

LOCKE'S WASTE RESTRICTION AND HIS STRONG VOLUNTARISM

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There is a conflict between two principles informing Locke's political philosophy, namely his waste restriction and his strong voluntarism. The waste restriction is proposed as a necessary, enforceable restriction upon rightful private property holdings, and it yields arguments to preserve and redistribute natural resources. The strong voluntarism is proposed as the liberal ideal of political obligations. It expresses Locke's view that each individual has a natural political power, which can only be transferred to a political body through the individual's voluntary, actual consent. On this view, the legitimacy of a political body is dependent upon its subjects' actual consent to its authority. After a brief outline of these two ideas, I will argue that we cannot maintain both at the same time. Therefore, contemporary Lockians must either derive restrictions upon private property concerned with preserving natural resources from other aspects of Locke's theory, or they must accept weak voluntarism as the ideal of political obligations. Both alternatives pose significant problems for the Lockian project.

The Waste Restriction

Locke argues that God commands us to labour rationally or be 'industrious'—and not to waste our resources (II §34, cf. 31–2),¹ hence Locke's justification for the waste restriction. By giving only a theological justification for the waste restriction, Locke

¹ John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: CUP, 1960), henceforth referred to in this form.

fails to demonstrate that the law of nature is justifiable both from the perspective of revelation and from the perspective of reason. We can, however, help to secularize Locke's claim by arguing that the waste restriction is a natural complement to the principle of self-preservation.² We have a right to appropriate resources by means of our labour, to preserve ourselves.³ If we waste the resources we have appropriated, then we are not investing labour in them to preserve ourselves. Therefore, there is a *use*-limitation on the amount of private property we can acquire or hold, in the sense that only purposive labouring activities aimed at self-preservation give rise to rightful private property. Given the reasonable assumption that the secular Lockian account of justice is a thoroughly *relational* account,⁴ according to which justice is understood in terms of rightful relations between persons, the waste restriction gives persons a right to force one another to use their natural resources productively. Those who waste their natural resources, on this view, lose their right to hold on to them, meaning that the resources must either be returned to the commons or be redistributed amongst those engaged in productive activities.

Voluntarism

In this paper, voluntarism is seen as involving a defence of four claims describing the state's use of coercion: 1) state authority requires coercion; 2) coercion by an unauthorized state is illegit-

² A. John Simmons argues along similar lines. See, for example, his *The Lockean Theory of Rights* (Princeton: PUP, 1992), 237–9, 281–6.

³ It is reasonable to argue that Locke defends our right to obtain conveniences if there is a sufficient amount of resources available for all.

⁴ A theory that fundamentally understands rightful relations in terms of rights and duties that persons hold against one another, as the Lockian and all liberal accounts do, must presumably be a relational account.

imate since it is inconsistent with respecting each individual's natural political power; 3) only individuals' consent can give the state authority, and 4) individuals can authorize the state to enforce their individual rights on their behalf as well as to make new laws that regulate their interactions within the sphere permitted by the law of nature. In this way, the voluntarist position maintains that all rightful use of coercion, whether by the state or by individuals, is exercised within the framework set by the law of nature. The main difference between the state's and individuals' exercise of their rights is that the state's right to enforce the law of nature coercively is *artificial* in that it must be explained through individuals' consent to its authority, whereas individuals have a *natural* right to enforce this law.

Voluntarism consists in the view that political obligations, or obligations to obey a political power, arise only through consent. The distinction between weak and strong voluntarism derives from the fact that consent is seen as coming in one of two possible forms. *Strong* voluntarism is the view that only *actual* (explicit or tacit) consent can give rise to obligations to a particular political power. On this view, a particular political power's use of coercion remains illegitimate without an *actual* authorization (consent) by each individual, since only such an actual authorization can fully reconcile the state's artificial political power with the individual's natural political power. In contrast, *weak* voluntarism is the view that *hypothetical* consent is sufficient to give rise to political obligations. This means that if persons, as rational or reasonable beings, *can be seen* as consenting to a particular state's use of coercion, then subjects of this particular political power are politically obligated to recognize its legitimacy. In sum, strong or weak voluntarist positions maintain that particular individuals are obliged to obey particular political governments, to whose power they are subjected, *only if* actual or hypothetical consent (respectively) to the political power can be demonstrated.

