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### Comments

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## As Good As “Enough and As Good”

*Bas van der Vossen*

In his defense of people’s natural right to acquire property without the consent of others, John Locke famously writes that such appropriation is possible “at least where there is enough, and as good left in common for others.” (Locke 1988: II, 27)<sup>1</sup> The passage seems to qualify the right to appropriate as applying to cases where (and presumably only where), in some relevant sense, others have an equally good shot at benefitting from the earth’s resources.

This constraint on appropriation, I think, reflects a core commitment of Lockean political thought. This commitment is that we are naturally free and equal individuals, people who cannot be unilaterally subjected to others. Property relations carry the potential to put people in relations of subjection that violate their natural freedom and equality. The proviso above precludes this potential from actualizing. It prevents people becoming subjected, losing their natural freedom, as a result of the introduction of property rights. Or so I will argue.

The discussion below focuses on Locke’s proviso, then. But the argument concerns a broader set of issues. Many who worry about the Lockean theory of justice worry precisely about property relations, and the market societies built upon them, creating problematic relations of subjection. And many who hold these concerns also hold that the only way to avoid them is to reject the Lockean project altogether. If my arguments are sound, such worries are

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<sup>1</sup> References to the *Two Treatises* will be by number of the book and section. See also II, 33, 36, and 38.

misguided. Lockean theory has the resources to address the issue of subjection and avoid its problems.

In what follows, I aim to reconstruct Locke's arguments in the most philosophically adequate way compatible with the letter and spirit of Locke's text. I do not claim that Locke saw things exactly this way. But I do claim that this reconstruction best captures the purpose of the “enough and as good” proviso within Lockean theory and that, applied to the societies like ours, it has implications like the ones below.

### **1. The abundance-view**

Let's begin by considering the two most popular interpretations of Locke's proviso: what I'll call the abundance-view and the welfare-view. Both suffer from serious problems. By identifying these, we'll formulate two desiderata for an interpretation of the proviso.

The first interpretation of the proviso takes quite literally Locke's suggestion that appropriation is unobjectionable if what remains is more than others could use or appropriate.<sup>2</sup>

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<sup>2</sup> “Nor was this *appropriation* of any parcel of *Land*, by improving it, any prejudice to any other Man, since there was still enough, and as good left; and more than the yet unprovided could use. So that in effect, there was never the less left for others because of his inclosure for himself. For he that leaves as much as another can make use of, does as good as taking nothing at all.” (II, 33) Here, as in II, 27, Locke is strictly speaking stating a sufficient condition. However, I will follow the common interpretation of the proviso as a necessary condition. See also fn. 3.

Appropriation being justified depends on what's left behind being, quite simply, more than what others might use or appropriate themselves.

The proviso, on this view, requires that unowned resources are non-scarce, or abundantly available, after appropriation. Such abundance might be achieved in different ways. It can be the result of the overall stock of unowned things. Or it might, as Locke points out, result from appropriation itself. Since appropriation typically increases the productivity of resources, appropriation can reduce the amount of resources needed to provide the same (or even a higher) level of provision. (II, 37) Thus, appropriation can maintain or create an abundance of unowned resources.

Call the view that the proviso requires such abundance the *abundance-view*. The abundance-view enjoys significant textual support. Locke at several occasions says that, when there is *not* enough and as good left, appropriation requires the consent of others. One example is his discussion of appropriation of the remaining commons in his time. (II, 35) Similarly, Locke speculates that when population growth caused land to become scarce, people from different societies mutually agreed to forgo their claims to what used to be common. These agreements – treaties between societies – involved waiving claims against appropriation, thus voiding (instead of satisfying) the proviso. (II, 45)<sup>3</sup>

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<sup>3</sup> These passages stand in direct tension with the reading, proposed by Waldron (1979), that the proviso identifies a sufficient condition for successful appropriation. Waldron doesn't consider these passages.

Many interpret “enough and as good” this way. (Fried 1995: 230n; Thomson 1990: 330; Stiliz 2017). However, this is fraught with problems. After all, a core commitment of the Lockean approach to property is that individuals be free to appropriate unilaterally, without having to rely on the permission of anyone else. Indeed, for many, this commitment is part of what makes the Lockean approach attractive. Given the advantages of owning property, the ability to acquire it unilaterally is of great importance. And, importantly, the ability to appropriate unilaterally is part of what it means to be *free*. Free persons don’t need anyone’s permission to make their way in the world.

At the same time, even though appropriation can initially increase the supply of unowned resources through productivity increases, over time it will remove what’s left in common. This needn’t be regrettable – it helps bring useful things into economic circulation – but it does produce violations of the abundance-interpretation. This creates a puzzle. After all, there is no evidence in Locke’s thought that this would be reason to deny people the freedom to appropriate. And there would be no point to doing so, as denying this freedom might threaten people’s self-preservation under (the realistic) conditions of non-abundance.<sup>4</sup>

The abundance-view thus casts the Lockean approach in an unstable manner. It enables, indeed incentivizes, people to bring about outcomes (the scarcity of unowned resources) that the theory itself considers problematic. Yet Locke goes out of his way to emphasize and praise the increased living-standards that result from private property. And Locke clearly thought very

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<sup>4</sup> Waldron (1979: 325-6) recognizes this. Waldron’s mistake is to infer that this implies that the proviso is not a necessary condition. It only shows that the abundance-view cannot be right.

favorably of people applying their productive abilities, labor, and industriousness. He repeatedly emphasizes the link between these traits and private property as justifying features of the latter, pointing out that it's God's will and part of the Law of Nature that mankind use the earth productively. This all speaks against the abundance-view.<sup>5</sup>

The passages mentioned above don't offer unequivocal support for the abundance-view either. If one were to understand II, 35 as stating that those enclosures are problematic because they leave people with less than "enough and as good", one would be committed to a much broader condemnation of English society at Locke's time. After all, if enclosing those remaining commons violated the proviso, the point at which people could legitimately complain about not being left enough and as good would have been reached much earlier. Locke's theory would then not just imply a critique of enclosing the remaining commons, but threaten the very possibility of a society organized around private property. Clearly, that's not Locke's project.

