On the Government's Right to Property

Cover Letter to the Second Draft

The first draft turned out better in terms of the developing and significance of claim than originally thought when I had submitted it, so the revisions are mostly mechanical.

When Pam Newton came and talked about revision strategies, I noticed a number of ways my language could be improved, most notably with filler language and precision of diction. My word choice was especially rambly in this paper.

Some examples of substitutions were: "… is a very important tool" → "critical," "much better … definition" → "preferable," "be categorized into one of these three categories" → "reclassified," "the new owner of the estate" → "inheritor," "same items for sale at market" → "face value," "never a great option" → "last-ditch," etc. A lot of these phrases really shouldn't be interchangeable, so I think replacing the vagueness with these more powerful, connotative phrases has a noticeable change on how the essay reads. The essay does read a little formal (it must, in order to generate a claim about such rhetorical works), so adding these terms and changing some passive clauses to active ones livens up the writing.

As usual, the marked errors (such as changing the encyclopedia source to the original source), as well as some other overlooked bloops, from the first draft were corrected.

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When a teacher goes to the store or supermarket and buys some food, it belongs to them. They spent the money. If a farmer plants seeds and reaps the harvest, the harvest belongs to them. John Locke discusses the acquisition of *property* by means of expending effort in his philosophical work *Second Treatise of Government*, which rationalizes the gain of property by these actions. But both teacher and farmer exist under some government, giving rise rise to numerous other questions: how much belongs to the government? What does the government pay when its citizens obtain property?

Fortunately, Locke performs as secretary to the group of eight lords proprietors in charge of the Carolina charter in America, and writes *The Fundamental Constitutions of Carolina*, an earlier document which cast a glance past philosophy into what was intended to be a working government, reflecting in part the lords proprietors' views. When the laws of the constitution are considered in light of the definition of his later work, it shows that government sometimes restricts acquisition of property as a means of avoiding arguments between the people (as opposed to the direct, illegal intervention), for which *record-keeping* is a critical tool. This record-keeping naturally leads people to manipulate their power by manipulating what is kept on record.

Locke maintains two definitions of *property* throughout *Second Treatise of Government*. The first, and more theoretical, declares that:

> "… 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. 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*" (V, §. 27.). This statement provides a man ownership of *his body*, *his labor*, and *anything affected by his body or labor* as this idea of *his property*. Locke then spells out two further aspects of *property*:

> "... no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others" (V, §. 27.).

The second statement is more difficult than the first: who has the right to call an item their *property* when multiple people invest their labor into that same item? And who is to judge whether or not there is enough left of the resources common to mankind, before anyone is stopped from claiming an unclaimed item as their *property*? Is there such a thing as shared property? Who is to enforce this kind of a rule that reads more like a moral code than a law; i.e., what happens in the case that a person's property is modified, but without knowledge by the owning party?

By disregarding this kind of logistical question, Locke leaves much of the specific implementation of *property* and its characteristics up to the specific implementation of the government. While it is important to achieve a solid understanding of Locke-ian *property* for this paper's claim, it is not necessary to address all of the faults in this definition. Luckily, he provides a second description of *property* when he discusses those things which all governments must achieve, one of which is, "Preservation of their Lives, Liberties, and Estates, which I call by the general Name, *Property*" (IX. §. 123.). This is the preferable definition, because "Lives, Liberties, and Estates" is a working definition: identifiable and quantifiable. While this does not include "Whatsoever ... he hath mixed his *labour* with ... and thereby makes it his *property*," as in the first definition, the fruits of his labor can practically be reclassified into one of these three categories. The categories align more closely with the modern connotation of "property," which in general fits best under "Estate" (as Americans can generally take for granted lives and liberties as an inherent truth and not explicitly as property), as well as the subject of many laws of *The Fundamental Constitutions of Carolina*.

The rules Locke scribes for the Carolina colony provide further insight on how property (i.e., the “proprietorship” of the lords proprietors) may be of legal importance. A significant number of laws address the estates of the lords and officials, especially their obtainment and size. These estates are originally provided by a royal charter by the English government and can be inherited, such that the inheritor "shall be obliged to take the name and arms of that proprietor whom he succeeds; which from thenceforth shall be the name and arms of his family and their posterity” (§. 7.), which indicates two significant aspects about property: that property can be given from one person to another, like currency, and not by a derivation from nature via labor; and that property can have its own properties, i.e., “name and arms,” associated with it. In the latter aspect, property can be thought to “mark” its owner with its inherent value; this value can be thought of as the sum total of the labors of all of the previous owners invested into that land (as far as when the land was first gifted sans labor by the charter). This is not an uncommon idea today, since a keepsake from a grandfather or land in the family for generations is vastly more valuable its face value. By extension, a person who inherits property with a long history of owners is imbued with a similar level of value, especially so for royalty.

