



"LIBERTY MATTERS"



A FORUM FOR THE DISCUSSION OF MATTERS PERTAINING TO LIBERTY

JOHN LOCKE ON PROPERTY (January, 2013)

OF CIVIL-GOVERNMENT. 215

CHAP. V.
OF PROPERTY.



§. 25. WHETHER we consider natural *reason*, which tells us, that men, being once born, have a right to their preservation, and consequently to meat and drink, and such other things as nature affords for their subsistence: or *revelation*, which gives us an account of those grants God made of the world to *Adam*, and to *Noah*, and his sons, it is very clear, that God, as king *David* says, *Psal. cxv. 16. has given the earth to the children of men*; given it to mankind in common. But this being supposed, it seems to some a very great difficulty, how any one should ever come to have a *property* in any thing: I will not content myself to answer, that if it be difficult to make out *property*, upon a supposition that God gave the world to *Adam*, and his posterity in common, it is impossible that any man, but one universal monarch, should have any *property* upon a supposition, that God gave the world to *Adam*, and his heirs in succession, exclusive of all the rest of his posterity. But I shall endeavour to shew, how men might come to have a *property* in several parts of that which God gave to mankind in common, and that without any express compact of all the commoners.

P 4

§. 26.

John Locke (1632–1704)

Second Treatise of Government (1689)

Liberty Matters <<http://oll.libertyfund.org/title/2516>>
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[May, 2013]

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LIBERTY MATTERS

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1. LIBERTY MATTERS: JOHN LOCKE ON PROPERTY (JANUARY, 2013)

This was an online discussion which appeared in “Liberty Matters: A Forum for the Discussion of Matters pertaining to Liberty” on Liberty Fund’s Online Library of Liberty during the month of January, 2013. Please visit <oll.libertyfund.org> for further details.

THE DEBATE

SUMMARY

John Locke (1632-1704) is a key figure in the history of classical-liberal thought. His *Second Treatise of Government* (1689) is the canonical text in political philosophy that most extensively and systematically advances the classical-liberal themes of individual liberty, natural rights, private property, deep suspicion of political power, radical limitations on the scope of legitimate political authority, and rightful resistance against unjust and arbitrary power. Locke’s next most important work in political theory, *A Letter Concerning Toleration* (1689), completes his fundamentally classical-liberal vision with arguments for religious toleration that readily generalize to the conclusion that the state has no authority to govern persons’ self-regarding actions or the activities of mutually consenting adults. This brief essay will examine the character and content of Locke’s central contentions about property.

Nevertheless, it is hard to avoid the conclusion that when Locke shifts from high philosophy to public policy – especially public policy concerning the less reputable members of society – liberty and property tend to get lost in the shuffle. When the poor escape from “negligent officers,” the untoward result is that they “are at liberty for a new ramble.” “Restraint of the debauchery” of the poor is a necessary step “towards setting the poor on work.” Despite Locke’s core devotion to property rights and despite the strong anti-paternalism and anti-moralism of his *A Letter Concerning Toleration*, in the “Essay on the Poor

Law” (1697) Locke calls for “the suppressing of superfluous brandy shops and unnecessary alehouses, especially in country parishes not lying upon great roads.” However, liberty and property are not compromised along the great roads that Locke travels.

The online discussion consists of the following parts:

1. **Lead Essay:** Eric Mack, "Locke on Property" [Posted: January 7, 2013]

2. Responses and Critiques:

1. Response by Jan Narveson [Posted: January 14, 2013]
2. Response by Peter Vallentyne [Posted: January 14, 2013]
3. Response by Michael Zuckert [Posted: January 14, 2013]

3. The Conversation:

1. Eric Mack's Reply to Jan Narveson (January 15, 2013)
2. Jan Narveson's Comment on Eric Mack (January 15, 2013)
3. Eric Mack's Response to Peter Vallentyne (January 16, 2013)
4. Peter Vallentyne's Reply to Eric Mack (January 17, 2013)
5. Eric Mack's Comment on Michael Zuckert (January 20, 2013)
6. Jan Narveson's Reply to Eric Mack (January 20, 2013)
7. Michael Zuckert's Comment on Eric Mack (January 20, 2013)
8. Eric Mack's Comment on Jan Narveson 2 (January 20, 2013)
9. Jan Narveson's Comments on Eric Mack and Michael Zuckert (January 20, 2013)
10. Peter Vallentyne's Response to Jan Narveson (January 20, 2013)
11. Eric Mack's Reply to Peter Vallentyne 2 (January 20, 2013)
12. Eric Mack's Comment on Michael Zuckert 2 (January 21, 2013)
13. Jan Narveson's Comment on Peter Vallentyne (January 22, 2013)
14. Peter Vallentyne's Response to Jan Narveson 2 (January 22, 2013)

15. Eric Mack's Final Comments (January 22, 2013)
16. Jan Narveson's Final Comment on Peter Vallentyne (January 22, 2013)
17. Michael Zuckert's Concluding Thoughts (January 27, 2013)
18. Jan Narveson's Response to Michael Zuckert (January 28, 2013)

ABOUT THE AUTHORS

Eric Mack is Professor of Philosophy at Tulane University and a faculty member of the University's Murphy Institute of Political Economy. His many scholarly essays focus on the moral foundations of rights, the nature of natural and acquired rights, property rights and economic justice, and the legitimate scope of coercive institutions. He is the author of *John Locke* which should be available in paperback by late January 2013. Eric has also written other essays and annotated bibliographies on 17th century political theorists such as John Locke, James Tyrrell, Robert Filmer, and Thomas Hobbes for the Online Library of Liberty. See:

- Eric Mack, An Introduction to the Political Thought of John Locke
- Eric Mack, Locke on Toleration: Locke's A Letter Concerning Toleration
- Eric Mack: Authority and Liberty in the Writings of Robert Filmer and Thomas Hobbes
- Eric Mack: James Tyrrell on Authority and Liberty

Jan Narveson is Distinguished Professor Emeritus of the University of Waterloo in Canada. He is the author of seven published books, notably *The Libertarian Idea* (1988 and 2001), *You and The State* (2008), and *This is Ethical Theory* (2010), and of several hundred articles and reviews in philosophical journals and collections. He has also been active in the presentation of classical music concerts (some 1,500 so far) as president of the Kitchener-Waterloo Chamber Music Society. He was elected a Fellow of the Royal Society of Canada in 1989; in 2003 he was made an Officer of the Order of Canada, which is that country's highest recognition of civilian achievement.

Peter Vallentyne is Florence G. Kline Professor of Philosophy at the University of Missouri. He writes on issues of liberty and equality in the theory of justice (and left-libertarianism in particular) and, more recently on enforcement rights (rights to protect primary rights). He is an associate editor of *Ethics*. Peter edited *Equality and Justice* (2003, 6 volumes) and *Contractarianism and Rational Choice: Essays on David Gauthier's Morals by Agreement* (1991), and he co-edited, with Hillel Steiner, *The Origins of Left Libertarianism: An Anthology of Historical Writings and Left Libertarianism and Its Critics: The Contemporary Debate* (2000).

Michael Zuckert is Nancy R. Dreux Professor of Political Science at University of Notre Dame. He is the author of many studies on early modern political theory, including *Natural Rights and the New Republicanism* and *Launching Liberalism: Studies on John Locke*. He is also founding editor-in-chief of a new journal, *American Political Thought*.

1. LEAD ESSAY: ERIC MACK, “LOCKE ON PROPERTY”

John Locke (1632-1704) is a key figure in the history of classical-liberal thought. His *Second Treatise of Government* (1689) is the canonical text in political philosophy that most extensively and systematically advances the classical-liberal themes of individual liberty, natural rights, private property, deep suspicion of political power, radical limitations on the scope of legitimate political authority, and rightful resistance against unjust and arbitrary power. Locke's next most important work in political theory, *A Letter Concerning Toleration* (1689), completes his fundamentally classical-liberal vision with arguments for religious toleration that readily generalize to the conclusion that the state has no authority to govern persons' self-regarding actions or the activities of mutually consenting adults. This brief essay will examine the character and content of Locke's central contentions about property.[1]

Two salient features of Locke's political thought are his focus on *natural rights* and his focus on *property*. Locke holds that all humans who have reached the age of reason are equally free and independent beings; we are “equal one amongst another without Subordination or Subjection ” (ST 4) and have basic moral claims against being subordinated to the ends of others “as if we were made for one another's uses” (ST 6). Each individual has ends of his own – his temporal and eternal happiness – to which he has reason to devote himself. Hence, each has reason to claim a right against interference in his pursuit of his own ultimate ends (ST 17); and each must acknowledge that others, who are his equals, have the same rights that he claims for himself. Hence, all are required by reason to affirm every adults' right to freedom (ST 6).

THE NATURAL RIGHT TO FREEDOM

This natural right to freedom is not an unlimited Hobbesian liberty to do whatever one desires to do. For such a liberty in others would mean that one was open to utter subjection to them, and “who could be free, when every other Man's Humour might domineer over him?” (ST 57). Instead, each individual's natural right

to freedom implies a natural obligation on the part of others to refrain from interference with that individual's pursuit of his temporal and eternal happiness. Each person's right to freedom is constrained by others' like rights to freedom.

How can the extent of each person's rightful freedom be codified so that no person's exercise of his right to freedom will be incompatible with any other person's exercise of his right to freedom? Locke saw that this codification requires the specification of what is *mine* and what is *thine*. My rightful freedom consists in my disposing as I see fit of what is *mine* (or at least *not thine*) “without asking leave, or depending upon the Will of any other Man” (ST 4). Your freedom requires that I not dispose of what is *thine* without your leave. A regime of compatible freedom depends on the identification of the fences that mark off mine from thine. Thus, for Locke, rights characteristically take the form of property. Property in its broad sense, i.e., rights to life, liberty, and estate, provide each individual with moral protection against subordination to other individuals *and* to the state. And property, especially in the sense of estate, provides the framework that allows and facilitates a peaceful and flourishing civil order. Locke's theory of rights to one's legitimately acquired holdings is an integral part of his more general view that each individual is morally entitled to pursue his own ends in his own chosen way. Religious freedom is, for instance, primarily a matter of the freedom of individuals in their religious practices to dispose of their own holdings (but not the holdings of others) as they see fit.

In the work that has done most in recent decades to revive interest in Locke's political philosophy, *Anarchy, State and Utopia* (1974)[2], Robert Nozick defends an essentially Lockean position on justice in holdings on the basis of a doctrine of natural rights. Moreover, like Locke, Nozick takes each person's basic rights to be reflective of morally significant features of persons, viz., their existence as separate beings with distinct systems of ends. For both thinkers, in virtue of these morally significant features, individuals are not to be treated as objects or resources or means at the disposal of others; they are not to be subordinated to or sacrificed for others' ends. As long as an agent abides by this basic constraint, all others are required to allow him to pursue his own ends in his own chosen way. This is a very different sort of moral perspective from

the consequentialist contention that there is some overarching social outcome--e.g., the maximization of the preservation of human life--that each person is bound to promote and that persons should be constrained in their conduct toward one another insofar and *only insofar* as constraint advances that maximization project. While Locke sometimes speaks as though our fundamental duty is to preserve mankind at large (at least when that is compatible with one's own self-preservation), he immediately parses this duty as a negative obligation not to "take away, or impair the life, or what tends to the Preservation of the Life, the Liberty, Health, Limb or Goods of another." (ST 6).[3]

THE RIGHTS OF PROPERTY

Let us turn to Locke's vindication of the rights of property in the sense of estate. In the crucial chapter "Of Property," as throughout the *Second Treatise*, Locke is writing in opposition to the authoritarian political theorists Robert Filmer and Thomas Hobbes. Despite their differences, both Filmer and Hobbes held that all property rights of citizens depend on the will of their sovereign and that, therefore, there can be no valid assertion of property rights against the will of the sovereign. Locke argues to the contrary that property rights do not depend on the will of the sovereign; indeed, no one can be said to have a *property* in any holding if another party, e.g., the sovereign, may deprive him of it without his consent (ST 138). In the 17th century the standard alternative to the view that property rights were created by the sovereign's will was the view that the earth was originally owned by all mankind in common *and* that it came to be divided into private property (or came to be open to private acquisition) through some sort of general consent. Filmer, however, provided powerful arguments against any such consent theory of private property rights, and Locke was convinced by these arguments. For this reason, Locke sets out "to shew, how Men might come to have a *property* in several parts of that which God gave to Mankind in common, and that without any express Compact of all the Commoners" (ST 25).

Locke himself continues to say that God had given the earth "to Mankind in common" because this was his most direct way of denying Filmer's claim that God had given the earth to Adam. Yet Locke sees that this

language seems to imply that private property can only arise through general consent. Locke's solution was to argue that all that *should* be meant by saying that the earth was originally the common property of mankind is that no portion of the earth was the original property of anyone in particular (ST 26). *In effect*, the earth is originally *unowned*. Hence, individuals may take hold of and use portions of the natural world without having to obtain the consent of others. Locke argues that the earth must be originally unowned precisely because, if the earth *were* originally commonly owned in any substantive sense, universal consent *would* be needed before any individual could permissibly take up and use any portion of the earth. But then, since universal consent will never be attained, morality would require that everyone abstain from all uses and appropriations of natural materials. Morality would require that we all starve in the midst of a plentiful nature. "If such a consent as that was necessary, Man had starved, notwithstanding the Plenty God had given him" (ST 28). Locke concludes that, since morality *could not* require that we all starve, it cannot be that the earth is originally jointly owned by mankind.

Still, why not think that man is obligated to starve if he cannot get universal consent to engage in the private use or appropriation of parts of nature? Locke addresses this question in his little-read *First Treatise*. His answer is cast largely in terms of God's intentions. God would not have created men with a need to use and appropriate portions of nature and surrounded men with a plentiful nature if He did not intend for men to use and appropriate parts of it (FT 86, ST 32-35). However, there is also a less theological version of this answer.[4] Each person's rational pursuit of (temporal) happiness centers on his desire for and rational pursuit of self-preservation; indeed, all persons rationally seek "the comfortable preservation of their Beings" (FT 87). For this reason, all persons have rights to pursue their comfortable preservation and, since the use or appropriation of portions of nature is necessary for the pursuit of comfortable preservation, all persons have rights to engage in such use or appropriation. Hence, people cannot be subject to natural obligations to forgo such life enhancing activities (FT 86-88).

We have here an inkling of an idea often found in classical-liberal thought, viz., that there is a *natural* right of property. This is not a right to particular natural objects or shares of such objects. For rights to

particular objects or shares must be *acquired* through the right-holder's actions. Rather, the natural right of property is a right to make things one's own. It is a right not to be precluded from acquiring holdings and exercising discretionary control over them. Imagine a political order that prohibits people from engaging in activities that would generate private property rights. By definition, *that* prohibition would not violate any individual's *acquired* property rights. Yet that prohibition would violate persons' natural right of property. Locke recognizes the distinction between this background natural right of property and particular acquired property rights by noting in his *First Treatise* discussion of the natural right that "in another place " he will show how a person creates for himself "a Property in any particular thing" (*FT* 87). That other place is the *Second Treatise's* chapter "Of Property," where Locke offers his famous labor-mixing account of particular property rights.

"every Man has a Property in his own Person. This no Body has any Right to but himself. The Labour of his Body, and the Work of his Hands, we may say, are properly his"

Locke begins that account with the affirmation of each person's natural right of self-proprietorship and, hence, each person's right to his own labor. "Every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his" (*ST* 27). Since nature itself is originally unowned, any individual may "mix " his labor with any portion of nature that is not being used or has not already been acquired by another. This mixing of labor involves the intentional transformation of some natural material for the sake of some future use by the transforming agent. Hence the labor is plausibly construed as invested in the transformed object rather than merely frittered away,[5] and the laborer retains his right to this invested labor. Since depriving the laborer of the transformed object violates that agent's rights, the agent who "mixes" his labor with some morally available natural material acquires a right to the altered object. The primary reason to respect the agent's freedom to dispose of the transformed object as he

chooses is regard for that agent's rights, not regard for the overall social benefits of allowing the agent to enjoy this freedom.

"MIXING ONE'S LABOR"

A number of points should be made about Locke's labor-mixing account. First, as far as it goes, it is eminently plausible. If persons do have rights over their own persons and hence over their respective talents, efforts, and time, then they have moral claims against being deprived of objects in which they have invested their talents, efforts, and time. The wrong done to the agent whose invested labor is expropriated by another is morally on par with the wrong done to an agent who is coerced into supplying labor to another.

