventually it must be restrained. Every law that the people pass through their representation in government becomes a rope to hold the bull in place. There is a delicate balance here: we want the bull to be sufficiently mobile that it can deter potential wrongdoers, but we also want to ensure it does not destroy the dishes we have so carefully arranged in our shop. If the restraints become too lax or frayed, the bull can escape and wreak havoc. If the restraints are too tight, then there is no real deterrent for criminals.

We might stop to consider whether this “bull” is a phenomenon of nature. Why is monarchy the form of government which has emerged so often? If a legislature is never created, it seems that a monarchy would arise anyways. It would then follow that a legislature is not, as Locke argues, a natural step after the formation of society, but in fact a formalization of social rules to protect society from the form of concentrated power that will always surface. From this view, government is a continuous battle between the individual powers as exercised through representation, and a concentration of those same powers into a single entity which must be controlled. In other words, the legislature acts with dual roles, both to enable the people, and to protect them from unmitigated tyranny.

Let's return to our opening story. One reason it seems outrageous to us is that we're used to the penalty being proportional to the crime. But why should that be the case? The answer is simple: when we give up our natural rights, in return we expect those rights *and* the well being of society to be considered. When enforcement of the laws which ostensibly protect our rights deviates from ensuring the good of society, it becomes tyrannical in nature and breaks the contract which binds us in allegiance to it. In other words, if our rights are violated by the very institution that we created to protect them, then the institution must be changed or dissolved.

One of the first questions we raised was about the purpose of government, and now we should turn to address the purpose of law. If we agree that an enforcer of power will always emerge, whether through personal charisma or through someone tasked with carrying out the decisions of a legislative body, we are forced to revisit theories of human nature. Does it make sense to assume the best, and then endure life under a Caligula, Nero, Napoleon, or Hitler? Or should we set up a safety net to protect ourselves and all of society from the harsh reality of what could be? In this sense, if power will always find a way to control, and if a group of people magnifies this power by ceding parts of their innate enforcing rights to it, then to be responsible and survive, we must restrain it. In this view, the purpose of the law is to restrain government: after all, why should the penalty for speeding *not* be immediate death, if an all powerful executive has decided it be so?

This scepticism of power is not new. Locke lived during tension between Parliament and the King, and in modern times, we see similar tensions in many countries. Note how, in the American Bill of Rights, the Amendments are all restricting what government can do, not advising on how citizens should live. In a democracy, when we vote, there is an expectation that our interests will be maintained, and when this does not happen, when the trust between the elected and electorate begins to fray, a Pandora's box begins to open. If this social contract breaks, the entire government dissolves, and all former members of the society enter into a state of nature where their aim becomes survival of their life and property. All rights which people had ceded to the government return, and, as people no longer have any obligation of allegiance to a government, they are justified in taking whatever actions necessary to preserve their inherent rights.