Below I will argue that Locke affirms strong voluntarism in his writings, but that his waste restriction is compatible only with weak voluntarism.

Locke's Strong Voluntarist Conception of Political Obligations

Locke argues that rightful private property relations obtain only if individuals appropriate and hold private property in accordance with certain restrictions. These include the waste restriction, but also the 'enough-and-as-good' proviso, according to which we can appropriate unowned natural resources only if we leave enough and as good natural resources behind for the others.⁵ These restrictions, Locke argues, enable the rightful appropriation and holding of private property. In principle, therefore, Locke does not consider it necessary to institute civil society or *public* rules and procedures to ensure rightful acquisition of natural resources or to found rightful private property. The state is considered just, as long as individuals apply the restrictions when appropriating and holding private property. Indeed, even if we choose to enter civil society, the civil authority enforces restrictions derivable from those that virtuous individuals ideally enforce on their own in the state of nature. Civil society is therefore not seen as a strict or enforceable precondition of justice, rather it is the result of voluntary choice.

At this point we may ask why, given Locke's account, we should ever leave the state of nature. As he writes in 'An Essay Concerning Toleration': 'For if men could live peaceably and quietly together without uniting under certain laws and entering into a commonwealth, there would be no need at all of magistrates or politics, which are only made to preserve men in this world from the

⁵ There is some discussion regarding how many enforceable restrictions there are on Locke's view, but for our purposes here, we can steer clear of this discussion.

fraud and violence of one another'.⁶ The reason, then, to enter civil society is prudence. Entering civil society is the prudent choice given 'the inconveniencies' in the state of nature (II §127), which make 'the enjoyment of the property [the individual] has in this state...very unsafe, very unsecure' (II §123, cf. §§124, 149, 222). The 'inconveniencies', Locke contends, have three sources:⁷ In the state of nature, where each person is 'Judge, Interpreter, and Executioner', it is difficult to ensure that right, rather than might, settles the boundaries of property (II §136). That is, the specification of the law of nature depends upon individuals' ability to interpret it; the judgement of particular cases is dependent upon their ability to judge impartially, and the enforcement of the law of nature is dependent upon individuals' actual power to do so. In short, the three inconveniences characterizing the state of nature are the lack of posited laws, the absence of unbiased judges, and the unequal distribution of power among individuals. When justice is left to individuals in this way, it is highly likely that the rule of law is replaced with the rule of power—making it a prudent decision to leave the state of nature behind.

Since justice is extremely difficult to realize in the state of nature, Locke argues that the prudent thing to do is to leave the state of nature behind and enter civil society.⁸ The advantage sought

⁶ In *John Locke: Political Writings*, ed. D. Wootton (London: Penguin Books, 1993), 186; cf. II §§123, 128.

⁷ In a couple of places, Locke also talks of the love and want of society as a motivation for creating civil society. See for example, II §§15, 101. Whether or not we include these interests as additional motivating factors for leaving the state of nature is irrelevant for the issues discussed here.

⁸ 'To avoid these Inconveniencies which disorder Mens Properties in the state of Nature, Men unite into Societies, that they may have the united strength of the whole Society to secure and defend their Properties, and may have *standing Rules* to bound it, by which every one may know what is his. To this end it is that Men give up all their Natural Power to the Society which they enter into, and the Community put the Legislative Power into such hands as they think fit, with this trust, that they shall be govern'd by *declared Laws*,

by entrusting our individual natural political power to the civil, political authority is to increase our security against violations of the law of nature. So, Locke does not argue that the lack of positive laws makes it in principle impossible to establish rightful borders between yours and mine, but merely maintains that the inconveniences make it extraordinarily difficult to do so. Consequently, although entering civil society is required by prudence, it is not strictly required from the point of view of justice and no one can be forced to enter.⁹ All rightful use of force must be consistent with the original ascription of political power to each individual: any legitimate political authority must not only incorporate the law of nature, but must also rest on the actual consent of the people.¹⁰ If individuals are forced into civil society, they are in effect enslaved, since their political freedom is coercively subjected to the arbitrary choices of others. Entering civil society therefore is not an enforceable right or duty. Each person upon reaching the age of reason must decide for himself whether or not to enter civil society,¹¹ since only actual consent suffices to oblige a particular person

or else their Peace, Quiet, and Property will still be at the same uncertainty, as it was in the state of Nature' (II §136). Cf. II §§13–16, 21, 87–9, 101, 123–8, 131, 173.