Second, it is far from obvious that *all* rights of initial acquisition can or need to be explained on the basis labor-mixing. As various conventions develop that define what counts as an *entitlement-generating* initial acquisition, it seems that individuals can acquire initial entitlements by engaging in the activities specified by those conventions. Since those conventions enable people to make things their own, respect for the entitlements generated through those conventions seems to be required by the Lockean natural right of property.

"Nor was this appropriation of any parcel of land, by improving it, any prejudice to any other man, since there was still enough, and as good left; and more than the yet unprovided could use."

Third, Locke provides no account of property rights that arise through voluntary transfer. Here too it seems that, rather than trying to fit all acquisitions of property rights into the labor-mixing paradigm, Locke would have done well to emphasize how conventions that define just transfer facilitate people making things their own and hence each person's natural right of property underwrites his claim to the holdings he has acquired in accordance with those conventions. The recognition of a Lockean natural right of making

things one's own opens the door to a doctrine of property rights that is less centered on labor-mixing than Locke's actual discussion is.

Locke denies that it follows from his doctrine of just acquisition that "any one may ingross as much as he will" (ST 31). For Locke affirms two constraints on just acquisition, viz., a spoilage proviso and an "enough, and as good" proviso (ST 33). The spoilage proviso is tied to Locke's vision of the natural world having been provided to us by God who intends its use not its waste. According to this proviso, one's property rights do not extend to what will spoil in one's possession. If a third bushel of berries will just rot in my possession, I cannot claim just ownership of them even if I have labored to collect them. However, Locke provides two reasons for why the spoilage proviso has vanishingly little significance. The first is that before the existence of money no sensible person will gather more than he can consume or barter for some other perishable good. The second is that once money comes into existence, perishable holdings can be converted *without limit* into nonperishable holdings (ST 46).

"ENOUGH AND AS GOOD"

The "enough and as good" proviso is more significant both in theory and practice. According to this proviso, individuals may not so extensively appropriate from nature that others are left without enough and as good to use for their own purposes. Many recent authors think that this proviso signals Locke's commitment to economic egalitarianism.[6] This is mistaken. To begin with, this proviso does not require that an individual be left with an *equal* share of the earth; it only requires that he be left with "*enough*." Moreover, "as good" is best read as requiring that each individual be left with "as good" a portion as would have been available to him had others not privately appropriated portions of the earth. The proviso cannot plausibly be read as imposing the crazy restriction that each individual be left "as good" a portion as has already be acquired by other individuals. That restriction would require that *no one* ever acquire the best portion – because that would leave not as good for others! As Nozick suggests, (ASU 174-82), the "enough and as good" proviso should not be understood as a demand for the equal division of the earth but rather

as a demand that *in some sense* no one be made worse off by the initiation, expansion, and elaboration of private property. On Nozick's version of this proviso, no individual is to be made worse off along the dimension of *utility*. An individual has no just complaint if the operation of the overall system of private property does not impose a net utility loss on him or if he receives an appropriate utility-restoring compensation.

In contrast to Nozick, Locke is more consistently focused on *freedom*. His advocacy of the "enough and as good" proviso marks Locke's concern that the institution and deployment of private property may "straiten" (ST 36) some individuals, i.e., may fence them in (or out) in a morally impermissible way. What matters for Locke is not a baseline of utility that an individual would enjoy in a world that was still an open commons. Instead, what matters is a baseline of noninterference with that individual's employing his self-owned labor in pursuit of his comfortable preservation. The proviso is satisfied if and only if the institution, development, and elaboration of private property yields an economic environment that is at least as receptive to that individual's deploying his talents, efforts, and time in pursuit of his comfortable preservation as the pre-property environment would have been. It is not too far off the mark to say that Locke is concerned with no one being worse off with respect to economic opportunity rather than with respect to utility per se.

Locke divides the institution, expansion, and elaboration of a regime of private property into two phases and argues that within each phase economic opportunity will on net expand for all – or nearly all – individuals. The first phase, which exists before the introduction of money, begins with mankind's transition from a hunter-gatherer to an agricultural existence. For Locke this corresponds to a transition from the land being treated as an open commons to its being divided via individual investments of labor into private holdings. How much land will a given head of family acquire in the transition from hunter-gathering to farming? Locke's answer is that: (1) a given rational agent will acquire no more land than is necessary to produce the goods that he or his family needs for consumption or can barter for needed consumption goods and (2) this amount of land will be very much *less* than the land that he or his family has needed for sustenance as hunter-gatherers. The reason so much

less land will be needed is that labor, understood broadly as industrious activity, is the primary factor for all valuable human goods and labor will be vastly more effectively or intensively used in private agricultural endeavors than in hunter-gatherer meanderings. Thus as any head of family turns to agriculture and makes some portion of the earth his own, the amount of land he employs radically diminishes, and on net the amount of land available to others increases – whether they remain hunter-gatherers or turn to agriculture (*ST* 37). Notice that since economic gain accrues to people almost entirely on the basis of their industrious labor, one party’s economic gain in no way implies another party’s loss.

THE CREATION OF MONEY

***"gold, silver and diamonds,
are things that fancy or
agreement hath put the value
on, more than real use, and
the necessary support of life"***

The second phase of the development of private property begins with the creation of money by way of “fancy or agreement” (*ST* 46). Money radically expands the scope of feasible exchange (*ST* 48) and enables people to store the greater available gains from production and trade. The prospect of these storable gains greatly encourages the more extensive development and deployment of industrious labor (*ST* 49). On the other hand, this prospect motivates individuals to invest in much more extensive holdings of natural materials than they sought to labor on before the introduction of money. The success of some people in this pursuit *will* preclude others from appropriating or perhaps even using enough and as good of the earth. More generally, in the monetary phase the economic inequality that is rooted in “the different degrees of industry ” (*ST* 48) among men will become substantially more pronounced. So it looks as though the development of commercial society that is triggered by the introduction of money regularly violates the “enough and as good” proviso. Yet Locke maintains that this proviso will not – or will not often – be violated.

Locke’s official argument for this conclusion depends on his claim that money arises through universal (albeit tacit) consent to gold and silver having economic value. Since it is obvious that once money exists, economic inequality will be more pronounced and some people will expand their holdings of the earth to the exclusion of others, consent to the existence of money must also be construed as consent to these outcomes. “It is plain that Men have agreed to a disproportionate and unequal Possession of the Earth” (*ST* 50). Hence, this argument runs, the proviso is not *violated* after the introduction of money because in the course of that introduction everyone has agreed to that proviso’s suspension. Similarly, no one can justly complain about increased economic inequality because everyone has consented to this inequality as part of their agreeing to the establishment of money.

The problem here is not merely that there has been no such universal consent to money or inequality, but also that Locke himself has wisely disavowed any appeal to universal consent within his justification of property rights. Can Locke escape these problems?

***"A King in a large and
fruitful Territory [without
private property and money]
feeds, lodges, and is clad
worse than a day Labourer in
England."***

It looks like Locke can escape by focusing on the reason that individuals would have to consent to the introduction of money. For Locke, that reason must be that each party anticipates gaining in the course of the transition from the first phase to the second phase of the private property regime. “For no rational Creature can be supposed to change his condition with an intention to be worse” (*ST* 131). Why, according to Locke, would it be rational for each individual to agree to a transformation of human society that increases economic inequality and may leave that individual unable to appropriate (or even use) raw material? Locke’s answer is that the industrious powers that such a transformation promotes and releases so increases wealth and opportunity that each individual can reasonably anticipate that he will gain from this transition even if he ends up with a smaller pro rata share. According to Locke, such gains can be expected

if, but only if, a “wise and godlike” ruler establishes “laws of liberty to secure protection and encouragement to the honest industry of Mankind” (ST 42). Indeed, because of the enormous improvement generated by human labor in commercial societies, “a King in a large and fruitful Territory [without private property and money] feeds, lodges, and is clad worse than a day Labourer in *England*.” (ST 41).[7] For the achievement of material prosperity, “numbers of men [living under laws of liberty] are to be preferred to largeness of dominions” (ST 42).

How do these claims about the bountifulness of commercial society indicate that such a society generally satisfies the “enough and as good” proviso? Understood narrowly, the proviso is not satisfied. For it will not be uncommon for an individual to find himself precluded from using as enough and as good *raw* material as he would be able to use were the earth still an open (and hence undeveloped) commons. But understood more broadly, the proviso is generally satisfied. For all – or nearly all – individuals within commercial society will encounter a world of economic options that will be *at least* as receptive to their bringing their self-owned powers to bear in pursuit of their ends as they would encounter were the earth still an open commons.[8] Within commercial society, no individual – or almost no individual – will be “straitened” in his life-enhancing economic activities compared to the open-commons alternative. And the real point of the proviso is to rule out this sort of straitening of people. Note that the proviso understood broadly will be satisfied precisely because economic opportunity depends fundamentally on the positive-sum process of encouraging the development and exercise of industrious labor rather than the zero-sum process of fighting over given raw material. It is the vast expansion of industrious labor and opportunity that private property and expanded trade calls forth which also explains why commercial society enhances the material well-being of everyone – or nearly everyone.

Locke tells us that labor is “*the great Foundation of Property*” (ST 44). He means this in two distinct senses. First, the investment of labor is the source of initial property *rights*. Second, the investment of labor is the primary source of the *value* of rightfully held objects. And, of course, it is the creation, protection, and exercise of those rights that engender that value. Locke’s emphasis on the extent to which economic

value arises through labor often leads to the claim that Locke subscribed to the labor theory of economic value, i.e., the view that the exchange value of any item will (or will strongly tend to) be proportionate to the amount of labor that goes into the production of that item. However, this theory is tied to the idea that labor is in the final analysis one homogenous activity and that different amounts of this homogenous activity get poured into different objects that then have exchange value in proportion to the amount poured into them. There is no basis for thinking that Locke subscribed to this notion of labor or to the idea that the exchange value of any object is proportionate to the labor involved in producing it. Indeed, he tells us that the value of gold and silver depends on fancy and agreement and that the value of land depends on scarcity (ST 45).

***“though the things of nature
are given in common, yet
man, by being master of
himself, and proprietor of
his own person, and the
actions or labour of it, had
still in himself the great
foundation of property”***

ESSAY ON THE POOR LAW (1697)

Although Locke asserts quite generally the satisfaction of the “enough and as good” proviso in commercial society, I have represented Locke as holding that the proviso is satisfied for all – *or almost all* – individuals, for it is difficult to imagine a philosophical *proof* that at all times and in all places the development of private property and free commerce straitens nobody. Moreover, in his 1697 “An Essay on the Poor Law,”[9] Locke seems to view at least some of the poor as people who have been deprived of the opportunity to work, i.e., who are worse off with regard to economic opportunity than they would have been were they still living in an open commons.[10] His proposed remedies are various measures to provide these impoverished individuals with employment opportunities – on merchant ships, in workhouses, and so on. And these are the sort of measures that are

called for by the “enough and as good” proviso insofar as people’s worsened positions are really the result of the development and exercise of private property rights.

“The true and proper relief of the poor... consists in finding work for them, and taking care they do not live like drones upon the labour of others.”

However, in his Poor Law essay Locke does not merely recommend that the impoverished be *offered* employment. Rather, Locke proposes that the poor be *forced* to accept the employment opportunities offered. Within this essay at least, it is a settled point for Locke that the poor are to be maintained. “Everyone must have meat, drink, clothing, and firing. So much goes out of the stock of the kingdom, whether they work or no.” [11] However, the nation cannot afford to provide these necessities unless, through their labor, the poor bear the burden of their own maintenance as much as possible. “[T]he true and proper relief of the poor ... consists in finding work for them, and taking care they do not live like drones upon the labour of others.” [12] It is easy here to accuse Locke of forgetting about the self-ownership right of the poor to refuse offered employment and of focusing instead on the policy of maintaining “the stock of the kingdom.” Still, factors other than mere disregard for liberty are at work. Locke’s hard-work ethos makes him unsympathetic to and suspicious of “idle vagabonds.” He almost certainly sees any vagabond’s rejection of offered employment as manifesting not so much a desire for liberty but, rather, a desire to live at the expense of others.

Nevertheless, it is hard to avoid the conclusion that when Locke shifts from high philosophy to public policy – especially public policy concerning the less reputable members of society – liberty and property tend to get lost in the shuffle. When the poor escape from “negligent officers,” the untoward result is that they “are at liberty for a new ramble.” [13] “Restraint of the debauchery” of the poor is a necessary step “towards setting the poor on work.” Despite Locke’s core devotion to property rights and despite the strong anti-paternalism and anti-moralism of his *A Letter*

Concerning Toleration, in the “Essay on the Poor Law” Locke calls for “the suppressing of superfluous brandy shops and unnecessary alehouses, especially in country parishes not lying upon great roads.” [14] However, liberty and property are not compromised along the great roads that Locke travels.

End Notes

[1] Citations from the *Second Treatise* (and the *First Treatise*) will be to paragraph numbers in Locke’s *Two Treatises of Government*, 2nd edition, Peter Laslett, ed. (Cambridge: Cambridge University Press, 1967). [The links are to one of our online editions, the Thomas Hollis edition of 1764. The link will take you to the paragraph in which the quotation is located - Editor].

[2] Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974).

[3] The most sophisticated reading of Locke as a consequentialist is offered by A. John Simmons in *The Lockean Theory of Rights*. According to Simmons’ rule-consequentialist account, Lockean rights are norms general compliance with which maximizes the human preservation. I examine consequentialist sounding passages from the *Second Treatise* in *John Locke*, pp. 43-6, 52-3, 84-5, 93-4, and 97-8.

[4] It is often held that propositions about God are essential to Locke’s arguments within political philosophy. See John Dunn’s *The Political Thought of John Locke* and Jeremy Waldron’s *God, Locke, and Equality*. In *John Locke*, I argue that these propositions are *not* essential to Locke’s arguments. The standard Straussian position is that Locke *disbelieved* these claims and his disbelief is essential to his real convictions. See, e.g. Leo Strauss’ *Natural Right and History*.

[5] Contrast this with Nozick’s example of pouring one’s can of tomato juice into the ocean. (*ASU* 175).

[6] For a striking instance of this contention, see Michael Otsuka’s *Libertarianism without Inequality* (Oxford: Oxford University Press, 2005).

[7] This claim that *everyone* in a commercial society is better off than *everyone* in an open commons society is quite a bit bolder than Locke actually needs.

[8] See David Schmidtz's discussion in "The Institution of Property," *Social Philosophy and Policy*, Summer 1994, pp. 42-62.

[9] Reprinted in *Locke: Political Essays*, Mark Goldie, ed. (Cambridge: Cambridge University Press, 1997). An older version of this essay can be found in Fox Bourne's biography *The Life of John Locke* (1876), vol. 2, pp. 377-91 [PDF only].

[10] Apparently *these* day-laborers are *not* better situated than kings of open commons societies.

[11] "Poor Law," p.189.

[12] Ibid.

[13] Ibid., p.185.

[14] Ibid., p.184.

2. RESPONSES AND CRITIQUES

1. JAN NARVESON'S RESPONSE TO "MACK ON LOCKE ON PROPERTY"

Eric Mack sets forth with his characteristic elegance the essentials of Locke's philosophical outlook on political morality. He points out what is not always clearly appreciated, namely, that if each is to be free – and not just some few – then we need somehow to demarcate a domain, a sphere, within which the individual has complete authority: Others must apply for permission to enter that domain. So “regime of compatible freedom depends on the identification of the fences that mark off mine from thine. Thus for Locke, rights characteristically take the form of property. Property in its broad sense, that is, rights to life, liberty, and estate, provide each individual with moral protection against subordination to other individuals *and* to the state.”

Accurately enough, he goes on to say that people have, in the view of Locke (and Nozick and others), “morally significant features” such that “individuals are not to be treated as objects or resources or means at the disposal of others.” If an agent abides by that constraint in relation to others, they are required to “allow him to pursue his own ends in his own chosen way.” The question is, though: Why *are* those features “morally significant”? What is it about those features that ground the principle in question? Bad accounts, or non-accounts (such as that these are “natural rights”) abound.

"it is a precept, or general rule of reason, that every man, ought to endeavour peace, as far as he has hope of obtaining it; and when he cannot obtain it, that he may seek, and use, all helps, and advantages of war."

