Beyond Liberty Alone

A Progressive Vision of Freedom and Capitalism in America

Howard I. Schwartz, PhD

Beyond Liberty Alone

A Progressive Vision of Freedom and Capitalism in America

Howard I. Schwartz, PhD

Other Ideas Press
San Francisco, CA

ISBN: 0982832516
ISBN-13: 9780982832516

Other Ideas Press

To my wife, Carroll,
who brings out the best in me.

Contents

Chapter 6
On Private Property Rights and Equality

Property is one of those concepts and institutions whose origins and justification most people don't bother to think about. Property simply is assumed to be protected by our liberties. But if we delve into the ideas about property among those early modern thinkers who fashioned our modern notions of rights, we find some surprising convictions that should give us pause and help us rethink our basic assumptions about the allocation of resources, ownership, and our own responsibilities.

Among many advocates of liberty today, it is an unquestioned assumption that anything that we have in our possession or anything that we come by through our efforts, work, labor, and luck become and are part of our property. That view assumes that we own the results of our labor and what came to us through any accidents of history. Anything that we create, produce, and achieve is ours alone. For the same reason, anything our parents and ancestors have created was theirs alone. Anything that comes into our hands through inheritance or through the activity of our lives is our private property. This conception of property is intimately tied into our notions about what liberty is and means. Liberty includes the right to own the results of our labor and efforts and to be recognized for our talents.

These early modern notions of property are deeply tied conceptually to notions of "propriety," "proper," and "proprietor," as the etymology of

the words reflect. In fact, early modern philosophers sometimes used the words interchangeably and said "propriety" where today we would say "property," and they used the word "property" also to describe all our rights, including our lives and liberties and not just our material possessions.[1] These notions are not easily pried apart in the modern Western tradition, illustrating just how deeply our notion of property is tied to our notions of what's right and proper.

In what follows, we explore this entanglement of property and propriety by looking at some of the forgotten assumptions that shaped our modern conceptions. In doing so, we discover grounds for rethinking what we hold to be right and proper. It is fascinating and somewhat startling to see the particular ideas on which our modern notions of property are grounded. Most of these ideas have long since been forgotten except by a narrow range of academics who still read the seventeenth-century classics. But they were the foundation for institutions and ideas about rights and property that still shape our lives, our language, and our way of thinking. Finding that our modern notions stand on such unusual foundations rattles the edifice on which they were built, a secret that very few want to acknowledge, let alone talk about. Indeed this is why even some liberty-first adherents have fled from a "rights" justification of property and turned to utilitarian justifications, as we shall see later.[2] Since property was and is ultimately about what's proper, it would be only reasonable that our own notions of what's right should reshape our relationship to property. We shall find in these early modern discussions the roots for other more productive ways to think about property that have subsequently disappeared or been forgotten.

For some readers, it will be interesting and perhaps even surprising to know that at the dawn of human time, the world and its resources were given "in common" to all humanity, according to our modern natural rights thinkers. Precisely what in common meant and how private property arose subsequently were points of disagreement. The debate turned on a variety of historical, philosophical, and religious questions. Why, when, and how did private property emerge? Was private property a natural right or a human convention? If the world was given in common, how

did property become private, and what turned it private? If humans are equal, why is property distributed unevenly? These questions had their religious variations as well. What specifically did God give to Adam, the first human, in particular? Was the world Adam's alone or was it a gift to humankind in general? How did private property emerge out of that original gift to Adam?

For the most part, there was a general consensus among our early moderns that the institution of private property did *not* exist in the beginning of human time and emerged later in ways to be discussed. Only some royalists, such as Robert Filmer, tried to argue that private property started at human creation and that all property rights were inheritances of the property given to the first human ancestor, Adam. How these thinkers knew what happened in the beginning of time is part of the interesting story. For them, evidence of the early human situation came from scripture, which was identified not only with the word of God, but the historical record of early human history. They also found evidence of early human history and institutions in the practices of "simpler" peoples that European explorers believed they were encountering in the Americas. As Locke famously put it, "in the beginning all the World was *America* [italics in original]," meaning that humankind lived in the beginning of time like the American Indian tribes reported by explorers of his day, a view that dominated European anthropology until the end of the nineteenth century.[3] The early natural state of humans was thought to be still visible in the practices of non-European peoples, above whom the more civilized European Christians had progressed.

The idea that the world's resources were given in common is a good launching point for our discussion of property. Underlying this view is a set of interesting assumptions about the nature of history, human character, God, and morality. The core conviction is that the world was intended in some sense to benefit and sustain human beings equally. There are two key assumptions here that both need some examination.

The first is that either nature or God (which, for some thinkers, were one and the same) intended the natural world for human use and purpose. This is a teleological and religious perspective. It assumes that the purpose

of creation was human oriented and in service of humanity. Humans were understood as the pinnacle of creation, and the rest of the natural world was created at least in part to serve human purposes. This is an assumption we can and should rethink, for it would seem reasonable to question, from both a religious and secular ecological perspective, whether this human-centered philosophy now appears to be arrogant. If the planet and resources were not given for human purposes, or were given in some more limited way, or were not "given" or "intended" at all, then the founding assumption that the world is for human use is problematic.

Doubts about this view already are hinted at in the writings of the early moderns, some of whom argued that God ultimately has property in everything, and human property rights are therefore only secondary to God's ultimate ownership.[4] If we today see ourselves as part of nature, instead of above nature, then the very question of what right we have in natural resources intensifies, a position that ecologically oriented secular and religious thinkers have made in emphasizing the obligation of stewardship.[5] Furthermore, these early moderns in some ways anticipated a view I wish to develop further below. That view holds that nature and God gave humans only the use of nature's resources at the beginning, but not private property rights per se. We shall come back to the question below of what it would mean to see humans as having only temporary use rights and not permanent property rights.

The second justification of the common nature of resources flows from reason: given the natural human instinct to self-preservation and the corresponding right to life, there must be an obvious means for humans to be able to sustain their lives. The idea here is that God gave humans a means of sustenance and that nature provided humans both the instinct to life and the means to fulfill it.[6] In this perspective, the world's resources were part of that human provisioning, and humans were fulfilling their nature by utilizing natural resources. For some thinkers, this provisioning had a distinctively religious foundation to it. God intended the world's resources as sustenance for human life through a special gift of the world's resources. This was evident in scripture itself when God blesses the first human beings:

> God blessed them and God said to them, "Be fertile and increase, fill the earth and master it; and rule the fish of the sea, the birds of the sky, and all the living things that creep on the earth." God said, "See, I give you every seed-bearing plant that is upon all the earth, and every tree that has seed-bearing fruit; they shall be yours for food" (Gen. 1:28–29).[7]

According to Genesis, the permission to use vegetation as human food was given by God at creation. Initially, humans were told to subdue the earth and were given dominion over creatures, but this did not give them the right to take animals' lives and eat them. The permission to eat flesh was given to Noah in a dispensation after the flood, at which point God says, "Every moving thing that liveth shall be meat for you; even as the green herb have I given you all things. But flesh with the life thereof, *which* is the blood thereof, shall ye not eat." (Gen. 9:3-4)[8] [italics in original]

There are a number of key ambiguities in these scriptural verses that provided grist for debate among both religious scholars and early modern philosophers alike. These scriptural interpretations were at the heart of the debate over the nature of property rights and specifically over whom and for what purpose God gave the world's resources. Though scripture was central to the debate on property, others played down the religious overtones and assumed that one could infer the right of humans to *use* the world's resources from the human instinct for self-preservation, even without appealing to the idea of God. As Locke put it, "Whether we consider natural *Reason* which tells us, that Men, being once born, have a right to their Preservation and consequently to Meat and Drink, and such other things, as Nature affords for their Subsistence, or R*evelation,* which gives us account of those Grants God made of the World to *Adam*, and to *Noah*, and his Sons, "tis very clear, that God…[has] given it to mankind in common."[9] In either derivation of property, there was no attempt to differentiate ownership of resources by human status or human hierarchies at the inception of creation. What was given by God via revelation, or by nature via reason, was given in common.

The assumption that natural resources were in common aligns well with the emerging modern conviction that humans were equal in value with each other, a topic covered in the previous chapter. From this equality in value or basic human capabilities flowed the conviction that resources should not be preallocated in a way that privileged some human beings over others. Equality implied that resources were conferred equally by God or by nature in the beginning of human time. Without the conviction that humans were equal in value, early modern philosophers would have read scripture and human history differently. The idea that human equality implied "resources in common" at the beginning would help support the growing seventeenth-century repudiation of the divine right of kings, which gave the monarchs divine justification for their authority, though not necessarily unlimited power over their subjects and the properties of the kingdom.[10]

For the early moderns, the idea that natural resources were given or held in common at the beginning of time was thus a core conviction that was tied into their assumption of human equality. In the previous chapter, I suggested that the assertion of human equality can be taken as a core modern moral conviction, not something that is self-evident in nature. If we see modernity as trying to work out and embrace the implications of this founding assumption, then it is plausible to argue that our conception of property should also be shaped by our conception of human equality. This linkage between original human equality and the common ownership of property was already intuited by our earlier modern philosophers. Before pondering this connection for ourselves, let us see how they came to grips with what they considered an end of this original human condition of equality and common ownership and the emergence of private property and inequality.[11]

• • •

The claim that humans received the world and its resources in common had several meanings. For some, in common meant what we now

would call "tenants in common," meaning that everyone has equal rights together.[12] On this view, all humans shared ownership equally in the world's resources, and no one could do anything without the permission of all other property owners. The other view holds that resources in common was intended exclusively, meaning that all resources were treated like the air and the ocean today and given for use to everyone, but that *no one had property rights over anything in particular*.[13]

The view that the world's resources were given in common was tied in with a particular reading of scripture. In Genesis 1, God can be understood to be talking about the creation not of Adam, the individual man, but Adam, the ancestor or prototype of humankind. Indeed, "Adam" in Hebrew can either be a proper name, Adam, or mean "human being," like the English word "man."[14] That God is bestowing the right "to subdue" or "to master" the world on more than just a single male is suggested by the vacillation from singular to plural in the instructions: "So God created man in his own image, in the image of God created he *him*; male and female created he *them*. And God blessed *them*, and God said unto *them*, Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth.[15] (Gen. 1:28–29) [emphasis mine]

Over the centuries, interpreters of Genesis have argued about the meaning of the plurals in this passage. What does scripture mean in saying that "male and female he created *them*"? There are many possibilities here. One traditional interpretation understands Adam to be the first human being created and male. A second interpretation understands the language as symbolic, seeing Adam, the first ancestor, as a representation of all humanity. Another approach interprets the word "Adam" like the English "man" as including human beings, and the word "them" refers to the first human pair. Still another possibility is that the first Adam was beyond or before the differentiation of the sexes (i.e., androgynous or sexless) and thus in God's image (which is beyond sex).[16] Adam, as the first human entity created, was a generic human with no sex or both sexes until Eve was later split off, at which point the male and female sexes

were differentiated from the original sexless human entity. Adam, the first human, represents humanity writ large, and God's instructions to Adam are expressions of God's purpose for humankind in general.

This first human entity is instructed to replenish and subdue the earth and have dominion over the creatures of the earth.[17] For Robert Filmer, the author of *Patriarcha*, this instruction was the basis for the private property of Adam, the original male, and the ultimate foundation of the divine right of kings. Adam passed his property rights over the world and over people to his male heirs who became the kings.

Other early modern interpreters wanted to avoid the conclusion that property rights had been given to only a single individual at creation. Instead, they understood God's action at creation as granting the first human the right to *use* the world's resources, but not necessarily the right to have private property.

In either the religious or more rationalist positions described above, there was no private property at creation. For all of these thinkers, *it thus became a problem to explain how private property came to exist in the first place*. Locke puts this problem quite dramatically: "it seems to some a very great difficulty, how any one should ever come to have a *Property* in any thing."[18] The origin of private property was both a problem for and point of contention between early modern thinkers and highlights the fact that their notions of property did not sit easily with their notion of an equal creation and an equal value of human beings. Instead, they saw a tension between these two different sets of convictions. And in some sense their work can be understood as an attempt to work through these incompatible impulses. How could they argue both for the equal value of human beings before God or death yet also account for the emergence of private property and an uneven distribution of God's creation? One can see the debate about human beginnings as the foundation or original condition of their moral thinking. It was their point of departure. Given that humans were equal in value, how could they understand and justify private property and ultimately the uneven distribution of the world's resources? Is this what God or nature intended?

There were two basic answers to the question, with some variations on each. The first view is quite intriguing, since it attributes the introduction of private property to human convention and compact. According to this view, humans for various reasons came to an agreement that they would embrace private property, which did not exist at creation. Private property was thus an artifact of human society, not nature. A second view, by contrast, held that the mechanisms to create private property were already implicit in and available at creation, and humans simply exercised and implemented those mechanisms that already existed. Both views thus shared the assumption that the institution of private property arose after human creation. But they differed on how private property in fact began and whether it was a purely human convention or already authorized by nature or God. The differences are significant and interesting for our discussion and show that there was not a single perspective on the origin of property. After summarizing the two main positions on property, we shall rethink their implications for our own notion of what's right and proper.

Consider first the perspective that private property was introduced by human convention and compact or civil law.[19] In this view, private property is *not* comparable with the right to life and liberty, which were in nature or God-given, but was rather an institution or practice agreed upon by human beings.[20] In this view, we may have natural rights to life and liberty but not to property. From the beginning of human creation there was a natural right to *use* the world's resources, but there was no notion of legal ownership. This right of use was thought to arise from either a gift of God (as told by scripture) or the fact that humans had a right and instinct to self-preservation and thus to use resources for sustaining life (as inferred from reason). *Using* resources was qualitatively different from having property rights. A right to use resources may have entitled Adam to eat fruit from a tree but not to put a fence around the tree, keep others away from it, hoard the fruit from it, or sell it. Use was limited to what an individual needed to sustain his or her life, but it did not entitle individuals to own or accumulate more than they needed.

Thus when things were "in common," people could use resources for life's basic needs but not rightfully accumulate them beyond what they needed. The ability to accumulate was an artifact of property rights and human civilization.

This property-free condition in which people lived off the land was thought by some to be the simple state of humankind, in which people lived closer to nature, without clothing, in caves, and had no practice of private property.[21] As evidence, thinkers pointed not only to the biblical story about the naked Adam and Eve, but also to what they perceived as simpler living arrangements and social organizations in the practices of the non-European peoples that European explorers had encountered. As we shall see later, this equation of non-European peoples with simpler societies would be among the justifications used by Europeans for settling on and occupying the lands in the Americas. In any case, these thinkers concluded that the development of property was historical, not natural, and the result of human convention, either through explicit agreement or through tacit consent to new social arrangements. Why did this arrangement emerge? The historical development of private property occurred in response to the nature of human character, the development of the human species, and pressures of population growth, and was part of what differentiated the early simple societies from more complex later ones and what even differentiated humans in their early natural state from their more advanced state. Private property was thus a good and perhaps inevitable human invention that was part of the foundation of civilization.[22]

This view of property has intriguing implications. If private property rights are the result of human social convention, they cannot be part of a natural law that is protected in the same way that life and liberty would be protected. Private property is instead the result of a "contract" that human beings made with each other. And like other institutions that result from human convention, property rights could potentially be rethought and under certain conditions could revert to their prior natural state. In this sense, private property is analogous to political institutions and government, which are created by human compact and therefore

subject to human control, change, and ultimately revision. And just as the compact that creates government can be overturned under certain conditions that violate the underlying intent and rights of the original parties, some thinkers believed that property rights would be undone and revert back to the state of nature in the face of "extreme necessity."[23]

The assumption here was that the parties to the original agreement (or agreements) codifying the idea of property entered with an implicit understanding that everyone would have sufficient basic resources needed for their sustenance. Since this was the tacit intent of the "original contract(s)," the case of starvation or other forms of extreme necessity could override the convention and revert matters back to the condition prior to the agreement. As one Dutch thinker put it, "My Calamity doth not give me a right to those things, to which I had none before; but the extremity of my Danger makes that Condition cease, under which I gave up my first Right."[24] Under extreme circumstances, one could take another's property without the action falling into the category of theft. My conventional right to property does not supersede another person's right to preserve his or her life.

What, then, led humans to adopt private property arrangements? Private property was regarded as a reasonable and even a necessary response to the growth of human civilization and the nature of human character. Property rights provided a way to "preserve peace" and avoid "discord" and "infinite clashings."[25] What provoked this tendency toward discord or even war was the nature of human character itself. The fact that humans were equal in character meant they desired and expected the same goods, were driven by ambition, and competed for resources as a result of population growth.[26]

According to some, the transition to private property occurred over a period of time as humans spread out across the earth and came to multiple agreements on property rights among smaller groups.[27] There was not a single contract with all humanity. Instead the arrangements emerged among groups of the expanding human population. Sometimes the agreements were explicit, as groups settled on new land and divvied it up by property rights. Sometimes the agreements were tacit, as when people

spread out and settled on new land, tacitly accepting that there was a first-come-first-served basis to appropriating goods and lands.

Some thought "seizure" was the means by which the original humans exercised their "right" to own what had been given in common, while others disagreed.[28] Even seizure of property only constituted rightful ownership because humans had come to agree to abide by private property rights and identify seizure as the conventional mechanism to secure them.[29] God had given the resources for human use, but neither God nor nature had defined how the resources should be allocated.[30] According to some, property rights thus emerged along with the very concept of right and wrong and thus were implicit in the human step out of nature itself.[31] Others argued that humans accepted the notion of private property rights in recognition that most human goods came into being only through human labor and effort. For reasons of fairness, the individual who expended effort and labor thus deserved the value created by that labor and effort. As one writer put it, "Again, many Things stand in need of Human Labour and Culture, either for their Production, or to fit and prepare them for Use. But here, it was very inconvenient that a person who had taken no pains about a Thing should have an equal Right to it with another, by whose Industry it was either first rais'd, or exactly wrought and fram'd, to render it of farther service."[32] A number of thinkers also recognized the positive benefits of private property, which made humans more industrious and improved their character.[33]

To summarize, then, the first view understands private property as a human convention or arrangement that emerged for many good reasons from the challenges of human character, competition, ambition, and recognition of human effort. In this view, property is not among the natural rights on the same plane as "life and liberty." Instead, humans invented the institution of private property for some good reasons. But because it is a human invention and not a right in nature, it is theoretically revisable. One advantage of this view of property is that it better aligns with the probable history of human development. The institution of property is lost in history; it evolved over thousands of years in different ways in different cultures. No one can prove how private property arose originally.

A second view of property attempts to push property rights back to God and creation in order to avoid the implication that property rights were "conventional." In this view, property was a right in nature.[34] John Locke is the most important proponent of this position, and it is his view of property rights and their origins that in many ways shaped and continue to shape our modern perceptions.[35] By locating the origin of property rights back closer to creation, Locke was walking a fine line. On the one hand, he was trying to avoid the claim that property rights were just "human conventions" and wanted to position property more like "life and liberty," as rights authorized in nature. In doing so, however, Locke also had to avoid the royalist position of those like Robert Filmer, who had argued that God had given property rights at creation to Adam, and those rights had been inherited by Adam's descendants, who were the kings.

Locke made his intellectual move by claiming that it is *human labor* that creates private property rights. As noted already, some thinkers before Locke had already argued that persons who expend labor should, out of fairness, be recognized with property rights for their efforts. Yet there was a crucial difference. Those same thinkers had argued that treating labor as the source of property rights was a convention adopted by human beings, not a right of nature, as Locke argued. Let's follow Locke in his thinking.

Like others before him, Locke argued that the right to use the world's resources was evident from both revelation and reason. Revelation taught that God had given the world to humans in common (and not to just to the first man, Adam, as Filmer and others had argued). Reason also made evident that humans who were given the right to life and instinct to self-preservation (derived from the idea of God) must also be given the right to sustain themselves.[36] Indeed, they were forbidden to take their own lives for the same reason. So far Locke is not so different than the other early moderns writing in the same tradition.

But here is where Locke makes an intellectual move different from several of his predecessors. He argues that there must be a natural way to create property rights, because the world was given in common. If there was no way to make something "mine," how else could a person take food or resources that were held in common? Would it not be stealing if I took acorns from a tree that had been owned in common? There must be something that turns that which is given in common into something over which I have private rights and can eat. "The Fruit, or Venison, which nourishes the wild *Indian*, who knows no Inclosure, and is still a Tenant in common, must be his, and so his, *i.e.* a part of him, that another can no longer have any right to it, before it can do him any good for the support of his Life."[37]

To make this intellectual move, Locke takes for granted that in the beginning all humans were "tenants in common" and that one must remove resources from that common status in order to use them.[38] Thus, in the beginning, everything was like the air or the ocean, to which all people had rights jointly. We have seen that not all thinkers understood the common status of resources this way. Some believed that resources were in common in the "negative sense," meaning that no one owned anything at all but had only the right to use what he or she needed. Those who held this view of resources would not have struggled with or recognized Locke's conceptual puzzle. If no one owned anything at all (it was all in common), there would be no problem taking anything for one's personal use. Like fish from the ocean, everyone could take without infringing the rights of others.[39] Locke thus based his argument on a conceptual problem that not all thinkers had or recognized. Nor did he explicitly defend his view that God or reason had given everything as co-owned instead of owned by no one.

In any case, Locke reasons that it is human labor that in the beginning turns what is owned in common into what is mine. Since my labor belongs to me, when I labor I mix what is mine into what is common and thereby create my private property. Locke's theory has become known as the "labor theory of value."[40] As Locke puts it,

> Though the Earth, and all inferior Creatures, be common to all men, yet every Man has a *Property* in his own *Person*: this no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joyned to it something that is his own, and thereby makes it his P*roperty.* It being by him removed from the common state Nature hath placed it in, it hath by this *labour* something annexed to it, that excludes the common right of other Men: for this *Labour* being the unquestioned property of the Labourer, no Man but he can have a right to what that is once joyned to, at least where there is enough, and as good, left in common for others.[41]

There are a number of assumptions here that still permeate our own contemporary views of property. If we scrutinize them, we see a number of perplexing questions. First, it is interesting that Locke says that human labor belongs to the individual. Elsewhere, he also writes that "man is proprietor of his own person."[42] On the surface, this is a perplexing assertion by Locke, since he has already argued that individuals are the workmanship of God and God's property.[43] As we have seen earlier, the fact that we are God's workmanship and God's property is the basis for Locke's argument that a person is not allowed to commit suicide, since to do so would be to end his or her life, which does not belong to him or her but to God.[44] In addition, even our basic rights to protection of "life, liberty, health, and possessions" come from the fact that we are the workmanship of God and thus equal before each other. But if we are God's workmanship, then from where do we get the right of property from our labor? Does not our labor belong to God too?