This interpretation, in other words, makes a mockery of Locke's theory. Plainly, that theory is intended to license, not prohibit, appropriation. If the proviso cannot be satisfied, we're back to the idea that appropriation requires the consent of others. Not only does Locke ridicule this position explicitly (II, 28), it denies people the freedom and benefits of unilateral appropriation around which the theory is organized in the first place.<sup>6</sup>

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<sup>5</sup> See I, 41, II, 32, 34, 35, 41, and other places. See also Dunn (1982: 219-20, 222-24, 250-51).

<sup>6</sup> Locke at several points asserts the importance of things being available for appropriation. E.g.: "there must of necessity be a means *to appropriate*" (II, 26) And: "The Law Man was under [i.e. the natural law], was rather for *appropriating*." (II, 35) See also the references in fn. 5. As a

Indeed, conditions of scarcity may be precisely when appropriation is *most* needed. After all, private ownership, and the exclusion it licenses, is a powerful solution to the problem of conflict over resources. But such conflict arises only when abundance does not obtain, when different people desire to use or possess the same things. The point of a system of property, at least in part, is to help people cooperate and live together peacefully despite scarcity and the potential for conflict it contains. Rather than justifying appropriation, abundance may render it obsolete.<sup>7</sup>

There's textual support for interpreting Locke differently as well. It's unlikely that the passages invoking historical moments of consent under scarcity were intended as history in the literal sense. Presumably, Locke did not hold the (ridiculous) view that ancient peoples actually came together to form treaties forgoing their initial ownership of the world. More plausibly, Locke is offering a kind of rational reconstruction, a speculative account intended to illuminate

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result, Nozick's suggestion that the proviso could be retained (and side-step his "zipping back-argument") by referring to things available for *use* as well as appropriation, is unacceptable. See Nozick (1974: 176, 178). See also Tully (1980: 61, 76-7). It's worth recalling that one way in which Locke defends unilateral appropriation is by arguing that permissible forms of unilateral use (like eating) entail appropriation. (II, 28)

<sup>7</sup> This was Hume's point, of course. See Hume (1978, Book 3, Part 2, Sec. 2). The same appears in Grotius (2005), who strongly influenced Locke. Property, Grotius writes, is created when "there was no Possibility then of using Things in common". (2.2.2.3) Grotius even suggested appropriation would be *impermissible* under abundance. (2.2.2.3)



something about why, despite the absence of abundance, people would nevertheless see reason to endorse the creation of private property.<sup>8</sup>

Read in this way, Locke is asserting that no reasonable proviso will rule out appropriation under scarcity. Of course, this by itself is not an account yet. It's the claim that such an account can be given. Even if it's plausible to postulate that people have reason not to assert claims that prevent further appropriation, we need to know *why* that's the case. And to answer that question, we need to know what we were asking in the first place: in virtue of what is appropriation, and the system of property it creates, morally acceptable?

## **2. The welfare-view**

The discussion above brings out a first desideratum for a theory of the proviso. Any plausible interpretation must allow that the proviso be satisfied even if enough and as good *unowned* resources are not available.

The second interpretation of the proviso satisfies this desideratum. Its most influential statement is given by Robert Nozick in *Anarchy, State and Utopia*: "Locke's proviso ... is meant to ensure that the situation of others is not worsened." (Nozick 1974: 175) On this view, the proviso requires that people's welfare cannot be worsened, relative to their condition before the appropriation, as a result of appropriation. (Nozick 1974: 178)<sup>9</sup>

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<sup>8</sup> For a similar reconstruction of Locke's speculations about historical moments involving political consent, see Rawls (2007: 124-35)

<sup>9</sup> See also Cohen (1995: 76).

This view constitutes the most commonly accepted alternative to the abundance-view. Proponents usually see the productivity gains that result from a system of private property as offsetting whatever initial losses people experience as a result of appropriation. As David Schmidtz writes: appropriation might indeed reduce “the stock of what can be *originally appropriated*, at least in the case of land, but that is not the same thing as diminishing the stock of what can be *owned*.” (1998: 30. Emphasis in original. See also Schmidtz 1990, 1994; Nozick 1974: 178, 182) And if the stock of the latter goes up enough, the proviso may be satisfied.

The proviso, on this view, ensures that a system of property has no negative welfare effects for all. Such an interpretation has clear advantages. Most obviously, it can be satisfied under scarcity, avoiding the problems of the abundance-view. And it fits Locke’s emphasizing that productivity gains help justify property. (II, 36-37, 40-43)

Nevertheless, there are serious problems here. First, a welfarist reading of the proviso ill fits the kind of rights-based theory that Lockeans (including Nozick) favor. Generally, rights don’t come with non-worsening clauses attached. My right to free speech might negatively affect you, say because my argument shows a lethal deficiency in yours. But that doesn’t tell against my right to speak freely. If the most desirable person in town tells me there’s no way she’ll marry me, I may be much worse off than I was before (blissfully delusional). But this in no way impugns her right to do so.

This general point about rights also applies to property rights. If you strike oil and begin to sell it, you’ll likely make your competitors worse off. But this, too, in no way impugns your right to do so. When I throw away the shirt my wife thinks looks best on me, she may be worse off as a result. But I’m perfectly free to do so.

This is not to say, of course, that reasons concerning people's welfare have no place in rights-theory. If the interest-theory of rights is true, rights are ultimately grounded in welfare-considerations. And the ways in which rights affect those around us may play some role in determining how extensive they can be. Nuisance laws can prevent me from using my property in ways that keep up my neighbors at night. But none of this suggests that a necessary condition of the exercise of our rights, including the right to appropriate, is that others are made no worse off.

