

0001 on the face of it  
0002 Locke is a powerful ally  
0003 of the libertarian  
0004 first  
0005 he believes,  
0006 as libertarians today maintain  
0007 that there are certain fundamental individual rights  
0008 that are so important  
0009 that no government  
0010 even a representative government even a democratically elected government  
0011 can override them.  
0012 not only that  
0013 he believes  
0014 that those fundamental rights include  
0015 a natural right  
0016 to life liberty and property  
0017 and  
0018 furthermore he argues  
0019 that the right to property  
0020 is not just the creation  
0021 of government  
0022 or of law  
0023 the right to property is a natural right  
0024 in the sense that  
0025 it is pre-political  
0026 it is a right  
0027 that attaches to individuals  
0028 as human beings  
0029 even before government comes on the scene  
0030 even before parliaments and legislatures enact laws to define rights  
0031 and to enforce them  
0032 Locke says in order to think about  
0033 what it means to have a natural right  
0034 we have to imagine  
0035 the way things are

0036 before government  
0037 before law  
0038 and that's what Locke means  
0039 by the state of nature.  
0040 he says the state of nature is the state of liberty  
0041 human beings are free and equal beings  
0042 there is no natural hierarchy  
0043 it's not the case that some people are born to be kings and others were born to be  
0044 serfs  
0045 we're free and equal in the state of nature  
0046 and yet  
0047 he makes the point  
0048 but there's a difference between a state of liberty and the state of  
0049 license  
0050 and the reason is that even in the state of nature there is a kind of the law it's not  
0051 the kind of law the legislatures enact  
0052 it's the law of nature  
0053 and this law of nature  
0054 constrains  
0055 what we can do  
0056 even though we're free  
0057 even though we're in the state of nature  
0058 well what are the constraints?  
0059 the only constraint  
0060 given by the laws of nature  
0061 is that  
0062 the rights we have  
0063 the national rights we have  
0064 we can't give up  
0065 nor can we take them from somebody else  
0066 under the law of nature I'm not free  
0067 take somebody else's  
0068 life or liberty  
0069 or property  
0070 nor am I  
0071 free  
0072 to take my own

0073 life liberty or property  
0074 even though I'm free,  
0075 I'm not free  
0076 to violate the laws of nature, I'm not free to  
0077 take my own life  
0078 or to sell myself into slavery  
0079 or to give to somebody else  
0080 arbitrary absolute power  
0081 over me  
0082 so where does this constraint  
0083 you may think it's a fairly minimal constraint, but where does it come from?  
0084 Well Locke tells us where it comes from  
0085 and he gives two answers  
0086 here's the first answer  
0087 for men  
0088 being all the workmanship  
0089 of one  
0090 omnipotent and infinitely wise maker, namely God,  
0091 they're his property  
0092 whose workmanship they are, made to last during his,  
0093 not one another's pleasure.  
0094 so one answer the question is why can't I give up my  
0095 natural rights to life liberty and property  
0096 well they're not strictly speaking yours  
0097 after all  
0098 you are  
0099 the creature of God.  
0100 God has a  
0101 bigger property right in us  
0102 a prior priority right  
0103 now you might say that  
0104 an unsatisfying unconvincing answer at least for those who don't believe in God  
0105 what did Locke have to say to them  
0106 well here's where Locke appeals to the idea  
0107 of reason  
0108 and this is the idea  
0109 that if we properly reflect

0110 on what it means to be free

0111 we will be lead to the conclusion

0112 that freedom can't just be a matter of doing whatever we want

0113 I think this is what Locke means

0114 when he says

0115 the state of nature has a law of nature to govern it which obliges everyone

0116 and reason

0117 which is that law

0118 teaches all mankind, who will but consult it, that being all equal and independent

0119 no one ought to harm another in his life health liberty for possessions

0120 this leads

0121 to a puzzling paradoxical

0122 feature to Locke's account of rights

0123 familiar in one sense

0124 but strange in another

0125 it's the idea

0126 that out natural rights are inalienable

0127 what does unalienable mean?

