

THE COMPATIBILITY OF LOCKE'S WASTE RESTRICTION AND HIS POLITICAL VOLUNTARISM

DANIEL LAYMAN

I

In the Second Treatise of Government, Locke argues both that persons must give their consent in order to be bound by the laws of a civil society, and that it is not permissible for individuals to hoard up more resources than they can put to use. Let us call these two doctrines 'political voluntarism' (or 'voluntarism' for short) and 'the waste restriction', respectively. There is wide scholarly agreement that Locke is committed to both of them. But are these two positions compatible with one another? Helga Varden has recently argued in this journal that they are not.¹ Her reasoning for this conclusion is, on the face of it, quite compelling. Locke holds that those who violate the waste restriction commit a kind of theft against those willing and able to put the wasted resources to good use. He writes: 'As much as any one can make use of to any advantage of life before it spoils, so much he may by his Labour fix a Property in: whatever is beyond this, is more than his share, and belongs to others' (II §31).² Furthermore, this type of offence is justly punishable. A waste restriction violator, Locke states, 'offended against the common law of nature, and was liable to be punished' (II §37).³ Now, it is only reasonable, Varden suggests

¹ Helga Varden, 'Locke's Waste Restriction and His Strong Voluntarism', *Locke Studies* 6 (2006), 127.

² John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: CUP, 1960), henceforth referred to in this form.

³ The waste restriction does not require that persons use their resources themselves. Locke holds that it is permissible to give or barter away unspoiled resources to others, who then assume waste restriction duties with respect to them (II §46).

(rightly, I think), to understand the waste restriction as forbidding not only literal rot and destruction of resources, but extremely inefficient resource use as well. But here arises the problem. According to Locke, the extra-political condition is, at least where there is much scarcity, a 'state of enmity and destruction' in which 'the enjoyment of ... property ... is very unsafe, very unsecure' (II §123).⁴ If this is the case, it can hardly be possible for a person outside civil society to make efficient use of her resources. After all, such a person must spend most of her time and energy simply fighting off invasion and rapine. It therefore seems that anyone who remains in the state of war instead of entering civil society will almost certainly violate the waste restriction. But given that the waste restriction is enforceable, this seems to entail that persons have a duty to enter a civil society if they can, and that others may force them to do so. Such enforcement, however, would require compulsory subjection to the laws of a civil society. Consequently, it looks as though Locke cannot hold both voluntarism and the waste restriction: one of them must go.

Varden correctly points out that Locke's system of politics can hardly sustain the loss of either doctrine. Without strong voluntarism, Locke would lack his most fundamental anti-authoritarian commitment, which he deploys in answering Filmer's absolutism and on which he builds his entire liberal edifice.⁵ And if Locke were to reject the waste restriction, the whole task of securing a fair share

⁴ Unlike Hobbes, Locke does not think that all extra-political conditions, which Locke calls states of nature, need be states of war. But Locke does hold that most (or perhaps all) states of nature become states of war once persons begin amassing large properties through a monetary economy, and that persons depart from states of war in order to begin civil societies. See II §19, §36.

⁵ Locke's primary goal in the First Treatise, and arguably in the Second Treatise as well, is to refute Sir Robert Filmer's *Patriarcha*, in which Filmer argues in favour of a divine right of kings founded on God's original donation of the earth's resources to Adam. For Filmer's arguments, see Robert Filmer, *Patriarcha and Other Writings*, ed. J. P. Sommerville (Cambridge: CUP, 1991).

of resources for everyone (including future generations) would fall to the (highly controversial) sufficiency restriction, which appears to require appropriators to leave 'enough and as good' for others (II §27).⁶ This would be problematic because, even apart from the opacity of the status and practical demands of the sufficiency restriction, a requirement to leave enough and as good for all, including future generations, must restrict the size of just properties to the infinitesimally small unless it is supplemented by an efficient use norm.⁷

