### Locke NC

#### First off: the Locke NC

#### I negate and value justice as implied by the resolution. The standard is consistency with Lockean property rights

#### Property rights are a natural extension of the concept of self-ownership- these rights are pre-political

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[George H., "John Locke: The Justification of Private Property," Libertarianism.org, 10-19-15, https://www.libertarianism.org/columns/john-locke-justification-private-property, accessed 6-25-21]

My last essay discussed John Locke’s theory of a negative commons. This was the moral status of natural resources prior to the emergence of private property, a situation in which every person had an equal right to use unowned land and other natural goods. I included this topic in my lengthy series on “Freethought and Freedom” because it was germane to understanding how natural‐​law philosophers during the seventeenth century moved from the traditional Christian doctrine of private property to a more secular approach. But it would be an unwarranted stretch to include additional essays on Locke within my series on freethought, so I hereby begin a new series devoted to Locke’s ideas. This series will discuss not only Locke’s theory of property in more detail but also other features of his political theory, such as his theory of government and his defense of the rights of resistance and revolution against established governments.

The most important source for understanding Locke’s justification of private property is the celebrated chapter “Of Property,” which comprises Chapter V of The Second Treatise of Government. But we also find significant remarks about property in Chapter IV (“Of Adam’s Title to Sovereignty by Donation”) of the First Treatise. Although most of my discussion is based on Locke’s treatment in the Second Treatise, I may occasionally draw upon his comments in the First Treatise.

According to Locke, in the “natural state”—that original condition in which every person had an equal right to use natural resources provided by the “spontaneous hand of Nature”—no one had “a private Dominion, exclusive of the rest of Mankind,” over those resources. But such resources would have been useless for human survival and well‐​being unless they could be appropriated by individuals for their personal use. So how can a transition from unowned resources to private ownership be morally justified? How can one person legitimately claim an exclusive right to use a resource that, in its natural state, could be used by anyone? Locke’s treatment of this problem remains highly controversial among scholars. His theory has been used to justify everything from laissez‐​faire to the welfare state to full‐​blown socialism. Which of these conflicting interpretations should be covered in my survey of Locke’s political ideas is a judgment call, and I frankly remain uncertain about my final decision. I fear that many of my readers will have little if any interest in the fine points of Lockean scholarship, however much those points may interest specialists. Fortunately perhaps, I can delay my decision until a later time. Before we can appreciate the ambiguity in some of Locke’s statements about property, we must first understand his overall approach. Hence the purpose of this essay (and probably the next installment as well) is to provide a barebones account of how John Locke justified private property, while postponing a consideration of the more controversial features until a later time.

There is another reason why an overview is desirable before I delve into more technical matters. Only a relative handful of my readers are likely to have actually read Locke’s Two Treatises of Government. The status of John Locke in the modern libertarian movement is rather like that of Adam Smith. Both figures are widely known to nonacademic libertarians, as are their leading ideas, but it is a safe guess that the major works of these philosophers remain largely unread. This is understandable. The workaday libertarian is more interested in ideas that he can use in the struggle to establish a free society than he is in arcane historical theories and controversies. And if this libertarian believes that he can find adequate justifications of private property in the writings of modern libertarian philosophers, such as Rothbard, Hayek, and Rand, then why should he spend his time reading earlier and quite possibly less satisfactory accounts?

As I have attempted to demonstrate throughout my many Lib​er​tar​i​an​ism​.org essays, the issues discussed by early classical liberals are essential to understanding the origin and evolution of modern libertarian ideas. In addition, many of the internecine controversies among early classical liberals may be found, alive and kicking, in the modern libertarian movement. The fundamental problems attending an adequate defense of individual freedom are perennial; they arise again and again from one generation of libertarians to the next, however much the particular contexts may differ. There is much to be learned from reading the books of John Locke, Adam Smith, and other intellectual giants in the history of freedom—knowledge that is directly relevant to the problems confronted by modern libertarians.

Having presented my preliminary case for the relevance of John Locke, I shall now explain the basic principles that underlay his case for private property.

