

Civil Society in Locke's Second Treatise of Government

This presentation will focus on John Locke's concept of civil society. Introduction of this concept supplements his analysis of the state of nature by allowing for deliberation and free choice prior to the introduction of government, as well as providing an answer to Hobbes' assertion that "mere multitudes" could not reassign the supreme power.¹

How is civil society formed?

The establishment of civil society is motivated by the desire of individuals to protect property (§48). After the introduction of money, individuals begin to "enlarge their possessions" (§49), and eventually, "men have agreed to a disproportionate and unequal possession of the earth" (§50).

After the introduction of money and the emergence of inequality, (§107) men began to look for a means of protecting their wealth. "The **great and chief end**, therefore, of men's uniting into commonwealths, and putting themselves under government, **is the preservation of their property**" (§124) "and the end why they chuse and authorize a legislative, is...to limit the power, and moderate the dominion, of every part and member of the society" (§222).

People in the state of nature may agree to hand over to civil society "all the power necessary to the ends for which they unite into society" (§99), amounting to "**all their natural power**" (§136). This includes jurisdiction over their possessions (§120) and their persons, in the form of duly-established laws (§120). Crucially, they retain the right to self-preservation (§23).

Civil society aims "to avoid, and remedy those inconveniencies of the state of nature, which necessarily follow from every man's being judge in his own case, by setting up a known authority, to which every one of that society may appeal upon any injury received, or controversy that may arise, and which every one of the society ought to obey" (§90)

It is founded on consent. "And thus that, which begins and actually constitutes any political society, is nothing but the **consent of any number of freemen** capable of a majority to unite and incorporate into such a society. And this is that, and that only, which did, or could give beginning to any lawful government in the world" (§99). Consent may be tacit or explicit (§119).

How can civil society create a government?

By act of the majority. "The only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society, is by **agreeing with other men** to join 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...When any number of men have so consented to make one community or government, they are thereby presently incorporated, and **make one body politic**, wherein the majority have a right to act and conclude the rest." (§95)

Once established, civil society can set up whatever form of government it prefers. A majority of citizens can act on behalf of civil society. (§96)

¹ "Individuals must be understood to have agreed to give up their natural rights and powers to an all-powerful civil society, but that the civil society (themselves when so united) could not conceivably have delegated absolute or arbitrary power to any government, but must be understood to have retained the right to alter the frame of government whenever they (acting by a majority of themselves) so desired." (McPherson, introduction, xiv)

“And thus all private judgment of every particular member being excluded, **the community comes to be umpire**, by settled standing rules, indifferent, and the same to all parties.” (§87)

Civil society is unitary, and its actions are to be determined by majority rule. “For when any number of men have, by the consent of every individual, made a community, they have thereby **made that community one body**, with a power to act as one body, which is only **by the will and determination of the majority**.” (§96) The minimum conditions for a civil society are that a people be “united into one body,” with common laws and an appointed authority “to decide controversies between them, and punish offenders” (§87).

Civil society confers the legislative power as it sees fit to further the public interest. The legislature is what makes the community unitary. “Civil society being a state of peace, amongst those who are of it, from whom the state of war is excluded by the umpirage, which they have provided in their legislative, for the ending all differences that may arise amongst any of them, it is in their legislative, that the members of a commonwealth are united, and combined together into one coherent living body.” (§212)

Political power (“a right of making laws...for the regulating and conserving of property” (§3)) is retained by civil society, and assigned to governments as **fiduciaries** (§149).

How does civil society differ from the state of nature?

People are limited by their own consent. “The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule. The liberty of man, in society, is to be under no other legislative power, but that established, by **consent**, in the commonwealth; nor under the dominion of any will, or restraint of any law, but what that legislative shall enact.” (§22)

The state of nature is more free but also more dangerous. “Thus mankind, notwithstanding all the privileges of the state of nature, being but in an ill condition, while they remain in it, are quickly driven into society. Hence it comes to pass, that we seldom find any number of men live any time together in this state. The inconveniencies that they are therein exposed to, by the irregular and uncertain exercise of the power every man has of punishing the transgressions of others, **make them take sanctuary under the established laws of government**, and therein seek the preservation of their property.” (§127)

Who may be a member of the civil society?

Those who own property may be members. Slaves and other persons “not capable of any property, cannot in that state be considered as any part of civil society; the chief end whereof is the preservation of property.” (§85)

What powers do people give up under civil society?