We have a minor more-or-less scholarly difference regarding Hobbes, whom Mack classifies as an “authoritarian.” That’s certainly right on the strictly

political level, but in Hobbes there is beneath this a moral level, set forth in (a) a depiction of the state of mankind without rules and (b) a list of fundamental moral rules beginning with one master rule, the First Law of Nature, calling upon all to refrain from violence against others. This, he thinks, is a “rule of reason” – a pregnant phrase in context. Locke too thinks that his Law of Nature, which I would argue has precisely the same content as Hobbes’s First Law, is a pronouncement of reason, saying, “Reason, which is that law, teaches that no one....” How Hobbes becomes a sort of political authoritarian despite this total agreement in basic premises is a fascinating question. Hobbes’s idea is that anybody contemplating the natural condition of mankind would see that what we need is a general rule, and specifically that one. Locke, on the other hand, seems to leave matters at a purely intuitive level or even, worse yet, a religious one.

Mack suggests that the salient passage in paragraph 26, which starts out with the communist-sounding proclamation that “the earth, and all inferior creatures, be common to all men” has the *effect* – as I think most of us would say – of really denying this: “*In effect*,” Mack writes, “the earth is originally *unowned*.” Now I agree that this is what Locke should have said, and I agree too that his slightly tortuous argument in that paragraph tries to work around to that conclusion. Still, what we should realize is that Locke isn’t entitled to lean on any theological premises in the *Treatise*, and absent those, there is absolutely no reason to declare the earth to be primordially communist. The earth is just a bunch of stuff, and people are in fact able to put bits of it to their use. Since it *is* just a bunch of stuff, there is no *natural* reason why they should not go ahead and use it – and plenty of reason, “natural” enough, why they should, in the process, grant each other the moral status of *rights* to what they have thus selected and put to use. These reasons need to be spelled out, and Locke gets a very good start on this by arguing (as Mack says) that if we didn’t, in effect, have this institution of property rights, relying instead on full-blown communism, mankind would have starved – a claim confirmed by the world’s celebrated communist basket-cases, such as the vast starvation of early Maoist China in recent times.

But as Mack perceptively asks – well, why *aren’t* we obligated to just go ahead and starve? He proposes a de-theologized answer: “all persons rationally seek ‘the

comfortable preservation of their Beings' (*FT* 87)... [S]ince the use or appropriation of portions of nature is necessary for the pursuit of comfortable preservation, all persons have rights to engage in such use or appropriation."

Now if we look at it in this de-theologized way – as we of course should – then a question arises: If particular person Jones can, in some circumstances, appropriate bits of nature *at the expense of* his fellow man and *thereby* "preserve himself" – well, why shouldn't he do *that* – contrary to the requirements of the Law of Nature?

What this all hinges on is a recognition of a *natural* right, namely, a right of acquisition, "a right to make things one's own." There are two aspects of this needing discussion. The one that gets almost all the attention among recent scholars, in the wake of Nozick and others, is how we get *from* our natural right to general liberty *to* this right to acquire and then become the *owner*, in the appropriately normative sense, of what one acquires. Locke's famous derivation via our original right to ourselves, through our labor, to rights in things is the focus of this discussion, with many authors denying that the argument goes through, while others (including Mack and myself) think it does. But even if we are right, that leaves us with the more fundamental question: Why should we think each other to be "owners" of ourselves in the first place? (Hobbes's answer is clear: because if we don't, we'll be facing an awful state-of-nature situation.)

We get some light on this by following Mack's further discussion. Not all rights of individual acquisition need depend on "labor-mixing." "Various conventions develop" that, he holds, "*define* [my emphasis] what counts as an entitlement-generating initial acquisition." In ensuing discussion, considerable weight is put on this device. But doesn't this tread on thin ice? If ownership is a function literally of conventions, in at least some cases, doesn't that imply that the conventions could be other than they are, thus changing our rights – contrary to the original assertion of natural rights in this area?

Mack's next discussions concern the famous spoilage proviso and still more famous "enough and as good proviso" on acquisition. His discussion of the latter is elegant. We are not to acquire something if that would leave others in a *worse* condition than they

would have been in a propertyless state of nature, of course -- but there is no restriction such that "each individual be left 'as good' a portion *as has already been acquired by other individuals*" (again, my emphasis). The more familiar egalitarian interpretation involves an illegitimate shift of baseline. That is a signal contribution, indeed, to the discussion of this much-vexed question. (In my own writing on this, I have arrived at a similar conclusion by a slightly different route.[1])

Mack notes that Nozick tends to put this in utility terms: No one to be left *worse off* than he or she would have been in the unmodified commons – but Mack proposes that Locke instead is concentrating on *freedom*, with the striking summary that "it is not too far off the mark to say that Locke is concerned with no one being worse off with respect to economic opportunity rather than with respect to utility per se." This is interesting and plausible; my question would only be whether there is really any difference for such creatures as we are. If there is – if we suppose that being fed intravenously forever without doing an ounce of effort represents a "level of utility" different from whatever might ensue from our own efforts -- then perhaps we should agree with Mack here.

Next he goes on to discuss the effects of the introduction of money as it bears on the proviso. Extensive commercial activity will, Mack agrees, really disenable *some* people from initial acquisition *of*, say, natural resources and land. How can this be all right? His answer is that, nevertheless, the new opportunities created by all this, as we might call it, "unnatural" activity more than compensates for any losses at the primitive level. Locke himself, as Mack notes, has already pointed out that a king in a country without exchange and property will be worse off than a day-laborer in the England of his day (not to mention the contemporary poor, with their TVs, cell phones, indoor plumbing, and more).

Now he is careful to qualify this: "Almost" everyone, not absolutely everyone will thus benefit. That raises two questions. One has to do with interpersonal comparisons of benefit: Are we *sure* that people will be *better off* poor now than in a genuine "state of nature"? There's hope for a decent answer to that one. But another is more fundamental: What about those who exploit the compliance of most of us

with Locke's natural law – the thieves and cutthroats (including the political ones) or those who have a natural preference for violence. It would be nice if we could show that such persons are irrational – but it's not obvious.

"Thirdly, The supreme power cannot take from any man any part of his property without his own consent..."

With respect to one sizable subset of that class of persons, Mack discusses Locke on the Poor Law. Those who fall into such poverty that they might really have been better off in a commons may, Locke thinks, actually be forced to work for their upkeep. (That is, if they can. We should note that it is totally implausible to think that the ones who *can't* would have done better in a common.) Mack observes that "it is hard to avoid the conclusion that when Locke shifts from high philosophy to public policy – especially public policy concerning the less reputable members of society – liberty and property tend to get lost in the shuffle." Yes, indeed. Just as he seems to underappreciate the contribution that his proposed restrictions on the scope of political authority would have (#38): "*Thirdly, The Supreme Power cannot take from any Man any part of his Property without his own consent.*" It's pretty hard to square that with any government, let alone the limited one that Locke wants. Well, nobody's perfect!

Endnotes

[1] Narveson, "Property Rights: Original Acquisition and Lockean Provisos" in *Respecting Persons in Theory and Practice* (Rowman & Littlefield, 2002), 111-129.

2. PETER VALLENTYNE'S RESPONSE TO "MACK ON LOCKE ON PROPERTY"

It's a pleasure and an honor to comment on Eric Mack's superb piece on Locke. Mack has done more than almost any contemporary writer to develop the philosophical foundations of libertarian and classical-liberal theories of justice. Although I endorse a Lockean-inspired version of libertarianism, I am not a Lockean scholar. Consequently, in what follows I will not challenge Mack's wonderfully clear and insightful interpretation of Locke (which seems roughly correct to me). Instead, I will comment on some aspects of the theory of property that Mack attributes to Locke. My concern, that is, is with the *plausibility* of the theory and not with whether Locke actually held it.

Locke held that natural resources are initially unowned, that agents initially own themselves (and their labor power), and that agents have a moral power to acquire private property in natural resources by performing suitable actions (e.g., labor-mixing). I agree with him.

Property rights over a thing are a bundle of rights. At the core are *control rights*. These include a claim-right against others that they not use the thing without the owner's permission, and a liberty-right against others to use the thing. (No one else's permission is required for use as such.) Additional property rights include: the claim-right to compensation for the infringement of one's property rights, enforcement rights to prevent (and perhaps punish) infringements, the moral power to transfer the rights to others (by sale, gift, etc.), and an immunity to non-consensual loss as long as one is not infringing the rights of others. *Full ownership* of a thing is a maximally strong set of property rights (compatible with others having the same rights over other things).

Locke held that natural resources (land, air, oil, etc. in their natural state) are initially owned in common by everyone, which means they are unowned. This means that each agent has a moral liberty-right against all other agents to use natural resources. No one needs anyone's permission to use natural resources (no one has a claim-right against such use), although, of course, no one has a moral liberty to smash someone's head with a rock. Because the rock is unowned, no one's permission is needed to use it, but because you own

your head, your permission is needed to smash it with the rock.

If natural resources are initially unowned in the fullest sense, then one has a moral liberty to poison all the water in the world or destroy all the plants. This, I claim, is implausible, when it adversely affects others. Even prior to appropriation, there are some moral limits on how one may use natural resources. My view, following that of Eric Roark,[1] is that, whatever restrictions there are on appropriation and ownership (addressed below), they also apply to use. I'm not sure what Locke's view was on this matter.

The fact that natural resources are initially unowned (a first-order issue concerning use) is compatible with several different higher-order conditions concerning the moral powers of individuals to acquire private property over natural resources (and the corresponding lack of moral immunities of others to the loss of their liberty-rights to use natural resources). One position is that there are no moral powers to appropriate. The commons must hold in perpetuity. Another is that only collective (e.g., majority) approval can give someone private property over natural resources. Locke rightly rejected these positions. He endorsed a unilateralist position, according to which an individual has the power to appropriate natural resources by performing a suitable action, as long as certain conditions hold. I agree. We will examine the required action and conditions below.

What conditions, then, are required for someone to acquire private property over natural resources? Locke seems to hold that labor-mixing is necessary. Mack wisely restricts labor-mixing to cases where there is "the intentional transformation of some natural material for the sake of some future use." This helps avoid the problem (raised by Nozick[2]) that my picking an apple mixes my labor with the world, but surely that does not give me private ownership of the world. Still, I think that labor-mixing, even in this restricted sense, plays no essential role in the correct theory of appropriation. What is required is that the agent "stake a claim" to particular natural resources. Exactly what is required to stake a claim requires more attention than I can give here, but a paradigm case is publicly marking off an area and publicly stating that you are claiming specified rights over that area. Mack rightly notes that labor-mixing is not necessary, since

"various conventions develop that define what counts as an *entitlement-generating* initial acquisition." I further add that labor-mixing plays a justificatory role for appropriation only where prevailing social conventions count such mixing as staking a claim.

It is often thought that ownership of natural resources with which one has mixed/invested one's labor follows from self-ownership, at least where the "enough and as good" proviso applies. Mack rightly interprets Locke as holding this view. I believe, however, that this view is mistaken. When I secretly trespass on your land to plant and cultivate some tomatoes, I do not acquire ownership of the land or even of the tomatoes. I have invested my labor in something that you own and have thereby forfeited any claim to its products. Likewise, when the land is in the commons, my self-ownership is fully compatible with my forfeiting the product to the commons. I do not deny that one acquires ownership of previously unowned natural resources when one stakes a suitable claim, and the proviso holds. I claim that this so because of an *independent* moral power, an independent right to property, and not because of one's self-ownership. Full self-ownership, that is, is compatible with natural resources being in the commons in perpetuity, with individuals having no powers of appropriation.

Full self-ownership does, of course, play a role in the justification of the ownership of one's *products*: If one owns all the factors of production (natural resources, capital, labor power), then one owns the product. This principle, however, does not give one ownership of natural resources, since they are not the products of one's labor or other assets.

Locke's proviso on appropriation requires that "enough and as good" be left for others. Mack gives the standard weak reading according to which this requires only that no one be worse off (net of any compensation provided) than she would have been had the resources remained in the commons. I agree that this is the best interpretation of Locke, but I believe that Locke's version of the proviso is too weak. I think it more plausible that an equally valuable share (net of compensation provided) must be left for others (or more radically: a share compatible with an equal opportunity for wellbeing). Natural resources were not created by any non-divine person, and I see little

reason to hold that the benefits they provide should not be shared equally (or even to promote equality). I won't attempt to defend this view here.[3] I will merely note that the resulting left-libertarian theory differs from standard right-libertarian theories only with respect to the proviso. Moreover, given that both views hold that appropriation is just as long as suitable compensation is paid, the only difference is the amount of compensation owed.

As Mack indicates, Locke seems to hold that all agents have consented to the existence of money and thereby to the suspension of the proviso. This, however, seems to be an implausible view. Hardly any of the individuals alive today have consented to the existence of money in the sense needed for a valid contract. Moreover, even if they have validly consented to the existence of money, they have not consented to the suspension of the proviso. The former does not entail the latter. So Locke seems mistaken here.

"This being the reason and foundation of Adam's property, gave the same title, on the same ground, to all his children, not only after his death, but in his life-time: so that here was no privilege of his heir above his other children, which could exclude them from an equal right to the use of the inferior creatures, for the comfortable preservation of their beings, which is all the property man hath in them;"

Finally, let us turn to the limitations on private property. Locke seems to hold that the "enough and as good" proviso only applies to the initial act of appropriation. I would argue, however, that the relevant version of the proviso is plausible as an *ongoing limitation* on property rights in natural resources. I claim, that is, that the property rights initially obtained by appropriation are (unlike those of self-ownership) conditional on the ongoing satisfaction of the proviso.

Thus it is not enough initially to leave enough and as good for others in the relevant sense. If circumstances change (e.g., population growth, natural disaster), what was compatible with enough and as good may cease to be so and thus require greater, or less, compensation. [4] Thus even if no compensation to others was initially owed, some compensation may be owed at a later date. On this model, compensation is a periodic payment rather than a single payment at the time of initial appropriation.

Locke holds that private property does not include the right to exclude others from using resources one owns that would otherwise spoil. He does not, that is, give appropriators *full* private property in the appropriated resources. Others have a liberty-right to use them when they would otherwise spoil.

As Mack notes, Locke also holds that "all persons have rights to pursue their comfortable preservation" and thus have "rights to engage in such use or appropriation" of nature. I read this as holding that private property rights in natural resources do not include the claim-right that others not use one's resources when (1) they need to use someone's (less than full) private property, without permission, in order to meet their basic needs, and (2) the use of one's resources is compatible with one's comfortable preservation. Under these conditions, Locke held that others have a liberty-right to use one's private property. [5]

I'm inclined to reject both of the above limitations on property. If one satisfies the ongoing limitations of the more egalitarian "enough and as good" proviso that I would endorse, these additional limitations seem excessively restrictive. Of course, if one only endorses the more minimal proviso, then the additional limitations are more plausible.

Let me close by commenting on the role that property rights can play in the theory of moral permissibility. First, they might be advocated as merely *pro tanto* considerations that can be overridden by other moral considerations. On this view, a property right may be permissibly infringed when there is an overriding justification (e.g., to protect the rights of many others). Locke, I believe, implicitly held that property rights were *conclusive*, and not merely *pro tanto*, and in this he was right. Infringing a property right is always morally wrong. Second, property rights might

be advocated as a theory of *justice*—understood as the *duties owed to individuals*—or as a full theory of moral permissibility. I'm fairly sure that Locke advocated only the former. As such, property rights are compatible with there being additional *impersonal moral constraints* (not owed to anyone). For example, I may not have a claim-right, against you, that you give me some food, but you may have an impersonal duty to do so. If so, it is wrong of you not to do so, even if perfectly just (and does not wrong me). Because I'm skeptical that there are any impersonal duties, I'm inclined to think that property rights exhaust the moral constraints. Here, I merely note that others may disagree.

In sum, Mack's excellent summary and interpretation of Locke makes clear the importance of Lockean theories of property. I fully endorse the Lockean framework, but I have questioned a few aspects of the specific version held by Locke.

Endnotes

[1] For a defense, see Eric Roark, "Applying Locke's Proviso to Unappropriated Natural Resources," *Political Studies* 60 (2012): 687-702.

[2] Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 174-78.

[3] See, for example, Michael Otsuka, *Libertarianism without Inequality* (Oxford: Clarendon Press, 2003); and Peter Vallentyne, Hillel Steiner, and Michael Otsuka, "Why Left-Libertarianism Isn't Incoherent, Indeterminate, or Irrelevant: A Reply to Fried", *Philosophy and Public Affairs* 33 (2005): 201-15.

