

Property and Possession in Rousseau's *Social Contract*<sup>1</sup>  
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1.

What is Rousseau's attitude toward private property? Complex, to say the least.

On one hand, Part II of his *Discourse on Inequality* begins with the memorable salvo:

The first person who, having enclosed a plot of ground, bethought himself to say *this is mine*, and found people simple enough to believe him, was the true founder of civil society. How many crimes, wars, murders, how many miseries and horrors Mankind would have been spared by him who, pulling up the stakes or filling in the ditch, had cried out to his kind: Beware of listening to this imposter; You are lost if you forget that the fruits are everyone's and the Earth no one's (*DI*, 165/*OC* 3, 164; emphasis in original).<sup>2</sup>

On the other hand, when Rousseau turns from social critique to constructive political theory, property protection becomes integral to a just state. In the *Discourse on Political Economy*, property is "the true foundation of civil society...the most sacred of all the citizens' rights, and in some respects more important than freedom itself" (*DPE*, 23-24/*OC* 3, 263). Further, in *The Social Contract*, the fundamental political project is "[t]o find a form of association that will defend and protect the person *and the goods* of each associate with the full common force, and by means of which each, uniting with all,

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<sup>1</sup> Draft for: *The Cambridge Companion to Rousseau's 'Social Contract'*, eds. David Williams and Matthew Maguire. Please do not cite without permission.

<sup>2</sup> I cite Rousseau parenthetically in the text, using the following abbreviations: *DI*: *Discourse on the Origin and the Foundations of Inequality Among Men* (1755), in *The Discourses and Other Early Political Writings*, 2<sup>nd</sup> Edition, ed. Victor Gourevitch (Cambridge: Cambridge University Press, 2019), pp. 114-229; *E*: *Emile, or on Education* (1762), trans. Allan Bloom (New York: Basic Books, 1979); *PE*: *Discourse on Political Economy* (1755), in *The Social Contract and Other Later Political Writings*, pp. 3-38; *SC*: *Of the Social Contract* (1762), in *The Social Contract and Other Later Political Writings*, 2<sup>nd</sup> Edition, ed. Victor Gourevitch (Cambridge: Cambridge University Press, 2019), pp. 39-155; *OC* 3: *Oeuvres Complètes*, ed. Bernard Gagnebin and Marcel Raymond, vol. 3 (Paris: Gallimard, Bibliothèque de la Pléiade, 1959-1969).

nevertheless obey only himself and remain as free as before (SC, 1.6.4/OC 3, 360; emphasis mine).<sup>3</sup>

Is there a coherent theory of property underlying these seemingly disparate remarks? An examination of property's role in *The Social Contract*, especially the dense chapter entitled "Of Real Property," sheds light on this question.<sup>4</sup>

Rousseau's treatment of property in *The Social Contract*, I propose, makes a nuanced intervention into the familiar debate about whether property rights are *conventional* or *natural*. Let me briefly summarize the terms of this debate. For the conventionalist, property rights are entirely products of human arrangements such as social practices, law, and state; absent such arrangements, there is no moral obligation to respect another's possessions. For the natural lawyer, by contrast, individuals have a moral entitlement to property which obtains independently of conventional arrangements and so constrains the forms such arrangements may take.<sup>5</sup> (Said in contractarian language: property rights obtain in 'the state of nature.')

According to the conventionalist, respecting someone's property is like stopping at red lights; both obligations depend for their legitimacy on the existence of a social order. Whereas according to the natural lawyer, refraining from interfering with someone's property is like refraining from assault; both obligations prohibit actions that are wrong in themselves, not wrong simply by law. Conventionalism about property is associated with

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<sup>3</sup> SC, 1.6.4 refers to Book 1, Chapter 6, paragraph 4.

<sup>4</sup> "*Du domaine réel.*" Alternatively translated: "Of Real Estate," as in Rousseau, *Of the Social Contract and Other Political Writings*, ed. Christopher Bertram (New York: Penguin Books, 2012), p. 24.

<sup>5</sup> For a statement of the core issues, see Anna Stilz, "Property Rights: Natural or Conventional?" in *The Routledge Handbook of Libertarianism*, eds. Jason Brennan, Bas van der Vossen, and David Schmidtz (New York: Routledge, 2017), pp. 244-258.

Hobbes and Hume; the natural rights view with Locke.<sup>6</sup> Where is Rousseau in this venerable debate?

