

Property background

1 Common to private ownership through consent

“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 1652, 22-23)¹

2 Filmer’s criticisms

“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 1680, 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

¹ Hugo Grotius (1925, 2:189-90) and Samuel Pufendorf (1749, 361-78) had similar accounts of the origin of private property.

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 then it will be lawful for every man, when he please, to dissolve all Government, and Destroy all Property.” (Filmer 1680, 234-36)

Sources

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