[4] Interestingly, Nozick himself endorses this limitation view. For a defense, see Peter Vallentyne, "Nozick's Libertarian Theory of Justice," in *Anarchy, State, and Utopia—A Reappraisal*, edited by Ralf Bader and John Meadowcroft (Cambridge University Press, 2011), pp. 145-67.

[5] See, for example, A. John Simmons, *The Lockean Theory of Rights* (Princeton: Princeton University Press, 1992), sec. 6.3.

3. MICHAEL ZUCKERT'S RESPONSE TO "MACK ON LOCKE ON PROPERTY"

It is difficult to disagree with Eric Mack's splendid little essay on Locke's property doctrine, so instead of taking issue with him I will attempt to supplement his essay by attempting to place the chapter on property more firmly within its context in the *Second Treatise*. Placing it so will allow me to confirm, reinforce, and perhaps extend some of Mack's most important conclusions.

"To this purpose, I think it may not be amiss, to set down what I take to be political power; that the power of a magistrate over a subject may be distinguished from that of a father over his children, a master over his servant, a husband over his wife, and a lord over his slave."

Readers are sometimes puzzled by the placement of the chapter on property within the *Treatises*. It occurs in a series of chapters quite obviously devoted to fulfilling Locke's promise in 2 Tr2 to explain political power in such a way as to distinguish it clearly from "that of a Father over his Children, a Master over his Servant, a Husband over his Wife, and a Lord over his Slave." The task of distinguishing these various powers was necessitated most obviously by Robert Filmer's doctrine, which identified all these powers with the power of fathers. After presenting what one might call the baseline situation, the state of nature where there is no political power of any sort, Locke proceeds in a series of chapters to discourse briefly on the various powers he identified in 2 Tr2. Thus in chapter 4, "Of Slavery," he explains how the power of a "Lord over his Slave" can legitimately arise, despite the natural freedom and equality of human beings. Chapter 6, "Of Paternal Power," clearly carries forward Locke's agenda by explaining the nature and limits of the power of fathers over children. Chapter 7, "Of Political or Civil Society," presents Locke's account of "conjugal

society,” that is, of the “power of a Husband over his Wife.”

In the midst of these chapters elucidating the various relations or sorts of power that Locke means to distinguish from the “power of a Magistrate over a Subject,” or political power, comes the seemingly irrelevant and digressive chapter “Of Property.” What is this chapter doing in this place? The key to answering that question lies in noticing that Locke has not in direct terms explained one of the sorts of power he had promised to explain in 2 Tr2: that of “a Master over his Servant.” Locke has in mind something much broader than his words convey to a modern ear, for the master-servant relation, as he understands it, translates into what we would call the employer-employee relation. To explain that relation is to explain how some come to work for others in exchange for wages.

In chapter 7 Locke mentions in passing the master-servant relation in tracing out the chronological emergence of the different relations: “The first society was between Man and Wife, which gave beginning to that between Parents and Children; to which, in time, that between Master and Servant came to be added.” In this chapter Locke proceeds to explain the conjugal relation, the first in time, but the penultimate relation discussed before Locke gets to his ultimate destination, the political relation of magistrate and subject. In the preceding chapter Locke had explained the paternal (or better put) parental relation. He will go on in chapter 7 to again touch very briefly on the master-servant relation, but only in the context of distinguishing it from the master-slave relation (2 T85):

Master and servant are Names as old as History, but given to those of far different condition; for a Free-man makes himself a Servant to another, by selling him for a certain time, the Service he undertakes to do, in exchange for Wages he is to receive: ... gives the Master but a Temporary Power over him, and no greater than what is contained in the Contract between men. But there is another sort of Servants, which by a peculiar Name we call Slaves, who being Captives taken in a just War, are, by the Right of Nature subjected to the Absolute Dominion and Arbitrary Power of their Masters.

Servants are free-men who exchange their labor for wages via contract; slaves are not free and do not relate to their masters via contract, as Locke explained in chapter 4. How men come to be slaves Locke

explained clearly in that chapter. But how do men come to be servants, i.e., beings who sell their labor to others? That is *precisely* the task of chapter 5 to explain. It is not at all out of place, but it is the place where Locke presents the ground for this all-important economic relation.

"From all which it is evident, that though the things of nature are given in common, yet man, by being master of himself, and proprietor of his own person, and the actions or labour of it, had still in himself the great foundation of property; "

This insight into the organizational placement of the discussion of property is not only helpful for confirming our general impression that Locke knew how to present his thought in an orderly and logically structured manner, but it also gives us a crucial insight into what the dominant point of chapter 5 is. To repeat, that point is to explain the genesis and nature of the employer-employee relation. Or perhaps better put, to show the legitimacy of that relation. This insight helps make clear that *the* point of the chapter “Of Propriety” is to show how, beginning from the claim that the earth “belongs to mankind in common” (which, as Mack rightly shows, means that the earth is originally unowned rather than jointly owned), we can arrive at a situation in which the whole earth is owned, and owned quite unequally, with some possessing a great deal more than they strictly need and others owning none of it. This does not mean these dispossessed men are entirely without property, however. As self-owners, they are “Proprietor(s) of [their] own Person(s), and the actions or labour of it” and thus have within themselves “the great Foundation of Property.” (2 T44)

The history of property relations would seem to be a history of injustice or at least unfairness, for mankind moves from a situation where all have a right of preservation and an equal right to appropriate the goods needed for preservation from an unowned world to a situation where most have no right to appropriate anything directly from a world no longer “owned in

common.” But the point of Locke’s chapter is to establish that this apparently unfair development is perfectly legitimate and to the benefit of everybody, i.e., genuinely a common good. I need not repeat the arguments by which Locke tries to show this, for Mack has laid them out exceedingly well in his essay.

One benefit of seeing the point of chapter 5 in this way is that it refutes C.B. Macpherson’s claim that Locke is a mere unconscious mouthpiece for developing market relations in 17th-century England, unwittingly taking for granted the master-servant relation and merely importing it, untheorized, into his property doctrine. Locke was so far from unconscious of the master-servant relation that explaining it was his chief goal in the chapter on property.

This insight into the aim of chapter 5 confirms Mack’s basic conclusions about the consequences of the introduction of money. The complete ownership of the world, which in a sense is equivalent to the expropriation of some from their primitive rights, is neither a denial of the rights of the expropriated (if we may even speak of them in that way) nor a disaster for them. As Mack rightly brings out, the landless retain their rights (as the right to sell their labor for wages) and their benefit (as the increased productivity that the unleashing of labor power made possible by the introduction of money). The landless retain “the great foundation of Property” in their labor power and do accrue property in the form of the wages they gain with their labor.

"As justice gives every man a title to the product of his honest industry, and the fair acquisitions of his ancestors descended to him; so charity gives every man a title to so much out of another's plenty, as will keep him from extreme want,"

The assumption behind Locke’s presentation of the mature post-money world is something like a full-employment economy. This is “ideal theory.” Mack brings out very well Locke’s implicit point that if this assumption of ideal theory is not met, there is a just basis for complaint by those both dispossessed and

unemployed. As he says in 1 Tr42: “As Justice gives every Man a Title to the product of his honest Industry, and the fair Acquisition’s of his Ancestors descended to him; so Charity gives every Man a Title to so much out of another’s Plenty, as will keep him from extreme want, where he has no means to subsist otherwise.”

Locke is using somewhat traditional language but his meaning is quite untraditional, for he speaks here of granting a man a “title,” i.e., bestowing on him a right, via charity. In speaking in that way Locke is in effect saying that “charity” is not something different from justice (as it traditionally was thought to be) but under the situation specified is a matter of justice or right. That is to say, what he is speaking about is not charity at all, but an en-titlement. This “right” to support for the otherwise resourceless connects to Mack’s discussion of Locke’s essay on the Poor Law. I believe that Locke’s point is that the propertied should honor the right of the resourceless via a public policy rather than as helter-skelter individuals. As Mack makes clear, Locke outlines a kind of welfare policy that meets the obligations of providing support for those unable to support themselves in the wage economy without providing incentives for dependence or shirking. It is of some interest, I think, that Thomas Paine, a few generations later, picked up on Locke’s basic argument and developed from it a more full-blown plan for something like a welfare state.

[For further discussion, interested readers might consult my forthcoming essay, “Two Paths from Revolution: Jefferson, Paine and the Radicalization of Enlightenment Thought” to appear in Simon Newman and Peter Ounf, eds., *Paine and Jefferson in the Age of Revolutions* (University Press of Virginia, forthcoming, 2013).]

Placing chapter 5 in the context of the line of argument of this part of the *Second Treatise* has the further consequence of highlighting a feature of Locke’s doctrine that does not always stand out, and which does not receive much notice in Mack’s essay. As Locke emphasizes and Mack reports, Locke partly justifies the movement from the universal common to total but unequal ownership of the earth by claiming that all are better off than they would be in a pre-private property world: the famous day-laborer versus the Indian chief. Mack points out that it is not

universally true that all are better off—the point Locke concedes in his proposal for a poor law. Mack, however, does not emphasize the other important aspect of Locke’s thesis: Although all or almost all are indeed “better off” in the sense of materially better off, the members of society are far from *equally* better off, as Locke’s emphasis on explaining the existence of a class of men who have no property but their persons and nothing to sell or barter but their labor. Civil society, commerce, and money raise all the boats, but some are way at the top of the wave and others in the trough. Locke does not take this as a justification for redistribution, in part for reasons not too far from Rawls’s theory of justice—this is the arrangement from which all do benefit and therefore the inequality is justifiable and just.

Nonetheless, Locke’s account brings out the nature of society and politics in a propertied society: It is a class society, and it is a politics of actual or potential class conflict. Locke may be correct that as a matter of political morality the property-less would be doubly wrong to attempt to expropriate the propertied, just as it would be wrong for the propertied to govern in such a way that the property in their persons of the otherwise property-less was endangered. That, precisely, is the political problem that comes to sight when focusing on the chapter on property as aiming to explain the existence and legitimacy of a free class of self-owning but otherwise property-less men.

3. THE CONVERSATION

1. ERIC MACK'S REPLY TO JAN NARVESON (JANUARY 15, 2013)

I thank Jan Narveson for his generous, thoughtful, and thought-provoking comments. Narveson raises five or six really important issues, including concerns about whether there is any need to argue against the proposition that nature is the joint property of all mankind, concerns about how precisely to formulate Locke's "enough, and as good" proviso, and concerns about my non-Lockean willingness to assign a major role to conventional rules in the generation of legitimate property rights. [1]

However, at this point, I am going to focus almost entirely on one issue where I think there is a really deep philosophical disagreement between Narveson and myself. In doing so I hope to highlight a crucial and contentious feature of natural-rights doctrines – a feature that is much too readily taken to be a fundamental defect of such doctrines. To complement the discussion of the character of natural-rights theory, I will say a word or two about Narveson's alternative approach to vindicating really basic moral rules. Needless to say, I will only be dipping a toe or two into the depths.

The really deep philosophical dispute between Narveson and me concerns what sorts of reasons exist for endorsing or condemning actions, or for affirming or rejecting really basic moral principles or really basic rights. I think (and I construe Locke as thinking) that certain "morally significant features" of other people provide me with nonprudential and nonstrategic reasons to be circumspect in my conduct toward them. Because persons have these features they matter; and they matter in a way that limits what I may do to or with them. Natural-rights theories seek to identify core natural features of persons that explain why they have a status or standing that morally precludes their being subject to certain sorts of treatment. For Locke these morally significant features include others being one's moral equals, others not being made for one's own purposes, others having ultimate ends of their own that they are rational to advance, and others each having reason to claim freedom from interference as the

crucial condition of their advancing their own ends. Natural-rights theorists think that such facts about others have moral import for one. They provide one with reason not to do certain things to other people – like destroying them, locking them up, or converting them into wall-hangings – which one is perfectly morally free to do to other sorts of entities.

Why is one morally precluded from destroying other people, locking them up, and converting them into wall-hangings? Why may they *demand* that one not subject them to such treatment? According to any natural-rights doctrine the crucial answer is *not* that such treatment would have untoward consequences – for the agent or for the subject or for society at large. Bad consequences for the agent may provide the agent with prudential reasons not to impose that treatment, and bad consequences for the subject or for society at large may provide the agent with reasons of benevolence not to impose that treatment. Nevertheless, the wrongness of imposing those sorts of treatment is not contingent upon that treatment having untoward consequences for the agent or the subject or society at large. The wrongness of imposing those sorts of treatment is not contingent on the agent having prudential reasons or reasons of benevolence for eschewing those kinds of treatment. That is why, according to the natural-rights theorist, one can know that one ought not to inflict such treatment without knowing that its infliction would have bad consequences for the agent or the subject or society at large. One can know that one ought not to inflict such treatment without knowing that it will have untoward consequences because one can *reason* from persons having traits like being one's moral equal, not being made for one's purposes, and so on *to* one's having reason not to inflict such treatment. Or so natural-rights theorists like Locke contend.

My point here is not that all these contentions are correct but rather that it is crucial to any (genuine) natural-rights position that there are nonconsequentialist reasons against certain types of action – reasons that are provided to one by morally significant features of persons. One subscribes to the consequentialist conception of reasons if one believes (as many do) that all reason for or against actions is a matter of the value or disvalue of the consequences of those actions. And, if one subscribes to this consequentialist conception of reasons, one will think

that the sort of reasons that have to exist for natural-rights doctrines to make sense simply do not exist. I believe that Narveson thinks that all purported natural-rights accounts of fundamental moral principles have to be “[b]ad accounts, or non-accounts” precisely because he subscribes to such a consequentialist conception of reasons.

However, this narrow conception of reasons is challenged by the thought that persons – beings who are one’s moral equal, who are not made for one’s purposes, and so on -- matter in a way that places moral limits on what one may do to or with them. Since natural-rights accounts incorporate this thought, invoking the consequentialist conception of reasons to dismiss natural-rights accounts illicitly presupposes a conception of reasons that natural-rights doctrines reject. This does not show that any natural-rights account is correct. It merely shows that dismissing all such accounts as bad accounts or as non-accounts on the basis that all reasons must be consequentialist in character fails to take the character of natural-rights positions seriously.

Narveson prefers a mutual-advantage account of basic moral rules. On this account a rule is justified if and only if we are all better off with general compliance. But the well-known problem with this approach is that (almost) every individual would be better off yet if others generally complied with the rule while he got to violate it when he can do so without being detected. (Narveson himself asks, “What about those who exploit the compliance of most of us with Locke’s natural law...?”) The problem is that if each individual is prepared to break the rule when doing so is more advantageous for him, and each knows that each is so prepared, we get general noncompliance – which is worse for everyone.

My contention is that we will get general compliance with nifty rules – like refrain from violence against nonviolent others – only if people take themselves to have nonconsequentialist reasons to abide by those rules. The perception that there are certain constraints on how one may treat other persons -- because they are persons – is a necessary catalyst for the general compliance that is mutually advantageous. As Locke put it in his early *Essays on the Law of Nature*, “Thus the rightness of an action does not depend on

its utility; on the contrary, its utility is a result of its rightness.” [2]

Endnotes

[1] On the conventional rules issue, see Eric Mack, “The Natural Right of Property,” *Social Philosophy and Policy*, v.27 no.1 (Winter 2010), 53-79.

[2] *Essays on the Law of Nature*, 79-133, in *Locke: Political Essays*, Mark Goldie, ed. (Cambridge: Cambridge University Press, 1997), 133.

2. JAN NARVESON'S COMMENT ON ERIC MACK (JANUARY 15, 2013)

Eric Mack is right to think that we have a serious philosophical disagreement on the matter of the foundations of rights. We are in agreement (and everybody else is too, I hope!) that rights are natural in the sense that they aren't a matter of what some legislature or king decrees, but stem from how people are, how they relate to each other and their environment. He characterizes my interview as: “The wrongness of imposing those sorts of treatment” is “contingent on the agent having prudential reasons or reasons of benevolence for eschewing those kinds of treatment.” I admit that I don't see how this could not be so. Why would we care about rights if the things they protected for us were things that just didn't matter to us? Eric says that persons “matter.” As a moral proposition, I agree: But matter how? On his view (or Kant’s comparable one), it seems that other people “mattering” is a *fact* about all of us. If it were so, why do some people kill others or take their stuff? I don't see how the answer could be anything other than that morality is interpersonal -- it's the forming and inculcating of interpersonally authoritative rules of behavior. I can't expect you to respect me and what matters to me if I won't in turn respect you and what matters to you. If that isn't enough (and apparently for some it isn't) to induce us both to make and keep the commitments of morality, then we are reduced to war -- and telling our enemies that they are bad people while they're at it, though true, isn't going to do any

good unless there is some *reason* (that they can understand) *why* people who do the sorts of things they are doing are rationally regarded *as* bad.

