
PROPERTY, SPACE AND SACRED HISTORY IN JOHN LOCKE'S TWO TREATISES OF GOVERNMENT*

TOM PYE

King's College, Cambridge

E-mail: tp310@cam.ac.uk

Historians have recently begun to gather round imperial, and lately “global,” contexts in which Western political thought might be better understood. John Locke has been pulled along behind them; the contours of his account of private property have increasingly been explained by his personal connections to the colonies. But in his case, the imperial context does less interpretive work than it appears to. This article attempts to show why: it tells a different, more explicitly intellectual, story about why Locke’s depiction of property took the shape that it did. It does so by underlining the extent to which seventeenth-century property debates took place in the spatial and temporal dimensions inhabited by sacred history. It then tries to explain why this might have mattered to Locke.

In 1689, John Locke published a short political tract in which he gave a detailed account of how and why human beings had created private property.¹ The problem was not new. Since at least the sixteenth century, Christian jurists of various confessional hues had been wrangling with it, not least because the Book of Genesis appeared to describe God as having given the world to mankind to enjoy communally. Before Locke, a prominent and interconfessional solution held that although God had originally granted the world to humans in common, they had subsequently agreed, or consented, to its division.² But as C. B. Macpherson

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¹ John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge, 1960; repr. 1988), II.25–51. Henceforth *TT*, followed by (Roman) treatise and (Arabic) paragraph numerals.

² Annabel Brett, *Changes of State: Nature and the Limits of the City in Early Modern Natural Law* (Princeton, 2011), 196–99.

pointed out in 1962, Locke took a different tack.³ In his telling, consent had not been necessary in order to begin dividing up the common world; it was required only later in time: first (tacitly) for the introduction of money, and second (expressly) for the formation of the *civitas* or, in Locke's terminology, "political society."⁴ In Macpherson's eyes, this established an "unlimited natural right of appropriation," giving landowners a weapon with which they could protect themselves from the unwelcome incursions of politics.⁵ His motivations, Macpherson concluded, must have derived from the seedbed of class interest: Locke's argument had been designed to justify the landholdings of the emergent liberal bourgeoisie of which he was part.⁶

As historians have become more sensitive to the theological dimension of Locke's thought, the claim that he proposed an unconditional right to property has been dismantled as thoroughly as the Marxist explanation of his motivations.⁷ But Macpherson's association of Locke with liberalism remains, and the positions Locke allocated to consent in his account of property remain unusual.⁸ In order to explain the link, historians have begun to cluster round the history of early English imperialism. One of the most prominent arguments to come from this

³ C. B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford, 1962; repr. 2011), 194–221.

⁴ *Ibid.*, 210–11; for Locke's use of "political society" see, in particular, *TT* II.77–94; on the political city, or *civitas*, in early modern natural law see Brett, *Changes of State*, *passim*; see also, more generally, Brett, *Liberty, Right, and Nature: Individual Rights in Later Scholastic Thought* (Cambridge, 1997); and also Brett, "Scholastic Political Thought and the Modern Concept of the State," in Annabel Brett, James Tully and Holly Hamilton-Bleakley, eds., *Rethinking the Foundations of Modern Political Thought* (Cambridge, 2006), 130–49.

⁵ Macpherson, *Political Theory*, 203; for a reading of Locke which takes up this view and unspools its political implications see Robert Nozick, *Anarchy, State, and Utopia* (Oxford, 1974).

⁶ Macpherson, *Political Theory*, 222–62.

⁷ John Dunn, *The Political Thought of John Locke* (Cambridge, 1969); for readings of Locke on property which follow in Dunn's wake see Karl Olivecrona, "Appropriation in the State of Nature: Locke on the Origin of Property," *Journal of the History of Ideas*, 35/2 (1974), 211–30; Olivecrona, "Locke's Theory of Appropriation," *Philosophical Quarterly*, 24/96 (1974), 220–34; R. M. Lemos, "Locke's Theory of Property," *Interpretation*, 5/2 (1975), 226–44; Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge, 1979); James Tully, *A Discourse on Property: John Locke and His Adversaries* (Cambridge, 1980); Tully, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge, 1993); Alan Ryan, *Property and Political Theory* (Oxford, 1984); Stephen Buckle, *Natural Law and the Theory of Property: Grotius to Hume* (Oxford, 1991); Jeremy Waldron, *The Right to Private Property* (Oxford, 1988).

⁸ For a historical account of how Locke became—in Britain and America between the 1930s and 1950s—the figurehead of a newly invented "liberal" political tradition see Duncan Bell, "What Is Liberalism?" *Political Theory* 42/6 (2014), 682–715, at 698–705.

shift has been made by James Tully and David Armitage.⁹ It claims that Locke had two accounts of the origin of property. The first is supposed to lie in a manuscript fragment titled “Morality,” speculatively dated to 1677–8, in which consent featured as a necessary condition of legitimate appropriation.¹⁰ The second is supposed to lie in the fifth chapter (“Of Property”) of the *Second Treatise of Government*, in which this condition was removed.¹¹ In a 1993 essay, Tully notes this change as part of a broader argument about the chapter’s function as a justification of the colonial projects in which Locke was personally involved as a landgrave, or noble, of the colony of Carolina.¹² In a 2004 article, and again in a 2012 essay, Armitage pushes Tully’s observation further, arguing that Locke’s removal of consent was a consistency requirement for a revised version of the *Constitutions of Carolina* to which he was contributing in the summer of 1682.¹³ “Of Property,” he contends, was also composed around this time—much later than both the *First Treatise*, which dates to 1680, and much of the *Second Treatise*, which was written throughout 1681 and 1682.¹⁴ As Locke’s mature

⁹ James Tully, “Rediscovering America: The Two Treatises and Aboriginal Rights,” in Tully, *An Approach to Political Philosophy*, 137–79; David Armitage, “John Locke, Carolina, and the Two Treatises of Government,” *Political Theory* 32/5 (2004), 602–27, recently reprinted in Armitage, *Foundations of Modern International Thought* (Cambridge, 2013), 90–114; Armitage, “John Locke: Theorist of Empire?” in Sankar Muthu, ed., *Empire and Modern Political Thought* (Cambridge, 2012), 84–111, also reprinted in Armitage, *Foundations of Modern International Thought*, 114–35. Henceforth references to both essays are to *Foundations*.

¹⁰ Locke, “Morality” (n.d.), Bod. MS Locke c. 28, fols. 139–40; later published in Thomas Sargentich, “Locke and Ethical Theory: Two MS Pieces,” *Locke Newsletter*, 5 (1974), 24–31; and again in Locke, *Political Essays*, ed. Mark Goldie (Cambridge, 1997), 267–69. Henceforth all references are to Goldie’s collection.

¹¹ *TT* II. 25–51.

¹² Tully, “Rediscovering America,” 145.

¹³ Armitage, “John Locke, Carolina,” 105–10; Armitage, “John Locke: Theorist of Empire?,” 126–27. For the article of the *Constitutions* in question (§102) see Locke, *Constitutions of Carolina*, in Locke, *Political Essays*, 180.

¹⁴ The dating of the *Two Treatises* is contested. Peter Laslett’s 1960 critical edition rubbished its reputation as post-Revolutionary apologetic by pinning its composition to 1679–81, for which see Laslett, “Introduction,” *TT*, 3–93. Laslett also claimed, however, that Locke wrote the *Second Treatise* before the *First Treatise*—an order reversed by Richard Ashcraft, “Revolutionary Politics and Locke’s *Two Treatises of Government*: Radicalism and Lockean Political Theory,” *Political Theory*, 8/4 (1980), 429–86. There is now a consensus that Locke wrote the *First Treatise* in 1680, after buying a copy of Filmer’s *Patriarcha* in January that year, for which see John Milton’s helpful article, “Dating Locke’s *Second Treatise*,” *History of Political Thought*, 16/3 (1995), 356–63. Debates over the *Second Treatise* continue. David Wootton, in his edition of Locke, *Political Writings* (Harmondsworth, 1993), 54, dates it to 1681; Richard Ashcraft, *Locke’s Two Treatises of Government* (London, 1987), 286–97, to

account of property could now be connected so directly to his role as a colonial administrator, Armitage concludes more forcefully than Tully that the shift from the early note to “Of Property” was motivated by Locke’s private imperial designs.¹⁵ Under Armitage’s microscope, one of the “founding texts of liberalism” reveals itself to be exclusionary by design, and liberalism to be exclusionary by nature.¹⁶

Apology for colonial activity was implicit in Locke’s later conclusion that appropriation required no consent, and given the biography carefully marshalled by Armitage, it is certainly plausible to think of such apology as motivating the conclusion itself. But this article aims to suggest other reasons for why Locke saw property as he did—reasons which do not replace his imperial motivations, but which raise questions about how his purposes might be organized. It attempts to do so by underlining the extent to which seventeenth-century property debates took place in the spatial and temporal dimensions inhabited by sacred history—the record of God’s actions in and upon time.¹⁷ Sacred history has only relatively recently begun to attract the attention of intellectual historians.¹⁸ It has also only

1681–2; John Marshall, *John Locke: Resistance, Religion and Responsibility* (Cambridge, 1994), 230–60, to 1682; and Mark Goldie, in his edition of Locke, *Two Treatises of Government* (London, 1993), xxi, to 1681–3. Milton, “Dating Locke’s *Second Treatise*,” 389, sets his boundaries between the winter of 1680 and the summer of 1682. In dating “Of Property” to the summer of 1682, Armitage follows Richard Tuck’s rejection of Milton, the latter of whom argues that the chapter was composed in the early 1670s and inserted into the *Second Treatise* at an indeterminate point in writing or revision. See Milton, “Dating Locke’s *Second Treatise*,” 374; Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Cambridge, 1999), 168 n.; Armitage, “John Locke, Carolina,” 109.