⁹ 'Men being... by Nature, all free, equal and independent, no one can be put out of this Estate [the state of nature], and subjected to the Political Power of another, without his own Consent' (II §95). Similarly, 'The Natural Liberty of Man is to be free from any Superior Power on Earth, and not to be under the Will or Legislative Authority of Man, but to have only the Law of Nature for his Rule. The Liberty of Man, in Society, is to be under no other Legislative Power, but that established, by consent, in the Common-wealth, nor under the Dominion of any Will, or Restraint of any Law, but what the Legislative shall enact, according to the Trust put in it... Freedom of Nature is to be under no other restraint but the Law of Nature' (II §22). Cf. II §§15, 90, 96–9, 104, 106, 112, 116, 119–22, 134–6, 175, 186.

¹⁰ The public authority therefore cannot entrust legislative authority to any foreign or other domestic power (II §§134, 142, 217). The political authority is merely entrusted to make decisions on behalf of the citizens, namely to regulate their interactions with one another and their interactions as a group with other societies.

¹¹ For example, see II §§73, 116–18, 191, 211.

politically to obey a particular civil authority.¹² Therefore, strong voluntarism is seen as the liberal ideal of political obligations.¹³

The Irreconcilability of the Waste Restriction and Strong Voluntarism

As noted earlier, although Locke's justification for the waste restriction appeals to God's will, this is buttressed by the additional argument that the waste restriction is the natural complement to the principle of self-preservation. On this interpretation, the spirit of the waste restriction is that labour subject to the proviso gives us an enforceable right and duty towards one another to pursue *productive uses* of the resources. We have also seen that Locke's strong voluntarism is bound up with his conception of an individual's natural political power. Since only actual consent can reconcile an artificial political power's use of coercion with an

¹² Consent only ceases to be binding if civil society is dissolved by foreign conquest or if the political authority uses its powers in ways inconsistent with the political constitution. In these cases, the political authority forfeits its right to rule, and political power is returned to individuals or the people (II §§121, 149, 155, 211–22, 243). Locke gives three different answers concerning who is to judge exactly when a particular state no longer counts as civil society: each individual as answerable to his conscience, God in Heaven, and the majority of citizens (II §§168, 208, 240–2).

¹³ Actual consent, on which the legitimacy of civil society rests, comes in two forms: express and tacit consent (II §§87–9). Locke argues that individuals can permanently entrust their political rights to the state only by express (actual) consent (II §119; cf. II §§14–15, 122). An individual's express consent to entrust his natural political power to a political authority is the distinctive mark of his transition from the state of nature to civil society. Express consent, then, is necessary to make someone a full member of civil society. Nevertheless, Locke maintains that tacit consent suffices to make aliens and independents residing in the territory of the state politically obligated to abide by its laws. This means that someone who enjoys the protection of a civil state with regard to his property (life, land, liberty, and possessions) is seen as tacitly consenting to temporarily entrusting his political power to the state (II §§3, 7–18, 87–9, 91, 95, 99, 117, 128, 130, 171). Locke argues that by remaining in the territory, we tacitly agree to be obligated to the civil political authority, since we could have chosen to leave.

individual's natural political power, only actual consent can engender political obligations. Let me now show why I think these two principles, the waste restriction and Locke's strong voluntarism, are incompatible.

