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Olsthoorn, J.

DOI
10.1515/agph-2021-0121

Publication date
2024

Document Version
Final published version

Published in
Archiv für Geschichte der Philosophie

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Link to publication

Citation for published version (APA):
Olsthoorn, J. (2024). Between Starvation and Spoilage: Conceptual Foundations of Locke's Theory of Original Appropriation. *Archiv für Geschichte der Philosophie*, *106*(2), 236-266. https://doi.org/10.1515/agph-2021-0121

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Download date:14 Dec 2024

AGPh 2024; 106(2): 236–266 DE GRUYTER

Johan Olsthoorn*

Between Starvation and Spoilage: Conceptual Foundations of Locke's Theory of Original Appropriation

https://doi.org/10.1515/agph-2021-0121

Abstract: This paper reconstructs the conceptual foundations of Locke's unilateralist theory of original appropriation through a critical comparison with the rival compact theories of Grotius and Pufendorf. Much of the normative and conceptual framework of Locke's theory is common to theirs. Integrating his innovative doctrines on labour and natural self-proprietorship into this received theoretical framework logically required Locke to make several conceptual amendments. I highlight three all but overlooked revisions: (i) an unusually broad conception of *labour*; (ii) a reduction of mere use-rights to *property rights*; and (iii) a novel non-self-preservationist interpretation of the *divine authorization* to use natural resources in common. The reconceptualization of 'labour' is theoretically the most fundamental, underpinning the other two. My contextual reconstruction enhances our grasp of the structure of Locke's theory of original appropriation. It also reveals Locke's main objection to compact theories to be an external one, hinging on idiosyncratic conceptualizations of key notions.

Introduction

It is an ambitious task that Locke sets himself in Chapter V of *The Second Treatise of Government*: "I shall endeavour to shew, how Men might come to have a *property* in several parts of that which God gave to Mankind in common, and that without any express Compact of all the Commoners" (*TTG* II.25). Theories of original appropriation aim to explain how persons can rightfully come to privately own resources that were before either unowned or held in common. Locke advances a theory of *unilateral* original appropriation: it is morally possible for humans to initially acquire property rights in external things without anyone else's consent. In dispensing with the need for consent Locke's theory historically stood out. Philosophers at the time generally regarded the institution of private property as con-

***Corresponding author: Johan Olsthoorn**, University of Amsterdam, Department of Politics, Nieuwe Achtergracht 166, Amsterdam 1018 WV, NL; j.c.a.olsthoorn@uva.nl

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ventional in origin, introduced by (tacit) agreement.[1] Hugo Grotius (1583–1645), for instance, maintained that "the Original of Property resulted from a certain Compact and Agreement [*pacto*], either expressly, as by a Division; or else tacitly, as by Seizure" (*DJBP* 2.2.2.5).[2] Samuel Pufendorf (1632–1694) concurred, insisting that the institution of property "necessarily presupposeth some Human Act, and some Covenant [*pactum*] either Tacit or Express" (*JNG* 4.4.4). Indeed, only a few years prior to drafting the *Second Treatise*, Locke himself had observed in his notebook: "Therefore man at his birth can have no right to anything in the world more than another. Men therefore must either enjoy all things in common or by compact determine their rights".[3]

This paper reconstructs the structure of Locke's theory of original appropriation by contrasting it with the rival compact theories of Grotius and Pufendorf. I do not mean to suggest that we should understand Locke's theory as a response to either thinker. The present paper takes no position on the contested question of whom Locke's polemical targets are in the *Second Treatise*. Rather, contextualization is used as a heuristic, to unearth some hitherto overlooked conceptual presuppositions of Locke's theory of original appropriation. Grotius and Pufendorf endorsed many of Locke's starting principles (including original common ownership of the earth; natural self-ownership; human natural equality of right; and individual rights of self-preservation) yet arrived at opposing conclusions. Accordingly, a contrast with their theories could indicate (i) which (suppressed) premises of Locke's argument are pivotal for its non-conventionalist conclusions; and (ii) where and how Locke reinterpreted the meaning of received concepts and principles.

This is certainly not the first study to read Locke's theory of original appropriation alongside those of Grotius and Pufendorf. Earlier comparisons have duly underlined the innovative role of labour and natural self-proprietorship in Locke.[4] Rich and detailed though these extant analyses are, the following reconstruction will highlight three all but overlooked conceptual presuppositions of Locke's theory: (i) an unusually broad conception of *labour*; (ii) a reduction of rights of

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1 For a concise overview, see Shimokawa 2013. Following common usage in the literature, the label 'conventionalist' shall cover both explicit agreements (promises and contracts) and tacit ones (based on "a sense of common interest", in the words of Hume 1975, 257). Distinctively, conventionalist theories regard the introduction of private property (i) as morally optional and (ii) as involving the consensual waiving of natural rights of common use.

2 Also e. g., *DJBP* 1.1.10.4: "Property [...] as now in use, was introduced by Man's Will". On Grotius's compact theory of property, see Salter 2001; De Aurajo 2009; Shimokawa 2013, 564–66; cf. Buckle 1991, 42–44.

3 Locke 1997, 268.

4 E.g., Tully 1980; Mautner 1982; Buckle 1991; Zuckert 1994, 248–72; Forde 2009.

use to *property rights*; and (iii) a novel non-self-preservationist interpretation of the *divine authorization* to use the earth in common. Of these three presuppositions, 'labour' is theoretically the most fundamental one: it underpins the other two revisions. My analysis reveals Locke's main objection to compact theories to be an external one, hinging on conceptualizations of key notions not shared by Grotius and Pufendorf. Locke's conceptual dice were loaded from the start.

This paper is structured around the two parts of Locke's theory of original appropriation. Sections 1–3 explore the conceptual foundations of his argument for the moral possibility of unilateral original appropriation; Sections 4–6 examine those for the extent and limiting conditions of individual rights of original appropriation. Section 1 analyses Locke's argument for why unilateral appropriation from the commons *must* be morally possible ('the Starvation Objection'). Locke's novel conception of labour serves to prove that *any* use of common resources requires privatization (Section 2). In combination with his mechanism of choice for normatively effective original appropriation – mixture with labour – that conception allows him to sidestep the objection that unilateral original appropriation is morally off-limits because it involves moral lawgiving over one's equals (Section 3). Section 4 argues that natural self-ownership provides no positive authorization for unilateral original appropriation. An additional moral principle is required. Natural rights of self-preservation won't do (Section 5). Rights of original appropriation are instead best understood as underpinned by Locke's novel gloss on the divine donation of the earth to humanity, recorded in Scripture. The spoilage proviso (a necessary condition for non-injurious original appropriation) supports the proposed theological interpretation of the grounds of our "natural common Right" (*TTG* II.45) (Section 6).

1 The Starvation Objection

Before advancing a positive argument for how individuals can unilaterally appropriate resources from the commons, Locke introduces a *reductio* to show that such appropriation must be morally possible.[5] Rendering permissible appropriation dependent on "the consent of all Mankind" is absurd in Locke's view. How could we ever obtain the consent of *everyone*? "If such a consent as that was necessary, Man had starved, notwithstanding the Plenty God had given him" (*TTG* II.28; cf. I.41 f; I.86). There must be a way to unilaterally acquire external resources for

5 Sreenivasan 1995, 28 f.

private use, Locke claims – unless we accept that God's gift was in vain (or that He scandalously compels us to sin). This section contends that Locke's Starvation Objection is of limited force against Grotius's and Pufendorf's conventionalist theories. Both thinkers can easily sidestep the objection: on their more fine-grained conceptions of rights, natural rights to use the earth in common can be exercised without acquiring private property – and hence without needing anyone's consent.

The force of the Starvation Objection hinges in part on what type of consent is deemed required. Not all forms of consent are equally demanding. Locke only rejects the need for "express" and "explicit" consent (*TTG* II.25; II.28 f.). Tacit consent is never mentioned in the context of original appropriation, although it does figure in the consensual introduction of money (*TTG* II.50).[6] Framing the problem around explicit consent is apt insofar as the Starvation Objection meant to target Robert Filmer (1588–1653). The English royalist objected (against Grotius) that original common ownership of the earth implies that "without a joint consent of the whole people of the world, no one thing can be made proper to any one man, but it will be an injury and an usurpation upon the common right of all others".[7] Locke shared Filmer's concern about the consent requirement, yet argued (against him) that private property can be originally acquired unilaterally, without anyone's consent. Filmer's concern overlooked, however, that for Grotius the introduction of private property did not require the *express* consent of anyone. Tacit consent – a more minimal and practical condition – sufficed. On Grotius's historical reconstruction, withholding consent was no option: "as soon as living in common was no longer approved of, all Men were supposed, and ought to be supposed to have consented, that each should appropriate to himself, by Right of first Possession, what could not have been divided" (*DJBP* 2.2.2.5). Pufendorf likewise stressed the role of tacit consent in the establishment of private property.[8] Compact theorists, this reconstruction suggests, may grant Locke the claim that *any* use or consumption of natural resources requires privatization – and yet forestall the Starvation Objection by holding that such privatization should be seen as having been tacitly consented to.[9]

6 On tacit consent in Locke, see Simmons 1993, 80–90.

7 Filmer 1991, 140.

8 *JNG* 4.4.10: "when Divisions were establish'd by Express, or Possessions confirm'd by *Tacit* Covenant, then Things pass'd out of this Negative Communion, into settled Properties." Both Grotius and Pufendorf distinguish 'common use' from 'first seizure' and 'occupation'. Only the last two have been established by tacit consent and result in exclusive rights (e. g., *DJBP* 2.2.2.5; *JNG* 3.2.5, 4.6.2).

