

## **Locke and the Liberal Tradition**

**Richard J. Arneson**

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John Locke's *Second Treatise of Government* is a ringing defense of individual liberty and individual moral rights, including rights to private property. Locke calls for limited government and also outlines legitimate functions of government. Attacking patriarchal defenses of absolutist monarchy, he takes some modest steps toward attacking patriarchy and promoting the moral rights of women and the equal moral status of men and women. Locke espouses a theological ethics, within which one can discern seeds of secular and even utilitarian notions of the foundation of ethics. He is adamant in asserting that no one acquires political obligations to obey the established authorities except by her free and voluntary consent, but also acknowledges the difficulties that have spurred some to abandon this consent doctrine. Ideas of democracy and majority rule play a very limited role in his political doctrine, and this neglect raises questions about the centrality of democracy to the ideal of a morally legitimate state. Locke proclaims that all normal human individuals are free and equal persons, and takes this to be compatible with inequality in people's possessions and opportunities..

Just this short listing of some of Locke's ideas indicates that they reverberate throughout the tradition of modern liberal political thought. There are tensions, and perhaps inconsistencies, in Locke's thought, and later articulations of Lockean ideas not surprisingly emphasize and develop different elements in the Lockean package. Opposed positions in modern liberalism can with justification trace their roots back to Locke.

This chapter discusses some themes in Locke's writing that are prominent features in one or another version of modern liberalism. The discussion highlights both insights and confusions in Locke's writing that also show up in contemporary thinking. Although there is little doubt that Locke proved to be an influential thinker whose ideas shaped later developments, I make no attempt to trace causal connections. I comment on affinities between Locke's ideas and contemporary doctrines without making any claims to the effect that what Locke wrote caused some later writer to write what he wrote. Another limitation of the following account: it is confined to discussion of Locke's *Second Treatise of Government* and does not attempt to relate that great polemic to other writings by Locke that touch on similar themes or expand or complicate his arguments.

### **1. Natural law and natural moral rights.**

Locke introduces his way of thinking about our moral relations to one another and about the moral basis of our political relationships by a thought experiment. He imagines people living together without government. Without laws or courts or police, we would surely still have moral duties to one another and moral rights against each other, Locke affirms. Locke states, "The *State of Nature* has a Law of Nature to govern it, which obliges every one: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions" (/TT/2, 6). Corresponding to this law are rights possessed by each person, not to be harmed by others in his life, health, liberty, or possessions.

The natural moral law according to Locke is objectively binding; it gives each person overriding reason to obey its dictates. Each person can discover this binding moral law by bethinking herself; the law is as it were written on the hearts of all men and women. The law's normative force is independent of institutional arrangements, shared cultural understandings, or anyone's subjective opinions about its content. For example, each of us has a right not to be enslaved, even if current institutions and social practices uphold slavery, the public culture affirms its rectitude, and the members of society all are of the opinion that slavery is morally permissible. The law takes the form of directed duties: each of us has a duty not to assault innocent nonthreatening persons, and the duty is owed to each person, and corresponds to a moral right of each person not to be so assaulted.

A moral right is a claim one possesses to certain conduct or forbearance on the part of specified others; a right of this sort might (or might not) be alienable or transferable, forfeitable, and waivable. Some examples: my property right in my shirt is transferable to another person by mutual consent. With transfer to another, the other person has all the rights of ownership I once possessed in the shirt, including the right to transfer the bundle to another person by gift or sale. My property right in my shirt is waivable: I can relinquish the shirt and my rights to it, and then anyone who comes along can take possession of the shirt. Within some limits, I can waive my right not to be touched or even assaulted: if I waive my right not to be hit by you now in the stomach, you do not violate my right by hitting me now in the stomach. By my bad conduct I can forfeit some or perhaps all of the rights I possess: attacking others, or stealing their goods, or depriving them of their liberty, I render it morally permissible for others to

deprive me of liberty or harm me in ways that would be impermissible but for my transgressions, in order to block me from my wrongful course of action or to deter me or others from like transgressions.

Not all rights are waivable or transferable. Each of us has a right that others refrain from wrongfully harming him in ways that threaten death or grievous injury, but according to Locke, each of us has a duty to stay alive, and no right to commit suicide or engage in actions that recklessly court grievous physical harm for no serious purpose, so none of us is morally at liberty to waive our right not to be subjected to harmful physical assault or our right not to be killed.

Locke does not assert that all moral considerations fall under the heading of what we owe to one another by way of strict moral duties and corresponding rights. No doubt there is a region of behavior that is morally nice or admirable but not morally required. One very consequential question does arise, in determining how individual moral rights shape morally acceptable political institutions and practices: are the moral rights we have against others exhausted by negative duties not to harm or do they include positive duties to aid? Locke does not provide a full answer to this question. The tone of his work emphasizes negative duties, and in twentieth-century libertarian political thought, such writers as Robert Nozick (1974) cite Locke as inspiring their view, which denies that anyone ever owes anyone any positive duties of aid unless one has voluntarily undertaken such duties.