One possibility is that Locke holds that we have property "in ourselves" and not over ourselves, meaning we are proprietors over the exercise of our will, and thus by extension our labor belongs to us, since it is the outcome of our will. This is what he means by saying that we have

a "property in" our own person.[45] It is thus our labor, which belongs to us, and that creates our rights over property, even though we are God's property, and our bodies and selves are God's property. Locke assumes that the fact that labor has the capacity to create private property rights is obvious from both reason and revelation. He writes, for example, that "the Condition of Humane life, which requires Labour and Materials to work on, necessarily introduces *private Possessions* [italics in original]."[46] Or as he puts it more theologically in his *First Treatise on Government*:

> Man had a right to a use of the Creatures, by the Will and Grant of God. For the desire, strong desire of Preserving his Life and Being, having been Planted in him as a principle of action by God himself, Reason, *which was the Voice of God in him*, could not but teach him and assure him, that pursuing that Natural Inclination he had to preserve his Being, he followed the will of his Maker, and therefore had a right to make use of those Creatures, which by his Reason or Senses he could discover would be serviceable thereunto. And thus Man's *Property* in the Creatures was founded upon the right he had, to make use of those things that were necessary or useful to his Being.[47] [italics in original]

Locke thus argues that in giving humans an instinct and right to self-preservation, we know by reason (which is the voice of God inside humans) that we have a right to use creatures.[48] Furthermore, if we have the right to use resources, we must also have the right to remove them from rights in common and by definition have the ability to make them "mine" and not "yours." Locke assumes that this conclusion is also known from revelation and God's command to Adam to subdue the earth, which sets an expectation that humans will labor. The fact that labor creates property rights is thus both a "law of reason" and a "law of nature," the voice of God within the human, and not a human convention as others had argued.[49]

• • •

To step back and take stock, we have so far summarized two major positions in the early modern period regarding the origins and rights of private property. In many ways, these positions broadly characterize the arguments that have continued forward to our own time in late modernity. The position of the "conventionalists" is principally an argument from human contract (what academics describe as "contractarian") or history, because it argues that private property arose from earlier human agreements or conventional arrangements. It is also utilitarian in flavor as well, arguing that the motivation and justification of private property was to improve human life by avoiding conflict and improve human character. By contrast, Locke's natural rights justification of private property locates private property in nature and makes individual labor the trigger that creates private rights in common resources. As we have seen, both positions were trying to answer the principal problem of how private property could have arisen and been morally justified if the world's resources were first given in common. The foundational assumption that resources were given in common was itself based on the prior conviction that humans were created equal in value in nature and before God and that humans needed resources to preserve their lives. In nature at creation, in other words, there were no inherent kings nor queens, no masters and slaves, no leaders and followers, no aristocracy nor commoners. From the original equality in human value and equal human rights to the world's resources flowed the question of how property came about and how an uneven distribution of wealth could have arisen.

I believe the early moderns posed a deep and troubling question for modernity in asking how the disparity of wealth and resources could be reconciled with a conviction of equality. They were aware of the problem and grappling with it. And the question is one with which we collectively still have not sufficiently come to terms. At the start of the modern period, they had grasped and posited what I am taking as the fundamental founding assumption of modernity: that humans are equal in value before the absolute—call it nature, death, or God. They thought this truth was self-evident in nature, even though equality in value is not natural and instead should be seen as a compelling modern conviction by which to

organize ourselves and our relations. Some of the early moderns saw that this conviction of equality had the power to undermine the divine right of kings and to justify the transfer of power away from absolute governments into the hands of the people.[50] In this insight, their perspicacity was profound, and they fundamentally began the process by which we in the West conceptualize human value. At the same time, their ideal of equality also called into question how private property could have arisen and how resources that were given in common could have come to be so unevenly distributed among individuals. Is this what God, nature, or both intended? Or is this the product of human conventions, and if so, why did it get this way? It is in response to these latter questions that their answers fell short and did not go far enough in digesting the implications of their own founding insight. It is to the limitations of their answers that we now turn.

Limitations in the Conception of Property

To understand the limitations in the early modern conceptions of property, let us turn again to Locke's justification of private property, for it is the more prominent and entrenched view of property today.[51] Locke's position gives grounding to the conviction that the results of both our efforts and those of our direct ancestors are our own. At the core of this natural rights view is the assumption that the industriousness or labor of one person will not have a negative impact on or injure another. This core conviction, however, makes sense only on the premise that natural resources are inexhaustible and that one person's labor does not limit another's. This assumption is critical for Locke's natural rights argument and constitutes a blind spot in Locke's justification of private property, as it does for others such as Pufendorf before him.[52] Locke assumes that there is an inexhaustible supply of resources, land, and opportunities for every individual and that the decisions and activities of those who came earlier do not limit or affect the opportunity of those who follow. If resources are not sufficient or inexhaustible for everyone's needs, then by what right

could God or nature privilege the first laborers over later ones if all were equal in value? We can see this blind spot more clearly by considering the following analogy.

Suppose that at the beginning of time there were five hundred people and only five hundred square miles of land. And suppose in the beginning everyone was wandering the planet and eating acorns and fruit from the trees and living off the earth, and there was no private property. Now imagine that one hundred individuals got a head start, and each enclosed and labored on five square miles, tilling the soil, growing wheat, and involving themselves in productive engagements with the land. All five hundred square miles in the world would now be private property according to the labor theory. There would be none left for the other four hundred individuals who wanted to labor later. Simply because they got a slow start, the remaining four hundred individuals and their descendants would now be forced to work for the first one hundred individuals or to start their own businesses somehow, because they didn't take advantage of the first-mover advantage. The other four hundred might be creative enough to find alternative ways to build their wealth, but they would need more industriousness to avoid simply selling their labor to those who own the land. In this case, the labor of the first individuals circumscribes and limits the opportunity of the latter individuals. And it does so because land and resources are not unlimited.

Because Locke assumes resources are plentiful and inexhaustible, he does not see how the labor of one person could injure the rights of another *in a condition of scarcity*. Where resources are limited, the labor of the earlier individuals can negatively affect the rights of other or later individuals. There might not be as many natural resources available for another laborer.

It is easy, for example, to see how Locke and other early moderns made the assumption of abundance about the earliest human ancestors. In the beginning of human time, when a person took something from the common stock, no one else was damaged or hurt, for there was always plenty more to go around. Here is this assumption in Locke's words:

> 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 leaves as much as another can make use of, does as good as take nothing at all. No Body could think himself injur'd by the drinking of another Man, though he took a good Draught, who had a whole River of the same Water left him to quench his thirst; and the Case of Land and Water, where there is enough of both, is perfectly the same.[53]

If one person claimed a piece of land, another could readily move elsewhere and find arable land or lands to hunt. If one drank from the river, there was plenty left to quench the thirst of another.

While it is easy to see how seventeenth-century thinkers projected an unlimited abundance back into the early history before humans had greatly populated the earth, it is more difficult, though still understandable, that they drew this same conclusion in the seventeenth century, when the human population in Europe had begun to expand. The seventeenth century was still a century before the Industrial Revolution with the kinds of inventions such as the steam engine and the spinning jenny that would transform the means of production and the size of cities. The population in England by 1600 was estimated to be four million people, and London's population had grown to two hundred fifty thousand, though other towns were quite smaller.[54] To the early modern thinkers, it is understandable how natural resources still looked sufficiently abundant and unlimited. Locke noted that though "the Race of Men have now spread themselves to all the corners of the world and do infinitely exceed the small number [which] was at the beginning," yet it is still possible to find "vacant places" in America.[55] Locke thought he was being bold when he claimed that even if every individual had as much land as "he could make use of," there was still sufficient land in the world for double the world's population at his time. He could not imagine that the population might reach more than seven billion, as it has today.

Locke's optimism about the inexhaustible abundance of nature came in large part from what is an extremely thoughtful understanding of human labor. It is labor that unlocks natural resources and creates abundance, at least in comparison with "nature unworked." Nature provides the basic raw resources and some basic resources on which humans can subsist. Locke is eloquent and insightful in detailing how human labor transformed and expanded the benefits of natural resources. Labor was so powerful, according to Locke, that nine-tenths of goods produced for human consumption were produced through labor and did not come unmediated from nature.[56] As evidence, he noted too that Americans (natives) are "rich in Land, and poor in the Comforts of Life" and that though Americans have much land, "yet for want of improving it by labour, have not one hundreth part of the Conveniences we enjoy: And a King of a large and fruitful Territory there [in America], feeds, lodges, and is clad worse than a day-Labourer in *England*."[57] It is not the amount of land itself that determines whether it produces abundantly, but the amount of labor upon it. Locke concludes, "This shews, how much numbers of men are to be preferd to largenesse of dominions, and that the increase of lands, and the right imploying of them is the great art of government."[58]

In this way, Locke rightfully anticipated that human labor and industriousness had the power to expand nature's bounty dramatically. To Locke, the world's resources looked inexhaustible. Labor could continue to unlock infinite resources of the planet, and an industrious person could always find ways to satisfy his or her needs. For one who wanted to labor, there was always ample opportunity. In this sense, humans fulfilled God's purpose to "subdue" the earth, which Locke interpreted to mean "improve it for the benefit of life."[59] Labor on the land was the fulfillment of the earth's potential and God's will, and for this reason uncultivated land could not be owned, for it had not yet been worked. Similar assumptions about labor helped justify European colonialism and conquest of America, as we shall see.[60]

Locke's insights about labor gave him confidence that the creation of private property rights would expand rather than limit the resources

available for the human species. It was this confidence that led him to the moral position that one individual's labor and creation of property rights does not limit or injure the opportunities of the next person.[61] For Locke, the situation at creation before private property existed was really no different from the situation later in human history in his own day. There was always a limitless supply of natural resources on which human labor could be expended. The pie grew and grew and did not diminish.

Today, with the hindsight of more than three hundred years since Locke, many of us can see this as an understandable blind spot in Locke's theory. Most of us realize today that without care, the planet's basic resources are exhaustible. I do not need to enumerate the number of animal and plant species that have disappeared, the bodies of water and air polluted, the number of forests depleted, the ozone that is thinning out, and countless other examples of the way in which nature has been depleted. The question before us is thus different from the one before the architects of natural rights. For we can see that without constraints, labor on nature can have a detrimental impact on others' rights. Nature is not an ever-expanding pie. There are only so many pieces to go around, and the right thing to do is to share them with everyone at the table. Without constraints, the natural resources on which we can labor and through which we can create abundance can and will be depleted. Indeed, my labor can create damaging effects on nature through what economists have called "externalities," such as pollution, restricting and limiting your possibility of limitless abundance. In a situation of scarcity, the people who labor first are privileged over those who labor later. A natural rights theory of property thus falls apart when there is in fact an exhaustible supply of resources. With scarcity or a limitation on resources, the first movers who grab and labor on the property benefit more than those who come later and find less available.

This brings me to a second critique of Locke's natural rights theory of property. As noted earlier, Locke assumes that a person is a proprietor of his or her own person and therefore owns his or her own labor and the fruits of that labor. This all makes some sense only when we imagine labor in the beginning of civilization, as in the examples Locke uses. It makes

some sense to say, using Locke's examples, that the Indian who kills the deer or takes fish or ambergris from the ocean, or the person who gathers acorns from the tree, should get the full results of his or her labor.[62] But if we talk about labor later in the development of civilization, it is much harder to see how all of my labor belongs exclusively to me when I am not laboring directly on unmediated nature.[63] I have explored this issue previously, in chapter 3, arguing that we stand on the shoulders of countless people before us, whose insights and inventions provide the platform on which we live our lives. We don't labor on a blank slate of nature in the same way the very first theoretical ancestors may have, though even distant ancestors benefited from early discoveries of tools, fire, and an upright posture. As soon as we labor and transform nature, humans produce a new platform through which they engage nature. Human labor and inventiveness created fire, domesticated animals, invented steel, made parchment and paper, built spinning jennies and steam engines, discovered penicillin, and created light bulbs, electricity, automobiles, computers, and so on. Those who follow earlier laborers benefit from their prior labors. The knowledge of the predecessors gets embodied in the output of their labor and is taken up and assumed by those who labor later. What grows is a shared human knowledge that is the platform on which later humans labor. Indeed, humans are distinctive in the amount of knowledge they accumulate and pass on to descendants through learning and culture. The output of this shared human endeavor actually changed the very nature of the human animal over time and made us what we are.

Locke to some extent anticipated this insight but did not draw out its full moral implications. He talks eloquently about what investment of labor goes into making even a simple loaf of bread, making the point that it is labor invested in countless other products that stand behind even the simplest commodity:

> "Twould be a strange *Catalog of things, that industry provided and made use of, about* [i.e., in the making of] *every Loaf of Bread*, before it came to our use, if we could trace them; Iron, Wood, Leather, Bark, Timber, Stone, Bricks, Coals, Lime, Cloth, Dying-drugs,

> Pitch, Tar, Masts, Ropes, and all the Materials made use of in the Ship, that bought any of the Commodities made use of by any of the Workmen, to any part of the Work all which, "twould be almost impossible, at least too long, to reckon up."[64]

In seeing how any product is in fact the outcome of many other prior investments of labor, Locke here anticipates an insight that is core to Adam Smith's *Wealth of Nations* and modern economics, a topic to which we return later.[65] If we take Locke's insight here to its logical conclusions, then it is difficult to see how my labor can or should belong exclusively to me.[66] If I invent a cure for cancer because someone earlier created a microscope, or if I make bread because someone else learned to create yeast, build ships, and transport wheat, then countless outcomes of labor in the human community make possible the abundance that follows an individual's labor. It is hard to see how the results of an individual's labor should belong only to him or her alone.[67] While it might make sense to say a person is a proprietor of his or her own person, it is more difficult to see how all of my labor should be my own when I work on gifts bequeathed by others before me. Every type of labor I perform leverages the efforts of countless other people who labored before me. How are their labors not also embedded into mine? The key here, as in the previous point, is that no humans besides the theoretical first ancestral pair labor on a blank slate of nature. We labor instead within a human world that has already transformed nature, and we bring to bear in our labor collective knowledge that the human community has gathered, remembered, and shared. How can the outcome of my labors belong only to me when I labor with knowledge of countless others before me? How can I borrow from the bank of human knowledge without paying back a fee or interest for that use?

There is a third critical hole in the modern labor theory of property that has to do with the fairness of labor as the only mechanism to create private property. The labor theory of property assumes that labor invested is always proportional to outcome. That is why Locke, like predecessors such as Pufendorf, says that labor creates private property, because

he sees it as a fair way in which what was in common became private. Locke assumes it is fair because of the ever-expanding theory of natural resources. If there are always more possibilities for resources and human inventiveness, then my labor can theoretically always find an outlet that produces an outcome proportional to my investment of labor.

There are several problems with this theory. If resources are not always expandable, or they are not easily accessible, or there are dwindling resources, then my efforts may not be proportional to the outcomes, for I may have to expend more labor than another person to achieve the same results. In other words, the labor theory of property assumes that individuals should be rewarded for their effort and labor, and that makes them work hard and fulfill God's vision that resources were given to humans to expand. And that view fits with the starting assumption that everyone is more or less equal and starts out on a level playing field with equal access to resources. The problem is that while it may theoretically be a level playing field in the beginning of time—though that point is debatable too—it is not a level playing field as the human population expands and resources come under ownership. A proportional outcome matches effort expended only on a level playing field with the same rules of the game for everyone and when everyone gets to start the game at the same time. In the real world, effort is not always proportional to outcome. This is because access to resources may vary, and because talents and circumstances enter into the outcome, and because not everyone plays the same game. A better analogy would be a relay race in which subsequent runners are already hindered or advantaged by the outcome of their earlier teammates or even those who are not on their team.

Indeed, the labor theory of property does not adequately take account of the differences between effort, talents, or circumstances. Not everyone's equal effort is the same. People are born with different talents and capabilities. Not everyone has the same starting point by definition. While hard work and training can go a long way in maximizing a person's capabilities, neutralizing inborn deficits, and maximizing inborn talents, differences in skills and capabilities do affect outcome, no matter how big a person's effort. In addition, a person's circumstances, including not just

the talents they are born with, but where they are born geographically, to which parents and culture, and in which epoch, all will shape and affect the outcome of their individual effort. The question is whether a theory of property should or could recognize variations in talents and circumstances.

Let's start first with the question of talents. There is no question that human variations exist among people. Some are smarter, some better looking, others are better singers, or taller for basketball, or able to run faster, etc. And there is no question too that this variation has been beneficial to the human species as a whole, for like nature in general, the proliferation of differences helps create new varieties of species. So while we can see the benefits to everyone of each person pursuing his or her own course and talents, the benefits may not ultimately be fair to the individual him- or herself. We do not all start with the same skills, capabilities, circumstances. Was this what God wanted, for those who believe in God? Did God give us varying talents so that some of us could live in poverty, and others in a rich abundance of resources? Is there an understanding of God that would have wanted some humans to have radically more resources than others? One suspects this was not God's intent, at least the kind God that some would want to believe in.

One can see how the differentiation of humans into rich and poor might be what humans produce naturally. And one could argue from nature that the uneven distribution of resources is itself natural. But the question before us, as humans who start with the hypothesis or quest for equality, is whether we are content with what nature naturally produces. Isn't the notion of human equality a vision that contests nature's natural course and that tries to have us live according to a human ideal and aspiration? Isn't that what we think and wish is different about humans, that is to say, that we can live by an ethical center that moves beyond instinct? In some ways that was at the heart of the vision of the modern natural rights thinkers, who argued that humans had distinctive burdens among the animals species and thus distinctive responsibilities to identify and realize a moral law.

For all of these reasons, it is hard to see how a labor-only theory of property would be a fair way to distribute resources. On the contrary, if equality suggests that all natural resources were (or should have been) given to humanity in common, then it would seem that relying on labor alone to create private property would be a fundamental violation of that founding conviction. While it is easy to see how we might want an individual's effort to be a key factor in his or her outcomes, and why we might want to motivate people to pursue their individual interests, it is hard to see how the equality of human beings can justly mesh with a radically uneven distribution of natural resources. By what right should some people have radically more than others, if all resources were or should have been given in common in our imagined beginning or because we wish to embrace the pursuit of equality?

That this tension exists in the labor theory of property is evident from Locke himself, who sensed some of the inherent problems in his theory of natural property and who attempted to argue that there were natural and reasonable limits on what an individual could accumulate through labor, at least in the beginning of human history. Specifically, Locke says that in the beginning of human history, a person's labor created property rights only in what could be used without spoiling. A person could *not* hoard up resources and let them go to waste, though he or she could destroy property as long as it was while using it, as, for example, when one eats food.[68] These were constraints imposed by God, nature, and reason, at least in early human history. In the beginning, therefore, property distribution was fair, for no one could or would take more than was needed or could be used. There was a *natural* inherent limit on accumulation, reinforced by God and reason's command not to let anything spoil.

> As much as any one can make use of to any advantage of life before it spoils, so much he may by his labour fix a Property in: Whatever is beyond this, is more than his share, and belongs to others. Nothing was made by God for man to spoil or destroy. And thus, considering the plenty of natural Provisions there was

> a long time in the World, and the few spenders; and to how small a part of that provision the industry of one Man could extend itself, and ingross it to the prejudice of others; especially keeping within the *bounds*, set by reason, of what might serve for his *use;* there could be then little room for Quarrels or Contentions about Property so established.[69]

In Locke's mind, property rights had built-in, natural, inherent limits, and there was sufficient abundance that ensured one person's labor and property rights did not harm the rights of others. People did not live in a state of war with each other, because there was plenty to go around, and no one hoarded anything.[70] All was well as long as nature was governing things.

This natural equilibrium broke down, however, when humans invented money. With the agreement to use something like gold as a medium of exchange in transactions, humans could now accumulate wealth without worrying about spoilage. They could thus satisfy the human desire to accumulate while meeting the expectation of God and reason that nothing should go to waste. This is why precisely those types of things that did not spoil (such as gold) came to serve as money. Prior to the invention of money, spoiling was a built-in, natural mechanism that prevented people from accumulating much more than they could use or exchange. With the invention of money, which by its very nature would not spoil, individuals could accumulate more than they needed without disrupting the equilibrium of nature. Here is Locke again: "This I dare boldly affirm, That the same *Rule of propriety*, (*viz*.) that every Man should have as much as he could make use of, would hold still in the World, without straitning [i.e., without bothering] any body; since there is Land enough in the world to suffice double the Inhabitants, 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; which, how it has done, I shall, by and by shew more at large."[71]

If we pause here, we can see that Locke is in some ways wanting to eat his cake and have it too. On the one hand, he wants to argue that property is a natural right intended by God and made evident by reason from the natural desire for self-preservation.[72] In that natural state of simpler societies, people do not accumulate more than they can use. He also acknowledges that industriousness differs across individuals and therefore that a labor theory of property means some people accumulate more than others. On the other hand, he also wants to say the uneven distribution of wealth is not entirely natural; it is the outcome of the human invention of money and the human desire for more than what people need. In nature, there is equality and a kind of natural equilibrium in which people have no mechanism to accumulate much more than they can use. The human desire for more and the ability to store wealth with money destroyed the natural equilibrium and ended the equality of resources that nature maintained. Although the right to property from labor by itself leads to uneven accumulation, it is in part humanity's fault, and not entirely God's or nature's, that there is such an unequal distribution of resources.[73]

This is ultimately a tension in Locke's theory, and it exposes the fundamental problem we are here exploring. Can you argue that property is a natural right but not also see the uneven distributions of resources as also from nature? Locke tries to slip around the problem by blaming material inequality partially on the invention of money, which was born of the human desire for more than what people need.[74] Inequality of wealth was in part the outcome of human convention, not entirely from God or nature itself, which had a more natural equilibrium and balance. While it is clear that Locke celebrates labor and private property, it is not completely clear how Locke feels about the unequal allocation of resources that arises from human convention. Locke seems to be saying it was inevitable, given the nature of human desire and the origin of property in labor. Some view Locke as essentially providing an early justification of a capitalist economy, which was just developing.[75] Yet it also appears that Locke sees the modern human state as a kind of fall from an earlier natural state in which people lived in balance with nature with enough resources to go around before the invention of money.[76] And if he does see the fall into inequality as a corruption of the original human state, then why does

he not argue for a way to correct it? These are questions that, standing three hundred years after Locke, we will need to ask in his place.

