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0521271401 - A Discourse on Property: John Locke and his Adversaries

James Tully

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PART ONE

Philosophical Underpinnings

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[More information](#)

CHAPTER ONE

The contribution of the *Essay*i. From the *Two Treatises* to the *Essay*

1

Locke begins the chapter in the Second Treatise entitled 'Of Property' with two propositions which, as we shall see, are established in the First Treatise. Scripture reveals that the world is a gift given to mankind in common and natural reason teaches that men have a right 'to Meat and Drink, and such other things, as Nature affords for their Subsistence' (2.25). This, in turn, leads to an *aporia* or difficulty: 'this being supposed, it seems to some a very great difficulty, how any one should ever come to have a *Property* in any thing'. Locke sets himself to solve this difficulty of individuating the common gift within the constraints of each man's right to it: 'I shall endeavour to shew, how Men might come to have a *property* in several parts of that which God gave to Mankind in common'.

'Locke wants to explain', writes Yolton, 'how particularisation of the common is possible' (1970: p. 187). It is not, as Day assumes, a 'justification of private property' (1966: p. 207). It is an attempt to work out this problem of the natural distribution of common property (Dunn, 1969: p. 67n.4). To understand the nature of Locke's 'great difficulty', and his solution, it is necessary to trace the two propositions which give rise to it back to their basis in the law of nature. This is especially necessary in light of Nozick's potentially misleading claim that Locke 'does not provide anything remotely resembling a satisfactory explanation of the status and basis of the law of nature in his *Second Treatise*' (1974: p. 9).

Locke calls the right which all men have to the things necessary for subsistence 'property' and this is, in some sense, distinguished from 'property in' some thing which a person 'comes to have' in the process of individuation of the common gift (1.23, 24, 86, 87; 2.25). The right or property that all men have to things necessary for subsistence is said to be a consequence of the right which all men have to their preservation, derived by what Locke calls 'natural reason' (2.25). Locke consistently uses 'reason' in two senses, in the *Essays on the Law of Nature* (pp. 111, 149) the *Essay* (4.17.1) and in his second reply to Edward Stillingfleet

Cambridge University Press

0521271401 - A Discourse on Property: John Locke and his Adversaries

James Tully

Excerpt

[More information](#)

4

Philosophical Underpinnings

(1823: iv, pp. 366–7): to stand for either the object of search or the rational means of search (the discursive faculty). This is common in natural law writing and we also employ this linguistic practice when a kind of knowledge stands in a means–end relation to its object; for example, ‘logic’, ‘politics’ and ‘art’. Locke writes here of reason in the sense of the discursive faculty. This is known by the fact that when he wishes to characterise what the reasoning faculty discovers in morals and politics, other than by ‘reason’, he calls it natural law (1.101; 2.6; 1823: vii, p. 11).

Since the two rights, to preservation and to the means of subsistence, are discovered by natural reason, they are, *ipso facto*, derived from natural law. Locke derives the right to preservation from the fundamental law of nature that mankind ought to be preserved (1.86; 2.8, 25, 149). This logical series can be traced back one step further. In the *Essay* Locke argues that each natural law is a normative proposition and, as such, has itself a reason from which it follows as a consequence: ‘*there cannot any one moral Rule be propos’d, whereof a Man may not justly demand a Reason...the truth of all these moral Rules, plainly depends upon some other antecedent to them, and from which they must be deduced*’ (1.3.4; cf. 1.3.12). The primary duty to preserve mankind, and its corollary duty to respect ‘what tends to the Preservation of the Life, the Liberty, Health, Limb or Goods of another’, follows immediately from a special relation between God and man: ‘For Men being all the Workmanship of one Omnipotent, and infinitely wise Maker; All the Servants of one Sovereign Master, sent into the World by his order and about his business, they are his Property, whose Workmanship they are, made to last during his, not one another’s Pleasure’ (2.6).