It is *not* a “problem” with the social-contract view that while cooperation is better for all, noncooperation is often better for each. The fact that general noncooperation is far worse for everyone, including the noncooperating agent, tells us a lot -- in the end, I think, everything. It explains both why people often do evil and why we need to redouble our efforts to see to it that they don't. But it does not in the least impugn that what they are doing is indeed wrong -- for wrongness is a matter of acting against rationally imposed rules for all. It not only doesn't need to be anything else, but it really can't be.

3. ERIC MACK'S RESPONSE TO PETER VALLENTYNE (JANUARY 16, 2013)

I now thank Peter Vallentyne for his very gracious and challenging comments. I want to address several of the issues that Vallentyne raises. Most of these issues arise within the context of the debate – or, let us say, conversation – between theorists (like myself) who are labeled “right-libertarians” and theorists (like Vallentyne) who are labeled “left-libertarians.”[1] Moreover, since most, if not all, members of each of these philosophical sub-camps see themselves as endorsing “a Locke-inspired version of libertarianism,” one can also describe the philosophical conversation as being between “right-Lockeans” and “left-Lockeans.” This is not a conversation about exactly what John Locke actually believed but rather one about what is the best philosophical elaboration of the basic elements of Lockean political theory as those elements themselves are best understood.

"Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this no body has any right to but himself."

Both “right-Lockeans” and “left-Lockeans” recognize in Locke and themselves affirm that “every Man has a *Property* in his own *Person*. This no Body as any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his.” [ST §27] This is a statement about each person's natural (or original) moral condition. Each is “Master of himself, and *Proprietor of his own Person*” [ST §44] in the sense that each is morally at liberty to dispose as he sees fit of the elements that compose his person and each has rights against all others not to be prevented from disposing of his person as he sees fit.

For our current purposes, it is important to note that this affirmation of “self-ownership” is anti-egalitarian in the sense that individuals are ascribed rights over very unequal “shares” of personal resources. Some individuals will have rights over considerably more in the way of mental or physical capacities and levels of energy and get-going-ness than others. In addition, it looks as though the affirmed and rightful inequality in personal resources will in all likelihood generate inequalities in extra-personal holdings – in the number of acorns that people will gather, the extent of the fields that they will cultivate and the crops that they will harvest, and the minerals they will mine and refine. As Locke says, “Different degrees of Industry were apt to give Men Possessions in different Proportions...” [ST §48]. And when the invention of money engenders more elaborate forms of labor and commerce, this inequality in extra-personal holdings will be enlarged. When individuals with rights over their talents, energy, and labor bring these factors to bear on the natural materials that surround them, we seem to get rightful inequalities of extra-personal holdings. Left-Lockeans, however, want to push back against these apparently anti-egalitarian implications. They want to find bases within a fundamentally Lockean approach for something like equality in the distribution of the blessings of nature – or even (in some left-Lockeans) something like equality in the distribution of all extra-personal holdings.

The Lockean text suggests four ways in which a Lockean might launch an argument for some degree – perhaps a very considerable degree – of mandated equality in extra-personal holdings. The least promising of these is Locke's advocacy of a spoilage proviso according to which, even if I have mixed my labor with some natural material – e.g., even if I have

gathered all three of these bushels of berries – if some of the labor-invested material will spoil in my possession, others are morally at liberty to take that material. But, as Locke points out, the spoilage proviso provides little room for inequality reducing transfers of extra-personal holdings, for only the most irrational people will invest their labor in gathering more berries than they can consume without spoilage or can barter away for other consumption goods. And once money comes along, all those extra berries can readily be converted in to silver and gold coins that never spoil.

Locke tells us that the earth has been given to all mankind in common. There are two very strong interpretations of this claim, each of which seems to require something like an equal distribution of the blessings of nature. One interpretation is that we are all by nature joint-owners of the earth and hence any private appropriation requires everyone’s agreement. The other interpretation is that each of such is naturally the owner of a discrete equal share of the earth. (Locke himself rejects both of these interpretations.) As I see it, the history of left-Lockeanism (or left-libertarianism) has largely been the history of people trying to defend one or another of these strong propositions and then trying to show the coherence of a system that includes one of these propositions and self-ownership. One of the striking things about Vallentyne’s left-Lockeanism is that Vallentyne disavows both of these strong claims about original equal rights to nature and accepts the position of Locke (and of right-Lockeans) that nature is originally unowned.

Another opening for the insertion of equality into a Lockean system is Locke’s claim that an individual who is in extreme want is morally at liberty to take the loaf of bread that she needs to avoid starvation from the otherwise rightful owner of that loaf. Vallentyne agrees, and so do I. Locke in fact seems to make a much stronger claim on behalf of the party in dire circumstances. In his *First Treatise* he declares that “charity gives every Man a Title to so much out of another’s plenty, as will keep him from extream want, where he has no means to subsist otherwise....” [FT §42]. Notice that this moral-liberty argument goes beyond the spoilage proviso because the party who needs to take the loaf to avoid starvation may take the loaf even if it will not otherwise spoil.[2] On the other hand, the doctrine that people are not obligated to sit

and starve or even that there is a duty of charity to prevent starvation hardly gets one to anything like an egalitarianism of extra-personal shares of nature.

“... which Question will at first seem strange, since the Establishment of Property seems to have extinguished all the Right that arose from the State of Community. But it is not so; for we are to consider the Intention of those who first introduced the Property of Goods. There is all the Reason in the World to suppose that they designed to deviate as little as possible from the Rules of natural Equity;”

Notice that in this *First Treatise* passage Locke says that the person in extreme want has a “Title” to what she needs to survive – albeit it is a title bestowed by charity and not by justice. This raises some of the same philosophical issues considered by Vallentyne toward the end of his remarks. Does the loaf-holder have a *duty* to hand the bread over to the starving individual? Does he at least have a *duty* to allow her to exercise her liberty to take the bread? If the loaf-holder has duties with respect to the person in extreme want does that mean that she has claim-rights against the loaf-holder? In *A Letter Concerning Toleration*, Locke holds that although uncharitableness is a sin, it is not subject to punishment by the magistrate because uncharitable conduct is “not prejudicial to other mens Rights....”[3]

The fourth opening for something like the equal blessings of nature into a Lockean system is Locke’s advocacy of the “enough and as good” proviso. The core idea of such a proviso is that people’s acquisition of property and/or their decisions about how they will employ their property may not worsen the condition of others in some way. But in what way may people’s condition not be worsened? And what is the baseline for determining whether a person’s condition is worsened in the specified way? And what justifies any

such proviso and how does the affirmed proviso fit into an overall Lockean political theory? All these are matters of complex debate. What is salient here is that Vallentyne's left-Lockean position turns on the inclusion of a bold "enough and as good" proviso. Vallentyne's proposed proviso requires that an equally valuable share of natural resources be left for each individual or that each individual receive due compensation for anything less than an equally valuable share being left for her. [4]

Vallentyne quite rightly notes that he cannot be expected to defend this claim in a short commentary on a short essay about Locke. So it would be unjust for me to launch a full-scale critique here. I will merely highlight three difficulties that I expect readers of this conversation to have. The first is the difficulty of determining what an equally valuable share of natural resources would be. The second is the difficulty of seeing why the benefits provided by natural resources should be shared equally. The third is the difficulty of thinking that raw nature, to any significant degree, provides us with benefits. An important Lockean doctrine is that what provides us with benefits is people doing things with raw stuff that would otherwise be worthless.

Endnotes

[1] For a variety of reasons, I dislike these "right"—"left" labels.

[2] A really interesting discussion of this issue of which Locke must have been aware appears in Hugo Grotius's great 1625 treatise, *The Rights of War and Peace*, (Indianapolis, IN: Liberty Fund, 2005), Bk.II, Ch.II, VI-IX. Editor's Note: Hugo Grotius, *The Rights of War and Peace*, edited and with an Introduction by Richard Tuck, from the Edition by Jean Barbeyrac (Indianapolis: Liberty Fund, 2005). Vol. 2. Bk. II CHAPTER II: VI: Of Things which belong in common to all Men. < <http://oll.libertyfund.org/title/1947/121278/2448195>>

[3] *A Letter Concerning Toleration*, ed. J. Tully (Indianapolis, IN: Hackett Publishing, 1983), 44. Editor's Note: Or see Liberty Fund's edition, John Locke, *A Letter concerning Toleration and Other Writings*, edited and with an Introduction by Mark Goldie

(Indianapolis: Liberty Fund, 2010). <<http://oll.libertyfund.org/title/2375>>.]

[4] Vallentyne might go further. He might require that each be left with a large enough share to provide her with an equal opportunity for wellbeing or receive due compensation for not being left with such a share.

4. PETER VALLENTYNE'S REPLY TO ERIC MACK (JANUARY 17, 2013)

I have no disagreements with Eric's excellent response to my commentary. I will here take the opportunity to reply, very briefly, to the three questions he raises at the end.

The first question concerns how the value of shares of natural resources is determined. I would defend an appeal to the competitive value (based on demand and supply) of the rights held over (unimproved) natural resources. There is some indeterminacy in this notion, but a suitable auction would be one example, as would be the market-clearing price in a suitable free market. This general approach is endorsed by Hillel Steiner and Henry George,[1] and some jurisdictions (e.g., Hong Kong, I believe) tax landowners on this basis.

Related to this is the third question, which concerns how raw natural resources could have any value apart from what people might do with them. I fully agree that their value so depends. The value of rights over some natural resources (e.g., beautiful beachfront) is higher than that of rights over other resources (e.g., ugly beachfront) precisely because there is more that people can or want to do with them.

The second, and remaining, question is why the value of natural resources should be shared equally. This is a more difficult question. If I were a moral realist, I would say that moral reality includes such a requirement (and of course I would need to justify this claim). I am not, however, a moral realist, and so I view this a matter of what moral principles we would endorse in a suitable reflective equilibrium (after much information gathering, reflection, discussion, etc.). I find full self-ownership plausible, but I also find a *limited* requirement for some form of substantive equality

plausible. Some kind of egalitarian proviso on appropriation (and use) of natural resources seems like a plausible limited requirement. I fully recognize, however, that others (most others!) do not share this view. I thus view it, like all normative matters, as a matter for continued reflection and investigation. I should emphasize, however, that the issue of justification arises no matter what position one takes on the appropriation proviso. One can always ask why some specific proviso is the relevant one, rather than some other one, or none. The egalitarian proviso does not face, that is, any special burden of justification compared to other versions. They all face a very strong burden.

Endnotes

[1] Hillel Steiner, *An Essay on Rights* (Cambridge, MA: Blackwell Publishing, 1994). Henry George, *Progress and Poverty* (New York: Robert Schalkenbach Foundation, 1879). See the OLL edition: Henry George, *Progress and Poverty: An Inquiry into the Cause of Industrial Depressions and of Increase of Want with Increase of Wealth, The Remedy* (Garden City, NY: Doubleday, Page, & Co. 1912). <<http://oll.libertyfund.org/title/328>>.

5. ERIC MACK'S COMMENT ON MICHAEL ZUCKERT (JANUARY 20, 2013)

I have already thanked Jan Narveson and Peter Vallentyne for their gracious and thought-provoking comments. I now thank Michael Zuckert, who, as is always the case, reveals to me interesting ways to look at philosophical texts and issues that would otherwise be beyond my ken. It is very gratifying to have such distinguished thinkers as commentators and friends.

Zuckert zooms in on what seems to be a curious feature of Locke's *Second Treatise*. Locke's treatise is very reasonably viewed as (among other things) a defense of an economic order in which owners of extra-personal productive resources employ individuals who possess little in the way of productive resources beyond themselves. Such an economic order will be shot through with employer-employee relationships – or, in

Locke's language, with master-servant relationships. Moreover, Locke mentions master-servant relationships as one of the several types of relationship that are to be distinguished from the political ruler-political subject relationship. Nevertheless, while Locke devotes good segments of chapters to the owner-slave, the parent-child, and the husband-wife relationships before going on to ruler-subject relationship, he does not seem to offer a comparable discussion of the master-servant relationship. Zuckert's resolution of this curiosity is that the chapter "Of Property" – which is located between chapters that focus on these other relationships – is in reality about the master-servant relationship. It is an elaborate justifying explanation of the emergence of an economic order that is shot through with employer-employee relationships.

I think that this is a very illuminating point even though (or especially because) the only explicit reference to servants that I recall in "Of Property" is Locke's assertion that,

Thus the Grass my Horse has bit; the Turfs my Servant has cut; and the Ore I have digg'd in any place where I have a right to them in common with others, become my Property, without the assignment or consent of any body. The labour that was mine [including my horse's labor and my servant's labor], removing them out of that common state they were in, hath fixed my Property in them.[1]

Still, I think that there is another respect in which "Of Property" is strangely silent given Locke's place as a crucial defender of a private property commercial order. Locke never takes up the question of why freely contracted exchanges give both parties rights *against the world at large* to what those parties receive through such exchanges.

Consider a situation in which *A* has a property right to a particular silver coin and *B* has a property right to a particular wool coat and they voluntarily agree to an exchange of the coin for the coat. It is pretty clear why, in virtue of their agreement, after the exchange *A* has a right *against B* that *B* not grab the wool coat and that *B* has a right *against A* that *A* not grab the coin. Each has the specified right *against the other* in virtue of the binding moral force of contracts. As Locke says, agreements are binding in the state of nature because "truth and keeping of faith belongs to men, as men..."[2]

But why does *A* now have a right *against everyone* that they keep their hands off the wool coat and why does *B* now have a right *against everyone* that they keep their hands off the silver coin? One might say – albeit Locke does not try this – that *A* and *B* don't merely exchange the coin and the coat; they also exchange their rights. *A* transfers to *B* his *right against the world to the coin* and *B* transfers to *A* her *right against the world to the wool coat*. But I think saying this at best amounts to saying that *somehow* the agreement between *A* and *B* results in *A* having a right against the world to the coat and *B* having a right against the world to the coin. Yet what is needed is some explanation of how the voluntary exchange has this effect. I think that there are two factors that explain Locke's failure to note the need to provide an explanation for how voluntary transfers of just holdings bring it about that the recipients now have rights against the world to what they have received in trade.

First, I think that Locke is quite appropriately impressed with the moral power of agreement. For this reason he does not notice that, while it is clear that if I agree to transfer my coin to you, I am bound not to grab it back, it is not so clear why everyone else becomes obligated *to you* not to take the coin. Second, along with all other 17th-century theorists, Locke is focused on how property rights initially arise – on how portions of the natural world are justly removed from the commons and converted into property. The task that he sets for himself in “Of Property” is to explain how just *initial* acquisition is possible (in the absence of the world at large agreeing to such acquisition). Locke simply takes it for granted that justice in transfer is possible.

There is another significant silence in and around Locke's chapter “Of Property.” I've argued that Locke provides a forceful explanation for why the appearance and increasing articulation of a system of private property and trade will benefit all (or nearly all) persons. But this is, as Zuckert points out, a bit of “ideal theory” that may not fully address the world as it actually is. One way that Locke's theorizing about how the rise of property *could be* just and mutually beneficial does not connect to the actual non-ideal world is that Locke remains silent about the extent to which the actual holdings – especially the land holdings -- of the world in which he lived were just or unjust and to what extent individuals were worse off than they would be

because unjust holdings were in fact upheld. My presumption is that it simply does not occur to Locke to investigate the gap between his philosophical account of just holdings and those actually existing holdings. Perhaps – I think this is a Zuckert-like thought -- he saw the gap but judged that the most he could do was to leave it to others to see the gap as well.

Zuckert is impressed by the extent to which the gains to participants in Lockean commercial society are unequal – more specifically, by the extent to which the gains to those who are propertied are greater than the gains to those who are property-less. As I understand Zuckert, he is saying that, although justice may not condemn this unequal gain, we have to recognize the sense in which Lockean commercial society is a class society. Here I would just want to put forward an alternative picture for consideration. On that picture (i) many of the gains and the losses in Locke's actual world and in ours derived or now derive from the sorts of economic predation that good Lockeans condemn; (ii) many of those illicit gains accrued and now accrue to those who are already powerful and hooked up to concentrated political interests, and many of those unjust losses fell and now fall on those who are already weak and unrepresented in coalitions of concentrated interests; and (iii) the important class division is the too-often unrecognized division between those who gain from predatory measures that Lockeans should condemn and those from whom those gains are extracted.