A cursory reading of *The Social Contract* might take Rousseau to be a conventionalist. After all, he suggests that there are no “property relationships” or “stable property” (*propriété constante*) in the natural condition (SC, 1.4.8/OC 3, 357), and that it is only via the social contract that man gains “property in everything he possesses” (SC, 1.8.2/OC 3, 364). Yet in the “Of Real Property” chapter Rousseau also refers to a natural or pre-political dimension of property. He discusses the “right of the first occupant,” speaks of an original “community of goods,” and suggests, in an explicitly Lockean vein, that “labor and cultivation” are “the only sign of property that others ought to respect in the absence of legal titles” (SC, 1.9.2-1.9.3/OC 3, 365-366).

The complexity of Rousseau’s views on property comes to a head in a key passage on the “transition” (SC, 1.8.1/OC 3, 364) from the state of nature to political community:

What man loses by the social contract is his natural freedom and an unlimited right to everything that tempts him and he can reach; what he gains is civil freedom and property in everything he possesses. In order not to be mistaken about these compensations, a clear distinction has to be drawn between natural freedom that has no other bounds than the individual’s force and civil freedom that is limited by the general will, and between *possession that is merely the effect of force or the right of the first occupant* and *property that can only be founded on a positive title* (SC, 1.8.2/OC 3, 364-365; emphasis mine).

This passage seems a clear endorsement of conventionalism: property emerges only through the social contract. In the absence of political institutions, there are no genuine obligations to respect the property of others, only a diffuse and conflict-prone entitlement to take what one wants (“an unlimited right to everything that tempts him and he can

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<sup>6</sup> The actual views of these thinkers are far more complicated than this schematic presentation suggests. Given limitations of space, I have (mostly) resisted the temptation to position Rousseau with respect to the broader tradition, instead treating his thought on its own terms.

reach"). Read carefully, however, this passage intimates a more complex relationship between the conventionality of 'property' and the natural status of 'possession.' For it also says that in the state of nature possessory claims are not only (or at least not always) obtained through mere "force," but can also be expressions of a "right of the first occupant." It appears then that for Rousseau property rights are not created solely by state and law, but instead represent some kind of transformation of pre-political rights concerning the use of things. What exactly this means awaits explanation.<sup>7</sup>

Reconstructing Rousseau's views on property is important for understanding his broader position within the history of political thought. (Is Rousseau's vision of a just society liberal, republican, or socialist in spirit?). But such an exercise is also of independent philosophical interest. This is because both positions in the property debate speak to something compelling. The attractions of conventionalism are perhaps more obvious. Why think that just *by nature* people have rights to own parts of the earth, especially when the cost is often great human immiseration? Since most property is maintained by social arrangements—what good is a car without roads on which to drive it?—it seems as though society should have the authority to construct property rights in

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<sup>7</sup> Some commentators see Rousseau's state of nature as containing "provisional" property claims; others of the civil state as "*transforming* rather than merely *securing*" natural property rights, or as "modif[ying]" Lockean principles of private ownership. See Christopher Bertram, *Rousseau and 'The Social Contract'* (New York: Routledge, 2004), p. 90; Chris Pierson, "Rousseau and the Paradoxes of Property," *European Journal of Political Theory* 12 (2013): 409-424, 411, 418; David Siroky and Hans-Jörg Sigwart, "Principle and Prudence: Rousseau on Private Property and Inequality," *Polity* 46 (214): 381-406, 395 (emphases in original); and Nicholas Dent, *A Rousseau Dictionary* (London: Wiley Blackwell, 1992), p. 199. These formulations, while helpful, call for further philosophical elucidation.

a manner that best advances its own ends, not least of which is the pursuit of distributive justice. Behind conventionalism stands laudable aspirations for social reform.<sup>8</sup>

Still, the natural rights position is not without plausibility. To see why, imagine two individuals encountering one another in the wilderness, far beyond the reach of law and state. Many (myself included) will hold that these individuals have duties not to murder and assault one another, duties which stem from their shared personhood. But once one recognizes the moral centrality of personhood, it becomes significant that persons' essential activities characteristically involve the use of land, natural resources, and tools. Thus the very same considerations that justify protections of the person also justify protections of the material substratum or expression of the person's activities. In other words, if one of these individuals interferes with the crops or dwelling of the other, it seems that the wrongness of their actions, just like the wrongness of assault, does not depend on the existence of a shared public order or social conventions that declare theft or vandalism a crime.<sup>9</sup> Such state of nature scenarios may appear irrelevant to the modern world. But then make of these individuals an Indigenous person and the other an artificial person such as a state or multinational corporation. In such cases, the conventionalist view could easily justify colonial occupation and territorial expansion.

Since both the conventionalist and natural-rights views of property speak to important moral truths, we should examine with great interest Rousseau's attempt to reconcile them. As we will see, a proper grasp of his position requires considering property in its broadest possible senses: not just as the possessory claims of individuals

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<sup>8</sup> For a contemporary defense of conventionalism see Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (Oxford: Oxford University Press, 2004).

