

## Background on property

### 1 What was he trying to show about property?

“I shall endeavour to show, how Men might come to have a *property* in several parts of that which God gave to Mankind in common, and that without any express Compact of all the commoners.” (Locke §25)

### 2 Why “common ownership”?

“And God said, Behold, I have given you [Adam -m]g] every herb bearing seed, which is upon the face of all the earth, and every tree, in the which is the fruit of a tree yielding seed; to you it shall be for meat. And to every beast of the earth, and to every fowl of the air, and to every thing that creepeth upon the earth, wherein there is life, I have given every green herb for meat: and it was so.” (Genesis 1.29-30)

“God blessed Noah and his sons, and said to them, ‘Be fruitful and multiply, and fill the earth. The fear and dread of you shall rest on every animal of the earth, and on every bird of the air, on everything that creeps on the ground, and on all the fish of the sea; into your hand they are delivered. Every moving thing that lives shall be food for you; and just as I gave you the green plants, I give you everything.’” (Genesis 9.1-3.)

### 3 Why would you need “express compact” for private ownership?

“if ... all men were indifferently and without distinction Lords of the whole, before a division was made of some parts, then of necessity we must conceive, they all ought to remain, equally and without distinction, Lords of those parts which never came under a division, even as they were before, unless some compact or covenant intervene whereby all kind of ancient right or title of common interest shall be so renounced, that any persons whatsoever might afterwards become particular masters of those places which should remain vacant or undisposed, who should first corporally seize them with an intent of possessing, holding, using, and enjoying.

... it must be yielded, that some such compact or covenant was passed in the very first beginnings of private Dominion or possession, and that it was in full force and virtue transmitted to posterity by the Fathers who had the power of distributing possessions after the flood.” (Selden, 22-23)<sup>1</sup>

#### 4 Problems with requiring “express compact” (i.e. consent)

“How the Consent of Mankind could bind posterity when all things were common, is a point not so evident: where children take nothing by gift or descent from their parents, but have an equal and common interest with them, there is no reason in such cases, that the acts of the fathers should bind the sons. I find no cause why Mr. Selden should call *community a pristine right*; since he makes it but to begin in Noah, and to end in Noah’s children, or grand-children at the most.” (Filmer, 213)

“Certainly, it was a rare felicity, that all the men in the World at one instant of time should agree together in one mind, to change the Natural Community of all things into Private Dominion: for without such an unanimous Consent, it was not possible for Community to be altered: for, if but one man in the World had dissented, the Alteration had been unjust, because that Man by the Law of Nature had a Right to the common Use of all things in the World; so that to have given a Propriety of any one thing to any other, had been to have robbed him of his Right to the common Use of all things. ... If our first Parents, or some other of our Forefathers did voluntarily bring in Propriety of Goods, and Subjection to Governours, and it were in their power either to bring them in or not, or having brought them in, to alter their minds, and restore them to their first condition of Community and Liberty; what reason can there be alleged that men that now live should not have the same power? So that if any one man in the World, be he never so mean or base, will but alter his Will, and say, he will resume his Natural Right to Community, and be restored unto his Natural Liberty, and consequently take what he please, and do what he list; who can say that such a man doth more than by Right he may? And

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<sup>1</sup> Hugo Grotius (189-90) and Samuel Pufendorf (Book 4, Ch. 4, pp.361-78) had similar accounts of the origin of private property.

then it will be lawful for every man, when he please, to dissolve all Government, and Destroy all Property.” (Filmer, 234-36)

“He that is nourished by the acorns he picked up under an oak, or the apples he gathered from the trees in the wood, has certainly appropriated them to himself. ... will any one say he had no right to those acorns or apples he thus appropriated, because he had not the consent of all mankind to make them his? Was it a robbery thus to assume to himself what belonged to all in common? If such a consent as that was necessary, man had starved, notwithstanding the plenty God had given him. We see in *commons*, which remain so by compact, that it is the taking any part of what is common, and removing it out of the state nature leaves it in, which *begins the property*; without which the common is of no use. And the taking of this or that part does not depend on the express consent of all the commoners.” (Locke §28)

## 5 The alternative Locke wanted to avoid: absolutism

Hobbes, e.g.: no natural property rights and no property rights against the sovereign. (*Leviathan*, ch. 13-15, 17-18.)

“I have briefly presented here the desperate inconveniences which attend upon the Doctrine of *the natural freedom and community* of all things; these and many more absurdities are easily removed, if on the contrary we maintain *the natural and private Dominion of Adam*, to be the fountain of all Government and Propriety...” (Filmer, 222)

## 6 References

Filmer, Robert. *Observations upon H. Grotius De Jure Belli & Pacis*. In *The free-holders grand inquest...* London, 1680.

Grotius, Hugo. *De Jure Belli ac Pacis Libri Tres*. Oxford: Clarendon Press, 1925.

Locke, John. *Two Treatises of Government*. Edited by Peter Laslett. Cambridge: Cambridge University Press, 1988.

Pufendorf, Samuel. *The law of nature and nations*. Fifth edition. London, 1749.

Selden, John. *Of the Dominion, or Ownership, of the Sea*. London, 1652.

## 7 Where to find it

1. Seventeenth century: Early English Books Online.<sup>2</sup>
2. Eighteenth: Eighteenth Century Collections Online.<sup>3</sup>
3. Full text searches for philosophers: Past Masters<sup>4</sup> or Liberty Fund.<sup>5</sup>
4. Legal material, including Grotius and Pufendorf: Hein Online.<sup>6</sup>

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<sup>2</sup> <http://eebo.chadwyck.com.ccl.idm.oclc.org/home>

<sup>3</sup> [http://galenet.galegroup.com/servlet/ECCO?locID=claremont\\_main](http://galenet.galegroup.com/servlet/ECCO?locID=claremont_main)

<sup>4</sup> <http://ezproxy.libraries.claremont.edu/login?url=http://library.nlx.com/>

<sup>5</sup> <http://oll.libertyfund.org/>

<sup>6</sup> <http://heinonline.org.ccl.idm.oclc.org/HOL/Welcome>