Locke writes, “Every one as he is *bound to preserve himself*, and not to quit his Station wilfully; so by the like reason, when his own Preservation comes not in competition, ought he, as much as he can, to *preserve the rest of Mankind*” (/TT/2, 6).

What does this mean? Read literally, his words suggest that when I can save my own life only by bashing the head of another person, that is morally permissible. I doubt Locke really means that. Read literally, Locke's words suggest that one has an unlimited charitable duty to help anyone in peril anywhere so long as the helping does not cost me my own life. I doubt Locke really means that. In fact, following the passage just quoted, Locke appears to explicate the duty to preserve the rest of mankind entirely in terms of duties to refrain from harming others in certain ways.

Locke is explicit in asserting that in the absence of any government or institutional social order, each person has an executive right to enforce the law of nature—to block other people's violations of anyone's rights and to apprehend and punish violators in order to deter the offender himself and other people from committing similar crimes. Beyond this universal moral permission to enforce the law of nature, is there an enforceable duty that attaches to each of us, to do her part toward enforcement? On this important question Locke does not clearly declare his view.

Locke's doctrine of natural moral rights, incomplete as it is, forms the core of the tradition of deontological, rights-based liberalism, a broad tradition that is perhaps the dominant contemporary view. On this view, the account of what we owe one another bottoms out in claims of individual claim rights correlated with strict moral duties. This way of thinking contrasts with consequentialist approaches that regard rights and corresponding duties as devices we should devise in order better to fulfill, in the complex circumstances of human life, more fundamental duties to improve the world by improving the overall quality of life for human persons and other sentient beings. But if

we ask, what are rights based upon, Locke's account provides interesting twists, which also reverberated in the subsequent development of liberal thought.

## **2. Theology and ethics.**

As presented in the *Second Treatise of Government*, Locke's doctrine affirms that our moral rights and duties are based on divine commands. According to Locke, the fact that we are created by an all-loving all-powerful God renders it the case that we always have decisive reason to obey this God's commands. So at the foundational level, to determine what human persons owe one another we need to look to the substance of these divine commands. Locke follows a longstanding version of the Christian tradition in holding that the natural moral law consists of commands of God that are promulgated via the mechanism of human reason (as well as by special revelation, for example, to be found in a sacred book). Without needing any special revelation of God's purposes, by consulting our reason we can determine what God generally commands.

To discover God's commands, we need to consider Divine Providence. A loving God intends the flourishing of his creation. Locke tells us that the law of nature "willeth the Peace and *Preservation of all Mankind*" (*TT/2*, 7). Locke uses this thought to reason as to what the content of the rules commanded by God must be. Locke here clearly supposes that God issues commands to mankind such that if they are generally followed, the peace and preservation (and we can probably add, the prosperity and flourishing) of humans is assured. God's Providence takes a rule utilitarian form. By reason we can know that God issues commands, binding on all human persons, such that if they are generally followed, that maximally advances the peace and preservation and flourishing

of people. The same line of reasoning gives assurance that the law of nature must be simple and easily learned by human persons, because if the commands were complex and excessively difficult to comprehend, many people would fail to comprehend them, and this state of affairs would be contrary to God's purposes.

In passing, notice that this account invites an objection that attaches to many versions of rule utilitarianism: the rules that if generally followed would maximize human flourishing might in some circumstances, when not generally followed, foreseeably lead to very suboptimal outcomes and even disasters. In this way God, as described by Locke, stumbles badly in his planning.

The divine command ethics to which Locke describes continues to find adherents in the contemporary world. However, the edifice collapses if we have good reason to doubt God's existence or to doubt that we have any reliable way of discovering God's plans for humanity even on the assumption that He does exist. "Collapse" here is perhaps too strong a verdict. One might alternatively just scratch out the claim that the normative status of Locke's natural law ethic is generated by the fact that it has been commanded by God, and leave the substance of his doctrine intact, providing a defense of its being normative for us by reflective equilibrium ideal coherence methods or by whatever other form of reasoning might be thought to undergird claims to objectivity in ethics.

This procedure bowdlerizes Locke's own doctrine, but might be justifiable all the same. Moreover, this is a path that some modern followers of Locke have taken. For reasons already stated, the Divine command foundation for Locke's claims about what we morally owe to one another is anyway shaky. However, if one drops its claimed basis in God's commands, some shift in the content of Locke's natural law appears inevitable.

In particular, without the assurance that the fundamental moral rules are commanded by God and to suit His purposes must be short and simple, there is no particular basis for supposing that the moral norms we ought to easy to comprehend and simple rather than complex in their formulation. Maybe the truth about the substance of moral requirements is difficult, messy, and complex.