In trying to pawn off responsibility for the inequitable distribution of wealth in part to the invention of money and human desires, Locke ends up offering an answer that looks like that of the conventionalists, who had argued that private property itself was a human invention. In their view and Locke's, the unequal allocation of resources is ultimately a result of human decisions—whether the invention of private property or the invention of money. On neither view is the unequal distribution of resources entirely implicit in nature itself, even if property exists in the natural state. It is a consequence of who humans are and how they have chosen to live. And if that is so, then we have the right, if not the obligation, to think about that ideal human state, which may never have existed in nature, but which may serve as a regulative idea to which we aspire and by which we measure our present circumstances.[77]

• • •

My intent in looking at early modern positions on private property was to call into question those assumptions that continue to inform our modern notions of property and, more specifically, the relentless ideas that 1) private property is a natural right, like life and liberty, and 2) that our labor belongs exclusively to us. These assumptions are taken for granted today without thinking about their philosophical foundations, which rest on debatable and even untenable assumptions. As we have seen, the conception that property is a natural right is mistaken in several ways. It is mistaken not only because it is part of a notions of rights that, as previously discussed, is fuzzy, but also because it assumes the understandable but mistaken notion that the world's resources are inexhaustible and that anyone who labors will find access to as much natural resource as is necessary to sustain him- or herself. There was a certain fairness taken for granted in the conception of property as a natural right that collapses when there is a limited supply of resources. With limited

resources, the first movers in time and history are the beneficiaries of nature's bounty, and the equal value of human beings is undermined by this right, which is supposed to be natural.

Furthermore, the notion of private property rests on the problematic assumption that the output of our labor should be completely our own. I have questioned this assumption in previous chapters showing that everything we labor on, and the knowledge we labor with, is also given to us by the labor of others. We labor not in a vacuum at the beginning of time, but on a platform created by the human species before us. And thus the outcome of our labor should belong partly to ourselves but also partly to humanity, who has enabled us. Finally, we have seen that with limited or inaccessible resources the justice that private property was trying to create is not achieved. Without a level playing field, we aren't playing the same game, and my efforts or talents don't have the same chances as yours, and vice versa.

What all of this means, practically speaking, is not a simple problem to address, but it is one that matters. The first step is to realize that the outcome of our labor should *not* belong 100 percent to each of us individually. With the starting point that resources are limited and exhaustible, and that the outcome of our labor is due in part to the efforts of many others before us, we can no longer see our moral responsibilities as fulfilled by our own labor and the expansion of nature's capabilities. Limited resources means that anything we consume can potentially harm a contemporary or a future human being, if we do not have the means to conserve or expand resources and distribute access to those resources fairly. The pie is not infinitely expanding, at least as we now understand it. And until we can prove that our consumption of resources is not a deprivation and harm to others, then we have to assume that any use has to be compensated by a payback to the general fund with interest.

The original intellectual instinct of the natural rights thinkers—that everything was given in common and that nature was given for humans to use—was on the right path. And the attempt to link human initiative, labor, and private property with those assumptions about equality and resources makes sense. But what those early modern thinkers failed to

do was set any limits. Some limits should arise, because we can do harm through the consumption of resources, both through the depletion of nature but also through the uneven distribution of nature across human populations and individuals. In light of our current understanding of nature, it would make more sense to see the use of natural resources more like a bank loan or business capitalization rather than like a free gift: we are granted something on the condition we pay back more—either interest or a percentage of the benefits. Such a notion would be more compatible with the idea of natural resources given in common, which flows from the conception of human basic equality. After all, if resources were owned in common, why would any of us agree to let people use them without contributing something back and paying for their use? Would a bank give away its resources for nothing? Any use of the natural environment should be understood to come with a cost that should be paid back to the common shareholders. Why should our relationship to nature be any less responsible than our relationship to our banker or our investor? We can see property rights, then, not as individual rights, but as a contract between human individuals and the Bank of Nature (or, if you prefer, God), for whom the human species as a whole are the shareholders. Arguably, we will also want to expand the notion of shareholders to include all stakeholders, not just ourselves, but all living species, to also go beyond the view that nature was given to human beings alone and for their purposes only.

We should also now see ourselves as having natural responsibilities to conserve resources and to think about accessibility to resources across human populations. Since resources are exhaustible and since resources were given or intended for human beings in general, then it would be stealing both from one's human contemporaries and future individuals to take too much of nature's resources. Since resources are exhaustible, *their overuse constitutes stealing from others*. In a context where supply is exhaustible and opportunities are limited, a much more rigorous model of sharing and conserving should be part of how humans think of their rights, since their rights arise, after all, from the notion that we are equal in value. If we don't want to allocate resources more fairly, then we should

just abandon the modern quest to live in light of the idea that "all people are created equal." After all, as discussed before, duties and responsibilities are often the flip side of rights.

What this approach restores is a sense that the notion of property rights comes with a set of duties and debt to the human species as a whole. Some of the natural rights thinkers articulated this broader conception of obligation to humanity in general and, contrary to popular opinion, did not just focus on the individual's rights. Even Locke, who is often cited as the champion of individual rights par excellence, argued that the law of nature "willeth the Peace and *Preservation of Mankind*." One who violates the law of nature is "dangerous to Mankind" and has committed a "trespass against the whole Species." Such a person has "quit the principles of human nature," "committed war against all mankind," and become like a "Lyon or a Tyger." I have a right to punish or execute such a person, because as an individual I have "a right to preserve mankind in general."[78]

Locke implicitly connected this obligation to preserve humankind with his theory of labor, which he saw as expanding the human population and human resources and thus fulfilling the vision of protecting humankind. Given our vantage point in time, we can go beyond Locke and see that preserving the natural resources and sharing the benefits of our labor are natural responsibilities that are embedded in our rights that we wish to make natural.

I have argued that the "natural rights" understanding of private property is flawed in critical ways and needs to be revised. The fact that private property should *not* be treated as a natural right was already obvious to some of the early moderns who argued it was a human institution created for pragmatic human purposes. On this latter view, the question arises as to how binding on the present are human institutions developed in the past and how much pragmatic, utilitarian goals should override moral convictions such as the equal value of humans before the absolute. Even within natural rights theory, human institutions are by definition revisable, because people's opinions change and because they don't like or foresee the consequences of what they instituted. Indeed, the ability

to change is the very hallmark of the liberal conception of government: people can revise the laws because they created the original contract, as long as they don't infringe what are the natural rights. If private property rules arose hundreds or thousands of years before us, what obligation do we have to honor them precisely as they are? And to what extent are these earlier practices binding if their consequences were and remain unfair? If these were human conventions and contracts intended to solve human problems, then it logically follows that humans can agree to revise their terms and conditions, and this is especially pressing if the consequences of those earlier agreements produce consequences that were not intended or expected or that have proven morally disturbing.

At issue, in other words, is how much we should be stuck with an institution of private property in exactly the form as it currently exists simply because it was thought to be reasonable in the past. Is not the difference between a natural right and a contract precisely in the fact that the latter is thought to be revisable? Furthermore, if the key and compelling founding assumption of modernity is that humans are equal in value, then the fact that resources are so unevenly distributed both among individuals and among nations should be seen as a moral problem that we aspire to address, even if we cannot practically eradicate it. The uneven distribution of resources cannot be justified by appeal to either a natural right or a long-ago convention of human beings.

What alternatives do we have, given this history? I shall take up this question in a subsequent chapter, where I argue that it is precisely government's responsibility to be umpire, to seek fairness among individuals, and to help level the playing field, and that as individuals we have a natural responsibility or duty to contribute to that goal. Socialism, of course, was a failed attempt to institutionalize the equal value of human beings. It didn't work because it destroyed human initiative by making personal efforts irrelevant and by trying to manage an economy centrally. But why should a failure to actualize our commitment to the equal value of human beings mean we give up completely and abandon the moral responsibility?

Indeed, there remains no moral foundation ultimately for the argument that it is right for one person to have more than another if *both have labored equally hard with all their talents.* The practical problem, of course, is that it is impossible to rank how hard people have worked or how to rank their talents. Talents come in a wide variety, and a person may excel in one area but not in another. Today, we let the market take care of solving that problem. People seek to find their place based on their particular interests, talents, and resources. Yet since those pursuits of happiness are already constrained by thousands of years of private property and by dwindling resources, there is no fairness in the game. The game is stacked for and against certain players because of the historical allocation of resources, which defines how widely they can pursue their talents. That is the moral problem that remains. Natural rights in private property do not make it go away. In the vision of modernity that sought to place equal value on human beings, no one should have been privileged from the start with access to more resources. The question before us is how best to take that commitment seriously now and how much to let pragmatic utilitarian concerns and the decisions of the past deviate us from that goal.

practice of liberty that is and ought to be totally dissolved; and that as a free and independent people, we have the power and duty to limit war, conclude peace, contract alliances, establish moral commerce, protect common resources, repay debts to the past and the people who preceded us, and do all other acts and things that independent moral states may and should of right do. And for the support of this declaration, with a firm reliance on the protection of the ultimate commitments and values to which we aspire, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

Notes

Preface

1. Tuck, "Introduction" to *The Rights of War and Peace*, 6. For a deeper discussion of the influences on Jefferson, see my own Schwartz, *Liberty in America's Founding.*
2. The other book I wrote on this topic is *Liberty in America's Founding*. I have also published a number of essays on my website: www.freedomandcapitalism.com.
3. One can peruse the bibliography to see the hundreds of other voices who have influenced and shaped my own views.
4. See, for example, Boyd, *Declaration*, 16; Becker, *Declaration*, 25; Ford, *Works*, vol. 10:343; Malone, *Jefferson*, 220; Schwartz, *Liberty in America's Founding*, 18–21.

Introduction

1. Friedman, *Freedom and Capitalism*, 15, 8.
2. See Hayek, *Road to Serfdom*, xxxv, and his essay called "Why I am not a Conservative" in *Constitution of Liberty*, 397–411. Contrast this with my essay, Schwartz, "Why "Market Liberals' Are Not "the True Liberals.'"
3. I take this impulse as also behind the writing of others in the progressive or justice tradition, including but not limited to John Rawls, Amartya Sen, Ronald Dworkin, Cass Sunstein, Paul Hawken, Robert Kuttner, and many others who inspired me and whose names appear in the endnotes and bibliography.
4. Libertarians tend to be more consistent in their use of liberty than Republicans or Tea Party advocates. They tend to invoke the notion of individual rights more consistently regardless of the issue. Republicans and Tea Party advocates tend to use the concept when it suits their purposes. For the discussion of the Pledge of Allegiance, see, for example, Hannity, *Let Freedom Ring*, 113–142. On the abortion issue, see, for example, Ron Paul, *Liberty Defined*, 1–9; he argues against the right to abortion, but otherwise holds a fairly strict adherence to a proliberty position. Of course, he gives reasons for holding this view. But that is precisely the point, that when there are reasons to limit liberty, he will choose other values over liberty itself.

5. For a further discussion, see also my discussion, Schwartz, "Why Can't My Daughter Drive a Tank?"

6. I am not alone in my concern with this broad range of issues and instead wish to see myself building on and synthesizing discontent expressed by a number of people with various parts of the "liberty-first" platform. I see my own work as attacking one key root of the liberty-first position often ignored by others. Among those who are asking similar questions but from different perspectives are the following: Hawken, *Ecology of Commerce*, and Hawken et al., *Natural Capitalism;* Sunstein, *Free Markets and Social Justice* and *Second Bill of Rights*; Breyer, *Active Liberty;* Stiglitz, *Price of Inequality*; Dworkin, *Taking Rights Seriously*; Rawls, *Theory of Justice*; Sen, *Ethics and Economics* and *Development as Freedom*; Kuttner, *Economic Illusion* and *Everything for Sale*; Glendon, *Rights Talk*.

7. See my thinking in Schwartz, *Liberty in America's Founding*

Chapter 1

1. The early modern natural right philosophers drew attention to this paradoxical side of liberty. In *Leviathan* (14:5, 87), for example, Hobbes says the second law of nature implies "*that a man be willing, when others are so too, as far-forth, as for peace, and defense of himself he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himself.* For as long as every man holdeth this right, of doing any thing he liketh; so long are all men in the condition of war. But if other men will not lay down their right, as well as he; then there is no reason or any one, to divest himself of his: for that were to expose himself to prey, (which no man is bound to) rather than to dipose himself to peace. This is that law of the Gospel; *whatsoever you require that others should do to you, that do ye to them.*" [italics in original]

Locke has a similar perspective contrasting natural liberty with liberty in society. "The *Natural Liberty* of Man is to be free from any Superior Power on Earth, and not to be under the Will or Legislative Authority of Man, but to have only the Law of Nature for his Rule. The *Liberty of Man, in Society*, is to be under no other Legislative Power, but that established, by consent, in the Common-wealth, nor under the Dominion of any Will, or Restraint of any Law, but what the Legislative shall enact, according to the Trust put in it." Disagreeing with one of the popular royalists at the time, Locke writes, "*Freedom* then is not what Sir *Robert Filmer* tells us.…*A Liberty for everyone to do what he lists, to live as he pleases*, *and not to be tyed by any laws*." On the contrary, "*Freedom of Men under Government*, is, to have a standing Rule to live by, common to every one of that Society, and made by the Legislative Power erected in it; A Liberty to follow my own Will in all things, where the Rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, Arbitrary Will of another Man. As *Freedom of Nature* is to be under no other restraint but the Law of Nature" (II § 22, Laslett, 283–284) [italics in original]. For Locke, liberty in society meant not freedom, but the right to have a standing law to live by. Liberty means the right to follow my will where the rule is silent.

Again Locke: "For in all the states of created beings capable of laws, w*here there is no Law, there is no Freedom*. For *Liberty* is, to be free from restraint and violence from others which cannot be, where there is no Law: but Freedom is not, as we are told, *A Liberty for every man to do what he lists*: (For who could be free, when every other Man's humour might domineer over him?) But a *Liberty* to dispose, and order, as he lists, his Person, Actions, Possessions, and his whole Property, within the allowance of those Laws under which he is; and therein not to be subject to the arbitrary will of another, but freely follow his own" (Locke II § 58; Laslett, 306). [italics in original]

2. For discussions of the varying definition of rights and liberty and their histories, see, for example, Tierney, *Idea of Natural Rights*, 43–89; Munzer, *A Theory of Property*, 15–56; Tuck, *Natural Rights Theories*.

3. See note 1 on the foundation of this view in modern natural rights thinkers. We shall see below that some modern thinkers see rights, and thus liberty, as the opposite of law (law meaning restriction), whereas others think of rights, and thus liberty, as including restrictions of the law.

4. See, for example, Locke, II § 62–71.

5. In some sense this was Thomas Hobbes's question in *Leviathan*, which arguably is about why people can't live with unlimited desires in the state of nature.

6. On this definition of economics, see, for example, Flynn, *Economics for Dummies*, which states that "Economics is all about how people deal with scarcity." Or Okun, *Equality and Efficiency*, which says that "Tradeoffs are the central study of the economist."

7. In particular, the focus on natural rights has all but eclipsed the great moral insight that individuals have responsibilities to each other as members of the human species, in addition to each other as neighbors or members of the same communities, nations, or religious communities.

8. One of the interesting questions is whether our responsibilities devolve to those with whom we share a commonwealth or political society or whether we have broader obligations to the human species itself and, if so, what is the ground of that obligation. The natural rights philosophers do not all agree on this point. Hobbes, for example, sees rights and obligations emerging only with society, and thus the core of one's obligations are to fellow citizens. Locke, by contrast, sees right emerging as creatures of God and thus being implicit in nature even before the existence of a commonwealth. Thus Locke is also willing to speak about an obligation to "mankind" and not just to the citizen. As we shall see, I derive this obligation to the species in a different way, without needing to resort to the concept of God, which may be a stumbling block for some people who do not believe in God or who conceive of God in other ways.

9. See, for example, Epstein, *Principles*, 133–157, which argues that charity and altruism are private matters.

10. We shall see below that the "social contract" assumed by the natural rights tradition has also a "natural responsibility" dimension. By entering into society, one takes on more responsibilities than one had in nature.

11. See, for example, Epstein, *Principles*, for a liberty-first position that rejects the concepts of rights. If rights are neither "self-evident" nor "natural," then how we go about constructing the focus of government is an entirely different matter and requires an entirely different set of arguments. In that case, we can't rely on "self-evident" truths and must devise other ways of determining what our political entities focus on. I shall turn to the question of rights' self-evidence in the following discussion.

Chapter 2

1. The idea had its predecessors in the natural law tradition and the Greek philosophical traditions from antiquity. The relationship of modern natural rights thinking to those of late antiquity and premodern Christianity and the Renaissance is complex. See, for example, discussions by Tuck, *Natural Rights Theories* and *Philosophy and Government;* Tierney, *The Idea of Natural Rights*; Strauss, *Natural Right and History*; Skinner, *Foundations of Modern Political Thought*, 2 vols., and Skinner, *Liberty Before Liberalism*. See also Zuckert, *Natural Rights*, for a contrasting view of Locke and Locke's relationship to Jefferson.

2. Many have written on this topic of Jefferson's intellectual influence. For a review, see my discussion of the influences on Jefferson in Schwartz, *Liberty in America's Founding*, 18–50, 273–306.

3. Both Jewish and Christian thinkers synthesized Greek philosophical ideas about God, nature, and reason with the biblical traditions. In the Jewish tradition, Philo, the first-century Jewish thinker in Egypt, and Maimonides, the twelfth-century Spanish Jewish philosopher, were among the most famous synthesizers of the two traditions. In the Christian tradition, thirteenth-century philosopher Thomas Aquinas is the most well-respected premodern synthesizer of both traditions.

4. See, for example, Hobbes, *Leviathan*, 14.3, where he distinguishes law from right and defines right as the ability to choose to do or not to do whereas law is the duty not to do something. See the early Locke, *Essays*, 111, where he makes a similar distinction in very Hobbesian language.

5. In his *Two Treatises*, Locke tends to see natural law as providing the foundation for natural rights which are implied by natural law. Natural law exists in nature and is discernible when reason perceives the existence of a moral creator. That recognition that we are all God's property and creation leads to the corollary that we cannot harm the life, liberty, or health of another and that we have the right to punish an offender and get reparations for injury. See Locke II § 6; Laslett, *Two Treatises*, 271.

6. See Grotius, *Rights of War and Peace*, *Preliminary Discourse*, 10:1, 54, where he defines right as a dictate of right reason and sections III to X, where he discusses multiple meanings of the term "right."

7. In the synthesis between Greek philosophy and both Christian and Jewish views of revelation, illustrated by Philo, Maimonides, and Aquinas, among others, reason was thought to align perfectly with insights from revelation. One of the ways in which the modern view differed was in seeing that insights from reason and revelation were not necessarily identical. This emerging tension between reason and revelation would occupy the deists who come after Locke and in fact set the stage for the modern discussion that continues today. For discussions of this topic, see Manuel, *The Eighteenth Century Confronts the Gods* and *Changing of the Gods*; and my discussion, Eilberg-Schwartz, *Savage in Judaism*, 31–48.

8. In Christian thought, Jews had been examples of peoples who rejected God's revelation. With the Reformation, Protestants and Catholics argued that each had misinterpreted God's word and the will of Christ. For a similar perspective, see, for example, Wolterstorff, "Locke's philosophy."

9. Grotius, *Rights of War and Peace*, *Preliminary Discourse*, 24:42.

10. The diversity of human belief and practice would be one of key problems that European intellectuals would ponder in the sixteenth and seventeenth centuries. From the beginning of Columbus's discovery in the late fifteenth century throughout much of the sixteenth and seventeenth centuries, Europeans were fascinated and horrified by the description of cultures and practices in the Americas. The bewildering diversity of human beliefs and practices among the native peoples discovered by Europeans further amplified the problem caused by the breakdown of a single view of truth among European Christians themselves. The turn to reason and the law of nature in the seventeenth century was in part an attempt to find a common foundation for truth across human populations in the common consent of nations, a position held, for example, by Grotius. At the same time, however, this diversity of belief and practice among peoples of the world posed a difficult challenge for the new emerging intellectual view that reason could discern a universal law among nations. For example, John Locke, in his early *Essays* on the natural law, would name diversity as one of the key challenges to the view that reason could be the universal basis for morality. "The only thing, perhaps, about which all mortals think alike is that men's opinions about the law of nature and the ground of their duty are diverse and manifold—a fact which, even if tongues were silent, moral behavior, which differs so widely, would show pretty well. Men are everywhere met with, not only a select few and those in a private stations, but whole nations, in whom no sense of law, no moral rectitude, can be observed. There are also other nations, and they are many, which with no guilty feeling disregard some at least of the precepts of natural law and consider it to be not only customary but also praiseworthy to commit, and to approve of, such crimes as are utterly loathsome to those who think rightly and live according to nature" (Locke, *Essays*, 7:191).

11. On Galileo's physics influencing Descartes and both influencing Hobbes, see Tuck, *Hobbes*, 19, 20–25. See also Manuel, *Eighteenth Century Confronts the Gods*. All of the writers in the natural rights tradition were seeking to explore and find a foundation of human morality, which seemed shaky. We shall come back to this point later for the quest to find the source of morality in reason and in a natural sciences methodology that ultimately failed and posed a problem that continues to occupy us.