9 Zuckert 1994, 251–53.

My contention is that Grotius and Pufendorf had the conceptual resources to counter the Starvation Objection at an earlier stage: by denying Locke's thesis that any use of the commons requires original appropriation. Like Locke and Pufendorf, Grotius held that God has given the earth and its natural and animal resources to humanity in common: "Almighty God at the Creation, and again after the Deluge, gave to Mankind in general a Dominion over Things of this inferior World. *All Things [...] were at first common*" (*DJBP* 2.2.2.1).[10] This divine donation morally authorized each person to freely make use of the earth's resources in common with everyone else: "From hence it was, that every Man converted what he would to his own Use, and consumed whatever was to be consumed" (*DJBP* 2.2.2.1). "Thus, before Property was introduced, every Man had naturally a full Power to use what ever came in his Way" (*DJBP* 1.1.10.7).[11] The right to use the earth in common is held by every individual equally: "There are some Things which are ours by virtue of a Right *common* to all Men" (*DJBP* 2.2.1). And an enforceable right: "no Man could justly take from another, what he had thus first taken to himself" for personal use (*DJBP* 2.2.2.1; also *DJBP* 1.2.1.5).

For Grotius, exercising natural rights to use the earth in common neither requires nor entails acquisition of private property. Indeed, the Dutchman explicitly contrasted this original right of use with property: "such a Use of the Right common to all Men did at that Time supply the Place of Property" (*DJBP* 2.2.2.1).[12] Property inseparably involves the right to recover: "ownership consists in the right to recover lost possession" (*JH* 2.3.4; also *DJBP* 2.8.3).[13] That legal incident is absent in rights to use the earth in common. Those rights of common use do not establish the same degree of control over resources as property rights do. Dispossessing persons of what they have taken from the commons for personal use is unjust since it violates their right to freely enjoy the earth's resources in common – not because it violates any private property rights (which are after all not yet in place). In contrast to Locke and Pufendorf (*infra*), Grotius does not

10 This paragraph and the next follow Olsthoorn 2018, 197–99.

11 Grotius's general narrative attests that original rights to use the earth in common were not limited to immediate consumption, as claimed by Olivecrona 1974a, 215.

12 "Ac talis usus universalis juris erat tum vice proprietatis." Cited by Pufendorf, *JNG* 4.4.9. The right to use the earth in common is not a right of *exclusive* use (in the way a tenant has rights of exclusive use in their rented house). The irreducibility of Grotian rights of use to property rights is stressed by De Araujo 2009, 359 f.; Klimchuk 2013, 52.

13 Compare the claim of Aristotle *Rhet.*, 1361a, that rights of disposal are essential to private property: "[something] is our own if it is in our power to dispose of it or not." Also compare Kant's later distinction between "empirical" (physical) possessions and "intelligible" (*de iure*) possessions: only in case of intelligible possession does a thing physically removed from oneself remain one's own.

consider it a conceptual truth that all rights of exclusive possession are property rights.

The progressive institution of private property ("first of moveable, and then of immoveable things")[14] was therefore not needed to render consumption permissible. Rather, it served to make possible "a more commodious" form of living (*DJBP* 2.2.2.4). Commodious living required "Labour and Industry" to improve "what the Earth produced of itself". Private property was introduced by compact soon afterwards to compensate for the widespread lack of equity and love, a shortcoming which generated undesirable disproportionalities between individual production and consumption ('free-riders') (*DJBP* 2.2.2.4).[15]

Locke's Starvation Objection, I conclude, does not stick to Grotius.[16] It has been argued that the objection is rather "a retort to Pufendorf, who, without exception, had required the general consent for appropriation in the state of nature".[17] Without such consent "men would have had to abstain from using anything at all".[18] This reading, popularized by Karl Olivecrona, has some apparent textual support. The right to consume previously common goods, Pufendorf writes, is established "by virtue of a previous Covenant, whatever any Man hath seized for this private use, becomes his Property". An agreement was needed because "[o]therwise Men must altogether abstain from the use of things" (*JNG* 4.4.13).

Closer scrutiny proves Olivecrona's reading untenable. It contradicts two key tenets of Pufendorf's moral philosophy and overlooks the textual context of the quoted passage. Pufendorf held that the world originally belonged to all of humanity in the sense that "all Things lay free to any that would use them, and did not belong to one more than to another" (*JNG* 4.4.5). The original community was a negative one – *res nullius*: "Things that be free for any Taker" (*JNG* 4.4.2).[19] According to Scripture, God has expressly permitted humans to "consume on their Necessities", by sharing the earth's resources He created in common (*JNG* 4.4.10; also *JNG* 4.4.12). Consumption of goods unilaterally taken from the commons is further sanctioned by the natural right of self-preservation: "Men

14 Also Pufendorf, *JNG* 4.4.6, 12. Locke, too, affirmed the received doctrine that private property regimes were progressively developed over time (e. g. *TTG* II.38).

15 That last consideration in favour of instituting private property goes back to Aristotle *PCA*, 1263a12–5; Aquinas, *Summa Theologica*, 2a.2ae.66.2.

16 As also noted by Salter 2001, 548.

17 Olivecrona 1974a, 223; Olivecrona 1974b, 221 f. Cf. Zuckert 1994, 253.

18 Olivecrona 1974a, 217; also Tully 1980, 86 f.

19 The distinction between 'negative' and 'positive' forms of common ownership was first introduced by Pufendorf (*JNG* 4.4.2 f.). The distinction is irrelevant for my analysis: all three philosophers concurred that humans are originally co-owners of the earth in the limited, 'negative' sense that every individual has a natural right to freely use the earth in common.

[...] in a Natural State, may use and enjoy the Common Goods and Blessing, and may act and pursue whatever makes for their own Preservation" (*JNG* 2.2.3).[20] Why would rightful consumption of natural resources require a mutual covenant if these resources are "free for any Taker" and each individual equally has a natural right of self-preservation, confirmed by Scripture? Indeed, Pufendorf himself pressed a version of the Starvation Objection to prove that humans must be morally free to kill and consume nonhuman animals for reasons of self-preservation; a command to the contrary being inconsistent with divine goodness (*JNG* 4.3.3 f.; *DO* 1.12.1).

Olivecrona's interpretation further jars with Pufendorf's contention that "others might lawfully take from us, what we had before actually mark'd out for our own Use" (a departure from Grotius). Humans are by nature "under no obligation to forbear invading and plundering" (*JNG* 4.4.5). Requiring an agreement to justify consumption of previously common goods is plainly inconsistent with Pufendorf's claim that before the introduction of exclusive rights people have a right to take what another is using. Pufendorf followed Hobbes in claiming that original rights of common use are non-exclusive. Like Hobbes's natural right to all things, these original use-rights are 'naked' liberty-rights, imposing no obligations upon others.[21] They do "not [...] constitute such Dominion as shall take effect against the Claims of others" (*JNG* 4.5.5; also *JNG* 4.4.9). Offering no normative protection, they are effectively useless ("to no purpose") (*JNG* 4.4.5). For this reason, humans soon made "the first Agreement [...] that what any Person had seiz'd out of the Common Store of Things, or out of the Fruits of them, with design to apply to his Private Occasions, none else should rob him of" (*JNG* 4.4.5). In other words, agreement is needed, not to legitimate *use* of resources, but to establish *exclusive* rights of use:

> Property, strictly so called, ought to have produc'd this Effect, in relation to other Men, that none should invade what had been adjudg'd to one particular Possessor. And here certainly there was need of some Human Act and Agreement (*JNG* 4.4.10).

20 Appealing to the poets, Pufendorf imagines that people could have lived simply in peace and plenty, "finding an easy Supply of Food from Nature's Store" (*JNG* 4.4.8). Absence of private property was a salient feature of both the Golden Age narratives associated with the poets and the Stoics, and of the Epicureans' much more pessimistic account of primeval human life. Garnsey 2007, 108–25, and 136–46, provides a helpful overview of both ancient traditions and their early modern reception.