Locke's doctrine in its basic outline can survive this shift. One could uphold a natural law doctrine but add that the discovery of moral truths might be a difficult achievement of humanity collectively over long historical periods and maybe extending indefinitely into the future. Some cultures such as primitive hunter-gatherer culture might provide inadequate conceptual and linguistic resources for gaining access to moral truth, and one might wonder whether our present culture does not have similar defects, hard or impossible for us now to discern. Anyone's grasp of the moral law is surely fallible and partial. Some might see better than others through these trees and might have a better overview of the forest. There could be progress over time in mankind's discovery of moral truth, if moral truth has the natural law shape as Locke supposes.

### **3. Consent.**

Locke writes that the "State all Men are naturally in" is one "*of perfect freedom to order their Actions, and dispose of their Possessions, and Persons as they think fit, within the bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man*" (/TT/2, 4). In other words, there is no natural hierarchy among human beings, such that, for example, if one is born a lord, one has the authority to rule those born on one's estate, issuing commands they are bound to obey. Nor according to Locke



is there automatically an obligation that falls on one who is born within the jurisdiction of some political state to obey its constituted authorities. In a later chapter Locke observes that “Men being, as has been said, by Nature, all free, equal, and independent, no one can be put out of this Estate, and subjected to the Political Power of another, without his own *Consent*” (/TT/2, 95).

The legitimate authority of the state rests on the consent of the governed. So Locke asserts. This is an attractive but also a puzzling claim. In the ordinary course of events, political states do not seem to pay any heed to what Locke claims to be the necessary conditions for their legitimate authority. An ongoing state establishes and enforces a set of laws on all those who are inhabitants or even temporary residents of the territory it claims. States do not refrain from enforcing the laws of the land and compelling obedience from people prior to obtaining their free and voluntary consent to be subject to these arrangements. Of course, this fact might be no objection to Locke: maybe states characteristically act wrongly in claiming obedience from those who are present on its territory and within its clutches but who have never consented to be coerced in this way. However, this characteristic and perhaps even invariant behavior of states seems to inspire no popular opposition just on this account. People complain about particular states and point to their unjust or oppressive treatment of their subjects. But nobody (except for diehard anarchists) complains about an ongoing, well-functioning state that it does what states do—enforce a common code of rules on all within their territory. This is the proper business of a state; it is what the state is supposed to do. We would object vociferously if our state began asking those within its territory whether or

not they consent to its authority and enforcing the laws only on those who respond affirmatively.

Locke shows some awareness of the problem. He suggests that people might tacitly or silently consent to the authority of the state. By traveling on the public roads maintained by the state and enjoying the protection of its laws, one silently consents to the state's authority for as long as one continues to enjoy the benefits (/TT/2, 119).

Locke seems to view tacit consent as low-grade consent; only explicit consent makes one a full and permanent member of society (/TT/2, 121). There is something odd here. If residing on a state establishes a presumption of consent, it seems one could cancel the presumption established by one's silence by explicitly announcing that one does not consent, while continuing to reside on the territory. Locke does not countenance this possibility.

There is another strand in Locke's account of what generates political obligation. The idea is that a state that adequately respects and protects the rights of those present on the territory it claims to rule is entitled to the obedience of those within its domain. In this spirit Locke denies that a state that is an oppressive tyranny merits obedience. He goes further. According to Locke, one cannot validly give consent to a tyranny and become bound to obey it (/TT/2, 172).

The political theorist Hanna Pitkin (1965) claimed that despite Locke's proclamations, consent is not really the ground of political obligation in his account.

Consider

1. By residing within their territories, we give our consent even to governments that are tyrannies.

2. We are not obligated to governments that are tyrannies.
3. Consent is the ground of political obligation. That is to say, if one consents to a government, one is obligated to it, and if one does not consent, one is not obligated.

According to Pitkin, Locke suggests all of 1-3, but they are together inconsistent, and we make most sense of Locke, interpret him charitably, by dropping 3.

Pitkin's argument was dismissed by A. John Simmons on the ground that she failed to notice that Locke might be taking consent to be necessary, but not sufficient, for political obligation (Simmons 1976, 284). Once we notice this possibility, the better reading of Locke's text has him asserting that consent is the ground of political obligation, in the sense that one cannot be under political obligation unless one gives one's free and voluntary consent, but one cannot validly consent to tyranny, if a tyrannous state is one that claims unlimited authority to rule as it sees fit.

This move on Locke's behalf still leaves him in an indefensible position. The evident problem is that for reasons Locke himself suggests, it is implausible to regard individual free and voluntary consent as a necessary condition for binding political obligation. To deny this is to deny that there is a freestanding obligation not to be a free rider who benefits from the cooperative efforts of others without being willing to bear his fair share of the costs of their provision. Suppose one finds oneself living within a state that effectively provides the goods of the rule of law and military force that deters neighboring countries from aggressive attack. There is no question of accepting or rejecting these benefits; in their nature if provided at all they fall on all who reside on the territory of the state. A principle of reciprocity sometimes called the Hart-Rawls principle of fairness affirms that "when a number of persons engage in a joint, mutually

advantageous, cooperative venture according to rules and thus restrain their liberty in ways necessary to gain advantages for all, those who have submitted to these restrictions have a right to similar acquiescence on the part of those who have benefited from their submission” (cited from Nozick, 1973, at 95). Notice that in the case of a good that, if available to anyone in a specified group, must be available to all in the group, and that is also such that if anyone consumes any of the good, all in the group must consume some of it, the cooperators working together to supply the good do not have the option of supplying it for themselves and withholding it from those who for whatever reason choose not to cooperate in the scheme.