0128 it's not for us to alienate them or to get them up to give them a way to trade them the way

0129 to sell them

0130 consider an airline ticket

0131 airline tickets are nontransferable

0132 or tickets to the patriots or to the red sox

0133 nontransferable tickets

0134 are unalienable

0135 I own them

0136 in the limited sense

0137 that I can use them for myself but I can't trade them away

0138 so in one sense an unalienable right, a nontransferable right

0139 makes something I own

0140 less

0141 fully mine

0142 but in another sense

0143 of unalienable

0144 rights

0145 especially where we're thinking about life liberty and property

0146 for a right to be unalienable, makes it more deeply more profoundly mine

0147 and that's Locke's  
0148 sense  
0149 of unalienable  
0150 we see it in the American declaration of independence Thomas Jefferson  
0151 drew on this idea of Locke  
0152 unalienable rights  
0153 to life liberty  
0154 and as Jefferson amended Locke,  
0155 to the pursuit of happiness. unalienable rights  
0156 rights that are so  
0157 essentially mine  
0158 that even I can't trade them away or give them up  
0159 so these are the rights we have in the state of nature  
0160 before there is any government  
0161 in the case of life and liberty I can't take my own life I can't sell myself into slavery  
0162 anymore than I can take somebody else's life or take someone else as a slave by force  
0163 but how does that work in the case of property?  
0164 because it's essential to Locke's case  
0165 that private property  
0166 can arise  
0167 even before there is any government  
0168 how can there be a right to private property  
0169 even before there is any  
0170 government?  
0171 Locke's famous answer  
0172 comes in section twenty seven  
0173 every man has a property in his own person  
0174 this nobody has any right to but himself  
0175 the labor of his body  
0176 the work of his hands  
0177 we may say are properly his  
0178 so he moves  
0179 as the libertarians later of would move  
0180 from the idea  
0181 that we own ourselves  
0182 that we have property in our persons  
0183 to the closely connected idea that we own our own labor

0184 and from that  
0185 to the further claim  
0186 that whatever we mix our labor with  
0187 is unowned  
0188 becomes our property  
0189 whatsoever then he removes out of the state that nature has provided, and left it in,  
0190 he has mixed his labor with, and joined to it something that is his own,  
0191 and thereby makes it his property  
0192 why?  
0193 because the labor  
0194 is the questionable property of the laborer  
0195 and therefore  
0196 no one  
0197 but the laborer can have a right  
0198 to what is joined to or mixed with  
0199 his labor  
0200 and then he adds this important provision  
0201 at least where there is enough and as good left in common  
0202 for others.  
0203 but we not only  
0204 acquire our property in the fruits of the earth  
0205 in the deer that we hunt  
0206 in the fish that we catch  
0207 but also  
0208 if we till and plow and enclose the land and grow potatoes  
0209 we own not only the potatoes  
0210 but the land  
0211 the earth  
0212 as much land as a man tills, plants, improves, cultivates, and can use  
0213 the product of, so much is his property.  
0214 he by his labor  
0215 encloses it from the commons. so  
0216 the idea is that rights are unalienable seems to distance Locke from a libertarian  
0217 libertarian  
0218 wants to say we have  
0219 an absolute property rate in our selves  
0220 and therefore we can do with ourselves whatever we want

0221 Locke is not a sturdy ally for that view  
0222 in fact he says if you take  
0223 natural rights seriously you'll be led to the idea that there are certain  
0224 constraints on what we can do with our natural rights, constraints given  
0225 either by God  
0226 or by reason reflecting on what it means really to be free and really to be free  
0227 means recognizing  
0228 that our rights are unalienable  
0229 so here's the difference between Locke and the libertarians but  
0230 when it comes  
0231 the Locke's account of private property  
0232 he begins to look again  
0233 like a pretty good ally  
0234 because he's argument for private property  
0235 begins with the idea that we are the proprietors of our own person  
0236 and therefore of our labor and there of the fruits of our labor  
0237 including not only the things  
0238 we gather  
0239 and hunt  
0240 in the state of nature  
0241 but also we acquire a property right in the land that we enclosed and cultivate and improve  
0242 there are some examples that can bring out the  
0243 the moral intuition  
0244 that our labor  
0245 can take something that is unowned  
0246 and make it ours  
0247 though sometimes there are disputes about this  
0248 there's a debate among  
0249 rich countries and developing countries  
0250 about trade related intellectual property rights  
0251 it came to a head recently  
0252 over drug patent laws  
0253 western countries and especially the united states say  
0254 we have a big pharmaceutical industry that develops  
0255 new drugs  
0256 we want  
0257 all countries in the world