¹⁵ Armitage acknowledges, however, that although Locke’s argument has “identifiably colonial origins,” it need not have “exclusively colonial applications,” for which see Armitage, “John Locke, Carolina,” 111.

¹⁶ *Ibid.*, 95, 112; see also Uday Singh Mehta, *Liberalism and Empire: A Study in Eighteenth-Century British Liberal Thought* (Chicago, 1999), 4.

¹⁷ This pared down definition of sacred history is particularly relevant for this case, and comes from J. G. A. Pocock, “Classical and Civil History: The Transformation of Humanism,” *Cromohs*, 1 (1996), 1–34, at 22.

¹⁸ For an erudite overview see Dmitri Levitin, “From Sacred History to the History of Religion: Paganism, Judaism, and Christianity in European Historiography from Reformation to ‘Enlightenment,’” *Historical Journal*, 55/4 (2012), 1117–60; see also Levitin, *Ancient Wisdom in the Age of the New Science: Histories of Philosophy in England, c.1640–1700* (Cambridge, 2015); more generally see Katherine Van Liere, Simon Ditchfield and Howard Louthan, eds., *Sacred History: Uses of the Christian Past in the Renaissance World* (Oxford, 2012).

recently been pulled into the orbit of the history of political thought, as the resources it provided to seventeenth- and eighteenth-century Catholics wishing to conjecture about the origins of society have been brought to light.¹⁹ This article, however, takes as its point of departure a recent reminder that despite its abstraction from history, much natural-law thinking was parasitic on (often sacred) conceptions of time and place.²⁰

It begins by casting doubt on whether “Morality” can readily be compared with “Of Property” as, once probed, they do not appear as different accounts of property so much as different ways of thinking about human relations altogether. “Morality” framed the problem of possession (not “property”) in terms of sociability: the question of how humans could be expected to behave within and without the political city, or *civitas*.²¹ But as they were designed to answer Robert Filmer’s *Patriarcha*, published for the first time in 1680, the *Two Treatises*

¹⁹ John Robertson, “Sociability in sacred historical perspective, 1650–1800,” in Bela Kapossy and Michael Sonenscher, eds., *Markets, Morals, and Politics in Enlightenment Thought* (Cambridge, MA, forthcoming); Robertson, “Sacred History and Political Thought: Neapolitan Responses to the Problem of Sociability after Hobbes,” *Historical Journal*, 56/1 (2013), 1–29; and John Robertson and Sarah Mortimer, “Nature, Revelation, History: Intellectual Consequences of Religious Heterodoxy c.1600–1750,” in Robertson and Mortimer, eds., *The Intellectual Consequences of Religious Heterodoxy, 1600–1750* (Leiden, 2012), 1–46.

²⁰ Brett, *Changes of State*, chap. 8, “Re-placing the State,” 195–224; for a typically pathbreaking article along similar lines see J. G. A. Pocock, “Time, History and Eschatology in the Thought of Thomas Hobbes,” in Pocock, *Politics, Language and Time* (London, 1971), 148–201.

²¹ The question of human sociability had preoccupied natural lawyers since the later Middle Ages, but became increasingly central to thinking about politics in the wake of Thomas Hobbes. For an up-to-date overview of how it came to underpin many of the (apparently) diffuse strands of eighteenth-century political, philosophical, economic and historical thought see Eva Piirimäe and Alexander Schmidt, “Between Morality and Anthropology: Sociability in Enlightenment Thought,” *History of European Ideas*, 41/5 (2015), 571–88; for attempts to plot the importance of the concept of sociability from the mid-seventeenth century onwards see Istvan Hont, “The Language of Sociability and Commerce: Samuel Pufendorf and the Theoretical Foundations of the ‘Four-Stages’ Theory,” in A. Pagden, ed., *Languages of Political Theory in Early Modern Europe* (Cambridge, 1986), 253–76, later reprinted in Hont, *Jealousy of Trade: International Competition and the Nation-State in Historical Perspective* (Cambridge, MA, 2005), 159–85; James Moore and Michael Silverthorne, “Natural Sociability and Natural Rights in the Moral Philosophy of Gershom Carmichael,” in V. Hope, ed., *Philosophers of the Scottish Enlightenment* (Edinburgh, 1984), 1–12; E. J. Hundert, *The Enlightenment’s Fable: Bernard Mandeville and the Discovery of Society* (Cambridge, 1994); Pierre Force, *Self-Interest before Adam Smith* (Cambridge, 2003); John Robertson, *The Case for the Enlightenment: Scotland and Naples 1680–1760* (Cambridge, 2005).

looked instead at the formation of property as a moment in sacred time and space.²²

Targeting *Patriarcha* took Locke, as John Pocock observed some time ago, onto the terrain of “sacred, not national history.” (Filmer’s forays into English constitutional history were republished in 1679, but Locke had left them for others to rebut.)²³ It was in this work that Filmer had traced the origins of property to God’s grant of the world to Adam, and followed its donative descent through the biblical narrative of the Fall, the Flood, and the founding by Noah’s progeny of the *gentes*, or nations, which had since spread out over the surface of the earth. Among Filmer’s own targets was the Dutch jurist Hugo Grotius, whose *De iure belli ac pacis* (1625), though inhabiting the same history, had come to the risible conclusion that property derived not from Adam, but from the later consent of all humankind—a collective act that had taken place once after the Fall, and again after the Deluge.²⁴ To answer Filmer on property, then, was to rehabilitate Grotius; and to rehabilitate Grotius was to seize back the sacred-historical land on which Filmer had trespassed in *Patriarcha*. Locke attempted to do so in the *First Treatise*, continuing his case in the second. In order to succeed, he had to show that God had not donated the world to Adam; but he also had to show why, after the Fall and after the Deluge, there had been no need for humans to consent to its partition. The latter task was the more difficult, but Locke managed

²² In around the middle of 1679, a collected octavo edition of Filmer’s political works was published under the title *The Freeholder’s Grand Inquest* (London, 1679). It contained the *Observations concerning the Originall of Government, upon Mr Hobs Leviathan, Mr Milton against Salmasius, H. Grotius De Jure Belli*, which had first been published in 1652. In January 1680, this collected edition was printed again. So too, for the first time, was *Patriarcha, or, the natural power of Kings* (London, 1680). Locke then bought the collected edition with a copy of *Patriarcha* bound up inside, and referred to both *Patriarcha* and the *Observations* repeatedly throughout the *Two Treatises*. All references to *Patriarcha* below are to the version contained in Robert Filmer, *Patriarcha and other Writings*, ed. Johann Sommerville (Cambridge, 1991), 1–64. All references to *Observations* below are also to the version contained in the same Sommerville collection, 184–234. For commentary on Locke’s own edition of Filmer see Laslett, “Introduction,” *TT*, 57; for further bibliographical information on Filmer see Laslett’s introduction and notes to his edition of *Patriarcha and other Political Works of Robert Filmer* (Oxford, 1949); see also Gordon Schochet, *Patriarchalism in Political Thought* (Oxford, 1975); James Daly, *Sir Robert Filmer and English Political Thought* (Toronto, 1979); Johann Sommerville, “From Suarez to Filmer: A Reappraisal,” *Historical Journal*, 25/3 (1982), 525–40; Sommerville, *Politics and Ideology in England, 1603–1640* (London, 1986); Cesare Cuttica, *Sir Robert Filmer (1588–1653) and the Patriotic Monarch: Patriarchalism in Seventeenth-Century Political Thought* (Manchester, 2012).

²³ J. G. A. Pocock, *The Ancient Constitution and the Feudal Law* (Cambridge, 1957), 235.

²⁴ Hugo Grotius, *The Rights of War and Peace*, ed. Richard Tuck, 3 vols. (Indianapolis, 2005), 2: 2.2.2–3. Henceforth *DJB*, followed by volume, chapter, section, and paragraph number.

to meet it by arguing that due to the abundance of space in the early ages of the world, humans could in fact have had property before agreeing with one another to protect it.