It seems, then, that the Lockian must either answer Varden's challenge or grant that Locke's position contains a damning internal tension. My purpose in this essay is to do the former. But my aim in doing so is not merely to save face for Locke. Rather, I think that Varden's critique, though ultimately unsuccessful, does succeed in drawing attention to some very important, though only infrequently noted, features of Locke's political voluntarism. In particular, it helps show that for Locke, (A) consent is not merely *morally* necessary for persons to be subject to the laws of civil societies, but also *conceptually* necessary; (B) that persons in a state of war have a moral obligation to enter civil society if they can; and (C) that Locke allows consent to government to bind even under extreme duress so long as the duress is not of a kind that constitutes or generates the dependence of some on the arbitrary wills of others. Varden successfully argues that Locke is committed to (B) (although, unlike me, she does not think he meant to be), while (A) and (C) emerge as problems with Varden's challenge come to light.

⁶ Some scholars have doubted whether Locke endorses such a restriction at all. See e.g. Jeremy Waldron, *God, Locke, and Equality* (Cambridge: CUP, 2002), 172. Among those who do attribute a sufficiency restriction to Locke, there is a great deal of disagreement over what exactly it requires of appropriators. For conflicting positions on this, see Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974) and James Tully, *A Discourse on Property: John Locke and His Adversaries* (Cambridge: CUP, 1980).

⁷ Michael Otsuka argues for this point compellingly. See Michael Otsuka, *Libertarianism without Inequality* (New York: OUP, 2003), 37. See also Varden 2006, 140.

I will proceed as follows. In II, I will argue that Locke's voluntarism is secure against Varden's challenge because it is a constitutive norm of subjection to political power; a person who has not consented cannot possibly stand under political power. I will then make the case in III that Locke's doctrine of enforcement does not permit any kind of forced residence in civil society as a punishment for wasting resources by voluntarily remaining in a state of war. I will suggest there that the proper Lockian punishment for this offence is complete confiscation of the offender's resources. In IV, I will address an objection: doesn't the kind of confiscation discussed in III undercut the possibility of such offenders giving binding consent to civil power? I will argue that it does not, and that the reason why it does not helps clarify how Locke understands the conditions under which consent can bind. I briefly conclude in V.

II

As we have seen, Varden argues that the impossibility of using resources efficiently in a state of war seems to generate an obligation to enter civil society, an obligation that in turn allows persons to force others into civil society in violation of Locke's voluntarism. She writes:

Because staying in the state of nature is to stay in a condition where much or possibly all of our labour and resources will necessarily be wasted due to wars and violence, abiding by the waste restriction seems incompatible with staying in the 'very unsafe, very insecure' state of nature ... Consequently, enforcing the waste restriction seems to entail that individuals can be forced to leave the state of nature, and individuals' actual consent to enter civil society cannot be a necessary requirement. Locke's waste restriction therefore appears to be in tension with his claim that strong voluntarism is the ideal of political obligations.⁸

⁸ Varden 2006, 134.

I think there are actually three distinct points bound up in this complaint. First, there is the matter of the apparent obligation to enter society if (as is typically the case) failing to do so guarantees that one's resources will be used (at best) very inefficiently. Varden seems to think that although Lockian persons have prudential reasons to enter civil society, there is not generally any moral requirement that they do so. In a passage that appears just before the one quoted above, she states that according to Locke, 'although entering civil society is required by prudence, it is not strictly required from the point of view of justice'.⁹ Second, since Locke makes clear that the waste restriction is enforceable, it looks like those who are obligated to enter civil society so as not to waste may be *compelled* to do so. This, Varden says, would violate voluntarism. Third, in order to force people to join civil society, it would be necessary to take physical control of them or, as Locke would say, put them under absolute power. And by Locke's definition, for one person to put another person under her absolute power is for the one to enslave the other (II §23). Varden expresses this concern directly as well: 'if individuals are forced into civil society, they are in effect enslaved'.¹⁰

Only the second of these points bears directly on Varden's charge that Locke's voluntarism is incompatible with his waste restriction. But the first and third are of considerable interest as well. The first merits a hard look because so many have read Locke as denying that individuals have any moral reasons at all to enter society.¹¹ And the third is worth discussing because it bears importantly on the plausibility of Locke's theory of punishment. Surely it would be an embarrassment for Locke if he were bound to

⁹ Varden 2006, 132.