12. Grotius, *Rights of War and Peace*, *The Preliminary Discourse*, 11, 38.

13. The rationalist conception of God as a clockmaker was influenced by the growing prestige of science in the wake of Descartes. But it also had roots in the rationalist philosophy of Thomas Aquinas, which had already achieved a synthesis of classical Greek and Christian thought.
14. I associate this stream of thought with both Grotius and Hobbes. By contrast, see Locke, *Essays*, I, 119 where he lists the instinct to preservation as the fourth type of argument for natural law, though it is not the foundation of his own position. He also notes that "all [thinkers] direct perhaps more attention to this point than is necessary" (*Essays*, 4, 159).
15. See, for example, Grotius, *Rights of War and Peace*, Preliminary Discourse, VI and VIII, 36, "this Sociability, we have described in general, or this Care of maintaining Society, in a Manner conformable to the Light of human Understanding, is the Foundation of Right." Locke at times also recognizes this social impulse as well (*Essays*, 4, 157–59).
16. Hobbes, for example, does not see humans as social by nature but as at war and in competition by nature. He instead sees humans becoming social as a means to peace, and thus sociability is achieved through human development rather than inherently part of human nature.
17. This is the position of Hobbes, *Leviathan*, chaps. 13–14.
18. This is how I understand Hobbes's position that in the state of nature a human being has unlimited rights, even to one another's body and life, because there is no moral law in nature. Hobbes calls these "rights" because they are natural and because there is not yet a moral law that declares them "wrongs."
19. Grotius, Hobbes, and Locke all share this view to some extent.
20. From this social nature of the human creature, different thinkers inferred a broader or narrower set of laws. At the very least, social life depended on a set of standards and rules that protect a person's life, liberty, and property. For others, the rules that were inferred by reason were broader than simply life, liberty, and property. As we shall also see, some thought these rights were already evident by reason in nature prior to the existence of social life.
21. For a detailed exposition of this distinction, see Pufendorf, *Law of Nature and Nations*, book 2, chap. 1:4, 98.
22. Locke and Hobbes would both say that humans were animals who curtained their natural liberties or inclinations, though Locke envisioned laws and restrictions in nature and Hobbes did not.
23. Hobbes, *Leviathan*, 14:4, 87.
24. Mt. 7:12 and Lk. 6:31.
25. Hobbes, *Leviathan*, 15:1, 95. See also Grotius, *Rights of War and Peace*, *Preliminary Discourse*, 16, 38.
26. To convert promises into contracts, societies must have a coercive power that makes them enforceable. Thus the very foundation of social life is the contract, which requires a power to enforce it and hence the need for government. See, for example, Hobbes, *Leviathan*, 11:3, 95. Contrast Locke, II § 14, and Laslett, *Two Treatises*, 276, which sees promises as binding on people even in a state of nature "for the truth and keeping of faith belongs to men, as men, and not as members of society."
27. Locke, II § 77; Laslett, *Two Treatises*, 318–319.
28. For an example, see James Otis, "Rights," 423.
29. As Grotius, *Rights of War and Peace*, Preliminary Discourse, 11, 38, puts it, "what without the greatest wickedness cannot be granted."
30. Hobbes, *Leviathan*, 15:41, 106, by which Hobbes means that natural law is not really law but "dictates of reason." In his Essays 4, 151, Locke says something similar when he writes that "in order that anyone may understand that he is bound by a law, he must know beforehand there is a law-maker, i.e. some superior power to which he is rightly subject." Thus both agree that you need a Lawgiver to have natural law, but Hobbes therefore concludes natural law is not a law in fact, but only a mistaken idiom, whereas Locke concludes it is law and a lawmaker is discernible. Hobbes thus seems to imply that God, the Lawgiver, either does not exist or that the natural law is not enforced by God. For subtle implications such as this, the accusation of "Hobbism" in the seventeenth century was often associated with "atheism."
31. Grotius, Hobbes, and Locke all had to flee their countries at some point in their careers for political safety. Thus the question of how open these thinkers were with their deeply held convictions is a matter of debate in the academic literature and was most forcefully articulated as an interpretive question by Leo Strauss in *Persecution and the Art of Writing* and taken up by his students.
32. See Locke's rejection of tradition and innate knowledge as sources of moral knowledge in his early *Essays* (2, 131). He carries these themes forward in his magisterial *Essay Concerning Human Understanding*, which develops and further demolishes the idea of innate ideas already articulated in his earlier *Essays*. On the challenge this presented to more traditional religious understandings and understandings of the mind, see Wolterstorff, "Locke's Philosophy of Religion," Jolley, "Locke on Faith and Reason," and Rickless, "Locke's Polemic against Nativism."
33. In his *Essays*, 4, 153, Locke builds on but diverges from Descartes's proof of God in his *Meditation 3*. See the comment of von Leyden, "Introduction," notes, 153. Locke revisits the assumption of a creator in numerous places in passing in his *Two Treatises* and repeatedly in various places in his *Essay Concerning Human Understanding*. As discussed below, it is surprising that Locke did not scrutinize or question the proof of God in more detail given his skeptical theory of knowledge that he ultimately articulates. Below, I suggest that Locke may have had a more skeptical position on God's existence than many interpreters think.
34. Having inferred a creator from the evidence of the senses, Locke argues (*Essays*, IV, 153–155) that "reason lays down that there must be some superior power to which we are rightly subject, namely God who has a just and inevitable command over us and at his pleasure can raise us up or throw us down, and make us by the same commanding power happy or miserable." See also Pufendorf, *Law of Nature and Nations,* 3:10, 56 ff.

35. Locke, *Essays*, 4, 157.
36. Ibid., 159.
37. Ibid., 7, 195.
38. See Locke, II § 6 and 7, and Laslett, *Two Treatises*, 270–271.
39. See Hobbes, *Leviathan*, 15, 35, 104.
40. Locke's words "free, equal, and independent" (II § 95) are similar to the words used by Jefferson in the first draft of the Declaration of Independence and in the Virginia Declaration of Rights, authored by George Mason and a document that may have influenced Jefferson in writing the Declaration. I return to this point in a subsequent discussion. For discussions of these and related points see, for example, Schwartz, *Liberty in America's Founding*, 72–82; Boyd, *Declaration;* Boyd, *Papers*, 345; Ganter, "Pursuit of Happiness"; Maier, *American Scripture*, 134; Becker, *Declaration;* Dershowitz, *America Declares Independence*, 75; Jayne, *Jefferson's Declaration*; Zuckert, *Natural Rights;* Gerber, *To Secure These Rights*; Carey, "Natural Rights, Equality and the Declaration of Independence."
41. Locke, II § 6, and Laslett, *Two Treatises*, 270–71. [italics in original]
42. I am referring here to Locke's view of property, discussed in more detail below, where we shall have occasion to look at alternative perspectives.
43. There is a seeming tension or contradiction in Locke. On the one hand, he says that humans are God's workmanship or the property of God. On the other hand, he says they own their labor. This has led to an interesting discussion in the secondary literature on what Locke intended and whether it makes sense. Contrast Zuckert, *Natural Rights*, 220ff and 239ff, with Schwartz, *Liberty in America's Founding*, 378, notes 66 and 67, and "Liberty Is Not Freedom"; Tully, *A Discourse on Property*, 105–106; and Waldron, *Right To Private Property*, 177–184, who see no contradiction between these positions, understanding that the human life can belong to God but the will is the possession of the individual.
44. Locke, II § 9, 11; Laslett, *Two Treatises*, 272–273.
45. See, for example, Pufendorf's *Law of Nature and Nations*, book 2, chaps. 1:2, and 2:5–6, discussion of why God did not see fit to give humans "wild liberty."
46. I am anticipated in part by Glendon's wonderful work, *Rights Talk: The Impoverishment of Political Discourse*; she is moving along similar lines although she comes at it from another direction.

Chapter 3

1. See Strauss, *Natural Right*, 182, for example; Strauss partly characterizes one difference between modern and ancient notions of natural rights around the shift from "duties" to "rights."
2. The lengthy discussion by Locke (II § 52–76; Laslett, *Two Treatises*, 303–317) on paternal power and the relationship between parents and children has to do in part with his rejection of Filmer's patriarchalism and Filmer's claim that fathers own their children and wives as property. That patriarchal assumption was key in Filmer's argument that Adam was the owner of the whole world and that all property and people that followed were Adam's property and that of his heirs. This was the basis for Filmer's justification of monarchy. The kings were seen as the descendants of Adam and thus inherited his rights to absolute ownership over their children and their people. In addition, there are other impulses at work as well in the discussion of parent/children relationships in the natural rights theorists. The very question of authority over persons, which is at the heart of the discussion of political power, led Locke and others to discuss the relationship of power and rights over all peoples and to the assumptions of the patriarchal family. Grotius, *Rights of War and Peace*, book 2, chap. 5:1–8, 49–51, at the start of the century discusses parents' authority over children and articulates the patriarchal position asserting the father's right to "pawn" his children and the husband's status as head of the household. By contrast, Hobbes, *Leviathan*, 22, 4–9, 133–134, sees the father and mother more equally and also sees the parent's dominion as based on a child's consent. For discussion on the patriarchal family as a context for Locke's thinking, see Schochet, "Family and Origins of State."
3. This analogy is key to the argument of King James in his *Trew Law of Free Monarchies*, published in 1598, on absolute royal authority. See Zuckert, *New Republicanism*, 30ff.

Chapter 4

1. Hobbes, in *Leviathan*, 13:13, 44, had argued something similar when he argued that right and wrong emerge with the beginning of society. "The notions of Right and Wrong, Justice and Injustice have there no place. Where there is no common Power, there is no Law: where no Law, no Injustice…They are Qualities, that relate to men in Society, not in Solitude."
2. Locke in particular questioned "tradition" as a source of knowledge in his *Essays* and his *Essay Concerning Human Understanding*. He argued that tradition was not a sufficient basis for knowing God or morality and that reason instead must be the way to discern the source of truth.
3. Writers in the seventeenth and eighteenth centuries aspired to emulate the methods of the natural sciences in the study of human beings. Max Weber in the modern period is often credited with developing the "antipositivism" position within sociology, as an example, which denied that the methods of science could be applied to the study of the human phenomenon. The debate in the modern period has been over whether the social or human sciences (anthropology, sociology, psychology, economics, and political science) are sciences in the same way as natural sciences and can use the same methodologies. In all of these disciplines there are those who see the discipline and methodologies as interpretive and humanistic (nonscientific) and those who lean more toward positive, scientific methodologies and ways of characterizing what they do. Each discipline has fought out this battle in its own discipline.

4. This goal of the seventeenth-century thinkers, such as Hobbes, Pufendorf, and Locke, among many others, was to produce a science of morality. Emulating the natural sciences, Locke, for example, thought that ethics was and could be a demonstrative science like mathematics (von Leyden, "Introduction," 54–55). Here is Locke in his own words, *Essays* 7, 201: "it seems to me to follow just as necessarily from the nature of man that, if he is a man, he is bound to love and worship God and also to fulfill other things appropriate to the rational nature, i.e. to observe the law of nature, as it follows from the nature of a triangle that, if it is a triangle, its three angles are equal to two right angles, although perhaps very many men are so lazy and so thoughtless that for want of attention they are ignorant of both these rules."

Though Locke would ultimately in his more mature work reshape how we understood the mind and human knowledge, he ultimately failed, and he may have realized he had failed, in his quest to found morality on the basis of reason. I take up this point again below.

5. Locke, like others in the natural law tradition, had a problem explaining why, if reason can lead to the correct foundations of knowledge, all people don't come to the same conclusions about morality and about how to live. As mentioned in the previous note, Locke at one point in his early essay blames lack of agreement on tradition, people's laziness, or thoughtlessness. Sometimes (*Essays* 1, 113) Locke compares those who do not discern the results of reason to a blind person (113) who cannot read a legal notice. And though everyone is endowed with reason, not everyone cultivates reason.

Hobbes (*Leviathan*, 11, 69–70) has a much more pessimistic view of knowledge and argues that the reason people don't dispute "the doctrine of lines, and figures" (i.e., mathematical truths) is because "men care not, in that subject what be truth, as a thing that crosses no man's ambition, profit or lust. For I doubt not, but if it had been a thing contrary to any man's right of dominion, or to the interest of men that have dominion, *That the three angles of a triangle, should be equal to two angles of a square; that doctrine should have been, if not disputed, yet by the burning of all books of geometry, suppressed, as far as he* whom *it concerned was able."* While Hobbes still relies on reason to arrive at his laws of nature, he is more likely to see that what counts as truth depends on a human being's interests.

6. See my essay on this topic in Schwartz, "Why Can't My Daughter Drive a Tank?"

7. Seventeenth- and eighteenth-century thinkers grappled with the presence of polygamy in other cultures and as an accepted practice in the Hebrew scriptures, among other instances of cultural variations. See Grotius, *Rights of War and Peace*, book 2, chap. 5:9.2 and 9.4, 51–52. The discussion continued into the eighteenth century. See Hume's tongue-in-cheek essay "Of Polygamy and Divorce," discussing whether marriage practices are universal.

8. Grotius, Hobbes, Locke, and Pufendorf all start with the right to life or instinct to self-preservation and derive the other rights from this more basic right. They disagree, however, on where this primary right comes from. As discussed previously, for Locke, this primary right comes from the discernment of God the Creator. Grotius, *Rights of War*, book 1, chap. 2:1.1, 62, refers to it as "instinct of every animal" and as "first duty." Hobbes never says where this "right of self-preservation" comes from and thereby suggests it is something like an instinct. Indeed, the word "right" for Hobbes can be understood as what derives from human nature, and thus is "natural."

9. See, for example, Locke, II § 11 and I § 18, 19. Grotius, *Rights of War and Peace*, book 1, chap. 2:2, 88, also reflects on the thief who may be killed but notes the scriptural passage (Ex. 32:2) that distinguishes a thief killed during the night from a thief killed during daylight. No punishment applies to the first, but it does to the second.

10. See Hobbes, *Leviathan*, 17:2 and 17:4, 111–112, and Locke, II § 145.

11. Compare Pufendorf, *Law of Nature and Nations*, book 8, chap. 6:9, 837, with Grotius, *Rights of War and Peace*, book 2, chap. 22:9, 269–70. See Grotius and Pufendorf's disagreement with Francis Bacon about whether violation of the laws of nature constitute grounds for just war. Locke dodges the whole issue and doesn't define the just war at all.

12. One way to read the rich history of anthropological thought from the twentieth century to the present is about contesting the sharp dichotomies between civilized and savage peoples that were bequeathed by nineteenth-century evolutionary anthropologists such as Edward Burnett Tylor, James George Frazer, Lucien Lévy-Bruhl, and others. Twentieth-century cultural anthropology questioned the dichotomies between savage and civilized cultures, led by the pioneering work of the British anthropologists such as E. E. Evans-Pritchard, and providing the foundation for the work of American cultural anthropologists such as Clifford Geertz and French structural anthropologist Claude Lévi-Strauss. For discussions, see Harris, *Rise of Anthropological Theory*; Wilson, *Rationality*; Eilberg-Schwartz, *The Savage in Judaism*, 1–28.

13. In every humanistic discipline and social science, there is a fundamental and unresolvable divide over whether unambiguous interpretation of human behavior or writings is possible. Whether in history, literature, anthropology, religious studies, sociology, or the political sciences, there are those who believe it is possible to arrive at a set of unequivocal conclusions or interpretations of history, texts, or human behavior and those who believe you can't, and that interpretation is always ambiguous and open ended. The literature on the subject is vast in each discipline, and the founding assumption fundamentally divides methodology and conclusions.

Among the many important discussions on the subject are those flowing in philosophy from Rorty, *Objectivity, Relativism, and Truth;* in hermeneutics from Gadamer, *Truth and Method*; and in science from Thomas Kuhn, *Structure of Scientific Revolutions*. For a discussion in literature, contrast the position defending authorial intent, by Hirsch, *Aims of Interpretation*, with the positions arguing for the death of the author, by Barthes and Derrida, among others.

For a debate related to the interpretation of the Constitution, contrast, for example, Levy, *Original Intent*, and the view of Scalia, *A Matter of Interpretation*; related to history, contrast, for example, Skinner, *Natural Right and History*, with my own Schwartz, *Liberty in America's Founding*, 309–322.

14. There were several different ways of approaching the question of whether the law of nature and law of nations are the same concept. Some thinkers distinguished the two concepts and others did not. Grotius (*Rights of War and Peace*, *Preliminary Discourse* 41, 45) distinguishes the law of nature from the law of nations, though he acknowledges that others define the terms differently (see also book 1, chap. 1, 9:1, 55). In his view, the rules that are consented to by "many" people historically and across nations, he calls the "law of nature" and distinguishes it from "laws of nations," which are not generally or widely accepted. (See also book 2, chap. 8:1.2, 93 on this distinction.) But Grotius also distinguishes the law of nations from the civil law, though that distinction is less clear (*Rights of War and Peace*, book 1, chap. 1:14, 57). Indeed, at times Grotius seems to forget his own distinction and calls the laws consented to by most nations the law of nations.

Locke does not use the term law of nations at all in the *Two Treatises* and refers instead only to the law of nature. This is consistent with his rejection of consent among nations as evidence for the law of nature (Locke, *Essays,* 5, 161–179, and Von Leyden, "Introduction," 100). Instead, Locke believes the law of nature is evident through reason even before political society comes into existence and thus available before there is any nation that can consent to it. Hobbes says the law of nations and the law of nature are the same thing (Hobbes, *Leviathan*, 30:30, 235). Pufendorf, for his part, has a whole chapter devoted to the subject and tends to agree with Hobbes (*Law of Nature and Nations*, book 2, chap. 3:23, 149ff).

15. Locke, *Essays* 1, 113.

16. See, for example, Locke (*Essays* I, 113–115). Locke (*Essays* 7, 191) also writes, "There are also other nations, and they are many, which with no guilty feeling disregard some at least of the precepts of natural law and consider it to be not only customary but also praiseworthy to commit, and to approve of, such crimes as are utterly loathsome to those who think rightly and live according to nature."

17. Hobbes, *Leviathan*, 18:9, 118.

18. Hobbes's ideas about natural rights were fundamental in shaping the discussion in the seventeenth century, including the ideas of Locke, whom many regard as fundamental in shaping the American founding. Both Hobbes and Locke, among others, start from the equality of human beings. But Hobbes despairs of humans ever being capable on their own of resolving matters without an all-powerful sovereign.

19. Hobbes did think reason leads people to seek peace, which is the foundation of the law of nature, and this is the foundation for the rational decision to give up control of truth to the sovereign.

20. Gerber, in *To Secure These Rights*, makes this argument most explicit by arguing that we should interpret the American Constitution based on the Declaration and therefore limit our understanding of rights to what John Locke meant. This is a position that has been implied in many accounts that show a direct line from John Locke's *Second Treatise on Government* to Jefferson's Declaration of Independence. For positions holding this view, see, for example, the now classic Becker, *Declaration of Independence*, as well as the more recent Zuckert, *Natural Rights*; Dworetz, *Unvarnished Doctrine*; Jayne, *Jefferson's Declaration.* Contesting this view, see my own Schwartz, *Liberty in America's Founding*, and Dunn, "The Politics of Locke."

21. The *Essays* were written in the late 1650s and completed after 1660 and before 1664 when Locke was in his late twenties and early thirties (von Leyden, "Introduction," 10–11). His more mature works, such as the *Two Treatises*, were being written in 1679–80, some sixteen years later. On the dating of the *Two Treatises*, see discussions in Laslett, *Two Treatises*, 57–66; Gough, *Political Philosophy*, 143–144; Dunn, *Political Thought*, 47–53.

22. Locke II, § 12; Laslett, *Two Treatises*, 275.

23. In 1687, James Tyrrell, a close friend of Locke and an author on natural law in his own right, wrote a number of letters to Locke encouraging him to take up again the foundation of the law of nature, especially after reading Locke's *Essay* (von Leyden, "Introduction," 9–10 and again 62–63). Tyrrell had been among the group of five or six friends Locke mentions at the start of the *Essay* (*Epistle to the Reader*, xiv) whose conversation with Locke about the basis of morality and its relation to natural and revealed law had set Locke off in the first place to write on the underlying themes that led to *An Essay Concerning Human Understanding* (see von Leyden, "Introduction," 61, and Milton, "Locke's Life," 11).

Tyrrell was aware that Locke had already written earlier essays on the subject of natural law and was encouraging Locke to develop them, especially when critics of Locke's *Essay* challenged and questioned his position on the law of nature. Tyrrell was also suspicious that Locke was the author of the *Two Treatises*, which Locke published anonymously, and pressed Locke to acknowledge he was the author, which Locke refused to do. In any case, it is an interesting question how the Locke who wrote the *Essay*, which challenged the foundation of knowledge and the basis of knowledge in tradition or innate ideas, could also have been the Locke who wrote the *Second Treatise*, which takes for granted the law of nature (Gough, *Political Philosophy*, 12).

24. This view of Locke is held by many of his interpreters. In this line of thinking, Locke assumed reason could discern a moral lawgiver and from that assumption flowed certainty about the natural law. See, for example, Gough, *Political Philosophy*, 10, which describes this as part of Locke's unquestioned faith in a Christian God that is never subjected to the same scrutiny to which he subjects other sources of knowledge. See also Aarsleff, "The State of Nature," 99–136, for a similar theological understanding of Locke. Dunn, in *Political Thought*, 21–26, 198–199, tends to also see Locke this way and minimizes the tension between the *Two Treatises* and the *Essay*.

See von Leyden, 68ff and 72, for example, which offers several possibilities on why Locke doesn't work out the tension between the *Two Treatises* and the *Essay*. One is that Locke's theory of God as the foundation of morality was coming into conflict with his emerging theory of hedonism, a conflict that Gough (*Political Philosophy*, 14) thinks von Leyden overstates. But von Leyden also speculates (75), in a position that I find persuasive, that Locke avoided the question of natural law's foundation in God because "he

found himself at a loss to give full expression to his view of the demonstrative character of morality."