The key to Locke’s moral transition from common dominion to private ownership was his conception of self‐​ownership, or property in one’s person. As Locke put it in what was destined to become one of the most influential passages in the history of political thought:

Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a Property in his own Person. This no Body has any Right to but himself. The Labour of his Body, and the Work of his Hands, we may say are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joined to it something that is his own, and thereby makes it his Property. It being by him removed from the common state nature placed it, it hath by his labour something annexed to it, that excludes the common right of other Men. For this Labour being the unquestionable Property of the Labourer, no Man but he can have a right to what that is once joined to, at least where there is enough, and as good left in common for others.

Locke continued:

He that is nourished by the Acorns he pickt up under an Oak, or the Apples he gathered from the Trees in the Wood, has certainly appropriated them to himself. No Body can deny but the nourishment is his. I ask then, When did they begin to be his? When he digested? Or when he eat? Or when he boiled? Or when he brought them home? Or when he pickt them up?

Locke answered these questions by selecting the last of these options. The acorns became the private property of the owner when he picked them up, for it was in the gathering that labor was first expended. “That labour put a distinction between them and common. That added something to them more than Nature, the common Mother of all, had done, and so they became his private right.” But this raises a crucial question: “Was it a Robbery thus to assume to himself what belonged to all in Common?” Locke replied that to require universal consent would lead to universal starvation. More is involved here than the practical problem of obtaining the permission of every person on earth. Morally speaking, such consent is not required because, according to both reason and revelation, humans “have a right to their Preservation.” Thus if even the right to eat acorns and other natural goods could not be morally justified without first obtaining the consent of every commoner, “Man had starved, notwithstanding the Plenty God had given him.” (It should be noted that self‐​preservation had long been defended as a fundamental right—indeed, as a duty—by natural‐​law philosophers. In the thirteenth century, for example, Thomas Aquinas maintained that “whatever is a means of preserving human life belongs to the natural law, and whatever impedes it is contrary to it.”)

When Locke wrote that “every Man has a Property in his own Person,” he was using “property” in its older meaning to signify rightful dominion over something. (See my discussion in The Philosophy of the Declaration of Independence: Part 2.) Hence it was quite common during the seventeenth and eighteenth centuries to speak of property in one’s conscience, property in one’s freedom, property in one’s labor, property in one’s happiness, and even (as we find with James Madison) property in one’s time. Whereas we might say that “this computer is my property,” earlier philosophers might have said, “I have a property in this computer.” Locke included life, liberty, and estate (i.e., external goods) in his generic conception of property, so when he argued that the primary purpose of government is to protect property rights, he was not merely referring to material objects. Rather, he meant that a government should protect those fundamental rights (including the right to enjoy the fruits of our labor) that are essential to self‐​preservation and happiness.

Locke stressed labor as the foundation of private property because some form of labor is the basic method by which we sustain ourselves, even if that labor consists of nothing more than picking up acorns off the ground. Humans cannot survive without labor, so coercively to expropriate the fruits of another man’s labor is to violate his fundamental right of self‐​preservation. Labor is involved in every life‐​sustaining activity.

#### The only legitimate purpose of a state is to protect property rights

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[Alex, "Locke's Political Philosophy", The Stanford Encyclopedia of Philosophy, Summer 2018 Edition, Edward N. Zalta (ed.), https://plato.stanford.edu/archives/sum2018/entries/locke-political/, accessed 6-24-21]

John Locke (1632–1704) is among the most influential political philosophers of the modern period. In the Two Treatises of Government, he defended the claim that men are by nature free and equal against claims that God had made all people naturally subject to a monarch. He argued that people have rights, such as the right to life, liberty, and property, that have a foundation independent of the laws of any particular society. Locke used the claim that men are naturally free and equal as part of the justification for understanding legitimate political government as the result of a social contract where people in the state of nature conditionally transfer some of their rights to the government in order to better ensure the stable, comfortable enjoyment of their lives, liberty, and property. Since governments exist by the consent of the people in order to protect the rights of the people and promote the public good, governments that fail to do so can be resisted and replaced with new governments. Locke is thus also important for his defense of the right of revolution. Locke also defends the principle of majority rule and the separation of legislative and executive powers. In the Letter Concerning Toleration, Locke denied that coercion should be used to bring people to (what the ruler believes is) the true religion and also denied that churches should have any coercive power over their members. Locke elaborated on these themes in his later political writings, such as the Second Letter on Toleration and Third Letter on Toleration.