¹⁰ Ibid.

¹¹ C. B. MacPherson is the best-known champion of this reading. See his *The Political Theory of Possessive Individualism* (Toronto: OUP, 2011), 197–222, 247.

say that zealous enforcers of natural law may enslave stubborn individualists trying to make a go of it in the state of war. After all, Locke seems to think that leaving the state of war for life under civil law always *increases* liberty (II §57). For the time being, let us put the issue of enslavement to one side; it will occupy a central place in the discussion of Locke's doctrine of punishment to follow. The first two aspects of Varden's criticism, however, will together serve as a good point from which to begin unpacking the interpretative issues at hand.

In the passage quoted above, Varden seems to reason that because there is, on account of the waste restriction, an enforceable obligation to enter society, persons may, in violation of voluntarism, force others to enter society. This reasoning betrays two assumptions. The first is that by Locke's lights, it follows from 'norm N is enforceable' that 'persons may force those who would violate N to comply with N'. The second is that if a person were compelled to live within the bounds of a society and obey its laws, this would constitute a violation of voluntarism. Both of these assumptions are, I think, mistaken. Let us begin with the second.

Locke's most straightforward statement of voluntarism appears at the outset of his treatment of the 'Beginning of Political Societies':

MEN being, as has been said, by Nature, all free, equal and independent, no one can be put out of this Estate, and subjected to the Political Power of another, without his own *Consent*. The only way whereby any one divests himself of his Natural Liberty, and *puts on the bonds of Civil Society* is by agreeing with other Men to joyn and unite into a Community. (II §95)

Locke's use of 'can' in the first sentence of this passage is crucially ambiguous. On the one hand, it is possible to read Locke as making a claim only about what is possible *within the bounds of justice*. That is, Locke's point might be that although it is possible for a person to become a member of a civil society without her consent,

it is never permissible to bring this about. But on the other hand, Locke's point might be that subjection to political power without consent is impossible *simpliciter*.

Varden clearly understands Locke's modal claim about political power without consent in the first, purely normative way. If she didn't, it wouldn't make sense for her to claim that a right to force people in a state of war to live under the power of a government would violate voluntarism. She is hardly alone in this reading; most casual students of Locke, as well as some distinguished scholars, have endorsed it.¹² Nevertheless, I submit that it is wrong, and that Locke's voluntarism asserts a conceptual limitation on the extent of political power. As I read Locke, part of what it *is* for a person to be subject to the political power of a civil society is for that person to have consented to the rule of that society. Put another way, the requirement that subjects of political power consent to such power is a *constitutive* norm of political subjection. If a person or agency exercises coercive power (other than in the course of just punishment) over a non-consenting person, that power is both unjust and non-political in nature.¹³

There is a good deal of textual evidence for this reading. For instance, in the Chapter XV discussion of the varieties of legitimate power, Locke explains that in order for power to be political (rather than parental or despotic) it must be accompanied by the consent of those subject to it:

Political Power is that Power, which every Man, having in the state of Nature, has given up into the hands of the Society, and therein to the Governours, whom the Society hath set over it self, with this express or tacit

¹² A. John Simmons is one scholar who seems to read Locke this way. See his *Justification and Legitimacy* (New York: OUP, 2001), 128–9.

¹³ Ruth Grant argues compellingly for this reading of Locke's voluntarism. See her *John Locke's Liberalism* (Chicago: University of Chicago Press, 1991), 102.

