

on the face of it
Locke is a powerful ally
of the libertarian
first
he believes,
as libertarians today maintain
that there are certain fundamental individual rights
that are so important
that no government
even a representative government even a democratically elected government
can override them.
not only that
he believes
that those fundamental rights include
a natural right
to life liberty and property
and
furthermore he argues
that the right to property
is not just the creation
of government
or of law
the right to property is a natural right
in the sense that
it is pre-political
it is a right
that attaches to individuals
as human beings
even before government comes on the scene
even before parliaments and legislatures enact laws to define rights
and to enforce them
Locke says in order to think about
what it means to have a natural right
we have to imagine
the way things are
before government
before law
and that's what Locke means
by the state of nature.
he says the state of nature is the state of liberty
human beings are free and equal beings
there is no natural hierarchy
it's not the case that some people are born to be kings and others were born to be
serfs

we're free and equal in the state of nature
and yet
he makes the point
but there's a difference between a state of liberty and the state of
license
and the reason is that even in the state of nature there is a kind of the law it's not
the kind of law the legislatures enact
it's the law of nature
and this law of nature
constrains
what we can do
even though we're free
even though we're in the state of nature
well what are the constraints?
the only constraint
given by the laws of nature
is that
the rights we have
the natural rights we have
we can't give up
nor can we take them from somebody else
under the law of nature I'm not free
take somebody else's
life or liberty
or property
nor am I
free
to take my own
life liberty or property
even though I'm free,
I'm not free
to violate the laws of nature, I'm not free to
take my own life
or to sell myself into slavery
or to give to somebody else
arbitrary absolute power
over me
so where does this constraint
you may think it's a fairly minimal constraint, but where does it come from?
Well Locke tells us where it comes from
and he gives two answers
here's the first answer
for men
being all the workmanship
of one

omnipotent and infinitely wise maker, namely God,
they're his property
whose workmanship they are, made to last during his,
not one another's pleasure.
so one answer the question is why can't I give up my
natural rights to life liberty and property
well they're not strictly speaking yours
after all
you are
the creature of God.
God has a
bigger property right in us
a prior priority right
now you might say that
an unsatisfying unconvincing answer at least for those who don't believe in God
what did Locke have to say to them
well here's where Locke appeals to the idea
of reason
and this is the idea
that if we properly reflect
on what it means to be free
we will be lead to the conclusion
that freedom can't just be a matter of doing whatever we want
I think this is what Locke means
when he says
the state of nature has a law of nature to govern it which obliges everyone
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 for possessions
this leads
to a puzzling paradoxical
feature to Locke's account of rights
familiar in one sense
but strange in another
it's the idea
that out natural rights are inalienable
what does unalienable mean?
it's not for us to alienate them or to get them up to give them a way to trade them the way
to sell them
consider an airline ticket
airline tickets are nontransferable
or tickets to the patriots or to the red sox
nontransferable tickets
are unalienable

I own them
in the limited sense
that I can use them for myself but I can't trade them away
so in one sense an unalienable right, a nontransferable right
makes something I own
less
fully mine
but in another sense
of unalienable
rights
especially where we're thinking about life liberty and property
for a right to be unalienable, makes it more deeply more profoundly mine
and that's Locke's
sense
of unalienable
we see it in the American declaration of independence Thomas Jefferson
drew on this idea of Locke
unalienable rights
to life liberty
and as Jefferson amended Locke,
to the pursuit of happiness. unalienable rights
rights that are so
essentially mine
that even I can't trade them away or give them up
so these are the rights we have in the state of nature
before there is any government
in the case of life and liberty I can't take my own life I can't sell myself into slavery
anymore than I can take somebody else's life or take someone else as a slave by force
but how does that work in the case of property?
because it's essential to Locke's case
that private property
can arise
even before there is any government
how can there be a right to private property
even before there is any
government?
Locke's famous answer
comes in section twenty seven
every man has a property in his own person
this nobody has any right to but himself
the labor of his body
the work of his hands
we may say are properly his
so he moves
as the libertarians later of would move

