

# Locke's Justification of Private Property

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Locke provides a rich and thorough account of the right to property, and its persistent pervasiveness in contemporary discussions is testament to its (at least *prima facie*) plausibility.<sup>1</sup> In his *Two Treatises of Government*, Locke advances arguments intended to establish the right to private property even within the state of nature. My discussion in this paper is confined to Locke's account and defence of the *origin* of this property right. In the course of this paper I will suggest that Locke's account ought to be taken seriously and I will show how it musters satisfactory reply to certain initial objections. I will concede, however, that more pressing problems arise if one does not accept the teleological theistic assumptions which ground his claims.

## Background: Locke's Assumptions and the State of Nature

It is necessary to examine certain of Locke's theistic assumptions in order properly to understand and assess his overall theory of property. It is Locke's view that there are certain inviolable principles, or natural laws, which are justified by God and discoverable through reason. Locke's foundational premise is the claim that man is God's property, ordained for his purpose: he writes that God is "the maker of heaven and earth, who is sole *lord and proprietor* of the whole world."<sup>2</sup> In this sense, our lives are not entirely our own, and instead we are the caretakers of divine property. In virtue of this responsibility to protect God's property, Locke posits the "fundamental law of nature, man being to be preserved as much as possible."<sup>3</sup> As a matter of sound scholarship, we should recognize that Locke takes this premise already to establish the right to exclusive property, as well as the purposes to which it may be put.<sup>4</sup> Thus Locke's project in Chapter V is to establish how, *within this system*, the right to property may be sustained among men. In short, I take his argument to work as follows: Assuming that the earth was originally given by God in equal part to all that lived in it, Locke will explain how it is that a man could, in those

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<sup>1</sup> Rashdall notes that Locke's theory has "become the basis of almost all the attempts of modern philosophers to base the justification of private property upon some *a priori* principle, and not upon the ground of general utility and convenience" (Rashdall 1913, 40).

<sup>2</sup> (Locke 2003, BkI.Ch4.§39), emphasis mine

<sup>3</sup> (Locke 2003, BkII.Ch3.§16)

<sup>4</sup> Cf. (Tully 2006, 96-97)

circumstances, enclose private property. In virtue of this method, and the natural law which governed that original dispensation, Locke intends to show that there is a duty binding all people – including the government within civil society – to respect existing property rights.<sup>5</sup> I will discuss each of these important steps in turn.

Locke has a three-tiered conception of property which, we shall see, is broadly similar to contemporary accounts. He suggests that property may consist in one's "lives, liberties, and estates."<sup>6</sup> By 'lives' Locke intends, firstly, "that property which men have in their persons as well as goods."<sup>7</sup> While it might be odd to think of one's body as property, it certainly easy to see many similarities between the two concepts. We speak of '*my* body' and '*your* body' (as though they are things apart from our persons), and is easy to conceive of damage to one's body as damage to one's property, in some sense. Secondly, Locke includes liberties (that is, societal rights or privileges) to be forms of property. This, on reflection, is also a plausible form of property: rights, such as the right to freedom of expression, can be claimed, damaged and usurped in much the same way as 'ordinary' property. Finally, Locke acknowledges property in the form most commonly understood, the property of estates, which consists in physical objects which may fall into one's ownership. In all three cases, Locke believes that one's property is intended "for the subsistence and comfort of his life,...[and] for the benefit and sole advantage of the proprietor."<sup>8</sup>

Tully contends that Locke's conception of property is based in what is common rather than what is private. As he puts it, "Locke's property is a right to something which belongs to all; a right to one's due rather than to one's own."<sup>9</sup> There are several reasons to commend Tully's analysis. Firstly, Locke denies vehemently the idea that Adam was given sole propriety – what he calls 'private dominion' – over the earth and its spoils. Rather, Locke argues that correct biblical exegesis Genesis provides "confirmation of the original community of all things amongst the sons of men,"<sup>10</sup> and that "it is nothing but the giving to man, the *whole species* of man."<sup>11</sup> Tully's

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<sup>5</sup> Cf. (Waldron 1988, 137)

<sup>6</sup> (Locke 2003, BkII.Ch9.§123)

<sup>7</sup> (Locke 2003, BkII.Ch15.§173)

<sup>8</sup> (Locke 2003, BkI.Ch9.§92)

<sup>9</sup> (Tully 2006, 61)

<sup>10</sup> (Locke 2003, BkI.Ch4.§40)

<sup>11</sup> (Locke 2003, BkI.Ch4.§40)

interpretation has the additional virtue of unifying the three-tiered conception of property under a single consistent banner. All of “lives, liberties, and estates”<sup>12</sup> are united in the sense of being the subject of ‘*one’s due*’ – that which is owed to one. Locke’s account gains significant traction when analysed in such terms; we would interpret property to be whatever could be said to be rightfully ours, and thus clearly ranges over our lives, our rights and our material possessions.

