

0001 on the face of it
0002 Locke is a powerful ally
0003 of the libertarian
0004 first
0005 he believes,
0006 as libertarians today maintain
0007 that there are certain fundamental individual rights
0008 that are so important
0009 that no government
0010 even a representative government even a democratically elected government
0011 can override them.
0012 not only that
0013 he believes
0014 that those fundamental rights include
0015 a natural right
0016 to life liberty and property
0017 and
0018 furthermore he argues
0019 that the right to property
0020 is not just the creation
0021 of government
0022 or of law
0023 the right to property is a natural right
0024 in the sense that
0025 it is pre-political
0026 it is a right
0027 that attaches to individuals
0028 as human beings
0029 even before government comes on the scene
0030 even before parliaments and legislatures enact laws to define rights
0031 and to enforce them
0032 Locke says in order to think about
0033 what it means to have a natural right
0034 we have to imagine
0035 the way things are

0036 before government

0037 before law

0038 and that's what Locke means

0039 by the state of nature.

0040 he says the state of nature is the state of liberty

0041 human beings are free and equal beings

0042 there is no natural hierarchy

0043 it's not the case that some people are born to be kings and others were born to be

0044 serfs

0045 we're free and equal in the state of nature

0046 and yet

0047 he makes the point

0048 but there's a difference between a state of liberty and the state of

0049 license

0050 and the reason is that even in the state of nature there is a kind of the law it's not

0051 the kind of law the legislatures enact

0052 it's the law of nature

0053 and this law of nature

0054 constrains

0055 what we can do

0056 even though we're free

0057 even though we're in the state of nature

0058 well what are the constraints?

0059 the only constraint

0060 given by the laws of nature

0061 is that

0062 the rights we have

0063 the national rights we have

0064 we can't give up

0065 nor can we take them from somebody else

0066 under the law of nature I'm not free

0067 take somebody else's

0068 life or liberty

0069 or property

0070 nor am I

0071 free

0072 to take my own

0073 life liberty or property
0074 even though I'm free,
0075 I'm not free
0076 to violate the laws of nature, I'm not free to
0077 take my own life
0078 or to sell myself into slavery
0079 or to give to somebody else
0080 arbitrary absolute power
0081 over me
0082 so where does this constraint
0083 you may think it's a fairly minimal constraint, but where does it come from?
0084 Well Locke tells us where it comes from
0085 and he gives two answers
0086 here's the first answer
0087 for men
0088 being all the workmanship
0089 of one
0090 omnipotent and infinitely wise maker, namely God,
0091 they're his property
0092 whose workmanship they are, made to last during his,
0093 not one another's pleasure.
0094 so one answer the question is why can't I give up my
0095 natural rights to life liberty and property
0096 well they're not strictly speaking yours
0097 after all
0098 you are
0099 the creature of God.
0100 God has a
0101 bigger property right in us
0102 a prior priority right
0103 now you might say that
0104 an unsatisfying unconvincing answer at least for those who don't believe in God
0105 what did Locke have to say to them
0106 well here's where Locke appeals to the idea
0107 of reason
0108 and this is the idea
0109 that if we properly reflect

0110 on what it means to be free

0111 we will be lead to the conclusion

0112 that freedom can't just be a matter of doing whatever we want

0113 I think this is what Locke means

0114 when he says

0115 the state of nature has a law of nature to govern it which obliges everyone

0116 and reason

0117 which is that law

0118 teaches all mankind, who will but consult it, that being all equal and independent

0119 no one ought to harm another in his life health liberty for possessions

0120 this leads

0121 to a puzzling paradoxical

0122 feature to Locke's account of rights

0123 familiar in one sense

0124 but strange in another

0125 it's the idea

0126 that out natural rights are inalienable

0127 what does unalienable mean?