Endnotes

[1] *Second Treatise*, §28. <<http://oll.libertyfund.org/title/222/16269/704360>>.

[2] *Second Treatise*, §14. <<http://oll.libertyfund.org/title/222/16245/704328>>.

6. JAN NARVESON'S REPLY TO ERIC MACK (JANUARY 20, 2013)

Libertarians need to address, very seriously, the questions raised between Eric Mack and Peter Vallentyne regarding, broadly speaking, the treatment of those on the "bottom" (that is, the bottom of the honest-dollar scale, but not the robbers and wastrels.)

Locke's opening pitch in the famous chapter on property takes it that nature belongs to mankind in common. Mack's original essay in effect says that Locke virtually undoes that position. In a sense that's true, but it's also true that he is in a position of *having* to undo it. He evidently thinks that there is something very robust about the claim, even if it's only a strong *prima facie* claim.

Now, Locke also says, in introducing the thought, that "*God* gave the earth to mankind in common." This introduces theological notions into the foundational discourse on these matters, and there is decisive, definitive reason for refusing to countenance such notions here -- a fact that Locke isn't sufficiently aware of (hence the, it seems to me, totally inexcusable book by Jeremy Waldron holding that all of Locke's views depend on his religion, and apparently implying that he was even somehow on the right track in this respect. [1] But Waldron is completely wrong about that. In the present context, the point that can easily be made is: How does Locke *know* that God gave the earth to *all* of us equally, as he says, rather than, say, just the Aryans or the Inuits, or whatever, or that he gave it highly unequally to his buddies? In context, it's obvious that Locke "knows" this because he believes, antecedently, that the earth *does* belong to us all in common, and therefore *of course* that's who God would, in all conscience, have given it to. The circularity is obvious.

But what that means is that some independent argument has to be given for it. And such argument is, to put it mildly, seriously lacking, even though my impression is that somewhere just short of 100 percent of contemporary social philosophers seem to agree with Locke on the substantive point.

But I don't, and I don't see how libertarians in general can. The reason they can't is simple: *If* indeed all we have, at bottom, is the right to *liberty*, then that right must be essentially *negative*. Now, a negative right

over the earth has the problem that all rights are rights against *other people*. And a right against those others to a "share" of "the earth" is one that cannot be backed by strictly negative rights. If the earth is available for exploitation by free men, then there is no way to infer that everyone is *entitled* to some, either in the way of an equal share or anything else. If our only duty is to refrain from aggression, then some may starve because others, quite nonaggressively, neglect them.

I don't see how "left libertarianism" can be founded in liberty, and in Peter Vallentyne's account, it's not. On his account, it seems to me, liberty is a surd. But that's not a point of contention between Eric Mack and myself, so I won't pursue it here.

The question that remains is: Do we have any business asserting such positive claims if we are libertarians? If we are it would have to be this: that somehow, in the process of appropriating bits of the earth, those who end up with nothing in pure free-enterprise environments, due to whatever -- say, lack of talent or brainpower, or whatever -- have somehow been *deprived* of something by the rest, the ingenious and industrious. *If* that were so, we of course could infer our duty to help them out.

But it's at least not obviously so. The person born with no brain, or whatever, isn't going to make it regardless of his property rights. The Lockean idea, not to mention the Rawlsian idea, simply can't be based on that. Let's agree that the libertarian insists that we not put people below the relevant baseline. (In response to both Mack and Vallentyne, this baseline is simply where people would be in a state of nature even if it's Lockean rather than Hobbesian.) The answer, unfortunately, is that quite a few of them would be dead. Locke is perfectly right to point out that nature of itself supplies us with *nothing*. Some technology is essential, however minimum. (I include, say, the rudimentary, innate technology by which newborns seek their mothers' breasts. It does not, however, include the know-how necessary to increase product when Mom's breasts, alas, don't work properly or she is too low on sustenance to keep the supply coming.)

Nevertheless, there are three points that seem to me between them necessary and sufficient.

First, in any even moderately decent times (and if that's lacking, see point three), there are lots of caring

people around who will be ready and willing to contribute to appropriate helping agencies. We who worry about the down-and-out do not have a problem. We have, of course, a horrendous problem with governments whose policies shore up the unemployment rate, but we do not have a problem that people will starve to death in a libertarian world -- at least, not so long as most of them are pretty much like almost everybody that you and I know. The frequent aspersions on private charity by the friends of the welfare state -- exhortations that we shouldn't throw the very poor on the "tender mercies of arbitrary charity" etc. -- are not just derogatory but completely baseless. It is characteristic of leftists, and a good many knuckle-headed rightists, to say such things, but anyone who knows any appreciable number of real people knows that the cynics simply don't know what they're talking about. (Of course, those who will be charitable if they can may sometimes be unable to be so. See point three below.)

Secondly, let's also agree that modern technological environments make it highly likely that a lot of people who are perfectly competent will nevertheless end up unemployed now and then, and it may be that the skills some of them honed with years of study and practice and that are now redundant may also make it very difficult for those people to switch to other occupations that would get them back on track economically. However, I don't see that these problems of themselves generate the kind of across-the-board, open-ended case for "equal rights to natural resources," with whatever Vallentyne can somehow extract from that in the way of hard cash. What's needed is a return to prudence: saving for the future during good years, etc.

And thirdly, any idea of "guaranteeing" equality, and in particular guaranteeing it in such a way that every individual is kept above some floor level, enough to keep him alive and functioning, has the problem that moral principles can't of themselves actually guarantee anything whatever. If there absolutely isn't enough to go around, then what? It is, again, impossible to see how the libertarian can say anything other than that in such circumstances the smart, the quick, and the lucky will make it and those with the opposite properties will not. But as I've said above, there is absolutely no reason to think that the world we live in either is now or will in the foreseeable future be a world of such niggardliness.

All that's true here is that advocates of positive rights for all have to run out of gas on sheer supply problems at some point, so far as pure theory is concerned. The earth will get zapped by a comet, or boil, or freeze, and there may not be a thing we can do to prevent mass starvation or some such. Pure theory is for debaters only: Again, in the real world the efforts of so many ingenious and humane people -- think, e.g., of Norman Borlaug -- have simply solved any real supply problem, and they will continue to do so as long as the earth bears much resemblance to what it has been for the past many millennia. The claim that Borlaug is merely "equal," in libertarian terms, to the most down-and-out incompetent among us when it comes to claims on "shares" of developed resources is so utterly absurd as to make the egalitarian case a nonstarter.

The upshot is that libertarians do not need to follow Locke in his inconsistent insistence on positive rights for the starving. (It is inconsistent: Mack points out that "Locke holds that although uncharitableness is a sin, it is not subject to punishment by the magistrate..." -- and that, after all, is the *only point at issue*.) Some people's rights, of themselves, will not keep them alive; but warmhearted, sympathetic, and industrious people will do so. That's all we need -- as well as all we are theoretically entitled to.

Endnotes

[1] Jeremy Waldron, *God, Locke, and Equality* (Cambridge: Cambridge University Press, 2002).

7. MICHAEL ZUCKERT'S COMMENT ON ERIC MACK (JANUARY 20, 2013)

Eric's generous opening gesture about my comment bringing out insights "beyond his ken" may be a bit of an overstatement, but it does bring out something of a difference between many of us who approach political philosophy from within political science and those, like Eric, who do so from within the discipline of philosophy. I suppose there are many ways to describe the difference but one way is to note what Eric's comment directly points to—readers like me are

more emphatically concerned with the text of the philosophers than readers like Eric. He is directly concerned with the arguments and tends to see them in an acontextual and ahistorical manner. We tend to be concerned more with the text as text and to be attentive to the place of arguments within texts and within history. Thus in my original post I was trying to solve a puzzle about Locke's organization and order of argument. But in doing so, I believe, some substantive points of interest emerged that do not nullify the excellent interpretation that Eric developed but give some different emphases to Locke's property doctrine. Although the differences between us are slight I think they do mostly revolve around this difference in the way we approach philosophers like Locke.

With that preface let me make some specific responses to Eric's comments.

1. On a relatively fine textual point: Eric observes quite correctly that the only place where Locke refers to the master-servant relation directly in chapter five is the famous "the turfs my servant has cut" passage. This was the passage that C.B. Macpherson (*Possessive Individualism*) referred to as merely reflecting emerging market relations in and therefore as evidence for his Marxist way of reading major texts of the 17th century.[1] One of my points was to show that Locke was not merely not taking for granted relations in his society, but that the very point of the chapter was to show how there might rightly be masters and servants. But beyond that, Locke refers once more, though not in these terms, to the master-servant relation when he speaks of the day laborer in a passage Eric too makes much of. Locke has shown us how there come to be day laborers, i.e., men who have no land and no direct access to the fruits of the land and who therefore must sell their labor. To show that they are not harmed in their rights or in their welfare is, one could plausibly say, the main point of the chapter.

2. Eric uses this example of the servant and turf to raise an interesting philosophical question: How does Locke explain the force of exchange and contract in creating rights against all comers, not just vis-à-vis the exchangers. Here Eric makes a move rather like Macpherson—he concludes that Locke is just taking for granted a relation or practice that exists in his society and has not given it any thought. Perhaps, but I wonder if the Lockean line of answer to this question

would follow tracks similar to those that lead to rights against all comers for original appropriators. I do not follow that up here, but it would be an interesting argument to pursue.

3. Similarly, Eric says that it does not occur to Locke to investigate the gap between his account and current holdings. I cannot believe that this is correct. Locke's discussion in the immediate context has the purpose of refuting Filmer's claim that existing property relations cannot be justified on the basis of the contractarian/state of nature/original commons arguments he means to counter with his patriarchal doctrine. Only if the world is originally owned and then passed on can private ownership rightly exist, as Filmer has it. This point comes out very strongly in Filmer's critique of Grotius on property and the law of nature. So Locke's task is precisely to show the legitimacy of the existing relations and distribution of property—in general if not in every detail. He could not have overlooked the bearing of his argument on property holdings in his society. I actually think Eric and I agree more here than he sees, for he makes much of Locke's poor-law proposal, which is a response to the "gap" between the very general account he gives of property in a money economy with its assumption for this purpose of a full employment economy and the realities of his and all societies.

4. Eric suggests that my claims about the class character of Lockean society is perhaps more a result of economic and political practices and policies of which Locke would not approve and which he would work to overcome. Probably correct to some degree. Nonetheless, I believe the main point still holds. First, as I suggested above, Locke is writing to legitimate the property relations of his society. These are marked by great inequality of holdings. Second, he seems to believe that the dynamic of the money economy leads to great inequality under all conditions. After all, he takes on the burden of trying to show that the situation of the day laborer is just and right. And advantageous for all. The reason I raised the class issue in the first place is that it poses a serious political problem that Locke should need to face, and it is not evident how he meets it. That problem is how to maintain the property regime that benefits all but does so unequally in the face of temptations of the disadvantaged to disrupt those relations. We enter here issues such as the distribution of political power among the population,

special constitutional means to protect property, and so on. The problem Locke points to but does not seem to resolve set the agenda for much of the political thinking and action of the next century, as men like Montesquieu and Madison (and many others) grappled with it.

Endnotes

[1] Macpherson, C.B., *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford University Press, 1964).

8. ERIC MACK'S COMMENT ON JAN NARVESON 2 (JANUARY 20, 2013)

Jan Narveson provides a powerful response to my claim (on behalf of natural-rights theory) that one has reasons to be circumspect in one's treatment of others that are not reasons of prudence or benevolence. Jan's response is that there are things that matter to one and things that matter to others and surely this exhausts everything that matters. If one's reasons for action or forbearance derive from what matters, then all one's reasons must be reasons of prudence or reasons of benevolence. Jan's response is powerful because, at least for a moment, it is difficult to say what else matters.

Fortunately, I just watched a great documentary on the left-wing Current channel entitled *Marijuana Outlaws*, about folks growing marijuana in northern California – entirely, of course, for the legal medical marijuana market. These were all more or less counterculture people who have not had the friendliest past relationships with law enforcement. Because they don't know what to expect from the maze of law enforcement agencies – especially since they may be accused of supplying marijuana to nonmedical consumers – they grow their crops in very remote places. Unfortunately, a consequence of this is that their crops can readily be stolen just as they are about to be harvested.

The last segment of the show involved interviews with growers whose crops had just been stolen. What

was striking was the nature of their condemnation of what had been done to them. They all clearly believed that they had been wronged precisely because of the labor, effort, attention, and energy that they have devoted to their crops. Of course, they did not like ending up with \$70,000 or \$80,000 less income than they expected. They were not happy about that financial loss. Still, a great deal of what mattered to them was that they have been treated in a way that in itself was unacceptable. Their view was that human beings don't (i.e., shouldn't) go around taking other people's hard-earned stuff. There is something wrong with people who do treat others in these ways. (One grower said the thieves were "shits"; another said the thieves were creating "bad karma" that would eventually do them in.)

So everything that matters matters to someone. But one sort of thing that matters to people is not being treated in certain ways (above and beyond the consequences of being treated in those ways) and not themselves treating others in those ways. (The growers also talked about how much it mattered to them that their rights over their land be respected and how much it mattered to them that they respect others' land rights.) I think our view that there are certain constraints we ought to abide by in our interaction with others and that they ought to abide by in their conduct toward us is too deep to be a product of any sort of ends-oriented deliberation about what rule-compliance will be advantageous to oneself or to everyone.

Jan is right, of course, that for some people, being circumspect in the treatment of others does not in fact matter. Nothing I have said in this conversation shows that these people nevertheless have reason to be circumspect – though I think the sort of considerations Locke lines up do combine to provide reasons not to act in ways that interfere with others' pursuing their own ends. In some of my own essays, I have tried to lay out why any reasonable moral code has to contain important deontic restrictions.[1] All of that is a much bigger conversation.

Endnotes

[1] See "Prerogatives, Restrictions, and Rights," *Social Philosophy and Policy*, vol.22 no.1 (Winter 2005)

357-93, and “Individualism and Libertarian Rights,” in *Contemporary Debates in Political Philosophy*, edited by John Christman and Thomas Cristiano (Oxford: Blackwell, 2009), 121-36.

9. JAN NARVESON'S COMMENTS ON ERIC MACK AND MICHAEL ZUCKERT (JANUARY 20, 2013)

It is easy to misstate and to misread the view of us “reductivists” on moral matters, and it may be that Eric and I agree more than he thinks. His marijuana growers are of course right to complain about the thieves who deprive them of the fruits of their labors. The *ground* of their complaint is of the essence: Others intervened to lower their utility level – their quality of life -- relative to a nonaggressive Lockean baseline. But the complaint itself is expressed precisely and correctly in emotivist-approved terms – those thieves are a bunch of “shits.” To say this we surely need no further metaphysics, do we? (Of course, government intervention here is nearly at its worst and makes it most unlikely that the growers will be recompensed. In such a situation, use of “deontological” language is sure to flourish!

Eric’s response to me interacts with a point of Zuckert’s. The baseline of interaction is always the same: Lockean (and Hobbesian) nonaggression. Interactions that worsen no one’s condition are permitted; interactions that lower anyone’s condition are not. Aggression mucks up social relations, giving victims reason to react defensively, instead of being free to do their best with their natural endowments, such natural resources as may remain, and exchanges with others who have increased their property meanwhile. In the largely hypothetical original state, a person’s capital is mostly natural and affords a barely tolerable living; in developed social conditions, it makes even the day-laborer remarkably well off by comparison. But all that changes is the level of typical legitimate possessions of the rest of society. Given the potent combination of normal entrepreneurship plus normal levels of compassion, as time goes by this level gets very high.

None of the above entails anything about how much actual inequality there will be. We should note that as regards any Lockean intention of justifying the specific kinds of inequalities prevailing in his day, the huge problem is simply that the British landed gentry got their land by conquest and not by Locke-approved means. Justifying that on libertarian grounds is, *prima facie*, impossible. It’s a wholly different problem than the “problem” of justifying Bill Gates or Warren Buffet. The latter’s holdings are (unless there are things going on that I don’t know about) due to beneficial interaction with millions and millions of people who freely spend their legitimately earned money on things they like or can use to advantage. Insofar as that was the case with persons of whatever class in 17th-century England, the moral situation is precisely the same.