<sup>9</sup> I draw here on Stilz, "Property Rights," pp. 245-246 and T.M. Scanlon, *Why Does Inequality Matter?* (Oxford: Oxford University Press, 2018), pp. 105-106.

backed by legal sanction, but also as the resources of the earth and the territory of states.

2.

My assertion that Rousseau recognizes a ‘natural’ (i.e., pre-political) dimension to property rights, and so is indeed attempting to reconcile natural rights with conventionalism, may meet with suspicion. This is because *The Social Contract’s* central philosophical concept—the ‘general will’—seems to imply that *all* rights, property rights included, are constructed by the political community. Indeed, Rousseau appears to announce his rights-conventionalism at the outset of the *Social Contract*: “[T]he social order is a sacred right that serves as the basis for all others. Yet this right does not come from nature; it is therefore founded on conventions” (SC, 1.1.2/OC 3, 352). In this section, I explain the connection between the general will and conventionalism; in the next section, I show how the property chapter challenges that connection.

As is well-known, the fundamental task of *The Social Contract* is to reconcile individual freedom with political authority. Rousseau’s bold claim is that one can be both free and yet subject to the state’s laws *only* when political authority emanates from the collective will of the community—i.e., from the general will—rather than from the personal will of the ruler.<sup>10</sup> Political power, Rousseau writes, must derive from an agreement where: “*Each of us puts his person and his full power in common under the supreme direction of the general will; and as a body we receive each member as an indivisible part of the whole*” (SC, 1.6.9/OC 3, 361; emphasis in original).

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<sup>10</sup> The best explanation of how the general will reconciles freedom with authority is Frederick Neuhausser, “Freedom, Dependence, and the General Will,” *The Philosophical Review* 102 (1993): 363-395.

This rudimentary description of Rousseau's fundamental thesis already suggests conventionalism. If collective agreement is the fount from which all political norms flow, then individual rights appear to be determined through democratic deliberation. Such a view is very different from one in which individuals arrive at the scene of deliberation, as it were, already armed with basic rights and protections. In other words, Rousseau's conception of the general will seems to entail that rights derive from the political process, rather than being conceptually antecedent to it.

It is important not to misunderstand the kind of conventionalism at issue here. Rousseau's view is adamantly *not* that your rights are just whatever any particular community decides. He is not a proto-populist for whom individual protections may always be legitimately subverted through democratic force.<sup>11</sup> Rather, Rousseau's position is that the general will, by its very nature, must create a sphere of rights-protections for the individual. In other words, if a community crafts laws empowering the majority to tyrannize minorities, its decision is not an expression of the general will.

Why must the general will create individual rights? To answer this difficult question, let me draw on the often-made point that Rousseau does not understand the social contract to be a contract in the ordinary sense.<sup>12</sup> Typical contracts are bi-lateral agreements in which parties transfer goods or services: e.g., I agree to purchase your horse for \$100. But such contracts are effective only if there already exists a coercive

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<sup>11</sup> This interpretation, while controversial, is convincingly established by Joshua Cohen in his *Rousseau: A Free Community of Equals* (Oxford: Oxford University Press, 2010), see pp. 82-83, 146-148.

<sup>12</sup> See Samuel Freeman, "Reason and Agreement in Social Contract Views," *Philosophy and Public Affairs* 19 (1990): 122-157 and Louis Althusser, *Politics and History: Montesquieu, Rousseau, Marx*, trans. Ben Brewster (New York: Verso Books, 2007), pp. 125-134.

body—e.g., a state or community—to hold each party to account. Since ordinary contracts presuppose social and political institutions, they cannot be used to justify them.<sup>13</sup>

If the social contract is not about contracts, what is it about? In my view, it is centrally about the thought expressed in this terse passage:

A people, says Grotius, can give itself to a king. So that according to Grotius a people is a people before giving itself to a king. That very gift is a civil act, it presupposes public deliberation. Hence before examining the act by which a people elects a king, it would be well to examine *the act by which a people is a people*. For this act, since it is necessarily prior to the other, is the true foundation of society (SC, 1.5.2/OC 3, 359) (emphases mine).

Rousseau is making an important point here about relations of conceptual priority. Agreements between two parties obviously depend on both parties actually existing prior to the exchange. (One does not make contracts with ghosts.) So, Rousseau suggests, *logically* prior to any commission of rulers by the people is the question of what makes a collection of individuals into a unified entity—a people—in the first place. Rousseau's answer, of course, is that for a collection of individuals to form a people it must have a general will.<sup>14</sup> The essential point about rights is that rational individuals will not participate in the construction of such a will unless they receive certain guarantees from the collective agent they are making. The rights of the individual are those guarantees.

