

Philosophy 104, Ethics, Queens College
Russell Marcus, Instructor
email: philosophy@thatmarcusfamily.org
website: <http://philosophy.thatmarcusfamily.org>
Office phone: (718) 997-5287

Lecture Notes: Justice

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

Hobbes starts with a discussion of good and evil.
He's a moral relativist, at least.
Still, there are natural laws, which are laws of reason.

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.

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 are no concepts of good, nor of justice.
Everyone can break promises, contracts, with no fear of repercussion.
Even if you have something, you can always worry about some one taking it away from you.
(Locke will use this concept, too.)

So, it's a law of nature, a law of reason, that we would want peace (first law of nature).
So we're willing to do whatever it takes to get this peace, including giving up our natural freedom (second law).
The second law of nature is derived from the first (p 12).
Note the guiding principle of the golden rule, here.
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; justice only makes sense in society.
We need something to ensure that our sacrifices will not be in vain, that others will keep their promises.

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.
pp 14-5

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

Locke extends the notion of an agreement to set up a society.
With Hobbes, we submit everything to the leviathan.
For Locke, we have natural rights before the contract situation, which extend into the contract.
Morality transcends the contract.
There's morality and rights outside the contract.

Why should we obey the law?

Hobbes' answer: force of government
Does this mean that if you get a bigger army, then it's ok to break the law?
Consider the presence of militias.
Remember, outside the agreement, as between states, there is no morality.

Another Answer: Social Contract.
Hypothetical contract, agreement of individuals to abide by the decisions of the government.
So, it's our antecedent agreement, along with the presence outside the contract, which binds us.

Locke, on the state of nature.
(Note how he differs from Hobbes.)
Perfect freedom, though not license.
We are still constrained by moral law.
We can't kill each other, or selves.
Perfect equality.
We are all morally permitted to punish violators of the moral law. (p 271)
For reparation and restraint.
That is, we may protect our property and act to re-gain what has been lost.

So far, so good
But, what gives you the right to own something?

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, contrary to Hobbes, starts by assuming that morality and rights exist in the state of nature, only 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 he's making 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?

By natural law, just by being born, we have the natural right to preservation (food, water, shelter).
We are naturally entitled to whatever we need to survive.
Hobbes basically agrees.

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 - mixing one's labor. (p 273)
But we can't take more than we can use. (p 274)

So, our natural rights, moral facts, ground (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 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.

What happens if two people come and take what is rightfully yours?
In 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 275b-6)

Social Contract (p 275a)
We are naturally free.
But we consent to give up our rights, for protection.

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 the laws.
They are run by a majority. (274b)
Compare with Socrates, in Plato's 'Crito'

A digression:
We can devise another moral theory, based on the social contract:
Consider the Prisoner's Dilemma:

		Person A	
		Cooperate	Defect
Person B	Cooperate	2, 2	1, 4
	Defect	4, 1	3, 3

- #1 = go free
- #2 = 2 years in prison
- #3 = 7 years in prison
- #4 = death

Real life examples:
The employer-employee relationship (and vendors and clients).
Between lovers.

Hume, on the prisoner's dilemma: Your corn is ripe today; mine will be so tomorrow. 'Tis profitable for us both, that I should labour with you to-day, and that you should aid me to-morrow. I have no kindness for you, and know you have as little for me. I will not, therefore, take any pains on your account; and should I labour with you upon my own account, in expectation of a return, I know I should be disappointed, and that I should in vain depend upon your gratitude. Here then I leave you to labour alone: You treat me in the same manner. The seasons change; and both of us lose our harvests for want of mutual

confidence and security.

So, Social Contract Morality:

Morality is a set of rules that rational people agree to accept for mutual benefit

In terms of the prisoners' dilemma: morality moves us into 2,2 from 3,3, where rational, self-interested persons end up.

Returning to the discussion of justice and property.

Hobbes defends absolute power in the commonwealth, as the source of all rights and justice.

Locke defends a more limited governmental power via the social contract, assuming natural rights.

Hume thinks that all this talk of natural rights and hypothetical constructs (the social contract and the appointment of a leviathan) is bunk.

Hume argues that all of this talk of rights is misguided.

In a state of abundance, we would have no need for property rights

Recall the Ring of Gyges.

We could have whatever we needed, and so wouldn't need to rely on 'rights'.

In a state of extreme necessity, we would give them up.

Survival would be our main focus.

'Rights' would lose relevance.

So, Hume concludes, they're just conveniences, given the world in which we live. (p 277)

Rights aren't anything more metaphysically interesting, in the way that Locke would have them.

Property rights justified by utility, that's all. (p 278)