

Chapter 4

Property Rights

[E]very man has a *property* in his own *person*: this no body has a right to but himself. The *labour* of his body, and the work of his hands, we may say are properly his. Whatsoever then he moves 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*.

...

This partage [*i.e.*, partition] of things in an inequality of private possessions, men have made practicable out of the bounds of society, and without compact, only by putting a value on gold and silver, and tacitly agreeing in the use of money ...

John Locke (1689/1980), *Second Treatise of Government*: §27, §50.

Locke tells us that the right to freedom includes the right to do as one sees fit with one's possessions. Yet he cannot mean the right to do as one sees fit with whatever one actually possesses for he does not think that one has rights to do as one sees fit with objects one has acquired illicitly, that is, through theft or fraud. Such a right would conflict with the rights of the victims of theft and fraud to do as they see fit with their possessions. So, Locke needs a theory of property rights that explains why certain methods of acquisition engender rights to the acquired objects and why other methods of acquisition do not engender such property rights.

In his *First Treatise*, Locke argues that, since “Man should live and abide for some time upon the face of the Earth”, he must have a right “to make use of those things, that were necessary or useful to his Being” (*FT* §86). If human beings are to have a chance of achieving commodious preservation, they must have the opportunity to use and, indeed, exercise discretionary control over objects that are external to their own persons, for instance, acorns, plows, and fields cleared for cultivation.

However, according to Locke, no one is born with specific rights to particular useful objects. Locke does say that God has given the earth to all mankind in common (*ST* §25). Yet, he does not mean that originally we all are joint owners of the earth. Rather, he means two things. First, contrary to Filmer, the earth was not given to any particular individual; for instance, to Adam and then down the line of Adam's oldest male descendants (*ST* §26). Second, the raw material that is the earth is common to mankind in the sense that it is all originally unowned and all parts of it are available for just individual acquisition. Hence, again, we need a theory of property rights that specifies the procedure through which individuals can convert unowned portions of the earth into their rightful possessions (*FT* §87). This specification is offered in the *Second Treatise's* chapter, "Of Property". It is Locke's famous "labour-mixing" theory of just initial acquisition.

Locke's arguments for a natural right to freedom establish that "every man has a property in his own person" (*ST* §27). Each person is a "master of himself, and *proprietor of his own person*" (*ST* §44). This entails that each person has rights over his own faculties, talents, and labour. In more current terminology, each person has rights over his human capital and his exercise and investment of that capital. Locke then argues that if one "mixes" one's labour with some unowned raw material, one acquires a right to the resulting object. The reason is that this labour is now embedded in the resulting object. It is now "annexed" to the raw material on which the labour has been expended. Hence, if that object is seized or destroyed by another without one's consent, one's labour is seized or destroyed without one's consent. Such a seizure or destruction of the resulting object without one's consent violates one's right to one's labour: "He that in obedience to this command of God [to improve the earth for the benefit of life], subdued, tilled, and sowed any part of it, thereby annexed to it something that was his property, which another had no title to, nor could without injury take from him" (*ST* §32).

It is important to recognize that Locke is not thinking of one's labour as a quantity of physical stuff—a pint or a pound of labour—that one puts into a mixing bowl with some bit of raw material and stirs. Rather, one's labouring on some raw material is a process in which one invests one's time, effort, talent, and insight into some previously raw material with the aim of transforming it to better serve one's life. It is that investment of time, effort, talent, and insight that is expropriated when another seizes or destroys without one's consent the product of that investment.

There are two basic ways in which an individual's time, effort, talent, and insight can be expropriated by another: a prior-to-production way, and an after-production way. In the first way, another party coerces an individual to spend her time, effort, talent, and insight in the way that the coercer demands. Abe comes along, puts a gun to Bea's head, and threatens to shoot her unless she employs her powers to produce a crop of corn for Abe. In the second way, Abe stands aside while Bea invests her time, effort, talent, and insight in raising a crop of corn. He then steps forward, waves his gun, and seizes the crop. Locke's view is that these two acquisitive actions by Abe are morally on a par. Both acquisitions involve at least the partial enslavement of Bea. If one condemns the prior-to-production method of expropriation, one must equally condemn the after-production method. And, to condemn the after-production method is to affirm the producer's right to the product of her investment of her time, effort, talent, and insight.

Of course, most of what individuals justly possess, they do not possess through just *initial* acquisition. Just initial acquisition begins a process in which individuals produce not only for their own consumption but also to trade for products that others have produced for the sake of exchange. Bea, who is especially good at producing corn, produces far more corn than she and her family can consume and exchanges most of that corn for products—like plows and blueberry preserves—that others produce for the sake of trade because they are especially good at producing those products. The more highly articulated the economy is, the more one's just possessions will be acquired through market exchanges, exchanges that all parties perceive to be beneficial to them. (People may also acquire just possessions by extracting reparation payments from violators of their rights.)

