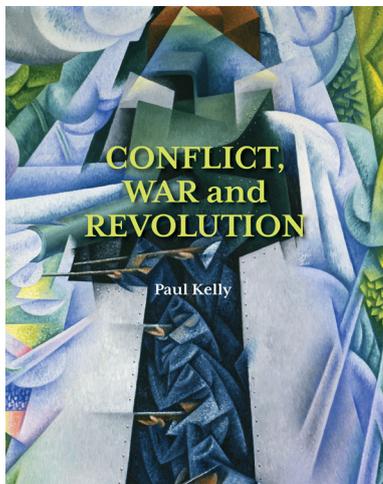


Locke - Liberalism and the externalisation of conflict

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CHAPTER 6

Locke

Liberalism and the externalisation of conflict

The second of the great social contract theorists is John Locke. In contrast to his predecessor Hobbes, Locke is considered an early liberal because he argued for a constitutionally limited conception of sovereignty that protects individuals' rights to life, liberty and property. I give an overview of Locke's social contract theory and his account of the constitutional sovereign state. The state of nature, the law and right of nature, and the theory of consent form a central part of the discussion as these are areas where Locke differs importantly from Hobbes.

I also explore Locke's arguments on the right of revolution and the theory of property, which is linked to trade and colonial acquisition. His connection to colonialism and its impact on his theory are discussed in light of what is known as the 'colonial turn' in political theory. I conclude with a discussion of Locke's state theory, his views on the normative status of non-constitutionally limited powers, and the extent to which they should be recognised by legitimate states. Because of his moralistic natural law theory, Locke is often thought of as a source for liberal idealism. However, the chapter concludes with a discussion of his relationship to the realism/idealism distinction and his defence of a militant liberal order in the international realm.

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At the end of his chapter on the English political philosopher John Locke, the author Robert A. Goldwin writes:

Locke has been called America's philosopher, our king in the only way a philosopher has ever been king of a great nation. We therefore, more than many other peoples in the world, have the duty and the experience to judge the rightness of his teaching. (Goldwin 1987, p. 510)

Amongst historians of political thought, much scholarship over the last few decades has been focused on wresting Locke's reputation away from those who wish to see him primarily as the philosopher or ideologist of the American founding and the constitutionalism or legal liberalism that follows from that. This effort can take the form of showing that Locke's arguments were engagements in 17th-century political theology and debates that are a world away from the fundamental tenets of liberal ideology – notably, his denial of toleration or civil accommodation of atheists or Roman Catholics. Alternatively, it can seek to show that the American founding was more influenced by the republican heirs of Machiavelli, such as James Harrington and Montesquieu, than by individualist contractarians such as Locke. Some authors have also argued that the very idea of liberalism as a coherent political ideology is problematic before the 19th century.

But what is most interesting about Goldwin's quote above is not simply the allusion to Locke's impact on the domestic constitutional order of the United States but the more general implication that there is something 'American' about Locke. By this, of course, is meant the United States, an association that many American students and scholars recognise but which is also acknowledged in the way in which Locke and Lockean liberalism is seen amongst international relations theorists. If Thomas Hobbes is the classic source of modern structural realism, his fellow contract theorist Locke occupies a middle position between realists and idealist internationalists and cosmopolitans. Instead of the international domain being a 'warre of all against all', with every state in constant fear for its security, the liberal vision is one of broadly peaceful competition and occasional cooperation between states pursuing their interests in a world without a permanent international order (Doyle 1987). This cooperation can and does give rise to international institutions and rules that facilitate the mutual pursuit of interest that Joseph Nye and Robert Keohane argue is a better characterisation of international affairs than the narrow security-focused realism of Hobbes-inspired theorists such as Kenneth Waltz (Nye and Keohane 1977).

Within this broadly liberal paradigm, part of which seems to reflect Locke's political theory, there is also a place for hegemonic powers that reinforce the rules of cooperation and collaboration whilst there is convergence of interests between all participants on the scheme of cooperation and the hegemonic power. At least until very recently, during the period when Donald Trump was U.S. president, this coincided with the United States' image of itself as both

a partisan actor in international affairs *and* as the guarantor of a rules-based international order in global economy – using its military force to sanction in support of that order rather than simply to pursue its own narrow national interest (Ikenberry 2020). This complex self-image of the United States as the last best hope for a benign liberal order is challenged from all quarters, including within the U.S., since Trump is only the latest manifestation of a nativist and isolationist tradition in U.S. politics. Critics see it as a cynical self-deception, a mask for a disguising a realist and assertive national policy, or a tragic example of Periclean democratic hubris. And, although the U.S. belief is now at some remove from Locke’s own thought, it is inevitable that some of this perception is read back into the understanding of Locke’s arguments and legacy. Similarly, central aspects of Locke’s arguments and philosophical style have a bearing on how liberal aspirations and intentions are perceived when applied to the international realm as the space between legitimate states, and to their relations with illegitimate states or peoples without states.

Locke’s arguments most closely connect with the politics of international liberalism in his views on state legitimacy and the claims and normative status of individuals. There is another important element of liberal internationalism that is not directly addressed in this chapter. It draws on Montesquieu and Adam Smith, because Locke was a mercantilist at least with respect to economic policy, and saw global trade in terms of a zero-sum competition. Locke’s contribution to international liberalism is chiefly in terms of the architecture and legitimacy of a state-based system of liberal legalism, as opposed to empire or some other structure for state politics (Armitage 2012; Kelly 2015). For contemporary cosmopolitan theorists and revisionist just war theorists (such as Jeff McMahan and Cecil Fabre), Lockean arguments have important normative implications that are to be commended. For others, Locke’s arguments contribute an important source of instability in international affairs or (at the most extreme) they undermine the possibility of any international order. Of most interest here is that Locke is both a source of the conceptualisation of the 21st-century liberal order and also a revolutionary challenge to that order with respect to the obligations of individuals and liberal states towards non-liberal regimes.

Living in interesting times – Locke’s political life

As in previous chapters, intellectual biography can be of varying use in understanding the arguments and significance of a thinker’s international or political thought. In some instances, biography can set a thinker’s ideas in the context of a debate or provide a key to unlocking its meaning, and in other cases it is of limited interest. In Locke’s case, his biography is most often examined to provide the key to his complex and not always consistent works. In 1689, after returning from exile in Holland, Locke published three great works: *An Essay Concerning Human Understanding*, the *Two Treatises on Civil Government* and

the *Letter Concerning Toleration*. The *Essay* is undoubtedly the greatest work of philosophy in the English language and established Locke's reputation as a leading thinker of the European Enlightenment. In it he develops an empiricist psychology that grounds all knowledge in experience. When coupled with the *Letter Concerning Toleration*, with its denial of the political right to impose uniformity of belief or religion, we see the emergence of a liberal enlightened philosophy that provided the philosophical underpinnings of the new science of Isaac Newton. But the radicalism of Locke's philosophy was to prove a problem for his political thought, which was never published in his lifetime under his own name, and which is based on natural law and natural rights. Whether there is a higher synthesis that reconciles the *Essay*, *Letter* and *Two Treatises* remains a major concern for scholars. But each work also gives rise to different emphases in the interpretation of Locke's biography.

In the case of the *Essay*, we might emphasise Locke's interest in medicine and his association with the emergence of empirical science and contemporaries such as Robert Boyle, Leibniz and Newton (Woolhouse 2009). The *Letter* emphasises the significance of Locke's interest in religion and religious accommodation and domestic politics (Marshall 2010). Turning to Locke's *Two Treatises* introduces an international dimension to his political thought, and one that is often overlooked when focusing on the politics of the Glorious Revolution of 1688 (Armitage 2012; Kelly 2015). This issue is becoming increasingly important in the view of many commentators, given the anti-colonial turn in Locke scholarship in the last two decades. This chapter also emphasises the international dimension in Locke's thought, but not simply in terms of his relationship to colonialism.

John Locke was born in Wrington, Somerset, in the west of England in 1632. His father had served in the Parliamentary forces in the English Civil War, and through that service and the patronage of the local MP he was able to send his son John to be educated at Westminster School in London (where he was to witness the execution of Charles I) and then to study at Christ Church at Oxford. Whilst at Oxford, Locke held relatively conservative political views, as evidenced by his argument against religious toleration in the *Two Tracts* of 1660. But he also cultivated an interest in medicine and natural science, which brought him into contact with Anthony Ashley Cooper (the Earl of Shaftesbury), who led the Protestant opposition to Charles II's policy toward Catholic France. Shaftesbury suffered from an abscess on his liver that became the subject of an effective (if improbable) operation conducted by Locke. The success of the operation began a personal and political relationship between Shaftesbury and Locke, which brought Locke into both government service as a commissioner on the Board of Trade and Plantations and secretary to the Lords Proprietor of Carolina, as well as involving him in the radical politics around opposition to Charles II and his Catholic brother James, Duke of York. During this period Locke drafted the *Fundamental Constitutions of Carolina* in 1669 and began his lifelong association with North American colonial administration.

