

Phil 114, February 29, 2012

Sir Robert Filmer, *Observations Concerning the Originall of Government*, p. 234 (bSpace)
John Locke, *First Treatise of Government*, Ch. 4 §§41–43 (review), Ch. 9 §§84–103 (review)
John Locke, *Second Treatise of Government*, Ch. 5, 13

Property rights

Essentially, property rights are clusters of (i) liberty-rights (i.e., permissions) to use, modify, destroy, abandon, etc. certain particular things, (ii) claim-rights against others that they not interfere with one's doing so, and (iii) certain powers to alter those rights, such as by transferring one's property to someone else.

Some hold that property rights are “natural”: that is, that one can have property rights independently of any social agreement or practice. Others hold that property rights are “conventional”: that is, that one can have property rights only as a result of a social agreement or practice. Still others hold mixtures of those views.

Hobbes takes a fairly extreme conventionalist view. Although the right of nature is, in effect, a liberty-right in everything, we don't get claim-rights until we enter into civil society. What those claim-rights are is entirely up to the sovereign to determine (although, if he's a good sovereign, then he'll determine those claim-rights in accordance with the recommendations of the law of nature). Indeed, part of the reason for the sovereign is to *establish* property rights.

Locke disagrees. He thinks that property rights are in large part natural. The reason for society and government is not so much to *establish* property rights as to *protect* pre-existing property rights (which are partly natural and, with the advent of money, partly conventional).

How, according to Locke, does someone acquire property rights?

- (i) If someone labors on part of the natural world, then he acquires property rights in it and what results from it,
- (ii) so long as it will not spoil and
- (iii) so long as he has left for others “enough and as good” of what he has taken from the natural world.
- (iv) People can also acquire property rights, second-hand as it were, as a result of transfers of property rights acquired by such labor.
- (v) People who lack sufficient goods to preserve themselves may have both claim-rights and liberty-rights to the surplus goods of those who have more than sufficient goods to preserve themselves. This means, it seems, that the latter lack full property rights in those goods.
- (vi) When money is instituted, by consent, this system of natural property rights changes.

What, according to Locke, *justifies* these natural property rights? Consider three different views, each of which is suggested by Locke's discussion.

The self-ownership/labor-mixing argument:

1. People own themselves.
2. Therefore, people own their labor.

3. When people work on bits of the natural world, their labor becomes inextricably mixed with it.
4. Therefore, their property rights in their labor cannot be respected with recognizing property rights in these worked-on bits of the natural world. After all, to take those bits of the natural world from them is to take away their labor.

Objection: Suppose I steal your play-doh and start molding it. Now my labor is mixed with it. Does that mean that you can't take the play-doh back from me, because you would be taking my labor? Isn't the right response that I have forfeited my labor?

Response: In the case under consideration, unlike this play-doh case, the bit of the natural world that I work on is not the private property of some other particular person. Since I left "enough and as good" of the natural world for them, they have no complaint. How does the fact that they cannot use the part of the natural world that has become mixed with my labor make them worse off?

Objection: Even if that bit of the natural world was not any particular person's private property, it was *all of our collective property*. God gave us the world in common. Even if others aren't left worse off, don't they have a complaint? You cut off a piece of the world without asking. (Intuitively, if you own something, I'm not allowed to take it from you without your consent, even if I compensate you.)

This is an objection that Filmer somewhat facetiously raises against the idea that God gave the world to all men in common.

Objection: Why should you get *full* property rights in the thing, rather than simply property rights somehow *proportional* to your labor in them?

Objection: This argument does not explain the no-spoilage condition.

Objection: This argument does not explain the exception for charity.

The liberty argument:

1. Everyone has (i) the liberty-right to pursue his or her plans and (ii) the claim-right to do so without interference from others, provided that this does not interfere with the similar rights of others.
2. Some of these plans involve the exclusive use of bits of the natural world.
3. Definition: To "labor" on a bit of the natural world is to embark on a plan that involves exclusive use of that bit of the natural world. Thus, to interfere with someone's use of a bit of the natural world on which he has already started laboring, or with what results from that labor, is to interfere with his pursuing a plan on which he has embarked.
4. From 1 it follows that if someone has started laboring on a bit of the natural world, then he has (i) a liberty-right to use that bit, and what results from his laboring on it, and (ii) a claim-right to do so without interference from others. This is equivalent to saying that if someone has started laboring on a bit of the natural world, then he has property rights in that bit and what results from his laboring on it.

5. Explaining the no-spoilage condition: A person leaves something to “spoil” when his plan does not involve using it. If his plan does not involve using it, then his right to pursue his plan does not translate into a property right in it. (For example, others do not interfere with his plan by interfering with his use of it.)
6. Explaining the enough and as good condition: We have rights (i) and (ii) only provided that our exercise of these rights does not interfere with others’ exercise of similar rights. If we do not leave enough and as good, then we are interfering with others’ exercise of similar rights.

A plausible argument. But is it Locke’s?

Note that we still don’t have an answer as to why we may take bits of the natural world without others’ consent, given that the natural world is *everyone’s collective property*. Even if others are able to pursue their plans, and so aren’t left worse off, don’t they have a complaint? You cut off a piece of the world without asking.