Trust, That it shall be employed for their good, and the preservation of their Property. (II §171)

Furthermore, at the opening of his treatment of the dissolution of government, Locke succinctly states that no one is a member of a political community unless she has given her consent. There is no possibility of non-consenting members. He writes:

That which makes the Community, and brings Men out of the loose State of Nature, into *one Politick Society*, is the Agreement which every one has with the rest to incorporate, and act as one Body, and so be one distinct Commonwealth. (II §211)

Note that Locke says here that *every* person who is a member of a ‘politick society’ has agreed to incorporate into such a society, and that it is this agreement that makes each person a member. And lest anyone suppose that this claim applies only to persons faced with the question of whether to found a civil society where there was not one before, Locke tells us that ‘*the Consent of Free-men, born under Government ... only makes them Members of it, being given separately in their turns*’ (II §117).

Consent’s status as a constitutive norm of political relationships also finds support in Locke’s picture of law, political power, and the relationship between them. In a notebook entry of 1678, Locke states point-blank: ‘A civil law is nothing but an *agreement* of a society of men’.¹⁴ Now, this claim leaves logically open the possibility that while a civil law is an agreement between persons, it binds persons not party to the agreement.¹⁵ But this strains the obvious sense of the text. Locke does not claim here that the agreement of a plurality of persons *causes* or *gives rise to* law, but

¹⁴ John Locke, *Political Essays*, ed. Mark Goldie (Cambridge: CUP, 1997), 269.

¹⁵ MacPherson holds that only property owners consent to government, but that non-property owners are bound as well. See Macpherson 2011, 249.

rather that such an agreement is *identical* to law. With this definition of law in terms of consent in mind, consider Locke's initial definition of political power from the *Second Treatise*: '*Political Power* then I take to be a *Right* of making Laws ... and of employing the force of the Community, in the Execution of such Laws' (II §3). This is the definitive characteristic of political power by which 'the Power of a *Magistrate* over a Subject, may be distinguished from that of a *Father* over his Children, a *Master* over his Servant, a *Husband* over his Wife, and a *Lord* over his Slave' (II §2).

Consent, it then seems, is part of what it *is* for power to be political. Let us now apply this result to the question of whether persons who would prefer to remain (wastefully) in the state of war can be forced to become subject to political power. Suppose that Smith lives in a state of war bordering a reasonably just Lockian commonwealth, C. Smith has the option of consenting to be a member of C, but prefers not to. Instead, she spends her days attempting to fend off attackers from her meagre and ever dwindling store of resources, thereby violating the waste restriction. Now suppose that an enforcer, Jones, takes hold of Smith and Smith's resources and forcibly compels her to live in the territory of C, where her property can be put to efficient use. Further suppose that Jones's act of enforcement is just. Has Jones succeeded in carrying out a just act that results in Smith being subject to the political power of C without her consent? By Locke's lights, Jones has done no such thing, because any power that Jones wields over Smith is not political power at all but rather despotic. Consequently, even if persons may enforce an obligation to enter civil society by forcing people to live within the territory of a civil society, this results only in despotic power, or slavery, and not political power. But is there such an obligation, and if so, may persons enforce it in this way? I turn to these questions now.

III

Despite its failure to demonstrate an incompatibility between the waste restriction and voluntarism, Varden's argument does succeed in making a very strong case for a Lockian obligation to enter civil society.¹⁶ After all, Varden is right that Locke requires all property holders to make good use of their property if there is a morally permissible way to do so, and leaving the state of war by consenting to join an at least reasonably just civil society is pretty clearly the only means available to persons in violent non-political conditions. So barring some very strong reason to think otherwise (and I am not aware of one), we should grant Varden's point that Lockian persons in conditions of war must enter a political society if they can.¹⁷

Furthermore, Varden is right to point out that this obligation must surely be enforceable. For it follows directly from the waste restriction, which Locke explicitly states is enforceable. Does it follow from this that individuals may forcibly compel others to live (as slaves, not subjects) within the protective jurisdiction of a civil society? This would indeed follow if Locke's understanding of enforcement were such that the proper way to enforce any given norm was simply to compel compliance with it. But Locke's rights of enforcement, which he calls 'executive rights' or 'rights of punishment', are not like this (II §7). To see how Locke would have

¹⁶ This is not to say that Varden would endorse this point. She insists that Locke does not *mean* to posit such an obligation (Varden 2006, 132). Her *modus tollens* is thus my *modus ponens*.