Only Machiavelli, as a diplomat, or Thucydides, as an Athenian general, rivals Locke's practical engagement with international politics. However, Locke's early political career as an associate of Shaftesbury was precarious because of the latter's political hostility to James, Duke of York. With Shaftesbury's fall from favour in 1675 as a result of his opposition to James's accession to the throne (the so-called Exclusion Crisis), Locke took up the opportunity to visit France from 1675 to 1679. He returned to England following a brief return to power by Shaftesbury only to have to flee to the Netherlands in 1683 after the uncovering of the Rye House Plot to assassinate Charles II and James. Locke's friend and political correspondent Algernon Sydney was executed, and Locke rightly feared for his own life in light of his manuscript for the *Two Treatises*, which were written (amongst other things) as a justification of the exclusion of James, Duke of York, from the throne and a popular right to revolution.

For six years, Locke lived in exile and hiding, avoiding spies who sought to assassinate or kidnap him and return him to trial in London. During that time, he was also associated with plotters seeking to overthrow James II as the legitimate monarch and to replace the government. This aspect of Locke's political life has been wonderfully captured by the Locke scholar Richard Ashcraft (Ashcraft 1986). It brings into stark relief the ways in which Locke's arguments challenge fundamental aspects of the state-based system of international relations that we think we have inherited from the late 17th century. Locke denies states' rights and defends intervention by individuals and legitimate states in disputed periods of revolutionary turmoil, in ways that 21st-century theorists would consider a breach of international order or even justifying terrorism.

In 1688, an invasion by Prince William of Orange (the husband of James II's Protestant sister) and an insurgency within England overthrew James II, who fled to France. Locke returned to England but only published his *Two Treatises* anonymously because of fears of their potentially revolutionary message. Locke returned to government service and economic and trade policy. His last active period as a senior official in the new regime was during an important English expansion and imperial consolidation. This process led to the eventual union of 1707 between England and Scotland that fostered the emergence of Britain as a major maritime imperial power in the 18th century, and Locke was for a time at the heart of colonial and foreign policy. He died in peaceful retirement in 1704 in Essex, in the care of his friend and intellectual companion Damaris Masham.

The bloodless so-called 'Glorious Revolution' of 1688 and Locke's place within it both had subsequent impacts on the American founding. Yet, this history has obscured both the revolutionary nature of Locke's liberalism and the extent to which this is also shaped by his international experience and thinking about international affairs. I argue that Locke's focus on the role of the sovereign state within international affairs was always an essential part of his philosophical politics.

The state of nature, natural law, punishment and war

Modern students rarely read the first of Locke's *Two Treatises* for enlightenment and edification. It comprises a long and detailed refutation of Sir Robert Filmer's *Patriarcha* (1680), in which he sought to justify political absolutism as a form of patriarchal rule that can be traced through scriptural sources to Noah's sons. As God had given all dominion over the earth to Adam and through him his sons, so, following the biblical flood, the sons of Noah inherited this divinely ordained right to rule. It is from this that the authority of kings arises, but also, most importantly, their dominion or ownership of the land comprising their territory. The ideological value of this argument for the defenders of Stuart absolutism was that it denied the right to taxation by consent. If the king already owned everything, then all so-called private property was really only enjoyed on terms that could be varied without consent. Locke's argument in the *First Treatise* rejects Filmer by providing an alternative reading of scripture.

In the *Second Treatise* he set out to defend political authority as altogether different from the power of patriarchs or fathers. He defines political power as:

a Right of making Laws with Penalties of Death, and consequently all less Penalties, for the Regulating and Preserving of Property, and of employing the force of the Community, in the Execution of such Laws, and in the defence of the Common-wealth from Foreign Injury, and all this only for the Publick Good. [II § 3] (Locke 1988, p. 268).

The task of the remainder of the *Second Treatise* is to explain the origin and justification of this conception of political power and its implications. Like his near-contemporary Hobbes, Locke provides an abstract contractarian defence of political power and government, avoiding reference to scripture and drawing on a state of nature, an account of natural law and natural right and a contract or agreement. But there is a great difference between their two views.

The state of nature

Hobbes famously described a state of nature in which the 'life of man [is] solitary, poore, nasty, brutish and short', as the basis for his defence of absolute sovereignty. Like Hobbes, Locke seeks to abstract from our experience and to give an account of a world *without* political authority as a reason for creating it: once again, political authority and the state is an artifice of human creation. Locke's account of the state of nature has three important features. Firstly, the state of nature is a 'state of perfect freedom' in which people are free to act and dispose of their own possessions 'within the bounds of the law of nature'. Secondly, there is a law of nature that is binding independently of political power. Thirdly, the state of nature is a 'state of equality', where this is a normative or

obligation-creating claim and not merely a descriptive claim. Locke's state of nature departs from that of Hobbes in that it is sociable and includes the acquisition and exchange of property and possessions. Indeed, in Chapter V of the *Second Treatise*, Locke provides a famous account of the pre-political acquisition of private property in land, one that forms an important part of his analysis of colonialism, to which we will return. For Locke, the pre-political world is a world of moral obligations and duties in which all men are free and equal. This is precisely the claim that Filmer sought to deny by emphasising patriarchal or parental subjection as the natural condition.

In contrast, Locke claims that people in the state of nature are both morally free and equal. People are free in the sense of not being subject to the domination or direction of others. But this is not a state of licence where they may do anything they wish: no one is free to kill another human being at will, nor are they free to wilfully destroy anything in nature. As a moral concept, freedom is something that all enjoy as a right of nature, so the state of nature is a condition of moral equality. Individuals in the state of nature are not merely equal in their power to cause harm or threaten others; they are morally equal in having a claim on other agents to act or refrain from acting in certain ways. Locke's argument for this fundamental moral claim of individuals to be free and equal is elusive and controversial; it is introduced in §§ 4–5 with a reference to Richard Hooker's book *Law of Ecclesiastical Polity*. But Locke is aware that a reference to authority is not a philosophical defence of the claim. The argument is developed by linkage to the idea of property: 'For Men being all the Workmanship of one Omnipotent and infinitely wise Maker ... they are his Property, whose Workmanship they are, made to last during his, not anothers Pleasure' [II § 6] (Locke 1988, p. 271).

Locke argues in Chapter V, 'On Property', that the exercise and mixing of labour with unowned nature establishes a *prima facie* claim over the product of that labour. Consequently, if we are created, then our creator owns us, thus precluding any intermediate rights or authority over persons. This right of prior ownership means that human beings do not own their own bodies as persons, at least in the sense of having a freedom to commit suicide. People have a duty to preserve themselves and where possible a duty not to destroy others: this is the foundation of Locke's concept of natural rights.

Every one as he is *bound to preserve himself*, and not to quit his Station wilfully; so by the like reason when his own Preservation comes not in competition, ought he, as a much as he can, to *preserve the rest of Mankind*, and may not unless it be to do Justice on an Offender, take away, or impair the life, or what tends to the Preservation of the Life, the Liberty, Health, Limb or Goods of another. [II § 6] (Locke 1988, p. 271)

On this argument we are all equal under God. But, of course, this argument depends upon a theistic premise about the existence of a creator, which Locke

was happy to accept as a rational belief but which 21st-century moral individualists find less persuasive. Some scholars have even argued that Locke's *Two Treatises* was only published anonymously because he was unable to provide a rational foundation for his fundamental moral convictions that withstood the challenge of his sceptical and empiricist psychology in the *Essay Concerning Human Understanding*.

Locke does not provide a simple list of natural rights, but these can be inferred from his account of what is necessary to preserve life, that is, such things as the liberty to find sustenance through labour and the means of sustenance such as food, clothing, shelter, protection. These rights are the basis of claims we have upon others and they have upon us, and that is the basis of the law of nature in Locke's theory. But, as we have a duty to preserve ourselves, these rights are mostly negative rights to be unhindered in the pursuit of food, as opposed to placing others under a duty to provide it.