Locke’s self-preservation argument

1. God intends for people to preserve themselves and others, and they have a duty to God to do so.
2. God gave people the natural world in common, to use to preserve themselves.
3. In order to preserve themselves, however, people need *exclusive* use of bits of the natural world. (Seems true in some cases: food. But why in all cases?)
4. Therefore, God must have intended people to use exclusively bits of the natural world, and so people must have the right to do so.
5. Filmer’s point: A right to exclusive use of a bit of the natural world cannot require unanimous consent, since unanimous consent is impossible.
6. The lesson Locke takes from Filmer’s point: Since God appreciated Filmer’s point, He must have intended there to be some *other* way for people to acquire rights to exclusive use of bits of the natural world, without unanimous consent.
7. One such way, which God might have had in mind, is laboring on a bit of the natural world. (But why assume that this *is* what God had in mind? Aren’t there alternatives?)
8. Explaining the no-spoilage condition: Since our rights to exclusive use are based on our duty to preserve ourselves and others, we have no rights to exclusive use that does not serve that purpose. Something “spoils” when it cannot be used for self-preservation.
9. Explaining the enough-and-as-good condition: Since we have a duty to preserve others, we have a duty to leave enough and as good for them.
10. Explaining the charity-exception: We have a duty to preserve others, when doing so does not compete with our own preservation.

Money

Locke believes that things change when money arrives on the scene.

1. Money is conventional. It is instituted by consent. We tacitly agree to accept certain durable, but intrinsically useless things in exchange for intrinsically useful things.
2. Money provides us with a medium of exchange. This allows us to exchange surplus goods, which would otherwise spoil.
3. Money also provides us with a store of value. It doesn’t spoil.

4. This allows us to acquire greater private property in the natural world without fear of violating the no-spoilage condition.
5. But it also makes it possible for us to acquire so much private property in the natural world that we *can*, for the first time, violate the enough-and-as-good condition.
6. Recall that the enough-and-as-good condition is really part of a disjunctive principle: In order to acquire private property in some part of the natural world, you must *either* (a) get everyone's consent to your acquisition or to system that allows that kind of acquisition; *or* (b) labor on it, in compliance with the no-spoilage and enough-and-as-good conditions.
7. With the advent of money, we all in effect consent to a system of acquisition that is not governed by the enough-and-as-good condition. (The institution of money is the kind of unanimous consent to the division of the commons that Filmer thought impossible.)
8. Therefore, with the advent of money, it is no longer necessarily *wrong* to violate the enough-and-as-good condition, since one can satisfy disjunct (a) of the principle in 6 without satisfying disjunct (b).
9. In sum, money produces and justifies the inequality and scarcity that we observe today.

Questions:

- Is this consent free? Do people have much of a choice whether to go along with the institution of money?
- Even if it is free, is it informed? Can people be expected to foresee the consequences? Put another way, do they consent to those consequences?
- Is what we can consent to constrained by our duty to preserve ourselves and others? Presumably, we may not consent to a system of property that we foresee will undermine the preservation of ourselves or others. And even if we did consent to a system that will undermine the preservation of ourselves or others, our consent would not legitimate the system. At very least, the exception for charity can't be waived by our consent.
- What is the dialectical status of this argument? Perhaps Locke takes it as given, and assumes that his readership takes it as given, that existing inequality is justified. Perhaps his main aim is explain how this existing inequality could be compatible with initial common ownership.

Labor theory of value: Locke is sometimes cited as a proponent of the labor theory of value: that the value of a thing depends (solely? principally?) on the labor devoted to its production. Do any of these arguments require that value arise from labor?

Desert: Do people own bits of the natural world and what results from those bits, because they *deserve* it as a reward for all of their hard work? We often think in such terms, but do any of these arguments rely on, or support, such thoughts?

The class state?

Some commentators—C. B. MacPherson, John Rawls, and Joshua Cohen—suggest that Locke endorsed a kind of class state, in which franchise is restricted to those with a “forty-shilling freehold”—that is, the poor are denied a say in government. I side with A. John Simmons in finding the evidence for this claim scant and inconclusive.

Nevertheless, Rawls's and Cohen's suggestions that Locke's account of the social contract *could* justify a class state, whether or not Locke thought that they did, are deep and interesting.

The basic problem is that the parties to Locke's social contract come to the table with preexisting advantages. In particular, Locke's social contract is supposed to take place between people with potentially vastly unequal wealth. This means that the parties to the contract may have vastly different bargaining power. This difference in bargaining power may bias the terms of the social contract, regardless of the fact that all the parties enter into it freely and knowingly and no one violates the law of nature.

Cohen, in fact, offers a plausible model of Locke's social contract that leads to an agreement on the class state. Cutting through the complexities: The rich worry that the poor might try to dispossess them of their property if the poor had the vote. So the rich prefer the state of nature to the classless state; they have less to lose from the inconveniences than from democratic populism. Of course, the rich prefer the class state to the state of nature; the inconveniences are inconvenient after all. The poor, as one might expect, prefer the classless state to the class state, but they prefer the class state to the state of nature. The class state, at least, relieves them of the inconveniences, and they don't have much to lose. So both the rich and the poor find agreement on the class state.

Review Questions:

1. Locke is often cited as an early proponent of a form of libertarianism that holds that taxation is justified only to provide for police protection, not for aid to the poor. But would Locke have any fundamental objection to taxing property to provide aid for the poor? Would that violate the law of nature, in his opinion?

2. Paraphrase the following point of Filmer:

Certainly it was a rare felicity that all the men in the world at one instant of time should agree together in one mind to change the natural community of all things into private dominion. For without such a unanimous consent it was not possible for community to be altered. For if but one man in the world had dissented, the alteration had been unjust, because that man by the law of nature had a right to the common use of all things in the world, so that to have given a property of any one thing to any other had been to have robbed him of his right to the common use of all things.

What does Filmer believe follows from this point?