21 Hobbes 1969, 14.10: "that right of all men to all things, is in effect no better than if no man had right to any thing. For there is little use and benefit of the right a man hath, when another as strong, or stronger than himself, hath right to the same." The distinction between 'naked' and 'vested' liberty-rights is taken from the discussion of Bentham in Hart 1982, 172.

These considerations attest that Locke's Starvation Objection does not stick to Pufendorf either.[22] We are not required to forgo from taking resources from the commons (for consumption) absent an agreement to the contrary.

Pufendorf, we have seen, departed from Grotius (and followed Hobbes) in holding that natural rights of common use place no normative restrictions upon other agents. All exclusive rights, binding others, are established by convention. Pufendorf nonetheless conceptually distinguished exclusive use-rights from full-fledged private property rights. Both count as property titles: "*Property*, in its strict and general Sense [...] denotes the Exclusion of all Others from a particular thing already assign'd to One" (*JNG* 4.4.12; also *JNG* 4.4.3). Yet private property involves ownership of the *substance* of the thing, over and above an exclusive right to use it (*JNG* 4.4.2, 6, 9).[23]

That distinction is central to the textual context of *JNG* 4.4.13 (overlooked by Olivecrona). The passage counters an objection by the German critic Johann Heinrich Böcler (1611–1672). Böcler had declared "primitive communion" impossible on the grounds that it contradicted "every Order and Method, conformable to Right Reason".[24] In response, Pufendorf introduced the idea of a "qualified communion", in which "the Acorns were his that took the Pains of getting them, but the Oak had no particular Owner". Humans could have long lived peacefully under this conventionally established regime of limited communal ownership. "Communion consider'd by itself, doth not render Life altogether lawless and unsociable, but only more simple and unpolish'd" (*JNG* 4.4.13). Pufendorf concluded that natural law does not require the institution of private property – a conclusion contrary to the one Locke drew from the Starvation Objection.

Locke postulates that we cannot *exercise* a right to use common resources without obtaining private property: "yet being given for the use of Men, there must of necessity be a means *to appropriate* them some way or other before they can be of any use, or at all beneficial to any particular Man" (*TTG* II.26; also II.28). That thesis, my reconstruction shows, critically relies on a controversial conceptual premise: namely, non-recognition of the distinction between common use-rights and full property rights. Locke's blunt conception of property collapses that distinction: "the *Idea* of *Property*, being a right to any thing" (*ECHU* 4.3.18).[25] That conception of property precludes, without substantive argument, the possibility

22 As also argued by Buckle 1991, 165.

23 Salter 2001, 547.

24 Quoted in *JNG* 4.4.13. Cf. Böcler 1663. On Böcler, see Palladini 1997; Hochstrasser 2000, 54–59.

25 Locke's conception of 'property' is expansive in a second way as well. It denotes *any* exclusive rights a person has, both rights in oneself and rights to material resources ("Life, Liberty and Estate" – *TTG* II.87; II.123). Olivecrona 1975; Waldron 1988, 157–62.

of introducing regimes of 'qualified communion' in lieu of private property.[26] It also rules out, again on conceptual grounds, a salient way of explaining how persons can originally share nature's bounty in common. Thomas Rutherforth (1712–1771) raised the same objection against Locke:

> It is by no means necessary either to allow, on the one hand, that he had an exclusive right of property in [gathered acorns]; or, on the other hand, to contend that it was robbery, thus to assume to himself what belonged to all in common. There is a middle opinion between these two [...] when he gathered [these acorns], and was eating them, he exercised his common right of using and enjoying, out of the joint stock, what his occasions called for. Though, therefore, we contend that he could not acquire an exclusive right of property in them, or in any thing else, without the consent of mankind, either express or tacit; yet there is no fear of his being starved whilst he is waiting for this consent; because, in the mean time, the exercise of his common right will sufficiently provide for his subsistence.[27]

These considerations show that neither the natural right to use the earth in common, nor that of self-preservation, justify by themselves the unilateral introduction of private property. It is tempting to conclude that the Starvation Objection fails to demonstrate that unilateral acquisition of private property must be morally possible.[28] Yet our reconstruction of the Starvation Objection remains incomplete. Locke's tacit dismissal of the distinction between common use-rights and full property rights does not rest solely upon a controversial claim about the meaning of 'property'. Rather, the next section argues, his concept of labour and theory of natural self-ownership render the distinction irrelevant for original appropriation.

2 Labour and Self-Ownership

Humans, Locke insists, can come to own previously common goods simply by labouring on them: "The *labour* that was mine, removing them out of that common state they were in, hath *fixed* my *Property* in them" (*TTG* II.28). More specifically, the alchemy of mixing one's labour with previously unowned resources is said to procure property titles.

26 Christmas 2020 argues that *Lockean* theories of original appropriation have the resources to justify unilateral appropriation resulting in common and collective ownership.
27 Rutherforth 1832, 3.10. Also Kramer 1997, 115: "people in the state of nature could readily survive without owning any goods, so long as they had privileges to use and consume the goods".
28 With Kramer 1997, 113–15.

> 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 joyned 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 this *labour* something annexed to it, that excludes the common right of other Men. (*TTG* II.27)

The cryptic notion of 'mixing with one's labour' has been the subject of much debate and criticism.[29] Objections include counterexamples ('spilling tomato juice into the sea', 'dropping ham sandwiches in vats of wet cement') and concerns about unintelligibility. Commentators have struggled to explain *how* mixing ('joining', 'annexing', 'employing', 'affecting', 'extending', etc.) one's labour with unowned resources can create private property titles.[30] A range of subtly different interpretations have been advanced, each built upon slightly diverging normative rationales.[31] I will refrain from parsing these existing interpretations, let alone develop a new view. My argument here is more limited: Locke's labour-mixture theory explains why *any* use of originally common resources necessarily results in private property acquisition – given his peculiarly broad conception of labour.

Locke endorses a principle of natural self-proprietorship: humans initially have exclusive moral control over themselves and over their labour.[32] Each person equally is by nature "Master of himself, and *Proprietor of his own Person*, and the Actions or *Labour* of it" (*TTG* II.44). Natural law forbids persons to "harm another in his Life, Health, Liberty, or Possessions" (*TTG* II.6). Natural resources are privatized, Locke claims, by 'mixing' them with what is *already* exclusively one's own. One thus "annexed to it something that was his *Property*, which another had no Title to, nor could without injury take from him" – their labour (*TTG* II.32).

Bracketing the disputed issue over how to make sense of the enigmatic notion of 'labour mixing', I proceed to another observation. If, through labour, what was already one's own somehow becomes *bound up* with what is yet unowned,

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29 For especially searching critiques, see Waldron 1983; Waldron 1988, 184–91; Kramer 1997, 146–50.

30 Waldron has argued that the inference from 'I own my labour' to 'I own the products of my labour' depends on the validity of the assumption that "the only way to safeguard and maintain my former entitlement is to hold me entitled to the object with which it has been mixed". That assumption, in turn, is indefensible because based on a category mistake: it treats an activity ('labouring') as an object. Waldron 1988, 188.

31 For helpful classifications, see Mautner 1982, 261 f.; Christmas 2020, 200–2.

32 On Locke's conception of self-ownership and its relation to divine ownership of all human life, see Olsthoorn 2019b.

then, I submit, on Locke's crude conception of property, this suffices for establishing private property rights in previously common goods. If taking an already appropriated resource violates the appropriator's natural rights in their labour, then the appropriated resource is *effectively* theirs. For exclusive entitlement, in Locke's view, is all there is to property: "The nature [of property] is, that *without a Man's own consent* it *cannot be taken from him*" (*TTG* II.193). "For I have truly no *Property* in that, which another can by right take from me, when he pleases, against my consent" (*TTG* II.138).

According to Locke, "the Condition of Humane Life, which requires Labour and Materials to work on, necessarily introduces *private Possessions*" (*TTG* II.35). This claim holds true for Locke, I contend, in virtue of his broad conception of labour combined with the labour-mixture doctrine. Because *every* act of using common resources involves labour, *every* just appropriative act creates private property (by dint of labour-mixture). What then counts as labour? The logic of his argument compelled Locke to introduce an idiosyncratic conception of labour. *Any* use of natural resources involves toil, including picking berries and filling jugs with rainwater. "Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with" (*TTG* II.27). Nature's bounty cannot otherwise become yours alone, unilaterally.