I

First to “Morality,” and whether it can be read as an early “contractual account of the origins of property.”²⁵ An initial problem with doing so is its dating: written on each side of two loose leaves of paper, the fragment has so far proved impossible to date with certainty, though various conjectures have been made. Thomas Sargentich, its first publisher, dated it to the early 1690s, citing theoretical similarities between it and another fragment, “Ethica A” (1692).²⁶ Among them was the hedonism with which the note began.²⁷ But Locke had already dipped his toe in hedonistic waters in 1676: “happiness and misery,” he wrote on 16 July that year, “seem to me wholly to consist in . . . pleasure and pain of the mind.”²⁸ Unconvinced by Sargentich, Patrick Kelly gave “Morality” the alternative date of 1677–8, citing its similarity to Locke’s journals from around that time (though without giving examples).²⁹ This dating has been silently followed by Tully and Armitage and accepted as probable by Mark Goldie, the editor of a modern collection of miscellaneous political pieces in which the fragment appears. But it remains uncertain.

The second problem with reading “Morality” as an account of property’s origins is analytical, for the note appears unconcerned with the origins of property at all: it has neither spatial nor temporal dimensions, offers little sense of where or when human beings might have found property necessary, and gives no indication of a foundational moment (or series of moments) having taken place in sacred-historical time. Regarding possession, the note stated baldly that “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.”³⁰ If the world were to be left in common, it continues, “want, rapine and

²⁵ Armitage, “John Locke, Carolina,” 109.

²⁶ Sargentich, “Locke and Ethical Theory,” 24; for “Ethica A” (1692) see Locke, *Political Essays*, 318–19.

²⁷ “Morality is the rule of man’s actions for the attaining happiness . . . Happiness and misery consist in pleasure and pain.” Locke, “Morality,” 267–8.

²⁸ See Locke’s journal entry for 16 July 1676, a fragment of which has been published under the editorial title “Pleasure, Pain, the Passions” in Locke, *Political Essays*, 237–45, at 241.

²⁹ Patrick Kelly, “‘All Things Richly to Enjoy’: Economics and Politics in Locke’s *Two Treatises of Government*,” *Political Studies*, 36/2 (1988), 273–93, at 281.

³⁰ Locke, “Morality,” 268; this is the extent of the passage taken by Tully and Armitage to comprise Locke’s early account of property.

force will unavoidably follow in which state, as is evident, happiness cannot be had which cannot consist without plenty and security.”³¹ If these “compact” were to be broken, “then whatever I possess will be subjected to the force or deceit of all the rest of the men in the world, in which state it is impossible for any man to be happy unless he were both stronger and wiser than all the rest of mankind.”³² If kept, they would establish justice, “the greatest and difficultest duty,” distinct from secondary virtues “not comprised under direct articles of contract such as . . . civility, charity, liberality.”³³ Locke concluded the fragment by defining only civility, as “nothing but outward expressing of goodwill and esteem or at least of no contempt of it.”³⁴

As Tully and Armitage have pointed out, Locke in the fragment required consent as a condition of legitimate possession. But taken in context, the remarks concern sociability more than they do property. Human beings, Locke was acknowledging, required the institution of the *civitas* to prevent their destruction; without signing up to a set of rules, they were destined endlessly to subject one other in the process of aggrandizing themselves. But outside the auspices of the *civitas*, they appeared capable of performing—if not actually holding—respect for one another. Locke was clear enough that this “civility” needed shoring up by the foundation of the city; but he nevertheless indicated that the city was not the only means through which human beings could be brought peacefully to coexist.³⁵

Analytically, the note’s discussion of civility and justice is less similar to “Of Property” than to Locke’s translation of the Jansenist theologian Pierre Nicole’s *Essais de Morale* (1671–8).³⁶ Between 1675 and 1679 Locke was in France, and acquired the first two volumes of Nicole’s *Essais* in 1676.³⁷ By August that year,

³¹ Ibid., 268.

³² Ibid., 268–9.

³³ Ibid., 269.

³⁴ Ibid., 269.

³⁵ The argument of Thomas Hobbes. See Thomas Hobbes, *On the Citizen* [1642], ed. Richard Tuck (Cambridge, 1998); and Hobbes, *Leviathan* [1651], ed. Richard Tuck (Cambridge, 1991).

³⁶ Pierre Nicole, *John Locke as Translator: Three of the Essais of Pierre Nicole*, ed. J. S. Yolton (Oxford, 2000); on Locke’s engagement with Nicole see Duncan Kelly, “The Propriety of Liberty and the Quality of Responsible Agency,” in Christophe Miqueu and Mason Chamie, eds., *Locke’s Political Liberty: Readings and Misreadings* (Oxford, 2009), 97–127, at 99–110, later reprinted in Kelly, *The Propriety of Liberty: Persons, Passions and Judgment in Modern Political Thought* (Princeton, 2011), 20–58, at 24–40. For further commentary see Wolfgang von Leyden, “Locke and Nicole,” *Sophia*, 16/1 (1948), 41–54; Marshall, *Religion, Resistance, and Responsibility*, 131–7, 178–86; Ian Harris, *The Mind of John Locke* (Cambridge, 1994), 282–4, 287–8.

³⁷ See Locke’s journal entry for 30 September 1676, printed in John Lough, *Locke’s Travels in France, 1675–79* (Cambridge, 1953), 111.

he had begun to translate three essays: “On the Existence of a God,” “Discourse of the Weaknesse of Man,” and the “Treatise concerning the way of preserving peace with men.”³⁸ Completing the bulk of the work in 1677, he presented his translation in manuscript to the Countess of Shaftesbury upon his return to England in 1679.³⁹ He did not publish it.

In a manuscript fragment dated to 1677, and probably intended as a draft preface to the translated essays, Locke admitted that he had been cavalier with the French text.⁴⁰ “I have thought fit,” he wrote, “sometimes to dispense with the strict formalities of a translator . . . to keep close to his argument, [I] have sometimes deviated from his words.”⁴¹ Uninterested in showing the “world the proprieties or agreements of these two languages or how well I might render the one into the other,” he attempted rather to depict what he saw as the Jansenist’s key ideas.⁴²

Nicole sat at the intersection of what might tentatively be characterized as Jansenist scholastic and Protestant conceptions of natural law, the former centred on the individual agency of Fallen man, the latter on a sphere of behaviour towards others (“alterity” or sociability).⁴³ Accordingly, the “Discourse” ruminated on the fragile and mortal condition of Fallen human beings, whilst the “Treatise” concerned the social systems they were able to construct on the basis of the passions. For Nicole, the passions and bodily movements of pre-lapsarian man were subjected to his faculty of reason.⁴⁴ But after the Fall, the capacity of reason to control the passions had been lost. As Locke rendered the problem, “We

³⁸ See Locke’s journal entry for 15 August 1676, published by Wolfgang von Leyden in his edition of Locke’s *Essays on the Law of Nature* (Oxford, 1954; repr. 2002), 252–54.

³⁹ See Yolton’s editorial introduction to Nicole, *John Locke as Translator: Three of the Essais*, 11–12; see also von Leyden, *Essays on the Law of Nature*, 252–4.

⁴⁰ Bod. MS Locke c. 28, fol. 42; the note was transcribed and published in von Leyden, *Essays on the Law of Nature*, 254–5; it is also reproduced by Yolton in Nicole, *John Locke as Translator: Three of the Essais*, 1.

⁴¹ Nicole, *John Locke as Translator: Three of the Essais*, 1.

⁴² Nevertheless, I will indicate below if Locke deviates markedly from Nicole’s sense.

⁴³ The former approach to natural law cannot be characterized more capaciously as Catholic (rather than specifically Jansenist) as Nicole pitted himself against the Jesuitical strain of natural law practised by Francisco Suárez and others. On the other (Protestant) side, Recknagel’s recent book has underlined the difficulties encountered when trying to characterize a particular branch of natural law as Protestant: Grotius, he argues, lifted important elements of his thought wholesale from Suárez. See Dominik Recknagel, *Einheit des Denkens trotz konfessioneller Spaltung: Parallelen zwischen den Rechtslehren von Francisco Suárez und Hugo Grotius* (Frankfurt am Main, 2010); for commentary on the historical development of confessional divides in natural-jurisprudential enquiry see Brett, *Changes of State*, 66, 71 and *passim*.

⁴⁴ E. D. James, *Pierre Nicole: Jansenist and Humanist* (The Hague, 1972), 118.