¹⁷ The case for reading Locke as holding that persons have moral reason to enter civil society is strengthened by remarks, scattered throughout Locke's corpus, to the effect that civil society is at least divinely ordained if not the proper framework for human lives. For instance, Locke writes in another notebook entry from 1678:

If he finds that God has made him and all other men in a state wherein they cannot subsist without society and has given them judgment to discern what is capable of preserving that society, can he but conclude that he is obliged and that God requires him to follow those rules which conduce to the preservation of society? (Locke 1997, 270)

the obligation to enter civil society enforced, we need to consider Locke's doctrine of punishment.¹⁸

Locke holds that the natural right to punish is actually a composite of two distinct rights. One is a right of '*Punishing ... for restraint, and preventing the like Offence*' (II §11). This right, which is derived from the universal right to '*Preserving all Mankind*', is naturally held by everyone (II §11). The other is the right of '*taking reparation, which belongs only to the injured party*', i.e. the person whose body or property has been violated by the offence in question (II §11). This right follows from the natural right of self-preservation (II §11). Let us call these the right of restraint and the right of reparation, respectively. According to the right of restraint, '*Each Transgression may be punished to that degree, and with so much Severity as will suffice to make it an ill bargain to the Offender, give him cause to repent, and terrifie others from doing the like*' (II §12). The maximum penalty justified by the right of restraint is death; according to Locke, all and only those

¹⁸ According to Locke, every person holds a natural right to punish violations of the natural law, which Locke calls the natural executive right. This right is complete in the state of nature; any person in the state of nature may punish any other person in the state of nature. Political society, however, limits this right. For when a person consents to be a member of a political society, she transfers her natural executive right to the government of that society (II §89). Consequently, no person legitimately subject to state authority may take it upon herself to punish anyone under the legitimate authority of the same government. Locke is less clear about whether persons who are subject to a civil government may punish those who are not subject to the same government. But a few things he says suggest that they may. First, Locke makes it clear that the law of nature by no means ceases to apply to people when they become members of political societies (II §135), so it would seem that if one person is a member of a particular political society while another is not, they have the natural law, and only the natural law, in common as a binding set of norms for their interactions. And as we have seen, the natural law includes an executive right. Second, Locke seems to suggest that when we join a civil society, we must give up only that portion of our rights that best serves the good and safety of *that society and its members*. A person entering civil society, he writes, must '*part also with as much of his natural liberty in providing for himself, as the good, prosperity, and safety of the Society shall require*' (II §130). Surely the good, prosperity, and safety of those in a society do not typically depend on whether anyone punishes persons outside that society.

who have tried to put another person under absolute power (whether to kill or merely extract something from the other person) deserve capital punishment (II §11, §18). The capital penalty itself may be preceded by whatever term of forced service the punisher might choose. Locke reasons that such compulsory servitude in delay or lieu of death must be justified, since a punisher who may by right take *everything* from an offender must surely have the right to take less (II §23). This kind of servitude is ‘perfect slavery’, and the power of a punisher (or master) over a slave (or criminal) is precisely the power of slavery that Locke contrasts with parental power and political power in Chapter XV (II §24). Locke does not, however, suggest that all violations of natural law warrant death. While he argues that this is the proper punishment for those who, without right, put (or attempt to put) another person under absolute power, ‘*lesser breaches* of that (natural) Law ... may be *punished* to that *degree*, and with so much *Severity* as will suffice to make it an ill bargain to the Offender, give him cause to repent, and terrifie others from doing the like’ (II §12). The right of reparation, by contrast, simply licenses the person injured by an offence, along with anyone she can convince to help her, to exact from the offender either the actual thing lost or the value thereof.

