

LOCKE ON PROPERTY CHAPTER 5, *SECOND TREATISE ON GOVERNMENT*
Notes for Philosophy 166

Locke wants to argue that individuals can acquire full property rights over moveable and nonmoveable parts of the earth in a state of nature, absent government. Our natural rights include the right legitimately to acquire property, and any government must respect natural rights including rights to property.

Property rights are rights in things. Full ownership of something includes the right to use it as one wishes (so long as one does not thereby harm others in ways that violate their rights), to exclude others from its use, to allow another person to use it on any mutually agreed terms, to waive or renounce one's rights in the thing, and to transfer this entire package of rights to another person.

Against Robert Filmer, who held that God gave the earth to Adam and that Adam passed dominion over the earth to a succession of absolute monarchs down to the Stuart Kings and other kings of other lands, Locke wants to urge that God gave the earth to men in common in such a way that individuals can acquire private ownership of parcels of it. That God gave the earth to men in common means for Locke that initially land is unowned and no one has any more rights to any bit of it than anyone else. What follows from the premise of initial common ownership? Locke proceeds on the assumption that the rules must make sense—God would not have established rules for us that require us to starve in the midst of plenty. So one can use unowned land without getting the permission of all other people. Initially then we have free use—anyone may use any bit of the earth, and no one has any more rights to any bit of the earth greater than anyone else.

LABOR-MIXING. One strand of thought in chapter 5 starts with the idea that we acquire private ownership of unowned land by laboring on it or as Locke says mixing our labor with bit. Locke seems to be reasoning as follows:

1. If one mixes what one owns with something that is unowned, one thereby comes to own the unowned thing.
2. Each person owns her own labor.
3. If one mixes one's labor with unowned land, one thereby comes to own the land.

There may be something to this idea, but as stated it seems vulnerable to objections.

Objection: It is not true in general that mixing what one owns with what one does not own expands one's ownership. Premise 1 looks to be false.

Objection: What determines the extent of what one comes to own via labor-mixing? If I labor on a tree in North America, when it is entirely unowned, do I come to own the bark my fingers touch, the tree, the land under the tree, the surrounding land, or all of North America? If you answer, it depends on what we intend, then someone with grand intentions will come to own a huge property with a little labor.

LIBERTY. There is another strand in Locke's thinking here that is implicit if not completely explicit. We start with the general statement of one's natural rights:

- A. Each person has the natural right to do whatever she chooses (to live as she chooses) with whatever she legitimately owns so long as she does not harm other people (in ways that violate their rights). Each person also has the corresponding natural right not to be harmed by anyone else (in any way that violates her rights).
- B. Each person is the full owner of herself.

Call B the self-ownership principle. Locke cannot mean that we have full self-ownership, because he does not believe the individual has the right to sell herself into slavery. But we can transfer to

others part of our self-ownership. We do this, for example, when we agree to marriage contracts or wage-labor contracts.

Under free use, and given self-ownership, Locke thinks each person may use the earth in ways that confer ownership of bits of it. For example, one can come to own the acorns and fruit that one gathers from unowned land, and when one begins to hunt a rabbit, one acquires ownership rights to that rabbit (others may not interfere with one's hunt). We are reasoning here from the premise that God has designed rules for us, the natural laws, in order to best preserve and enhance human life.

Locke offers, as a further interpretive gloss that explains the meaning of the "right to do what one chooses so long as one does not violate the rights of others" in A, that at least under conditions of nonscarcity, one who appropriates a particular parcel of unowned land as her private property thereby comes to have ownership rights over it. This means that from now on others are no longer free to use the land as they were before. Are they not then harmed by the private appropriation? No, says Locke. Each is free to appropriate land in just the same way and gain an equivalent benefit.

C. Each person has equal opportunity to appropriate land and gain roughly the same benefit from it by the expenditure of comparable laboring efforts.

Condition C, equal opportunity to appropriate, obtains when land is nonscarce in the sense that the total amount of claims to appropriate land that anyone might care to make (that satisfy the No-Waste rule) is in the aggregate less than the available land.

Locke seems to have something like condition C in mind in paragraph 33, where he states "he that leaves as much as another can make use of, does as good as take nothing at all." Locke gives the example of taking a drink of water from a steadily flowing river. One's drink does not prevent anyone else from drinking as much as he likes, for there is plenty of water flowing. In paragraph 36 Locke observes "it was impossible for any man, this way, to intrench upon the right of another, or acquire himself a property to the prejudice of his neighbour, who would still have room for as good, and as large a possession (after the other had taken out his) as before it was appropriated."

Locke also stipulates in paragraph 31 that the right to appropriate and use the things of the earth does not include a right to "spoil or destroy" or let things go to waste. Locke does not elaborate, but we might wonder: if there is nonscarcity, and condition C holds, why should not my liberty to live as I choose include a liberty to appropriate land and leave it in its natural state? Maybe I just like to watch leaves and fruit rot and fall. One might also wonder what limits the stringency of the No-Waste rule. Locke seems to have in mind that if hunter-gatherers claim a vast expanse of land as theirs to roam in, this counts as waste, relative to the claim of one who wants to farm the land and make it more productive. But suppose you appropriate the land and farm it, and then another person comes along, who has better techniques, and can farm it better. At the limit, Locke's No waste rule would be transformed into a rule to this effect: "Land belongs to whoever can use it most productively." Locke does not push the No Waste idea to its limit in this way, but what constrains its extension?