In considering this issue, we have to bear in mind Locke's refusal to acknowledge his authorship of the *Two Treatises*. This may have been due to his fear of reprisals, to the uncertainty of the political situation in which he wrote, and to his own experience in exile (Laslett, *Two Treatises*, 78). Laslett also questions whether that part of Locke's hesitation about revealing his authorship of the *Two Treatises* was because he was aware of the inconsistencies with the *Essay* and that it was no simple matter to reconcile their doctrines (Laslett, ibid., 66; Gough, *Political Philosophy*, 20). But Laslett and others also suggest that the *Second Treatise* should not be interpreted in the genre of philosophy in the same sense as the *Essay*, and that the *Second Treatise* was more of an "exclusion tract" or political work rather than a philosophical work. Since it is a nonphilosophical genre, it should not be held to the same expectations of philosophical rigor or consistency. In other words, it would be a category mistake to hold the *Second Treatise* to same expectation of philosophical rigor as the *Essay*. To complicate matters further, we know that Locke is not one of the most consistent and methodical thinkers, as Laslett notes, and thus we are at risk of overinterpreting Locke when we make too much of these inconsistencies.

25. Locke deleted a last chapter of the *Essay* called "Of Ethick in General," which was intended to be an essay on the foundation of morality and a culmination of the *Essay* (see MS Locke c 28, printed in Peter King, *The Life of John Locke*, 308–313). For discussions, see von Leyden, "Introduction," 69; Dunn, *Political Thought*, 187; Laslett, *Two Treatises*, 187. According to von Leyden, this deleted essay shows a trend toward "hedonism" (i.e., arguing that morality is based in pleasure and pain rather than reason) in Locke's thinking, which Locke may have realized was inconsistent with his argument for the foundation of morality in a concept of God and the law of nature and may be why he never published it as part of the *Essay*.

26. This is a telling irony in the story of modern natural rights thinking. One of the West's most important natural rights thinkers, John Locke, sometimes called the father of natural rights, may have doubted reason's ability to discern the moral law. The doubt appears in Locke's *An Essay Concerning Human Understanding*, one of the most important European books written to be written about the foundation of human knowledge. It is clear that here Locke is moving toward a much more skeptical understanding of what the mind can know. It is not entirely clear whether this articulated theory of knowledge fully reshaped how Locke thought about the idea of God and the natural law. For a discussion of Locke's view of God and religion in his *Essay*, see Jolley, "Locke on Faith and Reason," and the discussion that follows.

27. Locke, *Essay*, book 4, chap. 3:27, 454.

28. See discussion, for example, in Lowe, *On Human Understanding*, 7–9. Initial hostility to the *Essay* was directed at features thought to be hostile to religion, particularly its skeptical theme and its criticism of innate ideas. Critics such as Edward Stillingfleet, Bishop of Worcester, saw dangers to their Christian faith in Locke's emphasis on reason and experience. See also Jolley, "Locke on Faith and Reason."

29. Locke, *Essay*, "Introduction," 5, 3.

30. Locke, *Essay*, book 4, chap. 10, 527–536.

31. See note 24.

32. Ibid.

33. I see Laslett, "Introduction," heading in this direction. Dunn, however, draws back from this conclusion.

34. Various thinkers in the seventeenth century had already begun to question whether conclusions derived from reason were entirely consistent with revelation. This was one of the ways in which the Enlightenment thinking would break free from the medieval synthesis of reason and revelation that had been articulated in the Christian and Jewish traditions. Examples of this earlier synthesis, for example, were achieved most notably in writers such as Philo, Aquinas, and Maimonides. In that earlier tradition, reason appeared for the most part consistent with revelation.

With the Enlightenment, this nice alignment begins to break down. This was apparent, for example, already in Hobbes, and part of the reason that "Hobbism" was such a serious charge throughout the century. It was also visible in other thinkers, such as the precursor of deism, Lord Herbert of Cherbury (1583–1648), and his book *De Veritate* (1624), the first major statement of deism. In this work, Herbert begins to distinguish the key innate ideas that are reasonable and evident in Christianity and true religion from accretions and superstitions that must have infiltrated scripture and revelation. While Locke demolished Herbert's theory of innate religious ideas, he nonetheless carried forward and left unresolved the tension between "reason and revelation." Locke himself to some extent allowed reason to shape his interpretation of scripture in his *First Treatise on Government*. But Locke did not take this challenge to revelation by reason to its logical conclusion, and the deeper challenge was developed and carried forward by the deists who followed and saw the more radical implications, including Matthew Tindal, *Christianity as Old as Creation*; Anthony Collins, *Grounds and Reason of the Christian Religion*; Thomas Chubb, *Discourse Concerning Reason*, among others. For discussions of Herbert, see Hutcheson, "Introduction," Gay, *Deism,* Manuel, *Changing of the Gods*, and my Eilberg-Schwartz, *The Savage in Judaism*, 44–66.

35. Hume, "The Original Contract," 199.

36. I discuss the impact of Hume on Dickinson and Jefferson in *Liberty in America's Founding,* 134–135. See also 273ff.

37. Bentham, "Anarchical Fallacies," 914. Others who follow the utilitarian perspective include Epstein, "Principles" and "Simple Rules." For an alternative view arguing the language of rights is still defensible, see Dworkin, *Taking Rights Seriously*. Rawls, *A Theory of Justice*, is also an attempt to rehabilitate the Lockean notions of a social contract and a state of nature.

38. There is an extremely interesting debate on whether even what counts as rationality is common across cultures, in Wilson, *Rationality*. See discussions as well in Reynolds and Tracy, *Myth and Philosophy*.

39. See my discussion in Schwartz, *Liberty in America's Founding*.

Chapter 5

1. See for a similar position, Dworkin, *Taking Rights Seriously*, 192–205, and Schwartz, "Why Can't My Daughter Drive a Tank?"

2. Schwartz, *Liberty in America's Founding*, 15–82. More on the topic of land below.

3. See Maier, *Ratification*.

4. See Maier, *Ratification*, and Bowen, *Miracle*.

5. See Madison, *Notes*, on the debates during the convention. The very presence of emerging Federalist and Republican interpretations testifies that there was no consensus on either what rights meant or what the Constitution meant. For a discussion of the emerging Federalist and Republican positions, see Elkins and McKitrick, *Age of Federalism*, and Wootton, *Essential Federalist*. For a discussion questioning the notion of the original founding meaning, see Levy, *Original Intent*. For a description of the unfolding debate in the states, see Maier, *Ratification*.

6. See Levy, *Original Intent*, 284–387, which makes a similar point. On calls for a return to a lost Constitution, see Napolitano, *Constitution in Exile*, and Randy Barnett, *Restoring the Lost Constitution*.

7. See Levy, *Original Intent*.

8. See Detweiler, "The Changing Reputation"; Maier, "Strange History"; and Schwartz, *Liberty in America's Founding*.

9. Differences among branches of various religions (e.g., Protestants versus Catholics, Orthodox Jews versus Conservative and Reform Jews) often come down to arguments over the meaning of the original scriptures (God's word) and who has the rightful authority and interpretation.

Similarly, a key debate in literary theory, and one that has carried over to history and the academic discipline of religious studies as well, is whether texts have specified determinative meanings and whether those meanings can be based on authorial intent, the historical context, or the text itself, or whether the very meaning is produced through a reading. The literature on this topic is vast and spans debates across new criticism, postmodernism, deconstruction, postcolonial theory, and gender studies, just to name a few of the theoretical disciplines that have taken up the topic. Interestingly enough, debates about rights often assume that there are specified rights in nature or in the Constitution, even among jurists. In some ways this theoretical divide is more important than others.

10. See Hoekstra, "Hobbesian Equality," which argues that the idea of original equality was quite common in the Christian and Greek tradition, apart from Plato and Aristotle, and that Hobbes's use of equality should not be considered new or surprising. A more thorough examination of this question needs to be done for several reasons. First, the Aristotelian position of natural hierarchy revived in importance in the Renaissance and remained a prominent position against which natural rights theorists defined themselves. Second, interpretations of Genesis in the church saw Eve as a secondary creation after Adam and thus placed women in a secondary role with respect to men. Third, the social form of the family and society was patriarchal in the medieval period, with the father and men having the dominant positions.

11. For Aristotle's theory of slavery, see *Politics*, book 1, chaps. 3–7, and *Nicomachean Ethics*, book 7. See Hanke, *Aristotle and the American Indians* and *The Spanish Struggle for Justice*, for a discussion of how Aristotle was used to justify the enslavement of Indians in debates related to the Spanish conquest of Latin and South America. We return to this subject below.

12. The position was implicit as well in the writings of King James I and was developed fully by Sir Robert Filmer in *Patriarcha*. See the discussion in Curran, "Hobbes on Equality," and the critics of Hobbes, such as Clarendon, who argued for natural hierarchy.

13. Boyd, *Papers*, 317–18, Becker, *Declaration*, 212–13, Ellis, *Founding Brothers*, 81-119.

14. On the three-fifths rule and the compromise over slavery, see Bowen, *Miracle*, 95; 200–204. Bowen notes that in exchange for the "three-fifths" rule and the agreement to limit the import tax on slaves to ten dollars a head, Southern states agreed that importation of slaves would cease in the year 1808. For discussions in the convention on those days, see Madison, *Notes*, 103, 409–411, 503–508. The slavery question flared up regularly around the question of representation, power among the states, and taxes on imports and exports of goods, among other contentious subjects of discussion.

15. Madison, *Notes*, 411.

16. I understand Dworkin, *Taking Rights Seriously*, 179–183, to be moving in this same direction in his analysis of Rawls's work, as when he points out that a commitment to equality is assumed already by Rawls's "original position." In Dworkin's reading, Rawls's original position is not empty of all commitments. Instead "equality" is one of the key commitments already granted but never justified in Rawls's concept of the original position. Further, Dworkin, 269–275, carves out equality as the real meaning or dimension of rights, interpreting what rights mean to be identical with equality. By contrast, I see rights as a concept that pulls in different directions than equality. Ultimately this is a language issue and not necessarily a disagreement in substance.

17. Schwartz, *Liberty in America's Founding*.

18. See, for example, Springborg, "Introduction," Hobbes's *Leviathan*, 1. See also Skinner, *Hobbes*, and Tuck, *Hobbes*.

19. On the dating of *Leviathan*, see Tuck, *Hobbes*, 34; Skinner, *Hobbes*, 127.

20. Hobbes, *Leviathan*, 13:1, 82.

21. Hobbes was not the only royalist to start with human equality. John Locke, for example, notes that other royalists had started with the same assumption. For a

discussion on this surprising use of equality by Hobbes, see the contrasting discussions by Hoekstra "Hobbesian Equality," and Curran, "Hobbes on Equality."

There is an interesting debate in the secondary academic literature on whether Hobbes really endorsed and believed in equality or whether he considered it an instrumental or pragmatic concept that people should acknowledge for the creation of peace. While notions of equality had existed since antiquity, some royalists, such as Robert Filmer and Clarendon, attacked equality as a threatening doctrine and instead justified hierarchy and absolutism by identifying inequality embedded in nature.

Some interpreters argue that Hobbes was beginning with the assumption of his adversaries, such as the Levellers, and showing that even from those starting assumptions one ends in a view of absolutism. Hoekstra offers a similar instrumental view. He argues that Hobbes treated equality as a pragmatic idea that was necessary to achieve peace but did not really think of humans as equal and that his philosophy in fact presupposed that they were not equal either in nature or after they left nature. Curran questions this assumption, arguing that Hobbes really did embrace the idea of equality and was not just using the concept for instrumental purposes.

Understanding exactly what Hobbes meant by equality is not simple. In my view, Hobbes is not saying that humans are equal in nature in general, though he does note that experience and training tend to level differences in nature. Instead, Hobbes is saying that mortality is the great equalizer of human beings and that from the equal vulnerability to death, humans eventually discover through their reason the first law of nature, which is to seek peace, and thus to join a commonwealth. This realization that they are all equally vulnerable before death drives them to seek protection, to overcome their sense that they are better than one another, and to relinquish their rights in nature, which is the foundation of human society and ultimately morality. As Hobbes notes, in reality individuals think of themselves as superior to each other in many ways. But because they are mortal, they are led to understand that they must overlook their confidence in their own superiority and be willing to treat each other as equals to achieve peace.

In other words, it is *fear of death* that makes us the same and trivializes the other differences between us, such as strength, wit, and so forth. I thus understand Hobbes to be saying that it is our mortality that leads us to live in fear (i.e., we know we can die at the hands of anyone). From this fear of death, reason leads us to realize that we have to leave the state of nature. We trade our rights to everything in nature for more limited rights in political society to reduce or escape this fear of death. On that reading, I do not see Hobbes as using equality as simply a pragmatic concept (we need to acknowledge each other for peace), but as saying that it is our actual equality in mortality and our resulting fear of death that lead us to follow reason into a society in which we lose some of our freedoms and rights held in nature. Humans come to understand that they have a better chance of life and protection with loss of liberty (under the commonwealth) than fear of death, unlimited rights, and total liberty in the condition of mere nature.

22. Hobbes, *Leviathan*, 8:1, 45.
23. This kind of statement by Hobbes is interpreted by some as proving that Hobbes thought equality was a pragmatic or instrumental concept critical for peace, even though he recognized that people were not equal in all sorts of ways. See Hoekstra, "Hobbesian Equality."
24. Interpreting Hobbes as saying that death is an equalizer, I think, comes closer than the way that Hoekstra, "Hobbesian Equality," 76, which characterizes it as "they are equal because of their natural ability to kill one another."
25. Hobbes, *Leviathan*, 13:1, 82–83.
26. Hobbes treats the concept of "prudence" as "experience" and thus like skills that are developed. Elsewhere he says that animals have prudence, by which he means the kind of knowledge developed through experience and contrasted with knowledge developed by reasoning. He also sees no difference between the "prudence" of husband and wife that should justify the man having dominion over the children.
27. Hobbes does make an interesting exception in the case of science (i.e., philosophy), for which few have the capacity, in his view. Thus when he says there is a basic equality in faculties of mind, Hobbes seems to be referring to general adult capabilities, not those of the scientist or philosopher. But, unlike Aristotle, Hobbes does not make this difference a basis for one's role or status in society. The scientist deserves no special consideration for their differences in cognitive abilities.
28. Hobbes, *Leviathan*, 15:21, 102, in his comments on the ninth law of nature. [italics in original]
29. Ibid.
30. Ibid., 15:24, 103. [italics in original]
31. Ibid., 15:25, 103. [italics in original]
32. Ibid., 15:26, 103.
33. Hobbes, *Leviathan*, chap. 13:3, 83.
34. Locke, II § 2; Laslett, *Two Treatises*, 269. [italics in original]
35. Filmer, *Patriarcha*, 53; Laslett, *Filmer*, 11–20. Filmer's book was published during the Exclusion Crisis in the reign of King Charles II, in which the party led by Locke's patron, Lord Ashley, 1st Earl of Shaftesbury, tried to exclude King Charles's son from taking the throne. On the publication of *Patriarcha* in the midst of the Exclusion Crisis, see Laslett, *Filmer,* 33–35, and discussions also in Laslett*, Locke,* 46–66, and Dunn, *Political Thought,* 58–76.
36. Filmer, *Patriarcha*, 54.
37. Ibid.
38. As a contrast, see the view of Pufendorf, *Law of Nature and Nations*, book 4, chap. 4:4, 320, which said it is in vain to argue about the original ownership of Adam.
39. Gen. 1:28.
40. There is some evidence that Locke wrote his *First Treatise on Government*, which is a refutation of Filmer, after he had already written most of his *Second Treatise on Government*. For a discussion on the relationship of Locke's *Two Treatises* to the publication of

Filmer's *Patriarcha*, and to the argument of Filmer, see Laslett, *Locke*, 46–66 and 67–78, and Dunn, *Political Thought*, 58–76.

41. As discussed previously in chapter 4, there is a fascinating debate in the secondary scholarly literature on Locke, trying to understand why he does not provide a philosophical foundation for his idea of natural law and, of course, the idea of liberty and equal rights that comes with it. For discussion of this point, see chap. 4, note 23.

42. Locke's *Second Treatise* was written during what became known as the Exclusion Crisis, when there was fear that King Charles II would be succeeded by his Catholic brother, James Duke of York, who was also an advocate of the divine right of kings. Whigs led by Lord Shaftesbury, the patron of Locke, feared that a Catholic "popish" monarch would impose absolute rule, including control of religious freedom.

43. See Locke, I § 4, § 67 ; and Laslett, *Two Treatises*, 150–190 [italics in original]. Locke is quoting Filmer, who mentions the same three individuals as vindicators of the divine right of kings but starting from the assumption of natural liberty and equality (Filmer, *Patriarcha*, 54). It is possible to read Locke's *First Treatise* as focused in large part on proving that revelation accepts the natural liberty and equality of humankind in opposition to Filmer's reading, whereas the *Second Treatise* assumes the equality is self-evident from reason.

44. There is a complicated academic debate on why Locke does not refer to Hobbes and whether Hobbes is everywhere, always hovering in the background but unmentioned, or whether Locke simply had not read his work. The issue is complicated by the fact that Filmer and Pufendorf, both of whom Locke read and engaged with, both were reflecting on Hobbes. For discussions, contrast Laslett, *Two Treatises*, 67–79; Dunn, *Political Thought*, 77–83; Zuckert, *Natural Rights*, 218–220; Gough, *Political Philosophy*, 119–120. See Strauss, *Natural Right*, 221–251; Strauss sees Locke as more consistent with a position of Hobbes than do others.

45. Locke, II § 6.

46. See Zuckert, *Natural Rights*, 188, drawing the contrast between Locke and Grotius.

47. Locke, II § 54. [italics in original]

48. For versions and discussion, see Becker, *Declaration*, 198, and Maier, *American Scripture*, 132. See also Schwartz, *Liberty in America's Founding*, 66–82.

49. Schwartz, *Liberty in America's Founding*.

50. As noted earlier (this chapter, note 16), Dworkin, *Taking Rights Seriously*, argues that equality is assumed in the "original position" of Rawls's theory of justice. On that reading, Rawls's theory of justice is both assuming and trying to create equality as a foundation for the moral life by moving people into the original position where they do not know their future quality of life. In this way, Rawls attempts to rule out biases that arise from knowing who an individual will be or his or her own personal life histories.

51. For discussion of what the state of nature meant to these writers, see, for example, Tuck, *Rights of War and Peace*, and Laslett, 98. See Locke II §§ 14–15, 100–105, where he explicitly takes up the objection whether there ever was a natural state of humankind. Locke hedges his bets in all sorts of ways. On the one hand, he argues there is historical evidence of people starting new societies from the state of nature and also leaving societies and starting new ones (II §§ 102–103). He argues too that the origins of government in early societies are often buried in history and not always discoverable, and thus many political commonwealths may have started in a social contract out of the state of nature, though that history is lost (II § 101). While Locke thus wants to anchor his state of nature in real historical examples, Locke also dismisses those who argue from history (i.e., Filmer) and claims that "though at best an argument from what has been, to what should of right be, has no great force" (II § 103). Here Locke seems to be saying that the argument of natural rights does not need to rest on an actual historical account of how societies did come together but instead on how they should come together. Other modern thinkers such as Laslett, 93, and Rawls, *Theory of Liberty*, have followed this impulse and interpreted the social contract as a kind of ideal thought experiment rather than as a historical reality. Rawls's concept of an "original position," in fact, is an attempt to put people into a thought experiment where they imagine themselves in a kind of state of nature. Similarly, Hobbes, *Leviathan*, 13:11–12, 85, anticipates Locke, arguing that while there was never a time when everyone was in a state of nature, there are still "savage people in many places of America…[who] have no government at all; and live at this day in that brutish manner." He also notes that sovereign governments are in a state of nature or posture of "gladiators" toward one another, since they have no power to enforce a set of standards across more than their own national boundaries.

52. My thinking here aligns with the insights of Dworkin and Rawls. As noted earlier, the concept of the "original position" in Rawls's *Theory of Justice* is analogous to an idealized state of nature. As noted earlier, Dworkin argues that Rawls's "original position" is not empty of all content and is already presupposing a commitment to the idea of equality through this thought experiment.

53. Among the many ironies of history is the fact that early arguments that the monarch's power derived from the people, rather than from God, came from the representatives of the Catholic Church seeking to undermine the power of the secular authority and restore the prestige and power of the Church (McIlwain, "Introduction" to *Political Works of James I*, xvii–xix).

54. I take this to be one of the central conclusions of Williams, "Idea of Equality."

55. These assumptions are implicit in the work of Ayn Rand, Hayek, Friedman, Epstein, and others.

56. See, for example, the essays in Ferber and Nelson, *Feminist Economics,* as well as the various theoretical challenges to this core economic assumption.

Chapter 6

1. For example, see, Hobbes, *Leviathan*, 15:3, 96: "And therefore where there is no *own* [i.e., "mine"], that is, no propriety, there is no injustice; and where there is no coercive power erected, that is where there is no commonwealth, there is no propriety;

all men having right to all things [italics in original]." Pufendorf, *Law of Nature and Nations*, book 4, chap. 4:4.3, 364, for example, writes that "From what has been offer'd, "tis evident that as well positive Communion, as Propritey, does imply the Exclusion of others from the Thing thus said to be either common, or proper, and consequently doth presuppose more persons in the World than one." See, for example, Locke II § 36, "I dare boldly affirm, that the same *Rule of Propriety*, (*viz.*) that every man should have as much as he could make use of, would hold still in the World without straitning any body; since there is Land enough in the world to suffice double the inhabitants [italics in original]." Similarly Locke, I § 41, writes "that by this donation of God, *Adam* was made sole proprietor of the whole Earth, what will this be to his sovereignty? and how will it appear, that *propriety* in land gives a man power over the life of another [italics in original]?" I am quoting the Hollis edition here; the Laslett edition has "property" instead of "propriety."

2. Richard Epstein, for example, a legal and political philosopher who embraces the "liberty-first" position, abandoned the notion of rights in favor of a utilitarian approach. A utilitarian or consequentialist position argues on the basis not of individual rights, but on the basis of the general impact and consequences of a policy or decision on the general welfare.