The application of reciprocity to the provision of the core political goods that the state provides yields the result that those who benefit owe a duty of fair play to their fellow cooperators, a duty to bear their fair share of the cost of provision. Here the cost of provision includes willingness to obey the rules of the cooperative scheme, and a duty to share this cost is tantamount to a duty of political obligation, a duty to obey the law. On this account, when a scheme that satisfies the principle of fair play is ongoing, obligation arises without voluntary consent.

Locke’s struggles with consent and political obligation are still unsettled in contemporary liberal thought. Some political theorists accept the idea that Pitkin thought Locke should have accepted: that valid political obligation can fall on a person in the absence of anything resembling free and voluntary consent on her part that might be regarded as triggering the obligation. Theorists who reject this idea must do one of two things: Either they must take up Locke’s project of somehow showing that despite appearances the relationship of state to members of society does not rule out free and

voluntary consent to state authority and hence political obligation by the route that Locke outlines, or they must deny that most members of most contemporary states, even decent and well-functioning states, have any obligation to obey their commands or to support and sustain them. Most commentators find the first alternative indefensible. The upshot is that if you swallow Locke's arguments regarding the necessity of consent for political obligation, you are probably committed to anarchism, but you should not swallow Locke's arguments.

#### **4. The family.**

Locke is arguing against a conservative authoritarianism of his day, as represented by Sir Robert Filmer's arguments supporting the Divine rights of kings. Although not by any stretch of the imagination a left-winger, Locke often is focused on marshaling arguments against positions to his right and does not pay much heed to defending his left flank. As a result on some topics his stated ideas do not include any doorstop that prevents them from being pushed further toward the left.

This characterization fits his account of rights and duties among family members. Locke's nemesis Filmer had argued that just as God has established the male father as the absolute ruler of the family, accountable only to God, so too God has established an hereditary line of kings as absolute rulers of political societies, each king in effect a father to his people. Locke responds that different types of authority are different: the authority of parents over children in a family is different in purpose and point and character from the authority of a political official over members of society (/TT/2, 1, 53, and 170-171). So it is a mistake to infer from what the proper structure of family authority should be to

what the proper structure of political authority should be. Moreover, it is anyway not true that the male head of a family should have anything like an absolute right to rule other family members.

According to Locke, there is a natural law basis for long-term monogamous marriage. The family union has as its aim the generation and upbringing of children. Children are born weak and require many years of care while they develop, so a marriage must provide for stable long-term care of children that are born to husband and wife. But once the children are raised, there is no natural law bar to divorce, though he adds, positive law might forbid it. The rights of parents to rule over their children stem from their duty to nurture and train their children, so that they will in due course become mature rational agents, able to live free, cooperate with others on fair terms, and flourish. These rights belong to both parents equally, not to the husband alone. Children in turn are duty-bound to obey their parents while they are immature. When children have become adults running their own lives, they have residual duties to honor their parents.

So far, what Locke holds chimes in with modern liberal feminism, which holds that women are morally equal in basic rights to men and should have equal opportunity with men to live as they choose and compete with for positions of advantage. The next question concerns the rights and duties of a man and a woman who become married. For the most part Locke's position is that people are free to marry on any terms that are mutually agreeable provided the terms make satisfactory provision for the raising of children.

Locke explicitly endorses the idea that the man is the natural ruler of the family, despite his assertion that people should be free to make marriage contracts on whatever

terms they choose. He writes: “But the Husband and Wife, though they have but one common Concern, yet having different understandings, will unavoidably sometimes have different wills too; it therefore being necessary that the last Determination, i.e. the Rule, should be placed somewhere; it naturally falls to the Man’s share, as the abler and the stronger” (/TT/2, 82). This might be read as Locke insisting that the default understanding, unless the marriage contract specifically states otherwise, is that the man shall have the final say on matters of common concern. But the surrounding text indicates that Locke intends that the “man gets the final say” rule should be a set component of any acceptable marriage contract, not merely a default. However we interpret Locke’s statement here, it is clearly a shaky claim, liable to collapse under any scrutiny. In the law regulating business enterprises, we do not require that in a two-person partnership, the final say must be placed in the hands of the partner singled out somehow as abler and stronger. We let the partnership be run on whatever terms are mutually accepted by the parties involved. Why not treat marriage compacts in the same way? And why should the presumed greater physical strength of the male partner in marriage generate any entitlement to rule the female partner?