People give up the power to punish violations of the law of nature on the basis of private judgment (§130), as well as their right to unlimited self-preservation (§129). “The first power, viz. of doing whatsoever he thought for the preservation of himself, and the rest of mankind, he **gives up to be regulated** by laws made by the society, so far forth as the preservation of himself, and the rest of that society shall require; which laws of the society in many things confine the liberty he had by the law of nature.” (§129) “...every man who has entered into civil society, and is become a member of any commonwealth, has thereby **quitted his power to punish offences**, against the law of nature, in prosecution of his own private judgment” (§88, 96)

Locke assigns people two powers in the state of nature: the power to take measures necessary for self-preservation and the power to punish violations of the law of nature (§128). In civil society, people give up the first of these to the extent that they are bound by duly-enacted laws (§129), and they give up the second entirely (§130). “. . . he is to part also with as much of his natural liberty, in providing for himself, as the good, prosperity, and safety of the society shall require; which is not only necessary, but just, since the other members of the society do the like” (§130)

What are the limits to civil society?

It may not confer absolute power, because that power can't be given up by individuals (§135), and absolute power would be contrary to the ends for which civil society was established. (§137). “**Absolute monarchy**, which by some men is counted the only government in the world, is indeed **inconsistent with civil society**” (§90), because “what fence is there, in such a state, against the violence and oppression of this absolute ruler?” (§93). Men could “never be safe nor at rest, nor think themselves in civil society, till the legislature was placed in collective bodies of men” (§94) “. . . absolute dominion, however placed, is so far from being one kind of civil society, that it is as inconsistent with it, as slavery is with property.” (§174)

It may not exempt any citizens from the laws. “No man in civil society can be exempted from the laws of it.” (§94)

It may only act in furtherance of the common good. “. . . the power of the society, or legislative constituted by them, can never be supposed to extend farther, than the **common good**” (§131)

It may not transfer the legislative power. “The legislative **cannot transfer the power of making laws** to any other hands: for it being but a delegated power from the people, they who have it cannot pass it over to others. The people alone can appoint the form of the commonwealth, which is by constituting the legislative, and appointing in whose hands that shall be.” (§141)

It may not confer powers that were not delegated to it “the commission, or command of any magistrate, where he has no authority, being as void and insignificant, as that of any private man” (§206) “Tyranny is the exercise of power beyond right” (§199)

How can the government formed by civil society come to an end?

When the legislative power is divided. “the essence and union of the society consisting in having one will, the legislative, when once established by the majority, has the declaring, and as it were keeping of that will.” (§212)

When the legislative power ceases to legislate in the public interest. “Whensoever therefore the legislative shall transgress this fundamental rule of society; and either by ambition, fear, folly or corruption, endeavour to grasp themselves, or put into the hands of any other, an absolute power over the lives, liberties, and estates of the people; by this breach of trust they forfeit the power the people had put into their hands for quite contrary ends, and it **devolves to the people**, who have a right to resume their original liberty, and, by the establishment of a new legislative, (§such as they shall think fit) provide for their own safety and security, which is the end for which they are in society.” (§222)

“ this doctrine of a power in the people of providing for their safety a-new, by a new legislative, when their legislators have acted contrary to their trust, by invading their property, is the **best fence against rebellion**, and the probablest means to hinder it” (§226)

When civil society empowers a government, the consent given is both limited and revocable (§149, §222). "...yet the legislative being only a fiduciary power to act for certain ends, **there remains still in the people a supreme power to remove or alter the legislative**, when they find the legislative act contrary to the trust reposed in them: for all power given with trust for the attaining an end, being limited by that end, whenever that end is manifestly neglected, or opposed, the trust must necessarily be forfeited, and the power devolve into the hands of those that gave it, who may place it anew where they shall think best for their safety and security. And thus the community perpetually retains a supreme power of saving themselves from the attempts and designs of any body, even of their legislators" (§149)

"nay, where an appeal to the law, and constituted judges, lies open, but the remedy is denied by a manifest perverting of justice, and a barefaced wresting of the laws to protect or indemnify the violence or injuries of some men, or party of men, there it is hard to imagine any thing but a state of war" (§20)

How can civil society itself come to an end?

By invasion: "The usual, and almost only way whereby this union is dissolved, is the inroad of foreign force making a conquest upon them: for in that case, (§not being able to maintain and support themselves, as one intire and independent body) the union belonging to that body which consisted therein, must necessarily cease, and so every one return to the state he was in before, with a liberty to shift for himself, and provide for his own safety, as he thinks fit, in some other society. **Whenever the society is dissolved, it is certain the government of that society cannot remain.**" (§211)

Discussion Questions

1. Is the concept of civil society coherent? Does it make sense to separate the legislative power from the sovereign in this way?
2. Does Locke adequately explain what happens to property rights acquired in the state of nature after the introduction of civil society? Can these rights be retained?