

People are born free into the state of nature, but a nature filled with many ‘inconveniences’ from which they wish to fly. Amongst their many freedoms, they each hold the executive power of the law of nature, the power that allows each to justly punish, using force if necessary, any other who might attempt to interfere with his own person and/or freedoms. The inconveniences in the state of nature, however, are many and each person wishing to depart agrees to pool his executive power of the law of nature in with those of the others. This is an express consent, a contract, to enter into ‘the community’. For by pooling together their executive powers, each consents to follow the majority’s will. And here we see the first tacit consent into which the individual in the community walks. For because the individual entered an express consent to follow the majority’s will, as soon as the majority wishes to enter the commonwealth, so must the individual.²

It seems evident that the only legitimate way of entering the community is through express consent, which every individual is likely to do in order to escape the ‘inconveniences’ of the state of nature. There is no room for tacit consent here for no criteria has yet to be set up for each individual to be aware what each of his actions may mean to others. It seems that only the most natural and instinctual of activities may be decipherable, expressly consenting being one. This, however, is no longer the case once one has entered the community, where social actions take on new meanings. Each person enters into the community as an individual, but enters into the commonwealth as a community. Thus, once one has entered the community, each individual is bound by the majority’s decision to enter the commonwealth.

So far, the steps leading to the commonwealth seem clear enough. Yet, there is a problem. The steps which have led us here only apply to the generation that entered into the community through express consent. What of their children? What of visitors from outside the community or commonwealth? With these considerations, problems arise. I will first approach the problem of strangers or non-citizens, for it will help clarify the distinction Locke draws between express and tacit consent. I will then turn my attention to the problem of children.

In Chapter VIII of the Second Treatise, Locke seems to distinguish tacit from express consent by placing the former over non-citizens and the latter over citizens. The citizen is more tightly woven into the commonwealth than the non-citizen, for who, for all intents and purposes, is a visitor. Since the commonwealth is set up for the protection of the properties of citizens, they are bound rather intricately to the commonwealth and thus, their consent must be explicit in nature. It is important to remember that being bound to

¹ Edition used: John Locke, *Second Treatise of Government*, C.B. Macpherson, editor (United States: Hackett Publishing Inc., 1980)

² David Lloyd Thomas observes this point in the *Routledge Philosophy Guidebook to Locke: On Government* (United States: Routledge, 1995), p. 34.

the laws of the commonwealth does not make one a citizen, non-citizens within the commonwealth must also follow its laws.

But first, the non-citizen enters into a tacit consent to oblige himself to the laws of the commonwealth within which he finds himself merely by being within the borders of that commonwealth. Locke writes, ‘ever man, that hath any possessions, or enjoyment, of any part of the dominions of any government, doth thereby give his *tacit consent*, and is far forth obliged to obedience to the laws of that government, during such enjoyment, as anyone under it; whether his possession be of land, to him and his heirs for ever, or a lodging only for a week; or whether it be barely travelling freely on the highway; and in effect, it reaches as far as the very being of any one within the territories of that government.’³ The issue arises whether it is important or not whether one consents to oblige himself to the laws of the commonwealth in full knowledge of doing so or in ignorance. For it is conceivable that a passing highwayman might not be aware of stumbling into a commonwealth with laws which he objects, nor may a visitor know of the laws in any given commonwealth into which he enters. What is to happen to those who trespass against the law without any knowledge of doing so? What is to happen to those who are unaware of the implications of their actions? This is a live political issue. Which commonwealth is to claim sovereignty over an individual, the one to which the individual is a citizen or the one in which he finds himself?

Another point of interest here is the tie between possession of property and tacit consent. For elsewhere Locke claims that when the individual is approached with an offer of inheriting property, he has two options. 1. Turn down the inheritance. 2. Accept the inheritance and thus be bound to the laws of the commonwealth to which the property belongs. The obvious reasons for this link between the acceptance of property and tacit consent are that first, a person is a part of his property and tied to his property. Property for Locke includes not just land and other material goods, but also the self. Second, the accepting of property takes the form of an express consent (one is consenting to take ownership and responsibility of property) and attached to that is the tacit consent of obliging oneself to the laws of that commonwealth, because the property is linked to and makes up part of the commonwealth. Thus, under these two claims once one owns property in a commonwealth, it is as if he is in the commonwealth (since property and the self are conjoined) and while an express consent is given to one it is understood that the other is also agreed to.⁴ Locke makes this point explicitly: ‘Whoever therefore, from thenceforth, by inheritance, purchase, permission, or otherways, *enjoys any part of the land*, so annexed to, and under the government of *that commonwealth*, *must take it with the condition* it is under; that is, *of submitting to the government of the commonwealth*, under whose jurisdiction it is, as far forth as any subject of it.’⁵

Thus anyone within the boundaries of a commonwealth, either through himself or possessions, submits himself to the laws of that commonwealth. Non-citizens as well as

³ II. §119.