Peculiarly, for Locke, seizing moveable natural resources involves labour prior to and independent of improving the seized good (e. g., through industry, artisanship) (*TTG* II.28). He "that *gathered* a Hundred Bushels of Acorns or Apples, had thereby a *Property* in them; they were his Goods as soon as gathered" (*TTG* II.46). That "first gathering" creates property titles, Locke insists, because it involves labour: "*labour* put a distinction between them and common" (*TTG* II.28). Drawing water from a fountain is said to involve labour (*TTG* II.29), as does finding and pursuing a hare (*TTG* II.30). Ditto for deer killed, fish caught, and ambergris collected (*TTG* II.30). The apples I harvest from the commons are *ipso facto* no longer yours; no cumbersome baking of pies is needed to establish my property title.[33] Locke holds that toil qualitatively improves natural resources in general – "'tis *Labour* indeed that *puts the difference of value* on every thing" (*TTG* II.40; also II.42). Yet, contrary to what some have suggested, labour is not *defined* as an "improving, value-added activity".[34] Filling a jug with water from a fountain involves labour but does not in any meaningful sense improve that

33 The same is implied by *TTG* II.37 and II.45. In the latter passage, Locke argues that private property, grounded in labour, initially extended to a few goods only as "Men, at first, for the most part, contented themselves with what un-assisted Nature offered to their Necessities".
34 *Pace* Buckle 1991, 151.

water. It hence cannot be the *qualitative improvement* of natural resources that creates property entitlements.[35]

What about privatization of immoveable natural resources? The same appropriative principles apply. Ownership of land, Locke contends, "is acquired as in the former [i. e. moveable natural resources]" (*TTG* II.32). Working the land creates title to it: "subduing or cultivating the Earth, and having Dominion [...] are joyned together. The one gave Title to the Other" (*TTG* II.35). To "possess, and make use of [...] *Land*" go together (*TTG* II.184). Not every productive activity taking place upon land counts as using the land itself, however. Locke had a "very specific form of industry" in mind, Arneil writes: "agrarian cultivation".[36] "*As much Land* as a Man Tills, Plants, Improves, Cultivates, and can use the Product of, so much is his *Property*. He by his Labour does, as it were, inclose it from the Common" (*TTG* II.32). Animal husbandry, too, creates property in land (*TTG* II.37 and II.42). But hunting, fishing, and foraging do not: "Men, to whom the Rivers and Woods afforded the Spontaneous Provisions of Life, and so with no private Possessions of Land".[37] In Locke's view, non-farming practices are not ways of using and working *the land itself* (II.32). Following these cues, perhaps pastoralists possess the land their animals graze on; yet that land becomes common again as soon as the herd moves on. Only sedentary agriculture – enclosure – creates "*fixed property in the ground*" (*TTG* II.38; cf. *DJBP* 2.2.2.3).[38]

Significantly, all agrarian cultivation, whether "tillage or husbandry", *improves* the land, in the sense of making it more productive (*TTG* II.37; also II.32 f.; II.42).[39] All original appropriation of land therefore meets the Sufficiency

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35 As for Paine 1945, 611 f.; Nozick 1974, 175. Locke nowhere suggests that labour begets property because hard work *merits* some social reward. Simmons 1992, 246 f.; Russell 2004, 316.

36 Arneil 1996, 137 f.

37 Locke 1692, 72.

38 Locke's agrarian theory of original land acquisition informed a justification for settler colonialism. Outside the state, anyone is permitted to unilaterally appropriate waste land (*TTG* II.184). Locke spotted many "in-land, vacant places of *America*" ready for colonial taking (*TTG* II.36). All Native Americans who engaged in cultivation or husbandry, however, had property rights in land – unlike "the wild *Indian*, who knows no Inclosure" (*TTG* II.26). When Locke wrote that "in the beginning all the World was *America*", he meant that "no such thing as *Money* was any where known"; not that property in land was non-existent (*TTG* II.49). In the Americas "*great Tracts of Ground*" *must* lie waste, Locke argued, because "the Inhabitants thereof not having joined with the rest of Mankind, in the consent of the use of their common Money" (*TTG* II.45; also II.108). Lacking money, Native Americans could not substantially enlarge their perishable holdings without falling foul of the Spoilage Proviso (*infra*). For compatible if subtly different readings of Locke on agrarian colonialism, see Tully 1993, 145–55; Arneil 1996, 136–45.

39 Cf. Seneca 2015, 334: "The earth itself was more productive when it was untilled".

Proviso. That principle states that unilateral original appropriation must leave "enough, and as good [...] in common for others" to be permissible (*TTG* II.27). As Locke avers:

> he who appropriates land to himself by his labour, does not lessen but increase the common stock of mankind. For the provisions serving to the support of humane life, produced by one acre of inclosed and cultivated land, are [...] ten times more, than those, which are yielded by an acre of Land, of an equal richnesse, lyeing wast in common. And therefor he, that incloses [ten acres of] Land [...] may truly be said, to give ninety acres to Mankind. (*TTG* II.37; also II.43)

It does not follow that original acquisition of land *must* be productive to meet the Sufficiency Proviso.[40] Even if, counterfactually, toil would not increase land productivity, land was abundant enough for much of human history for enclosure to leave enough and as good in common for others (*TTG* II.33; II.36).

Unlike gathering acorns and collecting ambergris, the labour required to privatize land – agrarian cultivation – qualitatively improves the object seized. We need not conclude that Locke employs *two* conceptions of labour: an ameliorative one for land, a non-ameliorative one for moveable natural resources. Qualitative improvement seems a practical upshot of the way in which land is originally acquired, rather than a conceptual feature of 'agrarian labour'. However many conceptions of labour in original appropriation we wish to differentiate in Locke's theory, all are broad ones. *Any* use of natural resources themselves, moveable or immoveable, requires labour and *ipso facto* produces private property.

Grotius and Pufendorf worked with much more restrictive conceptions of labour. Neither regarded picking up acorns or filling up pitchers as labour. "Labour and Industry" became required, both held, only when humans were no longer content to live off nature's produce (*DJBP* 2.2.2.4; *JNG* 4.4.6). Instituting some form of private property became prudentially (Grotius) and morally (Pufendorf) required only when humans started improving natural resources through labour. For while natural resources are plentiful and hence not worth fighting over, works of industry are not (*JNG* 4.4.6).[41]

40 *Pace* Shrader-Frechette 1993, 217 f.

41 It has been argued that seventeenth-century debates over the nature of private property mirror the thirteenth-century controversy over Franciscan poverty. The Franciscans claimed to follow Christ by living without property altogether. Their opulent opponent Pope John XXII (c.1244–1334) argued that any consumption of goods presupposes private property, as it *de facto* excludes everyone else from the use of the same. Similar considerations are indeed found in Grotius 2006, 317 f. However, the theoretical disagreements here highlighted between Grotius, Pufendorf, and Locke are not about whether consumption is *de facto* exclusionary (and rightful

Locke's argument for why we must have rights of unilateral original appropriation, I have argued, is premised on a curiously broad conception of labour. That same conception explains his tacit dismissal of the received distinction between common use-rights and property. This distinction was not simply defined away by Locke. He reduced rights of common use to rights of original appropriation on theoretical grounds (rather than by definitional fiat). As *all* use of the commons involves labour, it is impossible to exercise natural rights to use the earth in common *without* acquiring private property because of the normative effects labour assorts (as per the enigmatic labour-mixture doctrine). The next section argues that the same combination of claims about labour allows Locke to show "*how Labour could at first begin a title of Property* in the common things of Nature" without moral lawgiving over equals (*TTG* II.51). For property rights in external things are normatively derivative on and extend prior rights of natural self-ownership.

3 Freedom, Natural Equality, and Original Appropriation

Any successful theory of original appropriation must explain, *inter alia*, how other people become *obligated* to acknowledge the goods individuals seize from the commons for their private benefit as henceforth theirs alone. Pufendorf and Kant declared *unilateral* original appropriation morally impossible on this ground. They regarded it as inconceivable that individual appropriators can impose new obligations upon their equals. This section argues that Locke has the theoretical resources to meet – or rather: set aside – their concerns by conceptualizing original appropriation as duty-alteration through pre-existing rights in personal labour. Fully neutralizing concerns about moral lawgiving over equals required Locke to hold that *every* act of original appropriation involves labour.

Like Grotius, Pufendorf regarded the institution of private property as morally optional. Natural law *permits* but does not *require* abandoning original communal use of the earth.[42]

only if that exclusion is justified). Instead, they centre on whether using the earth's resources necessarily requires private property acquisition – independent of and prior to consuming seized goods (*TTG* II.28). The question, in other words, is whether catching fowl produces private property, not whether eating them presupposes it. On the Franciscan poverty debate, see Mäkinen 2001.