It is not easy to understand the meaning of this conceptual model of God as maker and man as his workmanship, nor of God as master and man as his servant. Nor is the implicatory series from this workmanship model (as I shall call the relational model of man and his maker) to the law of nature and so to the two natural rights pellucid. If one looks for clarification one sees that the workmanship model is a fundamental feature of all Locke’s writing. (Indeed, on the basis of a content analysis alone the workmanship model can be seen to be a common theme uniting the *Essay* and the *Two Treatises*.) In the *Essay* he states that it is the ‘Foundations of our Duty and Rules of Action’ from which ‘the measures of right and wrong might be made out’ (4.3.18). (Measures of right and wrong are either natural laws or norms inferred from them (2.28.8, 13).) In his many uses of this conceptual model Locke makes it clear that it is the ground of property relations as well as of many political relations. Since Locke’s theory of property takes its start from this description of God and man, I begin with an investigation of it. It is discussed extensively in the *Essay*

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0521271401 - A Discourse on Property: John Locke and his Adversaries

James Tully

Excerpt

[More information](#)*The contribution of the 'Essay'*

5

and in the *Essays on the Law of Nature* and so to these we turn for enlightenment.

2

In using the *Essay* to assist in understanding Locke on property I am deliberately following an historical precedent. The three natural law writers whom Locke recommends are Richard Hooker (1554?–1600), Hugo Grotius or Huig de Groot of Delft (1583–1645) and Samuel Pufendorf (1632–92).¹ Hooker, the famous defender of Anglicanism, wrote the *Of the lawes of the Ecclesiastical Politie* (1593–1648). Grotius was a leading Dutch statesman, scholar and jurist whose single most important contribution to natural law political theory is *The Laws of War and Peace* (1625). Pufendorf, a German jurist, historian and political theorist, is famous for his major study, *The Law of Nature and Nations, or, a general system of the most important principles of morality, jurisprudence and politics* (1672). Jean Barbeyrac (1674–1744), a French legal theorist, annotated a Latin edition of Grotius' *The Laws of War and Peace* (1735) which was translated, with notes, into English by W. Innys and R. Manby in 1738. He annotated and translated into French Pufendorf's *The Law of Nature and Nations* (running to six editions by 1750) and this, in turn, was translated, with notes, into English by Basil Kennett and Carew (1729). Included in the English translation of Barbeyrac's annotated edition of Pufendorf is an account of natural law writing by Barbeyrac entitled 'An historical and critical account of the science of morality, and the progress it has made in the world, from the earliest times down to the publication of this work'. This study in the history of natural law political theory by Barbeyrac makes explicit the links between Locke and Grotius and Pufendorf on one hand, and between the *Two Treatises* and the *Essay* on the other.

Barbeyrac corresponded with Locke three times between 1702 and 1704, informing him of his intention to translate Pufendorf and asking his advice (MS. Locke, c.3, fo. 140). He learned English in order to read Locke in the original and offered criticism to Pierre Coste for his second French edition of the *Essay* (1729: 'Avis au lecteur'; Axtell, 1968: p. 92). 'No man in the early eighteenth century', Laslett notes of Barbeyrac, 'was in a generally better position than he to know about the relationship of his [Locke's] writings with the natural-law jurists and with the whole tradition of social and political theory' (1970: p. 306n). He was also the first to agree in print with Locke's claim that his is the best available explanation of property (1729: 4.4.3n.2).

Both Grotius and Pufendorf begin their work with a discussion of the kinds of concepts used in natural law theory, of the method appropriate to

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0521271401 - A Discourse on Property: John Locke and his Adversaries

James Tully

Excerpt

[More information](#)

it and of the degree of certainty obtainable (see below, pp. 30–2). Their substantive political theory is underpinned by the conclusions which they reach in this field. Barbeyrac's notes on this section in Pufendorf refer to Locke's *Essay* for both a clarification and a better treatment of the issues involved (1.1.2n.2). When Pufendorf comes to discuss property he states that his theory rests on his epistemological and methodological conclusions (4.4.1). In his commentary on Pufendorf's discussion of property Barbeyrac refers his reader to the *Two Treatises* for the definitive analysis of the topic (4.4. *passim*).