Locke does not provide an explicit account of why, when Bea trades some of her corn for some of Abe's blueberry preserves, Bea acquires a right to those preserves that everyone (not just Abe) must respect and Abe acquires a right to that corn that everyone (not just Bea) must respect. I believe that there are two reasons for this lacuna in Locke's doctrine. First, the consensus among 17th-century political philosophers was that the hard question concerned how private property *begins*. Having provided an answer to this question, Locke may well have thought he had completed the crucial task for any theorist of property rights. Locke may also have thought each person's right to others

fulfilling their agreements with her was all that is needed to explain each person's right against everyone to the particular goods and services acquired by her through voluntary trade.

Note that Locke's discussion of acquired property rights is part of his state-of-nature theory. The generation of rights through labour-mixing, trade, and just restitution does not require the permission of, or endorsement by, any political authority. On their isolated island, Abe and Bea can acquire property rights through their interaction with natural materials and with one another. Still, as we shall see in the next chapter, Locke thinks these rights will be quite insecure in the state of nature and this insecurity will encourage people to establish a political structure that will enforce these property rights.

According to Locke, there is a further momentous development that does not require governmental action. Money does not first arise through governmental decrees. Rather, it arises through a type of "tacit and voluntary consent" among individuals (*ST* §50). Through people's "fancy and agreement" value is conferred on "gold, silver, and diamonds", which enables them to function as money, that is, as stores of value and as means of exchange (*ST* §46). The existence of money greatly facilitates trade because trade no longer needs to take the form of barter. In addition, money greatly increases the incentive to produce for the sake of trade. For, money enables traders to store up their gains. Money greatly encourages human industriousness:

... what would a man value ten thousand, or an hundred thousand acres of excellent *land* ready cultivated, and well stocked too with cattle, in the middle of the inland parts of *America*, where he had no hopes of commerce with other parts of the world, to draw *money* to him by the sale of the product? It would not be worth the inclosing, and we should see him give up again to the wild common of nature, whatever was more than would supply the conveniences of life to be had there for him and his family. (*ST* §48)

Money enormously increases people's opportunities and motivations to develop and exercise their human capital. In this way, money—combined with the recognition of people's rights to the products of their labour and to the proceeds of their trades—vastly increases wealth.

Indeed, the value of the goods that enhance human life is almost entirely due to the human industry that goes into their production: “labour makes the far greatest part of the value of things we enjoy in this world: and the ground which produces the materials, is scarce to be reckoned in, as any, or at most, but a very small part of [the value] ...” (*ST* §42). Although the raw material furnished to mankind may be fixed, human productivity is not. Productivity can increase; and one person’s increased productivity is entirely compatible with—and, indeed, is likely to engender—increases in the productivity of others. Thus, all parties can gain under a regime that establishes “laws of liberty to secure protection and encouragement to the honest industry of mankind” (*ST* §42). Locke rejects the zero-sum view that one person’s economic gain must be based on some other person’s loss.

Even prior to the existence of money, “different degrees of industry” among men tend “to give men possessions in different proportions” (*ST* §48). When the existence of money increases the scope and intensity of economic activity the differences in wealth among persons is likely to increase. This prospect leads Locke to ask whether “any one may *ingross* as much as he will” (*ST* §31). Locke’s response is that there are two distinct limits on rightful acquisition, although, as we shall see, he holds that these limits are naturally complied with or readily circumvented.

The first limit on rightful acquisition concerns spoilage. Since the purpose of acquisition is to serve human life, if Abe acquires more bushels of strawberries through his labour than he and his family can consume (or barter away) before some of those strawberries spoil, Abe will not have a valid claim to those strawberries. The strawberries that would spoil in Abe’s possession will belong to others at least in the sense that they remain unowned and, hence, they are open to use and appropriation by others (*ST* §31).

Still, violation of the spoilage limit is unlikely. Prior to the existence of money, if Abe is at all rational, he simply will not acquire through labour (or barter) more strawberries than he and his family can enjoy. Once money exists, Abe will be able to avoid spoilage by converting the strawberries that otherwise would spoil into “durable things” such as pieces of metal or shells or sparkling pebbles. When conversion into money is possible, the spoilage restriction turns out to be no restriction at all on the extent of one’s legitimate holdings. For, the person who converts what will otherwise spoil into money, “might heap up as

much of the durable things as he pleased: the exceeding of the bounds of his just property not lying in the largeness of his possession, but the perishing of any thing uselessly in it” (*ST* §46).

Locke’s second, and more important and complex, restriction on individual engrossment of holdings is his requirement that private acquisition of raw material leave “enough, and as good” in common for others (*ST* §27). Prior to the appearance of money, people will naturally comply with this restriction. For people will only engage in modest acquisitions of raw material if there is no prospect of *monetary* gain through expanding their acquisition of raw material in order to increase their production of goods and services that they will offer for sale: “Where there is not some thing, both lasting and scarce, and so valuable to be hoarded up, there men will not be apt to enlarge their possessions of land, were it never so rich, never so free for them to take” (*ST* §48).