Surely the problem of today is government “control” of economic relations. That was a factor in Locke’s time too, but not, I would think, nearly as great a one.

10. PETER VALLENTYNE'S RESPONSE TO JAN NARVESON (JANUARY 20, 2013)

Jan asks whether left-libertarianism (i.e., with some kind of egalitarian proviso) can be “founded in [negative] liberty.” It can be so founded in the weak sense that (1) it is a form of Lockeanism that recognizes self-ownership and a unilateral moral power to appropriate natural resources, and (2) property rights ground negative liberties. It can also be founded in liberty in a stronger sense of being compatible with maximum equal negative liberty. I believe, however, that there is more than one set of rights that are so compatible (e.g., both radical right-libertarianism and radical left-libertarianism are so compatible). All the hard work is in justifying one set of rights rather than another.[1]

Jan writes, “If the earth is available for exploitation by free men, then there is no way to infer that everyone is entitled to some, either in the way of an equal share or anything else.” This seems quite false to me. We agree that agents initially have maximal equal liberty-rights, against all others, to use (unappropriated) natural resources. The point of

disagreement concerns the conditions under which someone may unilaterally acquire private property in some natural resources, thereby causing others to lose their liberty rights to use those resources. Jan holds that (1) agents have very strong moral powers to acquire such private property (e.g., it's enough to stake a claim or mix one's labor, with no proviso), and (2) agents have a very weak moral immunity to losing their initial liberty-rights to use the natural resources. My left-libertarian view is quite similar, but it holds that the moral powers to acquire private property in natural resources are weaker (e.g., subject to making a payment for the competitive value of private property rights acquired in excess of a fair [e.g., equal] share), and the moral immunities to loss of the liberty-right to use natural resources are stronger. This is not, I claim, a matter of Jan recognizing stronger negative rights than I do. It is a matter of his holding that the initial negative rights to use natural resources are more easily lost than I hold them to be.

Concerning Jan's three final points: (1) I fully agree that we are addressing only the enforceable duties of agents, and that agents frequently help others even when they don't have an enforceable duty to do so and even when they have no duty at all to do so. (2) I fully agree that inequality of various sorts is unavoidable and that, even when it is avoidable, justice does not require equality of outcome (e.g., equal wellbeing, or equal wealth). Individuals are, for example, accountable for managing their resources wisely and are owed no duty of justice to undo losses incurred when they fail to do. (3) The issue is simply that of whether the proviso on appropriation requires a payment to others for any excess share appropriated. If it does, then that is a matter of property rights. The others have an enforceable right to acquire the payments owed to them.

To make this last point maximally clear, suppose that: (1) one person unconditionally owns a tract of land and some buildings on it (as Jan might hold), (2) she transfers full ownership of the buildings to her husband, and (3) she transfers full ownership of the land to her husband, except that it is conditional on his making an annual payment to each of the two adult children (while alive) equal to one-third of the competitive rental value of the land. This situation can arise under Jan's version of right-libertarianism. Left-libertarianism merely allows that something like this

arises for all natural resources. Jan and others can reasonably reject this substantive view. I don't, however, see how this view is any less compatible with maximum equal negative liberty than Jan's preferred view.

Endnotes

[1] For discussion of this issue, see Shelly Kagan, "The Argument from Liberty," in *In Harm's Way: Essays in honor of Joel Feinberg*, edited by Jules Coleman and Allen Buchanan (Cambridge: Cambridge University Press, 1994), 16-41; Jan Narveson and James P. Sterba, *Are Liberty and Equality Compatible?* (New York: Cambridge University Press, 2010.); and Peter Vallentyne, "Equal Negative Liberty and Welfare Rights," *International Journal of Applied Philosophy*, 25 (2011): 237-41 (as well as the pieces by Narveson, Sterba, and Gibbard in that issue).

11. ERIC MACK'S REPLY TO PETER VALLENTYNE 2 (JANUARY 20, 2013)

Peter Vallentyne's nice brief response to the questions that I have posed has got me thinking about a standard move that "right-Lockeans" such as myself make in conversations with "left-Lockeans" like Peter. This move is to challenge the use of "natural resources" to describe the "raw stuff" (berries growing on bushes, fish swimming this way or that, that ugly sticky stuff that we now call proven reserves) that left-Lockeans say ought to be equally divided among persons or say (as Peter does) everyone should receive the equal blessings of either through equal shares being left for everyone or due compensation being paid to everyone for whom an equal share is not left.

I think this right-Lockeans challenge is based on the idea that, *if* there is some deep, natural, original, equal right with respect the earth, *then* that right must be a right to an equal share of that *raw stuff* or to have an equal share left for one or to be duly compensated if an equal share of the *raw stuff* is not left for one. Ten of us just find ourselves right next to a heap of ten yummy acorns. *If* there is a natural right to the earth, it seems that in this situation it would be a right of each

to one of those acorns or to have one acorn left for one or to be duly compensated if one is not left for one.

But the earth is not one big heap of acorns. There are berries, fish, and that ugly sticky stuff. So the question always gets posed: In a world with different types of stuff, what counts as an equal share? And the answer that is always given by left-Lockeans (and that Peter gives) is: An equal share is (something like) a share of equal market price. Right-Lockeans tend to go along with this proposal about what would count as an equal share because they are so happy to hear a *market-oriented* answer.

But it now occurs to me that “right-Lockeans” should resist this move – this interpretation of equal shares. The reason for resisting is, I think, this: That which has market value is no longer merely a raw bit of the earth. That which gives any bit of the earth market value – people having views about how it can be made available for use and consumption, how it may be consumed, how it can be utilized for production, how it can be preserved for future use – makes it into a not-that-natural “resource.” Hence, whatever intuition there is on behalf of an equal division of the earth, i.e., of that raw stuff, or on behalf of compensation for those who do not get an equal share of the earth does not carry over to an equal division of “natural resources.”

The role of people and their beliefs and actions in determining how much of a natural resource any bit of the earth is (at any given moment of human history) seems to make any claim to an equal share of natural *resources* very different from a claim to an equal share of *raw stuff*. That is why it seems to me that calling for each person receiving a share of equal value or having such a share of equal value left for him or being compensated for not have a share of equal value left for him goes way beyond calling for each to share equally in the blessings of nature – whatever that equality would be.

12. ERIC MACK’S COMMENT ON MICHAEL ZUCKERT 2 (JANUARY 21, 2013)

Let me begin by saying that I meant what I said about learning things about texts and about philosophical doctrines associated with those texts from readers like Michael that otherwise I would never see. Indeed, I wasn’t disputing Michael’s proposal that Locke’s chapter “Of Property” be seen as his treatment of the master-servant relationship when I said that the turf passage is the only passage in that chapter that explicitly mentions that relationship. I was trying to work my way over to something else that Locke does not explicitly talk about, viz., how the purchaser acquires a right against the world to the item that he has purchased. In this case, however, I have drawn the conclusion that Locke did not see any need to explain how it comes about that purchaser acquires a right against all comers and not merely against the seller. I offer an exculpating explanation for Locke’s not investigating acquisition of rights through transfer, viz., that the problem about private property rights for 17th-century theorists was how to explain the justice of initial acquisition. Filmer’s dispute with Grotius and Locke’s dispute with Filmer is focused on the possibility of just initial appropriation.

Moving along with my theme of things that Locke does not attend to, I say that Locke does not step back and ask whether the land holdings that actually exist in England in, say, 1689 are just in light of his own theory of just property rights. I think I want to stick by this claim – although there may somewhere be textual evidence against it. Again, I do not take this to be a huge criticism of Locke. I think it is quite natural for very deep thinkers not to raise questions about every facet of the world that they inhabit that might be questioned on the basis of the doctrines they develop. (Think of all the questions that we should be raising but which we do not think of to raise.)

As Michael points out, both he and I think that the sort of aid to the poor that Locke recommends in his “An Essay on the Poor Law” is a least partially motivated by his sense that the “enough and as good” proviso is triggered by the actual conditions in late 17th-century England. But I do not think that this is evidence for the proposition that Locke is questioning the property rights of those who will be required to

fund that aid. This belief on my part stems from my picture of what the “enough and as good” proviso says and demands. As I see it (and, perhaps, as Locke saw it) the proviso requires that holders of property not dispose of their property in ways that add up to any individual being made worse off with respect to (something like) economic opportunity. (See the Mack-Vallentyne dimension of this conversation.) If the proviso is violated, those who do the violating have to provide the victim with compensating economic opportunity. But the property rights of the violators are not nullified – except insofar as some of their holdings will have to be used to provide the required economic opportunities. There is no more general questioning of property rights than there is when I am found in a civil suit to be liable to make some compensation payment.

Lastly, I think that Michael is correct to raise the issue of “how to maintain the property regime that benefits all but does so unequally in the face of the temptations of the disadvantaged [I would have said “the less advantaged”] to disrupt those relations.” I now see my remarks as cautions against casting this as a *class* issue. My suggestion was that there is more class conflict in the zero-sum battles about who will be the beneficiaries and who will be the losers of political interventions in the market. My view is that most of those on the lowest rungs of the current economic ladder would be quite a ways further up that ladder were it not for policies that good Lockeans should condemn. Hence, to address the problems that arise because people are currently not very far up that ladder should not be described as addressing a problem attributable to Lockeanism.

13. JAN NARVESON'S COMMENT ON PETER VALLENTYNE (JANUARY 22, 2013)

I think that the idea that Mankind owns The Earth In Common and Equally is untenable as well as, in the case of Locke, unmotivated. Peter's latest argument here is interesting, but seems to me flawed. He says, “Suppose that: (1) one person unconditionally owns a tract of land and some buildings on it (as Jan might hold), (2) she transfers full ownership of the buildings to her husband, and (3) she transfers full ownership of the

land to her husband, except that it is conditional on his making an annual payment to each of the two adult children (while alive) equal to one third of the competitive rental value of the land. This situation can arise under Jan's version of right-libertarianism. Left-libertarianism merely allows something like this arises for all natural resources. Jan and others can reasonably reject this substantive view. I don't, however, see how this view is any less compatible with maximum equal negative liberty than Jan's preferred view.”

Here the problem is that while it is easy to see how some individual who owns something can give it to someone else with liens, and so, as Peter says, such “a situation ... can arise” on my version of libertarianism, it simply doesn't follow that libertarianism can even *allow* that this could be the general case. For obviously, at the start, somebody has to be in the position of the initial extender of that qualified right to others, meaning that that person was *not* under the obligation to make an annual payment. But if Peter's idea is right, everybody including that person has to be in that condition – and where could that come from in a regime of pure negative rights? (Of course, you could succumb to the theological infection and suppose that God, who after all made it all, was in that position and ... but we have seen through such gambits.)

More generally: Vallentyne's idea that we can solve the otherwise embarrassing problem of attributing a workable value to what “everyone” is supposed to get in the scheme of universal ownership of undeveloped resources seems to me not workable. The value of strictly natural resources qua natural is zero. This remains true no matter how far mankind has come along: unless and until someone is in a position to exchange the resource with someone else, in return for something else, there is no economic value to discuss. But once there is, it arises from the activities of individual people in using bits of nature. The idea that when Jones comes across *x* in a strictly natural state and “takes it into his possession,” he is thereby, as the unjustifiably fashionable phrase has it, *depriving* someone else of the *liberty* of taking it, is entirely mistaken. Everyone's liberty is constrained by everyone else's liberty, which means that nobody gets to aggress against anyone else – to deprive anyone else of the fruits of his or her labor, or inflict wounds, disease, or death on any innocent person. And to claim that Smith is *noninnocent* because he has undertaken to use

something not previously used by anyone else, is a misuse of the notion of “aggression.” It is logically impossible for us all to acquire the same item: Ownership means control, and if your and my desires, interests, willings are different with respect to the use of particular item x, then somebody must necessarily be frustrated. The full possession of any given thing presents a zero-sum game. And there cannot – logically cannot – be a universal solution to such a game.

But libertarianism doesn’t have that problem, because it is *essentially* historical: If person A gets there first, then x is no longer in a state of undeveloped, unpossessed nature, and so person B who comes next cannot in his turn make an *initial acquisition* of x. Instead, B will be aggressing against A if B undertakes use of x without A’s permission.

Writers on Locke tend to talk about three possible cases of legitimate acquisition: finding, making, and transfer from some previous owner – i.e., initial acquisition, creation, and transfer. But the first two are not generically distinct, for when anyone takes anything into use, that person is creating value: The item now serves a purpose that it didn’t before (even if the owner chooses not to alter it, like those who leave their suburban yards wild instead of planting and mowing grass there.) That’s why A is *now* in a position to consider exchange, if some B is likewise in possession of something else, y, such that A’s and B’s situations with respect to those things can be voluntarily reversed – A supplying B with x and B supplying A with y.

"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"

That is why Locke is essentially right. All rights are rights to act, to do or not do as we choose, and the ownership of things is just the right to perform actions involving the things in question. When those things are

inordinately complex and “artificial,” requiring immense technology to produce (such as electron scanning microscopes), the point may be more obvious but the logic is precisely the same.

If we could talk of equal ownership of nature, each person’s share would have a value of *zero*, since what is supposed to be shared in that condition has that value. And once we are into sharing things that do have value, that value arises from use, from work, and so the Vallentyinian egalitarian would be giving us all a share in *everyone else’s labor* – the very thing that his theory says we are not entitled to do with anything insofar as it *does* have human labor “mixed with it.”

Thus “left” libertarianism is not a coherent theory. There isn’t “left” and “right” libertarianism: there is either libertarianism or not. (Or: There is libertarianism supplemented by one sort of mistake (say, Marxist), or that sort supplemented with another sort (say, Henry George’s, as just discussed), and so on. But basically there is just the one fundamental moral idea: that no one is to use force or fraud (which I think can be analyzed into a sort of force) against anyone who has not in his turn used it against others; or in Hobbes’s terminology, no one is to make war against any peaceable person; or in Locke’s, that “no one ought to harm another in his life, health, liberty, or possessions.”

14. PETER VALLENTYNE'S RESPONSE TO JAN NARVESON 2 (JANUARY 22, 2013)

Jan says: “The value of strictly natural resources *qua* natural is zero.” I disagree. Suppose that we each need water for our apple trees. What is the value of the rights to control a water hole? If an auction were held, each of us would bid some positive amount for those rights. Of course, the water may have no value to us without adding some labor (e.g., transporting it to our plants), but that is factored into our bids. Our bids are based on what we can do with the natural resource when combined with our labor, etc.

Related to this, Eric says: “That which has market value is [on the left-libertarian view] no longer merely a raw bit of the earth. That which gives any bit of the

earth market value – people having views about how it can be made available for use and consumption, how it may be consumed, how it can be utilized for production, how it can be preserved for future use – makes it into a not-that-natural ‘resource.’ Hence, whatever intuition there is on behalf of an equal division of the earth, i.e., of that raw stuff, or on behalf of compensation for those who do not get an equal share of the earth does not carry over to an equal division of ‘natural resources.’”

I fully agree that what gives natural resources market value is what individuals can and want to do with them. Eric thinks that raw stuff is different, but I don’t understand the difference. Natural resources, as I understand them, simply are stuff in the world that does not have any moral standing (e.g., no self-ownership) in its original state prior to modification by agents (so a chair is not a natural resource, but its production ultimately involves the use of natural resources). Natural resources are, it seems to me, just raw stuff. Moreover, even if the two are somehow different, I don’t understand why the issue of market value distinguishes the two. Suppose (counterfactually) that raw stuff is homogeneous and we divide it up to give everyone an identical share of each kind of stuff. Each has private property in her bundle. Given that the bundles are tradable, they each have an equal market value, which depends on what individuals can and want to do with it. So, the market value of rights over raw stuff depends on what individuals can and want to do with them.

Jan says: “The idea that when Jones comes across x in a strictly natural state and ‘takes it into his possession,’ he is thereby, as the unjustifiably fashionable phrase has it, *depriving* someone else of the *liberty* of taking it, is entirely mistaken.” I fully agree, but the issue is not about taking into possession (which is a form of use) but about appropriation (acquiring rights to exclude others from using). Appropriation, by definition, deprives others of their former negative liberty to use the unowned natural resources.

Jan says that libertarianism is “*essentially* historical.” I fully agree.