One might suggest an even more restricted interpretation. Perhaps non-worsening applies only to the proviso's claims, not to (property) rights more generally. But apart from being *ad hoc*, this fails to address the worry that a non-worsening condition ill fits the Lockean project. People are rights-holders in part because this protects them against having to continually serve the ends of others or comply with some overall social calculus. Rights carve out pockets for individual freedom, among other things, giving us a protected space in which we can live our own lives. Should these protections run out as soon as there are negative welfare effects on others, this function would be strongly limited. It would mean that we can attend to our own fate (and the fates of those we care about) only if we attend to the fates of everyone else, too.<sup>10</sup>

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<sup>10</sup> Might non-worsening be necessary only for exercising Hohfeldian powers? This would affect the right to appropriate but not liberty-rights like free speech. However, the examples above include exercises of powers (e.g. the right to sell extracted oil). And I can promise you things that third parties don't like. Nor is it clear what motivates this view. Exercising powers can

This is true even if one the justification of property overall hinges on its having *positive* welfare effects. There is a distinction between what makes a system morally acceptable, and what makes individual moves within that system acceptable. Even if the system of property must to be welfare-enhancing overall, it does not follow that each individual exercise of such rights cannot make anyone worse off. A system in which no one is allowed to do things that worsen someone else is unlikely to be welfare-enhancing overall.

Nozick proposed the welfarist reading because he saw people being made worse off as the main objection to appropriation. (See also Cohen 1995: 75; Simmons 1992: 241) But this motivation is no more convincing than the proviso it's supposed to support. It's perfectly possible to wrong people without making them worse off (in welfarist terms). Consequently, the wrongness prevented by the proviso needn't be a worsening either.

That said, the welfare-view does capture something important. It's plausible that for a system of property rights to be justifiable, people must be able to better themselves through it. That's clearly Locke's view as well. So, it's no mystery why Locke would see productivity gains for all as offering justificatory support for private property. If a system of property were merely about some people grabbing things before and at the expense of others, it would hardly pass moral muster.

However, by focusing on welfare as such, this view loses sight of one of Nozick's own insights about justice. Justice, Nozick said, is not only concerned with distributions. How those

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deprive others of liberty-rights. But this is true of liberty-rights themselves, too. (When I sit on a bench, you lose the liberty to do the same.)

distributions come about matters, too. In particular, they should come about in ways that trace how people choose to exercise their rights. (Nozick 1974: 154) The same applies to the proviso. It matters not only *that* a system of property makes people better off. *How* they become better off matters, too.

Locke does offer some suggestions about in what respect the proviso protects people becoming better off. When he speaks of why appropriations might violate the proviso, he doesn't say it's because people are made worse off or unowned resources must remain abundant. What he says is that such appropriations "intrench upon the right of another" (II, 36). That is the right *kind* of answer: violations of the proviso remove what others have a right be available.

The right in question, of course, is the right to better oneself through using and appropriating the earth. But it's not clear just *how* this right is supposed to be threatened if it cannot be understood as a right to literally enough and as good being left. And we might even find ourselves much better off as a result of appropriation. So, in what sense might appropriation threaten people's rights to use and appropriate the earth? Explaining this is a second desideratum for a theory of the proviso.

### **3. The point of the proviso(s)**

Both main interpretations of Locke's proviso fail, then. We need a way to understand this constraint on appropriation that satisfies both desiderata above. In this section and the next, I outline and defend a new interpretation of the proviso, and show how it satisfies the second

desideratum. Sections 5 and 6 explain how this proviso can be satisfied in a world without unowned resources, per the first desideratum.

The point of the proviso, I'll argue, is to ensure that people remain in an important sense *free* when they live in a world containing private property. The freedom in question is the freedom to exercise one's rights without having to ask anyone's permission. I will call this sense of freedom: *non-subjection*. Non-subjection is an implication of our natural rights, requiring that our ability to enjoy those rights doesn't depend on others' choices. Since unilateral appropriation opens up the possibility that people's rights to appropriate become subjected, the proviso's point is to ensure that people continue to enjoy this right in a non-subjected way.<sup>11</sup>

To get a better grasp on the idea of non-subjection, consider Locke's affirmations of natural freedom. Locke begins the *Second Treatise* by stating:

TO understand Political Power right, and derive it from its Original, we must consider, what State all Men are naturally in, and that is, a *State of perfect Freedom* to order their Actions, and dispose of their Possessions and Persons as they think fit, within the bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man. (II, 4)

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<sup>11</sup> Locke, of course, mentions another proviso, prohibiting that appropriated resources be "spoiled" (II, 31). The point here is different, precluding the exclusion of others without making good use of things. This violates the natural injunction that appropriation serve human ends.

The first part of this description is familiar. Free persons must have the right to live their own lives, within the limits set by the (symmetrical) rights of others. (II, 6) Freedom thus entails certain moral permissions to do what we want. Absent these, we wouldn't really be in charge of our lives.

Slightly less familiar is the second element Locke describes. Free persons can choose to exercise those permissions "without asking leave, or depending upon the Will of any other Man." Yet this is no less important. Our moral permissions require protection. Absent the clause that we can exercise our rights "without asking leave," others might get to decide whether or not we may enjoy them. If our rights could simply be taken away unilaterally by others, they wouldn't amount to much.

Consider an example. Under normal conditions, my right to free movement means you cannot justly lock me into a room. But unless I can enjoy this right "without asking leave", my ability to move freely will effectively depend on your will. After all, you could lock me up without violating my right to free movement by first taking away my right in an exercise of your authority, and then locking me in a room. Natural freedom thus implies the absence of unilateral authority.