One might also wonder whether there might be paternalistic grounds for insistence on equality of basic rights and duties in marital contracts. (Here “paternalism” refers to restriction of a person’s liberty for his own good against his will.) Even if one partner in a marriage contract would voluntarily agree to a lopsided deal in which she gets the lion’s share of the obligations and the squirrel’s share of the rights and privileges, there should be at least a social norm, and perhaps legal rules, pressuring toward equal terms. This suggestion would limit contractual freedom in the domain of marriage for the

sake of upholding an ideal of equality in male-female relations. Locke might be supposing to the contrary that there are paternalistic grounds for limiting contractual freedom by insisting on greater rights for men on the ground that this benefits women (said to be weaker and less able). Be that as it may, Locke insists that the man's preset right to rule is limited in character. He is not to be the absolute ruler of the wife.

Locke's ideas on family obligations and duties form an interesting, in some ways appealing, unstable mixture. The arguments for superior male rights are conspicuously weak; to this extent Locke is implicitly a modern liberal feminist. Locke explicitly avows a conservative doctrine of husbandly rule that fits with traditional Christian doctrine. Finally, he flirts with the idea that in romantic and marital life individuals should be free to interact on any mutually acceptable terms. This let-free-contract-rule doctrine shapes a view of family rights and duties that has prominent adherents in the contemporary liberal tradition.

### **5. Property.**

In a famous chapter of the *Second Treatise*, Locke argues that if we start by assuming that initially no one has any more right to ownership or control of particular moveable or unmoveable parts of the Earth than anyone else, we can show that individuals can acquire permanent, transferable, bequeathable private ownership rights over particular parts of the Earth. In other words, God gave the Earth to men in common, but in such a way that the common ownership rights we all possess give way via a morally legitimate process to full private ownership.



Locke appeals to divine purposes to guide us to understanding of the moral rules regulating property acquisition. The rules must be such that if they are generally obeyed, the outcome will be the maximal preservation and flourishing of humanity (/TT/2, 26; see also Simmons 1992 and Tully 1980). So the initial provisional common ownership of the Earth by everyone cannot mean that no one can use any part of the Earth without everyone's consent. If that were the rule, and we generally obeyed it, we would all starve in the midst of plenty. Instead the rule must be along these lines: anyone can use any unowned part of the Earth, and if more than one person wants to use the same bit at the same time, individuals should take turns.

Locke holds that the free use regime is provisional: it is liable to be displaced by private ownership. Anyone may privately appropriate unowned land or moveable parts of the Earth, at least when the Earth's physical resources are abundant, in the sense that they exceed any claims that people in the aggregate might make on them. Locke proposes that one acquires private ownership of unowned parts of the Earth by laboring on them, but under conditions of abundance, it should be permissible to appropriate a parcel of land, marking it clearly so others can see it is now owned, and leave the land in a wild state, so one can observe its beauty. Since there is no scarcity of good-quality land, whenever one appropriates, anyone else can follow suit and appropriate relevantly similar unowned land and gain benefit from it just as one has, whether one appropriates in order to work the land productively or just contemplate it. Locke cogently observes that if you appropriate land in these stipulated circumstances and farm it productively, anyone who demands a share in one's crops desires the benefit of another's pains, to which he has no right. (/TT/2, 34).

Locke adds bells and whistles to the account just described. He proposes that one acquires property in unowned land by laboring on it (/TT/2, 27), and that one's private ownership of that land lapses if one subsequently lets the land go to waste (/TT/2, 31-32 and 46). One must continue to use the land productively or lose one's ownership of it. These added features are problematic. The no-waste proviso raises the question: to what degree must one's stewardship of land be productive, to avoid violating the condition that one must not let the land go to waste? Suppose you have appropriated land and are farming it by modestly productive techniques, and if a more technologically sophisticated and adroit (or for that matter a more hard-working and ambitious) person expropriated your land, she would work the land more productively. In these circumstances, does your continued ownership violate the no-waste condition? At the limit, a maximizing no-waste condition would become the rule that land belongs to whoever would employ it most productively, for just as long as that person would be the most productive owner of it. Such a rule would engender continued disputes about who really owns any given resource. But it is not clear what the nonarbitrary answer would be to the question, what extent of productive employment of appropriated resources is required to satisfy the no-waste proviso.

Locke suggests another basis for regarding laboring as key to justified appropriation and continued ownership. This idea is that land and resources ought to belong to the virtuously industrious, and laboring on land and continuously satisfying the no-waste proviso qualifies one as virtuously industrious (/TT/2, 34).

This is also a disquieting idea, partly so for the same reason that the no-waste proviso idea is dubious. Again the question of degree arises. How do we decide

whether the uses one makes of land one appropriates renders one sufficiently virtuous to be deserving of continued entitlement to ownership? Suppose one appropriates land and has a clever idea for its use, and hires brawny people for wages to work the land according to one's scheme. Being clever in this way is not the same as being virtuously hard-working, so does this scenario give grounds for doubting that one is entitled to continued ownership? Or suppose that one is hard-working but very untalented, so that one labors hard on the land one appropriates, but to little effect. Is failure to be effectively hard-working a deficiency of virtue, which causes one's entitlement to continued ownership to diminish or extinguish?