Jan says: “All rights are rights to act, to do or not do as we choose, and the ownership of things is just the right to perform actions involving the things in question.” I fully agree.

Jan says: “Thus ‘left’ libertarianism is not a coherent theory.” I, of course, disagree. I think of libertarianism, even right-libertarianism, as a family of theories that disagree on various points (just as utilitarianism is such a family). For example, different libertarian theories can disagree about how strong the enforcement rights are that protect one’s property. (Does one have a right to kill someone, who due to an innocent mistake, is about to take one’s chocolate bar, when this is the only way of stopping such use? Does one have a right to kill a murderer purely for retributive reasons?). I view the (perhaps empty) proviso on appropriation as a similar issue on which libertarians can disagree. I don’t see that much is gained by reserving the libertarian label only for those who endorse an empty proviso.

This will be my last post. So, future silence should not be interpreted as inability to answer any later posts!

15. ERIC MACK'S FINAL COMMENTS (JANUARY 22, 2013)

I do not think that it is part of my official duties to call an end to our conversation. So, rather than doing that, I simply want to thank again Jan Narveson, Peter Vallentyne, and Michael Zuckert for their spirited and instructive comments and to suggest that our further conversation be carried on in the private recesses of hyper-space (if any such private recesses really still exist).

16. JAN NARVESON'S FINAL COMMENT ON PETER VALLENTYNE (JANUARY 22, 2013)

(1) Peter says, “Suppose that we each need water for our apple trees. What is the value of the rights to control a water hole? If an auction were held, each of us would bid some positive amount for those rights. Of course, the water may have no value to us without adding some labor (e.g., transporting it to our plants), but that is factored into our bids. Our bids are based on

what we can do with the natural resource when combined with our labor, etc."

This is not relevant. Of course, if there is an auction, then somebody is in a position to distribute these things and has already taken some kind of possession; or a bunch of people have come upon the water hole and have decided to divvy it up; or whatever. So we no longer have value in situ: we have the minimum requirements for exchange and distribution (which itself is a kind of exchange).

If Elmer had stumbled on the water hole before any others came along, he would then be in a position to sell water (= water rights) to second comers. That is to say, their use of it would be an item in an exchange.

Further, the value that a given resource would get at a hypothetical auction is not obviously relevant as a way of ascribing value to natural resources for Peter's purpose. For his idea, as I understand it, is to understand natural resources as such to "belong to" everyone by nature. I do think that this Henry George idea confuses use value with exchange value. Economics is entirely about the latter, though of course exchange value always arises from the interaction of persons who have previously found a use-value for various things that they come to possess. Perhaps Peter is trading on the same confusion? For insofar as what we are trying to do is to enable all to share in the "value" of natural resources, that value in the use-value sense varies hugely as a function of technology (in the broad sense of, any idea of how to put stuff to use); to divvy *that* up is clearly to distribute the "labors" (again, in the broad sense of taking or putting anything to use) of persons. Distributing the "things" independently on their technologically-modulated use makes no sense.

(2) And then, "the issue is not about taking into possession (which is a form of use) but about appropriation (acquiring rights to exclude others from using). Appropriation, by definition, deprives others of their former negative liberty to use the unowned natural resources." However, what libertarianism does, just because that's what it is, is to give everyone rights to whatever they possess which was not acquired by molesting or robbing from others. Taking what some person has previously acquired is aggression, and is disallowed.

Now, the crucial question is broached when Peter says, "Appropriation, by definition, deprives others of their former negative liberty to use the unowned natural resources." My point about this is that it is impossible for more than one person to take into his possession any particular object. So to say that one *deprives* others of a liberty when one gets there first is to say nothing that constitutes a complaint. There has to be some other ground for complaint about A's acquiring x than that in so acquiring it, B "no longer can." As Locke observed, acquisitions by anyone are impossible if they must be compatible with acquisitions of the same thing by someone, let alone everyone, else. A right to *attempt* to use x is all we can have, as well as all we need. Having it means that no one may interfere with my attempts, but also that the previously successful attempts of others are not to be interfered with either. I don't see how left-libertarianism can fail to be guilty of doing just that.

Libertarians can disagree about lots of things, among which estimates of proper enforcement levels is an excellent example. But I don't see that this matter of supposed rights to natural resources is one such. Rights are duty-entailers: for A to have a right against B is for B to be required to act in certain ways toward A. I can't imagine what else property rights can be based on than first possession. Peter agrees that the liberty principle is, as I put it, essentially historical. So it seems to me that when A acquires something not previously acquired by anyone else, the case that taking it from him without his consent is the sort of aggression that liberty forbids is definitive. And redistributing it "equally" to everyone, since it amounts to redistributing the varying labors of a lot of people, is thus, so far as I can see, just such an aggression.

No doubt Peter will have some interesting further comments, but like him, I shall rest with this for now.

But I'll take the opportunity to thank the Liberty Fund for the opportunity to engage in these discussions!

17. MICHAEL ZUCKERT'S CONCLUDING THOUGHTS (27 JANUARY, 2013)

My colleagues seem to have signed off, but many issues remain worth discussing. So here come a few comments on the exchange as it is now pretty much at its end. Two large issues have dominated: Locke on property—what does he mean, how sound are his arguments?—and broader arguments about property and the nature of rights. I want to say a bit about both by looking first at some of the replies to my earlier comment.

Both Eric (entry 12) and Jan (entry 9) pick up on a theme from my initial reply to Eric. Both maintain, in effect, that property relations in Locke's England cannot satisfy his own criteria for just acquisition and therefore for just current holdings. As Jan says, "The British landed gentry got their land by conquest and not by Locke-approved means." Eric surmises that "Locke does not step back and ask whether the land holdings that actually exist in England in, say, 1689 are just in light of his theory of just property rights." Locke, to be sure, does not address explicitly that question, i.e., he does not say what Eric and Jan say—that the property holdings of his day are unjust. I would add a parallel case where Locke also fails to explicitly address an issue where his doctrine has unsettling implications for political and economic life of his day. According to him, conquest cannot generate legitimate political authority, a doctrine unsettling to all European powers of the day, including Britain. I wish to reiterate my point that Locke's silence on these points cannot be inadvertent, as Eric claims, for the context of his book is the debate with Filmer, in which the legitimacy of the property distribution of the modern world was precisely what was ultimately at stake. It is true, as Eric says, that the debate was explicitly over the means of initial acquisition, but Filmer made clear that the justice of current holdings was at stake in the debate: Only his account of an initial private property could legitimate current private property.

The challenge Locke faced was to develop an alternative theory that could validate the property regime of his own time. That was the very thing Filmer meant to put in play. Cagily, Filmer was counting on the propertied in England to support his argument for

absolutism because it would provide stronger support for their property claims than the Whiggish contractarian arguments he was opposed to. Therefore, Locke could not have been unaware of or indifferent to the implications of his doctrine for property relations in his England. Yet it is true that he does not pause to examine whether the current property distribution is just on his own criteria, nor, even more, to denounce those holdings as unjust. In proceeding as he does, we must ask what could Locke be thinking that he does not pause to make the point Nozick makes: that the theory of acquisition may have very disruptive implications for the reigning property regime? (See Loren Lomasky's "Libertarianism at Twin Harvard.") [1] Here we must be speculative, for Locke does not explicitly address the issue of his own silences.

So if speculate we must, here goes. My speculation concerns the overall character of Locke's argument. On property—and on quite a few other things—we should see Locke as making a two-stage argument. In the first place he means to show that the two large institutional arrangements of civilized society—private property and the state—are rational and just on the basis of a contractarian/natural rights-based argument that in its nature calls both into question initially. He shows that there is an argument that starts with an initial situation in which property is unowned (I am with those like Eric who argue that Locke means by "the earth belongs to mankind in common" that it is initially unowned, but ownable) and in which there is no political authority, i.e., a state of nature. He then tries to show that one can move from that state to one where private property and the state rightfully exist. That argument takes the form of a "history"—an idealized and fabulous history, as many of its critics have maintained over the years. That history is idealized in the sense that it shows what would happen if the actors understood their moral situation correctly and acted rationally in light of it. That argument is meant to show that the state and private property in general are just and beneficial to all who live in civilized society. Therefore, the argument is meant to show that it is rational for denizens of the civilized world to will these institutions as if they made the contract and underwent the history of property as Locke explained it in chapter five. He shows that the current property regime benefits all and that it would be irrational for anyone to will its destruction or severe

disruption. Locke himself must recognize that the present arrangement, though falling short of strict justice on the basis of his own theory, is both more just and more beneficial to all and to the society as a whole than would be the project of starting all over again and insisting on strict justice according to his criteria of just acquisition. It is not rational for him to propose such a thing, and it is not rational for any of us to will such a thing. So, on the basis of asking the important political and philosophical question, “compared to what,” Locke can treat present property relations as just enough.

However, once Locke has brought forward the true criteria of justice in property relations (and political construction) future actions should be governed by this standard, so far as he can win agreement to his criteria. That is to say, knowledge of the true character and justification of property has implications both looking backward and looking forward. In looking backward, Locke approaches Hume in validating a private property regime on the basis of social benefit, but in looking forward he keeps individual rights much more to the fore for reasons both of justice and of social benefit. (However, this last comment must be qualified by his statement at the end of chapter five on the power of the civil authorities to regulate property, but this takes us too far afield).

"And because the condition of Man, ... is a condition of Warre of every one against every one; in which case every one is governed by his own Reason; and there is nothing he can make use of, that may not be a help unto him, in preserving his life against his enemies; It followeth, that in such a condition, every man has a Right to every thing; even to one anothers body."

To my mind the most interesting issue that has arisen in the discussion is the one debated between Eric and Jan about the basis of rights. On the whole I am

on Eric's side but I believe that Jan raises an important question and challenge when he asks: "Why are those feature of persons" that Eric appeals to in order to ground rights "morally significant"? Jan goes on to observe that "bad accounts or non-accounts ... abound." He has a point—as the many manifestoes on human rights demonstrate. He seeks an alternative, less mushy account, roughly of a Hobbesian sort. That his account does not work is clear from a claim he makes that is, I believe, incorrect. He identifies "the more fundamental question: Why should we think each other to be 'owners' of ourselves in the first place? (Hobbes's answer is clear: because if we don't, we'll be facing an awful state-of-nature situation.)" That is, he agrees with Eric that self-ownership is a crucial piece of the argument but disagrees with Eric's Lockean-Kantian-Nozickian way of speaking in terms of "morally significant features of persons." He thinks he can get the necessary self-ownership claim on the basis of harder-nosed Hobbesian arguments. But contrary to what he says, Hobbes does not arrive at a doctrine of self-ownership and his doctrine of natural right forecloses him from doing so. According to Hobbes, we have a right of nature, which is a right to everything, including one another's bodies. If others have a right to our bodies we are not self-owners, for ownership of self implies immunities that rule out Hobbes's right of nature. So far as we recognize such immunities, they are not natural rights but conventional rights based on the law of nature (not really a law and not really natural as Hobbes tells us) or on the civil law. The absence of a doctrine of self-ownership is what leads Hobbes to deny a natural right of property. We have liberty to take what we need in the state of nature but no property right in the sense that others are obliged to respect our right to what we have taken and perhaps stored. There is no injustice in the state of nature because there is no mine and thine. Locke differs with Hobbes on more than the sovereign—he affirms a natural right that has the character of property and therefore can affirm the possibility of injustice in the state of nature.

As Eric maintains and as I agree, Locke affirms a natural right of property in part on the basis of self-ownership and affirms that on the basis of those morally significant features of persons. Jan is apparently unconvinced by Eric's way of developing this theme, and were there world enough and time I

would put forward an alternative account that perhaps he or others would find persuasive. In lieu of that I will mention my attempt to develop a Lockean theory of self-ownership on entirely nontheological grounds in my *Natural Rights and the New Republicanism* (1994), chapter nine. [2] Two comments about the argument I make there. First, I think Locke did have a nontheological argument in addition to the theological arguments he presented in two treatises. How the arguments relate is a fine question that I try to address in the introduction to *Launching Liberalism*. Second, the nontheological argument for self-ownership is developed from Locke's treatment of self and person in the *Essay on Human Understanding*.

I regret that I have not had time to address Peter Vallentyne's comments or many of the other issues raised by the discussion here. There seems to be enough material and disagreement to keep going for another year or two, I am sure. But like my colleagues, I have a few classes to teach and dissertations to read, so I too will sign off. Many thanks to Liberty Fund for pioneering yet another way to keep the discussion of important issues of liberty on the table.

Endnotes

[1] Loren E. Lomasky, "Libertarianism at twin Harvard," *Social Philosophy and Policy* 22 (1):178-199 (2005). Abstract at <<http://philpapers.org/rec/LOMLAT>>.

[2] Michael P. Zuckert, *Natural Rights and the New Republicanism* (Princeton University Press, 1994). Chapter 9 "Locke and the Reformation of Natural Law of Property."

18. JAN NARVESON'S RESPONSE TO MICHAEL ZUCKERT (JANUARY 28, 2013)

As I have been at pains to point out, "self-ownership" is not a basis of libertarianism. It simply is one of the several ways of stating it, and nothing else. Since Hobbes is a libertarian in moral principle -- his First Law of Nature is, precisely, the nonaggression

principle, as his deductions from it make clear; tabling, as usual, the strictly political arguments -- he does "arrive at" the self-ownership in question, though he doesn't call it that.

Hobbes's "right of nature," as I have also pointed out, is not and cannot be a right, a term he carefully defines in its proper moral connotation. For each to have a "right" "even to another man's body" is for nobody to have any rights at all. What there is, is the "liberty" of nature, which as Hobbes says gets us into nothing but big trouble. Rational people, therefore, go by -- agree to -- his Laws of Nature: "willing, when others are so too, as far-forth, as for Peace, and defence of himself he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himself." He calls it a "right" but what it is, in his own account, is and can only be a liberty, and in no way a right. Rights entail duties; liberties, as such, do not.

Hobbes indeed acknowledges, as Michael points out, that the law of nature is "not really a law and not really natural as Hobbes tells us." But Hobbes didn't take Philosophy 100. His Laws of Nature are moral, not civil or legislated, and they are natural in the only important sense, which is that they are based, as Hobbes says, on the nature of man, and so long as that nature remains roughly as it is, they are, as he says, "eternal and immutable." But the aspect of man's nature that they are based on is (practical) rationality, given our various needs and desires and bodily limitations. Seeing our situations and predicaments, we see the need for the Law(s) of Nature.

I am sorry not to have seen Michael's books that he refers to, and will hope to have time to peruse them one day!

ADDITIONAL READING

ONLINE RESOURCES

We have works by the following authors:

John Locke (1632-1704) - <<http://oll.libertyfund.org/person/131>>

- Second Treatise of Government (1689)
 - Thomas Hollis edition of 1756 - Chapter V "Of Property"
 - 1824 edition from The Works of John Locke
- *First Treatise of Government* - Hollis ed. <<http://oll.libertyfund.org/title/222/16058>>
- *A Letter Concerning Toleration*(1689) <<http://oll.libertyfund.org/title/764/80887>>
- "An Essay on the Poor Law" (1697) <<http://oll.libertyfund.org/title/2331>>

Sir Robert Filmer (1588-1653)

- *Patriarcha; of the Natural Power of Kings* (1680) <<http://oll.libertyfund.org/title/221>>

Thomas Hobbes (1588-1679)

- *Leviathan* (1651) <<http://oll.libertyfund.org/title/869>>

Life & Times of John Locke

- Biography: Locke: A Life
- Timeline: The Life and Work of John Locke [PDF]
- Timeline: The Divine Right of Kings [PDF]

Essays & Annotated Reading Lists

- Eric Mack, An Introduction to the Political Thought of John Locke
- Eric Mack, Locke on Toleration: Locke's A Letter Concerning Toleration
- Eric Mack: Authority and Liberty in the Writings of Robert Filmer and Thomas Hobbes

- Eric Mack: James Tyrrell on Authority and Liberty
- Bibliographical Essay: Karen Vaughn, John Locke's Theory of Property: Problems of Interpretation
- Literature of Liberty Editorial: On John Locke's Importance
- Foreword: Thomas G. West on Sidney, Filmer and Locke on Monarchical Power

Other Resources:

- Debates: The Divine Right of Kings vs. Natural Rights
- Debates: Religious Toleration
- Topics: Natural Law & Natural Rights
- Topics: Property
- School of Thought: 17thC Natural Rights Theorists

RECOMMENDED READING ON LOCKE AND PROPERTY.

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