This idea is crucial to the Lockean project. It's the foundation of the consent theory of political authority. Unless authority is granted through consent, it directly threatens our natural freedom in the way described above. The ability to take away part of a person's natural

freedom is thus morally acceptable only when self-imposed.<sup>12</sup> (II, 190-1. Also II, 95, stressing independence alongside freedom and equality.) Locke emphasizes the point throughout the *Second Treatise*. He initially describes a free person as someone who enjoys “an uncontrollable Liberty, to dispose of his Person or Possessions” (II, 6. Also II, 87). And he understands freedom as requiring people “not to be subject to the inconstant, uncertain, unknown, Arbitrary Will of another Man.” (II, 22)<sup>13</sup>

The most obvious way the “without asking leave” protection can be threatened is by (claims of) natural authority. When some person or agency A claims authority over B, they are claiming the moral power to directly alter B’s rights and obligations. If A has such authority over

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<sup>12</sup> One might think people do have powers to unilaterally deprive others of liberties, e.g. when criminals forfeit rights against punishment or when pushing someone without consent is the only way to save many others. But this is mistaken. In none of these cases do you lose rights as a result of my choice. I cannot act to forfeit your rights against punishment. And if you can be permissibly pushed, you either (now) have no right against pushing or that right is overridden. For an account of (im)possible unilateral powers, see {omitted}.

<sup>13</sup> Also: II, 4, 54, 57, 58, 59, 63, 65, 66, 85, 95, 118, 135, 189, 191, 212, 214. Obviously, this principle is the conclusion of the arguments of the First Treatise.



B, then A can unilaterally change B's moral landscape, including B's natural freedom. This subjects B to A. Call such subjection *de iure* subjection.<sup>14</sup>

But claims of natural authority are not the only threat to the "without asking leave" protection of freedom. It can be threatened in indirect ways, too, including as a result of unilateral appropriation.<sup>15</sup> Since appropriation opens the possibility that other people's actions effectively deny one the ability to acquire property – as is one's natural right – someone facing an exhaustively appropriated world must rely on others willingness to share or sell one the things they own. This potentially threatens one's ability to acquire property "without asking leave." Let's call such subjection, if actualized, *de facto* subjection.

We might conceive of Lockean freedom, then, as protected by three layers, functioning somewhat like concentric circles. At the core, we have moral permissions (and the claims that protect them) to give us the ability to live our lives. At one remove, we have immunities which protect those permissions from being *de iure* unilaterally denied by others. At a second remove,

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<sup>14</sup> Freedom, more precisely, requires immunities protecting our natural rights. These immunities disable others from unilaterally imposing obligations or taking away our natural rights in certain specified ways.

<sup>15</sup> Some hold that Lockean appropriation is similar to the direct, *de iure* threat to freedom posed by natural authority. On this view, appropriation involves unacceptably foisting unilateral obligations on others, something akin to illegitimate authority. If true, this would mean the Lockean is internally incoherent. For an argument how the Lockean can avoid this, see Van der Vossen (2015)

we have opportunities to exercise our permissions and claims. These protect our permissions from being *de facto* denied by others.

Each layer is necessary for the enjoyment of Lockean freedom. Even if a natural authority didn't actually remove any of our permissions, absent *de iure* non-subjection our freedom would remain precarious. Since the authority could remove those permissions, how we live our lives wouldn't be up to us. Free persons don't stand in such relations of subjection to one another. The same is true if we are not subject to anyone's *de iure* authority but our ability to exercise our natural rights – including owning and acquiring property – depends on them. If P and Q lived in a two-person world and P appropriated all the land, then Q's ability to appropriate would effectively depend on P's choosing to let her do so. With respect to Q's right to appropriate, such a situation is the *de facto* equivalent of *de iure* subjection to P.<sup>16</sup>

Locke clearly worried about *de facto* ways in which property can threaten natural freedom. In the *First Treatise*, he resists Filmer's claim that God had given Adam the entire world as his private property precisely because Filmer thought this would support political authority without consent. Thus, in a well-known passage, Locke writes:

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<sup>16</sup> One might derive this outer layer from natural equality, too. After all, without it, some people's exercise of their rights could deny others the same freedom to exercise their rights. That would render our rights and freedom non-reciprocal. Locke is explicit that between naturally equal persons "all the Power and Jurisdiction is reciprocal, no one having more than another" (II, 4)

The most specious thing to be said, is, that he that is Proprietor of the whole World, may deny the rest of Mankind Food, and so at his pleasure starve them, if they will now acknowledge his Sovereignty, and Obey his Will. (I, 41)

Invoking what's often labeled the "charity proviso," Locke asserts that no one can deny others their right to use and appropriate resources since "Charity gives every Man a Title to so much out of another's Plenty, as will keep him from Extream want, where he has no means to subsist otherwise". As a result:

a Man can no more justly make use of another's necessity, to force him to become his Vassal, by withholding that Relief, God requires him to afford to the wants of his Brother, than he that has more strength can seize upon a weaker, master him to his Obedience, and with a Dagger at his Throat offer him Death or Slavery. (I, 42)

To Locke, using one's rights to exclude others from using and appropriating the earth altogether (*contra* the third protective layer) is a perversion of property, which is meant "to make use of the Food and Rayment, and other Conveniencies of Life". Thus, the charity proviso prevents even a hypothetical owner of the entire world from choosing whether or not others may use or acquire the things they need to live their own lives – as is their natural right. Property cannot "make them depend upon the Will of a Man for their Subsistence" (I, 41). This

offers the third layer of protection of our natural freedom. It ensures that the exercise of our natural rights is really up to us.<sup>17</sup>

Call the condition in which people enjoy the full protection of their natural rights and freedom *non-subjection*. To be non-subjected, one's natural rights must be such that others cannot act unilaterally so as to deny or take them away. More precisely, non-subjection is a three-part relation between agents with respect to natural rights:

**Non-Subjection:** P stands in a relation of non-subjection to Q with respect to some natural right R to the extent that P's ability to enjoy R does not depend on Q.