⁴ Further evidence for the point raised here may be found at II. §73 and II. §120 and is furthered by David Lloyd Thomas (p. 37).

⁵ II. §120.

citizens are bound to the laws of the commonwealth. Now let us focus on the consent necessary to become a citizen. Tacit consent is not here enough to establish one as citizen, for the citizen commits more of himself to the commonwealth than the non-citizen, who severs his ties by simply removing his possessions from the commonwealth.⁶ The citizens, on the other hand, 'is perpetually and indispensably obliged to be, and remain unalterably a subject to it, and can never be again in the liberty of the state of nature; unless, by any calamity, the government he was under comes to be dissolved; or else by some public act cuts him off from being any longer a member of it.'⁷ It does not seem that holding one bound to citizenship for merely being within the borders of a commonwealth (tacit consent) makes much sense. For then each time one crossed borders, one would either have to gain a new title of citizenship or discard the last and replace it anew. This seems absurd.

It seems that the strength of the tie between citizen and commonwealth goes hand in hand with express consent. This is a necessary link for Locke, for one cannot entrust his powers onto a commonwealth without knowledge of doing so. And as mentioned before, it seems possible to give one's tacit consent in ignorance of what one is consenting to or is consenting at all. Locke makes the distinction between citizen and non-citizen quite clear and writes, 'And thus we see, that *foreigners*, by living all their lives under another government, and enjoying the privileges and protection of it, through they are bound, even in conscience, to submit to its administration, as far forth as any denison; yet do not thereby come to be *subjects or members of that commonwealth*. Nothing can make any man so, but his actually entering into it by positive engagement, and express promise and compact. This is that, which I think, concerning the beginning of political societies, and that *consent which makes any one a member of any common-wealth*.'⁸ It seems obvious from a Lockean point of view that simple tacit consent is unable to meet the burden of entering into citizenship. For the obligations of being a citizen exceed those of non-citizens and one should enter into such an entrustment of power with full knowledge of what one is obliging oneself to, especially since one should not leave those obligations at whim, which the non-citizen is in the full right to do.

Finally, there is the issue of children and those unable to think for themselves. Such people are unable to give express consent, yet they live in the commonwealth and enjoy its privileges. Indeed, it might be said that their existence is supported by the commonwealth in which they live. It seems that such people are simply unfit to provide express consent and thus cannot be citizens until such time that they may think for themselves. For children, this would be when they come of age, but for the others, it might be that they never become full citizens of the commonwealth in which they live. If this is the case, are they considered unequal to others in the state of nature or the community from which they may not emerge?

Do such people's extended lives within the commonwealth grounds for an entrance into citizenship via tacit consent? Locke makes it very clear that a child does not take on the

⁶ II. §121.

⁷ Ibid.

⁸ II. §122.

religion and citizenship of its parents, but what if the child resides in the commonwealth? Such residence might not be equivalent to what Locke had in mind when he wrote of visitors to the commonwealth, for the child spends his life in that place of residence. Thus, it might be possible that the child is born citizen but when it comes of age, decides whether or not it wishes to remain so, and either gives the commonwealth its express consent and remain citizen or holds it back and is no longer one. But such an easy exit option makes it look again like the scenario in which the child is not a citizen until it comes of age, at which point it decides the issue. Locke provides the answer with the following: 'It is true, that whatever engagement or promise any one has made for himself, he is under the obligation of them, but *cannot*, by any *compact* whatsoever, *bind his children or posterity*.'⁹ And thus it seems that unless one is willing and able to provide the commonwealth his express consent, he will remain but a stranger to it.¹⁰

It seems that Locke had no clear place for tacit consent in the making of citizens, but one could so bind himself to the laws of a commonwealth. The first step into community can only be by one's own express consent, after which one is part of the unit thus created, which working together acts on each person's express consent. This move is made by the first generation entering community. Thereafter, each individual enters into the commonwealth as citizen once he has come of age, otherwise he will live within the commonwealth as a non-citizen, bound to its laws, until the moment he decides to depart with all his possessions.

⁹ II. §116.

¹⁰ See also II. §73.