#### My contention is that consistency with Lockean property rights negates

#### First, there is no morally relevant difference between space and Earth

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[Kurt Anderson, Property Rights in Outer Space, 58 J. Air L. & Com. 1041, 1993, <https://scholar.smu.edu/jalc/vol58/iss4/4>, accessed 6-24-21]

The powers necessary to constitute an efficient system of property rights on Earth have been found, by deduction from first principles by political philosophers influential in the development of the Western institutions and from history and practice in the courts, to be the power to exclude, to use, and to dispose. 98 The resulting system is also inherently equitable as it benefits society as a whole and as it protects investments and expectations. This system would remain equitable so long as the initial allocation of any new resource was, and is, not based on mere usurpation of unclaimed property, but is based on investment in the property that adds to its value. 99

This system of property rights relies on the provision of powers to the holder of the property. The source of the power is ultimately in the state that enforces the liabilities of parties corresponding to the powers of owners: the liability to exclusion, the liability for interference with use, and the liability to respect contracts and to refrain from hindering disposition. °0 This implies that sovereign power is essential to any functioning system of property rights, and in the absence of a general sovereign body, sovereignty is to be found in the nation-state.

How does the extension of man's activities into space and onto the celestial bodies change the basic necessities of an efficient and equitable property rights system? The movement of activities into space affects only the place of activities. The nature of those activities and of the actor remain unchanged. The nature of efficiency and equity are likewise unchanged, and the need for certain securities and guarantees to foster productive activity by man is unchanged. The same property rights system that is most beneficial on Earth will be most beneficial on the celestial bodies.

The principles of the Outer Space Treaty do not necessarily contradict these property concepts. It has already been shown that the notion of property rights, including the power to use and dispose, are not incompatible with the general principles of the Outer Space Treaty.20 ' The principle of access in space is also appropriate when properly interpreted. ° But, in regulating access, governing bodies must make proper account for the use of various portions of space and of the rights of the user to be free of harmful interference. 3 Although the provision of Article II against national appropriation contradicts these property concepts, it is inconsistent with the notions of jurisdiction and ownership found elsewhere in the treaty.2 0 4 This provision should therefore be modified and replaced with a concept of reasonable use or investment.20 5 Such a provision should provide for initial allocation of unclaimed property only upon productive use or investment. This would allow for the security of national sovereignty while preventing the non-productive reservation of vast resources by non-users.20 6

#### Second, appropriation of outer space is consistent with the doctrine of res nullius

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[Dennison A., Who Owns the Moon, Mars, and Other Celestial Bodies: Lunar Jurisprudence in Corpus Juris Spatialis, 82 J. Air L. & Com. 505, 2017, <https://scholar.smu.edu/jalc/vol82/iss3/3>, accessed 6-24-21]

However, the doctrine of res nullius could apply. Res nullius, or terra nullius, is an international law principle used to describe land or territory that has not yet been subject to the sovereignty of any state or for which a prior sovereignty has relinquished sovereignty over the area.55 Australia was claimed by the British settlement in Cooper v. Stuart56 under the doctrine of terra nullius. Other areas claimed under terra nullius include the Western Sahara,57 Svalbard,58 Greenland,59 Antarctica,60 Scarborough Shoal,61 New Zealand,62 and Guano Islands.63

The doctrine of discovery is another theory implicated regarding property rights on celestial bodies and terra nullis. The doctrine of discovery is an international law principle under which European countries, colonists, and settlers made legal claims against the lands of indigenous peoples all over the world from the fifteenth through the twentieth century.64 Even today, the doctrine of discovery is applied in New Zealand,65 Canada,66 and Australia.67 Examples also include China, which invoked this doctrine in 2010 when it planted its flag to claim sovereignty over the bed of the South China Sea.68 In 2007, Russia also used this doctrine when it laid claim to the Arctic Ocean seabed.69 Similarly, Canada and Denmark each claimed sovereignty over an island off the west coast of Greenland in 2005.70 In fact, the Supreme Court of the United States of America cited the doctrine of discovery as a basis for property ownership as recently as 2005.71 Traditionally, discovery created an:

inchoate title to a territory that must be perfected by its effective occupation. . . . To turn a first discovery into a complete title, a European country had to actually occupy and possess the newly found lands. This was usually done by building forts or settlements. This physical possession had to be accomplished within a reasonable amount of time after the first discovery to create a complete title.72