Non-subjection requires that P's ability to exercise R does not depend on Q's actions. To the extent that P has a sufficient degree of independence from Q's actions in choosing how to

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<sup>17</sup> One might wonder whether this third layer becomes unnecessary if the right to appropriate is a claim-right, rather than a liberty-right. For claims (but not liberties) protect opportunities for exercise because they correlate with duties of forbearance. But this won't do. Either this claim requires certain resources remain unappropriated (for the claim-holder to appropriate), or it doesn't. If it does, the problems of the abundance-view resurface. If it doesn't, the claim remains unprotected in the sense identified here.

exercise R, P is non-subjected by Q. In those cases, it's up to P, and not Q, how P will live her life.<sup>18</sup>

Non-subjection doesn't simply rule out relations in which Q *wants* or *intends* to remove P's ability to enjoy R. P's rights can be nullified by Q whether or not Q aims to. Nor does it matter whether Q is a natural person, rather than some agency or collective. Natural persons and corporate agents can equally threaten non-subjection, as can collectives of persons or agents. Indeed, even when the mere aggregate of several decisions leads to P's inability to enjoy her rights, P counts as subjected. What matters is whether others' actions can deny P's rights-protected freedom to live her life in the way those rights were supposed to safeguard.

On this reading, the point of the "enough and as good" proviso is similar to the point of the charity proviso: protect non-subjection. Just as Adam's hypothetical ownership of the world would (absent a charity proviso) subject people to him, so too a system of decentralized appropriation could (absent an "enough and as good" proviso) threaten people's non-subjection. Owners might collude to exclude a propertyless person, denying her natural right to appropriate. Or they might be coerced to do the same. Or they might independently decide to exclude her, each for their own reasons. Either way, the propertyless person will be denied the

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<sup>18</sup> Rights that have other people's consent built into their content, such as the right to marry, constitute an obvious exception. With respect to such rights, people are subjected only if the ability to exercise them depends on people *other* than one's prospective partner. Were this not the case, one could effectively decide for others whether or to who they are to be married. Obviously, this would create subjection on the other end.

ability to acquire property – as is her natural right – as a result of others’ unilateral actions.

Natural freedom prohibits this.<sup>19</sup>

Many commentators see the charity proviso as distinct from “enough and as good.”<sup>20</sup> But the non-subjection motivation applies to both. If someone owning the entire world threatens non-subjection, then appropriations that don’t leave enough and as good threaten non-subjection, too. Both situations put people in a position where their right to use or acquire things is denied. If one must ask leave before one can use or acquire things – as is one’s natural right – one will be to that extent subjected. Both provisos encumber property rights to preclude this possibility.<sup>21</sup>

Non-subjection doesn’t require absolute *independence* from others. Some degree of dependence on others is unavoidable for people who live among each other. My ability to exercise my right to sit in this chair depends on others not sitting there first. And my right to

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<sup>19</sup> See II, 36 stating the proviso prevents that property might “straiten” people.

<sup>20</sup> See e.g. Waldron (1979: 327-8), claiming the charity proviso is more demanding than “enough and as good”. Compare Simmons (1992: 331-2).

<sup>21</sup> One might object that the charity proviso doesn’t set a limit on others’ appropriations, but asserts only the right to take what one needs (when one cannot satisfy those needs in other ways). But this is mistaken. While one does have this (liberty-)right, its existence implies the absence of those others’ (claim-)right over their property (against the needy). This is just to say that the proviso limits the rights appropriators can establish.

appropriate some particular thing depends on others not appropriating it before me. This is true even in a condition where no prior appropriations have occurred. And, as such, it's surely no problem. To say that people count as free only when they're entirely insulated from everyone else would be to put forward a highly emaciated (atomistic) conception of freedom. And it wouldn't be a promising vision of freedom for the kind of property system Locke defended. Property is a deeply social institution, a system through which we interact and cooperate with countless others, in ways that enable and facilitate our interdependence.

No plausible proviso can demand absolute independence, then. And it needn't either. Even in an entirely unowned world, your freedom to appropriate any particular thing may be denied if I appropriate it first. But you still enjoy a sufficiently robust set of opportunities to appropriate. The point of the proviso is to preserve this freedom: the kind one would enjoy if literally enough and as good were left to appropriate. Whatever mutual dependence that allows will count as unproblematic, consistent with non-subjection.

What abundance offers, and appropriation threatens, is the *free* availability of appropriable goods. Appropriation begins a move away from a world in which people can appropriate goods "without asking leave", toward a world in which that might no longer be the case. In that world, freedom as non-subjection needs additional protection. The point of the proviso is to guarantee this.

We can define the proviso, then, as follows.

**Proviso:** Unowned things can be appropriated only if they leave others' rights to use and appropriate the earth as non-subjected as they would be in the absence of appropriation.

The proviso ensures a sufficiently robust ability to enjoy our natural right to use and appropriate the earth.<sup>22</sup> This satisfies our second desideratum.

#### **4. A republican proviso?**

Sections 5 and 6 will explore how this interpretation of the proviso satisfies the first desideratum. Before turning to that, consider one more alternative reading. This alternative focuses on some of the same points which I claim support the non-subjection interpretation. Seeing why this alternative fails will further flesh out and bolster the non-subjection reading.

The alternative interpretation sees the proviso as republican in spirit. To those who read Locke in this way, the demand that free people can act “without asking leave, or depending upon the Will of any other Man” signifies a commitment to something like republican non-

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<sup>22</sup> The implications of this proviso are, as will become clear below, similar to Eric Mack's (1995). However, Mack does not see non-subjection playing a role in Lockean thought, interpreting the proviso as protecting the ability to exercise self-ownership. However, setting aside whether the right to appropriate can be derived from self-ownership, this is too narrow. In an exhaustively appropriated world, owners could simply allow others use (but not appropriation) of their possessions. Thus, self-ownership needn't be disabled, even if the right to appropriate is.



domination. Here, roughly speaking, people are unfree – in a way that the proviso condemns – when others can interfere with their choices on an arbitrary basis where, using Philip Pettit’s influential statement, “arbitrary” means that the interferer “is not forced to track the interests and ideas of those who suffer the interference.” (Pettit 1997: 272)<sup>23</sup>

Those who adopt this reading typically hold that Lockean ought to oppose market relations in more general terms. Such relations, they argue, involve republican unfreedom and are thus to be condemned. (Layman 2018: 157-162. More generally, Gourevitch 2014) A. John Simmons, for example, argues that Locke “dramatically underestimates the constraints on independence that are imposed by the superior economic position of others”, and that this kind of dependence is precisely what the proviso prohibits. Thus, Simmons accuses Locke of “blithely characteriz[ing] servants as freemen who sell their services to others, but who are not really under the others’ control.” (Simmons 1992: 294)<sup>24</sup>

This reading has obvious attractions. Locke repeatedly writes that free persons aren’t subject to the arbitrary wills of others. Consider II, 57: “*Liberty* [is] to dispose, and order, as he lists, his Person, Actions, Possessions, and his whole Property, within the Allowance of those

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<sup>23</sup> Pettit’s later emendations of the view do not affect the arguments here. Nor do other conceptions of republican freedom.