from the idea
that we own ourselves
that we have property in our persons
to the closely connected idea that we own our own labor
and from that
to the further claim
that whatever we mix our labor with
is unowned
becomes our property
whatsoever then he removes out of the state that nature has provided, and left it in,
he has mixed his labor with, and joined to it something that is his own,
and thereby makes it his property
why?
because the labor
is the questionable property of the laborer
and therefore
no one
but the laborer can have a right
to what is joined to or mixed with
his labor
and then he adds this important provision
at least where there is enough and as good left in common
for others.
but we not only
acquire our property in the fruits of the earth
in the deer that we hunt
in the fish that we catch
but also
if we till and plow and enclose the land and grow potatoes
we own not only the potatoes
but the land
the earth
as much land as a man tills, plants, improves, cultivates, and can use
the product of, so much is his property.
he by his labor
encloses it from the commons. so
the idea is that rights are unalienable seems to distance Locke from a libertarian
libertarian
wants to say we have
an absolute property right in our selves
and therefore we can do with ourselves whatever we want
Locke is not a sturdy ally for that view
in fact he says if you take
natural rights seriously you'll be led to the idea that there are certain
constraints on what we can do with our natural rights, constraints given

either by God
or by reason reflecting on what it means really to be free and really to be free
means recognizing
that our rights are unalienable
so here's the difference between Locke and the libertarians but
when it comes
the Locke's account of private property
he begins to look again
like a pretty good ally
because he's argument for private property
begins with the idea that we are the proprietors of our own person
and therefore of our labor and there of the fruits of our labor
including not only the things
we gather
and hunt
in the state of nature
but also we acquire a property right in the land that we enclosed and cultivate and improve
there are some examples that can bring out the
the moral intuition
that our labor
can take something that is unowned
and make it ours
though sometimes there are disputes about this
there's a debate among
rich countries and developing countries
about trade related intellectual property rights
it came to a head recently
over drug patent laws
western countries and especially the united states say
we have a big pharmaceutical industry that develops
new drugs
we want
all countries in the world
to agree
to respect the patents
then there came along the aids crisis in south Africa
and the American
aids drugs
were hugely expensive
far more than could be afforded by most Africans
so the south African government said
we're going to begin
to buy a generic version
of the AIDS
antiretroviral drug

at a tiny fraction of the cost
because we can find an Indian manufacturing
company
that figures out how the thing is made
and
produces it
and for a tiny fraction of the cost we can save lives if we
don't respect that patent
and then the American government said
no here's a company
that invested research
and created this
drug
you can just
start mass-producing
these drugs
without paying the licensing fee
so there was a dispute
the US and the pharmaceutical companies sued the south African government to try to prevent
their buying the cheap
generic
this they saw it,
pirated version
of an aids drug
and eventually
the pharmaceutical industry gave in
and said
all right you can do that but this dispute about what the rules
of property
should be of intellectual property
of drug patenting
in a way
is the last frontier of the state of nature
because among nations where there is no uniform law
of patent rights and property rights
it's up for grabs
until by some act of consent
some international agreement
people enter into
some settled
rules.
what about
Locke's account of
private property
and how it can arise

before government and before law comes on the scene
is it successful?
how many think
it's pretty persuasive?
how many
don't find it persuasive?
now let's hear from some critics
what is wrong with Locke's account
of how private property can arise
without consent
I think it justifies
European cultural norms as far as you look at
how native Americans may not cultivated American land
by their arrival
in the America's
that
that contributed to the development of America which would have otherwise necessarily happened
then or by that specific group
so you think that this defense this defense of private property in land
yes because it complicate original acquisitions if you
only site the arrival of
foreigners that cultivated the land
I see, and what's your name?
Rachelle
Rachelle? Rachelle says this account of how property
arises
would fit
what was going on
in north America
during the time of the
settlement, the European settlement
do you think
Rochelle, that it's
it's a way of defending
the appropriation of the land
indeed, because he is
also
you know, justifying the glorious revolution, so I don't think it's inconceivable
that he's also
justifying colonization as well
well that's an interesting
historical suggestion
and I think there's a lot to be said for it
what do you think of the validity of his argument though?
because if you're right