42 On permissive natural law and property, see Bisset 2015.

> [T]he Law of Nature is suppos'd to approve and confirm all Agreements made by Men about the Possession of things, provided they neither imply a Contradiction, nor tend to the Disturbance of Society. Therefore, the *Property* of things flow'd immediately from the Compact of Men, whether *tacit* or *express*. (*JNG* 4.4.4)

Like Locke and Grotius, Pufendorf maintained that each human equally by nature owns what relates to their person, including their "life, body, chastity and liberty" (labour goes unmentioned).[43] Through the law of nature, God has commanded everyone to abstain from interfering with what thus naturally belongs to another. The deity *could* similarly have instituted rules of property in external things (e. g., by issuing a natural law establishing rights of first seizure). But, Pufendorf insists, He has not done so.[44] Neither revelation nor natural reason indicates that God intended humans to establish some particular rules of property (private or communal): "we can by no means say, that there was any universal Rule and Manner of Possessing prescrib'd by God himself, which all Men should be oblig'd to observe" (*JNG* 4.4.4).

By logic of elimination, private property *must* therefore have been instituted by (tacit) mutual agreement. For rightfully excluding equals from a resource requires their consent: "that one Man's seizing on a thing should be understood to exclude the Right of all others to the same thing, could not proceed but from Mutual Agreement" (*JNG* 4.4.4). This last conclusion is built upon his doctrine of moral entities.[45] Moral entities are non-natural properties superimposed upon physical beings, things, and motions by an intelligent power (human or divine) in order to regulate the behaviour of rational agents (*JNG* 1.1.3). For example, 'authority', 'right', and 'obligation' are moral qualities attached to persons; while 'property' is a moral entity superimposed on things. For Pufendorf, introducing exclusive rights requires mutual consent not merely because they curb the natural rights of others to use the earth in common (a concern dealt with by Locke's Sufficiency Proviso). But also, more fundamentally, because humans by nature lack the moral authority to unilaterally restrict the rights of their equals. Absent divine lawgiving to the contrary, the moral entities constituting private property *must* have been introduced by mutual agreement: "we cannot apprehend how a bare

43 *DO* 1.6.3; *JNG* 3.1.1. According to Grotius: "A Man's Life is his own by Nature [...] and so is his Body, his Limbs, his Reputation, his Honour, and his Actions" (*DJBP* 2.17.2.1, also *DJBP* 1.2.1.5). On the idea of natural self-ownership in early modern natural jurisprudence, see Olivecrona 1973; Buckle 1991, 29–37, 77–80, 91 f., 169–74.

44 Pufendorf hence opposed Hobbes's inclusion of a rule of first possession under the natural law of equity (*DCv* 3.17 f.; L 15.26). Both rights of first seizure and of primogeniture are for him conventional in origin (*JNG* 3.2.5).

45 On this doctrine, see Olsthoorn 2019a, 61 f.

Corporal Act, such as Seizure is, should be able to prejudice the Right and Power of others, unless their Consent be added to confirm it" (*JNG* 4.4.5).

In Pufendorf's argument, natural equality renders unilateral original appropriation morally impossible; in Kant's better-known version, the right to freedom does. Unilateral original appropriation, Kant insisted, is morally wrong. Individuals have rights, and there are things no person or group may do to them (without violating their innate right to freedom). Unilateral appropriative acts, Kant contended, are unjust since they involve the arbitrary and direct restriction of everyone else's external freedom by foisting new obligations upon them:

> When I declare (by word or deed), I will that something external is to be mine, I thereby declare that everyone else is under obligation to refrain from using that object of my choice, an obligation no one would have were it not for this act of mine to establish a right.[46]

Observe that unilateral appropriation is wrong only insofar as it imposes upon others "obligations which they did not have before".[47] As Kant puts it: "Lawgiving is involved in the expression 'this external object is mine,' since by it an obligation is laid upon all others, which they would not otherwise have, to refrain from using the object".[48] The source of the obligations constitutive of property rights cannot possibly be the will of the individual appropriator: "a unilateral will cannot serve as a coercive law for everyone with regard to possession that is external and therefore contingent, since that would infringe upon freedom in accordance with universal laws".[49] Kant concluded that original appropriation can be justified only if authorized by an omnilateral will in accordance with principles of right.[50]

46 Kant 1996, VI 255; also VI 261. Kant's concern is thus not that unilateral appropriation deprives others of the opportunity to use or appropriate the seized object (a setback of their interests). Ensuring that appropriation does not harm anyone's interests (e. g., because it leaves enough and as good in common) therefore cannot forestall Kant's objections against unilateral original appropriation. Nozick 1974, 175; Gibbard 1976, 78.

47 Waldron 1988, 267.

48 Kant 1996, VI 253.

49 Kant 1996, VI 256; also VI 264.

50 Although "*conclusive* acquisition takes place only in the civil condition", provisional acquisition outside the state "is true acquisition" insofar as it is "in conformity with the idea of a civil condition" – i. e., "included in a will that is united a priori … and that commands absolutely" (Kant 1996, VI 263–4). Westphal 2002 argues that provisional appropriation in Kant only yields rights of use in the thing claimed. The vast literature on Kant's theory of property and original acquisition further includes Gregor 1988; Flikschuh 2000, 113–43; Ripstein 2009, 90–106, 148–59.

Van der Vossen has argued that *Lockeans* can meet Kant's challenge to unilateral appropriation.[51] Original appropriation, he maintains, does not necessarily involve *duty-creation*. Either *duty-activation* or *duty-alteration* might suffice. In the case of duty-activation, original appropriation activates a pre-existing natural duty to respect agents' natural right to own property. Such a natural duty is triggered by – for conditional on – the performance of appropriative acts (which satisfy relevant moral conditions). In the case of duty-alteration, non-normative facts about the world (like physical acts of seizure) alter what pre-existing duties practically require of individuals. On neither account does original appropriation involve moral lawgiving. Appropriators do not determine what is morally demanded of others but merely alter morally relevant non-normative features of the world. In elaboration, Van der Vossen argues that humans have a "natural conditional right to own property", grounded in autonomy-based and welfare-based interests, as well as in the meta-interest of being able to satisfy the former interests through unilateral action.[52] That conditional right places conditional duties on everyone else to respect property rights acquired by rightful appropriation. Van der Vossen highlights one significant upshot of his analysis: "It is nothing about labor as such that makes appropriation possible. It is the effect laboring has on our natural conditional rights".[53]

The same solution, I contend, is available to *Locke* as well. Departing from Van der Vossen, I maintain that for Locke the natural right to own property is derivative. It is a composite, consisting of a natural right to use the earth in common plus natural self-ownership of one's labour. *Pace* Van der Vossen, labour *is* normatively foundational to Locke's theory of original appropriation. Indeed, Locke significantly expanded what counts as labour for the purposes of that same theory.

Throughout the text, Locke suggests that unilateral original appropriation involves *extending* pre-existing natural rights in one's labour to previously common goods. "For this *Labour* being the unquestionable Property of the Labourer, no Man but he can have a right to what that is once joyned to" (*TTG* II.27; also II.32). Locke repeatedly invokes natural rights in one's labour to prove that others are obliged to abstain from interfering with justly appropriated resources. Grabbing what another has permissibly taken from the commons (or permissibly acquired by trading the fruits of their work), Locke suggests, violates pre-existing

51 Van der Vossen 2015. Sage 2012 denies that original appropriation involves duty-creation in Kant. Breakey 2009 argues that duty-imposing powers are common and morally unproblematic.

52 Van der Vossen 2015, 76 f.

53 Van der Vossen 2015, 76.

rights in the "*Labour* of his Body, and the *Work* of his Hands" (*TTG* II.27). It is to desire "the benefit of another's Pains, which he had no right to" (*TTG* II.34).[54] This suggests that labour-mixture does not create *new* property rights. Rather, original appropriation *extends* pre-existing rights of self-ownership – altering correlative duties along the way.[55]

Observe that everyone else is morally bound to acknowledge a seized good as henceforth privately owned only insofar as that resource is *laboured upon*. Locke's broad conception of labour, outlined above, ensures that every permissible use of previously common resources by natural self-proprietors produces private ownership. As even trivial acts of gathering and garnering somehow mix pre-owned labour with natural resources, no act of original appropriation involves the imposition of *new* moral obligations upon equals. Usurping *any* resource another has permissibly appropriated from the commons is unjust since it despoils them of their labour (their natural property). I conclude that Locke's idiosyncratic conception of labour allows him to sidestep the concerns Pufendorf and Kant raised about moral lawgiving – on *one* interpretation of how labour begets property rights. Whatever else its merits, the advanced reconstruction accords with, and makes sense of, Locke's conceptions of labour and natural self-ownership.