3. Locke, II § 49. On the history of humankind in Locke's political philosophy, see Schochet, "Family and the Origins of State," 81–136. See also Strauss, *Natural Right*, 215ff. For a similar quote by Hobbes, see his comments on the state of nature and the brutish manner in which the savages of American live (Hobbes, *Leviathan*, 13:11–12, 85).

4. Pufendorf, *Law of Nature and Nations*, book 4, chap. 3:2, 356. "It is therefore beyond Dispute, that Almighty God, inasmuch as he is the Maker and Preserver of all Things, doth likewise hold, as it were, an Originary and super-eminent Property over all, and they belong so strictly to Him, as that no one can pretend to the least Right in them, without his permission and consent."

5. There are many important books making this argument including, among others, Hawken et al., *Natural Capitalism*, and Hawken, *Ecology of Commerce*.

6. See, for example, Locke, I § 86 and II § 25 and more below.

7. Throughout my book, I generally follow the translation of the King James Version (KJV), but in this case it has a wording that is difficult to understand or is a mistake. The KJV reads: "And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth." And God said, Behold, I have given you every herb bearing seed, which *is* upon the face of all the earth, and every tree, in the which *is* [sic] the fruit of a tree yielding seed; to you it shall be for meat. (Gen. 1:.28–29). See http://www.kingjamesbibleonline.org/Genesis-Chapter-1/. Most seventeenth-century philosophers such as Locke could read the original Hebrew.

8. See Strauss, *Natural Right*, 215–217, for an insightful and interesting discussion of the challenge of linking Locke's state of nature with the biblical account. Strauss notes that Locke assumes people can eat meat in the state of nature, but the biblical account assumes people can eat meat only after the dispensation to Noah. Therefore, Strauss argues, Locke's state of nature cannot be identical with the pre-Fall biblical state. By contrast, Waldron, *Right to Private Property*, 165, sees Locke as embracing the conception of a fall in his theory of property and the fall from a natural state.

9. Locke, II § 25. See also Locke, I § 86, 87. [italics in original]

10. See Daly, "Absolute Monarchy," for a discussion on how the claim of divine right of kings did not always entail claims of absolutism for the kings who understood themselves to be subject to the laws of the kingdom.

11. See Locke, I §§ 86–87, where he explains his position with respect to Adam and Adam's children. Hobbes, *Leviathan*, 13:3, 83, makes a similar assumption when he claims that all people have a right to everything in the state of nature, but never justifies this position with respect to scripture.

12. See Tully, *A Discourse*, 61, quoting Macpherson, *Democratic Theory*, 123–5, who calls these "inclusive rights." Pufendorf, *Law of Nature and Nations*, book 4, chap. 4:2, 362, originally differentiated between what he called "negative" or "positive" communion. Positive communion was his term for "tenants in common."

13. See, for example, Pufendorf, *Law of Nature and Nations*, book 4, chap. 4:2, 362 where he calls this "negative" communion. For a discussion, see also Tully, *A Discourse on Property*, 61ff, and Waldron, *Right to Private Property*, 153ff.

14. The Hebrew "Adam" has all the same ambiguities and possible masculine biases as "Man." It is also possible in fact to read Genesis 1 as speaking about the creation of a human being who is "pregender" and that the distinction of male and female is created only when the being is split in half in Genesis 2. For a discussion, see Phyllis Trible, *God and the Rhetoric of Sexuality*, 72–143.

15. The Hebrew verbs in the "Be fruitful and multiply" passage are also conjugated in the plural and agree with the plural pronoun "them."

16. See Trible, *God and the Rhetoric of Sexuality*, 72–143. There is an extensive academic and popular literature on the meaning of Genesis 1:26–28, including what it means to be made in the image of God, whether God had a human form, or whether the passage is metaphorical. I have discussed some of this literature in *God's Phallus and Other Problems for Men and Monotheism.*

17. The injunction to be fruitful and multiply suggests that the writer assumed the differentiation of the sexes had already taken place and that Adam was understood as "humankind," inclusive of male and female.

18. Locke, II § 25; Laslett, *Two Treatises*, 286. [italics in original]

19. See Pufendorf, *Law of Nature and Nations*, book 4, chap. 4:1, 362 which argues it ""tis an Idle Question, Whether the Property of Things arise from Nature, or from Institution? Since we have plain evidence that it proceeds from the Imposition of Men; and that the Natural Substance of Things suffers no alteration, whether Property be

added to them or taken from them." See also book 4, chap 4:4, 364. See also Grotius, *Rights of War and Peace*, book 1, chap. 2:2.2, 63, which argues that "what we call *Property* had never been introduced" in nature and that anyone could "have made use of Things that were then in common, and to have consumed them, as far as Nature required, had been the Right of the first Possessor [italics in original]." Similarly, Hobbes, *Leviathan*, Chap 15:3, 96, "And therefore where there is no *own,* that is, no propriety, there is no injustice; and where there is no coercive power erected, that is, where there is no commonwealth, there is no propriety; all men having right to all things: therefore where there is no commonwealth, there nothing is unjust."

20. Grotius, *The Rights of War and Peace*, book 1, chap. 1:10.4 and 10.7, 54–55 and chap. 2:3, 63, makes this explicit, indicating that in nature people had a right to protect their "lives, limbs, and liberties" as part of the right to self-preservation but not a right to property. By contrast, for Hobbes, *Leviathan*, 14:4, 86–87, life, liberty, and property have the same status in nature. Every person has a right to everything, and there are no laws protecting life, liberty, or property in nature.

21. See, for example, Grotius, *Rights of War and Peace*, book 2, chap. 2:2 and 2:4, 19–20. See also Hobbes, *Leviathan*, 13:11, 85, "It may peradventure be thought, there was never such a time, nor condition of war as this;* and I believe it was never generally so, over all the world: but there are many places, where they live so now. For the savage people in many places of America, except [accept] the government of small families, the concord whereof dependeth on natural lust, have no government of all; and live at this day in that brutish manner, as I said before." [asterisk represents footnote in original]

22. See Grotius, ibid. See also Hobbes, *Leviathan*, 13:13, 85, and 15:3, 95–6.

23. See Pufendorf, *Law of Nature and Nations*, book 4, chap. 4:5, 366, quoting from the writings of Lambert van Velthuysen, "But forasmuch as all Human Institutions and Ordinances are made with exception of extreme Necessity, therefore when so desperate a Case happens, the primitive Right to all things revives: Because, in the Common Agreement for the Divisions of Things, every one is suppos'd to have renounc'd his Right to those Things which were alloted to other with this Reserve and Restriction, Unless I am unable otherwise to compass my own Preservation. My Calamity doth not give me a Right to those things, to which I had none before; but the extremity of my Danger makes that Condition cease, under which I gave up my first Right."

24. Lambert van Velthuysen (1622–1685) quoted in Pufendorf, *Law of Nature and Nations*, book IV, chap. 4:5, 366. On the significance of Velthuysen, see discussion in Blom, *Rise of Naturalism*, 104ff.

25. Pufendorf, *Law of Nature and Nations*, book 4, chap. 4:6, 367.

26. Hobbes, *Leviathan*, 13:3, 83, emphasizes equality as the source of fear of death, which leads to war in nature. Contrast with Grotius, *Rights of War and Peace*, book 2, chap. 2:3, 20, who emphasizes humans leaving a primitive state and weaves it closely into the biblical story of the Fall of Adam and Eve and the inclination for pleasure and vice among their descendants, thus associating this development with the development of culture and the arts. Pufendorf, *Law of Nature and Nations*, book 4, chap. 4:6, 332, focuses on property as reducing human conflict.

27. On gradual agreement to property, Pufendorf, *Law of Nature and Nations*, book 4, chap. 4:6, 367.

28. See, for example, Pufendorf, ibid., book 4, chap. 6, 367.

29. See, for example, Grotius, *Rights of War and Peace*, book 2, chap. 2:2.5, 21, on the tacit agreement to treat seizure or first possession as the mechanism of ownership. See Pufendorf, *Law of Nature and Nations*, book 4, chap. 4:6, 367, for a longer discussion of "first occupancy," in which he also emphasizes enclosing and developing the land through labor as one "tills and manuers it." As we shall see later, this emphasis on ownership being associated with "improving the land" becomes one of the justifications for taking the lands of American Indians, whom Europeans mistakenly characterized as being strictly nomadic and lacking agricultural techniques and any notions of property.

30. Pufendorf, *Law of Nature and Nations*, book 4, chap. 4:4, 364.

31. Hobbes, *Leviathan*, 15:3, 96: "And therefore where there is no *own,* that is, no propriety, there is no injustice; and where there is no coercive power erected, that is where there is no commonwealth, there is no propriety; all men having right to all things."

32. See, for example, Pufendorf, *Law of Nature and Nations*, book 4, chap 4:6, 322.

33. Pufendorf, ibid., book 4, chap. 4:7, 367–368, notes that the proposition "that the settling distinct properties turn'd to the real Benefit and Advantage for men" when people had grown numerous is illustrated by the arguments of Aristotle: "But now upon the introducing of Property, all these Complaints are silenc'd; every one grows more Industrious in improving his peculiar Portion; and Matter and Occasion is supplied for the Exercise of Liberality and Beneficence towards others." Hegel would take up a similar line of thinking and develop it. See Waldman, *Right to Private Property*, 343–389, for a discussion.

34. I am in agreement with the general reading of Waldron, *Right to Private Property*, 153, that Locke's intent is to make property a natural right, and I disagree with the view of Tully, *A Discourse on Property*, 98, which sees Locke taking a conventionalist view similar to Pufendorf.

It is important to distinguish the view that property is a right self-evident in nature itself from the view that it is in accord with reason and natural law but implemented by human beings as part of creating human society itself. The view that property was part of natural law was not new with Locke. Pufendorf, *Law of Nature and Nations,* book 4, chap. 4:4, 365, for example, discusses the view of other authors who believe property rights were given in nature by God and that the prohibition of stealing in the Decalogue shows that property was already given by God, and thus a law of nature.

35. Gough, *Political Philosophy*, 92–93, sees Locke's "labor theory" of property becoming a commonplace of economic theory and being taken up and assumed by Adam Smith.

36. Locke, II § 25 and I § 86.

37. Locke, II § 26. [italics in original]

38. See Locke, I § 29, where he interprets Gen. 1:28 as meaning the natural world was given in common to all mankind, and II § 26, 287, where he calls the first humans "Tenants in common." I here agree with the reading of Waldron, *Right to Private Property*, 153. Gough, *Political Philosophy*, 80, misunderstands Locke, assuming Locke thought humans had no common ownership in the beginning (i.e., "negative rights"). Gough, ibid., writes, "not that there was any positive communism or common ownership of property, but simply that nothing belonged to anyone in particular (just as nobody today owns the air or the sea)."

But if no one had any rights in anything in nature, there would be no issue in Locke's mind in appropriating something like acorns from nature. If no one had any rights, anyone could take what he or she wanted. Yet Locke specifically says that there must be a mechanism to make acorns "mine." Locke would not see this as a problem unless everyone was "tenants in common" and each had rights in everything. It is being tenants in common that generates the Lockean puzzle of how something can become mine out of something that is ours. Since everyone has rights in everything, I have no right to take it out of nature without their approval. Gough, 86, seems to miss this point again even when he quotes Locke as saying that if a person takes more than he can use, "it is more than his share, and belongs to others" (II § 31 and 37). Here Gough sees the predominant focus of Locke on the "common right of all…to preservation," meaning that taking more than I can use undermines the welfare of the species in general. But what Locke seems to mean is that I can't take more than I need from what is common, because then it is stealing from what belongs to all, and I am violating the rights of others.

39. Grotius, *Rights of War and Peace*, book 2, chap. 3: 7–11, 33–35, was innovative early in the century in arguing that the seas belonged to no country. This partly justified the expansion of the East Indian Trading Company, to whom Grotius was an adviser. For a discussion of this idea and its development in Grotius, see Tuck, "Introduction," in *Rights of War and Peace,* 17.

40. Gough, *Political Philosophy*, 92. For a longer discussion and analysis of what Locke meant, see Waldman, *Right to Private Property*, 137–251, and Tully, *Discourse on Property*, 108ff.

41. Locke, II § 27. [italics in original]

42. Locke, II § 47.

43. Locke, II § 6. In his *Essay*, Locke spends a great deal of time arguing that the idea of God is not innate, and that we can derive a divine law from the idea of God that is discovered by reason, but he does not link natural rights to the idea that humans are God's workmanship. For examples, see Locke, *Essay*, book 2, chap. 28:8, 308. This is another of the reasons why the Locke of the *Essay* and the Locke of the *Two Treatises* seem inconsistent.

44. Locke, II § 23.

45. See Waldman, *Right to Private Property*, 158–161, for a thorough analysis of what Locke may have meant and who sees this as one possible interpretation, though he rejects it on philosophical grounds. For a contrasting interpretation, see Zuckert, *Natural Rights*, 220ff and 239ff.

46. Locke, II § 35.

47. Locke, I § 86.

48. There are some interesting discussions in the secondary literature that discuss this view of property that Locke puts forward. It may seem that the appeal to the "strong desire" or instinct here contradicts his view in his *Essay* that there are no innate ideas. But see Laslett, *Two Treatises*, 205, and notes to 19–20. As I read him, Locke in his *Two Treatises* still sees reason as the means of discovering the right of property when humans reflect on their instinct to preservation. Thus reason intervenes as the means by which humans come to understand and interpret their instinct to survive. There is also an interesting interpretive question of how Locke understood God's decision in Genesis to forbid eating animals until after the flood. The right to eat creatures as opposed to have dominion over them was a significant topic of discussion for Pufendorf that Locke passes over in a couple of sentences. It is not clear here how Locke would explain why the first humans were forbidden to eat animals and how his thinking about reason discovering the right to own animals can be meshed with the biblical account. Stauss, *Natural Right and History*, 215ff, discusses the tension between Locke's view and the biblical story.

49. Locke, II § 25, 26, 30; I § 86.

50. Hobbes and others did not see the implication of equality this way. But Filmer saw how the concept of natural liberty and equality could be used to undermine royal authority and the natural hierarchy in patriarchal traditions. The Levellers in the English Civil Wars were among those who took the idea of natural liberty and equality to its furthest conclusions. Hobbes may in fact have been using the argument of the Levellers against them in adopting equality as the foundation of his system that ended in authoritarian rule. Locke comes closest to adopting the Leveller position, though he limits the conclusions when it comes to property.

51. There are many fine deep philosophical analyses and critiques of Locke's conception of property and its limitations as well as the notion of property itself. I have benefited from Tully, *Discourse on Property*, Waldman, *Right to Private Property*, Gough, *Political Philosophy*, among others.

52. See Pufendorf, *Law of Nature and Nations,* book 4, chap. 5:2–3, 379, which in a somewhat convoluted set of paragraphs distinguishes the earth from air, light, water. Air, light, water, and wind are inexhaustible and thus should not be subdivided. Pufendorf argues that the earth is treated differently as an exemption even though it is like these other natural phenomena. "But that a thing lying in common to Mankind, and sufficient for the promiscuous Use of all, should be shared out into distinct Parts, is certainly repugnant to Reason. The Earth is of such a magnitude, as to serve the Occasions of all People in all Uses to which they can apply it; yet it would not thus serve them,

were it possess'd, without Division, by so vast Bodies of Inhabitants as it now contains: Because it could never afford them Sustenance, unless manur'd and improv'd. Therefore there is plainly this particular Reason, why the extent of the Earth should not hinder its being divided; and yet the same Reason would make the division of the Ocean appear a ridiculous Absurdity."

53. Locke, II § 33 [italics in original]. See also II § 36 and I § 33.
54. E. A. Wrigley, et al., *The Population History of England*, and Hatcher, *Plague, Population*.
55. Locke, II § 36.
56. Locke, II § 40, Laslett, *Two Treatises*, 296.
57. Locke, II § 41. [italics in original]
58. Ibid.
59. Locke, II § 32, Laslett, *Two Treatises*, 291.
60. This point is discussed below in chapters 7 and 8.
61. See, similarly, Nozick, *Anarchy*, 174–177, and also Waldron, *Right to Property*, on this point.
62. Locke, II §§ 30–31.
63. See Waldron, *Right to Private Property*, 190, which raises a similar question.
64. Locke, II § 43, Laslett, *Two Treatises*, 298. [italics in original]
65. See chapter 9 for a discussion of the assumptions of modern economic theory. On Locke's role in the development of early modern economic theory and his impulse to see economics as functioning by natural value and natural principles, and not inherent value, see Letwin, *Origins*, 158–195, particularly on the British controversy over lessening interest rates to 4 percent and the recoinage controversy. On Locke's labor theory anticipating Adam Smith's, see Gough, *Political Philosophy*, 93.
66. Nozick, 175, quoted in Waldron, *Right to Private Property*, 190, asks something similar when he poses the question, "should one's entitlement extend to the whole object rather than just to the added value?" Nozick draws different conclusions from this question than do I.
67. I see Nozick, *Anarchy*, 174ff, posing the same line of critique here against Locke's theory of labor, though coming to very different conclusions ultimately.
68. Locke (I § 92) says property by definition includes the right to "destroy the thing, that he has property in by his use of it, where need requires." See Gough, *Political Philosophy*, 86, which discusses this position of Locke and sees it as evidence of the "communal" or "social" tendency of this thought.
69. Locke, II § 31 [italics in original] and again in II § 51.
70. This position differentiates Locke from the view of Hobbes in which people in the state of nature competed for the same goods and thus were led to seek peace in part out of the competition for goods.
71. See Locke, II § 36, and Laslett, 293 [italics in original]. See also II § 47. See also II §§ 107–108, where Locke talks about the early history of mankind and early forms of government and the Indians. "The equality of a simple poor way of liveing confineing their desires within the narrow bounds of each mans smal propertie made few controversies and so no need of many laws to decide them." For a discussion of Locke's underlying understanding of the transition from simple to more complex societies, and the corresponding complexity in social structure, see Schochet, "Family and Origins of State."
72. See Locke, I § 86 and II § 25.
73. Locke does see some basic inequality arising directly from the nature of labor itself, but these inequalities are amplified by money. "And as different degrees of Industry were apt to give Men Possessions in different Proportions, so this *Invention of Money* gave them the opportunity to continue and enlarge them" (Locke, II § 47, Laslett, *Two Treatises*, 301).
74. Why humans desire more than they need is not a question that Locke reflected upon, though earlier rights thinkers such as Pufendorf spend a great deal of time discussing God's intention in making humans the way they are. Locke simply takes for granted that this is how people are without asking the theological question of why God made humans this way or whether this was related to a "fall from grace." In this sense, Locke, like Hobbes (but in contrast to Pufendorf), sidesteps the theological questions that occupied the theological tradition and simply started with assumptions about human nature itself.
75. Macpherson, *Possessive Individualism*, 194–257.
76. Waldron, *Right to Private Property*, 165, also arrives at a similar conclusion.
77. I take it that this is in part the purpose of Rawls's conception of the "original position." As noted earlier, Dworkin, *Taking Rights Seriously*, 179–183 argues that Rawls's concept of the original position begins already by assuming the principle of equality, which is what makes the original position intelligible. It is beyond the present essay, but one can argue that Rawls gives in too easily to the arguments that market efficiency overrides the impulse to equality.
78. Locke, II § 7, § 8, and § 11 [italics in original]. See also II § 135 for mention of preservation of humankind in general. On this "social" dimension of Locke's theory, see Gough, *Political Philosophy*, 22–25, and Kendall, *Majority Rule*, which carried this interpretation to its logical interpretation.

Chapter 7

1. Locke, II § 124 and § 134. [italics in original]
2. Ibid., II § 123. [italics in original]
3. Ibid., II § 138. [italics in original]
4. See Hobbes, *Leviathan*, 13:3-4, 83; Locke (II § 123) describes enjoyment of property as unsafe and the state of nature as full of fears and continual dangers, and he (ibid., 137) emphasizes the purpose of government as the protection of property as well as peace and quiet. See also II § 127. Locke (II § 21) also says in very Hobbes-like language that "To avoid this State of War…is one great reason *of Mens putting themselves into Society* and quitting the State of Nature." See also II § 94, where Locke refers to leaving the

state of nature for safety and security, and II § 101, where he refers to "inconveniences of that condition [state of nature], and the love, and want of Society" that drove people together. For an interesting discussion and summary of Locke's understanding of the state of nature and the tensions in his view, see Simmons, "Locke's State of Nature."

5. Locke, II § 137. For Hobbes, there was no law in nature anyway and therefore no justice prior to society.

6. Locke, II § 77. For accounts of what Locke meant by the state of nature, see for example, Simmons, "Locke's State of Nature," and Ashcraft, "Political Philosophy."

7. See Locke, II §§ 123, 127, 137, where he assumes the development of political societies out of earlier human social groupings is almost inevitable.

8. If asked why humans were created by God to live in a fearful state of nature, the more theologically oriented, such as Pufendorf, would have said that humans were a distinctive animal just below the angels and thus given free will. And it was the ability to choose good versus evil that distinguished humans from animals. This theological question is one that neither Hobbes nor Locke takes up, in contrast to Pufendorf, who still operates in a more theological mode of thinking.

9. The boundaries of the states, according to Locke, would thus be worked out in similar ways to the boundaries of property between individuals. See, for example, Locke, II § 45, in his discussion of property, where he reflects on how early commonwealths and political groupings were extensions of individual property. Locke envisions it as a two-step contract, where individuals first contract together to form a political entity that now has rights to regulate the territory defined by their individual properties, and then the national entities contract with each other to define and recognize their boundaries. Here is Locke: "The several *Communities* settled the Bounds of their distinct Territories, and by Laws within themselves, regulated the Properties of the private Men of their Society, and so, *by Compact* and Agreement, *settled the Property* which Labour and Industry began; and the Leagues that have been made between several States and Kingdoms, either expressly or tacitly disowning all Claim and Right to the Land in the others Possession, have, by common Consent, given up their Pretences to their natural common Right, which originally they had to those Countries, and so have, by *positive agreement*, *settled a Property* amongst themselves, in distinct parts and parcels of the Earth." [italics in original]

Locke seems to be saying here that states or kingdoms first arise around individuals who acquired property through labor. They then go through a process of consenting to the boundaries of each other's territory. He thus envisions the agreements of states about what territories they oversee to follow after individuals already have their own properties. The dispute over boundaries of states is thus independent from a prior right of individuals to land for which they labored.