The main problem with the waste restriction is that it is in tension with Locke's claim that we have an enforceable right to remain in the state of nature. It seems that the waste restriction entails that we have a strict duty to leave the state of nature when there is a significant amount of violence. Because staying in the state of nature is to stay in a condition where much or possibly all of our labour and resources will necessarily be wasted due to wars and violence, abiding by the waste restriction seems incompatible with staying in the 'very unsafe, very unsecure' state of nature. In other words, if the productive use of the natural resources is an enforceable requirement in general, then to maintain overall consistency, we cannot be seen as having a right to stay in a condition where so much of our property—in severe cases even one's life—is wasted. Consequently, enforcing the waste restriction seems to entail that individuals can be forced to leave the state of nature, and individuals' actual consent to enter civil society cannot be a necessary requirement. Locke's waste restriction therefore appears to be in tension with his claim that strong voluntarism is the ideal of political obligations.

One might object that I mistake the waste restriction for an inefficiency restriction: that I wrongly presuppose that the waste restriction forbids *inefficient* uses of resources, but that Locke clearly distinguishes between wasting resources and using them inefficiently. The conclusion, then, would be that though we are not permitted to waste our resources, we are permitted to use them inefficiently. To counter this objection I argue that it is not clear that the intuition the waste restriction aims to capture distinguishes so easily between inefficiency and waste—at least not when the inefficiency is substantial. Let me illustrate this point. Assume that

I live in the north of Finland before the discovery of electricity, and I happen to love tomatoes. Due to the harsh climate in the north of Finland, tomatoes are very difficult to grow. Nevertheless, undaunted, I pursue my aim of growing tomatoes. As it turns out, the only way to grow tomatoes is by devoting the majority of my resources to heating a greenhouse. To generate the energy required for my greenhouse, I let most of the vegetables and other farm products I grow rot in compost bins, since this yields most of the energy I need. In addition, I cut from my forest as many trees as I possibly can, to burn for fuel to produce the balance of the heat needed for the tomatoes. This is how I manage to grow tomatoes.

In important ways, growing tomatoes in the north of Finland is analogous to trying to use resources productively in a violent state of nature. That is, productive activity on land typically requires stability (or absence of violent conflicts), and attempting to produce anything in a violent state is like trying to produce tomatoes in the north of Finland (an environment naturally hostile to successful tomato farming). It is problematic to say that under such circumstances one is merely using one's resources inefficiently, rather than wasting them. First, according to the ordinary way in which we talk about 'wasting' resources, I will be said to 'waste' my resources if I employ them in this way *even if* the Lockian position is that 'technically' I am simply using my resources inefficiently.¹⁴ Second, it is unclear that the waste intuition the Lockian position aims to capture can include such a technical distinction between waste and inefficiency when the inefficiency is so great as to call into question the rationality of the alleged 'productive' activity. Thus if we cannot forge a reasonable analytical distinction between waste and great inefficiency, it remains unclear that we can main-

¹⁴ For example, Simmons's conception of waste includes 'holding without using... [and] frivolous destruction (both of which deny others the opportunity of productive use)' (285). Obviously, staying in a violent version of the state of nature cannot be a case of 'frivolously' wasting one's resources, but it can be argued that it is a case of 'holding without using', since productive use of the resources is impossible there.

tain the waste restriction without also giving up an individual's right to stay in the state of nature.

Possible Responses to the Problem

I have argued that Locke's waste restriction is inconsistent with his strong voluntarism. This leaves us with two possible options—either to abandon the waste restriction or to abandon strong voluntarism. If we choose the latter, it seems that the most natural alternative is to argue that weak voluntarism is the Lockian ideal of political obligations. On this view, we do not have a right to stay in the state of nature as such, since hypothetical and not actual consent is required in order to legitimate a particular state's coercive authority. The rightful limits of the civil authority's power are then seen as comprising the individuals' rights as well as any additional powers transferred to the civil authority. That is, if we see the Lockian project through the weak voluntarist lens, then the civil authority's use of coercion is legitimate and its subjects are obligated to obey it in so far as the subjects, as rational and reasonable persons, *can be seen as* consenting to it.