Barbeyrac strengthens the connection between the *Two Treatises* and the *Essay* in his 'historical and critical account of the science of morality'. He argues that the superiority of the seventeenth-century natural law writers rests on their reconstruction of political theory on the basis of a new epistemology introduced by Francis Bacon (p. 79). He adds Richard Cumberland (1631–1718), the Bishop of Peterborough, to the list of political theorists involved in this new wave of natural law writing (p. 87). Cumberland wrote *A Treatise of the Laws of Nature* (1672) to refute the political theory of Thomas Hobbes (1588–1679) and Barbeyrac brought out a French edition of Cumberland's treatise in 1744. Cumberland reinforces Barbeyrac's reconstruction argument, adding John Wallis, the Savilian Professor of Geometry in Oxford, and Locke's close friend, to those responsible for providing the conceptual tools necessary to revolutionise natural law theory (1727: pp. 183–5).

Although I am using Barbeyrac's excellent essay to situate Locke's writings in the correct *intellectual* context, it is important to note that Cumberland's treatise can be seen to be a constituent element of it by another means. In 1679–81 Locke renewed his interest in natural law, worked in close association with his friend James Tyrrell (1642–1718) on critical notes to *The Mischief of Separation* (MS. Locke, c.34), and probably composed major parts of the *Two Treatises* (for the date of composition of the *Two Treatises*, see below, pp. 53–4). Tyrrell wrote his *The Patriarch un-monarched* (1681) in this period and later went on to write an English version of Cumberland's work, entitled *Disquisition of the Law of Nature* (1691). Although Locke neither owned nor cited Cumberland's treatise, it cannot seriously be doubted that he read it, either independently or through prompting by Tyrrell in 1681 (von Leyden, 1970: pp. 14, 55, 66; Gough, 1976). It is also worth noting that Pufendorf inserted several quotations from Cumberland's treatise into the second edition of *The Law of Nature and Nations* (1688).²

Barbeyrac states that Grotius 'introduc'd in the last Age, the methodological Study of the Law of Nature' (p. 36), and Cumberland and especially Pufendorf brought about the revolution in natural law theory (p. 81). However, Barbeyrac grants Locke the honour of completing the

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0521271401 - A Discourse on Property: John Locke and his Adversaries

James Tully

Excerpt

[More information](#)*The contribution of the 'Essay'*

7

theoretical reconstruction in a definitive manner and opens his historical account with several sections of the *Essay* quoted in full. The *Essay* is said to prove the superiority of the moral sciences over the natural sciences in terms of the certainty of knowledge obtainable (pp. 1–9). As all these authors make clear, the term ‘moral sciences’ is a synonym for ‘natural law theory’ signifying works such as the *Two Treatises*: ‘I [Barbeyrac] mean by this [the Practical Science of Moral Actions], and the Term *Morality*, not only what is commonly so call’d, but also *The Law of Nature, and Politicks*: In a word, all that is necessary for the Conduct of a Man’s Self, according to his Estate and Condition’ (p. 11 and see below, pp. 27–34).

Barbeyrac isolates three main lines of the *Essay*, all dealing with the epistemological foundations of moral knowledge, which are both analyses of problems in seventeenth-century natural law theory and underpinnings of Locke’s own political theory. First, he takes Locke’s workmanship model to be the ground of natural law theory in general and of a limited natural rights theory in particular. Second, Locke’s work on modes and relations is said to be propaedeutic and necessary in understanding natural law political theory. Third, Locke’s analysis of real essences is responsible for putting political theory definitely on a superior footing (pp. 4–5, 10–13).