that this would justify the taking of land in north America
from native Americans who didn't enclose it,
if it's a good argument
then Locke's given us a justification for that if it's a bad argument
then Locke's given us
a mere rationalization
it is morally indefensible
I'm leaning to the second one. You're leaning to the second one, but that's my opinion as well
alright
let's hear
if there's a defender of Locke's account of private property
and it would be interesting if they could address Rachelle's
worried that this is just a way of defending the
the appropriation of land by the American colonists
from the native Americans who didn't enclose it
is there someone who will defend Locke
on that point?
you're ready are you going to defend Locke?
but you're you're accusing him of justifying the European basically massacre of the native
Americans
but who says he's defending it maybe the European colonization isn't right
you know maybe it's the state of war that he talked about in his second treatise, you know
so the war is between the native Americans
and the
colonists, the settlers
that might have been a state of war
that we can only emerged from
by an agreement or an act of consent
and that's what would have been required
yeah and both sides would have to agree to and carry out and everything
but what about
and what's your name? Dan.
Dan, what about
Rachelle's says
this argument
in section twenty seven and then in thirty two
about appropriating land
that argument if it's valid would justify
the settlers
appropriating that land and excluding
others from it
you think that argument's a good argument?
well does it kind of imply that the native Americans hadn't already done that?
well the native Americans as hunter gatherers didn't actually enclose
enclose land so I think Rochelle

is on to something there

what I wanted

I

go ahead Dan. At the same time he's saying that just by picking an acorn or taking a apple or maybe killing of buffalo on a certain amount of land

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

by that definition maybe they didn't have fences around

little plots of land but didn't

they were using it

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

the native Americans could have claimed a property rights

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

as she points out. good

okay that's good

One more defender of Locke

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

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

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

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

an analogy to what he was talking about with like the

common English property

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

and you can't take land

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

so if you're taking common,

so you have to make sure whenever you take land or

that there's enough let for other people to use

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

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

right to private property in the earth is subject

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

what's your name. I'm Fang

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

that could be developed

on behalf of the native Americans

here's the further question,

if the right to private property is natural not conventional,

if it's something

that we acquire even before we agree to government

how does that right constrain what the legitimate government can do

in order for finally to see,

whether Locke is an ally
or potentially
a critic
of the libertarian idea
of the state
we have to ask what becomes of our natural rights
once we enter into society
we know that the way we enter into society is by consent by agreement
to leave the state of nature and to be governed by the majority
and by a system of laws, human laws
but those human laws
our only legitimate
if they respect
our natural rights
if they respect
our inalienable rights to life liberty and property
No
parliament
no legislature
however democratic
its credentials
can legitimately
violate
our natural rights.
this idea
that no law can violate our right
to life liberty and property would seem
to support
the idea of a government so limited
that it would gladden the heart of the libertarian
after all
but
those hearts should not be so quickly gladdened
because even though
for Locke
the law of nature persists
once government arrived
even though Locke
insists on limited government
government limited
by the end for which it was created
namely the preservation of property
even so
there's an important sense
in which

what counts as my property
what counts
as respecting
my life and liberty
are for the government
to define
that there be property
that there be respect
for life and liberty
is what limits government
but what counts
as respecting my life
and respecting my property
that is for governments
to decide and define
how can that be
is Locke contradicting himself
or is there an important distinction
here in order to answer that question which will decide Locke's fit with the libertarian view
we need to look closely
at what legitimate government
looks like for Locke,
and we turn to that next time.