10. See, for example, Grotius, *Rights of War and Peace*, book 2, chap. 2:4, 22.

11. See Locke, II §§ 106–107 and §§ 71–76, and discussion in Schochet, "Family and Origins of State."

12. Locke, II § 121. "But since the Government has a direct Jurisdiction only over the land, and reaches the Possessor of it (before he has actually incorporated himself in the society) only as he dwells upon, and enjoys that: *The Obligation* any one is under, by virtue of such Enjoyment, to *submit to the government, begins and ends with the Enjoyment* [of the land]*;* so that whenever the Owner, who has given nothing but a *tacit Consent* to the government, will, by Donation, Sale or otherwise, quit the said Possession, he is at liberty to go and incorporate himself into any other Commonwealth; or to agree with others to begin a new one, in *vacuis locis*, in any part of the World, they can find free and unpossessed." [italics in original]

13. Locke, II §§ 8, 121, and 119. For discussion, see Schwartz, *Liberty in American Founding*, 141.

14. This was a standard critique of Locke by, for example, Hume, "The Original Contract," and others. For Locke's reflections on the question whether there ever was a state of nature and a contract that created a nation, see Locke, II §§ 14–15, 100–105. See Hobbes, *Leviathan*, 13:11, 85 where he asks the same question. Hobbes takes for granted a war in the state of nature until hostilities cease through a social contract. Thus he does not have the same dilemma in his theory as does Locke, since he never assumes there is a right to property until the commonwealth comes into existence.

15. Rawls argues that in the original position, people would agree to the principle of fairness, namely, that laws must work to the absolute benefit of the worst-off members of society. But what if the people in the original position could know or become suspicious that natural resources might be depleted? If they asked that question and concluded that it was feasible resources could be depleted, and they did not know in what time period they would live or in what country, they reasonably would not have agreed to rules of private property at all, at least in the form we now know them.

16. Locke, II § 175, feels this contradiction and tries to resolve it in his last chapter. He writes, "Though Governments can originally have no other Rise than that before mentioned [i.e., consent], nor *Polities* be *founded* on any thing but *the Consent of the People*; yet such has been the Disorders Ambition has fill'd the World with, that in the noise of War, which makes so great a part of the History of Mankind, this *Consent* is little taken notice of: And therefore many have mistaken the force of Arms, for the consent of the People; and reckon Conquest as one of the Originals of Government. But *Conquest* is as far from setting up any Government, as demolishing an House is from building a new one in the place. Indeed it often makes way for a new Frame of a Common-wealth, by destroying the former; but, without the Consent of the people, can never erect a new one [italics in original]." In this passage, Locke tries to reconcile his theory of consent with the actual historical nature of conquest and war. He argues that it is always consent that is the legitimate, rightful basis of government, even if it is not the historical basis of government. But Locke does not take up the question that if war and conquest undermine or disturb the rightful relationships of individuals to their property, then consent after the fact can't be based on a prior rightful allocation of property by the labor theory of property. Property is no longer matched rightfully to individuals, and

therefore individuals who consent to the state bring with them properties that they do not completely own.

17. See note 4 above.

18. See Locke, who makes this argument. Locke reflects on the modern just-war tradition that grew out of earlier Catholic arguments about what constitutes a just war. In the modern period, the concept of just war was developed by Grotius, who argued that some wars between nations were just. Locke's position diverges dramatically from Grotius. Grotius (*Rights of War and Peace*, book 1, chap. 2:4, 189, and book 3, chap. 2:8) had argued that a just war would entitle the conqueror to enslave the population, take their lands and property, and institute government or sovereignty.

Locke, by contrast, in one of the most difficult and convoluted parts of his *Second Treatise*, argues that if a people are conquered, whether in a just or unjust war, the state becomes legitimate only if the people who are conquered consent to the new entity. Thus consent in Locke's view remains the criterion of a rightful state, whether or not the war is just. Locke distinguishes a just from an unjust war based on who is the aggressor. The aggressor is always unjust, and if the aggressor wins, then even consent cannot make the state legitimate (II § 176). If the war was just, and those who were attacked won, then the sovereign has absolute authority over those who fought against him and has the right to enslave them. But even in this case the sovereign's power is only over those who fought and not their properties, wives, or children (II § 180). For a discussion of Locke's position, see Moseley, "Political Philosophy of John Locke."

19. Locke tries to make this argument about consent throughout II §§ 175–196. While Locke denies the right of conquest, he doesn't deal with or recognize the deeper problem with "consent." A postwar situation still involves the distortion of property rights from the way they should have been aligned based on the natural right of labor. There is no way to reconstruct the right alignment of property rights and labor. But Locke does not reflect on this problem. Hobbes, for his part, doesn't have this conceptual problem that faces Locke because he assumes that people have unlimited rights in nature, and thus stealing and conquest are right and just in some sense in nature. There is no "unjust" distribution of property caused by war and theft, at least in nature. The political state is the end of that state of war. And political states are still in a state of war with each other until they too conclude a treaty. The equality in nature as conceptualized by Hobbes does not expect a fair allocation of property, but fairness and equity arise only after the state is formed.

20. Nozick, *Anarchy*.

21. I see this question as intersecting with the interesting thinking in what has come to be called "postcolonial" theorizing.

22. Locke, II § 192. [italics in original]

23. In this sense, Hobbes's theory, in contrast to Locke's, seems to recognize more fully the actual messiness of history and the fact that the human species always had the tendency to violence. In Hobbes's view, there was no just distribution of property until the state was created. Justice is thus limited to within the state. The problem, then, is that Hobbes never envisions a solution between states themselves. There is no sovereign power beyond the state and thus no right beyond that of the state, though states may go through the same process as individuals in confronting each other in a state of war and eventually come to the decision to pursue peace.

24. Schwartz, *Liberty in America's Founding*.

25. See, for example, Stannard, *American Holocaust*; Williams, *American Indian*; Bergreen, *Columbus*; Banner, *How Indians Lost Land*.

26. See prior note on discussions of the conquest. I have written about this question from another perspective in Schwartz, *Liberty in America's Founding*.

27. Though Locke does not come to see the significance of this conclusion, it is implied by his very claim that conquest of an aggressor never justifies new government or the taking of property.

28. On Jefferson's views, see Schwartz, *Liberty in America's Founding*, 163–233.

29. See Stannard, *American Holocaust*, and Williams, *American Indian*, 119–125. On the comparison of British and Spanish conquests, see also Elliot, *Empires of the Atlantic*.

30. In my earlier work, Schwartz, *Liberty in America's Founding*, 166–67, I discuss the relationship of Jefferson's natural rights understanding to Locke's. On this point, Jefferson can be seen to be moving away from Locke, who argued that people cannot leave a state once they explicitly consent to become citizens.

31. Jefferson, *A Summary View*, in Boyd, *Papers*, 1, 122. See my discussion in Schwartz, *Liberty in America's Founding*, 39, and a review of the literature there.

32. Jefferson, ibid., 133.

33. See my discussion in *Liberty in America's Founding*, 237–307. While in many other ways Jefferson seems to rely on or align with Locke's view of rights, he passes over in silence in this context Locke's argument (II § 175–196) that conquest does not entitle conquerors, even in a just war, to the property of the vanquished. Jefferson would have known, however, that other political philosophers did think conquest was a foundation of right. As we shall see, Jefferson later will express the view that the Indians' land was purchased from them, though he suppressed his reservations about the legitimacy of that position (Banner, *How the Indians*, 50).

34. James Wilson, "*Considerations,*" 34, and discussion in Schwartz, *Liberty in America's Founding*, 40–41.

35. Taylor, *Papers of John Adams*, 317.

36. This view had been voiced earlier by some settlers throughout the colonial period, though it was not universally accepted in the colonies. See Banner, *How the Indians Lost Their Land,* for a discussion of the differing views on this topic and how in practice the colonies often purchased land from the Indians, recognizing native ownership.

37. Taylor, *Papers of John Adams*, 317.

38. See Schwartz, *Liberty in America's Founding*, 38–47, 61–65, for a discussion of how the question of the right to lands is essentially unanswered and hidden in the Declaration of Independence.
39. Others have discussed this paradox in the founding period, including Maier, *American Scripture*, 191–201; Bowen, *Miracle at Philadelphia*, 197–204; and Ellis, *Founding Brothers*, 81–119.
40. Grotius, *Rights of War and Peace*, book 2, chap. 20:40.4, 239. Jefferson likely would have been familiar with Grotius's theory since he had read Samuel Pufendorf, whose own theory of rights was influenced by and provided a commentary on Grotius. For a discussion of the ideas of conquest in the humanist and scholastic traditions prior to Grotius, see Tuck, *Rights of War*, 47–77, and for a discussion of Grotius's views, see ibid., 78–108.
41. Grotius, ibid., book 2, chap. 20, 48:1, 246. See Tuck, *Rights of War*, 103.
42. Ibid., book 2, chap. 20:40.3, 239; Tuck, *Rights of War*, 103.
43. Ibid., book 2, chapter 3:8, 96. [italics in original]
44. Ibid., book 3, chap. 8:3, 73; book 2, chap. 2:40.1 and 40.3, 238–9. See also Tuck, "Introduction," *Rights of War and Peace,* 16–17.
45. Ibid., book 8, chap. 6:6, 227. [italics in original]
46. Locke, II §§ 14, 36, 37, 41, 43; Grotius, *Rights of War and Peace,* book 2, chap. 2: 2.1, 19.
47. Grotius, ibid., book 2, chap. 2.7, 29, writes, "And if there be any waste or barren Land within our Dominions, that also is to be given to Strangers, at their Request, or may be lawfully possessed by them, because whatever remains uncultivated, is not to be esteemed a Property, only so far as concerns Jurisdiction, which always continues the Right of the antient People."
48. See chap. 5, note 70 and related discussion.
49. Grotius, *Rights of War and Peace*, book 2, chap. 2:2.1, 19. [italics in original]
50. Locke, II § 49. On Locke's discussion of whether there were ever people in a state of nature, see also II §§ 14, 41, 100–102, and his references to peoples of the Americas and Indians in those contexts. See also his allusion to Indians in his discussions of the origins of property, II § 30.
51. Locke, II § 36 and my discussion earlier (chapter 6) on Locke's assumption that resources and land are limitless.
52. Locke, II § 37 and see also II § 37; Laslett, *Two Treatises*, 294.
53. Locke, II § 34, [italics in original] see also II § 35. For discussion of this theme of taking possession of open wilderness, see Tuck, *Rights of War*, 120–126.
54. Vattel, *Law of Nations*, book 1, chap. 17 § 209, 100. Originally written in French in 1758, the book was translated into English in 1759. James Otis, for example, mentions Vattel in *The Rights of the British Colonies* (July 1764).
55. See Stannard, *American Holocaust*, for a lengthy argument on this point. But even if "holocaust" were not used, it is clear that it was a conquest.

56. Williams, *American Indian*, 44.
57. Ibid., 14.
58. Ibid., 79.
59. See Williams, *American Indian*; Stannard, *American Holocaust*.
60. Williams, ibid., 81–85.
61. Eilberg-*Schwartz*, *The Savage in Judaism*, 32–37.
62. See especially Stannard, *American Holocaust*.
63. Williams, *American Indian*, 99.
64. For discussions of discovery as the means of taking ownership, see Banner, *How the Indians*, chap. 1; Williams, *American Indian*, 78; Stannard, *American Holocaust*, 64–65; Robertson, *Conquest by Law*.
65. Robertson, *Conquest by Law*.
66. See Williams, *American India*n, 96–108, on this point.
67. Ibid., 104.
68. Hanke, *Aristotle and the American Indians*, 17.
69. Ibid., 54.
70. Ibid., 38.
71. Ibid., 74–95.
72. The question of similarities and differences between the Spanish and British conquests is an interesting and complex one and is discussed by Williams, *American Indian*, 119–225, and Elliot, *Empires*.
73. Vespucci, like Columbus, was Italian but was financed by Spain and Portugal. For a discussion of the transmission and translation of earlier Spanish ideas into English translations, see Williams, *American Indian*, 121–191.
74. On the conquest of the Irish being a model for conquest of the Indians, see Williams, *American Indian*, 140ff.
75. Ibid., 211.
76. Ibid. On the Indians' abilities with agriculture in general and the permanence of many of their settlements, see the discussion in Stannard, *American Holocaust*, 3–54, and Banner, *How the Indians*, 10–48.
77. Banner, ibid., 6–9, argues that property and sovereignty are separate concepts. At the level of "sovereignty," England and the settlers viewed the American land as unoccupied, meaning that England could justify its government of the territory, even though it was recognized that the property was owned by Indians. I find Banner's distinction of sovereignty from ownership confusing, since sovereignty of a commonwealth could only be applied to territory rightfully occupied by a people who comprised a society under that sovereign.
78. Banner, *How the Indians*, 13.
79. Ibid., 14.
80. Banner, *How the Indians*, offers a brilliant exposition of this issue.
81. Robertson, *Conquest by Law*.

82. Jefferson, *Notes on Virginia*, 497; see Banner, *How the Indians*, 50, on Jefferson's deleted note.

Chapter 8

1. Locke, II § 123.
2. Hobbes, *Leviathan*, 13:3-4, 83; Locke, II §§ 21, 94, 101, 123, 137, and see the longer summary above in chapter 7, note 4.
3. Our position on what the state or government should be and how it should act is thus tied deeply into and rests upon prior notions about our rights and property that were articulated in the early modern period. Indeed, in many ways the modern understanding of the state is really nothing more than an extension or expansion of the core ideas of individual rights and property that serve as its conceptual foundation. Since we have already questioned both the self-evidence of natural rights and the modern understanding of property that came with it, it stands to reason that the very conception of the state has to come under some serious scrutiny too.
4. In "The Original Contract," for example, David Hume calls the notion of a social contract a political myth analogous to the myth of divine right of kings.
5. The idea that states were founded on conquest, and not on consent, was a persistent theme prior to Locke, was familiar to many of the American founders, and was mentioned by some of the early American colonists. See, for example, the discussion in chapter 7.
6. See note 2.
7. I discussed this point in the previous chapter.
8. As discussed earlier, Locke actually waffles on this point, sometimes arguing that there is an actual state of nature and an actual social contract and at times suggesting it is an ideal state only. For Locke's reflections on the question whether there ever was a state of nature and a contract that created a nation, see Locke, II §§, 14–15, 100–105. See Hobbes, *Leviathan*, 13:11, where he asks the same question. Modern interpreters who still embrace something like a notion of social contract tend to portray it is as an ideal for which liberal states should strive. I take this to be part of the thrust of Rawls's work and also the way that Laslett, 93, makes Locke intelligible.
9. See doubts among the American founders about the social contract theory in my *Liberty in America's Founding*, 85–128, including summaries by James Otis, 100–101, on typical critiques of the idea of a social contract.
10. Locke, II § 59, 61, and discussion of how natural freedom and "subjection to parents" can subsist together.
11. See, for example, Locke, II §§ 75, 87, and Friedman, *Freedom and Capitalism*, 15, on the use of the umpire analogy.
12. On the view that states are like individuals in a state of nature with respect to each other, see, for example, Locke, II § 183; Hobbes, *Leviathan*, 13.12, 85, and discussion in Tuck, *Rights of War*, 8–9.

13. According to Alan Krueger, chairman of the Council of Economic Advisers, "Land of Hope and Dreams," "An astonishing 84 percent of total income growth from 1979 to 2011 went to the top 1 percent of families, and more than 100 percent of it from 2000 to 2007 went to the top 1 percent." For additional discussions see also Stiglitz, *Price of Inequality*.
14. For inequality falling unevenly across races and genders, see Stiglitz, *Price of Inequality*.
15. This link of property, industriousness, and fairness is evident already; see Pufendorf, *Law of Nature and Nations,* book 4, chap. 4:7, 367–368, as a justification of property. The importance of property to the self was developed most intensely in the modern period by Hegel. See Waldron, *Right to Private Property*, 129, 343–389.
16. A thoughtful critique of how conceptualizing payments to the disadvantaged as "charity" impacts self-esteem and self-value of recipients is offered by Munzer, *Theory of Property*, 110–119.
17. Locke, II § 138. [italics in original]
18. Tuck, *Hobbes*, 30.
19. See Skinner, *Hobbes and Republican Liberty*, 124; Tuck, *Hobbes*, 30.
20. Hobbes, *Leviathan*, 30:17, 229.
21. Ibid.
22. Ibid., 30:18, 230.
23. On dating of Locke's *Second Treatise*, see Laslett, *Two Treatises*, 45–66, which dates the *Second Treatise* to the period of 1679–81.
24. Locke, II § 140. [italics in original]
25. Ibid., II § 97. [italics in original]
26. For a more detailed reading of Locke in this way, see Kendall, *Doctrine of Majority Rule*.
27. Locke, II § 95. [italics in original]
28. Ibid., II § 42. [italics in original]
29. Ibid., II § 51, and see also II §46 and 50.
30. Locke, I § 42 [italics in original]. See also Grotius, *Rights of War and Peace*, book 2, chap. 2:6, 4.

Chapter 9

1. Friedman, *Freedom and Capitalism*, 15, 8.
2. See, for example, Boaz and *Crane*, *Market Liberalism*.
3. Friedman, *Freedom and Capitalism*, 15, 8.
4. A notable example is Richard Epstein. See Epstein, *Simple Rules*, 30; *Principles*, 9–39, and "Utilitarian Foundations," 718, where Epstein argues that the original natural rights theorists often used utilitarian arguments and thus in their conclusions converge in many ways with utilitarian conclusions. He suggests that the loss in faith in God has led to a

modern emphasis on those utilitarian reasons but that core concepts developed by the rights tradition make sense and are consistent with a utilitarian perspective.

5. Milton Friedman, Fredrick Hayek, and Moses Mises are the most famous of those applauded by the Right and libertarians.

6. See Nelson, "Study of Choice," 31, quoting Georgescue-Roegen, *Analytical Economics*, 341. See also Debreu "Mathematization of Economic Theory."

7. There are a number of critiques of neoclassical economics for its single-minded narrowing. These come from within and outside economics. Examples of writers in this tradition include Sen, Sunstein, Kuttner, Hawken, England, Mansbridge, Nelson, Sibley, among others.

8. See the psychoanalytic and psychological traditions emanating from Freud and Jung and more recent commentators on the psyche, such as James Hillman, *Suicide and Soul*.

9. On this other side of Smith, see, for example, Sen, *On Ethics and Economics*, 22–28. See also Raphael and A. L. Macfie, "Introduction" to *Moral Sentiments*, 29.

10. Smith, *Moral Sentiments*, 3.

11. The fundamental disagreement arises from the positions of Keynes, *The General Theory of Employment*, and the monetary understanding was put forward by Friedman and Schwartz, *A Monetary History*. There is a vast second literature on the subject and disagreement. For useful summaries, see, for example, Smiley, "Great Depression," and White, "Boom and Crash."

12. On this critique specifically to economics, see Kuttner, *Economic Illusion*, and essays in Ferber and Nelson, *Beyond Economic Man*, and R. Nelson, *Economics as Religion.*

13. See England and Folbre, "Contracting for Care," and Nelson, "Study of Choice" on the way in which families and care pose a fundamental challenge to traditional economist models and the new economic theorizing about care. See also essays in Mansbridge, *Beyond Self-Interest*, and Leibenstein, *Beyond Economic Man*. For a counterpoint that argues that altruism doesn't exist, see Epstein, *Principles*, 133–157, and "Utilitarian Foundations."

14. Nelson, "Study of Choice," 26.

15. Hobbes, *Leviathan*, chaps. 14 and 15 are eloquent on this point. For a recent perspective, see Epstein, *Simple Rules*, 71–90.

16. See, for example, Epstein, *Simple Rules*, 43. In smaller and simpler social situations, pressure through social mechanisms of disapproval can suffice to pressure compliance, though it is doubtful that such mechanisms can work in broader, more anonymous exchanges, thus requiring "law" to enforce compliance.

17. This is basically the position of Hayek, Friedman, and Epstein, among others.

18. See, for example, the summary of analyses in Barrow, *Critical Theories of State*, for an understanding of how capitalist class interests may be developed and maintained through roles, institutions, and structures of late capitalist economies.

19. These views are influenced by many writers, including Kuttner, Sunstein, Hawken, Sen, among others.

20. Those who favor a utilitarian perspective must try to argue for the end of slavery without invoking the notion of rights. See, for example, Epstein, "Utilitarian Foundations," which tries to derive all the core values of the natural rights tradition from a utilitarian perspective. For my tongue-in-cheek critique of natural rights theory on this point, see my essay on endorsing suicide and slavery as part of a free society in Schwartz, "Liberty and the Public Good."

21. I am distilling the insights from Kuttner, Hawken, and Sens. I also see Rawls as attempting to ask a similar question but not going far enough.

22. See Waldon, *Right to Property,* who anticipates this perspective.

23. This is one of the classic challenges to the utilitarian position in general. For a discussion of objections to utilitarian approaches in general, see, for example, a useful summary and references in Velasquez, *Business Ethics*, 73–87. Rawls tries to mitigate this challenge by arguing everyone would agree with a liberal political system if they were in the original position and had a veil of ignorance about what their position would be. Since they don't know whether they will be poor or rich in the original position, they can come to agreement on how the system is most fair, and thus they can live with it, whatever the results. But as critics have noted, this strips the individuals of all the things they might want to know in the original position and thus undermines the ability of those in the original position to make rational decisions. For a critical discussion of Rawls's thinking, see Daniels, ed., *Reading Rawls*.

24. See, for example, Rosenthal, "Smuggling Europe's Waste," and NPR staff, "Electronic Waste."

25. Examples have been documented in Donaldson and Gini, *Case Studies*.

26. See Hoffman, "The Ford Pinto," 207–214.

27. Smith, et al., "Dow Corning," 39–42, and Gini and Sullivan, "The Dalkon Shield," 221.

28. See Velasquez, *Business Ethics*, 73–87.

29. http://en.wikipedia.org/wiki/List_of_motor_vehicle_deaths_in_U.S._by_year and NHTSA.dot.gov, June 2012.