The *State of Nature* has a Law of Nature to govern it, which obliges every one: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty or Possessions. [II § 6] (Locke 1988, p. 271)

The law of nature as a law of reason no doubt raises important questions about moral epistemology that the *Essay* makes difficult to answer. But, leaving that issue aside, Locke does think that the law of nature creates genuine obligations by the distribution of duties. Through having a right to life, a person is the beneficiary of all other persons having a duty not to kill them. Similarly, in enjoying liberty, one is also the beneficiary of others having duties not to limit one's freedom. Yet, that does not mean that Locke has a straightforward beneficiary theory of rights, because some natural rights (such as the right to acquire property) are liberties that impose no duties on others. They are merely the freedom of a person to act in a certain way through labouring or appropriating. But, when one has acquired or laboured, then others are under a duty not to interfere. The point is that the fundamental right is not derived from a prior duty. Central to Locke's natural law theory is the idea that the violation of a right or a duty is an objective wrong and as such should be subject to punishment.

Punishment and the executive power of the law of nature

One very important feature of Locke's account of the law of nature is that it is genuinely a law and not merely a belief about what we should do. As we have just seen, the law of nature is a sanctioned reason, one for which non-compliance merits punishment. Law and punishment go together. Yet, more than this, the law of nature is complete in the state of nature; it is a real law and not

an indication of a law, and that is because it has a real and legitimate sanctioning power: 'the *Law of Nature* would, ... be in vain, if there were no body that in the State of Nature, had the *Power to Execute* that Law' [II § 7] (Locke 1988, p. 271). That is because everyone in the state of nature enjoys the executive power of the law of nature and therefore '*every Man hath a Right to punish the Offender, and be Executioner of the Law of Nature*' [II § 8] (Locke 1988, p. 272).

It is only through enjoying this executive power of the law of nature that any man in the natural condition can come to exercise power over another person given their natural equality and the duty to preserve one another in the state of nature. When someone harms or kills another, they put themselves beyond the law of nature and become an outlaw. They live outside the law of nature and by another law. We can therefore, regard those who breach the law of nature as akin to a '*Lyon or a Tyger, one of those wild Savage Beasts, with whom Men can have no Society*' [II § 11] (Locke 1988, p. 274).

Whilst there is violence and force in the state of nature, this is only legitimate in the form of righteous punishment, otherwise it is precluded by the prior obligation to preserve one another. This executive power of the law of nature gives rise to two specific rights of punishment. Firstly, the right to punishment as restraint, and, secondly, punishment as restitution. The right to restrain is exercised by all people and not merely those who suffer injury or attack at the hands of criminals and outlaws. As we shall see, this third-party right of punishment is hugely controversial in international affairs. It can include the imposition of the death penalty on those who threaten or kill. This is the analogy with the lions, tigers and wild beasts with whom one cannot have society. Because people who behave as beasts harm not only their victims but all humankind, so all humankind also share that duty to restrain the threat and danger. Locke particularly singles out death as the appropriate punishment for murder. The defence of killing someone as an appropriate punishment, rather than as a mere side effect of defending oneself and others, is not fully explained. But it is clear from the reference to scripture that Locke's argument depends upon an idea of forfeiture. Does the death penalty apply only to murder?

Locke departs from the strict proportionality of 'an eye for an eye' by arguing that in the case of the lesser breaches of the law of nature appropriate punishments may involve judgements of a degree of severity sufficient to make the act 'an ill bargain.' As such, punishment is part retributive and part deterrent. The retributive argument supports the necessity and duty of punishing a breach of the law. On a strict deterrence theory, we might weigh up the cost of punishing against other costs and decide in some cases to withhold punishment because there will be no deterrent effect. However, for Locke, punishment is a duty that falls on us all because of the law of nature, and we do wrong not to exercise that power. The deterrent effect does play a role in deciding the severity and nature of the punishment. There is no simple connection between the nature of the crime and the character of the punishment, the sort of link we might infer from the use of the death penalty to punish murder. It is therefore perfectly

possible that the death penalty would be the appropriate deterrent for most crimes against property. Locke was concerned both about the problem of private violence and also about the legitimate exercise of private violence within the executive power of the law of nature (Frazer and Hutchings 2020).

Locke also identifies a further right to reparation. This right is different to the right of restraint, since it may be exercised only by the victim of the crime and not by third parties, as is the case with restraint. The right to reparation allows the victim or injured party to recover what is theirs, either by taking back what was stolen or by recovering its value. This right precludes anyone else from illegitimately benefiting from the proceeds of crime. But it is also important for Locke's later account of the competence of the political magistrate, for only the injured party can decide whether to pursue recovery, and no one else can claim to 'recover' what was illegitimately gained unless it was theirs in the first instance. If the state or third parties sought to recover the proceeds of crime without returning the full value to the original owners, then they too would be guilty of benefiting from the proceeds of crime, and that would put them in breach of the law of nature. The 'strange doctrine' of the executive power of the law of nature is one of the most challenging ideas. While it is clearly one of the building blocks of the idea of political authority, it is also not something that is wholly 'alienable' (i.e. capable of being lost, renounced or transferred). Central to Locke's philosophy is the idea that the pre-political world is moral and that the moral norms in this pre-political world not only create obligations but also carry legitimate sanctions and can displace the claims of politics. This is the genesis of one of the most controversial aspects of liberal universalism in the international domain. But, before turning to that issue, there is one further element of Locke's state of nature theory to address: namely, the place of war.

The state of nature is not a state of war

Locke devotes Chapter III of the *Second Treatise* to the topic of war, and the implication of the discussion for the state of nature is obvious, not least because of the contrast with Hobbes's state of nature picture. In Hobbes's case, war is the absence of law and sovereign authority. For Locke, the absence of sovereign or political authority (as he describes it) is perfectly compatible with sociability, including primitive trade and commerce. War as a phenomenon must be incorporated into the idea of a world that is structured by the law of nature as a fundamental feature of the natural condition. It cannot be explained, as it is for Hobbes, merely as the absence of law and sovereign power.

In II § 16, Locke defines the state of war as a state of enmity and destruction that arises when a person declares by 'Word or Action' a 'sedate settled Design' on another's life (Locke 1988, p. 278). When this design is declared, the person so threatened has the right to destroy that which threatens his destruction, on the grounds that the law of nature requires that all may be preserved.

When a person threatens the life of another, he effectively forfeits his own right to be preserved, and can therefore be killed as one would kill a wild animal or other creature beyond the law. The argument here is similar to the defence of punishment, where inflicting violence and death is justified on the grounds of forfeiture. In § 18, Locke argues that I may kill a thief even though they may not directly threaten my life, because the thief is putting himself beyond the law of nature by attempting to put me under their power. In restricting my freedom or depriving me of my property, I am entitled to assume that the thief might take away everything else, including my life. As there can be no reparation if the thief does kill me, I do not have to wait for the act and then seek to punish the culprit. The duty of self-preservation entitles me to kill the thief as an unjust aggressor who is effectively waging war with me.

Three important features of the argument follow. Firstly, the state of war is not necessarily a passionate and hasty act such as wantonly striking another. Instead, it is seen as a 'sedate settled Design' on the life of another. Secondly, a threat to the life of another is a legitimate ground for a person to assert their right of self-preservation against the potential aggressor. The aggressor must show or declare his intention to threaten the life of others, but need not have acted on that declared intention to be a legitimate target of defence against aggression. This declaration of intention can be in words or deeds (such as preparing for an invasion to impose Catholicism on Protestant England). But, in contrast to either classical or contemporary realism, the mere existence of an alternative power who could pose a threat is not the expression of a 'sedate settled Design'.

Locke's position rejects the structural threat embodied in the 'Thucydides trap' or security dilemma in the anarchical condition of modern realism. Examples such as Phillip II of Spain's Spanish Armada of 1588 or Louis XIV's support for Stuart absolutism in the so-called 'popish plot' provide Lockean examples of communicated 'sedate settled Designs' – just as for George Kennan it was the USSR's ideological support for global revolution and not simply its military power that made it a military threat. Of course, the reverse of the Lockean position is also a problem for contemporary liberal universalism. If states do not support Lockean natural rights or contemporary human rights (which are not exactly the same thing but are sufficiently close for the argument), then they are liable to punishment and hence threaten in a 'sedate settled Design' a liberal state order committed to promoting universal liberal norms. This is precisely the concern of contemporary critics of a liberal U.S. foreign policy such as John Mearsheimer (2017). They claim that liberal universalism tends to collapse into a security threat to others who fear they may not be regarded as rightly ordered states and peoples. Finally, Locke does not confine the state of war only to rightly constituted authorities such as monarchs or states. In this way he departs from the traditional 'just war' theory of Aquinas or Vitoria, which asserts that only princes can go to war with one another. A state of war can exist between princes, between princes and subjects, and between

individuals and non-state groups punishing breaches of the law of nature. This idea has been resurrected by the cosmopolitan just war theorist Cécile Fabre (Fabre 2012). In II § 17, Locke argues that anyone (person or prince) who seeks to put another under his absolute power is effectively declaring war on that person as this involves a declaration of a design on a person's life and freedom. Regimes such as Louis XIV's France were a permanent threat to the law of nature and necessarily posed a 'sedate settled Design' on the rights of others and Englishmen. So the new English state under William III was effectively in a state of nature with France with a possibility of a state of war.

