

INDIVIDUAL RIGHT TO PROPERTY VS. ECONOMIC INTEREST OF THE COMMUNITY

By Noah McKay

Resolved: The individual right to property ought to be valued above the economic interest of the community.

In last week's resolutional overview, I said that the right to property has a long and complex history in western philosophy and law. For that reason, it will be difficult to fit a helpful overview of the philosophy behind this resolution in just a few pages. But I will do my best to hit most of the highlights and give you a springboard for further research and discussion.

Part I: The Social Contract

If you have competed in LD debate before, you have probably heard of social contract theory. This theory, which was most famously defended by the early-modern philosophers Thomas Hobbes, Jean Jaques Rousseau, and John Locke, says that governments are formed when the members of a community enter into a special kind of contract, a contract whereby they give up some of their own rights and privileges to a governing authority who in turn serves as a neutral arbiter and protector.¹

Locke's theory has been the most influential. (Indeed, the Preamble to the Declaration of Independence is lifted almost directly from Locke's *Second Treatise of Government*.) According to Locke (and Hobbes and Rousseau, though they do not focus on it so pointedly), the government's authority is based on the consent of those whom it governs:

John Locke (John Locke was an English philosopher and physician, widely regarded as one of the most influential of Enlightenment thinkers and commonly known as the "Father of Liberalism."), *Two Treatises of Government and a Letter Concerning Toleration*, ed. Ian Shapiro (New Haven: Yale University Press, 2003), 152-53.

Whosoever therefore out of a state of nature unite into a community, must be understood to give up all the power necessary to the ends for which they unite into society, to the majority of the community, unless they expressly

¹ For primary sources, see Jean Jaques Rousseau, *The Social Contract and, The First and Second Discourses*, ed. Susan Dunn (New Haven: Yale University Press, 2002), Bk. I Ch. VI; Thomas Hobbes, *Leviathan* (Minneapolis: Lerner Publishing Group, 2018), Ch. XIII-XIV, XVIII; and John Locke, *Two Treatises of Government and a Letter Concerning Toleration*, ed. Ian Shapiro (New Haven: Yale University Press, 2003), Ch. VIII.

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agreed in any number greater than the majority. And this is done by barely agreeing to unite into one political society, which is all the compact that is, or needs be, between the individuals that enter into, or make up a commonwealth. And thus that which begins and actually constitutes any political society, is nothing but the consent of any number of freemen capable of a majority, to unite and incorporate into such a society. And this is that, and that only, which did or could give beginning to any lawful government in the world.

The appeal of social contract theory comes from its basis in consent. After all, if you were to ask me, “What gives you the right to do X to me?” the best possible answer I could give is, “Because you *told* me I could.” Under the social contract, that is government’s defense when its authority is challenged.

Hobbes, Rousseau, and Locke disagreed about precisely what parties to the social contract are required to give up – Hobbes, who was a monarchist, thought that the social contract requires citizens to surrender *all* of their rights and privileges, while Locke, who favored majority rule, thought it requires them to surrender almost none – but all three believed that the existence and obligations of government depend on the voluntary establishment of the social contract. That means the *duties* of government are determined by the *purpose* for which it was instituted. So, a highly relevant question for debaters to answer this year is: *why* do governments exist? Do they exist primarily to protect individual rights (as Locke believed)? Or do they exist to uphold common interests that no single member of the community could uphold on his own (as Rousseau probably believed)? Or is it *both*? And if it is both, which one comes *first*?

Before leaving this section, it is worth noting that social contract theory is a highly idealized account of government authority. In reality, virtually no one consents to living under the government of their nation. Locke tried to address this by saying that individuals *tacitly* consent to government power by not leaving their nation’s territory, but that is not a realistic option for many people (especially the most oppressed). However, many contemporary philosophers still appeal to the social contract as a thought experiment. John Rawls, professor of philosophy at Harvard and perhaps the most influential political philosopher of the twentieth century, pursued this strategy in his book, *A Theory of Justice*. Rawls’ argument is quite complex, but here is the simplified version: If we can determine what kind of government we *would* form *if* we had the chance to write our own social contract, that will tell us what a just government *should* be like. Rawls came to two conclusions via this thought experiment: the first was that governments are obligated to uphold an extensive system of basic liberty for every citizen, since every citizen values liberty. We will discuss his second conclusion in a later section.²

² John Rawls (John Rawls was a professor of philosophy at Harvard University and is widely considered to be the most important political philosopher of the 20th century. His landmark work, *A Theory of Justice*, presented a novel and powerful defense of individual liberty. He was awarded the National Humanities Medal by President Bill Clinton in 1999), *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1974), Ch. 1.

Part II: Natural Rights

In the last section, I made a claim that is technically untrue: not *every* social contract theorist believes that the duties of government are *entirely* based on consent. Locke argued that governments have some duties that precede the social contract, duties that come from natural law. For Locke, natural law demands that every person respect the life, liberty, and property of others, regardless of whether there is a social contract which requires them to do so. Locke called these rights “inalienable,” because they are given to each person by God and cannot be surrendered through consent.