0128 it's not for us to alienate them or to get them up to give them a way to trade them the way

0129 to sell them

0130 consider an airline ticket

0131 airline tickets are nontransferable

0132 or tickets to the patriots or to the red sox

0133 nontransferable tickets

0134 are unalienable

0135 I own them

0136 in the limited sense

0137 that I can use them for myself but I can't trade them away

0138 so in one sense an unalienable right, a nontransferable right

0139 makes something I own

0140 less

0141 fully mine

0142 but in another sense

0143 of unalienable

0144 rights

0145 especially where we're thinking about life liberty and property

0146 for a right to be unalienable, makes it more deeply more profoundly mine

0147 and that's Locke's
0148 sense
0149 of unalienable
0150 we see it in the American declaration of independence Thomas Jefferson
0151 drew on this idea of Locke
0152 unalienable rights
0153 to life liberty
0154 and as Jefferson amended Locke,
0155 to the pursuit of happiness. unalienable rights
0156 rights that are so
0157 essentially mine
0158 that even I can't trade them away or give them up
0159 so these are the rights we have in the state of nature
0160 before there is any government
0161 in the case of life and liberty I can't take my own life I can't sell myself into slavery
0162 anymore than I can take somebody else's life or take someone else as a slave by force
0163 but how does that work in the case of property?
0164 because it's essential to Locke's case
0165 that private property
0166 can arise
0167 even before there is any government
0168 how can there be a right to private property
0169 even before there is any
0170 government?
0171 Locke's famous answer
0172 comes in section twenty seven
0173 every man has a property in his own person
0174 this nobody has any right to but himself
0175 the labor of his body
0176 the work of his hands
0177 we may say are properly his
0178 so he moves
0179 as the libertarians later of would move
0180 from the idea
0181 that we own ourselves
0182 that we have property in our persons
0183 to the closely connected idea that we own our own labor

0184 and from that
0185 to the further claim
0186 that whatever we mix our labor with
0187 is unowned
0188 becomes our property
0189 whatsoever then he removes out of the state that nature has provided, and left it in,
0190 he has mixed his labor with, and joined to it something that is his own,
0191 and thereby makes it his property
0192 why?
0193 because the labor
0194 is the questionable property of the laborer
0195 and therefore
0196 no one
0197 but the laborer can have a right
0198 to what is joined to or mixed with
0199 his labor
0200 and then he adds this important provision
0201 at least where there is enough and as good left in common
0202 for others.
0203 but we not only
0204 acquire our property in the fruits of the earth
0205 in the deer that we hunt
0206 in the fish that we catch
0207 but also
0208 if we till and plow and enclose the land and grow potatoes
0209 we own not only the potatoes
0210 but the land
0211 the earth
0212 as much land as a man tills, plants, improves, cultivates, and can use
0213 the product of, so much is his property.
0214 he by his labor
0215 encloses it from the commons. so
0216 the idea is that rights are unalienable seems to distance Locke from a libertarian
0217 libertarian
0218 wants to say we have
0219 an absolute property rate in our selves
0220 and therefore we can do with ourselves whatever we want

0221 Locke is not a sturdy ally for that view
0222 in fact he says if you take
0223 natural rights seriously you'll be led to the idea that there are certain
0224 constraints on what we can do with our natural rights, constraints given
0225 either by God
0226 or by reason reflecting on what it means really to be free and really to be free
0227 means recognizing
0228 that our rights are unalienable
0229 so here's the difference between Locke and the libertarians but
0230 when it comes
0231 the Locke's account of private property
0232 he begins to look again
0233 like a pretty good ally
0234 because he's argument for private property
0235 begins with the idea that we are the proprietors of our own person
0236 and therefore of our labor and there of the fruits of our labor
0237 including not only the things
0238 we gather
0239 and hunt
0240 in the state of nature
0241 but also we acquire a property right in the land that we enclosed and cultivate and improve
0242 there are some examples that can bring out the
0243 the moral intuition
0244 that our labor
0245 can take something that is unowned
0246 and make it ours
0247 though sometimes there are disputes about this
0248 there's a debate among
0249 rich countries and developing countries
0250 about trade related intellectual property rights
0251 it came to a head recently
0252 over drug patent laws
0253 western countries and especially the united states say
0254 we have a big pharmaceutical industry that develops
0255 new drugs
0256 we want
0257 all countries in the world