Locke's argument is both an answer to the conflation of the state of nature and the state of war that is to be found in Hobbes and a lesson for international theory. In II § 19, Locke denies that the state of nature is a world of 'Malice, Violence and Mutual Destruction': it is properly understood as a state in which men live without a common superior on earth with the power to judge between them, whereas a state of war is initiated when one uses 'Force without Right' to threaten others (Locke 1988, p. 280). The state of nature can be a state of war but is not identical. Similarly, and importantly for Locke, the state of war can obtain *within* a society or state if its functionaries and rulers use force without right or legitimacy. Locke is quite explicit about this in II § 20, where he writes:

where an appeal to the Law, and constituted Judge lies open, but the remedy is deny'd by a manifest perverting of Justice, and a barefaced wresting of the Laws, to protect or indemnifie the violence or injuries of some Men, or Party of Men, *there it is hard to imagine any thing but a State of War*. For wherever violence is used, and injury done, though by hands appointed to administer Justice, it is still violence and injury. (Locke 1988, p. 281)

Locke's state of nature is sociable, moral and not reducible to a war of all against all. In making this claim, Locke does not simply offer the state of nature as a hypothetical model. He draws on the experience of the relations between states and kingdoms as an example of the state of nature. In this respect, his liberal universal order is a more realistic description of international affairs than theoretical realisms:

That since all *Princes* and Rulers of *Independent* Governments all through the World, are in a State of Nature, 'tis plain the World never was, nor ever will be, without Numbers of Men in that State. [II § 14] (Locke 1988, p. 276)

Between states or rulers there is no higher human legislative institution or world state, but that does not mean that there is no law between rulers. States and princes are not entitled to do anything they wish one with another. When one breaks the natural law, another has a right to go to war to punish the breach

of the law of nature. It is only by virtue of this law-governed state of nature that a ruler can punish a non-national for breach of the law and that a resident alien can seek redress for breach of the law in respect of property rights. A non-national engaged in international commerce and trade is entitled to seek punishment for interference with their property or person, even though they have not consented to be ruled by the prince. Keeping faith or keeping contracts is an obligation independent of being members of the same political society. If this were not the case, there would be little reason to engage in international trade and commerce.

Property, territory, colonies and conquest

If Locke's argument were simply to justify legitimate political rule, then the attention that he devotes to the pre-political acquisition of property would be curious. But the fact that he devotes a long and extended discussion to the concept in Chapter V suggests that it has an important place in the argument. This can be best understood if we look at Locke's account of state legitimacy from an external as opposed to the domestic perspective.

Property and territoriality

In the pre-political state of nature, individuals can acquire and enjoy property and possessions under the law of nature. The question for Locke is how access to a common resource for the preservation of our lives gives rise to a private right to exclude others in the enjoyment of property. Near contemporaries of Locke such as Grotius (1583–1645) or Pufendorf (1632–1694) believed in aboriginal common ownership of the world, but this created the problem of how people moved from a common right to private right – including the right to exclude people without violating their natural rights. Locke's revolutionary response avoids this problem by conceiving of the world only as a common resource from which individuals can take in order to preserve themselves under the law of nature. His ingenious move, which has perplexed subsequent scholars, is to argue that the natural condition already contains a form of private property right, namely property in one's own person or body.

We have seen this argument in the context of the derivation of natural rights, where the fundamental premise is that, as all part of creation, we are God's property, which excludes all relations of natural dominion or subordination between people. Having sole responsibility to God for our well-being and agency, we are effectively the owners of our own bodies and what results from our bodily agency, namely labour: 'Man (by being Master of himself, and *Proprietor of his own Person*, and *Actions or Labour* of it) had still in himself *the great Foundation of Property*' [II § 44] (Locke 1988, p. 298). Locke also emphasises labour as the primary source of value:

I think it will be but a very modest Computation to say, that of the *Products* of the Earth useful to the Life of Man 9/10 [nine tenths] are the *effects of labour*: nay, if we will rightly estimate things as they come to our use, and cast up the several Expences about them, what in them is purely owing to *Nature*, and what to *labour*, we shall find, that in most of them 99/100 [99 hundredths] are wholly to be put on the account of labour. [II § 40] (Locke 1988, p. 296)

The fact that labour is central to Locke's account of value and property is significant for his account of colonial acquisition, but how does it create an exclusive right to things? After all, private property is not simply access to objects in order to secure subsistence. A right to private property, especially if this is to be applied to land, must entail a right to exclude others from what is taken and transformed. How does Locke link labour and exclusive ownership or the transition of a common resource into private property?

The argument from labour provides part of the answer. In a world that is unowned, the transformation of the matter of nature into something valuable by human labour creates a *prima facie* argument for the justice of ownership as control. The crops my labour has grown on the land would not have been there but for the work of clearing, enclosing and cultivating the land. This alone suggests a *prima facie* claim on the product of labour, at least to the extent that no one else can (other things being equal) claim a prior right to that produce. Fairness supports the argument from labour.

But labour is not sufficient for two reasons. Firstly, whilst exercising labour might well create a productive resource that did not otherwise exist, it can at least be asked why that labour is not just wasted effort. Secondly, the enclosure and cultivation of land already assumes a prior right to enclose and exclude and this must assume the land is not previously owned or subject to a prior right. As we have seen, Locke denies that the world is originally owned in common so there must be unowned land for private acquisition. This leads to his adoption of the concept of *terra nullius* (unowned or empty land), which can be traced back to the Roman writer Tacitus, and is the foundation of colonial acquisition. Locke's answer to the first problem is the 'labour mixing' argument:

The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he has mixed his *Labour* with, and joyned to it something that is his own, and thereby makes it his *Property*. [II § 27] (Locke 1988, pp. 287–288)

Labour is not only the activity that transforms nature and which creates value; it is also something that can be physically and permanently joined with a thing, so extending the private right to one's body to the thing itself. Thus, by attaching something that was privately and exclusively owned to a common resource,

Locke creates private property in land that is transformed and its produce. Locke adds two important caveats to this basis of right. The first is the 'enough and as good' condition, which entails that all others are not denied the right to access unowned land in order to secure their own subsistence. The second is the 'non-spoilage condition'. No one can exclude others from what is being allowed to spoil and go to ruin. The former constraint is the more important, because it does suggest a problem for future generations arriving in a world where all the valuable and productive land has already been acquired. How could they acquire property and therefore secure their self-preservation? Does this not undermine the right to original acquisition?

Locke's first response is to describe the emergence of the money convention in the state of nature. The adoption of precious metals as a repository of value that can be the basis of exchange creates the possibility of a property right in labour that can be exchanged for wages. In effect, everyone has the ability to acquire property through the sale of their labour, so the 'enough and as good' criterion is satisfied. More interestingly, from the perspective of colonial acquisition, are Locke's many references to North America as a near boundless source of unoccupied land that can be acquired by enterprising people who are prepared to transform brute nature into productive land. Locke believed in the abundance of land in North America whilst recognising the fact of settled societies of the First Nations. Clearly there is a problem about how much territory and land they owned in the context of his account of acquisition. He certainly believed that settled communities such as the Iroquois nation did own property and controlled territory – that did not diminish his belief in the abundance of North America. This is clearly part of the prospectus of the colonisation companies establishing settlement in the new world.

Locke refers to North America as a potential opportunity for initial acquisition, and he also refers to the aboriginal population of Native Americans. Yet surely, if there are such people, then North America is not all *terra nullius* or wasteland free for colonisation, because parts belong to its original inhabitants. Locke's argument seeks to get around this problem through his labour theory of acquisition and the labour mixing argument. The key to this approach is not simply an argument from use but about the nature of that use, where labour transforms nature and creates something new. Native Americans can justly exclude settlers from acquiring towns and villages and cultivated lands around their settled communities. But they cannot exclude settlers taking and transforming lands that they simply use as a common resource. In this way, traditional hunting grounds through which tribal bands roam are not in the Lockean sense 'property', such that an enterprising settler can be precluded from cutting down trees, clearing the land and planting crops.