The aspect of Locke’s political theory of which these lines of the *Essay* are supportive is Locke’s theory of property (p. 5; 1729: 4.4.2n, 4.4.3n, 4.4.6n, 8.1.3n). Barbeyrac includes in his references Locke’s discussion of property in the *Letters Concerning Toleration*, as well as the *Two Treatises* and the *Essay*. To speak of Locke’s theory of property is to speak of Locke’s theory of rights: ‘Mr. Locke means by the word ‘property’ not only the right which one has to his goods and possessions, but even with respect to his actions, liberty, his life, his body; and, in a word, all sorts of right’ (p. 4).

Therefore, Barbeyrac presents two major investigative aids: three parts of the *Essay* are essential in understanding Locke on property in context and Locke’s term ‘property’ means ‘right’ of any sort. These are the same two points derived above from the initial textual analysis, reinforced with contextual detail. This lends historical justification to the decision to begin, as Barbeyrac himself suggests, with the former (p. 84).

3

This approach may appear to contradict Laslett’s claim that the *Two Treatises* and the *Essay* exhibit no philosophical links. ‘None of the connecting links is present’ (p. 84). ‘It was written for an entirely different purpose and in an entirely different state of mind’ (p. 83). I think, how-

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0521271401 - A Discourse on Property: John Locke and his Adversaries

James Tully

Excerpt

[More information](#)

8

Philosophical Underpinnings

ever, that the apparent contradiction is not irreconcilable. Laslett's primary intention in this section is to disabuse the reader of the notion that Locke's political theory might be a logical deduction from his philosophy, as, for example, Hobbes' theory is (pp. 85–90). With this I wholeheartedly agree. Laslett goes on to suggest that there might be some sort of looser, 'open' relationship between the *Essay* and the *Two Treatises* (p. 87). It is this sort of relationship which is explored in this chapter, although I agree with Dunn that Laslett's description of it as a 'Lockean attitude' as opposed to a 'Lockean philosophy' is an unhappy one (1969: p. 199n). The following three introductory points serve to illustrate my basic agreement with Laslett. First the relationship suggested both by textual analysis so far and by Barbeyrac holds between only certain parts of the *Essay* and the *Two Treatises*. Second, the nature of the relationship is much looser than formal logical demonstration. I have tried to suggest this by using 'implicatory series', 'supportive', 'ground' and 'underpinning' to express, tentatively, the kind of connection. Yolton has shown that even when Locke uses the term 'demonstration' he normally means something less formal than logical deduction: 'demonstration meant primarily for Locke just the uncovering of conceptual connexions' (1970: p. 92; cf. Dunn, 1969: pp. 24n.3, 191). Third, Barbeyrac clearly thought there was an important link between the two works. This provides the historical justification, which Laslett seems to imply is missing (p. 83), for an attempt to make the link explicit. Finally, Yolton has already broken turf in this area with his excellent discussion of Locke's theory of property as an application of the kind of conceptual analysis recommended in the *Essay* for moral concepts (1970: pp. 181–95).

The major block to seeing the connections between the *Essay* and the *Two Treatises* has been, as Dunn states, the predisposition to view the *Essay* as a contribution to empiricism or rationalism (1969: pp. 198–9; cf. Yolton, 1970: p. 14). Following Barbeyrac's lead and situating it in the wider intellectual context of seventeenth-century natural law writing provides a means of interpreting it in an historically more sensitive manner, and so of understanding the 'reasons internal to the positions argued in the *Essay* which determined the particular shape' of the *Two Treatises* (Dunn, 1969: p. 92).

ii. Mixed modes and relations

1

The three themes in the *Essay* which Barbeyrac singles out for attention are closely related. The workmanship model, which we saw to be bedrock

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0521271401 - A Discourse on Property: John Locke and his Adversaries