4 Towards a Positive Authorization for Unilateral Appropriation

Mixture with labour is Locke's mechanism of choice for normatively effective original appropriation: "*by* placing any of his *Labour* on them, did thereby *acquire a Propriety in them*" (*TTG* II.37). Natural self-ownership of the "*Labour* of his Body, and the *Work* of his Hands" does not, however, by itself justify original appropriation of common/unowned resources (*TTG* II.27). Only *if* humans are morally permitted to take resources from the commons through their labour, *then* those resources thereby become theirs alone.[56] Labour theories of property thus presuppose prior appropriative rights.[57]

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54 Also *TTG* I.42: "*Justice* gives every Man a Title to the product of his honest Industry, and the fair Acquisitions of his Ancestors descended to him".

55 Rights are commonly assumed to have correlative duties for Locke, e. g., Snyder 1986, 731 f.; Simmons 1992, 73.

56 As noted by, e. g., Steiner 1994, 235; Cohen 1995, 73.

57 Kant 1996, VI 269: "whoever expends his labor on land that was not already his has lost his pains and toil to who was first".

The same is true for the main rival interpretation of Locke's labour theory of property. Developed by James Tully and Gopal Sreenivasan, the Workmanship Model or Maker's Right Doctrine dispenses with labour-mixture.[58] It holds as axiomatically true that "a maker has a right in and over his workmanship".[59] Ample textual evidence attests that Locke endorses this principle.[60] He primarily invokes it to justify God's rights over His creatures. Yet the maxim is in principle applicable to humans as well. Locke distinguishes "creation" *ex nihilo* from "making" (*ECHU* 2.26.2). To what extent humans possess the former power is unclear.[61] Yet humans are evidently capable of *making* – i. e., rearranging pre-existing discernible matter to produce something new: "such are all artificial things" (*ECHU* 2.26.2).[62] As Sreenivasan duly notes, the Workmanship Model presupposes rights of original appropriation insofar as workmanship requires productive employment of natural resources – which *ex hypothesi* are originally commonly owned and whose rightful withdrawal from the commons stands in need of justification.[63] Grotius deemed creation practically irrelevant as a distinct "Way of Acquisition" for the same reason:

> since nothing can be naturally produced, except from some Matter that did itself exist before; if that [matter] be ours, we do but continue our Right of Property, by producing a new Form in it: If it be no Body's, then it is our Property in it acquired by the Right of a first Possessor (*DJBP* 2.3.3)

The Workmanship Model, I contend, cannot by itself render original appropriation permissible for another reason as well. Locke's biblically-inspired comparison with inanimate pottery notwithstanding, the Model serves to ground rights against created *agents*: "the authority and dominion which someone has over another, either by natural right and the right of creation, as when all things are justly subject to that by which they have first been made and also are constantly

58 Tully 1980, 35–38, 116–24; Sreenivasan 1995, 62–90. For critical discussion, see Simmons 1998.
59 Tully 1980, 42.
60 E.g. Locke 1997, 105, 117, 119; *TTG* I.53; II.6; *ECHU* 2.28.8, 4.3.18.
61 Cf. Aquinas, *Summa Theologica*, 1a.45.5: "[t]o create can be the action of God alone". The cosmologist Carl Sagan has quipped: "if you wish to make an apple pie from scratch, you must first invent the universe".
62 Locke further distinguishes "making" from "generation" – an indiscernible process not under direct human control. "Thus a Man is generated, a Picture made" (*ECHU* 2.26.2). Elsewhere, Locke argues that parents cannot be said to have *intentionally* created their offspring: procreational joys being a more likely motive (*TTG* I.52–54). Parents therefore cannot claim makers' rights over their offspring. For discussion, see Franklin-Hall 2012.
63 Sreenivasan 1995, 63 f., 70.

preserved".[64] By right of creation, the potter may destroy the products of her artisanship (those products being in her power and, if animate, subject to her will). The Model does not establish exclusive rights to her pottery *against fellow-humans* (who are not subject to her will). Due to its focus on creators' rights of authority over the created, the Model cannot straightforwardly be extended to property rights vis-à-vis persons. Any such extension risks the fallacy of conceptualizing property rights as consisting in moral relations to things: "as if someone could, by the work he expends upon them, put things under an obligation to serve him and no one else".[65] Property rights are essentially rights against other persons with respect to things – and those interpersonal rights are here in question.[66]

Regardless of how we interpret Locke's labour theory of property (through mixture or makers' rights), natural self-ownership, I conclude, cannot by itself ground rights of original appropriation. An additional moral principle is logically required, providing positive authorization for unilateral appropriation. That additional principle partly determines the extent of natural appropriative rights – and thus helps to explain the redundancy of property conventions. To stave off the Starvation Objection, the principle should at the least morally permit each person to appropriate whatever they need to survive.

5 Natural Rights of Self-Preservation

On Locke's account, natural rights to use the earth in common entail natural rights of unilateral original appropriation. Appropriative rights are thus normatively derivative. (Natural rights are non-conventional in origin but not necessarily normatively basic.) So are natural rights of common use. The remainder of this paper analyses Locke's principled justification for our "natural common Right" (*TTG* II.45), in juxtaposition to those of Grotius and Pufendorf.

Which normative principle provides a rationale for natural rights to use the earth in common, accounting for their extent (how much appropriators may take) and explaining their limiting conditions (why some appropriations are morally off-limits)? Natural rights of self-preservation are a salient candidate.[67] Pufendorf

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64 Locke 1997, 117. Continual dependency on the maker's power may play some (additional) normative role in grounding rights of creation.

65 Kant 1996, VI 269.

66 Kant 1996, VI 260.

67 Sreenivasan 1995, 41: "the natural right man has to property in common [...], which is derived from the natural right a man has to his preservation and to preserve himself, is the same as the right to the means of preservation". Also Buckle 1991, 186; Udi 2015, 211–13.

had supported natural rights to use the earth in common on the same grounds: “Since God Almighty hath conferr’d on Man the Privilege of Life, he is at the same time suppos’d to have allow’d him the use of every thing necessary for the keeping and maintaining of that his Gift” (*JNG* 4.3.2).[68] *If* natural resources cannot be used without private property acquisition – as Locke claims – *then* rights of self-preservation must permit non-injurious unilateral appropriation.

Supporting textual evidence abounds for a self-preservationist interpretation of the grounds of appropriative rights. In the first lines of Chapter V, we read: “Men, being once born, have a right to their Preservation, and consequently to Meat and Drink, and such other things, as Nature affords for their Subsistence” (*TTG* II.25). This “right every one had to take care of, and provide for their Subsistence” is repeatedly equated with the divine donation granting common ownership of the earth to humanity, related in Gen. 1:26–29 (*TTG* I.87; II.25). Locke avers that God communicates His wish that humans pursue self-preservation via both revelation and natural reason. The strong and universal human inkling to self-preservation is evidence, Locke believes, of our Maker’s will (*TTG* I.86). That inkling is itself indicative of both a *duty* and a *liberty-right* to preserve oneself. And as humans are by nature equal, so each is morally bound to preserve, not only themselves, but all of humanity (as much as possible, barring wrongdoers) (*TTG* II.6). That last universal natural law duty, in turn, grounds individual *claim-rights* to life and sustenance (*TTG* I.42).[69] Locke, I conclude, endorses an enforceable natural right of self-preservation, capable of justifying unilateral original appropriation.

This section argues that rights of self-preservation cannot do all the logically required normative work. For they do not justify every appropriative act that satisfies the two provisos. Self-preservation only grants a “right [...] to make use of those things, that were necessary or useful to his Being” (*TTG* I.86; also II.26). To forestall the need for property conventions, natural appropriative rights should permit seizing resources *beyond* those “which were serviceable for his Subsistence, and given him as means of his *Preservation*” (*TTG* I.86). Otherwise persons would lack moral permission to engage in certain forms of harmless unilateral appropriation – or so I shall argue.

For Locke, original appropriation is morally constrained by two provisos. They jointly set out the conditions for permissible (i. e., non-injurious) unilateral original appropriation. The Sufficiency Proviso demands that there must remain

68 On the normative status of rights of self-preservation in Pufendorf, see Haara 2020.

69 On rights to charity in Locke, see Waldron 2002, 177–87; Forde 2009; Udi 2015.

"enough, and as good left in common for others" (*TTG* II.27; also II.35).[70] Unilateral original appropriation that accords with this proviso is *not unjust* – as it leaves intact everyone else's right to use the earth in common. Such appropriation, Locke writes, does in no way "prejudice the rest of Mankind, or give them reason to complain, or think themselves injured by this Man's Incroachment" (*TTG* II.36). After all, "[n]o Body could think himself injur'd by the drinking of another Man, though he took a good Draught, who had a whole River of the same Water left him to quench his thirst". Original appropriation that leaves behind ample equally good resources for others is like "tak[ing] nothing at all" (*TTG* II.33). For Locke, natural common rights do not entitle persons to use *each and any* resource.[71] Rather, humans have a *general* right to freely enjoy the earth's resources; and that right remains intact if another's unilateral appropriative act leaves enough and as good behind in common.