As many subsequent commentators have argued, Locke may well be stacking the argument in his own favour here with an individualistic and early modern European conception of property that precludes ideas of collective ownership (Arneil 1996). But it is clear that Locke thought that use alone was not a ground

for excluding access by the industrious and enterprising to acquire private property. Once that property has been acquired, any subsequent interference with it becomes a breach of the law of nature that can be punished. However, it is the type of use that justifies initial acquisition by colonial settlers and not the defence of that property in just war against assailants.

Conquest and colonies

Locke's discussion of conquest is informed by his theory of property and territory and places a constraint on the colonial acquisition of dominion over native populations. The argument against conquest as a source of legitimate dominion reasserts the claim that political societies can only be founded on the consent of the governed. So, although history might seem to show that many societies appear to arise from conquest and war, this is a mistake that confuses explanation with legitimation and justification. Locke's original contract is primarily concerned with a normative as distinct from a causal process. Conquest does not create political societies; it only destroys them, and we should no more mistake it for creating legitimate political societies than we should mistake the demolition of a house for its construction [II § 175] (Locke 1988, pp. 384–385). In II § 211, Locke argues that the only way in which a political society is dissolved (as opposed to government, which can be dissolved by the people's right to revolution) is through 'the Inroad of Foreign Force making a Conquest upon them' (Locke 1988, p. 406). Consequently, if a conquest is the result of an unjust war, then it creates no more right to property than a thief can obtain by taking it by force. But not all conquests are the result of unjust wars and this has led scholars to speak of a right of lawful conquest in Locke's theory (Ward 2010, p. 287). This form of dominion arises as a result of the punishment of an unjust aggressive war, where invasion is the only way of preventing a 'sedate settled Design' or of punishing a direct attack. In this case, despotic rule is legitimate for a period, but Locke qualifies this right so much as to preclude just conquest as a ground for colonial acquisition or empire. Locke argues that the conqueror in a just war gains no lawful right over those who are engaged in conquest with him. This claim is prompted by risk that foreign backers of the Stuart cause might well expect landed titles in return for their support (Pincus 2009), as was the case with the followers of William the Conqueror in 1066. Furthermore, a just conqueror has an obligation to share the spoils of the just war with his companions, who in so far as they are engaged only in the pursuit of a just war are allowed to recover the cost of the campaign and to recompense any loss that resulted in the war in the first instance.

With respect to those subject to a lawful conquest, Locke argues that despotic rule only extends over those who were actually engaged in the prosecution of an unjust war and not peoples as such. Civilians and non-combatants are not only immune in battle but also not responsible for the unjust war, unless they

individually consented to it and participated in it. Only unjust aggressors forfeit their rights because the people cannot transfer an unjust power to their government, as it is not a power they possess. Therefore, it is the prince and his direct servants who must be held responsible for the breach of the law of nature as they have a responsibility to act only to protect civil interests and therefore to reject any illegitimate demands made of them by the people. The people are absolved because it remains the responsibility of government to decline popular demands for unjust aggression.

Those who engage in unjust aggression only forfeit their right to life and liberty: a just conqueror over them gains no right to seize an aggressor's property or that of their descendants or family, and hence wins no long-term territorial rights. Conquest does not circumvent the rights of private property, because these are pre-political. Unjust aggressors can be subject to charge, so that their property can be used to pay reparations for the aggression and for the legitimate costs of its punishment by war and conquest. However, the just conquerors' claim to just recompense cannot be so great as to force the family of an aggressor into death and destitution. In II § 183, Locke considers the case of the relative claims of just reparation and the absolute needs of an aggressor's family, and he concludes that the absolute need should prevail on the grounds of the natural law to preserve (Locke 1988, p. 391). The right to forfeiture undermines the claims of absolutists to base despotic rule on conquest as this only extends over the persons of unjust aggressors and not their property: it cannot give rise to jurisdiction over territory or over a people. To reinforce this point, Locke denies that territorial jurisdiction could be based on just reparation for unjust aggression, for even if reparations were charged to the 'last farthing' they would never extend to the value of the whole country in perpetuity.

Given his peculiar account of property and its relation to territoriality, as well as his practical involvement with the administration of the Carolina Colony, Locke is clearly an advocate of liberal colonialism. Yet, he is also unequivocally not a theorist of empire as that involves the illegitimate extension of sovereign dominion over the colonised. Indeed, by the 1690s, when Locke was a member of the new regime with responsibility for colonies, it was clear that his interest was far more directed towards trade than to territorial acquisition. Nor does he accept that conquest (even in defending against 'unjust aggression' by indigenous populations such as Native Americans) creates a right of dominion by conquest on behalf of settlers. The only grounds for legitimate colonisation are labour and the productivity of settlers in taking unoccupied land into productive use. Consequently, even if one accepts Locke's controversial account of property and initial acquisition, he has still set the bar for legitimate colonial acquisition so high that it probably precludes seeing the extent of colonisation of North America undertaken by Britain and France as legitimate. This has the peculiar consequence of making 'America's philosopher' (Goldwin 1987, p. 510) a critic of the legitimacy of the new post-revolutionary United States of America!

Political society, consent and revolution

The state of nature and the origin of private property are central to the account of Lockean liberal legalism in the international domain. But they are also very important in setting the parameters to the discussion of political authority as an extension or implication of the law of nature.

The original contract and origin of government

The state of nature is both a sociable and a law-governed condition, where primitive forms of property and trade are possible and where there is a genuine sanctioning power of the law of nature in the executive power of nature enjoyed by all individuals. In those circumstances it is not unreasonable to ask the anarchists' question: why, then, do we need any political authority or the state? Locke certainly thinks we do, and much of the argument of the *Treatises* is concerned to vindicate, as well as limit, government. To this end, he deploys the idea of a social contract but again his argument is very different from Thomas Hobbes's.

Although the natural condition is not a war of all against all, for Locke it does involve considerable inconveniences, which can be overcome by submitting to political authority. The greatest of these is the absence of a common and impartial judge. The initial definition of political authority makes it clear that politics is subordinate to the primacy of law and punishment, but, whilst that law has a sanctioning power in the state of nature, it does not have an impartial judge because we are all judge, jury and executioner in our own cases. This problem becomes destabilising when we add the problem of indeterminacy with respect to just or fair punishment. Although murder might warrant symmetrical punishment (a life for a life), when it comes to all lesser offences the justice of retribution and reparation is more complex. This technical absence of an impartial judge then becomes a source of instability where what one person may judge to be an appropriate response to their own case is judged to be an unjust imposition on behalf of another. In this way, we can see how tribal or family feuds could arise especially over land disputes, because of the absence of an authoritative judge. These disputes can escalate into situations that may look like a Hobbesian war of all against all. Yet they differ in that the Lockean problem is not the absence of a just law or rightful punishment but is simply about the fair implementation of these aspects of an objective moral order.

The state or political authority is the idea of a common judge who can determine a civil law with specified sanctions that ensures the just implementation of our natural law rights to enjoy our life, liberty, property and estate. The authority of such a state or common judge can only come from the pre-political authority of individuals to execute the law of nature. Accordingly, the first stage of creating a political authority involves recognising such a power, and this can

only be the result of a freely given agreement, hence Locke's turn to the idea of a social contract. Locke's theory is interesting because he also addresses the question of the nature and scope of the group over which such authority can be exercised. The first stage of his contract theory constitutes a people. Only once this is done can there be a second-stage authorising government. The second question can only be answered by the first. So how is a people constituted?

In the state of nature, the absence of an impartial judge matters most to those who are sufficiently close for property disputes or for the burdens of common protection to arise. Owing to such proximity, the initial agreement is to combine the enjoyment of property in land under the authority of a common judge by constituting private estates into a territorially constituted people. Men agree:

with other Men to joyn and unite into a Community, for their comfortable, safe and peaceable living one amongst another, in a secure Enjoyment of their Properties, and a greater Security against any that are not of it. [II § 95] (Locke 1988, p. 331)

This agreement to form a territorially constituted people is an *alienation* contract as it combines the enjoyment of private property within a political territory. Individuals do not forgo or limit their property rights except the right to subsequently secede with property in land to combine with another state. Once in a territorially constituted political community, real property in land cannot be unilaterally moved to the jurisdiction of another country; this precludes English Catholic aristocrats seceding from Protestant England to place their property under the jurisdiction of the French king. One can leave and take moveable property – but, once constituted as a part of a political community, that is the end of the matter, unless (as we have seen) a state is destroyed by war.