James Tully

Excerpt

[More information](#)*The contribution of the 'Essay'*

9

for the analysis of property in the *Two Treatises*, is shown in the *Essay* to comprise two complex ideas: 'The *Idea* of a supreme Being, infinite in Power, Goodness, and Wisdom, whose Workmanship we are, and on whom we depend; and the *Idea* of our selves, as understanding, rational Beings' (4.3.18). Here Locke says the workmanship model, 'duly considered, and pursued', would afford the foundations of morality, as indeed it does in the *Two Treatises* (2.6). When he gives the idea a name he calls it '*the Notion of his Maker*' which, if ideas were innate, God would set 'on his own Workmanship, to mind Man of his dependance and Duty' (1.4.13). The fact that Locke calls the idea a 'notion' means that it is a special kind of idea: either a mixed mode or a relation (3.5.12; 1823: 1, p. 540; Yolton, 1970: p. 161). A description of Locke's analysis of mixed modes and relations provides an understanding of the epistemological status of the workmanship model. As Barbeyrac writes, 'In a System of the Law of Nature an author ought, without Dispute, to begin with instructing his Reader in the Nature of Moral Entities or Beings' (p. 84). 'Moral entity' is Pufendorf's term for the object constituted by a moral concept. Locke standardly uses his own terminology of modes and relations but he reverts to Pufendorf's term at 3.5.12.

One of the things which an idea is is the meaning of a term in use which stands for the idea: 'The meaning of Words, being only the *Ideas* they are made to stand for by him that uses them' (3.4.6). A general idea is what a general term in use stands for (3.3.6). There are two fundamentally different kinds of general idea: ectype and archetype (2.31.12; omitting simple ideas). General ideas of substances are ectype (2.31.13). All general ideas, except those of substances, are archetype ideas (4.4.5). General archetype ideas comprise, therefore, all ideas of 'sorts of things' (3.3.12) which are, in some sense, constructed by man as opposed to substances, which are constructed by nature. Locke subdivides archetype ideas into two very general categories: modes and relations (2.12.4, 7).

Modes are general ideas which do not contain as part of their meaning the supposition of subsisting by themselves (as general ideas of substances do), 'but are considered as Dependences on, or Affections of Substances; such are the *Ideas* signified by the words *Triangle*, *Gratitude*, *Murther*, *etc*' (2.12.4). Pufendorf opens *The Law of Nature and Nations* with a similar distinction (below, p. 32). In the above definition 'substances' refers to men. Locke's meaning is that men construct triangles, feel or express gratitude and commit murder (3.6.42). Simple modes are composed of one kind of simple idea, such as 'a dozen', which is a combination of units (2.12.5). Mixed modes are composed of several ideas of several kinds, such as '*Theft*, which being the concealed change of the possession of any thing, without the consent of the Proprietor, contains, as is visible, a combination of several *Ideas* of several kinds' (2.12.5). Relations are

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0521271401 - A Discourse on Property: John Locke and his Adversaries

James Tully

Excerpt

[More information](#)

general ideas which consist 'in a consideration and comparing one *Idea* with another' (2.12.7). Another way in which Locke makes the mixed mode relation distinction is to consider the word and its object. Words of relations, 'together with the thing they denominate, imply also something else separate, and exterior to the existence of that thing', whereas words of mixed modes do not (2.25.10).³

For the purposes of political philosophy there are three important kinds of relation. Natural relations are those in which two or more things are considered with reference to their origin or beginning, such as father, son, brother and countryman (2.28.2; cf. Pufendorf: 1.1.7). Instituted relations are those in which two or more things are considered with reference to an act, 'whereby any one comes by a Moral Right, Power, or Obligation to do something', such as citizen, governor, master and servant (2.28.3). They differ from natural relations in that they depend upon men's 'Agreement in Society' and 'in that they are most, if not all of them, some way or other alterable, and separable from the Persons, to whom they have sometimes belonged, though neither of the Substances, so related, be destroy'd' (2.28.3; cf. Pufendorf: 1.1.8–12). The workmanship model, for example, is a natural relation with respect to man but instituted with respect to God. A moral relation is a voluntary action's conformity to or disagreement with a rule. Sin and duty are the moral relations of a voluntary action to natural law, criminal and legal are the moral relations of a voluntary action to civil law, and virtue and vice are the moral relations of voluntary action to cultural norms (2.28.7; cf. Pufendorf: 1.2.5–6).