The Spoilage Proviso states that persons may appropriate only "[a]s much as any one can make use of to any advantage of life before it spoils". "Whatever is beyond this, is more than his share, and belongs to others" (*TTG* II.31). Persons overstep their natural right to use the earth in common whenever they let an appropriated good go to waste. Spoilage violates the "common Law of Nature", rendering one "liable to be punished; he invaded his Neighbour's share, for he had *no Right*, *farther than his Use* called for any of them" (*TTG* II.37). We might think that flouting the Spoilage Proviso is morally wrong without violating anyone else's rights. After all, if appropriation leaves enough and as good behind for others, then wasting taken resources harms no one. Thus understood, the Spoilage Proviso prohibits appropriation *without right* (taking more than permitted) rather than *unjust* (i. e., rights-violating) appropriation. Puzzlingly, Locke's position is a different one. Even amidst plenty, taking more than one can use violates the rights of others: "He was only to look that he used them before they spoiled; else he took more then his share, and robb'd others" (*TTG* II.46; also II.31; II.37; II.51). The next section explains this curiosity.

70 Disagreement persists over the status and conditions of application of the Sufficiency Proviso. Waldron 1988, 209–18, has controversially denied that the 'enough and as good' clause constitutes "a necessary condition of legitimate appropriation". Cf. Mautner 1982, 260; Van der Vossen 2021.

71 Cf. Rutherforth 1832, 3.7: "Where one man has a right to exclude all others from the use or enjoyment of a thing, they cannot possibly have any claim of common right to use and enjoy it. Now it would be inconsistent with justice to deprive them of their common right without their consent. Property, therefore, could not be introduced, consistently with justice, unless mankind consented to it, either expressly or tacitly". Also Filmer 1991, 234.

Observe that the two provisos jointly permit unilateral original appropriation that cannot plausibly be interpreted as required by self-preservation. As Simmons remarks, "Locke clearly allows that our labor grounds property even in those goods that are only for our convenience or comfort, not just in those necessary for survival".[72] Unilateral appropriation that produces tradeable surpluses is explicitly condoned. Persons may appropriate more natural resources than needed for their personal sustenance if they give away the surplus, or exchange it for money or other non-perishable goods (*TTG* II.46). Even if these surpluses are largely due to the productive value of labour, it remains the case that sustenance-exceeding appropriation (albeit harmless) lacks positive authorization insofar as appropriative rights are derived from rights of self-preservation. "Men had a Right to appropriate, by their Labour, each one to himself, as much of the things of Nature, as he could use" – rather than as much as their self-preservation requires (*TTG* II.37).[73]

The ensuing gap can be filled by interpreting rights of self-preservation expansively. Consider Hobbes's "*right of nature*: that every man may preserve his own life and limbs, with all the power he hath" (*EL* 14.6; also *DCv* 1.7; *L* 14.1, 4). Hobbes turns this right into a blanket justification – a natural right to *everything*. In times of war, he argues, amassing resources is generally permitted as it increases one's power and thereby aids self-preservation. Moreover, due to natural equality, each individual is by nature entitled to judge for themselves what their self-preservation requires (*EL* 14.8 f.; *DCv* 1.9). No argument enlarging what rights of self-preservation permit and require is found in Locke. Absent such an argument, rights of self-preservation cannot adequately account for the range of permissible (i. e., non-injurious) appropriative acts. Which principle, then, authorizes unilateral appropriation of goods from the commons over and above those needed for survival?

6 Divine Permission to Appropriate from the Commons

In *TTG* II.25, Locke cites *two* basic principles in support of original common ownership of the earth – rights of self-preservation (vouchsafed by natural reason) and divine donation (by revelation). The former, I have argued, cannot explain the *extent* of appropriative rights: we may rightfully seize more from the commons

72 Simmons 1992, 245; also Waldron 1988, 168 f.

73 See also *TTG* I.97; II.51; I.92: "Property, whose Original is from the Right a Man has to use any of the Inferior Creatures, for the Subsistence and Comfort of his Life".

than what our personal subsistence requires. This section turns to the second ground for original co-ownership of the earth: "those Grants God made of the World to *Adam*, and to *Noah*, and his Sons", narrated in the holy writ (*TTG* II.25). The *First Treatise* ridicules Filmer's claim that God had given the earth as private property to Adam. None of Locke's objections, however, involves a principled rejection of divine donation as a ground of property rights. On the contrary, Locke fully endorses the biblical claim that common ownership of the earth is divinely sanctioned. He departs from Filmer in maintaining that "God in this Donation, gave the World to Mankind in common, and not to *Adam* in particular" (*TTG* I.30). The *Second Treatise* repeats this claim (e.g., *TTG* II.25 f.; II.34).

Divinely ordained common ownership of the earth was a cornerstone of many early-modern theories of property. Grotius, Pufendorf, and Locke agreed that both natural reason and revelation attest to the existence of individual rights to enjoy the earth's resources. Yet they held diverging views, I contend, on the *terms* and *point* of God's donation. Above, I argued that Locke stood out by insisting that (i) the earth's resources cannot be used while *remaining* common. *Any* use of natural resources inevitably establishes private property. This section highlights two further novelties in Locke's account – concerning (ii) the rationale for, and (iii) extent of these rights of common use. How much may persons appropriate from the commons, and for what purposes? Locke, I argue, justifies extensive appropriative rights by advancing a distinctive *non-self-preservationist* interpretation of the terms of God's donation of the earth to humanity.

Both Grotius and Pufendorf had linked the divine donation to Gen. 1:26–29 and 9:1–3, narrating God's grant to humanity of dominion over nonhuman animals, made at the creation and renewed after the flood, "to replenish the earth, and subdue it" (*DJBP* 2.2.2.1; *JNG* 4.4.3 f.). Neither thinker interpreted these biblical concessions as sanctioning the establishment of private property. For Pufendorf, "the Grant of Almighty God, by which he gave Mankind the use of Earthly Provisions" not even produced exclusive rights vis-à-vis other humans (*JNG* 4.4.3). Their readings departed in this respect from Filmer, for whom God's donation endowed Adam with private dominion and royal authority alike.[74] Locke followed Grotius and Pufendorf in holding that neither Gen. 1:26–28 nor Gen. 9:1–3 granted rights of dominion over other persons (*TTG* I.21–43). "Tis nothing but the giving to Man, the whole Species of Man, as the chief Inhabitant, who is the Image of his Maker, the Dominion over the other Creatures" (*TTG* I.40). Yet, unlike the two continental theorists, Locke insisted that humans cannot make use of "all the Fruits it naturally produces, and Beasts it feeds" without private appropriation

74 Filmer 1991, 217.

(*TTG* II.26). By authorizing human self-proprietors to use the earth's resources, God must therefore *simultaneously* have permitted unilateral initial acquisition – otherwise His gift would have been in vain. For Locke, the divine dispensation granting rights over inferior creatures entailed individual rights of original appropriation. His reconceptualization of 'labour' thus prompted Locke to reinterpret *how* God meant the earth to be used – and what appropriative rights this donation established.

The central role given to labour is distinctive in Locke's gloss on the divine donation. "God gave the World to Men in Common", Locke writes, "to the use of the Industrious and Rational, (and *Labour* was to be *his Title* to it;) not to the Fancy or Covetousness of the Quarrelsom and Contentious" (*TTG* II.34). Locke stresses that the donation includes the land itself: "the Ground which God had given him in common with others to labour on" (*TTG* II.34). The deity orders humans to "subdue the Earth" itself, through agrarian cultivation (*TTG* II.32).

Like Grotius and Pufendorf, Locke reads the biblical donation as granting humans a "*Liberty to use*" in common the natural and animal resources God created (*TTG* I.39). Locke further interprets the donation in light of God's overall plan: "Be Fruitful, and Multiply, and Replenish the Earth". That directive is called a "Blessing" and "Benediction" (*TTG* I.33; citing Gen. 1:28 and 9:1).[75] The wording indicates that replenishing the earth is not a divinely imposed duty, even if God benevolently wishes us to act accordingly. The deity does, however, command us to labour to procure necessities of life, as per the duty to preserve oneself. "God Commanded, and his Wants forced him to *Labour*" (*TTG* II.35; also I.45). We toil, Locke writes, "in Obedience to this Command of God" and as required by "the penury of [our] Condition" (*TTG* II.32). Intriguingly, Locke cites Gen. 3:17–19 to further gloss the terms of the donation. Those verses record God's curse of humanity: "in the Sweat of thy Face, shalt thou eat thy Bread" (*TTG* I.45). Labouring is the ordeal of fallen humanity: we toil in sorrow, 'all the days of thy life'. Fortunately, Locke's inflationary definition of labour notably lightens the curse: picking berries and drawing water from a fountain counts as labour but is hardly laborious.