As is increasingly clear, Locke’s conception of property is made somewhat unusual in virtue of its theistic teleological underpinnings. Property has a *telos* in the preservation of the wellbeing of the proprietor; thus property may not be alienated or disposed of entirely as one pleases. Though Locke expressly affirms that one’s body is one’s property, he would likely condemn the ‘disposal’ of this property in suicide, as this would not accord with the divine injunction to protect and preserve God’s property in us. Locke suggests that “reason, ‘which was the voice of God in him,’ could not but teach him and assure him that pursuing that natural inclination he had to preserve his being, he followed the will of his Maker.”<sup>13</sup> Since God has given the earth to man for the purpose of preserving divine property, there is a duty – and thus a right – to take from the store of nature that which is required for self-preservation. Man’s original right to property, for Locke, is “founded upon the right he had to make use of those things that were necessary or useful to his being.”<sup>14</sup> In this way, the original property right is established as a natural right which is chronologically and normatively *antecedent* to the establishment of civil society. Locke is clear that property rights are natural rights which obtain even within the state of nature, and which persist even when civil society is introduced.<sup>15</sup> There is also clearly a set of rights we owe to others, since they are similarly God’s property – more on these two matters later. However, each person is best placed to oversee the wellbeing of his *own* person, and one’s primary rights and duties obtain towards one’s own body. (Locke was the original proponent of the psychological continuity thesis of personal identity, consistent with the doctrine of Christ’s resurrection and eternal life in heaven for Christian believers; he would likely believe, therefore, that each person has a property

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<sup>12</sup> (Locke 2003, BkII.Ch9.§123)

<sup>13</sup> (Locke 2003, BkI.Ch9.§86)

<sup>14</sup> (Locke 2003, BkI.Ch9.§86)

<sup>15</sup> Cf. (Locke 2003, BkII.Ch9.§123)

in that body which *houses his soul*, whether terrestrial or celestial.<sup>16</sup>) Now, even if we do not share Locke's religious convictions, there is little controversial about the foundational premise that each of us has a natural right, which accrues to us even in the state of nature, to self-preservation.

### Labour and the beginning of the property right

Locke avers that it is *labour* which correctly answers the question of "how men might come to have a property in several parts of that which God gave to mankind in common".<sup>17</sup> Simmons recognizes the broad support for this general claim, noting that "there has been no more widespread or enduring intuition about property rights than that labour in creating or improving a thing gives one special right to it."<sup>18</sup> I contend that Locke's argument aims at demonstrating the truth of two conditional statements: (i) Property is necessary for preservation, and (ii) labour is necessary for property. The first of these is easily shown. If we allow that each person has a right to self-preservation (even if we do not think there is a *duty* to God in this respect), then we will agree that each person must take items necessary to enjoy this right out of the collective store of nature, and make exclusive use of them. Simply put, in order for a person to survive, he must eat, and so he must appropriate food from the commons; this food is then no longer common but private, and must be put to his exclusive disposal if he is to survive. Furthermore, we would perish if we required the consent of all those who had like claim upon the bounty of the commons before we enclosed property, so this could not be a requirement. Thus, we may conclude that (i) Property is necessary for preservation. The second conditional, that (ii) labour is necessary for property, requires somewhat more complex argument, but is, I contend, quite defensible.

Flowing from the two premises that the earth is given to all men in common to be used for their preservation, and "every man has a property in his own person,"<sup>19</sup> Locke concludes that "the labour of his body, and the work of his hands, we may say, are properly his."<sup>20</sup> Locke uses this step, that our labour is our property, to advance the claim that it is labour that begins

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<sup>16</sup> For further details of Locke's psychological account of personal identity, see his *Essay Concerning Human Understanding*, the section entitled 'Of Identity and Diversity' (II.xxvii).