Locke argued that the right to property is a natural right because each person comes into the world as the owner of himself. And if he owns himself, he has a right to his labor, since his labor is in some sense a part of him or derived from him. But that means that each person has a right to property in whatever goods he can acquire by his own labor. For example, according to Locke, it is possible to acquire a field by plowing it (as long as nobody else already owns it, of course). Anyone who thereafter uses the field without the owner’s permission steals a part of that owner’s labor, and thus a part of the owner himself. By doing this, the thief in some sense denies that the owner of the field owns himself and instead posits that the *thief* owns him. Robert Nozick, professor of philosophy at Harvard (and a colleague of Rawls’), put the point this way:

Robert Nozick (Robert Nozick was an American philosopher. He held the Joseph Pellegrino University Professorship at Harvard University and was president of the American Philosophical Association.), *Anarchy, State, and Utopia, 2013 Edition* (New York: Basic Books, 2013), 163.

Whether it is done through taxation on wages or on wages over a certain amount, or through seizure of profits, or through there being a big social pot so that it’s not clear what’s coming from where and what’s going where, patterned principles of distributive justice involve appropriating the actions of other persons. Seizing the results of someone’s labor is equivalent to seizing hours from him and directing him to carry on various activities. If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them part-owner of you; it gives them a property right in you. Just as having such partial control and power of decision, by right, over an animal or inanimate object would be to have a property right in it.

On this view, infringing on the right to property is the same kind of offense as slavery; it is just slavery in a less conspicuous form. If Locke and Nozick are correct, then the individual right to property does *not* depend on the social contract, as Hobbes and Rousseau supposed. So, the resolution comes down to when (if ever) government is justified in restraining someone’s natural rights. (As it turns out, we all believe that this is appropriate in some circumstances, for

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instance when government officials take away a criminal's liberty by incarcerating him or enter someone's property uninvited to perform a search. The challenge for NEG will be to show that limiting the right to property for the sake of the economic interest of the community is similar to these other, appropriate limitations on natural rights. That is difficult, but by no means impossible.)

Part III: Distributive Justice

So far, we have spoken only of rights, contracts, and obligations. But the concept of justice is relevant to the resolution as well. More specifically, the resolution has direct implications for distributive justice, or justice regarding the distribution of wealth. There are innumerable different theories of distributive justice, but we will examine four of the most important.

A. Meritocracy

One of the most ancient and intuitive theories of distributive justice says that wealth should be parceled out in accordance with merit, so that, to put it somewhat simplistically, virtuous people are rich and vicious people are poor. The ancient Greek philosopher Aristotle defended this view, pointing out that we feel uneasy when wealth is distributed in a way that does not accord with merit. When, for example, a thief is rich and an honest craftsman is poor, our conscience tells us that something must be done to raise the honest man up and bring the thief down.³ (This, by the way, is similar to the theory of distributive justice that Job takes for granted in the Old Testament. That is why he cannot understand why he is afflicted with poverty despite being the most righteous man alive.)

The strength of the theory of meritocracy is that it is intuitive – almost everyone will accept it when it is first described to them. Its weakness is that it sometimes appears to deliver the wrong verdict about what is just. Suppose a virtuous man leaves an equal portion of his estate to his two sons, one of them a good man and the other a moral reprobate. On Aristotle's view, the just thing to do would be to confiscate the vicious son's inheritance and give it over to the virtuous son. But that seems wrong – it seems that justice requires respecting the father's wishes, and the vicious son could rightly complain that he had been treated unjustly if his inheritance was taken away. This suggests that Aristotle's view, though appealing, is incomplete.

³ Aristotle, *Nicomachean Ethics*, trans. Roger Crisp (Cambridge: Cambridge University Press, 2014), Bk. V Ch. 3.; see also Aristotle, *Politics*, trans. Peter Simpson (Chapel Hill: University of North Carolina Press, 1995), Bk. III Ch. 12.

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B. Equality

Popular understandings of distributive justice often center on equality: equal rights, equal pay, equal opportunity, etc. And most philosophers would agree that justice requires equality in *some* sense. But there are many different kinds of equality (some of them mutually incompatible), and it is unclear which one is most important for distributive justice.

The simplest kind of equality is equality of outcome. A system that followed this principle would strive to ensure that every person in society had *exactly* the same amount of wealth. Practically no philosopher has ever seriously defended this view, since it is impossible to implement practically. Moreover, it is extraordinarily difficult to determine when two people have equal portions of wealth: are two men equally wealthy if each one has a boat but only one of them has a use for it?

The next simplest kind of equality is formal equality, or equality under the law. This kind of equality is enshrined in the Fourteenth Amendment to the U.S. Constitution. In a formally equal society, everyone has equal status before the governing authorities, regardless of their wealth, race, or social rank. In essence, formal equality is *impartiality*. This kind of equality, unlike equality of outcome, is compatible with income inequality of any magnitude. As long as the super-rich in society acquire their wealth by obeying the same laws as the extremely-poor, formal equality is satisfied.