<sup>24</sup> Simmons (obviously) doesn’t invoke Pettit’s conception of freedom, but his view is relevantly similar (274, 284). Simmons’ view that the proviso guarantees the freedom to “make a living” (293) is much closer to correct. But neither this republican twist nor (as I argue below) his “fair share”-justification are acceptable.

Laws under which he is; and therein not to be subject to the arbitrary Will of another, but freely follow his own.” To Simmons, this speaks in favor of the republican view. (1992: 327)

Nevertheless, the republican view cannot be correct. Neither independence nor non-domination can operate as free-floating moral values or goods in Lockean theory. An implication of our natural rights and freedom, non-subjection identifies as problematic only those relations that threaten our rights-protected freedom. And not every limitation of (republican) freedom can count as infringing rights. When you consume a commonly available acorn, you limit my freedom but, as such, no Lockean could consider this wrong. Nor do people who appropriate wrong others if there’s literally enough and as good left in common. Yet this might count as arbitrary by republican standards.

Perhaps these are relatively trivial examples. But more serious cases are possible, too. Locke offers one in II, 85 where he *contrasts* “Arbitrary Power” with the position of contractual servants. While such servants might be dominated in the republican sense, they plainly aren’t subjected in the Lockean sense. Perhaps one sees this, with Simmons, as reason to dismiss the idea of non-subjection in favor of the republican view. But such dismissal does constitute a rejection of the Lockean position.

Non-subjection, then, is narrower than non-domination. Limits to our freedom, including options that are dominated by others, aren’t always problematic. They’re problematic only when they make the enjoyment of our rights substantially depend on others. This, the Lockean cannot accept. Non-subjection precludes others from being able to unilaterally remove the rights and freedom we are naturally entitled to enjoy. And there’s no natural right to non-domination.

If a republican proviso condemns cases as unfree that the Lockean doesn't, the reverse is also true. There can be cases of republican freedom that the Lockean would nevertheless consider problematic. Suppose otherwise propertyless persons receive resources as part of a (duly constrained) redistributive government policy, but can only acquire property through that program. Such persons might live a non-dominated life, but can only acquire property – as is their natural right – subject to the government's consent. Part of their Lockean freedom is thereby denied, even if they're not dominated.

The republican reading ignores significant textual evidence. Consider again II, 57. Locke there makes an important qualification to his claim that free people cannot be subject to the arbitrary wills of others: "*Liberty* [is] to dispose, and order, as he lists, his Person, Actions, Possessions, and his whole Property, within the Allowance of those Laws under which he is; and *therein* not to be subject to the arbitrary Will of another, but freely follow his own." (Emphasis added.) This clause "therein" is crucial, as it restricts non-subjection's domain. The non-subjection requirement is an implication of our natural rights, of our "whole Property" – a phrase that, here, refers to the total set of a person's rights.<sup>25</sup>

The qualification appears several times in the *Second Treatise*. In II, 6, Locke describes free persons as having "an uncontrollable liberty to dispose *his person and possessions*" (emphasis added). Section II, 59 mentions the "free disposing of his Property according to his own Will". II, 87 asserts: "Man being born, as has been proved, with a Title to perfect Freedom,

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<sup>25</sup> II, 123. See also Tully (1980: 7, 114-6). I say "here" because at other times, obviously, Locke uses it to refer to material possessions. (Simmons 1992: 226-230)

and an uncontrolled enjoyment of all the Rights and Priviledges of the Law of Nature". And so on.<sup>26</sup>

The republican reading of the proviso fails, therefore. A free-floating protection against arbitrary interference doesn't fit within the Lockean approach and cannot explain why appropriations in excess of the proviso "intrench upon the right of another." This makes sense only if we read the proviso along the lines of non-subjection.

### **5. A redistributive proviso?**

If the proviso requires non-subjection, what are the implications? In particular, how might it be satisfied when enough and as good is no longer unowned?

Consider the appeal of the abundance-view. Even if abundance cannot be necessary to satisfy the proviso, it *is* sufficient. When literally "enough and as good" is left for others, no problematic subjection arises. The availability of resources that can be freely (because unilaterally) appropriated means that P has the ability to turn down Q, should Q demand that P

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<sup>26</sup> The qualification is also present in the statement of the consent theory of authority: "Men being, as has been said, by Nature, all free, equal and independent, no one can be put *out of his Estate*, and subjected to the Political Power of another, without his own *Consent*." (II, 95. Emphasis added.) See also II, 190-191. More generally, Locke explicitly connects natural freedom with the right to self-preservation (II, 23). Of course, the most obvious conflict remains II, 85.

do as Q says in return for using or acquiring Q's possessions. After all, P can simply go out and appropriate something else.

Still, abundance cannot be required, per our first desideratum. But if abundance cannot be required, and the kind of non-subjection P would enjoy under abundance *is* required, how might a world containing property remain just? If individuals can create exclusionary rights over resources, others may find themselves in an exhaustively appropriated world. And when "enough and as good" is not literally left in common for them, how might they remain non-subjected? The question, in other words, is: in what way might they enjoy opportunities to appropriate *as good* as "enough and as good"?

