

On Mack on Locke on Property

It's a pleasure and an honor to comment on Eric Mack's superb piece on Locke. Mack has done more than almost any contemporary writer to develop the philosophical foundations of libertarian and classical liberal theories of justice. Although I endorse a Lockean-inspired version of libertarianism, I am not a Lockean scholar. Consequently, in what follows, I will not challenge Mack's wonderfully clear and insightful interpretation of Locke (which seems roughly correct to me). Instead, I will comment on some aspects of the theory of property that Mack attributes to Locke. My concern, that is, is with the *plausibility* of the theory and not with whether Locke actually held it.

Locke held that natural resources are initially unowned, that agents initially own themselves (and their labor power), and that agents have a moral power to acquire private property in natural resources by performing suitable actions (e.g., labor-mixing). I agree with him.

Property rights, over a thing, are a bundle of rights. At the core are *control rights*. These include a claim-right against others that they not use the thing without the owner's permission, and a liberty-right against others to use the thing (no one else's permission is required for use as such). Additional property rights include: the claim-right to compensation for the infringement of one's property rights, enforcement rights to prevent (and perhaps punish) infringements, the moral power transfer the rights to others (by sale, gift, etc.), and an immunity to non-consensual loss as long as one is not infringing the rights of others. *Full ownership* of a thing is a maximally strong set of property rights (compatible with other having the same rights over other things).

Locke held that natural resources (land, air, oil, etc. in their natural state) are initially

owned in common by everyone, which means they are unowned. This means that each agent has a moral liberty-right against all other agents, to use natural resources. No one needs anyone's permission to use natural resources (no one has a claim-right against such use), although, of course, no one has a moral liberty to smash someone's head with a rock. Because the rock is unowned, no one's permission is needed to use it, but because you own your head, your permission is needed to smash it with the rock.

If natural resources are initially unowned in the fullest sense, then one has a moral liberty to poison all the water in the world or destroy all the plants. This, I claim, is implausible, when it adversely affects others. Even prior to appropriation, there are some moral limits on how one may use natural resources. My view, following that of Eric Roark¹, is that, whatever restrictions there are on appropriation and ownership (addressed below), they also apply to use. I'm not sure what Locke's view was on this matter.

The fact that natural resources are initially unowned (a first-order issue concerning use) is compatible with several different higher-order conditions concerning the moral powers of individuals to acquire private property over natural resources (and the corresponding lack of moral immunities of others to the loss of their liberty-rights to use natural resources). One position is that there are no moral powers to appropriate. The commons must hold in perpetuity. Another is that only collective (e.g., majority) approval can give someone private property over natural resources. Locke rightly rejected these positions. He endorsed a unilateralist position, according to which an individual has the power to appropriate natural resources by performing a suitable action, as long as certain conditions hold. I agree. We will examine the required action and conditions below.

What conditions, then, are required for someone to acquire private property over natural

resources? Locke seems to hold that labor-mixing is necessary. Mack wisely restricts labor-mixing to cases where there is “the intentional transformation of some natural material for the sake of some future use”. This helps avoid the problem (raised by Nozick²) that my picking an apple mixes my labor with the world, but surely that does not give me private ownership of the world. Still, I think that labor-mixing, even in this restricted sense, plays no essential role in the correct theory of appropriation. What is required is that the agent “stake a claim” to particular natural resources. Exactly what is required to stake a claim requires more attention than I can give here, but a paradigm case is publicly marking off an area and publicly stating that you are claiming specified rights over that area. Mack rightly notes that labor-mixing is not necessary, since “various conventions develop that define what counts as an *entitlement-generating* initial acquisition”. I further add that labor-mixing plays a justificatory role for appropriation only where prevailing social conventions count such mixing as staking a claim.

It is often thought that ownership of natural resources with which one has mixed/invested one’s labor follows from self-ownership, at least where the proviso applies. Mack rightly interprets Locke as holding this view. I believe, however, that this view is mistaken. When I secretly trespass on your land to plant and cultivate some tomatoes, I do not acquire ownership of the land or even of the tomatoes. I have invested my labor in something that you own and have thereby forfeited any claim to its products. Likewise, when the land is in the commons, my self-ownership is fully compatible with my forfeiting the product to the commons. I do not deny that one acquires ownership of previously unowned natural resources when one stakes a suitable claim, and the proviso holds. I claim that this so because of an *independent* moral power, an independent right to property, and not because of one’s self-ownership. Full self-ownership, that is, is compatible with natural resources being in the commons in perpetuity, with individuals

having no powers of appropriation.

Full self-ownership does, of course, play a role in the justification of the ownership of one's *products*: If one owns all the factors of production (natural resources, capital, labor power), then one owns the product. This principle, however, does not give one ownership of natural resources, since they are not the products of one's labor or other assets.