0258 to agree
0259 to respect the patents
0260 then there came along the aids crisis in south Africa
0261 and the American
0262 aids drugs
0263 were hugely expensive
0264 far more than could be afforded by most Africans
0265 so the south African government said
0266 we're going to begin
0267 to buy a generic version
0268 of the AIDS
0269 antiretroviral drug
0270 at a tiny fraction of the cost
0271 because we can find an Indian manufacturing
0272 company
0273 that figures out how the thing is made
0274 and
0275 produces it
0276 and for a tiny fraction of the cost we can save lives if we
0277 don't respect that patent
0278 and then the American government said
0279 no here's a company
0280 that invested research
0281 and created this
0282 drug
0283 you can just
0284 start mass-producing
0285 these drugs
0286 without paying the licensing fee
0287 so there was a dispute
0288 the US and the pharmaceutical companies sued the south African government to try to prevent
0289 their buying the cheap
0290 generic
0291 this they saw it,
0292 pirated version
0293 of an aids drug
0294 and eventually

0295 the pharmaceutical industry gave in
0296 and said
0297 all right you can do that but this dispute about what the rules
0298 of property
0299 should be of intellectual property
0300 of drug patenting
0301 in a way
0302 is the last frontier of the state of nature
0303 because among nations where there is no uniform law
0304 of patent rights and property rights
0305 it's up for grabs
0306 until by some act of consent
0307 some international agreement
0308 people enter into
0309 some settled
0310 rules.
0311 what about
0312 Locke's account of
0313 private property
0314 and how it can arise
0315 before government and before law comes on the scene
0316 is it successful?
0317 how many think
0318 it's pretty persuasive?
0319 how many
0320 don't find it persuasive?
0321 now let's hear from some critics
0322 what is wrong with Locke's account
0323 of how private property can arise
0324 without consent
0325 I think it's justifies
0326 European cultural norms as far as you look at
0327 how native Americans may not cultivated American land
0328 by their arrival
0329 in the America's
0330 that
0331 that contributed to the development of America which would have otherwise necessarily happened

0332 then or by that specific group

0333 so you think that this defense this defense of private property in land

0334 yes because it complicate original acquisitions if you

0335 only site the arrival of

0336 foreigners that cultivated the land

0337 I see, and what's your name?

0338 Rachelle

0339 Rachelle? Rachelle says this account of how property

0340 arises

0341 would fit

0342 what was going on

0343 in north America

0344 during the time of the

0345 settlement, the European settlement

0346 do you think

0347 Rochelle, that it's

0348 it's a way of defending

0349 the appropriation of the land

0350 indeed, because he is

0351 also

0352 you know, justifying the glorious revolution, so I don't think it's inconceivable

0353 that he's also

0354 justifying colonization as well

0355 well that's an interesting

0356 historical suggestion

0357 and I think there's a lot to be said for it

0358 what do you think of the validity of his argument though?

0359 because if you're right

0360 that this would justify the taking of land in north America

0361 from native Americans who didn't enclose it,

0362 if it's a good argument

0363 then Locke's given us a justification for that if it's a bad argument

0364 then Locke's given us

0365 a mere rationalization

0366 it is morally indefensible

0367 I'm leaning to the second one. You're leaning to the second one, but that's my opinion as well

0368 alright

0369 let's hear

0370 if there's a defender of Locke's account of private property

0371 and it would be interesting if they could address Rachelle's

0372 worried that this is just a way of defending the

0373 the appropriation of land by the American colonists

0374 from the native Americans who didn't enclose it

0375 is there someone who will defend Locke

0376 on that point?

0377 you're ready are you going to defend Locke?

0378 but you're you're accusing him of justifying the European basically massacre of the native

0379 Americans

0380 but who says he's defending it maybe the European colonization isn't right

0381 you know maybe it's the state of war that he talked about in his second treatise, you know

0382 so the war is between the native Americans

0383 and the

0384 colonists, the settlers

0385 that might have been a state of war

0386 that we can only emerged from

0387 by an agreement or an act of consent

0388 and that's what would have been required

0389 yeah and both sides would have to agree to and carry out and everything

0390 but what about

0391 and what's your name? Dan.