One obvious suggestion would be that some property must be made available from those who have it to those who don't. Thus, certain kinds of redistribution, undertaken by governments or third parties, might be thought required by the proviso. Only with such redistribution, this argument goes, will no one end up propertyless, requiring the cooperation of others. Writes Simmons: governments must bring about "[c]hanges in property relations" such that "later persons" can "appropriate the property of earlier ones." (Simmons 1992: 298, 318. Compare also Steiner 1994)

It's easy to see this reading's appeal. It requires a policy that many consider intuitively justified. And it fits some of Locke's remarks, most notably the claim in I, 42 that "Charity gives every Man a Title to so much out of another's Plenty, as will keep him from Extream want". This has the same grounds as "enough and as good" – to ensure non-subjection.

Nevertheless, this reading doesn't sit well within Locke's thought. Start with the right to charity. Locke introduces, again, an important restriction. This right doesn't operate as an

unqualified entitlement for propertyless people to take or be given owned goods. Rather, it applies only to those who are *incapable* of providing for themselves. The right to charity applies “where he has no means to subsist otherwise” (I, 42).

Locke throughout denies that people can *choose* to rely on charity. Famously (or infamously), Locke harshly condemned what he considered the idle poor in *An Essay on the Poor Law*, writing that people who can find work and provide for themselves, but choose to rely on charity, act wrongly. Indeed, they act wrongly in a way that’s punishable. To Locke, “true and proper relief of the poor ... consists in finding work for them”. People who can acquire property through work don’t have a right to take or be given. (Locke 1997: 189)<sup>27</sup>

This is not a mere quirk of Locke’s. If redistribution undoes subjection for the propertyless, it may recreate it on the other end. Persons who acquired property, but are liable to lose it if others choose to rely on redistribution, will find *their* rights insecure. The possession of their property – as is their right – will depend on another person’s choosing to work.

To Locke, this is unacceptable, and for the same reason. Our very *rights* to property depend on it. The point is emphasized repeatedly. Famously, II, 138 states that “I truly have no *Property* in that, which another can by right take from me, when he pleases, against my consent.” The same appears in II, 140 and II, 193. And Locke is explicit that this remains true

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<sup>27</sup> Lady Masham’s account of Locke’s life describes his conduct towards the poor as matching this conviction. (Woolhouse 2003: 190-1) See also Locke’s remark to Molyneux: “I think every one, according to what way Providence has placed him in, is bound to labour for the public good, as far as he is able, or else he has no right to eat.” (Locke 1924)

even if some are rich and others poor: “their *properties*, be they more or less, are *their own*, and at their own *dispose*, and not at his; or else it is no property.” (II, 194)<sup>28</sup>

Those who voluntarily choose to rely on charity thus do wrong, in Locke’s view. When our rights are subject to another’s choice, they are threatened, as is the freedom they protect. A view on which people could simply choose to help themselves to others’ possessions is therefore inconsistent with treating those others as having property rights in the first place. This explains why Locke considered those who can work but choose to rely on charity punishable: their actions would be acceptable only if they had a right (to rely on charity) which they lack. That right is reserved for those unable to provide for themselves.

The difference, again, is between it being up to others how we live our lives, and others merely affecting how we live. When people must rely on our assistance, they and their claims appear in our lives, morally speaking, as part of the background against which we make our decisions. But when others get to choose to rely on us, they can reach into our lives, so to speak, determining what happens in cases that should be up to us.

Might this be avoided by granting people an *unconditional* claim to resources, perhaps along left-libertarian lines? In that case, the right that’s threatened by appropriation would be

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<sup>28</sup> Might property rights be considered non-subjected if they’re not *too* dependent on others?

That could allow for some charitable takings. But this again cannot be right. The proviso’s demand of non-subjection is tethered to a condition in which enough and as good were literally available. In that condition, people have the ability to provide for themselves, and others thus enjoy *fully* secure possessions. The proviso is supposed to protect, not weaken, rights.

an equal right to some share of the earth's resources. At times, Simmons defends his redistributive conclusion this way, claiming that "[t]he idea of "shares" and a fair division of the original common (a division that allows all to freely labor and appropriate) appear over and over in chapter 5 of the Second Treatise". (Simmons 1992: 279)

But this simply lacks support. Locke invokes the idea of distributive shares only three times: II, 31, 37, and 46. All appear in the context of the prohibition on spoiling. In these cases, and in these cases alone, Locke sees appropriation as taking what belongs to others. His point is clear: when we take but don't use, we remove things for others to use and acquire – which was the point in the first place, and to which they have a natural right.<sup>29</sup>

In any case, what matters for the proviso isn't shares in the literal sense. What matters is the opportunity these represent: to better oneself through exercising the right to use and appropriate. And so, our question remains: how can this be achieved in a potentially exhaustively appropriated world?

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<sup>29</sup> Steiner (1994) claims the proviso requires equal shares. Steiner defends this by claiming it captures the idea of "equal freedom." However, *pace* Steiner, Locke affirms no foundational right to equal shares. Nor, despite asserting natural freedom and equality, is the phrase "equal freedom" invoked. More substantially, while the proviso isn't inconsistent with equal shares, this isn't required by non-subjection, as I argue below. And the idea of an equal right to appropriate doesn't imply equal shares either. Compare: equal rights to free speech don't require equalizing speech.



## 6. As good as “enough and as good”

When unowned resources are unavailable, opportunities to acquire property come mainly through the labor market. What must labor markets be like in order to be *as good* as if enough and as good were literally left?

The proviso requires that one’s ability to acquire property doesn’t depend on others’ choices more than if literally enough and as good were available. The key to satisfying the proviso in a fully appropriated world, then, will be opportunities in the labor market that are similarly robust. Being robust in this sense means that whether, and on what terms, one gets to acquire property cannot depend on others any more than it would under abundance.

The proviso, in short, prohibits prospective employers having significant control over the terms at which employees may find paid work. Their ability to set terms for workers must be constrained. Only when employers lack this power can they set terms for their employees in a way that severs the latter’s right to acquire property from the wills of the former. Under those conditions, working for others can count as non-submitting.