Does either of these rights of punishment permit persons to force waste restriction violators in the state of war to live within a civil territory and be subject to the coercive force of its government? Let us first consider whether the right of reparation does so. As we have seen, Locke says that those who violate the waste proviso illicitly control what properly belongs to all humankind in common (II §31). Consequently, although waste violations impinge on no one’s private property, they do impinge on everyone’s common property. And since Locke holds that those whose property is violated by a violation of natural law have the right to recoup it, it looks as though anyone may, by the right of reparation, take and use whatever portion of the violator’s goods are being wasted. In the

state of war, *all* property is radically insecure and subject to raids, collateral damage, etc. So by Locke's lights, anyone may take and use any or all of the goods controlled by those who refuse to leave the state of war for political society. This is no doubt a very serious punishment that would give anyone who suffered it compelling reasons to enter society. But it does not amount to putting the offender under absolute power and forcing her to live within society.

What of the right of prevention? As we have already seen, Locke judges that the proper exercise of this right sometimes involves putting the offender under absolute power. If the right of reparation were to allow punishers to control waste restriction violators in this way, then punishers would have the right to make such offenders live within the bounds of a civil society (or, for that matter, to make them do anything else, so long as the chosen activity would respect others' rights). However, as we have seen, Locke says that this sort of punishment is appropriate *only* when an offender has forfeited her life by attempting to place someone illicitly under *her* absolute power (II §11, §12, §18). This condition is clearly not met in the case of waste restriction violators. So those who would punish them under the right of reparation must employ whatever lesser punishment 'calm reason and conscience dictates' (II §8, §12). The lesser punishment that comes immediately to mind is the same one that is called for by the right of reparation, namely confiscation of the ill-used resources. Surely this would be sufficient to 'terrifie' the criminal as well as others, and to make the offender 'repent' of her wasteful obstinacy (II §12).

IV

I submit, then, that Locke's doctrine of enforcement does not allow enforcers to compel waste restriction violators to live within a civil territory. Consequently, the inference from the enforceability of the waste restriction to a right to force residence in civil society is

invalid. So we have now seen both that the voluntarism doctrine is not in danger (because it is a constitutive norm of political power), and that Locke is not committed to the position that waste restriction violators are justly subject to slavery. But someone might object that my argument has generated a new problem for the voluntarism doctrine: if it is legitimate to confiscate entire estates from those wasting resources in the state of war, then there is at least one kind of case in which it is legitimate to leave persons with no real choice but to consent to political society. After all, any attempt to continue living in a state of war with no resources under one's control would certainly result in death, so any such offender would, once punished, have to consent to the political power of a civil society in order to survive. Wouldn't this duress invalidate any such consent? This problem looks even more pressing when we consider that Locke himself states that if a conqueror gains 'consent' from those she has conquered by threatening them with death, this results in no political power (II §186). Wouldn't a punisher who left a waste restriction violator no choice but to enter civil society invalidate her consent in just the same way?

I do not think so: Locke's doctrine of consent to government allows consent given under conditions of extreme duress to be binding so long as the duress is not the product of circumstances that would make any ensuing power relationships arbitrary and so non-political. To begin to see this, it will be useful to again consider Locke's transition from the state of war to civil society. As we have seen, Locke holds that the state of war is extremely dangerous both for persons and for property: it is a 'State of ... Violence and Mutual Destruction' (II §19). It thus seems clear that persons in a state of war are under enormous pressure to leave. For even without the kind of confiscation I have argued is justified, all persons in the state of nature always run an elevated risk of death, and many no doubt risk imminent death so long as they remain outside a state. Locke is clear, though, that this is precisely the condition from

which persons originally gave binding consent to civil society. Historically, persons bound themselves to civil society in order to avoid these (often extreme) dangers and hardships, and now that civil societies are up and running, each new generation consents in order to avoid reverting to such a condition (II §117). Locke, then, does not think that duress (including extreme duress) is itself sufficient to undercut the binding power of consent. This locates Locke far afield of most contemporary thinking about consent. But the text leaves no doubt that this is Locke's view.