[now] flote in the Ocean of this world, under the conduct of our passions, with which we drive, some times this way, some times that way, as a vessell, without compasse, without pilot.”⁴⁵ Fallen man was mortal, and “continually expos’d to a thousand accidents.”⁴⁶ His pathology consisted in a turning away from God toward other creatures, particularly himself: in the terminology of Nicole and other Port-Royal Jansenists, this was *amour-propre*.⁴⁷ In his “Traité des moyens de conserver la paix,” the final of the essays translated by Locke, Nicole addressed the question whether it was possible to conceive of a social sphere in which individuals might peaceably engage with each other whilst driven mainly by *amour-propre*, or self-love.

“The necessitys, & wants of life,” Locke wrote, “drive men into societys, & keep them there together.”⁴⁸ This meant that “societys are according to the will of god, since to that end he hath left us under those necessitys.”⁴⁹ In Locke’s rendering of Nicole, man’s inclination toward society therefore stemmed from his desire to satisfy his own material needs rather than from any other-regarding aspect of his moral psychology.⁵⁰ This did not obviate the requirement for “Love, & respect,” both of which were “necessary to [society’s] preservation.”⁵¹ But “being of themselves invisible, men have by consent establishd certain dutys, to

⁴⁵ Pierre Nicole, “Discourse of the Weaknesse of Man,” trans. John Locke, in Nicole, *John Locke as Translator: Three of the Essais*, 93; cf. Nicole, “Traité de la faiblesse de l’homme,” published in parallel to Locke’s translation in Nicole, *John Locke as Translator: Three of the Essais*, 92, which renders Fallen man rather “comme un vaisseau sans voile [sail] & sans Pilote.” The edition used for Yolton is Nicole, *Essais de Morale, Contenus en divers Traitez sur plusieurs devoirs importants*, vol. 1 (Paris, 1672); *voile* is also translated as “sail” in Nicole, *Moral Essays, Contain’d in Several Treatises on Many Important Duties*, trans. anon., vol. 1 (London, 1677), 43.

⁴⁶ Nicole, “Discourse,” 65.

⁴⁷ James, *Pierre Nicole*, 118.

⁴⁸ Nicole, “Treatise concerning the way of preserving peace with men,” trans. John Locke, in Nicole, *John Locke as Translator: Three of the Essais*, 191; Locke here renders Nicole’s *société* as plural. Nicole, “Traité des moyens de conserver la paix,” in Nicole, *John Locke as Translator: Three of the Essais*, 190; the contemporary translation is more accurate: “Men are link’d together by an infinite number of wants, obliging them out of necessity to live in Society.” Nicole, *Moral Essays*, 238–9.

⁴⁹ Nicole, “Treatise,” 191.

⁵⁰ Grounding social interaction in material needs was not a move original to Nicole: in Aristotle, households were bound to one another by the principle of mutual need (*chreia* or *indigentia*). The society this formed (*koinonia*), however, was non-political. See Aristotle, *Politics*, trans. Ernest Barker, rev. and ed. R. F. Stalley (Oxford, 1995), 1252b17; for commentary see Bernard Yack, *The Problems of a Political Animal: Community, Justice, and Conflict in Aristotelian Political Thought* (Berkeley, 1993); Scott Meikle, “Aristotle and the Political Economy of the Polis,” *Journal of Hellenic Studies*, 99 (1979), 57–73.

⁵¹ Nicole, “Treatise,” 191.

passee as the marks, & pledges of them.”⁵² These tokens of respect and esteem were “external actions” visible to the naked eye, and were payable “wherever the internall [and invisible] dispositions, they stand for, are due.”⁵³ The performance of these actions was crucial: human societies were made up of people who “are full of love, & esteeme of them selves: & if others endeavour not a litle to satisfie, & sooth those inclinations, societys will prove but heards of malcontents, and hardly hold together.”⁵⁴ It was thus incumbent on human beings to conform to the “devoirs de civilité,” rendered by Locke as the dictates of “civility.”⁵⁵ Fallen men were capable of massaging the egos of others, but only if their own egos were massaged in return: “Those that pay us civilitys, expect the same from us again.”⁵⁶ It was a “sort of commerce” in external affections, Locke wrote, which was both “establishd & regulated by self-love [*amour-propre*] which being supreme judg in the case obleiges both sides to equall, & punctuall returns; & allows us to complain, when others faile in their part of the performance.”⁵⁷

The civility Locke described in “Morality”—“nothing but outward expressing of goodwill and esteem”—resembles the civility he had articulated in his translation of Nicole’s *Essais*.⁵⁸ In “Morality,” as in the translation, civility could no more replace the *civitas* than it could save the soul: humans were incapable of having possessions without agreeing with one another to respect them; they had to “enjoy all things in common or by compact determine their rights.”⁵⁹ Civility

⁵² Ibid., 191; Locke here renders *témoignages* as “marks,” rather than “tokens,” or—another possibility—“testimonies.” Nicole, “Traité des moyens de conserver la paix,” 190.

⁵³ Nicole, “Treatise,” 191.

⁵⁴ Ibid., 191.

⁵⁵ Nicole, “Traité des moyens de conserver la paix,” 192; Nicole, “Treatise,” 193.

⁵⁶ Nicole, “Treatise,” 247; “civilitys” is a rendering of *les civilités*. Nicole, “Traité des moyens de conserver la paix,” 246; the contemporary translation also renders *les civilités* as “civilities.” Nicole, *Moral Essays*, 285.

⁵⁷ Nicole, “Treatise,” 247; “equall, & punctuall returns” is a rendering of “une égalité réciproque de devoirs.” Nicole, “Traité des moyens de conserver la paix,” 246. In neglecting to translate *devoirs* as “duties,” Locke was followed by Nicole’s contemporary translator: civility “is a kind of commerce and traffick,” he wrote, “where self-love sits as Judge, and this Judge obliges us to a reciprocal equality of returns.” See Nicole, *Moral Essays*, 285; for commentary on Nicole’s theory of sociability see Hont, *Jealousy of Trade*, 47–50; David Wootton, “Introduction,” in Wootton, ed., *Divine Right and Democracy: An Anthology of Political Writing in Stuart England* (London, 1986), 21–91, at 74–5; Martin Hollis, “Economic Man and Original Sin,” *Political Studies*, 29/2 (1981), 167–80; J. B. Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy* (Cambridge, 1998), 275–9; Force, *Self-Interest*, 71.

⁵⁸ Locke, “Morality,” 269.

⁵⁹ Ibid., 268; on the relation between civility and the *civitas* in Nicole see Hont, *Jealousy of Trade*, 48.

acted rather as a secondary source of stability within the city, and was part of the note's enquiry into how the disorder generated by human passions might be resolved. But neither "Morality" nor Nicole's *Essais* gave Locke an articulation of, or an answer to, the question whether (or how) sociability might be maintained *prior* to a point at which some sort of communal consent became necessary. By explaining the origin of property in the spatial and temporal terms provided by the sacred history of Creation, Grotius came to give him both; Locke's response, however, emerged only from his tussle with Filmer, who himself had been tussling with Grotius.

II

Filmer troubled Locke because he claimed to be able to derive a specific political doctrine from Scripture, thus precluding any further form of political reflection.⁶⁰ But Scripture was also historical record: the book of Genesis was "Moses' history of the creation,"⁶¹ and it was on this ground that Filmer had ridiculed Grotius. "It seems strange," he intoned, that "Grotius should maintain that community of all things should be by the law of nature, of which God is the author, and yet such community should not be able to continue."⁶² Does it not "derogate from the providence of God Almighty, to ordain a community which could not continue?"⁶³

If Scripture showed that God gave the world to mankind in common, Filmer reasoned, then any subsequent abrogation of that community by the introduction of property must have been a "sin of high presumption."⁶⁴ To skirt the problem, Grotius had adopted a solution advanced by the sixteenth-century Dominican scholastics Francisco de Vitoria and Domingo de Soto. They had argued that God gave the world to mankind in common, but left open the question of how exactly it might be shared.⁶⁵ This meant that appropriation was allowed under

⁶⁰ Dunn, *The Political Thought of John Locke*, 68; on Locke's engagement with Filmer more generally see Jeremy Waldron, *God, Locke, and Equality* (Cambridge, 2002); Michael Zuckert, *Launching Liberalism: on Lockean Political Philosophy* (Lawrence, KS, 2002), 129–47.

⁶¹ Filmer, *Patriarcha*, 14.

⁶² Filmer, *Observations*, 218.

⁶³ *Ibid.*, 218.

⁶⁴ *Ibid.*, 218.