The no-waste and labor-as-displaying virtue suggestions hint at rules for permissible appropriation and continued ownership that would inevitably become embroiled in contested enforcement. There would be disagreement among reasonable people regarding who genuinely owns what, but Locke clearly envisages a noncontroversial property ownership regime that could be administered informally by right-thinking and good-hearted persons in the absence of government enforcement. A large part of the point of a private ownership regime is to establish clear title to resources and provide security of ownership. This aim is in tension with the suggestions under review. Locke does not engage with this issue in any way that would indicate how he would propose to resolve the tensions. (In principle, his divine command ethic as interpreted here would hold that the rules of property appropriation and ownership should be set so that if the rules are generally followed, the preservation and flourishing of mankind are maximized. Locke does not say enough to determine what those rules should be in the broad circumstances he considers.)

Locke is well aware that there is a major strand in his justification of private ownership that relies on the assumption of abundance or nonscarcity, and that he needs another account to justify private ownership when that assumption does not hold. Surely at some point there will not be enough valuable land left unowned to allow anyone to appropriate as much as she likes. Ultimately all valuable land will be claimed. When there is scarcity of parcels of the Earth that people want for private ownership, it will no longer be true that if you appropriate unowned land and work it and benefit from it, anyone else has the same opportunity to appropriate equally valuable unowned land and gain the same benefit. At this point, those who lack the opportunity to appropriate have a plausible complaint: why is it morally acceptable for some to gain from resources they or their predecessors have appropriated when latecomers lack these opportunities?

Locke has several responses. One is patently implausible. He urges that money is a human convention. Money tokens have value only because we accept them as having value and if we ceased to accept them in trade, they would immediately become worthless. On the basis of these sociological facts Locke asserts that we all tacitly consent to the use of money, and in consenting to this arrangement we consent as well to its foreseeable effects, which include some people heaping up great wealth and owning far more than others. So inequality of ownership and largeness of possession are morally permissible, because we all consent to the use of money and what predictably follows from it (/TT/2, 50). However, although money would fall into disuse if people generally did not accept its use, no single individual or small coalition needs to use money, for the system to sustain itself. So my choice is either to use money and benefit from the convenience, or insist on barter while others continue to use money. In these

circumstances there is no plausible sense in which my use of money involves my voluntary consent to all the foreseeable consequences of the operation of a money system (which will continue to unfold regardless of whether I avail myself of the money convention or not).

Locke adds that it makes sense for people to consent to the use of money and thereby to a private ownership regime under conditions of scarcity, because we are all better off under such a private ownership regime than we would have been under continued free use (/TT2, 41). Private ownership gives familiar incentives for owners to deploy resources in ways that will create more wealth, and the overall result is a growing economy in which everyone's opportunities improve, even if some people's opportunities improve far more than those of others. This line of thought suggests a justification of private ownership that can stand independently of the tacit consent to money idea.

Suppose we have to choose between two ownership systems: (1) each person has rights to use any part of the Earth (taking turns if need be) and no one has any right of private ownership and (2) each person provisionally has rights of free use, as in 1, but each person has a right to appropriate unowned parts of the Earth as permanent, transferable private property. Everyone is worse off under 1 than 2. In this case, we would do better to opt for 2 not 1. In addition, if God's will sets our moral duties and rights, and God's will is to set rules such that their general observance best promotes human preservation and flourishing, then God must have commanded 2 not 1. Neither of these lines of thought depends on any claim about the Earth's resources being nonscarce.

If one holds that the basic moral right is to live as one chooses so long as one does not wrongfully harm others in certain ways, then the first argument of the preceding

paragraph will justify private ownership even in later circumstances in which other possible property systems are feasible and would improve some people's condition and might be deemed more fair than continued private ownership. A broad trend in the liberal tradition, Lockean libertarianism, takes that position.

If one holds either the divine command theory account of property ownership or a secular version of it, then the justification of unvarnished private ownership becomes more open to question when circumstances change and we see we have a choice among several property regimes. Maybe the rules, the general following of which by people would best promote the preservation and flourishing of humanity, are not fixed for all time, but vary to some extent with changing circumstances. In the nineteenth century, something close to this line of thought leads J. S. Mill to be somewhat open-minded as to what regime of property rules makes most sense. He inclines toward a laissez-faire private ownership regime, but allows for a long list of exceptions to the general preference for a state policy of laissez-faire (Mill, 1965, Book V, ch. 11). Mill has no deeply principled objections to socialist proposals for the replacement of private ownership with some form of communal ownership system; he doubts that the operation of such a system would work out well for people, and is especially skeptical about the prospects for individual liberty under centralized socialist rule (Mill, 1965, Book II, chs. 1-2). Writing in the twentieth century, Friedrich Hayek expresses with greater confidence the view that a market economy based on private ownership of resources best enables people to live together peaceably and cooperatively (Hayek, 1960).