Many contemporary Lockians will, however, consider the implications of adopting hypothetical consent over actual consent intolerable, since the requirement of actual consent is considered one of the Lockian tradition's most significant contributions to liberal theory. A. John Simmons makes this point persuasively. According to Simmons, hypothetical and actual consent must play different roles in a liberal theory of justice. He argues that hypothetical consent is sufficient for 'issues of justification', while actual consent is necessary for 'issues of legitimacy'. By this he means that a liberal theory based on individual rights must recognize that 'considerations that justify the state cannot by

themselves also serve to legitimate it'.¹⁵ More specifically, issues of justification are seen as merely concerned with the question whether a particular use of coercion is consistent with the law of nature. When a theory outlines the rightful boundaries of state coercion with regard to issues of justification, it gives an account of what uses of coercion are consistent with individual rights. The boundaries that a theory outlines in this regard simply show how a state must function in order for it to represent a morally justifiable and prudent way for individuals to cope with the inconveniences of the state of nature (ibid. 126, 154). Issues of justification, therefore, correspond to Locke's claim that any rightful use of coercion must be exercised within the law of nature.

In contrast, issues of legitimacy concern the rightfulness of the state's assumption of political power. These issues arise because individuals have political power naturally, whereas the state has political power only artificially. A state is legitimate, Simmons argues, only if its coercive power is derived from the natural political power of consenting individuals.¹⁶ Issues of legitimacy, therefore, concern whether or not the state has obtained its current political power through its citizens' *actual consent*. The problem, then, is that if the Lockian ideal of political obligations is weak voluntarism, it is no longer possible to draw the distinction between issues of justification and issues of legitimacy. Under weak

¹⁵ A. J. Simmons, *Justification and Legitimacy* (Cambridge: CUP, 2001), 139.

¹⁶ A recurrent objection Simmons has to liberal non-Lockian accounts of justice, such as neo-Kantian accounts, is that they typically affirm weak voluntarism, but fail to justify the resulting, implicit claim that the reasons they use to justify the state can also be used to legitimate it (Simmons, *Moral Principles and Political Obligations* (Princeton: PUP, 1981), 35ff, 46, 47f, 52; cf. his *Justification*, 147–55). Simmons points out that Kant himself does not make this mistake, since Kant argues for the non-voluntarist account. Nevertheless, the problem with Kant's non-voluntarist position is that Kant 'never explains very clearly why I have an obligation to leave the state of nature and live in civil society with others, rather than just a general obligation to respect humanity and the rights persons possess (whether in or out of civil society)' (Simmons, *Justification*, 140).

voluntarism both the state's justification and its legitimacy is given through an account of hypothetical consent. Therefore, one can no longer claim with Simmons that what is characteristic about the Lockian position is its principled identification of actual consent as a necessary precondition of a state's legitimacy. Thus, individuals cannot be seen as having natural political power in the way envisioned by Locke and Simmons. Given this implication, it seems that Lockians will resist giving up strong voluntarism.

It is likely that anarchist libertarians like Simmons, who find Locke's defence of individuals' natural political power at the heart of the libertarian position, will find it more tempting to let go of the waste restriction in order to maintain strong voluntarism. But this choice is beset with problems of its own. Adherence to the waste restriction entails a special enforceable right and duty to *preserve* the natural resources in our possession.¹⁷ Without the waste restriction, all related (preservation) restrictions upon natural resources must be traceable back to persons' rights to an original fair share of the resources. The solution, while still within the Lockian framework, seems to be to appeal to the 'enough-and-as-good' proviso to pick up the slack by arguing that under conditions of scarcity we must preserve natural resources in our possession because we have an obligation to ensure enough and as good resources for future generations. As we will see, however, this alternative sits uneasily within the framework of a secular, relational Lockian theory of justice.

To give one illustration, by means of Simmons's theory: he argues that the 'enough-and-as-good' limit is an 'outside' limit on private property, meaning that it determines the initial size or quantity of natural goods each person has a right to. In contrast, the waste restriction is an 'inside' limit, which concerns how we use what we have already rightfully acquired (*Lockean Theory*, 282–3).

¹⁷ Obviously, given the relational nature of Locke's theory of right, this may be impossible anyway.

If we give up the waste restriction, we give up what Simmons calls the ‘inside limit’, and any restrictions regarding how we use our private property must be derivable from the ‘outside limit’. To see why Simmons’s own theory is irreconcilable with such an idea, we must look a little closer at his conception of the proviso.