Let me illustrate through an example, one which draws on Rousseau's discussions of public deliberation and popular assemblies as expressions of the general will.<sup>15</sup>

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<sup>13</sup> Here are two other disanalogies. (1) Ordinary contracts take place against the background of inequality—e.g., I sell my labor to the boss because I need him more than he needs me. But the social contract, Rousseau argues, should not be made from a position of antecedent bargaining advantage (e.g., DOI, 175-178/OC 3, 175-178.) (2) Ordinary contracts involve limited terms of exchange. But the social contract involves the “total alienation of each associate with all of his rights to the whole community (SC 1.6.6/OC 3, 360). I touch on a third disanalogy just below.

<sup>14</sup> For useful accounts of Rousseau's conception of the general will, see Cohen, *Rousseau: A Free Community of Equals*, ch. 2; and Gopal Sreenivasan, “What is the General Will?” *The Philosophical Review* 109 (2000): 545-581.

<sup>15</sup> On public deliberation see, in addition to SC, 1.5.2, quoted above, SC, 1.7.2/OC 3, 361. On public assemblies see SC, 3.12-3.15/OC 3, 425-431.

Imagine many individuals in a closed room, each shouting at the top of their lungs. This scene is clearly not one of group deliberation or debate, even if they are shouting about the same topic. What would resolve this cacophony into a debate? For one, a transformation in mindset: each individual must come to think of what they are shouting as in relation to what others are shouting, thereby conceptualizing their own activity in relation to a broader whole. But a change in mindset, while necessary, is not sufficient. Collective debate also requires shared norms of speech: rules about who can speak when and what topics are fit for discussion. Moreover, if these rules are to function, they must carry sanctions. If someone abruptly changes the subject, there must be some basis for the others to say, 'Stay on topic,' and enforce a punishment if she declines (e.g., refusing to engage further or perhaps removing her from the room). Roughly speaking, from these elements of social reality—mental attitudes, actions, sanction-based rules—emerges a general will.<sup>16</sup>

But why would anyone in the room agree to participate in the debate unless they were guaranteed that the rules eventually established will afford them a voice in the conversation? Any set of rules that *arbitrarily* excludes some people from speaking—where arbitrary means: not essential to the shared goal of the debate—could never be agreed to by everyone in the room. Think then of rights as what allow each participant to remain *distinct persons* in the constructed whole.<sup>17</sup>

Of course, the state can tax you, conscript you into the army, and put you in jail, not just eject you from the room. Since the power of the state is literally a matter of life

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<sup>16</sup> This paragraph draws on Arthur Ripstein, "The General Will," *History of Philosophy Quarterly* 9 (1992): 51-66.

<sup>17</sup> Rousseau would wholeheartedly concur with John Rawls that "justice must take seriously the distinction between persons." *A Theory of Justice* (Cambridge: Harvard University Press, 1971, p. 27).

and death, the rights of *citizens* must be far more robust than the rights of debaters. In figuring out the content of these rights, human nature enters the picture. Because human beings have vulnerable bodies and cannot survive without the use of things, they will not participate in the construction of a general will unless rights to property and person are among its guarantees. (If we scurried across the earth in protective shells or lacked opposable thumbs, the terms of the general will might be different.) But while these rights have an essential connection to our nature, they are not, for all that, *natural rights*. That is, Rousseau does not think that human beings just come into the world with rights to person and property that the state must protect. Rather, Rousseau's view is that our nature merely sets the agenda for discussion, highlighting the areas about which citizens should reach a genuinely deliberative decision.

In sum, Rousseau thinks that while the general will must create rights to person and property, such rights do not precede the general will.

3.

This understanding of rights, while attractive, faces a philosophical problem. In my view, "Of Real Property" is Rousseau's attempt to solve it. To appreciate the dilemma, let me suggest an important criterion for a general will that was omitted from my previous discussion. In addition to a collective mindset, a set of sanction-based rules, and actions conducted in light of those rules, a general will needs to be realized *somewhere*—usually, a location on the earth. (In this regard, general wills are no different from individual wills, which are not ethereal presences but are housed in human bodies.) With respect to the general will of the state, the name for this location is 'territory.' Now here's the problem: what gives the state the *right* to its territory?

Conventionalism struggles to answer this question. The individuals who comprise a given community find themselves in a particular corner of the earth. History, usually a violent one, explains why. But how could the artificial being such individuals create—i.e., the people— just give itself the moral authority to conduct its affairs in that particular spot? (Returning to our previous example: all the individuals may have found themselves in the same room, but what authorizes them to conduct their debate *there*?) The idea that the people can retroactively transform the facts of history into rightful entitlement looks like sheer moral alchemy.