For an interesting case study, the Scarborough Shoal was claimed by China under the principles of discovery in the thirteenth century, whereas the Philippines claimed the Shoal under the theory of terra nullius. 73

Furthermore, the international doctrine of discovery is consistent with John Locke’s labor theory of property. Locke’s theory famously posits that before government existed, all men had common access to Earth’s resources as given by God.74 In order to survive, individuals had to appropriate resources for themselves.75 Through their own labor and effort, men were able to gain private property rights if they did not waste the resources they claimed.76

The labor of his body, and the work of his hands, we may say are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labor with, and joyned [sic] to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature placed it in, it hath by his labor something annexed to it, that excludes the common right of other men . . . at least where there is enough, and as good, left in common for others.77

The United States prides itself in and was established under the idea that “all men are created equal.”78 The spirit of entrepreneurship has not only had an influence on America’s economic system but has also directly impacted every aspect of our lives.79 Adam Smith declared, “[l]ittle else is requisite to carry a state to the highest degree of opulence from the lowest barbarism but peace, easy taxes and a tolerable administration of justice.”80 To justify his position he went on to say:

As every individual . . . endeavours [sic] . . . to employ his capital in the support of domestic industry, and so to direct that industry that its produce may be of the greatest value, every individual necessarily labours [sic] to render the annual revenue of the society as great as he can . . . . [While] he intends only his own gain . . . he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention.81

The ability to profit through ones own work has been one of the leading contributors to economic wealth not only in the United States, but also in free trade zones such as Hong Kong.82 This allows individuals to profit from the work of their own labor and to subsequently enjoy the benefits or suffer the losses from those risks.83

One of the best examples that can be analogized to territory in space is the Homestead Act of 1862.84 President Abraham Lincoln signed the bill into law, allowing individuals to acquire a freehold title in fee simple to 160 acres of land if they: (1) filed an application; (2) improved the land; and (3) filed for a deed.85 This right was limited to individuals who were over twenty-one years old or the head of a family and had lived on the land for at least five years.86 Nonetheless, the Homestead Act of 1862 gave individuals a chance to directly enjoy the fruits of their labor. Allowing individuals to profit or suffer from their own sweat is an exemplification John Locke’s labor theory.87 The Homestead Act of 1862 was also imitated, with some modification, by Canada88 in 1872 and by several Australian colonies89 in the 1860s.

Allowing people the ability to profit or loss from their own risk in working land directly allowed the settlement and cultivation of most of the land west of the Mississippi River. Between 1862 and 1938, “almost 1.5 million households were given title to 246 million acres of land.”90 That area is approximately the acreage of California and Texas combined.91 Some have estimated that even today $46.3 billion is generated every year directly because of the industrious pioneers.92

Structuring property ownership laws on the Moon, Mars, and other celestial bodies after the Homestead Act of 1862 would allow companies, individuals, and even countries to claim property if they “improve[ ] the land”93 in some way. This would prevent entities from claiming extraterrestrial property without having first demonstrated a proper use for it.94 On top of that, entities would have an incentive to profit from their own effort. Like President Lincoln encouraging Americans to settle the West, incentivizing entities to claim extraterrestrial property on the Moon and Mars would accelerate space colonization and promote utilization of resources already available.

The desire and profit is great for entities to explore the Moon and outer space. However, the treaties that currently exist, forbidding country and private ownership, destroy any incentive to use the resources found thereon. If the laws allowed people, companies, or countries to claim ownership to what they could manage, it would create significant incentive for both private and government groups to invest the resources necessary to establish ownership and control over the property on Mars, the Moon, and other celestial bodies.95 Furthermore, allowing entities to claim property rights over only what they can manage would pave the way for everyone to profit as lunar exploration and colonization become more feasible and affordable.