⁶⁵ In making this claim, Vitoria and De Soto drew in turn on the distinction between "permissive" and "prescriptive" (or "preceptive") natural law, which had commonly been used to think about property since at least Aquinas. Going further back, it had roots in the distinction made by the twelfth-century Italian canon lawyer Rufinus between "command" and "demonstration." For discussion of these (and other) distinctions in relation to

natural law, but that human beings had to agree with one another to effect it. All mankind, they claimed, had consented to the partition of the world after the Fall, and again after the Flood. This consensus took the role normally assigned to God or a lawgiving prince, and marked a historical transition from the realm of natural law to the law of nations, or *jus gentium*.⁶⁶ As Grotius saw, this intricate (and sophisticated) scholastic proposition had managed to shake off the association of property with sin. But Filmer was insistent. The simplicity of his own argument—that God gave the world directly and exclusively to Adam, and that all property derived (by donation) from this ultimate source—allowed him to paint the *jus gentium* as sophistry: if “the law of nature” was really “one and the same with the moral,” he asked, then why was a separate law needed to legitimate property?⁶⁷

Consent was a further absurdity. He mocked the idea that “all the men in the world at one instant of time should agree together in one mind to change the natural community of all things”; the dissent of one man alone would have brought the entire consensual edifice crashing down.⁶⁸ Non-unanimous consent fared little better. If “some” of our forefathers had consented to “property of goods and subjection to governors” (Filmer yoked together what Grotius had kept apart), they could just as easily have opted to return to “community and liberty” whenever it suited.⁶⁹ On this account of property and politics, there was nothing stopping men from doing the same thing now: it would be “lawful for every man, when he please, to dissolve all government, and destroy all property.”⁷⁰

Locke took the challenge seriously, and used the *First Treatise* to repair the damage Filmer had inflicted on Grotius.⁷¹ The patches he applied were sometimes

thinking about property in Roman, canon, and natural law see Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150–1625* (Atlanta, 1997), 131–70, 138–45; Tierney, “Kant on Property: The Problem of Permissive Law,” *Journal of the History of Ideas*, 62/2 (2001), 301–12; Tierney, “Permissive Natural Law and Property: Gratian to Kant,” *Journal of the History of Ideas*, 62/3 (2001), 381–99; Tierney, *Liberty and Law: The Idea of Permissive Natural Law, 1100–1800* (Washington, DC, 2014); see also Anthony Parel, “Aquinas’ Theory of Property,” in Anthony Parel and Thomas Flanagan, eds., *Theories of Property: Aristotle to the Present* (Waterloo, 1979), 89–115.

⁶⁶ On Vitoria and de Soto’s formulation of the argument see Brett, *Changes of State*, 197.

⁶⁷ Filmer, *Observations*, 210–11; in the section of *Observations* dedicated to Grotius, the *jus gentium* was the object of Filmer’s first, and most extended, attack. See *ibid.*, 208–17.

⁶⁸ *Ibid.*, 234.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ Filmer’s tract was published—about forty years after it was composed—to bolster the Tory case in the Exclusion Crisis. Locke and his friend James Tyrrell (both of whom were Whigs) immediately set about refuting it—the latter producing the full-length rebuttal *Patriarcha non monarcha: The patriarch unmonarch’d: being observations on a late treatise and divers other miscellanies, published under the name of Sir Robert Filmer Baronet*. In

obvious, sometimes subtle. In order to see how they fitted together, some comparison will therefore be necessary: first with Grotius himself, and second with the German jurist Samuel Pufendorf.⁷² In 1678, Locke bought Pufendorf's *De officio hominis et civis* (1673);⁷³ in June 1680, he purchased his magnum opus, *De jure naturae et gentium* (1672).⁷⁴ Acquisition is no guarantee of engagement, but, like Locke, Pufendorf was committed to reformulating the weaker parts of Grotian natural law; setting them alongside one another helps to clarify the revisions they made to Grotius's account of property. Most significantly, Pufendorf (like Grotius) introduced consent quickly as part of the temporal sequencing dictated by the sacred history of Creation. Locke, however, did not.

In *De iure belli*—the work torn into by Filmer—Grotius argued that “Almighty GOD, at the Creation, and again after the Deluge, gave to Mankind in general a Dominion over Things of this inferior World.”⁷⁵ Every man “converted what he would to his own Use, and consumed whatever was to be consumed; and such a Use of the Right common to all Men did at that Time supply the Place of Property, for no Man could justly take from another, what he had thus first taken to himself.”⁷⁶ This state of things could have continued indefinitely, had “Men persisted in their primitive Simplicity.”⁷⁷ Before long, however, they “applied themselves to various Arts,” the first of which “were those of Agriculture, and Feeding Cattle; they were exercised by the first Brothers, so that there was between them some Sort of Division of Goods.”⁷⁸ This division was repeated

which the falseness of those opinions that would make monarchy jure divino are laid open: and the true principles of government and property (especially in our kingdom) asserted by a lover of truth and of his country. (London, 1681); for commentary on why Locke (and Tyrrell) thought it important to address Filmer see Peter Laslett's introduction to *TT*, 59, 61, 67, 68–71.

⁷² For biography see Detlef Döring, *Samuel Pufendorf in der Welt des 17. Jahrhunderts: Untersuchungen zur Biographie Pufendorfs und zu seinem Wirken als Politiker und Theologe* (Frankfurt am Main, 2012); Fiametta Palladini and Gerald Hartung, eds., *Samuel Pufendorf und die europäische Frühaufklärung: Werk und Einfluss eines deutschen Bürgers der Gelehrtenrepublik nach 300 Jahren (1694–1994)* (Berlin, 1994).

⁷³ See Locke's journal entry for 3 July 1678, printed in Lough, *Locke's Travels in France*, 203; see also Lough, “Locke's Reading during His Stay in France (1675–79),” *The Library*, 5/8 (1953), 229–58, at 250.

⁷⁴ Journal entry for 9 June 1680, Bod. MS Locke f. 4, fols. 114–15; on 26 May 1681 Locke also bought a late edition of Pufendorf's *Dissertationes academicae selectiores* (Uppsala, 1677), along with his *Elementorum jurisprudentiae universalis*, vol. 2 (Cambridge, 1672). Bod. MS Locke f. 5, fol. 62.

⁷⁵ *DJB* 2: 2.2.1.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*, 2: 2.2.2.

after the Flood, when nations (*gentes*) “went afterwards some one Way, and some another, and thus divided the Lands amongst them.”⁷⁹ The “origin of property” thus “resulted from a certain Compact and Agreement, either expressly, as by a Division; or else tacitly, as by Seizure.”⁸⁰ As part of his own narrative of the Creation, Grotius inserted consent at the very moment at which the common was first divided.

Pufendorf began to modify Grotius’s account by crafting a distinction between positive and negative community. Understood “negatively,” common things were said to be “*No Body’s*, rather negatively, than privatively, *i.e.* that they are not yet assigned to any particular person, not that they are incapable of being so assign’d.”⁸¹ It was on this basis that God had granted the world to mankind: “antedecently to any Act of Agreement of Men, there was a Communion of all Things in the World; not such as we have before term’d positive, but a negative Communion.”⁸² In this way, Pufendorf overcame the charge that the individuation of what was common must necessarily contradict God’s providence. But whilst managing to reshape Grotius’s conception of consent, Pufendorf found no way of doing away with it altogether: in both *De jure naturae* and *De officio hominis*, the position he accorded to consent in the Scriptural history of Creation toed the Grotian line.

“In the beginning,” Pufendorf began, all things required for human sustenance “are thought to have been made available by God to all men indifferently, so that they did not belong to one more than to another.”⁸³ The partition of the common was “afterwards adjusted, by the Disposal of Men, according as the Peace of human Society seem’d to require.”⁸⁴ Hence once population started to grow, and men started to cultivate “things which produce food and clothing,” they began to divide “things amongst themselves, and each was assigned his own

⁷⁹ Ibid., 2: 2.2.3.

⁸⁰ Ibid., 2: 2.2.5.

⁸¹ Samuel Pufendorf, *The Law of Nature and Nations*, trans. Basil Kennet, 5th edn (London, 1749), IV.4.2. Henceforth *DJN*, followed by book, chapter, and section number. Here and henceforth (unless otherwise stated) original emphasis has been preserved.

⁸² Ibid., IV.4.5; for discussion of Pufendorf’s “negative” community, see Istvan Hont and Michael Ignatieff, “Needs and Justice in the *Wealth of Nations*,” in Hont and Ignatieff, eds., *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment* (Cambridge, 1983), 1–45, at 32–4, later reprinted in Hont, *Jealousy of Trade*, 389–443, at 426–8. Henceforth all references are to the version of the essay in *Jealousy of Trade*.

⁸³ Samuel Pufendorf, *On the Duty of Man and Citizen According to Natural Law*, ed. James Tully (Cambridge, 1991), I.12.2. Henceforth *DOH*, followed by book, chapter, and section number.