Mixed modes and relations, therefore, comprise an extremely large category of ideas. Many moral ideas (property, obligations, right) and all ideas of human artifacts, affections, actions and institutions are mixed modes. Any idea that we come to have by comparison is a relation. As Locke writes, '*to enumerate all the mixed Modes. . . would be to make a Dictionary of the greatest part of the Words made use of in Divinity, Ethicks, Law, and Politicks, and several other Sciences*' (2.22.12).⁴ Relations too are the central ideas of political theory. The various relations under which men are picked out 'should be observed, and marked out in Mankind, there being occasion, both in Laws, and other Communications one with another, to mention and take notice of Men, under these Relations: From whence also arise the Obligations of several Duties amongst Men' (2.28.2).⁵ As early as his Oxford lectures on natural law, *Essays on the Law of Nature* (1662), Locke stresses the central role of social relations in natural law theory: 'most precepts of this law [of nature] have regard to the various relations between men and are founded on those' (p. 197). Thus, there is a close connection between the *Essay* and the *Two Treatises* at this point. The epistemological aspects of these sorts of concepts are

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0521271401 - A Discourse on Property: John Locke and his Adversaries

James Tully

Excerpt

[More information](#)*The contribution of the 'Essay'*

11

investigated in the *Essay* and the conceptual connections yielding duties and rights of various relations, with reference to natural law, are worked out in the *Two Treatises*. Indeed, this is the stated aim of the *Two Treatises* (2.2). Thus, a fundamental assumption of Locke's political thought is, contrary to common misunderstandings, not to treat man as an isolated individual but, rather, to treat him in his various relations with other men and with God.

The kind of knowledge appropriate to ideas of substances is knowledge of 'The Nature of Things, as they are in themselves, their Relations, and their manner of Operation'; φυσική or natural philosophy (4.21.1). The end of this kind of knowledge is 'bare speculative Truth' (4.21.2). The kind of knowledge appropriate to mixed modes and relations is knowledge of 'That which Man himself ought to do, as a rational and voluntary Agent, for the Attainment of any End, especially Happiness'; πρακτική or practical knowledge (4.21.1). Locke's redescription of practical knowledge shows that it includes, but is not exhausted by, morality as defined earlier in terms of the kind of knowledge which is founded on the workmanship model (4.3.18), and which is identical to Barbeyrac's definition of morality in terms of natural law and political theory (4.21.3):

Πρακτική, The Skill of Right applying our own Powers and Actions, for the Attainment of Things good and useful. The most considerable under this Head, is *Ethicks*, which is the seeking out those Rules, and Measures of humane Actions, which lead to Happiness, and the Means to practise them.

The end of practical knowledge is 'not bare Speculation, and the Knowledge of Truth; but Right, and a Conduct suitable to it'. The third branch of knowledge is the logic of the ideas used in either practical or natural philosophy; semiotics or the doctrine of signs (4.21.4).

The first point to note in Locke's classification of knowledge is that practical knowledge includes both making and doing. As he writes, 'things good [doing] and useful [making]; any end'. This accords with his classification of knowledge elsewhere (1967: pp. 245–7) and with his grouping of the ideas of the applied sciences and those of morality, divinity, politics and law into one category (archetypal) (cf. Cumberland, 1727: pp. 50–2; Barbeyrac, 1729: pp. 2–5). The distinction between natural and practical knowledge is Aristotelian (Joachim, 1970: pp. 1–18). Man's object in the natural sciences is to understand, to contemplate; in the practical sciences to live in a certain way and to make certain things; not to understand except to act.

The second point to note is that the distinction between natural and practical philosophy is not isomorphic with theory and non-theory. Both these categories have a theoretical and a 'prudential' or experimental component. The normal Scholastic classification, on the other hand, is