Perhaps alchemy is the best we can do: the land-grab at the foundation of the state must either be accepted as brute fact or retroactively legitimized.<sup>18</sup> But in the property chapter, Rousseau explores the more optimistic possibility that the relation between state and territory is one of right and not sheer force. If he is correct, then *underneath* (both literally and conceptually) the rights constructed through political agreement is a prior moral framework governing the relation between persons and land.

Questions of territory and jurisdiction help contextualize the otherwise quite mysterious opening paragraph of “Of Real Property”:

Each member of the community gives himself to it the moment it gets formed, such as he then is, himself with all his forces, of which the goods he possesses are a part. Not that by this act possession changes in nature by changing hands and becomes property in the hands of the Sovereign. But just as the City’s forces are incomparably greater than a private individual’s, so, at least in relation to foreigners, does public possession in fact have greater force and is more irrevocable without being any more legitimate. For with regard to its members, the State is master of all their goods by the social contract, which serves as the basis of all rights within the State; but with regard to other Powers it is master of all its members’

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<sup>18</sup> The moral ambiguity of state foundation is precisely the topic of Rousseau’s chapter on the Lawgiver (*SC*, 2.7/*OC* 3, 381-384). The Lawgiver instigates a just society by forms of persuasion that look suspiciously close to brainwashing.

goods only by the right of the first occupant, which it derives from private individuals (SC, 1.9.1/OC 3, 365).

This passage moves between two seemingly distinct issues. First, it treats the relation between persons and possessions in the state of nature—i.e., before the state constructs property rights and becomes “master of [everyone’s] goods.” Second, it treats the relation of states to one another, specifically, the relation of one state to the property holdings of another state’s citizens. Regarding the first issue, Rousseau goes against his apparent conventionalism, suggesting that people come to state formation with their “goods” already in hand. The possessions of individuals don’t simply “change hands” through the social contract and become property of the state. This is all surprising enough. But what do the natural possessory claims of individuals and the international order have to do with one another?

We can reconstruct Rousseau’s somewhat tortured reasoning as follows:

1. States do not form social contracts with one another.
2. There are rightful relations between states.
3. So there are rightful relations that do not derive from social contracts. (1, 2)

Assuming (3) is true—and one could of course deny it by contesting premise (1) and/or (2)—why should it illuminate the relation between persons and their possessions in the state of nature? It does so on a further assumption:

4. The relation between individuals in the state of nature is sufficiently similar to the relation between states such that the same kinds of rights govern both domains.

Since Rousseau repeatedly describes states as moral persons, (4) can plausibly be attributed to him.<sup>19</sup> In short, Rousseau’s reasoning here is by analogy: because states

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<sup>19</sup> E.g., SC, 2.4.1, 3.4.1, 3.6.1/OC 3, 372, 406, 408; DPE, 6/OC 3, 244. To complicate matters, Rousseau sometimes suggests that only states, not individuals, can wage war against one another. E.g., SC, 1.4.8-10/OC 3, 357 and the unpublished text “Principles of the Right of War” (circa 1758) in *The Social Contract and Other Later Political Writings*, pp. 166-180. This presents a

have a duty to recognize the territory of another—a duty not derived from any explicit agreement—individuals in the state of nature have a duty to respect others' possessions. I take this to be why Rousseau says that the rightful relation between state and territory is “derived” from individuals' natural occupancy rights.<sup>20</sup>

How does Rousseau understand the nature and justification of the right of occupancy? The second paragraph of the property chapter explains:

The right of the first occupant, although more real than the right of the stronger, becomes a true right only after the right of property has been established. Every man naturally has the right to everything he needs; but the positive act that makes him the proprietor of a given good excludes him from all the rest. Once he has received his share, he has to limit himself to it, and he has no further right to the community of goods. That is why the right of the first occupant, so weak in the state of nature, is respected by everyone in civil society. In this right one respects no much what is another's as what is not one's own (SC, 1.9.2/OC 3, 365).

Evidently, Rousseau's state of nature is not devoid of moral norms concerning the use of things; would-be proprietors are not simply mired in a war of all against all. Instead, there is a genuine *right* of first occupancy, a right grounded in the moral status of human needs. Since “every man naturally has the right to everything he needs,” a person is morally obligated to “limit himself” to only “his share” of the earth's resources.