Third and finally (for the purposes of this brief summary), distributive justice may require equality of opportunity. By “equality of opportunity,” many philosophers just mean formal equality. But some philosophers, such as Ronald Dworkin, professor of law and philosophy at New York University, have argued that equal opportunity requires that every person have an *equal chance to succeed*, and that those who are born with disadvantages should be compensated for them, so that their chances of success are not hampered by unlucky accidents of birth. According to Dworkin, once this compensation is made, each person’s success should be left up to his own choices.⁴ This principle requires governments to confiscate and redistribute wealth under certain circumstances. (Note, however, that it is *not* socialism. Socialism says that wealth should be owned by the state, and that it should be up to the state who gets what. That was not Dworkin’s view.)

C. The Difference Principle

The Difference Principle is Rawls’ second principle of justice, the one I alluded to above. The Difference Principle says that, in a just society, whatever economic inequality exists should

⁴ Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2000), 5.

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benefit the least advantaged in that society, so that they are better off with the inequality than they would be without it. The saying “a rising tide lifts all boats” provides a good analogy for the Difference Principle: according to Rawls, the tide should only be allowed to rise if it lifts *all* boats, including the boats of the poor and marginalized. Inequality that does nothing to benefit the poorest among us should not be permitted by a just government.⁵

Rawls’ argument for the Difference Principle is quite detailed, but it boils down to this: If we had the opportunity to form our own society (i.e., author our own social contract), *everyone* would agree to the Difference Principle, since it would benefit everyone, even the disadvantaged. And a principle to which all reasonable people would agree is a just principle almost by definition.

D. The Entitlement Theory

Robert Nozick argued that views like Rawls’ and Aristotle’s are incompatible with even a minimal degree of economic freedom, since they seek to impose a certain *pattern* of distribution on society and the only way to maintain this pattern is to prevent people from engaging in free exchange. Take Aristotle’s view, for example. Suppose that we in the United States somehow succeeded in apportioning wealth in precise accordance with merit. On Aristotle’s view, that distribution would be perfectly just. It follows that any deviation from that distribution would be *unjust*. If, for example, a rich person chose to give to the poor or to pay a less wealthy person for a good or a service, justice would be undermined, since wealth would be transferred from a more virtuous person to a less virtuous person. So, in order to uphold justice, the state would have to continually interfere to prevent such transfers.

As you might imagine, Nozick was unhappy with that consequence. The alternative he offered is called the entitlement theory, which boils down to two principles: “finders keepers,” and “thou shall not steal.” The entitlement theory is an updated version of Locke’s theory of property: it says that the only just ways to acquire an entitlement to something are (i) to produce it by your own labor or (ii) to acquire it from someone who is already entitled to it through voluntary exchange.

⁵ John Rawls (John Rawls was a professor of philosophy at Harvard University and is widely considered to be the most important political philosopher of the 20th century. His landmark work, *A Theory of Justice*, presented a novel and powerful defense of individual liberty. He was awarded the National Humanities Medal by President Bill Clinton in 1999), *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1974), Ch. 2.

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The draw of the entitlement theory is twofold: first, it is more compatible with liberty than any of the alternatives. Second, it is based, like social contract theory, in consent. So long as a distribution is arrived at through exchanges that are entirely voluntary, no one has grounds to complain about the distribution, since it is what they – along with everyone else – *agreed* to.

Part IV: Free Markets

So far, we have been considering what we might call moral arguments about the resolution. But many philosophers have offered practical arguments for the individual right to property. Perhaps the most famous such argument comes from the Austrian philosopher and economist F. A. Hayek. Hayek argued that economic freedom always leads to greater prosperity than government control, since in a free market economy the task of distributing resources is spread out across all of society. This allows society to make use of the “diffuse knowledge” that exists in the population. For example, in a free market economy, an individual architect can make use of his detailed knowledge about his own industry and situation when deciding how to use his resources, detailed knowledge that no government bureaucrat could have. Thus, in a free market economy, every decision about wealth distribution is *more informed*, and thus more efficient, than it would be under centralized government control.

F. A. Hayek (Friedrich August von Hayek was an Austrian economist, legal theorist and philosopher who is best known for his defense of classical liberalism.), *The Constitution of Liberty* (Chicago: Chicago University Press, 1960), 30-31.

It is through the mutually adjusted efforts of many people that more knowledge is utilized than any one individual possesses or than it is possible to synthesize intellectually; and it is through such utilization of dispersed knowledge that achievements are made possible greater than any single mind can foresee. It is because freedom means the renunciation of direct control of individual efforts that a free society can make use of much more knowledge than the mind of the wisest ruler could comprehend.

As I explained in the resolutional overview, it is dangerous for AFF to hang his hat on arguments like this one, since he may be accused of valuing the individual right to property only *because* it contributes to the economic interest of the community. However, arguments like Hayek’s may safely be used to refute the claim that robust property rights are bad for the community’s interests, or, alternatively, to show that the two rarely conflict with each other.

Conclusion

This overview has been brief, and I have had to leave quite a lot unsaid. (If you ever see me in person, ask me about the common good and the role of government. But make sure you have an hour or two free before you do.) But I suspect that most of the successful philosophical

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arguments offered this season will trace back to the subjects covered here. In next week's strategy section, I will show you how to apply many of these arguments in your constructive speeches.