⁸⁴ *DJN* IV.4.4.

proper portion.”⁸⁵ In this way, “property in things or ownership was introduced by the will of God, with consent among men right from the beginning and with at least a tacit agreement.”⁸⁶

Unlike Grotius, however, Pufendorf was keen to establish the incremental and contingent quality of this consent: “Men left this original negative Communion, and, by Covenant, settled distinct Properties, not at the same Time, and by one single Act, but by successive Degrees.”⁸⁷ The gloss was more than cosmetic: behind it lay Pufendorf’s recognition that in light of the challenge presented by Hobbes, Grotius’s concept of sociability needed reworking.⁸⁸ Grotius, Pufendorf saw, lacked an individualist moral epistemology underpinning his theory of sociability—a shortcoming that was impossible to defend in the wake of *De cive* (1642) and *Leviathan* (1651). Much of *De jure naturae* and *De officio hominis* was aimed at providing him with one, and Pufendorf’s complication of Grotius’s clean historical transition between *jus naturale* and *jus gentium* was part of the endeavour.⁸⁹ That consensual agreements about property were made by multiple early human communities over time—rather than all of humankind at once—demonstrated two things: that disparate human beings could enter into agreements with each other in response to changing circumstances and, consequently, that human association must—at least to some degree—revolve around the principle of utility. Covenants relating to property, Pufendorf claimed, therefore issued from the changing utility requirements and calculations of

⁸⁵ *DOH* I.12.2.

⁸⁶ *Ibid.*; for an expanded version of this story, see *DJN* IV.4.5–6.

⁸⁷ *DJN* IV.4.6.

⁸⁸ On the vexed issue of Pufendorf’s attempted synthesis of the projects of Hobbes and Grotius see T. J. Hochstrasser, *Natural Law Theories in the Early Enlightenment* (Cambridge, 2000), 40–71, 79–106; Hont, “The Language of Sociability,” in Hont, *Jealousy of Trade*, 163–84; Hont and Ignatieff, “Needs and Justice,” 424–31; Fiametta Palladini, “Pufendorf Disciple of Hobbes: The Nature of Man and the State of Nature: The Doctrine of *Socialitas*,” *History of European Ideas*, 34/1 (2008), 26–60; though it is beyond the scope of this article to intervene, there is a sharply distinguished debate on Grotius’s theory of sociability. Tuck has long argued that it is thin enough to be labelled Epicurean, for which see Richard Tuck, *Philosophy and Government, 1572–1651* (Cambridge, 1993), 190–201; and Tuck, *Rights of War and Peace*, 78–109, 89. Brooke has recently contested this reading, arguing that Grotius’s concept of sociability is thicker, and closer to that of the Stoics, for which see Christopher Brooke, “Grotius, Stoicism and *Oikeiosis*,” *Grotiana*, 29/1 (2008), 25–50, and recently reprinted as part of Brooke, *Philosophical Pride: Stoicism and Political Thought from Lipsius to Rousseau* (Princeton, 2012), 37–59; Brett leans toward the Stoic reading, for which see *Changes of State*, 70–71, 199.

⁸⁹ On this point, see Hont, “The Language of Sociability,” 173; Hochstrasser, *Natural Law Theories*, 98; Tully, *Discourse on Property*, 98.

groups of human agents over time.⁹⁰ This adaptation of the temporal dimension of Grotius's sacred-historical story served effectively to counter the position of Hobbes, for whom time was rather internal and particular to the mind of any given human agent.⁹¹ Without filtering his state of nature through a sacred-historical account of the first ages of humankind, time for Hobbes was a source only of strife, and another confirmation that the *civitas* alone could resolve the problems generated by the aggressive honour-seeking of human beings.⁹² But whilst Pufendorf's adaptation of Grotian sociability helped him to avoid this particular conclusion, consent nevertheless remained central to his account of property: in Pufendorf as in Grotius, consent was a requirement of division, and was embedded in the history of God's grant of the world to mankind.

In the *First Treatise*, Locke began by indicting Filmer for wrongly asserting that God's grant of government to Adam (Genesis 1:28) took place at the moment of his creation, rather than after the Fall.⁹³ Taken in its proper historical setting, Locke argued, the grant conferred "no immediate power to *Adam* over men," but only over "inferior creatures."⁹⁴ It was nothing but the "Confirmation of the Original Community of all things amongst the Sons of Men."⁹⁵ More importantly, the power God did confer was not "*Private Dominion* over the Inferior Creatures, but right in common with all Mankind."⁹⁶ The post-diluvian grant of government given to Noah and his sons (Genesis 9:1–3) was similar insofar as it conferred no dominion over other men.⁹⁷ But in one crucial respect, it was different: "Property

⁹⁰ Hont, "The Language of Sociability," 178–80; Hochstrasser, *Natural Law Theories*, 98–103.

⁹¹ On the development of Hobbes's distinctive view of the temporality of human agents see Michael Edwards, *Time and the Science of the Soul in Early Modern Philosophy* (Leiden, 2013), 11–12, 163–206, 182; see also Pocock, "Time, History and Eschatology," 148–201; more generally see Pasquale Porro, ed., *The Medieval Concept of Time: The Scholastic Debate and Its Reception in Early Modern Philosophy* (Leiden, 2001).

⁹² On the social problems caused by the temporality of human agency in Hobbes's state of nature see Edwards, *Time and the Science of the Soul*, 204.

⁹³ *TT* I.16. The importance of the Old Testament to Locke's thought has only recently begun to emerge. For a preliminary investigation see Fania Oz-Salzberger, "The Political Thought of John Locke and the Significance of Political Hebraism," *Hebraic Political Studies*, 1/5 (2006), 568–92; more recently, two articles in the same vein have narrowed their focus to Locke's use of the Book of Judges, for which see Andrew Rehfeld, "Jephthah, the Hebrew Bible, and John Locke's 'Second Treatise of Government,'" *Hebraic Political Studies*, 3/1 (2008), 60–93; Samuel Moyn, "Appealing to Heaven: Jephthah, John Locke, and Just War," *Hebraic Political Studies*, 4/3 (2009), 286–303.

⁹⁴ *TT* I.24.

⁹⁵ *Ibid.*, I.40.

⁹⁶ *Ibid.*, I.24.

⁹⁷ *Ibid.*, I.24–7.

[was] not only given in clear words, but in a larger extent than it was to *Adam*.⁹⁸ Genesis 1:29–30 showed that Adam “could not make bold with a Lark or a Rabbet to satisfie his hunger, and had the Herbs but in common with the Beasts.”⁹⁹ But Noah and his sons were given the “utmost Property Man is capable of, which is to have a right to destroy any thing by using it; *Every moving thing that Liveth*, saith God, *shall be Meat for you*, which was not allowed to *Adam* in his Charter.”¹⁰⁰ Locke noticed Filmer’s attempt to brush the difference under the carpet: the Noachic grant, he had argued in the *Observations*, left Adam’s title “to a property of all things” untouched, and offered Noah “but an enlargement only of [Adam’s] commons.”¹⁰¹ Locke responded by asking why Adam, putative lord of all the world, was not allowed to eat meat. (A vegetarian lord, he was implying, was no lord at all.)¹⁰² Properly understood, the distinction between Adamic and Noachic property was analogous to “*having Dominion*, which a Shepherd may have, and having full Property as an Owner.”¹⁰³

The significance of this distinction between post-lapsarian and post-diluvian property, however, did not lie wholly in what it said about Filmer, nor in what it said about Noah and his progeny. It lay in the fact that a distinction had existed at all. Taken together, the two grants showed that in respect of God, “Mans Propriety in the Creatures is nothing but that *Liberty to use them*, which God has permitted, and so Man’s property may be altered and enlarged, as we see it was here, after the Flood, when other uses of them are allowed, which before were not.”¹⁰⁴ If combined, the Fall and the Flood laid bare the conditions of God’s gift of the world to man. Neither post-lapsarian nor post-diluvian grant determined who was to have property in “distinct portions of the Creatures”: that was a matter for mankind to settle themselves, “in respect of one another.”¹⁰⁵ What the grants did do was dictate the kind of property mankind were permitted to have, or the uses to which they were permitted to put the earth. By forbidding Adam from eating meat, God had restricted his use of the world. By then lifting this restriction for Noah and his progeny, God altered the kind of property they were permitted to acquire. As the question of who owned what was not at stake after either the Fall or the Flood, Locke could conclude that in respect of God, “What other

⁹⁸ Ibid., I.39.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Filmer, *Observations*, 217–18.