Moreover, prior to the introduction of money, households that transition from living as hunter-gatherers upon common (unowned) land to living as cultivators of private parcels of acquired land *increase* the land that is left in common for others. This is because a private cultivator needs much less land for his use than he needs as a hunter-gatherer. A tribe of hunter-gatherers composed of 100 households may need 10,000 acres to live on—that is, 100 acres per household. However, when one household from this tribe settles down as cultivators, it only needs and only has an interest in acquiring 10 acres of that land. Thus, that privatizing household releases 90 acres to the remaining hunter-gatherers. The result is 100.91 acres for each of the remaining hunter-gatherer households, “[a]nd therefore he that incloses land, and has a greater plenty of conveniences of life from ten acres, than he could have from an hundred left to nature, may truly be said to give ninety acres to mankind ...” (*ST* §37).

However, when money appears and, along with it, the prospects of storable gains from industrious production, individuals will have much more incentive to acquire more raw materials for the sake of greater production. The result of this increased acquisition of raw materials may well be that “enough, and as good” raw materials will not be left for others (*ST* §36). Nevertheless, Locke has an explicit argument and an implicit argument for why this development does not violate the “enough, and as good” restriction. The explicit argument is weak; the implicit argument is much stronger.

The explicit and weak argument is that, since everyone has tacitly agreed to the introduction of money, everyone has agreed to the obvious

consequences of money and, since one of the obvious consequences is that not “enough, and as good” raw material will be left for some, the agreement to the introduction of money amounts to an agreement to set aside the “enough, and as good” restriction. After the appearance of money, this restriction is not violated because it is no longer around to be violated.

This argument is weak because only if money were created through a express, intentional, “compact” would it be at all plausible that the creation of money sets aside the “enough, and as good” restriction. Yet, Locke himself insists that money has not arisen through any “compact” (*ST* §50). It emerges through “fancy or [tacit] agreement” (*ST* §46). Moreover, we have no reason to believe that everyone has been a party to the “fancy or agreement” that is supposed to have created money. Hence, even if this agreement would set aside the restriction for those party to it, we would have reason to believe that some people retain their right to invoke this restriction.

Locke’s implicit and stronger argument emerges when we consider the reason that all people have to welcome to the introduction of money, whether or not they actually consent to it. According to Locke, the reason that each individual has for welcoming any development is “better to preserve himself, his liberty, and property” or, more generally, to sustain or enhance his well-being (*ST* §131). If each person has reason to welcome the introduction of money, it must be because *on net* each person’s economic opportunities will be (or will likely to be) enhanced by that development.

We have seen, however, that for some people the introduction of money will have the negative effect on their economic opportunity of there no longer being enough and as good *raw materials* left for them to take possession of through initial acquisition. So, for each person to have reason to welcome the introduction of money, there must be positive and countervailing effects; and those countervailing effects must leave everyone—including those who have less opportunity to be *initial* appropriators of raw material—at least not on net worse off with respect to economic opportunity. That there are such countervailing effects is the empirical claim at the core of Locke’s implicit argument.

We need to remember that almost nobody lives well (or at all) by raw material alone. Almost everybody who lives well does so by taking advantage of an array of economic opportunities created by the extensive development of private property, human productivity, and trade—development that is greatly augmented by the introduction of money. That development is the primary

source of economic opportunity, the opportunity to acquire *produced* materials through trade, to benefit through production for trade, and to hone and sell the diverse labour skills that acquire value in such an economic environment.

Opportunity depends much more on being a participant in the sort of market economic order that emerges with the establishment of property rights and the introduction of money than on being a party to the initial acquisition of raw material. (This is largely a consequence of the fact that the development of human capital and its exercise is vastly more important than raw material in the creation of economic opportunity and wealth.) Any loss of opportunity as a result of one's being less able to be an *initial* acquirer of raw materials will be overbalanced by one's gain in the range of economic opportunities that do not consist in such raw acquisition. Or, to put Locke's conclusion more modestly, no one will have a complaint in justice about a loss of opportunity to be an initial acquirer of raw material unless that person has been excluded from the counterbalancing opportunities that economic development based on extensive privatization and increased productivity and trade normally provides.

Locke's implicit argument for why the introduction of property rights and money does not violate the requirement that "enough, and as good" be left for others depends on an equally implicit distinction between two understandings of that requirement. The narrow understanding is that no one is to be left with less opportunity to be an initial appropriator of raw material. The broad understanding is that no one is to be left with less economic opportunity. Locke's implicit argument is that, while the introduction of property and money may well lead to some individuals having less opportunity to be initial appropriators of raw material, the introduction of property and money at least normally enhances everyone's economic opportunities broadly understood.

Locke's view, then, is that the spoilage and "enough, and as good" restrictions express theoretical limits on rightful individual holdings. However, in anything like the normal course of affairs—both prior to and after the introduction of money—holdings that arise through just acts of initial acquisition, trade, and rectification will not violate those limits. More generally, the introduction of property rights, money, and widespread commerce will tend *both* to increase inequality of possessions (compared to a pre-property, pre-monetary state of nature) and to be economically advantageous to all.