0392 Dan, what about

0393 Rachelle's says

0394 this argument

0395 in section twenty seven and then in thirty two

0396 about appropriating land

0397 that argument if it's valid would justify

0398 the settlers

0399 appropriating that land and excluding

0400 others from it

0401 you think that argument's a good argument?

0402 well does it kind of imply that the native Americans hadn't already done that?

0403 well the native Americans as hunter gatherers didn't actually enclose

0404 enclose land so I think Rochelle

0405 is on to something there

0406 what I wanted

0407 I

0408 go ahead Dan. At the same time he's saying that just by picking an acorn or taking a apple or

0409 maybe killing of buffalo on a certain amount of land

0410 that makes it yours because it's your labor and that's your labor would enclose that land

0411 so

0412 by that definition maybe they didn't have fences

0413 around

0414 little plots of land but didn't

0415 they were using it

0416 so by Locke's definitions, so maybe by Locke's definition

0417 the native Americans could have claimed a property rights

0418 in the land itself but they just didn't have Locke on their side

0419 as she points out. good

0420 okay that's good

0421 One more defender of Locke

0422 well I mean just to defend Locke, he does say there are

0423 some times in which you can't take another person's land for example you can't acquire land

0424 that is common property to people and in terms of American Indians I feel like they already have

0425 civilizations themselves

0426 and they were using land in common so it's kind of like

0427 an analogy to what he was talking about with like the

0428 common English property

0429 you can't take land that everyone has in common. That's very interesting

0430 and you can't take land

0431 unless you make sure that there's as much land as possible enough for other people take as

0432 well

0433 so if you're taking common,

0434 so you have to make sure whenever you take land or

0435 that there's enough let for other people to use

0436 that's just as good as the land that you took

0437 That's true, Locke says there has to be this

0438 right to private property in the earth is subject

0439 to the provision that there be as much and as good left for others

0440 what's your name. I'm Fang

0441 So Fang in a way agrees with Dan that maybe there is a claim within Locke's framework

0442 that could be developed

0443 on behalf of the native Americans

0444 here's the further question,

0445 if the right to private property is natural not conventional,

0446 if it's something

0447 that we acquire even before we agree to government

0448 how does that right constrain what the legitimate government can do

0449 in order for finally to see,

0450 whether Locke is an ally

0451 or potentially

0452 a critic

0453 of the libertarian idea

0454 of the state

0455 we have to ask what becomes of our natural rights

0456 once we enter into society

0457 we know that the way we enter into society is by consent by agreement

0458 to leave the state of nature and to be governed by the majority

0459 and by a system of laws, human laws

0460 but those human laws

0461 our only legitimate

0462 if they respect

0463 our natural rights

0464 if they respect

0465 our inalienable rights to life liberty and property

0466 No

0467 parliament

0468 no legislature

0469 however democratic

0470 its credentials

0471 can legitimately

0472 violate

0473 our natural rights.

0474 this idea

0475 that no law can violate our right

0476 to life liberty and property would seem

0477 to support

0478 the idea of a government so limited

0479 that it would gladden the heart of the libertarian

0480 after all
0481 but
0482 those hearts should not be so quickly gladdened
0483 because even though
0484 for Locke
0485 the law of nature persists
0486 once government arrived
0487 even though Locke
0488 insists on limited government
0489 government limited
0490 by the end for which it was created
0491 namely the preservation of property
0492 even so
0493 there's an important sense
0494 in which
0495 what counts as my property
0496 what counts
0497 as respecting
0498 my life and liberty
0499 are for the government
0500 to define
0501 that there be property
0502 that there be respect
0503 for life and liberty
0504 is what limits government
0505 but what counts
0506 as respecting my life
0507 and respecting my property
0508 that is for governments
0509 to decide and define
0510 how can that be
0511 is Locke contradicting himself
0512 or is there an important distinction
0513 here in order to answer that question which will decide Locke's fit with the libertarian view
0514 we need to look closely
0515 at what legitimate government
0516 looks like for Locke,

0517 | and we turn to that next time.