<sup>17</sup> (Locke 2003, BkII.Ch5.§25)

<sup>18</sup> (Simmons 1992, 223)

<sup>19</sup> (Locke 2003, BkII.Ch5.§27)

<sup>20</sup> (Locke 2003, BkII.Ch5.§27)

the property right. He contends that when we labour, we *mix* a part of our property with the subject of our labour, and in that way annex it as our own property. Locke's thesis, in his words, is that "whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property."<sup>21</sup> While the 'labour-mixing' thesis might seem strange, it is made more plausible by considering that Locke has in mind here *original* property rights, those which accrue prior to the establishment of civil society, in circumstances where many goods are really held in common by mankind. This is not a circumstance frequently found today, since exceedingly few items or resources are left in common as in the state of nature. However, one case which still gains purchase in a contemporary setting is the example of fishing. When a man catches a fish, we suppose it is thereby his, *simply in virtue of that labour*. It was once held in common, and at that stage we would say that it is fair game. However, upon the catching – the mixing of the labour – it thereby (and for no other reason) becomes the property of the fisherman. Furthermore, if the fisherman were to put the caught fish in a bucket next to him, the fish would remain his property. If someone tried to take the fish (even though the fish were not physically in the fisherman's hand) the fisherman would complain that they are his fish, his property. And if asked why, he would reply, simply, that *he caught them*. This provides *prima facie* support for the argument that where property is held in common, it is enclosed in the first instance through the performance of labour upon it. On reflection, there are several contemporary circumstances in which we think that labour encloses as private that property which was held in common. As with fishing, there are still berry-picking farms or hunting lodges, and we think in such cases that the items in question pass from the commons to the owner solely in virtue of his performance of labour.

Locke extends his argument for the relationship between labour and property in suggesting that labour is what makes property *valuable*. In this section, Locke does not appear to be arguing that there is a necessary conceptual, theoretical or even historical connection between labour and property, but rather that there is something *beneficial* about so conceiving of property; that is, society is better off for sustaining policy which confers property according to labour (Thomas remarks wryly that Locke provides here a "*severely instrumental* view of the reasons why individuals should be able to acquire rights to private property").<sup>22</sup> According to Locke, "it is

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<sup>21</sup> (Locke 2003, BkII.Ch5.§27)

<sup>22</sup> (Thomas 2002, 96), emphasis mine

labour indeed that put the difference of value on every thing.”<sup>23</sup> In support of this claim he urges his reader to “consider what the difference is between an acre of land planted with tobacco or sugar, sown with wheat or barley, and an acre of the same land lying in common, without any husbandry upon it.”<sup>24</sup> Locke holds that it is the labour expended which accounts best for the dramatic improvement in value. Since this cultivated land is more beneficial to society as a whole, he who performs the labour ought to be granted the civil right to property, so that such beneficial activities might be encouraged.

### Limitations of the property right

There is a legitimate concern that Locke's conception of property is too permissive. It appears to grant property rights to anyone who performs some (even insignificant) labour upon the item in question, and individuals could exploit this notion by amassing more property than is fair. This objection takes Locke to claim that labour is a *sufficient* rather than merely *necessary* condition for property, which is contrary to my interpretation, as I mentioned earlier. Nevertheless, Locke anticipates this objection, and refers to the principles of reason which govern the state of nature in making his reply. Locke writes, “The same law of nature, that does by this means give us property, does also bound that property too.”<sup>25</sup> Locke presents two ways in which the property right might be limited.<sup>26</sup> First, the bounty of the earth was given “to enjoy”<sup>27</sup> and “nothing was made by God for man to spoil or destroy.”<sup>28</sup> Thus it offends against God and reason to enclose a resource which exceeds what one may enjoy, or to let spoil that which “is more than his share, and [so] belongs to others.”<sup>29</sup> Second, one may only

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<sup>23</sup> (Locke 2003, BkII.Ch5.§40)

<sup>24</sup> (Locke 2003, BkII.Ch5.§40)

<sup>25</sup> (Locke 2003, BkII.Ch5.§31)

<sup>26</sup> Cf. (Feser 2007, 126-128)

<sup>27</sup> (Locke 2003, BkII.Ch5.§31). Locke writes further that “the measure of property nature has well set by the extent of men’s labour and the conveniencies of life : no man’s labour could subdue, or appropriate all; nor could his enjoyment consume more than a small part” (Locke 2003, BkII.Ch5.§36).

<sup>28</sup> (Locke 2003, BkII.Ch5.§31)

<sup>29</sup> (Locke 2003, BkII.Ch5.§31)

enclose private property from the commons if one leaves “enough, and as good, left in common for others.”<sup>30</sup>