¹⁰² *TT* I.39.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

Property Man can have in the Creatures, but that *Liberty of using them*, is hard to be understood.”¹⁰⁶

This may be taken as an oblique formulation of Pufendorf’s negative community, itself a conception of a world given to no one in particular, but free for the use of all. Nevertheless, Locke came close in the following three paragraphs to claiming that God gave the world to mankind collectively (or in Pufendorf’s terminology, positively).¹⁰⁷ It was ludicrous to suppose, Locke went on, that by making Adam proprietor of all the world, God had denied mankind access to the materials they needed to survive; it was more “reasonable to think” that he “should rather himself give them all a Right, to make use of the Food and Rayment, and other Conveniencies of Life, the materials whereof he had so plentifully provided for them.”¹⁰⁸ Rather than giving “one of his children” property, he had given “his needy Brother a Right to the Surplusage of his Goods.”¹⁰⁹ This was because human beings had been put on earth for a purpose: to be fruitful and to multiply.¹¹⁰ In order to align themselves with God’s directive, they must all be able to subsist.¹¹¹

¹⁰⁶ Ibid. By denying that the world was given exclusively to Adam and that the Fall could of itself reveal the conditions of God’s grant of the world to man, Locke implied that Adam could not be held to represent mankind. This is consonant with the scepticism he later ladled onto the doctrine of original sin. The Fall, he wrote in 1695, had made men mortal; but God could not be supposed, “as a Punishment of one sin wherewith he is displeased, to [have] put man under the necessity of sinning continually.” Though “*all die in Adam*,” he concluded, “none are truly *punished* but for their own deeds.” John Locke, *The Reasonableness of Christianity*, ed. John Higgins-Biddle (Oxford, 1999), 8, 10. This claim left Locke unable to render Christ’s death as a ransom paid to God as a satisfaction of sin. Having thereby failed to affirm the full divinity of Christ, he left himself open to the charge of Socinianism. On Locke’s later view of the Fall see Tim Stanton, “Locke and the Politics and Theology of Toleration,” *Political Studies*, 54/1 (2006), 84–102, at 97–8.

¹⁰⁷ *TT* I.40–43. They have been taken us such, most significantly, by Harris, *The Mind of John Locke*, 214–30. There is a well-worn debate over whether Locke’s original community should be designated “positive” or “negative.” For the former, and in addition to Harris, see Tully, *A Discourse on Property*, 125–30; Barbara Arneil, *John Locke and America: The Defence of English Colonialism* (Oxford, 1996), 135; for the latter see Dunn, *The Political Thought of John Locke*, 67; Hont and Ignatieff, “Needs and Justice,” 432.

¹⁰⁸ *TT* I.41. This quotation is the central item of Harris’s reading of Locke on original community. Harris, *The Mind of John Locke*, 215.

¹⁰⁹ *TT* I.42.

¹¹⁰ Ibid.; see also I.23, II.26, 32, 34, 35; for commentary on these passages see Harris, *The Mind of John Locke*, 214–15; Waldron, *God, Locke, and Equality*, 160, 169.

¹¹¹ For Harris, *The Mind of John Locke*, 215, the presence of the directive in both Genesis 1:28 and 9:2 shows that, for Locke, God gave “people a right to the means of self-preservation,” and by doing so, had “given the earth to all mankind.”

But if Locke saw God as having given humans a right to the means of self-preservation, he might have struggled to remove consent from his Creation story by the end of the chapter—a feat neither Grotius nor Pufendorf had managed.¹¹² He did so by proposing a world owned, as Filmer had suggested, by one man alone. Such a world would fail to show that “propriety in Land, even in this Case” bestowed sovereignty.¹¹³ It would show only that “Compact might; since the authority of the Rich Proprietor, and the Subjection of the Needy Beggar began not from the Possession of the Lord, but the Consent of the poor Man, who preferr’d being his Subject to starving.”¹¹⁴ There was no suggestion that consent was required for the proprietor to become a proprietor in the first place; consent intervened only at the foundational moment of the *civitas*.

A question remains. Locke’s reading of Genesis suggested that, initially, mankind had no need of rights to the means of self-preservation, and no need to consent to the formation of property. But he still had to show how, without either of these aids, human beings could still comply with God’s directive to be fruitful, to multiply, and to replenish the earth. He managed it only by adapting Grotius: Locke saw in him a way of using the spatial dimensions of the first ages of the world to extend the temporal duration of the original community of mankind.

III

Grotius’s discussion of the Flood contained a double-sided analysis of space. After the post-diluvian division of the world by the *gentes*, there was enough space for common places to remain in the interstices between them. There remained among neighbours a “Community” of pastures, “because the Extent of Grounds was as yet so great in Proportion to the small Number of Men, that it was sufficient to answer the Occasions of many, without their incommoding one another.”¹¹⁵ But it was precisely this abundance of space that served to ensure the original division of the “antient” community: “by Reason of the Distance of Places where each [of the *gentes*] was settled; and afterwards because of the Defect of Equity and Love,” there was “no Possibility then of using Things in common.”¹¹⁶ On this point, Pufendorf concurred: “When Men are scattered into different Places, and fixed at a Distance from each other, ’twould be a foolish Labour to gather all the Provision into one Heap, and to distribute it out of the common Mass.”¹¹⁷

¹¹² *TT* I.43.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ *DJB* 2: 2.2.3.

¹¹⁶ *Ibid.*, 2: 2.2.4.

¹¹⁷ *DJN* IV.4.9.

Attention has recently been drawn to Grotius's deliberate placement of distance before vice—the “Defect of Equity and Love”—in his causal explanation of the ending of natural community.¹¹⁸ For Grotius, the distances between *gentes* were a blight on history; they represented the departure of mankind from their original, communal, and naturally sociable condition.¹¹⁹ But there remained a network of common places which, if used, could reconnect the *gentes* with one another. Traders, merchants and travellers thereby acquired a theological function: as they navigated the sea and passed through highways linking place to place, they restored the communication that division had destroyed and, in doing so, tugged humanity back toward its original (and sociable) condition.¹²⁰ Migrants served the same purpose, but so did settlers. As long as the occupants of the place being colonized had not instituted their own political power, or *imperium*, there was nothing preventing its settlement (as, for Grotius, there could be no *imperium* over place without *imperium* over people).¹²¹ Like migration and commerce, colonial activity was a tonic for division, and pushed human beings back toward the community which God had originally designed for them.

Locke cut out the consensual division of the world by the *gentes* from his own discussion of the Deluge. But he held on to Grotius's spatial abundance. Filmer may have claimed, Locke argued, that Noah inherited the world at the expense of his progeny. But he had failed to show what harm would have befallen Noah if God had permitted his sons use of the earth, as “the whole was not only more than *Noah* himself, but infinitely more than they all could make use of, and the Possessions of one could not at all Prejudice, or as to any use streighten that of the other.”¹²² By keeping abundance and dropping division, Locke inverted Grotius's argument. For Grotius, the vast space into which the *gentes* sprawled spelled the end of the original community: mankind became divided, and the distances between *gentes* made its common enjoyment impossible. But for Locke, space preserved community. If the world was “infinitely more” than Noah and his sons could use, there was no cause for “Prejudice,” and thus no occasion for men to agree on (or consent to) a division of land. Distance obstructed natural sociability for Grotius, but maintained it for Locke. This was why consent was absent from Locke's Creation story: at this point, it was simply unnecessary. Humans could take up their freedom to use the world without impinging on one another or contravening God's directive to increase and to multiply.

¹¹⁸ Brett, *Changes of State*, 199; cf. James Tully, whose discussion of the passage neglects to mention either distance or space. See Tully, *Discourse on Property*, 81.

¹¹⁹ Brett, *Changes of State*, 199.

¹²⁰ *Ibid.*, 199–200.

¹²¹ *Ibid.*, 200.

¹²² *TTI*, 37.

In “Of Property,” Locke buttressed his claim. But he did so on different territory. The *First Treatise*’s exploration of the Fall and the Deluge had taken place in the world of sacred history; the *Second Treatise* began from the “State all Men are naturally in” (the state of nature) before following them into property and, after that, into political society.¹²³ This world remained God’s: its men were “the Workmanship of one Omnipotent, and infinitely wise Maker; All the Servants of one Sovereign Master, sent into the World by his order and about his business, they are his Property.”¹²⁴ But it also retained the dimensions of sacred time and space in which the *First Treatise* had operated; at the very least, it was parasitic upon them. The chapter therefore picked up where Locke’s discussion of Noah left off, and overturned Pufendorf’s claim that in the early ages of the world, natural resources had been scarce: “considering the plenty of natural Provisions there was a long time in the World, and the few spenders . . . there could be then little room for Quarrels or Contentions about Property.”¹²⁵ Hence, “at least where there [was] enough, and as good left in common for others,” men could appropriate without consent.¹²⁶ Conditions of “enough, and as good,” Locke continued, would persist because the small and relatively uniform size of the human stomach set a natural limit on how much one would labour, and how much property one could thereby acquire: “As much as any one can make use of to any advantage of life before it spoils; so much he may by his labour fix a property in.”¹²⁷

Without Locke’s claim about space, however, his spoliation proviso might not have been able to overcome Grotius and Pufendorf. For both of them, conditions of “enough, and as good” may well have existed for a time, but cultivation soon necessitated a consensual division of goods. Grotius was clear that as soon as agriculture and pasturage were developed by the “first brothers” (Cain and Abel), the common was divided.¹²⁸ Pufendorf’s marker was the cultivation of “things which produce food and clothing.”¹²⁹ For both, agriculture multiplied the possibilities for conflict by exacerbating natural inequalities between the capabilities, industriousness and inclinations of different human beings. Combined with their dispersal across the world, this made its common enjoyment impossible.