Having constituted itself as a single political community, there is still the question of the constitution or form of government of the state. This is also determined by a contractual agreement, but with the condition that the agreement does not have to be unanimous:

every Man, by consenting with others to make one Body Politick under one Government, puts himself under an Obligation to everyone of that Society, to submit to the determination of the *majority*, and to be concluded by it; or else this *original Compact*, whereby he with others incorporates into *one Society*, would signifie nothing, and be no Compact. [II § 97] (Locke 1988, p. 332)

The constitution of the state is therefore created by a majority decision amongst a people who have unanimously constituted themselves as a political society. This argument is interesting because it is partly a causal theory of the state that mirrors a possible historical account of actual political communities emerging from tribal alliances and conflict. But it is important to remember that Locke's

argument is ultimately an account of how *legitimate* political authority arises. Unless historically emerging political communities have this contractual form, they are not actually legitimate states but simply unjust coercive communities that enjoy no rights or duties from those subject to them, or enjoy no right of recognition from other legitimate states. As such, Locke's rather demanding criteria of legitimacy mean that many (perhaps most) actual states during Locke's time, or our own, will not be legitimate. They are therefore not exempt from the right of third parties to intervene and punish breaches of the law of nature (Simmons 1993, p. 16). This is also why Locke's dangerous doctrine remained anonymous during his lifetime.

Consent and the legitimacy of government

Locke was aware of how demanding his theory was, and the primacy he had given to a moralised notion of political legitimacy under the law of nature, hence the emphasis he places on consent and on prerogative. Prerogative is the discretionary personal power a ruler has to decide how to implement the law or protect civil interests in circumstances where the law or constitution does not prescribe or prohibit action. That said, prerogative has its limits, culminating in the right to revolution, as we shall see in the next section.

The concept of consent plays an important role in Locke's argument because the requirement of legitimacy must be met for all those who fall under political rule. Whilst an original contract amongst those who initially bind themselves into a political community, or who first constitute a state, might well be a source of obligation, how does this affect later generations born into political societies? For Locke, it is fundamental that they can only be subject to legitimate political authority if they too have agreed or consented to that rule. He distinguishes between two types of consent: express and tacit. The former is the most important and easily comprehended, taking the form of oaths of allegiance and office, or the recognition of formal structure, such as engaging in legal processes. This sort of argument is often used to explain how voters in elections can endorse the legitimate rule of a party they have voted against. By engaging in an election, citizens endorse the process for delivering and outcome, as well as expressing their own political preference. The problem with express consent is that it is still only likely to be something a small part of society engage in. To overcome this problem, Locke introduces the controversial idea of tacit consent:

No body doubts but an *express Consent*, of any Man, entering into any Society, makes him a perfect Member of that Society, a Subject of that Government. The difficulty is, what ought to be look'd upon as a *tacit Consent*, and how far it binds, *i.e.* how far anyone shall be looked on to have consented, and thereby submitted to any Government, where he has made no Expressions of it at all. And to this I say, that every Man,

that hath any Possession, or Enjoyment, or any part of the Dominions of any Government, doth thereby give his *tacit Consent*, and ... Obedience to the Laws of that Government, during such Enjoyment, as any one under it; whether this 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; [II § 119] (Locke 1988, pp. 347–348)

The comprehensive nature of Locke's conception appears to depart from the concept of consent, replacing it with a benefit theory of political obligation where duty is based on the enjoyment of political benefits. This controversial concept has continued to challenge subsequent scholars, but it reinforces the fundamental Lockean premise that political authority is a power that only individuals can place themselves under; it is not a natural condition of natural obligation (see Kelly 2007, pp. 104–112).

It is equally important to note that Locke's argument from consent is a legitimation of political authority and not ultimately individual laws and policies. These will need to be consistent with the demands of the law of nature and natural rights, but Locke is equally clear that there is no simple inference from the law of nature to specific laws and policies. He argues that the government must have prerogative powers to exercise on behalf of the governed in pursuit of and defence of the civil interests and natural rights of the people. To this end, the constitution contains a legislative power to make laws to protect our property, liberty and civil condition, and an executive power to ensure that our political rights and interests are protected. It must remain for government to determine the institutions that protect our rights and the extent of their powers in enforcing and protecting the law. This prerogative is exercised as trust on behalf of those who are ruled.

In the field of international affairs, Locke speaks of a federative power, which is the authority to enter into treaties, alliances and obligations with other states to advance and protect the people's interests. The federative power is exercised at one remove from ordinary citizens because it requires a knowledge and perspective that can only be obtained by those in government. In this way, we can see an implicit defence of a professionalised diplomatic service that informed policy by drawing on the knowledge and experience acquired in embassies and diplomatic missions of the sort undertaken by Locke in his early career. It also suggests that the people as a rightly constituted state acts together in determining the status and relations between political communities. It is for the whole political community to act as one in entering treaties and exercising the power of war and peace conceived of as a state power. These powers are clearly markers of the modern sovereign state.

Implicit in Locke's short statement of the federative power is the idea that interstate war and treaties are reserved powers for the state and not powers to be exercised by private individuals or groups of individuals contrary to the state's will. The creation of private armies and of private engagements with

other states for sectional and group benefits are also ruled out as illegitimate. At the same time, Locke acknowledges that the rightly ordered state remains in a state of nature with other political communities especially those that are absolutist and despotic, some of which (such as France) pose a 'sedate settled Design' against the English post-revolutionary order of William III. With respect to external despotic powers, individuals retain their right to execute punishment for breaching the law of nature unless a legitimate sovereign exercises that power on behalf of the body politics using the federative power. Federative power is the special discretionary power the executive exercises with respect to other governments, through either the contracting of treaties or the conduct of war.

Although prerogative and trust are central to effective government, that trust does have its limits. The defence of prerogative is about creating constitutional space in which political judgement can be exercised, but Locke is equally clear that there are strict limits to that prerogative and discretion and there are clear cases when the trust of government is broken. It is in those contexts that we have recourse to a right of revolution.

The right of revolution

The right of revolution is a right both to overthrow a government that acts in breach of its trust on behalf of the people and the right to replace and reconstitute a new government and not merely a right to individual or collective self-defence or resistance. Much of his argument is a defence of revolution from the charge of being an illegitimate rebellion against a divinely instituted government or the wholesale destruction of political society. The discussion of William Barclay's defence of absolutism in §§ 233–235 shows that individuals can replace and not just 'respectfully' resist a tyrant (Locke 1988, pp. 420–423). Yet, Locke also considers the issue of political prudence, namely when to exercise that right and who is to judge when it is appropriate to exercise that right. This issue of political prudence also applies in the case of extending the executive power of the law of nature to international intervention against an unjust and illegitimate third-party government.

Locke's argument is for a right to revolution, a *right* to punish and a putative *right* to intervene; he does not claim that we have a *duty* to do so in either a state of nature or in political society. Who exercises that right and when? In II § 230, Locke addresses the challenge to his theory that it will encourage those with 'a busie head, or turbulent spirit' to seek a change of government every time they disagree with what it does. In such circumstances, the mischief will either grow to an extent where it is recognised as a general threat triggering popular resistance or it will not be seen as a sufficient harm to warrant the greater harm that might follow from its rectification. Two points follow from this discussion that are relevant for extending the argument about revolution and dissolution

to international intervention. The first confirms that the balance of harms has an important role in a legitimate decision about whether to punish, rebel or intervene. The second point concerns who should decide.

On this second point, the argument of the chapter on 'Dissolution' is helpfully complex when applied to judgements about whether to intervene or not. Locke makes two claims:

The People shall be Judge; for who shall be *Judge* whether his Trustee or Deputy acts well, and according to the Trust reposed in him, but he who deposes him, and must, by having deposed him have still a Power to discard him, when he fails in his Trust? [II § 240] (Locke 1988, p. 427)

And:

For where there is no Judicature on Earth, to decide Controversies amongst Men, *God* in Heaven is *Judge*: He alone, 'tis true, is Judge of the Right. But *every Man is Judge* for himself, as in all other Cases, so in this. [II § 241] (Locke 1988, p. 427)

The first passage indicates that the right of revolution is to be exercised by the people, the second passage that the people is composed of an aggregate of individuals who all retain the exercise of their individual judgement. Locke is a reductionist individualist, so no societal judgement exists independently of the individual judgements of those who compose it – there is no will of the people except the aggregation of their individual wills. This, of course, leaves a number of practical and unanswered questions about when the aggregate of individual judgements becomes a judgement of the people. The obvious answer drawing on the argument of § 95 is that the aggregate must be a majority of individuals in the political society, but, equally importantly, there must be a clear sign that the political society and not merely a number of disgruntled individuals such as those with a 'busie head, or turbulent spirit' [II § 230] (Locke 1988, p. 417) recognises that there is a breach of the law of nature and not simply an aggregation of various individual grievances.