If duress alone does not undercut the binding power of consent, then what are we to make of Locke's claim that a conqueror attains no political power by pressing consent from the conquered? If the presence of duress is not what neutralizes the force of such consent, then what does? I think the problem Locke sees with such 'consent' has to do with the relationship between the two parties. It is not insignificant that the sort of forced consent Locke considers is extracted by someone who aims to exercise power over another person who has not forfeited her rights of self-government by violating natural law. If Jones wants to rule over Smith and gains Smith's consent at gunpoint, the power relation thus established is completely one-sided; there are no standing terms that bind both parties. Put in more Lockian terms, there is no common judge between them, and so no law. Locke makes clear that any case in which one adult person exercises non-punitive coercive force over another without acting as an agent of a law that binds them both is a case of arbitrary dominion, which is incompatible with the equal natural freedom that the consent doctrine is meant to protect. He writes:

Freedom is not, as we are told, *A Liberty for every Man to do what he lists*: (For who could be free, when every other Man's Humour might domineer over him?) But a *Liberty* to dispose, and order, as he lists, his Person, Actions, Possessions, and his whole Property, within the Allowance of those

Laws under which he is, and therein not to be subject to the arbitrary Will of another, but freely follow his own. (II §57)

Furthermore, the relationship thus established need not have the good and security of the governed as its aim; certainly such an aim is not possible given that the relationship in question is grounded only in the insecurity of one of the parties. But as I noted earlier, Locke insists that political power is necessarily power exercised toward the good of all those under it (II §171).

By contrast, the consent given by those left without property in the state of war by a just confiscation of misused goods does not run afoul of any of the necessary conditions of political power. First of all, the choice by such a person to enter society would not place her under the arbitrary control of the individual (or individuals) who conducted the punitive confiscation of her goods.¹⁹ Indeed, there is no reason to think that it would place her under any authority but that of the laws of the relevant civil society. Second, such a person has, *ex hypothesi*, violated the law of nature in a serious (though not maximally serious) way. Consequently, she is not in a position to complain that the momentous choice before her is the result of malfeasance on the part of anyone but herself. So she rightfully possesses nothing but her own person, and she now faces the choice of whether to gain rightful security by entering civil society. Her situation is thus sharply disanalogous to that of the conqueror's victim.

V

I have argued that, *pace* Varden, there is no incompatibility between Locke's voluntarism and his waste restriction. This is because a)

¹⁹ This is true even if the persons who confiscated her resources are officials of the civil society she consents to enter. For if a person (of whatever rank) who is a member of a society exercises the natural right of punishment over a non-member, she acts only as an individual under natural law. There is simply no relationship between the offender and the enforcer to make the enforcer's status within her civil society pertinent.

Varden argues that enforcing the waste restriction must often violate voluntarism, but b) voluntarism is a *constitutive* norm of political power and so cannot be violated; any attempt at violation must result in non-political power. Furthermore, Locke does not have to say that persons may enslave waste restriction violators and make them live within civil territories, as Locke's doctrine of punishment calls only for confiscation of wasted property as punishment for wilful, wasteful residence in the state of war. Finally, although such confiscation leaves offenders little choice but to enter civil society, the duress they face does not undercut the binding power of their consent, because a) such consent does not result in absolute power of one person over another and b) they have no right to be free from heightened pressure to enter society, having forfeited this right by violating the waste restriction.

University of North Carolina