Locke holds that AT LEAST when condition C obtains and the No-Waste rule is observed by private appropriators, then one has a right to appropriate unowned land as one's private property and this appropriation establishes genuine full property rights held by the appropriator over that particular parcel of land. In this setting, anyone who insists on continuing freely to use the particular land that you have appropriated and improved by your labour is desirous of "the benefit of another's pains, which he had no right to" (para 34). It's not that we can derive the

right to private ownership from A and B under conditions of nonscarcity, but that if we start with A and B, and try to interpret what A should imply for use and ownership rights in the state of nature, the best interpretation is the one Locke gives.

Notice that from premises about self-ownership alone, even full self-ownership, nothing follows about justified ownership of parts of the earth. Consistently with saying each person is the full rightful owner of herself you can add, and the earth belongs to all in common, or the earth belongs only to Adam's child Abel (not Cain) and his descendants. Hence there is logical space for a left-Lockean position that combines full robust self-ownership with egalitarian claims about justified ownership of the earth. However, even robust individual self-ownership, absent any premises about permission to use or own parts of the earth, does not entitle a person to live as she chooses in any ordinary sense. If I fully own myself, but am not entitled to stand on any land, or breathe any air, my self-ownership counts for little. Locke himself combines a fairly strong but not full self-ownership claim with claims that guarantee self-owners rights to use parts of the earth and acquire ownership of parts of the earth.

Under conditions of nonscarcity, it is quite plausible to think that if I own myself, I ought to be able to appropriate as much land as I like and gain whatever I can gain by laboring on that land (or by exerting my entrepreneurial talent and hiring others to work the land I own). If my labor is mine, and land is nonscarce, how could others have a rightful claim to some of the produce of my labor on this nonscarce land? By applying similar labor to a similar parcel of land, anyone could achieve the same gain I am getting. However, an egalitarian of a certain sort might hold that Unable might lack the ability to labor on land productively in the way Able does, so either Able should give some of her produce to Unable, or ownership rules should be adjusted so that Unable gets far more land than Able (so she has the opportunity to gain just as much from the land she owns given her talents at laboring as Able has the opportunity to gain from the land he is allowed to own in combination with his talents at laboring). Locke of course is not an egalitarian of this sort. (However, someone might appeal to Locke's tendency to rule-utilitarianism. The moral rules we should obey are the ones God affirms, and God specifies rules that work to maximize human flourishing. Given diminishing marginal utility of material goods, across persons, then the use a wealthy person makes of her 100th bushel of corn is likely to do less for her than the gain for herself a poor person would be likely to get from a first bushel of corn. So there is a general case for transfer, which is limited by the utility gain from giving persons secure ownership rights. The ideal moral rules for property that God affirms for us will balance these two concerns, so reflect the utility of requiring some transfers from wealthy to poor persons.)

What determines the extent of one's ownership claim in a particular case? Locke does not say. He clearly means that one must signal to others that one means to acquire a given parcel of land, say by marking the boundaries in some way. Laboring on unowned land might carry out this signalling—if a parcel of forest is cleared and the ground prepared for farming, it is clear to anyone that someone means to appropriate the cleared land. What I do not signal to others as mine cannot be mine.

LABOR-MIXING AS VIRTUOUS. Another strand in Locke's argument, separate from the liberty strand, stresses that laboring on unowned earth and rendering it productive is virtuous activity, and doing this renders one deserving of reward. Property ownership might be regarded as the appropriate reward. See para. 34: "God gave the earth to men in common, but . . . He gave it to the use of the industrious and rational (and *labour* was to be his *his title* to it;), not to the fancy or covetousness of the quarrelsome and contentious."

PRIVATE APPROPRIATION AND SCARCITY. What happens when land is no longer scarce and all valuable land is owned? It then is no longer the case that condition C, the equal opportunity to

appropriate condition, obtains. People are born who are nonowners and have no opportunity to appropriate land as their own as others did. Locke wants to hold that private ownership can continue to be justified in this case.

Locke suggests two ideas here. (1) Inequality of possessions consistent with the satisfaction of the No Waste rule comes about only because people consent to the use of money. Money's value is conventional, it is only valuable because people agree to take it as valuable. The use of money predictably gives rise to unequal possessions. So each person, agreeing the use of money, tacitly consents to unequal possessions. (2) Since labour creates by far most of what people value in things—Locke says labour creates 999/1000 of all value—a system of private ownership even with scarcity is far more productive than a system of free use. All who live under private ownership are made better off by the existence of this system, even though some fare better than others. Locke observes that the poorest day laborer in England, living under a private ownership system, is better off than a chieftain, the best off person, in a North American tribe that lives under something closer to a free use system and that does not countenance private ownership, and this even though North America is far richer in natural resources than England. Locke might then hold that an individual act of private appropriation, or a system of private ownership, is morally OK just in case the act (or the system) leaves no one including nonappropriators better off than they would have been under continuance of free use. Since free use does not give anyone much incentive to labor productively (where one sows, anyone may reap), the free use baseline will be rather low, so a private ownership system will perhaps easily satisfy this requirement.

Question: Does either line of thought or the combination of the two suffice to justify private ownership in the way that Locke intends?