The connection between occupancy and needs explains the significance of *first* occupancy. Rousseau's view is not that there is some intrinsic moral value in being first. Rather, timing matters because being the first to occupy a region of the earth is a way of signaling that I am claiming my share. In so doing, I am not only disabling other people's entitlement to take these resources; I am also establishing a moral barrier on

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major disanalogy between the two forms of moral personhood, which threatens to render (4) unsupported. See Bertram, *Rousseau and 'The Social Contract,'* pp. 67-69 for discussion.

<sup>20</sup> As Rousseau writes shortly after “the combined and contiguous land holdings of individuals become the public territory” (SC, 1.9.5; OC 3, 366).

my own further acquisitive activity: I have taken what I need and will take no more.<sup>21</sup>

Occupancy is thus an expressive act—it says that I am within a moral community aimed at the satisfaction of everyone’s needs.

Rousseau’s subsequent quasi-Lockean reference to labor as conferring natural title must therefore be understood carefully. Rousseau writes:

In general, the following conditions must obtain in order to authorize the right of the first occupant to any piece of land. First, that this land be not yet inhabited by anyone; second, that one occupy only as much of it as one needs in order to subsist; In the third place, that one take possession of it not by a vain ceremony but by labor and cultivation, the only sign of property that others to respect in the absence of legal titles (SC 1.9.2/OC 3, 365-466).

Rousseau’s social ontology is not one of atomized individuals, each transferring ownership over resources through their labor—as on some readings of Locke.<sup>22</sup> Rather, once again Rousseau’s view seems to be that laboring on a thing is a way of demonstrating one’s upright motivations to others.<sup>23</sup> By laboring, I say to others that need, rather than greed, is my reason for action.

But now our original puzzle returns. Why isn’t the complex moral economy detailed in these passages—governed by concepts of need, occupancy, and fair shares of the earth—just about *property*, full stop? Rousseau appears to hold that we require the

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<sup>21</sup> See Bertram, *Rousseau and ‘The Social Contract,’* p. 93.

<sup>22</sup> These readings are usually derived from Locke’s labor-mixing arguments. E.g., *Second Treatise of Government* (1669), ed. C.B. Macpherson (Indianapolis, Indiana: Hackett Publishing, 1980), chapter 5, section 27. For a more sophisticated account of Locke’s property theory, see John Simmons, *The Lockean Theory of Rights* (Princeton: Princeton University Press), chs. 5-6. On Rousseau’s differences from Locke, see Bertram, *Rousseau and ‘The Social Contract,’* pp. 91-92 and Richard Teichgraber III, “Rousseau’s Argument for Property,” *History of European Ideas 2* (1981): 115-134, pp 125-127. The most significant of such differences is that when Rousseau discusses “labor and cultivation” he is not yet speaking about conclusive property rights—not ‘property,’ merely its “sign.”

<sup>23</sup> In Rousseau’s *Emile*, the Tutor uses a more atomistic, labor-mixing argument to explain the concept of property to the young Emile (e.g., *E*, 98). This suggests that Rousseau himself finds such a position to be naïve, suitable for a child not yet aware of the full scope of human interdependence.

earth's resources in order to meet basic human needs, and that laboring on those resources is a way of indicating our virtuous motivations. But he does not accept the natural conclusion that individuals in the state of nature have full-fledged duties to respect other's fair shares. Instead, he describes the right of occupancy as "weak in the state of nature," becoming "a true right" only once the state constructs property rights.

Rousseau could of course avail himself of the familiar Lockean argument that in the state of nature individuals cannot enforce their rights or resolve disputes in a manner consonant with the basic equality and independence of all. But in fact, just a few paragraphs after the passages I've just considered, Rousseau appears to retract any natural rights elements in his theory of property and instead embrace conventionalism. Returning to his claim that political society requires the complete subordination of all individuals' rights and powers to the general will, Rousseau writes:

What is remarkable about this alienation is that by accepting the goods of private individuals, the community, far from despoiling them of their goods, merely secures their possession of them by transforming usurpation into a genuine right and use into property. Then the possessors, being considered to be trustees of the public good, with their rights respected by all the members of the State and secured by all of its forces against any foreign power, have, by an assignment advantageous to the public and even more so to themselves, so to speak acquired everything they gave (*SC*, 1.9.6/*OC* 3, 367).

Above, the Rousseauian state of nature was governed by moral norms based on the fulfillment of needs. Now, it is described in more Hobbesian terms as governed by force and assertion. Proprietary claims are not expressions of a "right of the first occupant" but mere "usurpation." Individual proprietors emerge only with the state and should therefore be viewed as "trustees of the public good." In short, it now appears that the reason my possessions are 'mine' is not because of a natural occupancy claim that a

political order must recognize, but rather because the political order has decided that 'assigning' goods to individuals best serves public ends.<sup>24</sup>

What is going on? One possibility is that what looks like contradiction—there are and there aren't ownership claims in the state of nature—is actually a more complex, dialectical form of argument. Rousseau may be suggesting that although there are no natural property rights strictly speaking, any legitimate public order *must* create a system of private ownership rights.<sup>25</sup> But this just pushes the question back a step. By what necessity? Is it because individuals *have* property rights, or because it is a good idea for the state to *grant* them such rights? Is 'private' property really private, or is it solely a creature of public order?