¹²³ Ibid., II.4.

¹²⁴ Ibid., II.6.

¹²⁵ *TT* II.31; for Pufendorf’s rejection of natural abundance, see *DJN* IV.4.6.

¹²⁶ *TT* II.27.

¹²⁷ Ibid., II.31; on the spoliation proviso, see Hont and Ignatieff, “Needs and Justice,” 432.

¹²⁸ *DJB* 2: 2.2.2.

¹²⁹ *DOH* I.12.2; see also *DOH* II.5.2.

But Locke's spoliation limit could withstand the development of agriculture: "As much Land as a man Tills, Plants, Improves, Cultivates, and can use the Product of, so much is his Property."¹³⁰ The reason for this, he argued, was spatial: "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."¹³¹ After all, "He that had as good left for his Improvement, as was already taken up, needed not complain."¹³² As long as there was enough space for individuals or families to disperse, they would be unlikely to clash over the same goods: there were few causes of conflict, and little reason for men to agree to dissolve the common. Moreover, mankind's diffusion could safely be assumed in the "first Ages of the World, when Men were more in danger to be lost, by wandering from their Company, in the then vast Wilderness of the Earth, than to be straitned for want of room to plant in."¹³³ In the hands of Grotius and Pufendorf, distance brought forward the consensual division of the common. But in Locke's, distance delayed it.

In some places space soon became constrained enough to necessitate consensual partition. Locke had two (related) answers to the question of how this had happened, the first of which involved explicitly contesting the early moment at which Grotius had inserted consent into Scripture. Consent would have been superfluous, Locke argued, between Grotius's "first brothers," Cain and Abel: "Cain might take as much Ground as he could till, and make it his own Land, and yet leave enough to Abel's Sheep to feed on; a few Acres would serve for both their Possessions."¹³⁴ Neither was any division of the world necessary among the earliest families and *gentes*. Right down to the time of Abraham (son of Terah, the tenth descendant of Noah), families "wandred with their Flocks, and their Herds, which was their substance, freely up and down," making it clear that "a great part of the Land lay in common; that the Inhabitants valued it not, nor claimed Property in any more than they made use of."¹³⁵ Consent, Locke concluded, only emerged as the product of explicit competition over the same pastoral lands, itself a product of a natural increase in livestock: "when there was not room enough in the same place, for their Herds to feed together, they, by consent, as Abraham and Lot did, *Gen. xiii. 5.* separated and enlarged their pasture."¹³⁶

¹³⁰ *TT* II.32.

¹³¹ *Ibid.*, II.33.

¹³² *Ibid.*, II.34.

¹³³ *Ibid.*, II.36; compare "straitned" here with the "straightening" of property at *TT* I.37.

¹³⁴ *Ibid.*, II.38.

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

Locke's second answer introduced money as an artificial accelerant of the constriction of space. There would be still enough land in the world to provide for double its current inhabitants, Locke claimed, "had not the *Invention of Money*, and the tacit Agreement of Men to put a value on it, introduced (by Consent) larger Possessions, and a Right to them."¹³⁷ The spoliation proviso had previously provided no outlet for natural covetousness, because "as a Man had a Right to all he could employ his Labour upon, so he had no temptation to labour for more than he could make use of."¹³⁸ But money unleashed it by allowing men to cheat the proviso: man could now appropriate more than he could consume and exchange the surplus for non-perishable specie, "the *exceeding of the bounds of his just Property* not lying in the largeness of his Possession, but the perishing of any thing uselessly in it."¹³⁹ This triggered competition for space, necessitating consent. But this time, agreement could not be as simple as it had been for Abraham and Lot; the inequalities made possible by money raised the question of how juridically equal men could agree to an unequal division of goods.¹⁴⁰ Locke's answer was *tacitly*: "This partage of things, in an inequality of private possessions, men have made practicable out of the bounds of Societie, and without compact, only by putting a value on gold and silver and tacitly agreeing in the use of Money."¹⁴¹

In places where competition for resources had become fierce and the common had already been consensually divided, communities tended to form in order to institute the *civitas*: "in some parts of the World, (where the Increase of People and Stock, with the *Use of Money*) had made Land scarce, and so of some Value, the several *Communities* settled the Bounds of their distinct Territories," and then, "by *Compact* and Agreement *settled the Property* which Labour and Industry began."¹⁴² But elsewhere—and by this, Locke meant America—there were still "*great Tracts of Ground* to be found, which (the Inhabitants thereof not having joyned with the rest of Mankind, in the consent of the Use of their common Money) *lie waste*, and are more than the People, who dwell on it, do, or can make use of, and so still lie in common."¹⁴³ Besides explaining how the individuation of the common could precede both its consensual division and the

¹³⁷ Ibid., II.36.

¹³⁸ Ibid., II.51.

¹³⁹ Ibid., II.48; for a tight depiction of Locke's analysis of money see Hont and Ignatieff, "Needs and Justice," 432–3; for a looser one see Tully, *Discourse*, 144–50; see also, exhaustively, Patrick Kelly, ed., *John Locke on Money*, 2 vols. (Oxford: Clarendon, 1991).

¹⁴⁰ For Locke's discussion of juridical equality see *TT* II.54.

¹⁴¹ Ibid., II.50.

¹⁴² Ibid., II.45.

¹⁴³ Ibid.

formation of the *civitas*, Locke's spatial argument could also serve to justify the non-consensual appropriation of American land; by this point, its potential to act as imperial apologetic had become clear. But apology was not necessarily the primary object of Locke's argument: it may just as plausibly have been motivated by his desire to rebuild Grotius in a way that met Filmer's challenge. At stake was the authority over the earliest written (and sacred) records of human history, which, following *Patriarcha's* publication, had been thrust into Filmer's hands. In taking it back, Locke articulated a view of imperial acquisition which followed from his understanding of how God had bequeathed the world to human beings, and of what they had done to it since. In arriving at this understanding, he had outlined a social sphere which accommodated both the non-consensual acquisition of property and the tacitly consensual use of money. In time, he had situated it after God's original grant of the world to mankind but before the (consensual) foundation of cities, which answered Filmer on the question of order as well as consent: dissolution of the *civitas* would return its citizens not to natural community and liberty, but to the less appetizing prospect of property rendered insecure by a scarcity of goods and space.

The best recent work on liberalism and empire has not stopped at revealing the colonial contexts in which a purportedly universal idiom was formulated and expressed: it has taken the further step of exploring the character of the connection, and how it changes across time and space.¹⁴⁴ But in Locke's case, the revelation of his imperial complicity remains the terminus of the story,¹⁴⁵ and has been presented as a gleaming example of what an internationalized—or globalized—intellectual history can do.¹⁴⁶ This article has sought to step beyond Locke's complicity by asking whether it might not be distortive to see Carolina as the only (or even the overriding) determinant of his view of property.¹⁴⁷ In the early modern historiographical culture in which Locke operated, the past

¹⁴⁴ Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton, 2005), 4; Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism* (Princeton, 2010), 2; Duncan Kelly, ed., *Lineages of Empire: The Historical Roots of British Imperial Thought*, Proceedings of the British Academy, 155 (Oxford, 2009); Duncan Bell, *Reordering the World: Essays on Liberalism and Empire* (Princeton, 2016).

¹⁴⁵ Tully, "Rediscovering America," 137–79; Duncan Ivison, "Locke, Liberalism, and Empire," in Peter Anstey, ed., *The Philosophy of John Locke: New Perspectives* (London, 2003), 86–106; Arneil, *John Locke and America*, 201–10; Herman Lebovics, "The Uses of America in Locke's Second *Treatise of Government*," *Journal of the History of Ideas*, 47/4 (1986), 567–82.

¹⁴⁶ Armitage, "John Locke, Carolina," in Armitage, *Foundations of Modern International Thought*, 90–114.

¹⁴⁷ Armitage, "John Locke, Carolina."

continued to consist primarily of the textual records of human actions.¹⁴⁸ The Old Testament continued to be the earliest of such records, so it mattered to Locke that Filmer had brandished it as the source of his politics. Accepting this as one of the contexts in which Locke articulated his own account of property does not eliminate the context of imperial acquisition; the *Two Treatises* was formed in both. What it does do is raise the possibility that, for Locke, justifying the expropriation of American land was a second-order priority. It also suggests that global contexts need to be related to intellectual contexts, rather than simply extruding them.

¹⁴⁸ Anthony Grafton, *What Was History? The Art of History in Early Modern Europe* (Cambridge, 2007); the innovations of Göttingen and Edinburgh were as yet some way off. See Peter Reill, *German Enlightenment and the Rise of Historicism* (Berkeley, 1975); J. G. A. Pocock, *Barbarism and Religion, vol. 2, Narratives of Civil Government* (Cambridge, 1999).