

Self-Ownership & the Lockean Proviso

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The proposition here is plain: If one is going to be serious about the Lockean proviso, namely, that we have the right of acquisition only if we leave "enough and as good in common . . . to others," then self-ownership—or in Locke's terms "property in his own person"—is justified only if we leave "enough and as good" for others *of ourselves*.¹

As normally taken, the Lockean proviso applies to stuff in nature, so that the right to acquire such stuff is qualified by the proviso: none may become a monopolist.² But might not this right also qualify ownership in one's own person, in oneself?

The answer may well be that given that the skills and talents that one has developed are often scarce around one's neighborhood, community, even in the global marketplace as they have rarely been developed by others or at least not to the same degree, so the Lockean proviso applies here as it does when anything else comes to be owned. Thus, the reasoning would go, one's possession of one's skills and talents may be unjust.

There are in fact practices that indicate that ownership of such skills and talents is not viewed as unconditional—for example, Good Samaritan laws force professionals with certain life-saving skills to provide assistance whether they choose to do so or not. So, arguably when one acquires the skill of being a medical professional, one may own the skill provided "enough and as good" is left to help those in dire need. Furthermore, leaders of communities extract taxes from

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members, whether they want to pay them, so their lives and labors are treated as not unconditionally their own.

Before developing the argument against the application of the Lockean proviso to self-ownership, I wish to indicate very briefly why private property rights are sound social-political-legal principles.

Why make so much of private property rights? Is the idea, as some critics argue, only an excuse for the rich to remain rich, to keep what they have for themselves and make it impossible for those without wealth to prosper?³ Is it a means by which to keep the poor from getting better off?

Not really. The right to private property is the basis for the rule of law as applied to human community life. When this principle is developed into an elaborate legal system, it enables human beings to live in one another's company, striving to achieve their enormously varied goals without aggressively imposing their will upon others. It is the principle that recognizes, to quote the late comic, Myron Cohen, that "everybody's got to be someplace." It makes it possible for everyone to be sovereign, to rule himself and some portion of the world without having to ask permission from others—a king or tsar or the majority.

As William Pitt—British Prime Minister in the late 1700s, early 1800s—explained the point of private property rights, "The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail. Its roof may shake, the wind may blow through it—the storm may enter, the rain may enter, but the King of England cannot enter; all his forces dare not cross the threshold of the ruined tenement." If this right is secured, we enjoy a more or less sizable bit of "kingdom" for ourselves. We are the ultimate authority in some however large or small but inviolate sphere so that we all then have a measure of independence.

The right to own stuff doesn't mean actually having to have stuff. The right only recognizes the liberty – the prohibition on others from interfering with one, as one embarks – to seek and obtain property. One may make one's own what is in nature or what is offered by others in society. (Notice, this precludes owning other people unless they offer themselves and remain in the position to withdraw this offer – even an accepted offer once terms have been fulfilled – if they so choose.)

One can have this right to property and not exercise it much, by renouncing wealth if that is what one believes would be the best thing to do. But it would be up to oneself whether or not to accumulate stuff, to hold on to it, to give it away or to sell it if one so chooses. The right to private property means liberty, not being subject to the will of others in at least some significant measure.

Of course, aside from effort and care, it is a matter of luck, too, the extent to which we can use this liberty to accumulate property. So, since property is generally useful for an abundant life, luck affects how] abundantly one lives within the system of the right to private property.

But this openness to the effects of luck is quite natural – luck plays a role in all areas of life. Some of us start our lives healthier than do others, some better looking, some more talented, and some, yes, richer (even a lot richer) since if our parents accumulated extensively they can then bequeath to us the fruits of their hard work and luck.⁴ So long as these advantages are something obtained without doing violence to anyone, obtained either through hard and smart work or through some measure of good fortune, there is nothing wrong with the resulting differences between ourselves and others in the amount of our property holdings.

It is in part because we have the right to do as we choose with what we possess at the start of our lives that we can make a good deal out of our development of our lives: of our talents and skills, in the management of our assets such as good looks, health or fortunate circumstances. And some manage to build on their initial endowments, others lose a good measure of them, and yet others oscillate back and forth from wealth to poverty and back again throughout their lives.

Because human beings are not all identical to start with, and, especially, because they make all kinds of different choices—some better, some worse than others’—the idea of equality of conditions, even of opportunities is a myth and to try to attain it is a major threat to our liberty. There is, however, an area of life where full equality is quite right for us, namely, in the moral respect owed to our basic rights and, in a legal order, to protection owed to our rights. That is what “equality under the law” signifies, not getting some identical measure of goodies from some government which would, in any case, be impossible. Government, so as to make us all equally wealthy or happy or such would have to be very unequally powerful, in order to carry off the constant reassignment of wealth and [effects of] talent and other assets. This then would defeat the purpose of equalization from the very start and make the task hopeless.