The divine donation of the world is accompanied, Locke insists, by a natural right to appropriate, as a counterpart of the instruction to cultivate the earth. "God, by commanding to subdue, gave Authority so far to *appropriate*" (*TTG* II.35). Humans are naturally entitled to unilaterally remove resources from the

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75 For an alternative analysis of Locke's exegesis of these biblical verses, and the rights derived from it, see Tully 1993, 110–13.

commons through their labour because they thereby fulfil God's wishes.[76] Not self-ownership or self-preservation, I maintain, but this divine authorization to appropriate through labour underpins natural rights of original appropriation. For Filmer, God has given *dominium* over the world to Adam alone. For Locke, *dominium* is given to whoever lawfully appropriates from the common stock through labour, in obedience to God's directive to "Replenish the Earth and subdue it" (*TTG* I.23).[77]

The Spoilage Proviso supports the proposed theological interpretation. Self-preservation cannot explain the limits this proviso places on permissible original appropriation. If the Sufficiency Proviso is met, spoilage cannot possibly violate others' rights of self-preservation. If appropriation leaves enough and as good in common for others, then why would wasting seized resources be unjust? The Spoilage Proviso seems *ad hoc* on a secularist reading.[78] Theological interpretations of the proviso *can* offer a principled explanation, while aligning with the textual context.[79] Spoilage is incompatible with everyone else's natural right to share the earth's bonanza since the terms of common enjoyment are, by divine request, laborious: natural resources have been given to humanity to be *used* (which inevitably requires labour, on Locke's view). "Nothing was made by God for Man to spoil or destroy" (*TTG* II.31). The Spoilage proviso is the logical upshot of grounding appropriative rights in a divine permission to use natural resources through labour – not just to meet basic needs, but "for their benefit" generally (*TTG* II.34).[80]

What does it mean to 'use' natural resources? Locke understands the Spoilage Proviso in a curious way, making it chime even better with the industrious terms of common ownership of the earth. The proviso limits how many resources one may appropriate by prohibiting persons to *physically* let perish appropriated

76 Snyder 1986, 734–8, 748–50, makes a similar point. Yet his interpretation of the divine authorization differs from mine, focusing on duties of self-preservation and rational action instead.
77 Adding a further ethical dimension, Locke believes that God instructed us to work to intellectually improve ourselves, including by enlarging knowledge in the arts and sciences (e. g., *ECHU* 4.12.11; *TTG* I.33). For general discussion, see Corneanu 2011, 141–219; Nuovo 2017. Thanks to Kathryn Tabb for pointing this out to me.
78 Natural self-ownership provides no principled rationale for this limitation either. Indeed, Mautner 1982, 264, argues that natural self-ownership is positively inconsistent with the spoilage proviso.
79 Tomasi 1998, 452: "When Locke introduces and explains the spoilage condition, his argument for it is strongly theological".
80 Waldron 2002, 170–72.

goods (*TTG* II.46). It does not order persons to *actively* use seized goods.[81] Letting assets lie idle is permissible as long as they do not decay. Gold and silver can be justly possessed without putting them to productive uses. The "tacit and voluntary" agreement to use money ensures that "a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus, Gold and Silver, which may be hoarded up without injury to any one, these metalls not spoileing or decaying" (*TTG* II.50). By making the measure of 'non-use' physical spoilage Locke incorporates a temporal dimension into usage: unowned resources may be appropriated for later use.

Significantly, the same rotten interpretation of 'non-use' (permit me the pun) also ensures that persons may appropriate more than they can *personally* use in the future (provided they trade before it spoils). This notable feature of the Spoilage Proviso indicates that Locke's theory of original appropriation is ultimately not underpinned by natural rights of *personal* use of the earth – rights of the kind found in Grotius and Pufendorf (e. g., *DJBP* 2.2.2.1; *JNG* 4.4.4). Take Pufendorf's rule of first seizure (conventional in origin though that rule is for him) (*JNG* 3.2.5, 4.6.2). First seizure only permits persons to take "out of a common Store whatever is Necessary for his own occasions", including for future personal use (*JNG* 4.5.9). Taking more than "is likely to suffice for the Service of themselves and of their Dependants" violates "the Law of general Kindness and Humanity" (*JNG* 4.5.9 f.).[82] For Locke, by contrast, God wills us to subdue the earth for the *general* use of humanity, to "improve it for the benefit of Life" (*TTG* II.32). Appropriative rights are granted in the service of that "Great Design of God, *Increase and Multiply*" (*TTG* I.41). That agrarian cultivation increases the common stock of life's necessities, permitting population growth, is theologically significant (*TTG* II.37). Locke argues on biblical grounds that natural rights of common use serve to make possible, not so much self-preservation, as human prosperity generally. To be permissible, I conclude, initial acquisition of natural resources must not contravene that divine design.

81 *Pace* Simmons 1992, 285: "Locke's real concern […] must be with *productive use* (and waste), *not* spoilage."

82 Whether Locke can be read as similarly morally delimiting original appropriation by a natural law commanding "the real Practice of mutual Good", I leave for another occasion (*JNG* 3.3.1).

7 Conclusion

Commentators have long since pointed out that Locke countered rival compact theories of property by stressing the normative significance of labour and natural self-ownership (the organising principles of his unilateralist theory of original appropriation). This paper has shown that Locke's theory is premised upon a novel, curiously broad conception of 'labour'. That idiosyncratic conception underpins each of Locke's key departures from Grotius's and Pufendorf's conventionalist theories of property. For Locke, *any* use of the earth's resources requires labour – regardless of whether the resource is qualitatively improved along the way. *All* permissible appropriative acts produce private property because each person by nature owns their labour; and in *any* process of appropriation labour is, in some sense, fused or adjoined with seized resources. Locke was thus able to reduce rights of common use to rights of original appropriation – not by definitional fiat but on labour-theoretical grounds. The same enigmatic mechanism of labour-mixture explains why unilateral original appropriation does not involve moral lawgiving over equals for Locke: others must abstain from interfering with another's justly appropriated goods on pain of violating their pre-existing rights in their labour (now somehow inseparable from those same goods). Locke further stands out by glossing the biblical donation of the earth to humanity through the lens of labour. Locke disagreed with Grotius and Pufendorf, not only over the terms of that donation, but also over its point. Rights to engage in unilateral original appropriation, I have argued, are ultimately grounded in and delimited by the divine directive to subdue and improve the earth through toil (rather than in rights of self-preservation).[83]

DCv Hobbes, T. 1998/[1642/1647]. *On the Citizen*. Ed. R. Tuck, trans. M. Silverthorne. Cambridge.

DJBP Grotius, H. 2005/[1625]. *De Jure Belli ac Pacis*, 3 vols. Ed. R. Tuck. Indianapolis.

83 This essay is written upon a palimpsest. For instructive comments on its erased predecessor, thanks are due to Robin Douglass, Jakob Huber, Eric MacGilvray, Joe Mazor, Chris Pierson, Nick Sage, John Salter, and audiences at the LSE and Nottingham and Cambridge Universities (spring 2015). For encouraging feedback on the present version, I am indebted to Laurens van Apeldoorn, Brian Smith, Susanne Sreedhar, Bas van der Vossen, and participants in the annual meeting of the Locke Working Group (June 2021). Two anonymous referees for this journal provided acute and detailed suggestions for improvement. Research on this article has been supported by a senior postdoctoral fellowship from the Research Foundation (FWO)-Flanders under grant #12L5718N.

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ECHU Locke, J. 1975/[1690]. *An Essay Concerning Human Understanding*. Ed. P. H. Nidditch. Oxford.
EL Hobbes, T. 1969/[1640]. *The Elements of Law, Natural and Politic*. Ed. F. Tönnies. London.
JH Grotius, H. 1926. *Introduction to the Jurisprudence of Holland*. Ed. R. W. Lee. Oxford.
JNG Pufendorf, S. 1729/[1672]. *Of the Law of Nature and Nations*. Trans. B. Kennett. London.
L Hobbes, T. 2012/[1651/1668]. *Leviathan*, 3 vols. Ed. N. Malcolm. Oxford.
PCA Aristotle. 1996. *The Politics and the Constitution of Athens*. Ed. S. Everson. Cambridge.
Rhet. Aristotle. 1926. *The 'Art' of Rhetoric*. Ed./transl. J. H. Freese. Cambridge, MA.
TTG Locke, J. 1988/[1690]. *Two Treatises of Government*. Ed. P. Laslett. Cambridge.

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