These are powerful protections against the improper amassing of property. In those circumstances where we decry someone’s excessive accumulations, we will remark that he ‘has more than he knows what to do with.’ Clearly, this is to evince in other words what Locke had in mind with the first proviso, that one should acquire only that which one may *enjoy* without it spoiling.<sup>31</sup> The other thing we might decry about someone’s excess of property is that he appears to have it *at someone else’s expense*, or to the exclusion of those in real need. This is to evince Locke’s second proviso, that it is wrong to enclose property from the store of nature when to do so is to force another to go without. In addition, this second proviso properly respects Locke’s belief that we are God’s property: we would offend against God’s property if we took excessively from the store of nature while our fellows perished as a result. However, if in the state of nature someone took an apple from the commons, and he ate it before it spoiled, and there remained an abundance of good apples left over, we surely could have no legitimate quarrel with him.<sup>32</sup> Furthermore, if such an individual collected more apples than he could enjoy, but elected to barter them with someone who had an excess of chestnuts, then nothing would spoil and the property would be rightfully theirs. Owing to the stringency of these limitations and the abundance of natural resources, Locke contends that they would suffice to regulate property in a way acceptable even today. That is, should everyone enclose only as much property as permitted by Locke’s account, there would be no scope for legitimate dispute.<sup>33</sup>

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<sup>30</sup> (Locke 2003, BkII.Ch5.§33)

<sup>31</sup> “[I]f the fruits rotted, or the venison putrefied, before he could spend it ; he offended against the common law of nature, and was liable to be punished; he invaded his neighbour’s share, for he had no right, farther than his use called for any of them” (Locke 2003, BkII.Ch5.§37).

<sup>32</sup> “[S]upposing the world given, as it was, to the children of men in common, we see how labour could make men distinct titles to several parcels of it, for their private uses ; wherein there could be no doubt of right, no room for quarrel” (Locke 2003, BkII.Ch5.§39).

<sup>33</sup> “I dare boldly affirm, that the same rule of propriety, viz. that every man should have as much as he could make use of, would hold still in the world, without straitening any body; since there is land enough in the world to suffice double the inhabitants” (Locke 2003, BkII.Ch5.§36).

## The rectitude and role of Locke's assumptions

I wish to note, however, that the success of this account depends crucially on certain teleological theistic premises. Consider the paucity of Locke's thesis in the absence of the assumption that the earth's bounty was given to all men equally by God for the *telos* of preservation (or simply, in the absence of belief in God). In such a case, we would fail to make intelligible the injustice of a man's amassing an excess of property through the performance of labour, as Locke's two provisos would gain no purchase. We could not refer to the theological injunction not to let one's property spoil, since *ex hypothesi* there is no *purpose* for which these goods are intended. Neither could we appeal to the second proviso to leave as good and enough in common, as this is to assume that others have an equal claim to the earth; and this in turn rests on the assumption that the earth was given equally to all people by God.

Even if we have egalitarian inclinations, without the belief in God and the teleology of property, we might well suppose that everyone has *equal opportunity* with respect to the enclosure of property, not that everyone is *due* to as much or as good as anyone else. That is, we might see the state of nature as a circumstance in which the earth's bounty is fair game for everyone, but that no one has particular claim over any part, and neither does anyone have any limitations on the extent of property they may enclose through labour. To return to the fishing example in this case, someone could catch all the fish, far more than he could enjoy, and yet maintain that they were justly his. He could claim they were won 'fair and square,' feeling no duty towards those who lost out since they had the same opportunity to labour as he did. Indeed, as Feser and Waldron note, it is only within Locke's theistic teleology that the labour-mixing argument obtains force.<sup>34</sup> Locke suggests that we enclose property originally by the performance of labour upon that item. Yet this suggestion is imbued with the theistic assumption that self-preservation through sustenance is the appropriate *telos* of the item, and that labour is the appropriate means of acquisition. If there were independently plausible reasons for believing that Locke's God exists, or that everyone has a right to an equal share (and a duty to respect others' share) in the earth's bounty, then his theory would flow almost analytically from such premises. Yet, should we deny these premises, Locke's argument seems porous.

Nevertheless, as with much political theorising, there is little that one could do if a critic rejects one's guiding assumptions wholesale, and this is not

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<sup>34</sup> Cf. (Feser 2007, 133) and (Waldron 1988, 187-189)

necessarily a mark of a poor theory: one could, for example, point to a theory's internal coherence, its prescience over a range of different circumstances, or its ability to cope with counterexamples. On these terms, Locke's theory certainly merits praise. Furthermore, I have suggested that there are good reasons (if not reasons which will convince the ardent sceptic) for endorsing his account of *the origin* of the property right. It seems highly plausible that as a brute fact, since property is necessary for survival, and almost all property requires labour in order to have value or use, that labour is the means by which the property right was *first* established: "the condition of human life, which requires labour and materials to work on, necessarily introduces private possessions."<sup>35</sup> Additionally, those theories which accept human equality and a duty to preserve human life (of which there are many) will find Locke's limitations on the property right to be highly instructive safeguards in the establishment of civil society.

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<sup>35</sup> (Locke 2003, BkII.Ch5.§35)

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