4.

I don't know how to reconcile everything Rousseau says about property in *The Social Contract*. Ultimately, he may just have been caught between natural rights and conventionalism. Nevertheless, I think we can make some sense of Rousseau's remarks by reflecting more carefully on the specific place of rights within morality as a whole. What I have in mind is the venerable idea—expressed in a number of different ways throughout the history of Western philosophy—that not everything I morally *ought* to do is something that others have the *right* to demand that I do. When Rousseau says that the right of the first occupant is not a "true" or "genuine" right, I think what he means is that while individuals in the state of nature have a moral obligation to take only what they need, such an obligation does not correspond to anyone's rights. It

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<sup>24</sup> Public ends might include: efficiency, civic equality, and social responsibility. All of these are suggested at some point in *The Social Contract*, as well as in Rousseau's other political writings.

<sup>25</sup> As suggested by, e.g., Siroky and Sigwart, "Principle and Prudence," pp. 393-398.

follows then that any attempt to enforce one's ownership claims in the state of nature, since such claims are not based on rights, is closer to mere force or violence than the claimants would like to admit.

Here's an illustration of the distinction between morality and rights I have in mind. Suppose there is a moral obligation to tell the truth. (For my purposes, it doesn't much matter what justifies this obligation, whether utilitarian considerations of overall happiness, Kantian considerations of rational self-commitment, or something else entirely.) If I lie about my accomplishments, I violate this moral prohibition and so commit a moral wrong. But it need not follow that I wrong anyone in particular. Suppose you, a stranger, happen to pick up the phone when I call to blather on about my (false) successes at work. It is of course true that the wrong I do takes place within your midst. You, not someone else, are the one listening. But you have no specific claim against me. Because I do not violate your rights, you are not my victim. Discovering my deceit, you can admonish me, reminding me of the moral obligation I have violated. But resentment seems out of place. The moral landscape changes dramatically, however, if you are, say, my spouse or employer. Then, my lying about who I am and what I've done directly wrongs *you*.<sup>26</sup>

Enter now Rousseau's state of nature. Here you are, planting some beans to feed your family on a modest plot of land you've appropriated from the common resources of the earth. By stealth of night, I uproot your beans in order to grow some luxurious melons.<sup>27</sup> Let us assume that I have enough food to survive, having already tilled a small plot elsewhere. Rousseau's view, I am suggesting, is that while I have violated a

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<sup>26</sup> For elaboration on this distinction, see Stephen Darwall, *The Second-Person Standpoint: Morality, Respect, and Accountability* (Cambridge: Harvard University Press, 2009).

<sup>27</sup> This example invokes the primal scene of property in Rousseau's *Emile*, pp. 98-99.

moral obligation, I have not directly wronged you. Given the moral concepts available in the state of nature, any protest on your part can only be understood as a kind of reminder of my own moral commitments: ‘Remember, when you acquired your plot of land you obligated *yourself* not to take more than your fair share!’

I think this provides a plausible interpretation of Rousseau’s otherwise enigmatic remark that in a moral world governed by the right of the first occupant, “one respects not so much what is another’s as what is not one’s own” (SC, 1.9.2/OC 3, 365). His point, I propose, is that persons in the state of nature confront the resources of the earth as a pile of (useful) stuff. It is morally acceptable to take from the pile just so long as one does not take more than one needs. ‘Mine’ means ‘my fair share.’ This is very different from understanding the earth via private property, where ‘mine’ becomes an inherently relational concept meaning ‘not yours.’<sup>28</sup>

The private property relation requires the general will. Through the formation of a people, citizens create mutually binding obligations: “there is no associate over whom one does not acquire the same right that one grants him over oneself” (SC, 1.6.8; OC 3, 361). Once the general will constructs property rights—and, as I suggested above, such rights are not optional but mandatory—I now have a direct duty to you *qua* property