It remains true, of course, that workers must secure *someone’s* consent to acquire property. To that extent, they depend on others’ wills. But, again, this by itself needn’t be a problem. Absolute independence doesn’t exist, even amidst abundant unowned goods, and it’s not required for non-submitting. The point of the proviso isn’t social isolation.<sup>30</sup> It’s to structure

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<sup>30</sup> This marks a significant disagreement. Compare Rousseau’s conception of freedom as “obeying only oneself.” That is no part of the Lockean conception. The difference mirrors differing evaluations of market society. As Frederick Neuhouser writes: “dependence poses a

cooperation in a way compatible with freedom and equality – to ensure one’s right to use and acquire resources remains as non-subjected as it would be absent appropriation.

The goal, then, is for labor markets to function in ways that disable people from deciding how others acquire property. Only if a worker Q’s opportunities are not sensitive to the wills of others in this way can Q count as non-subjected. And if Q’s opportunities are indeed not sensitive to others’ choices in this way, Q can count as free, despite having to interact with P (or someone else) in order to acquire property.

To see this, consider G.A. Cohen’s objections to Nozick’s proviso. Cohen imagines a two-person world in which P appropriates all the land and then offers Q to work for him. In that world, Q will be forced to accept whatever P proposes. P can thus extract virtually all the benefits of exchange, including the benefits of dividing labor and increasing productivity, while Q gets almost nothing of what she contributes. Thus, Q seems trapped in a subordinate position to P. (Cohen 1995: 79)

Cohen’s point was that Nozick’s (welfarist) proviso might be satisfied in this scenario and should be rejected for this reason. This seems true. For a system of property to count as just, it cannot license that situation. The interpretation suggested here matches Cohen’s verdict. Cases

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standing threat to being free, since it opens up the possibility that in order to get what I need, I may have little choice but to tailor my actions to conform to the wills of those on whose cooperation I rely.” (2013: 196-7) I suspect that to the Lockean, this is a virtue, not a vice, of markets.

like this are unjust because P can determine Q's terms of property acquisition. That violates non-subjection.

Moreover, the non-subjection reading provides the correct analysis of *why* Cohen's case is unjust. The problem cannot be merely Q's resultant standard of living. After all, Q's income could be high, should P choose so. But that's just the problem – Q's standard of living is *P's to choose*. That's unacceptable in its own right. Free people have the right to make their own way, so P doesn't get to decide on what terms Q makes a living.<sup>31</sup>

The key to resolving the injustice is to remove this ability for P. Again, P's position must become constrained so that Q's terms of exchange are no longer sensitive to P's will. Here, a crucial element of Cohen's example is the fact that P and Q are the only parties around. If sufficient other parties (R, S, ...) were around, some of whom also might also be interested in acquiring Q's services, then P would lose the ability in question. When Q has sufficient alternatives to acquire goods through work, Q gets to choose for whom to work, what work to do, and which among the available terms she finds acceptable. The ideal case empowers Q to

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<sup>31</sup> It's implied that even if P offered Q a fair or favorable wage, Q would remain a liberty to *take* some of P's possessions, simply because P is the exhaustive proprietor. In this sense, my view is more demanding than certain left-libertarian positions. This is a happy implication, since Q's right to take strengthens Q's bargaining position vis-à-vis P.

play off potential employers against another, removing for P virtually all ability to affect how Q makes a living.<sup>32</sup>

When Q can decide which opportunity to accept, and others don't control which options she has available, Q can enjoy freedom as non-subjection. While Q will have to accept *someone's* offer – and that offer will obviously be shaped by that person's will, at least in the sense that they're willing to make it at all – there's an important difference with Cohen's situation. In the competitive scenario, no party has the power to determine the content of Q's set of opportunities. They only determine one of the opportunities from which Q can choose.

It's no coincidence that such competition will arise in a society containing private property. The Lockean position is that appropriation and ownership be decentralized, something independently undertaken by many people, each not having to "ask leave" from others. Since people are able and incentivized to appropriate unilaterally, and use their property in mutually advantageous ways, we should expect a multiplicity of owners to arise from a situation of common holdings, a large number of whom will be interested in acquiring each other's services.

At their best, non-subjecting labor markets allow societies to be a source of freedom, not just a threat. When we can find work in such a society, we can enjoy something that's as good as appropriating in isolation. It might even be better. When the proviso is satisfied,

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<sup>32</sup> Cohen (1995: 79 n23) asserts, without argument, that his result replicates when more parties are involved. But this is false. At the limit (under perfect competition), all participants are price-takers, meaning no employer can pay employees anything but market rate.

interdependence, something that could be constraining or oppressive, becomes liberating – offering free persons opportunities they would otherwise never have. In those cases, despite (or *because*) our economic lives being deeply interdependent, we can live together in ways that are genuinely free. (Compare Mack 1995: 213)

No doubt, many questions remain. Perhaps poor people's opportunities will be such as to trap them into poverty. Or perhaps employers will, despite the constraints of competition, wield significant power over workers. These are plainly legitimate concerns. Lockean, I suspect, here find solace in the fact that it's part of the very case for private property that it should do well by people, including (perhaps especially) the poor. But whether the theory lives up to its billing is beyond our discussion here.

The proviso precludes uses of property that remove certain alternatives in the labor market for others. It also condemns actions by which people might coercively shape the set of options others have available, collude to effectively offer only one choice of employment, or something equivalent. (The *mere* presence of multiple potential employers is not sufficient for the proviso to be satisfied.) Perhaps considerations like the ones above might further limit property rights. But whether they do is beyond the purview of the proviso.

It's obviously an open (and empirical) question whether labor markets live up to this ideal. To the extent that they don't, they stand in need of reform. It's no part of my argument that all is well in the world. However, the charge that a Lockean system of unilateral appropriation will *necessarily* produce problematic inequalities, societies in which some must live in subjection to others, must be rejected. At least under conditions of adequate

competition, a Lockean society can be one of truly free and independent beings, each living their own lives without subjection.

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