Locke's proviso on appropriation requires that "enough and as good" be left for others. Mack gives the standard weak reading according to which this requires only that no one be worse off (net of any compensation provided) than she would have been, had the resources remained in the commons. I agree that this is the best interpretation of Locke, but I believe that Locke's version of the proviso is too weak. I think it more plausible that an equally valuable share (net of compensation provided) must be left for others (or more radically: a share compatible with an equal opportunity for wellbeing). Natural resources were not created by any non-divine person, and I see little reason to hold that the benefits they provide should not be shared equally (or even to promote equality). I won't attempt to defend this view here.³ I will merely note that the resulting left-libertarian theory differs from standard right-libertarian theories only with respect to the proviso. Moreover, given that both views hold that appropriation is just as long as suitable compensation is paid, the only difference is the amount of compensation owed.

As Mack indicates, Locke seems to hold that all agents have consented to the existence of money and thereby to the suspension of the proviso. This, however, seems to be an implausible view. Hardly any of the individuals alive today have consented to the existence of money in the sense needed for a valid contract. Moreover, even if they have validly consented to the existence of money, they have not consented to the suspension of the proviso. The former does not entail the latter. So, Locke seems mistaken here.

Finally, let us turn to the limitations on private property. Locke seems to hold that the “enough and as good” proviso only applies to the initial act of appropriation. I would argue, however, that the relevant version of the proviso is plausible as an *on-going limitation* on property rights in natural resources. I claim, that is, that the property rights initially obtained by appropriation are (unlike those of self-ownership) conditional on the on-going satisfaction of the proviso. Thus, it is not enough initially to leave enough and as good for others in the relevant sense. If circumstances change (e.g., population growth, natural disaster), what was compatible with enough and as good may cease to be so, and thus require greater, or less, compensation.⁴ Thus, even if no compensation to others was initially owed, some compensation may be owed at a later date. On this model, compensation is a periodic payment rather than a single payment at the time of initial appropriation.

Locke holds that private property does not include the right to exclude others from using resources one owns that would otherwise spoil. He does not, that is, give appropriators *full* private property in the appropriated resources. Others have a liberty-right to use them, when they would otherwise spoil.

As Mack notes, Locke also holds that “all persons have rights to pursue their comfortable preservation” and thus have “rights to engage in such use or appropriation” of nature. I read this as holding that private property rights in natural resources do not include the claim-right that others not use one’s resources when (1) they need to use someone’s (less than full) private property, without permission, in order to meet their basic needs, and (2) the use of one’s resources is compatible with one’s comfortable preservation. Under these conditions, Locke held that others have a liberty-right to use one’s private property.⁵

I’m inclined to reject both of the above limitations on property. If one satisfies the on-

going limitations of the more egalitarian “enough and as good” proviso that I would endorse, these additional limitations seem excessively restrictive. Of course, if one only endorses the more minimal proviso, then the additional limitations are more plausible.

Let me close by commenting on the role that property rights can play in the theory of moral permissibility. First, they might be advocated as merely *pro tanto* considerations that can be overridden by other moral considerations. On this view, a property right may be permissibly infringed when there is an overriding justification (e.g., to protect the rights of many others). Locke, I believe, implicitly held that property rights were *conclusive*, and not merely *pro tanto*, and in this he was right. Infringing a property right is always morally wrong. Second, property rights might be advocated as a theory of *justice*—understood as the *duties owed to individuals*—or as a full theory of moral permissibility. I’m fairly sure that Locke advocated only the former. As such, property rights are compatible with there being additional *impersonal moral constraints* (not owed to anyone). For example, I may not have a claim-right, against you, that you give me some food, but you may have an impersonal duty to do so. If so, it is wrong of you not to do so, even if perfectly just (and does not wrong me). Because I’m skeptical that there are any impersonal duties, I’m inclined to think that property rights exhaust the moral constraints. Here, I merely note that others may disagree.

In sum, Mack’s excellent summary and interpretation of Locke makes clear the importance of Lockean theories of property. I fully endorse the Lockean framework, but I have questioned a few aspects of the specific version held by Locke.

¹ For a defense, see Eric Roark, “Applying Locke’s Proviso to Unappropriated Natural Resources,” *Political Studies* 60 (2012): 687-702.

² Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 174-78.

³ See, for example, Michael Otsuka, *Libertarianism without Inequality* (Oxford: Clarendon Press, 2003); and Peter Vallentyne, Hillel Steiner, and Michael Otsuka, “Why Left-Libertarianism Isn’t Incoherent, Indeterminate, or Irrelevant: A Reply to Fried”, *Philosophy and Public Affairs* 33 (2005): 201-15.

⁴ Interestingly, Nozick himself endorses this limitation view. For a defense, see Peter Vallentyne, “Nozick’s Libertarian Theory of Justice,” in *Anarchy, State, and Utopia—A Reappraisal*, edited by Ralf Bader and John Meadowcroft (Cambridge University Press, 2011), pp. 145-67.

⁵ See, for example, A. John Simmons, *The Lockean Theory of Rights* (Princeton: Princeton University Press, 1992), sec. 6.3.