Revolution, intervention, and the individual

Locke's discussion of the right of revolution is inextricably linked with international intervention following the 1688 overthrow of James II by the forces of William of Orange and this raises similar questions about when it is legitimate to intervene and who has that right. Given that Locke does allow for a right to intervention, Ward (2010, p. 287), for example, focuses on Locke's reference to the Greek Christians living under the domination of the Turks [II § 192] (Locke 1988, p. 394) as an illustration of where and when one might intervene,

who can exercise that right and for what reasons. The answer (drawing on II §§ 8 and 11) is that the right resides ultimately with individuals as it is a right held by individuals in the natural condition prior to the creation of political societies, and it is a right that individuals retain in political society when the powers of government are too remote to enforce prevention, protection and punishment on behalf of the citizen.

Although political societies as states play a non-trivial role in the architecture of international politics, it remains the case that Locke bases his account of political authority on an individual's power under the law of nature. Individual moral power is ultimately at the root of legitimate political power – indeed, for Locke there is no other kind of political power, because anything else is illegitimate coercion and force. Locke's liberalism as applied to political society and the international domain allows for the external judgement and criticism of domestic political arrangements according to the law of nature. This is precisely John Rawls's concern that Locke's account of political society is too naively individualistic to make sense of international politics (Rawls 2007). For Locke it is only in the case of a legitimate and well-ordered political society that there is no scope for external criticism and censure. This is because being well-ordered means being fully compliant with the law of nature and confining the exercise of political power to the protection of people's civil interests. Until there is a just system of legitimate states or a single world state, there remains an individual right to enforce the law of nature.

Locke's individualistic methodology does not appear to preclude any role for the state in the third-party enforcement of the law of nature. Indeed, in the case of William of Orange's intervention in the removal of James II, we are confronted with a state intervening to support the people in re-establishing a well-ordered political society by removing an absolutist government that has put itself into a state of war with the people. The argument is similar to that of the right of revolution, in that there must be a clear majority with a single purpose revolting against the government and appealing to Heaven. In the case of individuals intervening, there is the matter of feasibility. An individual going to war against an unjust state or attempting to punish a breach of the law of nature, however well armed and well intentioned, is unlikely to succeed like an organised political community. But feasibility does not trump what is right.

Locke's legacy in international theory

Standard accounts of international political theory place Locke in opposition to the structural realism of Hobbes's theory (Doyle 1997; Wendt 1999). The Lockean world is not consumed by a preoccupation with war and security threats, but it is a world of anarchy due to the absence of an external overarching power that sanctions international law. Instead, states pursue national interests, in a world of law but without a common police power. Occasionally, this results in

conflicts, but when it does the law of nature places strict limitations on either what is permissible as a ground for war (*jus ad bellum*) or what is permissible in the conduct of war (*jus in bello*). Equally, these interests can be pursued in cooperation or in pacific mutually advantageous agreements such as trade. Liberal theorists vary in terms of their emphasis between those who veer towards realism and those at the other extreme who veer towards idealism and the prospect of evolution towards a global rule-governed order. Much contemporary international politics can be seen to reflect that span between pessimist and optimist liberal perspectives on a rule-governed global order. The extension of trade was Locke's primary interest in international politics. In his last major public role as a secretary to the Council of Trade and Plantations, he pursued a mercantilist strategy to expand trade in goods and, more controversially, in human beings in the Atlantic slave trade – which was pursued by colonists in the West Indies and in North America. This aspect of Locke's political activity has ensured that his reputation as a universalist liberal has been challenged in discussions of the colonialist legacy of liberal ideas. Whether or not his fundamental moral and philosophical ideas can consistently support enslavement, he was certainly implicated as a functionary in supporting a regime that condoned slavery and the trade in Africans to North America. This fact might dent the argument that Locke's natural law liberalism lends itself to alignment with idealism, in contrast to Hobbes's alignment with realism. But the simple identification of Locke with idealism over realism misses an important element of his state theory and of his view of international politics.

Hobbes's idea of the state of nature as a state of war is taken as a simple paradigm of the realist view of states in the international system colliding in the absence of global sovereign imposing order. Locke is thought to be different because his view of the pre-political state is a legal and moral world where individuals contract into legitimate political communities in order to secure the enjoyment of their rights and liberties. This has the formal consequence that Locke's cosmopolitan order is one of a plurality of what we now call nation states securing individual rights in a settled jurisdiction and territory, and he is often credited with adding the idea of territoriality to Hobbes's abstract account of sovereignty. However, Locke's theory also has an historical sociological element that recognises that the state as a legitimate political society is not the same thing as a natural community. Natural communities that exercise coercive and absolute power are not the same things as states, and they mostly precede the development of legitimate states. These natural powers and societies can have different forms of coercive rule that force people to submit to them, but they are not in that respect legitimate political societies. The consequence of Locke's uncompromising account of legitimacy is a clear transfer of authority from the ruled to the ruler. This meant that many of the governments of the Europe of Locke's day were not actually legitimate states but simply collections of coerced peoples, or absolutist powers posing a threat to any legitimately constituted state. The Europe of Locke's day was not, therefore, a world of equal

states under a law but without a common power to sanction it. Instead, it was a form of the state of nature in which multiple coercive powers existed alongside each other. Some of those powers can be internally focused and not pose a challenge to the Lockean state. They thus did not have a 'sedate settled Design' on the new regime of William III, which presumably Locke thought came close to his ideal because of their absolutist character and proximity other powers (such as France) did indeed pose such a threat of war. One immediate consequence in Locke's political practice was his support for war as a way of containing the unruly power of France on the European mainland, and for competition with France in the colonies in order to ensure trade for the advantage of English merchants. Locke saw trade as a way of spreading the material benefits of creation around the globe, so making goods available in England that climate and geography could not provide. Yet, it is important to remember that he was also essentially a mercantilist who saw trade as a zero-sum competition for wealth.

More importantly, at the level of international theory, Locke saw statehood as an achievement concept and not a natural fact of the international realm. Whereas the Hobbesian schema might be imposed on the plurality of competing powers in the world to give us the state system, for Locke the world was a mixed system of states and of other entities that are not states and have no equal normative or juridical standing. And this lack of standing is not merely a lack of historical development as later liberals might claim – such as John Stuart Mill, who argued that backward barbarisms (such as the Indian principalities under British tutelage) would eventually evolve into states. For Locke, the failing is not developmental but moral. Powers that are illegitimate could become legitimate but, until they do, they fall short of the objective moral order of rightly constituted political societies or states and, therefore, are open to moral challenge. As they technically breach the law of nature in involving illegitimate coercion, they are subject to the natural right to punish breaches of the law of nature derived from the executive power of the law of nature. This individual power is the basis of political right, and, in its transfer to a common judge in the process of a contract to establish civil power, it is given to the government to exercise on behalf of subjects, except where that power is too remote in emergencies or where the right of revolution is exercised against illegitimate rule.

A legitimate political society has a right to exercise that power on behalf of its people and under the federative power to exercise prudence in deciding when to go to war to punish breaches of the law. This condition has the consequence of staying the hand of rightly ordered states in a non-ideal world of illegitimate powers, because no state can have an obligation to ensure that *all* illegitimate coercive governments should be eradicated. However, this idea of international political prudence has precisely the same effect of realism in international affairs. Rightly ordered states have a reason, indeed an obligation, to act, to oppose illegitimate regimes in a precise parallel with Hobbesian states having a reason to go to war to secure an interest or to remove an enemy when they can.

This moralised international order under Locke's scheme opens up the prospect of war and conflict to accelerate the progress of legitimate political communities and the eradication of illegitimate powers that violate the rights of individuals wherever they happen to be. What is clearly missing in Locke's theory and what aligns his theory of the state system under natural law with realism is an international theory of toleration. There is no obligation to acknowledge the standing of regimes and powers that are not legitimate on Locke's theory, only a prudential judgement of when or if, in particular circumstances, to exercise the right of war and the executive power of the law of nature.