0258 to agree

0259 to respect the patents

0260 then there came along the aids crisis in south Africa

0261 and the American

0262 aids drugs

0263 were hugely expensive

0264 far more than could be afforded by most Africans

0265 so the south African government said

0266 we're going to begin

0267 to buy a generic version

0268 of the AIDS

0269 antiretroviral drug

0270 at a tiny fraction of the cost

0271 because we can find an Indian manufacturing

0272 company

0273 that figures out how the thing is made

0274 and

0275 produces it

0276 and for a tiny fraction of the cost we can save lives if we

0277 don't respect that patent

0278 and then the American government said

0279 no here's a company

0280 that invested research

0281 and created this

0282 drug

0283 you can just

0284 start mass-producing

0285 these drugs

0286 without paying the licensing fee

0287 so there was a dispute

0288 the US and the pharmaceutical companies sued the south African government to try to prevent

0289 their buying the cheap

0290 generic

0291 this they saw it,

0292 pirated version

0293 of an aids drug

0294 and eventually



0295 the pharmaceutical industry gave in  
0296 and said  
0297 all right you can do that but this dispute about what the rules  
0298 of property  
0299 should be of intellectual property  
0300 of drug patenting  
0301 in a way  
0302 is the last frontier of the state of nature  
0303 because among nations where there is no uniform law  
0304 of patent rights and property rights  
0305 it's up for grabs  
0306 until by some act of consent  
0307 some international agreement  
0308 people enter into  
0309 some settled  
0310 rules.  
0311 what about  
0312 Locke's account of  
0313 private property  
0314 and how it can arise  
0315 before government and before law comes on the scene  
0316 is it successful?  
0317 how many think  
0318 it's pretty persuasive?  
0319 how many  
0320 don't find it persuasive?  
0321 now let's hear from some critics  
0322 what is wrong with Locke's account  
0323 of how private property can arise  
0324 without consent  
0325 I think it's justifies  
0326 European cultural norms as far as you look at  
0327 how native Americans may not cultivated American land  
0328 by their arrival  
0329 in the America's  
0330 that  
0331 that contributed to the development of America which would have otherwise necessarily happened

0332 then or by that specific group

0333 so you think that this defense this defense of private property in land

0334 yes because it complicate original acquisitions if you

0335 only site the arrival of

0336 foreigners that cultivated the land

0337 I see, and what's your name?

0338 Rachelle

0339 Rachelle? Rachelle says this account of how property

0340 arises

0341 would fit

0342 what was going on

0343 in north America

0344 during the time of the

0345 settlement, the European settlement

0346 do you think

0347 Rochelle, that it's

0348 it's a way of defending

0349 the appropriation of the land

0350 indeed, because he is

0351 also

0352 you know, justifying the glorious revolution, so I don't think it's inconceivable

0353 that he's also

0354 justifying colonization as well

0355 well that's an interesting

0356 historical suggestion

0357 and I think there's a lot to be said for it

0358 what do you think of the validity of his argument though?

0359 because if you're right

0360 that this would justify the taking of land in north America

0361 from native Americans who didn't enclose it,

0362 if it's a good argument

0363 then Locke's given us a justification for that if it's a bad argument

0364 then Locke's given us

0365 a mere rationalization

0366 it is morally indefensible

0367 I'm leaning to the second one. You're leaning to the second one, but that's my opinion as well

0368 alright

0369 let's hear

0370 if there's a defender of Locke's account of private property

0371 and it would be interesting if they could address Rachelle's

0372 worried that this is just a way of defending the

0373 the appropriation of land by the American colonists

0374 from the native Americans who didn't enclose it

0375 is there someone who will defend Locke

0376 on that point?

0377 you're ready are you going to defend Locke?

0378 but you're you're accusing him of justifying the European basically massacre of the native

0379 Americans

0380 but who says he's defending it maybe the European colonization isn't right

0381 you know maybe it's the state of war that he talked about in his second treatise, you know

0382 so the war is between the native Americans

0383 and the

0384 colonists, the settlers

0385 that might have been a state of war

0386 that we can only emerged from

0387 by an agreement or an act of consent

0388 and that's what would have been required

0389 yeah and both sides would have to agree to and carry out and everything

0390 but what about

0391 and what's your name? Dan.

