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Lecture Notes, October 25

I. Introduction to Justice

We are now broadening the moral questions: How shall we live, together?

We will attempt to answer the following four, specific questions:

- 1) What justifies the rule of a government?
- 2) What justifies property ownership?
- 3) Why do people form societies?
- 4) What are the limits to governmental rule of law?

II. Hobbes' first law of nature

Hobbes starts with a discussion of good and evil, p 9.

He's a moral relativist, at least.

Still, there are natural laws, which are laws of reason.

But they are derived from empirical premises, unlike Kant's moral law.

Law #1: In the state of nature (war) every man has a right to everything.

So, people naturally pursue government in order to protect themselves and their property.

III. The state of war

Everyone is basically equal.

We are completely free, and self-governing.

That's the good news.

The bad news is that life in such a state is "solitary, poor, nasty, brutish and short," p 11.

There is no justice or morality.

Everyone can break promises, contracts, without fear of repercussion.

Even if you have something, you can always worry about some one taking it away from you.

Locke uses this concept, too, though he uses the less drastic term, 'state of nature'.

III. Hobbes' second law of nature

It's a law of nature, then, that we would want peace.

So we're willing to do whatever it takes to get this peace, including giving up our natural freedom.

This is the second law of nature.

It is derived from the first, p 12.

Note the guiding principle of the golden rule, here.

We give up as much liberty as we are willing to give to others.

Also, compare with Mill's Harm Principle, which we will read later.

Our limited freedom is a consequence of our desire for peace and stability.

But this isn't enough.

Even if we're willing to give up our liberty, there's always the possibility that others will take advantage of us.

In the state of nature, there's no notion of justice, or morality, generally.

These only make sense in society.

We need something to ensure that our sacrifices will not be in vain, that others will keep their promises.

IV. The commonwealth

A commonwealth arises from the appointment of a Leviathan.

We all cede our rights to govern ourselves, as one, in favor of an outside ruler with total control.

See pp 14-5

Without ceding all rights, there's no assurance that the contract will be upheld.

Thus, a government is justified by the agreement of a group of people to submit their will to a single rule.

We have to have a single rule, to act as the voice of the people.

Once we have this single will, then contracts can be enforced.

Then it makes sense to enter into contracts.

And breaking a contract is what Hobbes calls 'injustice'.

Thus, we have an account of the origin of morality, as well as the rule of law.

It's universal, in the sense that it holds for everyone within a civil society.

But it doesn't depend on anything like natural rights.

It's just derived from bare claims about the natural state of the world.

V. Locke argues that morality transcends the contract

Locke believes that we have natural rights before the contract situation.

These extend into the contract.

Thus, morality transcends the contract.

For Hobbes, we obey the rule of law in deference to the force of government, the power of the leviathan.

It seems that this entails that if you get a bigger army, then it's acceptable to break the law.

Consider militias.

Outside the agreement, as between states, there is no morality.

All we have is a state of war.

Locke's answer depends on his view of the social contract.

This is a hypothetical contract, an agreement of individuals to abide by the decisions of the government.

For Locke, our antecedent agreement, along with the presence of morality outside the contract, binds us.

Locke on the Social Contract, p 275.

We are naturally free.

But we consent to give up our rights, for protection.

VI. Locke, on the state of nature

We have perfect freedom, though not license.

We are still constrained by moral law.

We may not kill each other, or selves.

We also have perfect equality.

We are all equally permitted to punish violators of the moral law, p 271.

This is for both reparation and restraint.

That is, we may protect our property and act to re-gain what has been lost.

VII. Contrasting Locke and Hobbes

Since Hobbes starts with no assumption of morality in the state of nature, the commonwealth doesn't exist to protect our natural rights.

Instead it is the source of those rights.

Since the assumption of natural rights is a significant metaphysical assumption, it is in his favor that he can avoid it.

On the other hand, Hobbes' position yields as a consequence that outside of a commonwealth, between rival states, say, or among people on a desert island, there is no morality.

Locke, in contrast, starts by assuming that morality and rights exist in the state of nature.

But there we have no protection for them.

Everyone, being equal, is equally liable to lose property or be wronged without protection or reparation.

So, for Locke, we form the social contract in order to protect these natural rights.

Since Locke makes this significant metaphysical assumption, of morality which transcends the social contract, he owes us an account of natural rights.

Specifically, what gives you the right to own something?

VIII. Locke on property rights

By natural law, just by being born, we have the natural right to preservation.

We are naturally entitled to whatever we need to survive (food, water, shelter).

Hobbes basically agrees.

What happens if two people come and take what is rightfully yours?

In the state of nature, we are all equal, so two defeat one, normally.

We have to get a bigger group.

The role of government is basically for protection of property rights, pp 275-6.

In order to use something, like food, we have to make it ours first.

I have to own the apple to eat it.

I own my own body, and thus what I make with it when I mix my labor with the environment, p 273.

But we may not take more than we can use, p 274.

So, our natural rights, moral facts, justify property ownership.

It's not just a legal justification, as it is for Hobbes.

It's not arbitrary, as it might seem by the U.S. tax code, e.g.

It remains an open question whether we can account for all our laws, and for government in general, by appeal to this abstract, general principle.

IX. An objection to Locke's account

We've never signed any contract.

Locke responds by appealing to tacit consent.

We use the roads, police, schools, etc.

We are free to give up our property and leave.

But if we stay, we are bound to obey the laws.

We are also bound by the laws if we are merely visiting a foreign country, and using the protections of that government.

The laws are decided by a majority, 274.

Compare with Socrates, in Plato's 'Crito'.