The laws governing land ownership of the lords are very explicit. A province is divided into counties, which is subdivided into signiories, baronies, and precincts (which are further divided into colonies) (§. 3), and the land in a manor is meticulously restricted to within three and twelve thousand acres of land (§. 17), in which the manor’s lord is allowed to bestow a limited fraction of his estates upon others for a limited duration of time (§. 18). Inheritance of an estate is explicitly allowed, in which the inheritor inherits also the name and arms of the property.

Besides physical property, Locke also includes “rights” as a form of property. In a modern context, it sounds peculiar because rights are not like the monetary or real-estate property that can be quantified and transferred; but it is properly property because effort is put into using (usually in speech as “exercising our rights”) and maintaining them (“defending our rights”). People possess rights just as

they do property, but, being an immaterial construct of legislature, it must come from an infinitely generous reservoir in nature, such that always is there “enough ... left in common for others,” as per Locke’s first definition, such that it can be obtained by anyone.

It might seem abstruse then that rights can be governed, but a prominent example exists in *The Fundamental Constitutions of Carolina*: regulation of the right to religion. The Constitutions decree that “No man shall be permitted to be a freeman of Carolina, or to have any estate or habitation within it, that doth not acknowledge a God” (§. 95), which limits people to belief in a God. How is this enforced? Decrees 98 and 99 state that all religious subscriptions, along with the date and terms of admittance, must be kept on public record.

Why does the system of rules pertaining to material and immaterial property have to be so complex? In both cases, property is being both restricted and protected: land is distributed in a predetermined fashion, preventing officials from losing land and from expanding; and religion is regulated by mandating a form of religion.

This doesn’t disagree with Locke’s vision of a government. He states that “The great and *chief end* ... of men’s ... putting themselves under a government, is the *preservation of their property”* (IX. §. 124.), by means of an established law and justice systems. At the same time, he states that legislature “*cannot take* from any man any part of his *property* without his own consent” (XI, §. 138.) because of the government’s goal.

While both of these statements seem to make sense independently of one another, and it seems hypocritical to adhere to one principle and break the other, it’s not always possible. For instance, what is the government to do in the case of an economic monopoly, or in the case of “enclosure” in sixteenth century European agriculture, when power legitimately, albeit not ethically, comes into the hands of a few? There is not “enough ... left in common for others,” but that may be for causes unrelated to the monopoly, so it would be unlawful for government to try to take away that property. The poor people

and the government are then at a deadlock: neither party is legally able to obtain property that has already been claimed, without the consent of the proprietor. The only quasi-lawful way for dire situations, in which the monopolizing party is deemed to be harming others by restricting the common good, is for a state of war to be declared and an authorization of force. Of course, this is the last-ditch option and should be avoided when possible.

While Locke always argues that government should protect existing property, nothing in his philosophy prevents the government from preventing the gain of property. The complicated set of rules about land ownership exist to prevent the government from active intervention by this means of passive intervention-- a lord is lord only over what he is allotted, and not allowed to expand his manor indefinitely nor bestow it upon others in whatever manner he chooses. Though religion doesn't have to be restricted like property does, a person's religious subscription is regulated to be somewhat conformist (adhering to a monotheistic belief) and singular.

By means of restriction, people are still allowed to (or are forced to) own property, but only in a way that the government allows for. However, for the sake of the government, it is not always legal to obtain more property, such as obtaining more land or subscribing to multiple beliefs, for fear of the consequences that may arise. In other words, this kind of a social contract doesn't allow the government to strip people of property, but it does allow for the government to prevent acquisition of property (to protect the first interest).

What is especially important to allowing restriction, as is important to all legal principles, is its documentation. The restrictions are written in law, but it's also important that the citizens know where the property lies, as a sort of public testament to the law. Religion is written into a public record. Transactions and ownership of physical property, such as estates, are presumably also recorded in some official record. If it isn't, the way that property and proprietor mark each other with "name and arms," at least for significant inheritances, make it very clear who owns what and from where it came.

Public record-keeping inherently is a controversial idea. There may emerge a class of people who try to hide all of their property, or disguise it so that the regulations have the least effect. There are a number of possible causes, which pervade modern society: avoidance of record keeping for maximum personal benefit, such as tax evaders; suspicion of government or of fellow citizens; and the want of a private life without public probing. Conversely, another faction may seek to exploit this visibility to promote personal motives, or to protect personal assets by public documentation. While the government can only regulate its citizens' property of which it has knowledge, it can only be an estimate of what the people truly own (personal, private, and secret possessions outside of legal reach).

Much of the restriction comes from the specific implementation of government in *The Fundamental Constitutions of Carolina*, and ultimately its government and feudal system were never fully realized, even after multiple revisions (Bell). But it is far closer to implementation than the philosophy in *Second Treatise of Government*, and more recent history, such as the trust-busting of the turn of the twentieth century, show that it can be beneficial to restrain what a person can own.

Works Cited

Bell, John L. "Fundamental Constitutions." *Encyclopedia of North Carolina*, University of North Carolina Press, 2006, https://www.ncpedia.org/fundamental-constitutions.

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