But the question, what system of property rights would best promote human flourishing under modern conditions, is left wide open by the considerations that Locke

marshals. We could agree that private ownership trumps free use but add that both are inferior to some further alternative. For example, we could embrace a social democratic regime in which free trade on a basis of private ownership is tempered by state action to maintain full employment, keep markets competitive, fund public education, tax the wealthy and transfer resources in some form to the poor so that all have reasonable opportunities to pursue a rich variety of life plans, insist that business firms follow meritocratic hiring practices and do not discriminate against applicants on arbitrary grounds, and so on (Rawls, 1998). Locke's stated opinions do not indicate that he would lean in this direction, but to reiterate the point, his abstract moral framework for determining that natural moral rights and duties we have toward one another would render it the case that the rights we have depend on the consequences of people's generally conforming to them.

#### **6. Limited government and the right to rebel.**

Locke is famous for upholding a moral right to rebel against unjust rulers. Just as everyone has the right to uphold the natural moral law by apprehending and punishing an offender, once government is established, a government that massively violates people's moral rights forfeits its right to rule, and its subjects have the moral right to overturn it (/TT/2, 222). Locke refrains from asserting a duty to rebel against injustice. For one thing, rebellion might do no good, and result in death or other harms falling on innocent people. Locke refrains even from asserting a duty of rebellion when this would be an easy rescue of people from the peril of suffering tyranny. (One might ask, why wouldn't a God who commands rules conformity to which will be conducive to the general

flourishing people require joining with others to rebel against tyranny when the costs and risks to those joining are moderate and the prospective gains large?)

Can we design and establish political institutions that will reduce the risk that a government will degenerate into tyranny, or into incompetence that renders it ineffective at protecting people's moral rights? Locke does not show much interest in questions of institutional design. He relies on maintenance of a public culture of willingness to resist tyranny as a bulwark against the rise of oppressive government (/TT/2, 226). If people are disposed to rebel against a government that veers off the path of rectitude, that gives political rulers an incentive to stay on the straight path. Locke might add that institutional devices to protect against the rise of tyranny will likely prove ineffective in the absence of a known widespread disposition of political subjects to make trouble for would-be oppressive rulers. Even if this speculation is correct, it does not diminish the importance of institutional design, because the right sort of institutions might encourage people's disposition to be intolerant of government oppression, and might lessen the temptations of rulers to be oppressive.

Locke does not explore nonviolent resistance as a possible tool for taming evil governments, but what he does say opens the topic. If we can correct government oppression without the dangers and harms of coups and insurrection, we should choose the nonviolent path. Another topic that Locke's discussion suggests, although he does not explore it, is what we should do in the face of governments whose policies are significantly but not massively unjust.

Locke's strong assertion of the right to rebel against tyranny is a mainstay of just about any plausible modern liberal doctrine. The modern world keeps generating



massively unjust governments, whose subjects and victims face hard conditions to which Locke's discussion still speaks.

### **7. Three conceptions of liberalism.**

Thomas Nagel has characterized liberalism as the conjunction of two ideals (Nagel, 1995). One is the ideal of individuals being free to live as they choose (so long as they do not harm others or get in each other's way in certain uncontroversial ways) and free to form their beliefs about the natural universe and about how we ought to live in an environment of open discussion and debate and cultural expression. The second is an ideal of democratic equality, in which all members of society share a fundamentally equal status, hereditary inequality of rank is absent, the state is democratically governed, and there is equality of opportunity in the formal sense of careers open to talents and in a substantive sense such that all have a genuine chance to develop their abilities and enough resources to carry out a wide array of life plans. Emphasizing both ideals places one in the camp of social democratic and welfare state liberalism; emphasizing the first ideal alone places one in the camp of the classical liberalism of the nineteenth-century that maybe gets its fullest expression in the writings of twentieth-century theorists such as Friedrich Hayek and Robert Nozick.

Locke's writings contain seeds that blossom into both sorts of liberalism, but his own emphasis is on the first, and especially on its toleration and limited government components. My discussion here has emphasized that although Locke does not espouse very much of the democratic equality ideal, he also does not offer arguments against it, and indeed he makes suggestions that lead us toward support of social democracy.

In the twentieth century, shadowed by fascism and communism, Locke's ideas of limited government and of individual rights against the state have considerable traction. What Locke says about the limited rightful authority of kings provides a trenchant critique of dictators who seek to mobilize the resources of coercive state power, augmented by modern technologies of violence and bureaucratic organizational methods, to advance grand racial, nationalist, or humanitarian goals.

“Individuals have rights, and there are things no person or group may do to them (without violating their rights)” (Nozick, 1974). So writes Robert Nozick, self-consciously echoing Locke. Nozick develops a Lockean libertarianism, a doctrine that is recognizably Lockean but interestingly streamlines Locke's views. According to Nozick, each individual person has natural moral rights, that impose strict duties on others, but these duties are all negative duties not to harm and do not include any positive duties to aid others in the absence of contract or promise to do so (except perhaps in the special case of childbearing). On this view each person has rights not to be harmed in certain ways specified by a list—by force or violence, threat of these, fraud, theft of property, breach of contract, causing physical damage to the person or property of others. Each has the right to live as she chooses provided she does not violate anyone's rights.