The implication of Locke's theory for international politics has been obscured because of the tendency to see his contribution in terms of trade and economic integration, and also because of his successors (such as Rousseau and Kant) being preoccupied with perpetual peace. Yet, Locke's account has remained a contribution to the liberal tradition in terms of what might be characterised as militant or warrior idealism. Conflict for peace and to end war, or to extirpate evils of various kinds, is as old as the Crusades of the Middle Ages, if not earlier. It has also had a more recent manifestation in the militant idealism that was associated with the War on Terror and regime change at the beginning of the new millennium. The end of the Cold War and the emergence of the USA as an unrivalled hegemon in the international realm led many neo-conservative thinkers who combined a militant belief in progress and a commitment to liberal democracy to see an opportunity for accelerating history's march by toppling illiberal undemocratic regimes using military interventions. Their underlying argument was a moral one based on the superiority of democracy as a regime, which was aligned with historical progress and development – misrepresenting Fukuyama's doctrine of the end of history as the triumph of liberal democracy over other regime types (Fukuyama 1992). As liberal democracy was the only good regime, by definition all other regime types were bad regimes and therefore potential enemies that need to be confronted. So this doctrine left no room for neutrality.

The logic of Locke's theory of the state has left this ambiguous and conflictual legacy in a position that is seen as the opposite pole to Hobbes-inspired realism. This tendency of liberalism and liberal internationalism to reveal itself as a fighting creed and a version of Christian millennialism is a particular preoccupation of mid-20th-century Christian realists such as Reinhold Niebuhr, who, whilst not averse to war, were particularly concerned about the idea of using war as a tool for human redemption. Locke's writings on religion and on toleration try to avoid a full-blown Manichean struggle between the forces of good (Protestantism) and the forces of evil (associated with the Pope and Catholicism). This was also precisely what Hobbes sought to avoid by submitting religion to the authority of the sovereign. Yet, the spectre of political Catholicism, especially as embodied in French political absolutism, was for Locke a threat that needed to be contained and confronted. Locke's challenge provides an

echo of the way in which many militant liberal internationalists approached the threat of Communism during the Cold War, where the threat was not the doctrine itself but its embodiment in the expansionist absolutism of the USSR.

The Lockean legacy for standard international relations theory still sees the international realm as a realm of state activity, albeit states that are the agents of individual rights and interests. Alongside this view, recent international political theory has manifested a turn to Locke's fundamental moral individualism as part of the cosmopolitan turn that dispenses with the state as a moral agent. This is most strikingly manifest in the work of cosmopolitan just war theorists such as Cécile Fabre. In an extraordinary series of books, Fabre has sought to build a theory of just war on individualistic foundations: 'I articulate and defend an ethical account of war ... by taking as my starting point a political morality to which the individual, rather than the nation-state is central' (Fabre 2012, p. 2). She describes this as a cosmopolitan theory and its similarities with Locke's argument are striking, except that the foundation of her individualist premise does not have Locke's theistic underpinning.

In Fabre's case, as with Locke, the real moral or justificatory work is done by ethical individualism rather than by the contingent nature of political community, which is nothing more than a convenient vehicle for pursuing individual ends. As a consequence, Fabre's grounds for war, such as subsistence wars on behalf of the world's poor, or her explicit defence of an individual's right of war, also resemble and more importantly draw out the individualist implications of Locke's third-party right to punish breaches of the law of nature. In Locke scholarship, the troubling implications of this individualised right are usually overlooked by scholars contextualising Locke's argument. However, for Fabre these implications are celebrated as cosmopolitan rights and duties that are prior to political life and in her argument do not depend on intervening institutions such as the state. The impressive and comprehensive architecture of Fabre's argument – ranging from traditional issues of *jus ad bellum* and *jus in bello* to post-bellum obligations, and most recently the obligations and constraints on what she calls 'economic statecraft', such as sanctions regimes and boycotts – is undoubtedly impressive. But it has not been without criticism.

The fundamental problem underlying Fabre's edifice is the challenge of foundations. Whilst she does address the basis of her rights-based cosmopolitanism, much of the argument depends on the shared intuitions that we find in liberal philosophical culture, which are now no more widespread and certain than Locke's own foundations in Christian rationalism. At the level of philosophical justification, there is a case for appealing to a version of reflective equilibrium between the intuitions of a broadly individualist human rights culture and the implications of those intuitions in the theory, as a way of testing what we ultimately believe. Yet, this method raises a fundamental issue about moral individualism in international affairs. Cosmopolitans and Lockean libertarians have a weak or contingent commitment to the state. In some cases,

they challenge it altogether, adopting the tough-minded Lockean position that any state is only morally relevant in so far as it is morally legitimate. In contrast, Kantian cosmopolitans, following an ancient tradition going back to Cicero, see the state or the political association as a necessary element within a cosmopolitan order (Flikschuh 2000). The problem with that cosmopolitan order is that it leaves the state as a necessary moral conception (or achievement concept in terms of Lockean legitimacy) and as an historical and coercive political community that does not necessarily act or conceive of itself as a cosmopolitan moral association.

The challenge for the cosmopolitan liberal is the relationship between the ideal of the state and the real world of nation states. Individualist cosmopolitans such as Fabre overcome this difficulty by wishing away the problem of the state or association beyond the individual and her claims. The criterion of moral legitimacy for Fabre is individual or human rights and this exhausts the moral terrain. Whilst the primacy of individual human rights does find echoes in the widespread culture of human rights since 1945, or in the more recent development of an international responsibility to protect (R2P), these trends and initiatives have not achieved global dominance. Nor is this just the result of the slow evolution of international affairs. A world made safe for rights in which there are only individuals with rights is a utopian vision so far removed from political experience that one can ask what benefit we derive from conceiving of it. Such a world is very far removed from the one in which we have to live, and the transitioning from the real to the ideal world would be exceedingly costly, even if that idea is thought desirable. The challenge of an individualised global moral order is a fundamental challenge to a liberal international order that is problematic enough. Even the USA, which is seen as, and often presents itself as, the guarantor of a broadly liberal global order, has been wary or even hostile to the extension of individual rights over states' rights, particularly in areas such as the International Criminal Court and global legalism (Posner 2011).

Critics claim that the challenge of Lockean internationalism is that it does not take the challenge of politics seriously. It reduces all issues to moral ones of right and wrong that can be addressed by moral and legal rules and duties. In consequence, it denies rather than responds to the fundamental premise of realists. It also has a further consequence that we can see in both its Lockean and its cosmopolitan variants. If all relevant issues are moralised, then political experience is reduced to assigning right and wrong and imposing punishments or sanctions on those individuals, states, communities and cultures that are wrong. If domestic politics and international affairs are reducible to the requirements of policing the international law (as the surrogate for Lockean natural law), then, rather than creating a 'peaceable kingdom', we create the conditions of instability and chaos that realist theories presuppose, and which was to become the preoccupation of Locke's successors Jean-Jacques Rousseau and Immanuel Kant in the 18th century. In the case of egregious violations of

human rights (such as genocide or even just bloody civil wars), liberal orders appear to have an obligation to intervene, which, in the world we find ourselves in, may become a duty of permanent war. When this is coupled with disagreement about fundamental moral, natural or human rights, the individual's right to judge and duty to act creates the further problem of individual interventions in insurgencies or rebellions against unjust regimes.

In the absence of universally shared values, difference and diversity become potential sources of conflict and violence, precisely the problem that the modern European state system developed to try to manage in the 16th century. Whereas an important feature of that settlement was religious toleration, contemporary international liberalism and individualist cosmopolitanism does not have a theory of international toleration; instead, it has only a theory of trade. Locke placed much emphasis on the importance of trade as the principal international activity, as opposed to war. However, his successors tell different stories about how the human obsession with trade, and the journeys undertaken to secure it, contribute to building ties between peoples that unite them in pacific alliances of interest, or whether it is another stimulus for competition and conflict. The question is whether Locke and the liberal internationalism that he inspires is merely a new front in the conflictual international order that the realists predict.

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Suggestions for finding open access versions of John Locke's texts

Online Library of Liberty, maintained by the Liberty Fund

<https://oll.libertyfund.org/person/john-locke>

Also see the Digital Locke Project <http://www.digitallockeproject.nl/>

The Digital Locke Project presents the first complete text critical edition, based on John Locke's manuscripts, of the texts that are related to his most famous work, *An Essay Concerning Human Understanding*. The DLP concentrates on the material that was produced between the first edition of the *Essay* in 1689 and Locke's death in 1704.

At the time of writing, there was also a sample of the same edition Professor Kelly recommends at:

<http://assets.cambridge.org/97805210/69038/sample/9780521069038ws.pdf>