Equality in the legal protection of our rights is a little like the rules of most games—they apply to all the players or racers fully and equally, but no one actually starts out with identical chances of winning the game, nor carries on with the same success in the course of the game. So the end result is hardly ever equal for all. Still, all the contestants need to play or race by the same rules in order for each to have a decent chance to success.

The principle of the right to private property shows equality in the legal protection of our rights to be, the only desirable and sensible form of, human equality. Out of its implementation in a society, as the sole mode of enforced equality can arise a very diverse community, domestic and international. Just think of how many different ways of life, religious worship, and productive enterprises can emerge from it!

A society where it is implemented would also be the most peaceful and prosperous one ever devised by the political imagination of human beings. Sadly, however many would rather take over ruling us than accept the diversity that comes from such self-rule. Sadly, because often, these alternative, diversity destroying societies, wealth is acquired through conquest and confiscation, and even when it is gained through hard work and good fortune, many resent it and would use violence to take it.

However, when properly understood, the principle of private property, and its implied principle of equality in the protection of rights can be seen as the source of most of the great things that social life offers us. "Good fences make good neighbors," as Robert Frost's poem *Mending Wall* says, and good fences demarcate property lines. It is too bad we often fail to heed this adage and instead yield to the temptation to tear down fences, tear down claims to personal property, or refuse to erect them. When people act that way they foster thereby violence, war and mayhem all over the globe.

With the case for the principle of private property having been sketched, let us now consider what may lie behind Locke's decision to offer a proviso. Why should the right not be treated as the United States of America's Declaration of Independence characterizes our basic rights, namely, as unalienable?

I believe this is explained by Locke's invocation of God as the true owner of the world and all its goods. For Locke the right to private property is a utilitarian device to be used for purposes of dealing with the rivalry that would arise without some sort of initial rationing system. But such a system does not necessarily distribute the goods in an ethical way—some folks may be left without "enough and as good" as others and by the laws of Christian love and charity, this would be intolerable.

Without invoking the idea of God in the establishment of private property rights, however, this element of Christian ethics would not be required. An atheist could well omit a concern for such fair treatment by God and all that would be left is the practice of the virtue of generosity whenever extraordinary or emergency needs arise for some who lack property. That is the modern libertarian understanding but not Locke's.

Similarly, when it comes to giving of oneself, in the Lockean-Christian framework it is arguable that one owes others services, services which are part of one's life. This may even be something one is obligated, by just law theory, to provide. Modern libertarianism, however, sees no such enforceable obligation of justice. Again, the generous or charitable deeds that one ought to perform for others are exercises of benevolence, not of justice, and may not be coerced—involuntary servitude is banned—and only voluntary giving is ethically required, not, however, legally mandated.

So, there's no justification for a Lockean proviso within a system of justice, either when it comes to the distribution of goods (estate), or to the provision of services (persons)⁵.

Endnotes:

¹ John Locke, *Two Treatises of Government*, ed., Mark Goldie (London: Everyman, 1924), p. 128. In Robert Nozick's *Anarchy, State, and Utopia* (NY: Basic Books, 1974), pp. 174ff, the Lockean Proviso is accepted within the Lockean libertarian framework but quickly declared moot on the grounds that within a regime of the right to private property, so much productivity would ensue that no monopolization of any good would occur.

² The kind of monopoly is *not* the coercive kind whereby a market is secured for some firm by government policy, with competitors kept out by law (as are, for example, first class mail providers kept out of competing with the United States Postal Service in the USA). Rather it is the kind of monopoly one may have in a special attribute or sphere one happens to have, such as one's knowledge of an invention or an oasis.

³ The classic statement of this comes from Karl Marx's essay, "On The Jewish Question," and is developed by C. B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford, UK: Clarendon Press, 1962).

⁴ Although it is widely claimed that Lockean property rights favor the wealthy, arguably they do not. The wealthy, being more politically influential, are able to deploy government to encroach on the possessions of the less well off if these do not have clear cut property rights that are vigilantly protected in the law. See, Steve Greenhut, *Abuse of Power: How the Government Misuses Eminent Domain* (Seven Locks Press, 2004).

⁵ Aside from the labor of others to which no one is by nature entitled (with the apparent exception of children but only by the prior implicit consent or compact entered into by their parents when they "invited" them into the family), no one is entitled, either, to another's body parts though not "enough and as good [is] left in common to others." For more on this, see, Samuel C. Wheeler III, "Natural Property Rights as Body Rights," in T. R. Machan, ed., *The Libertarian Reader* (Lanham, MD: Rowman & Littlefield, 1982), pp. 272-289