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<sup>28</sup> My hunch is that for Rousseau these two moral frameworks—one for the satisfaction of needs; the other for recognizing the claims of others—correspond to the two basic forms of human self-regard central to his moral psychology: *amour de soi-même*, a concern for one’s basic material interests, and *amour-propre*, a concern for recognition or standing in the eyes of others (e.g., DOI, 224; OC 3, 219-220). In fact, Rousseau explicitly ties *amour-propre* to the concept of rights: “Once men had begun to appreciate one another and the idea of esteem had taken shape in their mind, everyone claimed a *right* to it...” (DOI, 170; OC 3, 170; emphasis mine). On Rousseau’s moral psychology, see Dent, *Rousseau: An Introduction to His Psychological, Social and Political Theory* (Oxford: Blackwell, 1988) and Neuhausser, *Rousseau’s Theodicy of Self-Love: Evil, Rationality, and the Drive for Recognition* (Oxford: Oxford University Press, 2008). In subsequent work, Neuhausser briefly connects *amour-propre* to property (*propriété*). See *Rousseau’s Critique of Inequality: Reconstructing the Second Discourse* (Cambridge: Cambridge University Press, 2014), p. 100.

holder not to take what is yours, and you can call on the coercive power of the state to enforce your right.

Importantly, Rousseau's understanding of property need not entail a minimalist state, devoted only to the protection of existing distributions of property. The Rousseauian case for redistribution stems from the fact that underpinning the concept of *owner* is the concept of *citizen*. Since the state constructs property rights in part to enable relations of freedom and equality among citizens, the state can intervene in the economic order when existing property distributions damage those very relations. The freedom-protecting state must act so as to ensure that "no citizen be rich enough to be able to buy another, and none so poor that he is compelled to sell himself" (SC, 2.11.2/OC 3, 391-392).<sup>29</sup>

The distinction between morality and rights, a distinction which I am claiming is necessary for making sense of the distinction between possession and property, is hardly on the surface of *The Social Contract*. But it seems to me implicit in the following passage:

No doubt there is a universal justice emanated from reason alone; but in order to be admitted among us this justice has to be reciprocal. Considering things in human terms, the laws of justice are vain among men for want of natural sanction; they only benefit the wicked and harm the just when he observes them toward everyone while no one observes them toward him. *Conventions and laws are therefore needed to unite rights with duties and to bring justice back to its object.* In the state of nature, I owe nothing to those whom I have promised nothing. I recognize as another's only what is of no use to myself. It is not so in the civil state where all rights are fixed by law (SC, 2.6.2; OC 3, 378; emphasis mine).

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<sup>29</sup> Economic inequality is hardly a downstream issue for Rousseau. The property chapter itself ends with the suggestion that although the state must create legal property rights, formal legality without material redress is insufficient to secure genuine freedom: "the social state is advantageous to men only insofar as all have something and none of them has too much" (SC, 1.9.8/OC 3, 367). For elaboration, see Neuhouser, "Rousseau's Critique of Economic Inequality," *Philosophy and Public Affairs* 41 (2013): 193-225.

There is “universal justice” because there are moral obligations which are grounded in reason and do not in any way depend on one’s membership in the state. One might think here of general obligations to refrain from violence and harm, as well as, as I suggested above, the obligation not to waste the earth’s resources. Flouting these obligations, while clearly wrong, does not directly wrong another. This is because “conventions and laws are...needed to unite rights with duties.” In other words, if in the state of nature I violate a moral injunction, I mess up with respect to my own reason. Once the general will has instituted conventions and laws, however, I mess up with respect to other people.

Rousseau is not suggesting that absent a state one could never make direct moral claims on others. The statement that “in the state of nature, I owe nothing to those whom I have promised nothing,” obviously entails that I do in fact owe those whom I have directly promised. But once inside the community of the general will no such special obligation-creating acts are needed. Rather, everyone has rights against everyone else just in virtue of being citizens. You and I don’t have to make a specific agreement for it to be true that you wrong me if you take what is mine without asking.

In sum, *The Social Contract* holds that there are two distinct moral frameworks governing the relation between persons and things. With respect to *possession*, each person stands under a moral injunction not to take more than they need. This is the natural rights element of Rousseau’s theory. But this moral injunction does not give anyone a direct claim against others, and so possession falls short of *property*: binding, enforceable obligations on others to respect what is yours. People can only stand in such relations as citizens under the general will. This is the conventionalist element of Rousseau’s theory.

What exactly is the relationship between these two frameworks? For example, once inside a legal order, does the fact that I badly need something entitle me to steal it from you? Material need concerns my relation to myself, whereas property, I have argued, concerns what I can demand of others. Are there bridging principles that allow us to connect the intrapersonal and the interpersonal elements of Rousseau's theory of property? A fuller treatment must answer such questions. Only then can we determine if Rousseau's reconciliation of natural law with conventionalism is fully coherent. At the very least, *The Social Contract* contains a fascinating attempt to do justice to the competing intuitions that property both depends on the state and is prior to it.<sup>30</sup>

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