0392 Dan, what about

0393 Rachelle's says

0394 this argument

0395 in section twenty seven and then in thirty two

0396 about appropriating land

0397 that argument if it's valid would justify

0398 the settlers

0399 appropriating that land and excluding

0400 others from it

0401 you think that argument's a good argument?

0402 well does it kind of imply that the native Americans hadn't already done that?

0403 well the native Americans as hunter gatherers didn't actually enclose

0404 enclose land so I think Rochelle

0405 is on to something there

0406 what I wanted

0407 I

0408 go ahead Dan. At the same time he's saying that just by picking an acorn or taking a apple or

0409 maybe killing of buffalo on a certain amount of land

0410 that makes it yours because it's your labor and that's your labor would enclose that land

0411 so

0412 by that definition maybe they didn't have fences

0413 around

0414 little plots of land but didn't

0415 they were using it

0416 so by Locke's definitions, so maybe by Locke's definition

0417 the native Americans could have claimed a property rights

0418 in the land itself but they just didn't have Locke on their side

0419 as she points out. good

0420 okay that's good

0421 One more defender of Locke

0422 well I mean just to defend Locke, he does say there are

0423 some times in which you can't take another person's land for example you can't acquire land

0424 that is common property to people and in terms of American Indians I feel like they already have

0425 civilizations themselves

0426 and they were using land in common so it's kind of like

0427 an analogy to what he was talking about with like the

0428 common English property

0429 you can't take land that everyone has in common. That's very interesting

0430 and you can't take land

0431 unless you make sure that there's as much land as possible enough for other people take as

0432 well

0433 so if you're taking common,

0434 so you have to make sure whenever you take land or

0435 that there's enough let for other people to use

0436 that's just as good as the land that you took

0437 That's true, Locke says there has to be this

0438 right to private property in the earth is subject

0439 to the provision that there be as much and as good left for others

0440 what's your name. I'm Fang

0441 So Fang in a way agrees with Dan that maybe there is a claim within Locke's framework

0442 that could be developed

0443 on behalf of the native Americans

0444 here's the further question,

0445 if the right to private property is natural not conventional,

0446 if it's something

0447 that we acquire even before we agree to government

0448 how does that right constrain what the legitimate government can do

0449 in order for finally to see,

0450 whether Locke is an ally

0451 or potentially

0452 a critic

0453 of the libertarian idea

0454 of the state

0455 we have to ask what becomes of our natural rights

0456 once we enter into society

0457 we know that the way we enter into society is by consent by agreement

0458 to leave the state of nature and to be governed by the majority

0459 and by a system of laws, human laws

0460 but those human laws

0461 our only legitimate

0462 if they respect

0463 our natural rights

0464 if they respect

0465 our inalienable rights to life liberty and property

0466 No

0467 parliament

0468 no legislature

0469 however democratic

0470 its credentials

0471 can legitimately

0472 violate

0473 our natural rights.

0474 this idea

0475 that no law can violate our right

0476 to life liberty and property would seem

0477 to support

0478 the idea of a government so limited

0479 that it would gladden the heart of the libertarian

0480 after all  
0481 but  
0482 those hearts should not be so quickly gladdened  
0483 because even though  
0484 for Locke  
0485 the law of nature persists  
0486 once government arrived  
0487 even though Locke  
0488 insists on limited government  
0489 government limited  
0490 by the end for which it was created  
0491 namely the preservation of property  
0492 even so  
0493 there's an important sense  
0494 in which  
0495 what counts as my property  
0496 what counts  
0497 as respecting  
0498 my life and liberty  
0499 are for the government  
0500 to define  
0501 that there be property  
0502 that there be respect  
0503 for life and liberty  
0504 is what limits government  
0505 but what counts  
0506 as respecting my life  
0507 and respecting my property  
0508 that is for governments  
0509 to decide and define  
0510 how can that be  
0511 is Locke contradicting himself  
0512 or is there an important distinction  
0513 here in order to answer that question which will decide Locke's fit with the libertarian view  
0514 we need to look closely  
0515 at what legitimate government  
0516 looks like for Locke,

0517 | and we turn to that next time.

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