Simmons argues that newcomers have a right to acquire their original share, but he rejects the idea that future generations must be included when calculating persons’ original rightful shares at any particular time. According to Simmons, the ‘enough-and-as-good’ proviso requires us to calculate the fair share of material resources as relative to the number of persons existing in a society at any time or as relative to the number of persons who actually want to appropriate (ibid. 295).¹⁸ For example, if we are nine people sharing an area and each of us wants a share of the resources, then each of us has the right to one-ninth of the materials found there. In this way, ‘the “fairness” of acquisitions...is *relative* to the time at which they occurred’ (ibid. 297). This does not mean that newcomers do not have a right to obtain their fair share—of course they do—but Simmons rejects the idea that considerations of future generations must be a part of calculating original fair shares at any particular time. Instead, Simmons emphasizes that future generations can be given ‘access to a living’ as they come into existence (ibid. 298). But there are good reasons for arguing that the acquisition rights of future generations not only *can* be provided for in this way, but *must* be. After all, according to Simmons, the Lockian conception is inherently relational, meaning that justice is seen as the rightful *relations* between persons—and since future persons do not exist presently, it seems impossible to appeal to them within the relational Lockian scheme. The implication of this is

¹⁸ Simmons argues that since Locke does not mention future generations as relevant to determining the proviso, and because ‘in I §42, Locke strongly suggests that the ‘fairness’ of acquisitions...is relative to the time at which they occurred’ (ibid. 297), the calculation of the fair share at any one time should not include future generations as a relevant variable.

that the rights of future generations are not secured directly, but rather indirectly through the waste restriction, since it ensures that resources are used productively at all times. Consequently, if Simmons no longer can appeal to the waste restriction (the 'inside limit'), then he can no longer justify either a right and duty to ensure that resources are used productively or the possibility of securing resources for future generations. Giving up the waste restriction, therefore, comes at considerable cost.

To see this point more clearly, consider Michael Otsuka's argument that the 'enough-and-as-good' proviso must incorporate intergenerational considerations:

[i]n order to guarantee... intergenerational equality of ability to better oneself, and still assuming that generations are of the same size, each individual would need to be restricted so that she has the right to acquire no more than one- n th of [the planet]... where n is the total number of individuals who will ever inhabit [it]... If we assume a very large number of generations, then each individual would be entitled to acquire only a minute sliver... In light of these difficulties, it is reasonable to deny the existence of complete rights to consume, destroy, or bequeath those resources that one has acquired from an unowned state. It would make far more sense to insist that the members of each generation ensure that, at their deaths, resources that are at least as valuable as those that they have acquired lapse back into a state of non-ownership.¹⁹

Considerations of future generations entail, Otsuka argues, that persons at any particular time only have a right to an infinitely small amount of natural resources. Since no one can preserve themselves with only an infinitely small amount of resources, he suggests we should argue that living persons have a right to a larger original share of resources as long as they leave behind their original fair share when they die. Obviously, there are some peculiar problems arising when trying to conceptualize the enforceability of such a

¹⁹ *Libertarianism without Inequality* (Oxford: OUP, 2003), 37.

legal right and duty towards dead or dying people.²⁰ But more importantly, the main problem with this conception is, I believe, that it seems incompatible with a relational, liberal conception of justice, according to which we conceive of justice as rightful *relations* between persons. The problem is that it seems impossible to appeal to future, non-existing persons within a secular relational account.²¹ Since future generations do not currently exist, they cannot have enforceable claims towards us and vice versa, which is to say that we cannot establish rightful relations with them. For these reasons, it seems that if contemporary Lockian positions give up the waste restriction, then they also give up the possibility of ensuring productive uses of resources at any one time and the availability of natural resources for future generations.²²

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²⁰ After all, if a person is dead and has spent all his resources, then there are no resources to be returned, whereas before the person is dead, she is under no obligation to return any resources.

²¹ If we argue within a theological account, we can argue that the relation is one with God.

²² I would like to thank Arnt Myrstad, Arthur Ripstein, Gopal Sreenivasan, Sergio Tenenbaum, Shelley Weinberg, and the editor of *Locke Studies* for their useful comments and support in the process of writing this article.