Libertarianism streamlines Locke's doctrine, removing any ambiguity in Locke's views as to whether there are any strict enforceable moral duties of beneficence. Whether this amounts to an improvement on Locke's stated views is dubious. If a child is drowning in a shallow pond in front of me, and I can easily pull her out of the pond and save her life, the intuition that I am duty-bound to save her, and that omitting to save renders me liable to justified coercion (as when a third party could induce me to carry out

my lifesaving duty by credibly threatening to harm me if I do not) is as compelling as intuition can be.

Lockean libertarianism holds that people can acquire permanent bequeathable private ownership rights over material resources, parts of the Earth. Remaining true to Locke's doctrine, the libertarian will have to hedge this right of acquisition with several qualifications. A key idea is that if the continued claim to private ownership of land renders others worse than they would be if the land had remained under free use, the claimed right of ownership shrinks and gives way to rights of nonowners.

If one presses on the moral limits on property acquisition that Locke accepts, one's view is drifting toward social democratic liberalism. Roughly speaking, this view allows that there are moral rights to private ownership, rights that are crucial to our robust understanding of people's rights to liberty, but holds also that these rights are constrained and give way in order to accommodate the legitimate moral claims of losers in market economy transactions and more generally of those who are worse off than others and leading grim and improvable lives.

If one presses further and maintains that these duties to help improve the quality of lives of distant needy strangers hold across time and space, one embraces a version of global egalitarianism, the imperative of social democracy on a world scale. In post-World War II doctrines of international relations, one finds as well an echo of Locke's view that anyone has the authority to punish offenders against the law of nature in a state of nature. Against the idea that any military intervention involving incursion onto the territory of a sovereign nation (except to repel a prior military intervention by another) is wrongful aggression, currently accepted international relations law is moving toward the

position that if a regime is inflicting crimes against humanity against its own people, any member of the international community of nations is morally empowered to make war against the offender to eliminate or diminish these crimes against humanity.

Perhaps the foremost twentieth-century representative of what I am here calling the *social democratic* conception of liberalism, combining the individual liberty and democratic equality ideals, is John Rawls (Rawls 1998). Rawls explicitly expresses an intellectual debt to Locke's social contract doctrine. As Rawls sees it, Locke supposes that the legitimate moral authority of government arises from the voluntary consent its individual members give it. According to Rawls, what renders a society just is that its institutions conform to the principles to which rational persons would assent in a hypothetical situation that is a fair setting for choosing principles of social regulation. According to Rawls those principles would require equal basic liberties for all and would allow social and economic inequalities only if (1) their acquisition is open to all members of society so that all those with the same ambition and native talent have the same prospects and (2) social and economic arrangements work to the maximal benefit of the worst off members of society.

Locke's own doctrine is less egalitarian than this social democratic descendant of it, and the question arises whether Locke's doctrine contains intellectual resources to resist the egalitarian normative imperative. Another question that arises when Locke's doctrine is compared to Rawlsian liberalism is whether the Rawlsian insistence that the foundation of what we morally owe one another consists of rights that people fairly situated would choose and does not involve any appeal on any level to the maximization of good consequences can be sustained. Locke's view, as already noted, via its divine

command warrant, does in the end render what we owe one another dependent on what rules are such that, if generally followed, they would generate best consequences for people. The answers to both of these questions—about egalitarian content and about consequentialist foundations-- are hotly contested in contemporary normative political theory.

Locke's own views have some affinity with opposed traditions of contemporary thought, the libertarian and social democratic conceptions. Locke's views also stand in an ambiguous relationship toward a third type of view, cross-cutting the others, a conception that nowadays tends to get labeled "political liberalism" (Larmore 1989, Rawls, 1996, Gaus 2011). For advocates of this doctrine, the essence of liberalism is the conjunction of the ideas (1) that in modern times reasonable people tend not to converge toward one view of the right and the good, but tend to fan out in allegiance to many conflicting doctrines, and (2) that the exercises of state power are morally illegitimate and wrong unless they can be justified to each and every reasonable person whatever his ultimate allegiances. Locke affirms the second claim but has no truck with the first.

So, is Locke illiberal after all? This is not so clear. Maybe claim 1 above is false. That people disagree wildly about the right and the good is undeniable, but the bases of their views are often patently unreasonable, and it is an open question whether people being fully reasonable, exercising their practical reason correctly in light of the empirical facts, would disagree. The claim that they would not is compatible with *fallibilism*, the thought that at any given time our considered views might be false, and compatible with *pluralism*, the idea that there is more than one doctrine of the right and the good that will be compelling to our reason even at the ideal limit of rational inquiry. Locke's common

sense belief that reasonable people living and cooperating together can together discern the right principles for regulating their common life and instructing them in how they ought to treat one another might yet be vindicated.

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