30. See Pfeffer, *Human Equation*, and O'Reilly and Pfeffer, *Hidden Value*.

31. See, for example, the record of safety in the garment industry in Bangladesh, Ali Manik and Yardley, "Gross Negligence in Factory Fire," McCarthy, "Bangladesh Collapse," and Clean Clothes Campaign, "Making Bangladesh Garment Industry Safe." Another example is the treatment of workers in the fast food industry, as documented in Schlosser, *Fast Food Nation*.

32. See the International Labour Organization report on child labor "Marking Progress against Child Labour."

33. For documentation in the fast food industry, see Schlosser, *Fast Food Nation*. Recently, labor abuses have been reported in Apple manufacturing plants, Associated Press staff, "China labor watchdog accuses Apple supplier of worker abuse." http://www.nbcnews.com/business/china-labor-watchdog-accuses-apple-supplier-worker-abuse-6C10783106.

34. Bowie and Lenway, "H. B. Fuller in Honduras."

35. See case studies documented by Pfeffer.

36. Friedman, "The Social Responsibility of Business."

37. See, for example, the various critiques in Ferber and Nelson, eds., *Beyond Economic Man*, and *Feminist Economics Today*.

38. On stakeholder theory, see Freeman, "Stakeholder Theory," and Goodpaster, "Stakeholder Analysis." See, for example, Benioff, *Compassionate Capitalism*.

39. In this sense, I take Friedman's argument about the purpose of business to be for the shareholders as a description of how things in reality are, but not as a description of what they morally should be, though Friedman believes this is the way it should be as well. For the complexity of trying to see the relationship between corporate executives, board members, shareholders, and class, see the discussions in Barrow, *Critical Theories of State*.

40. It is difficult to see how one can get to all of these values from a utilitarian account.

41. See Friedman, *Freedom and Capitalism*, 108–118.

42. Grotius, *Rights of War and Peace*, book 2, chap. 3:1–16, 32–39, on the air and sea. For a discussion, see Tuck, "Introduction," *Rights of War and Peace*.

43. On use of term "externalities" by economists, see, for example, Flynn, *Economics for Dummies*, chap 14. For a sustained alternative perspective, see books by Hawken.

44. For discussions of how future generations should figure into ethical calculations, see the discussion in Velasquez, *Business Ethics*, 308–312, and references there.

45. I take this to be one of the original points of Garrett James Hardin in his original essay on "The Tragedy of the Commons," and one point I agree with. In my reading of Hardin's original essay, his point is that the commons becomes a tragedy *only if it is not regulated and that regulation is needed to protect it*. One example he gives is the national parks, which are owned in common (public property) but must be regulated to protect them. His point is that without regulation, things cannot be owned in common successfully. It is beyond the present context to discuss the extensive subsequent scholarship and popular discussion of whether the commons always ends in tragedy or not, and I do not agree with some of Hardin's subsequent moral conclusions, such as his moral conclusions about preventing immigration in his metaphor of "Living on a Lifeboat."

46. See on this point Hawken, et al., *Natural Capitalism*, and Hawken, *Ecology of Commerce*.

Chapter 10

1. See Wilson, *Rationality*. This was already noted as a problem by Locke and others as they reflected on why non-Europeans did not all come to the same reasoned assumptions about social life. This remains a key problem that is unresolved by liberal societies.

2. In other words, even if we argue there is shared rationality in modes of thinking, the substantive conclusions of rational people are not always the same. On the argument that there is a universal understanding of right and wrong, see discussion in Tierney, *Idea of Natural Rights*, 2–3, and Gewirth, *Reason and Morality*.

3. See my discussion earlier on this point, in chapter 4 and notes to that chapter.

4. Whether it is possible to discern the founders' intent and whether that should govern or dictate what we believe and do is itself an interesting question that I take up in *Liberty in America's Founding*, 309–323. See also Levy, *Original Intent*.

Bibliography

Aarsleff, Hans. "The State of Nature and the Nature of Man in Locke." In *John Locke: Problems and Perspectives*, edited by John W. Yolton, 99–135.

Ashcraft, Richard. "Locke's Political Philosophy." In *The Cambridge Companion to Locke*, edited by Vere Chappell, 1994, 226–251.

Associated Press staff. "China Labor Watchdog Accuses Apple Supplier of Worker Abuse." NBC News. July 29, 2013. http://www.nbcnews.com/business/china-laborwatchdog-accuses-apple-supplier-worker-abuse-6C10783106.

Bailyn, Bernard, ed. *Pamphlets of the American Revolution*. 1750–1776. Vol. 1. Cambridge, MA: Belknap Press of Harvard University, 1965.

Banner, Stuart. *How the Indians Lost Their Land: Law and Power on the Frontier*. Cambridge, MA: Belknap Press of Harvard University, 2005.

Barnett, Randy E. *Restoring the Lost Constitution*: *The Presumption of Liberty*. Princeton: Princeton University Press, 2004.

Barrow, Clyde W. *Critical Theories of the State*: *Marxist, Neo Marxist, Post-Marxist*. Madison: University of Wisconsin, 1993.

Becker, Carl L. *The Declaration of Independence*. New York: Vintage Books, 1922.

Benioff, Mark, and Karen Southwick. *Compassionate Capitalism: How Corporations Can Make Doing Good an Integral Part of Doing Well*. Pompton Plains, NJ: Career Press, 2004.

Bentham, Jeremy. "Anarchical Fallacies: Being an Examination of the Declarations of Rights Issued During the French Revolution." In *The Works of Jeremy Bentham*. Vol. 2, edited by John Browring, 896–971. Edinburgh: William Tait, 1843.

Bergreen, Laurence. *Columbus: The Four Voyages 1492–1504*. New York: Penguin, 2011.

Blom, Hans W. *Causality and Morality in Politics: The Rise of Naturalism in Dutch Seventeenth-Century Political Thought*. Rotterdam, 1999.

Boaz, David, and Edward H. Crane. "Introduction: The Collapse of the Statist Vision." In *Market Liberalism: A Paradigm for the 21st Century*, edited by David Boaz and Edward H. Crane, 1–20. Washington, DC: Cato Institute, 1993.

Bowie, Norman, and Stefanie Ann Lenway. "H. B. Fuller in Honduras: Street Children and Substance Abuse." In *Case Studies in Business Ethics*. 4th ed., edited by Thomas Donaldson and Al Gini, 267–290.

Boyd, Julian, ed. *The Declaration of Independence*. The Library of Congress, 1999.

———. *The Papers of Thomas Jefferson*. Vol. 1. Princeton: Princeton University Press, 1950.

Brenan, Mary C. *Turning Right in the Sixties: The Conservative Capture of the GOP*. Chapel Hill: University of North Carolina, 1995.

Breyer, Stephen. *Active Liberty: Interpreting Our Democratic Constitution*. New York: Alfred A. Knopf, 2006.

Carey, George W. "Natural Rights, Equality, and the Declaration of Independence." *AveMaria Law Review*. 3:1 (2005): 45–67.

Chappell, Vere, ed. *The Cambridge Companion to Locke*. Cambridge: Cambridge University, 1994.

Chubb, Thomas, 1978 [1730]. *The Comparative Excellence and Obligation of Moral and Positive Duties*. New York: Garland.

Clean Clothes Campaign. "Hazardous Workplaces: Making the Bangladesh Garment Industry Safe." *http://www.cleanclothes.org/resources/publications/2012-11-hazardousworkplaces.pdf/view.* 2013.

Collins, Anthony, 1976 [1724]. *A Discourse on the Grounds and Reason of the Christian Religion*. New York: Garland.

Cox, R. H. *Locke on War and Peace.* Oxford: Oxford University Press, 1960.

Curran, Eleanor. "Hobbes on Equality: Context, Rhetoric, Argument." In *Hobbes Studies* 25. (2012):166–187.

Daly, James. "The Idea of the Absolute Monarchy in Seventeenth-Century England." *The Historical Journal* 21, no. 2 (June 1978), 227–250.

Daniels, Norman, ed. *Reading Rawls: Critical Studies on Rawls' "A Theory of Justice."* Stanford, CA: Stanford University Press, 1989.

Debreu, Gerard. "The Mathematization of Economic Theory." *American Economic Review* 81 (1991):1–7.

Detweiler, Philip F. "The Changing Reputation of the Declaration of Independence: The First Fifty Years." *William and Mary Quarterly,* 3rd ser. (1962):557–65.

Donaldson, Thomas, and Al Gini, eds. *Case Studies in Business Ethics*. Upper Saddle River, NJ: Prentice Hall, 1984.

Dunn, John. *The Political Thought of John Locke: An Historical Account of the Argument of the "Two Treatises of Government."* Cambridge: Cambridge University, 1969.

———. "The Politics of Locke in England and America in the Eighteenth Century." In *John Locke: Problems and Perspectives*, edited by John W. Yolton, 45–81.

Dworetz, Steven M. *The Unvarnished Doctrine. Locke, Liberalism, and the American Revolution*. Durham, NC: Duke University, 1990.

Dworkin, Ronald. *Taking Rights Seriously*. Cambridge, MA: Harvard University, 1977.

Eberstadt, Mary, ed. *Why I Turned Right*: *Leading Baby Boom Conservatives Chronicle Their Political Journey*. New York: Threshold Editions, 2007.

Eilberg-Schwartz, Howard. *The Savage in Judaism: An Anthropology of Israelite Religion and Ancient Judaism*. Bloomington: Indiana University, 1990.

Elkins, Stanley, and Eric McKitrick. *The Age of Federalism: The Early American Republic*, *1788–1800*. Oxford: Oxford University Press, 1993.

Elliot, J. H. *Empires of the Atlantic World: Britain and Spain in America, 1492–1830*. New Haven: Yale University Press, 2006.

Ellis, Joseph J. *American Sphinx: The Character of Thomas Jefferson*. New York: Vintage Books, 1996.

———. *Founding Brothers: The Revolutionary Generation*. New York: Vintage, 2000.

England, Paula. "Separable and Soluble Selves: Dichotomous Thinking in Economics." In *Feminist Economics Today: Beyond Economic Man*, edited by Marianne A. Ferber and Julie A. Nelson, 33–59.

England, Paula, and Nancy Folbre. "Contracting for Care." In *Feminist Economics Today: Beyond Economic Man*, edited by Marianne A. Ferber and Julie A. Nelson, 61–79. 2003.

Epstein, Richard A. *Principles for a Free Society: Reconciling Individual Liberty with the Common Good*. Reading, MA: Perseus Books, 1998.

———. *Simple Rules for a Complex World*. Cambridge, MA: Harvard University Press, 1995.

———. "The Utilitarian Foundations of Natural Law," *Harvard Journal of Law and Public Policy* 12 (1989):711–751.

Ferber, Marianne A., and Julie A. Nelson, eds. *Feminist Economics Today: Beyond Economic Man*. Chicago: The University of Chicago Press, 2003.

Feulner, Edwin J., Jr. *The March of Freedom: Modern Classics in Conservative Thought*. Dallas: Spence Publishing, 1998.

Filmer, Sir Robert. *Patriarcha: A Defence of the Natural Power of Kings against the Unnatural Liberty of the People*. In *Robert Filmer: Patriarcha and Other Political Works*, edited by Peter Laslett, 53–126. New Brunswick, NJ: Transaction Publishers, 2009 [1680].

Flynn, Sean Masaki. *Economics for Dummies*. Hoboken, NJ: Wiley Publishing, 2005.

Freeman, R. Edward. "Stakeholder Theory of the Modern Corporation." In *Ethical Issues in Business,* edited by Thomas Donaldson, Patricia Werhane, and Margaret Cording, 38–48.

Friedman, Milton. *Freedom and Capitalism*. Chicago: University of Chicago, 1962.

———. "The Social Responsibility of Business Is to Increase Its Profits." In *Ethical Issues in Business,* edited by Thomas Donaldson, Patricia Werhane, and Margaret Cording, 33–38.

Friedman, Milton, and Anna Schwartz. *A Monetary History of the United States, 1867–1960*. Princeton: Princeton University Press, 1963.

Gadamer, Hans-Georg. *Truth and Method*. New York: Continuum Publishing Group, 1979.

Ganter, Herbert Lawrence. "Jefferson's "Pursuit of Happiness' and Some Forgotten Men." *William and Mary College Quarterly*. Part 1. 2nd ser. 16:3 (July 1936): 422–434; Part 2, 16:4 (Oct. 1936): 558–585.

Gay, Peter. *Deism: An Anthology*. Princeton: D. Van Nostrand, 1968.

Georgescu-Roegen, Nicholas. *Analytical Economics*. Cambridge, MA: Harvard University Press, 1966.

Gerber, Scott. *To Secure These Rights: The Declaration of Independence and Constitutional Interpretation*. New York: New York University, 1995.

Gewirth, A. *Reason and Morality*. Chicago: University of Chicago Press, 1978.
Gini, Al, and Terry Sullivan. "A. H. Robins: The Dalkon Shield," In *Case Studies in Business Ethics*. 4th ed., edited by Thomas Donaldson and Al Gini, 215–223.

Glendon, Mary Ann. *Rights Talk: The Impoverishment of Political Discourse*. New York: The Free Press, 1991.

Goodpaster, Kenneth E. "Business Ethics and Stakeholder Analysis." In *Ethical Issues in Business*, edited by Thomas Donaldson, Patricia Werhane, and Margaret Cording, 49–60.

Gough, J. W. *John Locke's Political Philosophy*. Oxford: Clarendon Press, 1973.

Grotius, Hugo. *The Rights of War and Peace* [*De Iure Belli ac Pacis*], edited by Richard Tuck, from the edition by Jean Barbeyrac. Liberty Fund: Indianapolis. 2005 [1625]. http://oll.libertyfund.org/title/1425

Hanke, Lewis. *All Mankind Is One: A Study of the Disputation between Bartolomé de Las Casas and Juan Ginés de Sepúlveda on the Religious and Intellectual Capacity of the American Indians*. DeKalb: Northern Illinois, 1974.

———. *Aristotle and the American Indians*. Bloomington: Indiana University, 1975.

———. *The Spanish Struggle for Justice in the Conquest of America*. Dallas: Southern Methodist, 2002.Hannity, Sean. *Let Freedom Ring*. Harper: New York, 2002.

Hardin, Garrett James. "Living on a Lifeboat." *The Social Contract.* Fall 2001: 36–47.

———. "The Tragedy of the Commons." *Science*. Vol. 162 (1968): 1243–1248.

Harris, Marvin. *The Rise of Anthropological Theory*. Lanham, MD: AltaMira Press, 1969.

Hatcher, John. *Plague, Population, and the English Economy, 1348–1530.* New York: Macmillan, 1977.

Hawken, Paul. *The Ecology of Commerce*: *A Declaration of Sustainability*. New York: HarperBusiness, 1993.

Hawken, Paul, Amory Lovins, and L. Hunter Lovins. *Natural Capitalism: Creating the Next Industrial Revolution*. Boston: Little, Brown and Company, 1999.

Hayek, Friedrich A. The *Constitution of Liberty.* Chicago: University of Chicago Press, 1960.

———. *The Road to Serfdom.* Chicago: University of Chicago Press, 1994.

Herbert of Cherbury. *De Religione Laici*. Trans. Harold L. Hutcheson. New Haven: Yale University, 1944 [1645].

———. *De Veritate*. 3rd ed. Translated by Merick H. Carré. Bristol: J. W. Arrowsmith, 1937 [1624].

Hilman, James. *Suicide and Soul.* Harper & Row, 1965.

Hirsch, E. D. *Validity in Interpretation*. New Haven: Yale University Press, 1967.

Hobbes, Thomas. *Leviathan.* Edited by J. C. A. Gaskin. Clarendon: Oxford University Press, 2005 [1651].

———.Thomas. *Leviathan*. Oxford: Oxford University Press, 1909 [1651 repr.]

Hoekstra, Kinch. "Hobbesian Equality." In *Hobbes Today*, edited by S. A. Lloyd. Cambridge: Cambridge University, 2013.

Hoffman, W. Michael, 1984. "The Ford Pinto." In *Case Studies in Business Ethics*. 4th ed. Edited by Thomas Donaldson and Al Gini, 207–21.

Hume, David. "The Original Contract." In *Essays, Moral, Political, Literary*, edited by Eugene F. Miller, 199–208. Indianapolis: Liberty Fund, 1987 [1777], http://oll.libertyfund.org/Home3/EBook.php?recordID=0059.

Hutcheson, Harold L. "Introduction" to *De Religione Laici*, by Lord Herbert of Cherbury. New Haven: Yale University, 1944.

International Labour Organization. "Marking progress against child labour," 2013. http://www.ilo.org/ipec/Informationresources/WCMS_221513/lang--en/index.htm.

Jayne, Allen. *Jefferson's Declaration of Independence: Origin, Philosophy, and Theology*. Lexington: University of Kentucky Press, 1998.

Jefferson, Thomas. *Notes on the State of Virginia*. In *The Works of Thomas Jefferson*, Vol. 3, edited by Paul Leicester Ford, 494–512. New York: G. P. Putnam's Sons, 1904 [1781].

Jewish Publication Society. *TANAKH: The Holy Scriptures*. The New JPS Translation According to the Traditional Hebrew Text. Philadelphia: The Jewish Publication Society, 1988.

Jolley, Nicholas. "Locke on Faith and Reason." In *The Cambridge Companion to Locke's "Essay Concerning Human Understanding*," edited by Lex Newman, 436–455. Cambridge: Cambridge University. 2007.

Kendall, Willmoore. *John Locke and the Doctrine of Majority Rule*. Urbana: University of Illinois, 1959.

Keynes, John Maynard. *The General Theory of Employment, Interest, and Money*. Amherst, NY: Prometheus Books, 1997 [1936].

King James Bible. http://www.kingjamesbibleonline.org/.

Krueger, Alan B. "Land of Hope and Dreams: Rock and Roll, Economics, and Rebuilding the Middle Class." June 12, 2013, http://www.whitehouse.gov/blog/2013/06/12/rock-and-roll-economics-and-rebuilding-middle-class#fulltext.

Kuhn, Thomas. *The Structure of Scientific Revolutions*. Chicago: The University of Chicago Press, 1962.

Kuttner, Robert. *The Economic Illusion: False Choices between Prosperity and Social Justice*. Philadelphia: University of Pennsylvania, 1984.

———. *Everything for Sale: The Virtues and Limits of Markets*. Chicago: University of Chicago, 1996.

Laslett, Peter, ed. "Introduction" to *Locke: Two Treatises of Government,* 3–127. Cambridge: Cambridge, 1960.

———. "Introduction" to *Robert Filmer: Patriarcha and Other Political Essays*, 1-46. New Brunswick, NJ: Transaction Publishers, 2009.

Leibenstein, Harvey. *Beyond Economic Man: A New Foundation for Microeconomics*. Cambridge, MA: Harvard University, 1976.

Letwin, William. *The Origins of Scientific Economics*. Garden City: Doubleday, 1964.

Levy, Leonard W. *Original Intent*. Chicago: Ivan R. Dee, 1988.

Lewin, Mark R. *Liberty and Tyranny: A Conservative Manifesto*. New York: Threshold Editions, 2009.

Locke, John. *An Essay Concerning Human Understanding*. Amherst, NY: Prometheus, 1995 [1693].

———. *Essays on the Law of Nature*, edited by W. von Leyden. Oxford: Clarendon, 1954 [1660].

———. "Of Ethick in General." In *The Life of John Locke: With Extracts from His Correspondence, Journals, and Common-Place Books,* 308–313. Edited by Lord Peter King. London: H. Colburn and R. Bentley, 1829 edition [1886–87], or vol. 2:122–133, 1830 edition.

———. *Two Treatises of Government*, edited by Peter Laslett. Cambridge: Cambridge. 1960 [between years 1679–1690].

———. *The Works*. Vol. 1. *An Essay Concerning Human Understanding*. 12th ed. Online Library of Liberty. London: Rivington, 1824 [1689].

Macpherson, C. B. *The Political Theory of Possessive Individualism*. Oxford: Oxford University, 1962.

———. *Democratic Theory*. Oxford: Clarendon, 1975.

Madison, James. *Notes of Debates in the Federal Convention of 1787*. New York: W. W. Norton, 1987 [1840].

Maier, Pauline. *American Scripture*. New York: Vintage Books, 1997.

———. *Ratification: The People Debate the Constitution, 1787–1788*. New York: Simon and Schuster. 2010.

———. "The Strange History of "All Men Are Created Equal.' " *Washington and Lee Law Review*. 56:3, (1999): 873–878.

Manik, Julfikar Ali, and Jim Yardley. "Bangladesh Finds Gross Negligence in Factory Fire." *New York Times*. Dec. 17, 2012. http://www.nytimes.com/2012/12/18/world /asia/bangladesh-factory-fire-caused-by-gross-negligence.html?_r=0.

Mansbridge, Jane J. *Beyond Self-Interest*. Chicago: The University of Chicago, 1990.

Manuel, Frank. *The Changing of the Gods*. Hanover: University Press of New England, 1983.

———. *The Eighteenth Century Confronts the Gods*. Cambridge, MA: Harvard University, *1959*.

McCarthy, Julie. "Bangladesh Collapse: The Garment Workers Who Survived." National Public Radio. July 10, 2013. http://www.npr.org/blogs/parallels/2013/07/10/200644781/Bangladesh-Collapse-The-Garment-Workers-Who-Survived.

McIlwain, Charles Howard. "Introduction." *The Political Works of James I*. Cambridge, MA: Harvard University Press, 1918.

Milton, J. R. "Locke's Life and Times." In *The Cambridge Companion to Locke*, edited by Vere Chappell, 1994, 5–25.

Moseley, Alexander. "Political Philosophy of John Locke." In *Internet Encyclopedia of Philosophy*, edited by James Fieser and Bradley Dowden, 2005. http://www.iep.utm.edu/locke-po/#H1.

Munzer, Stephen R. *A Theory of Property*. Cambridge: Cambridge University Press, 1990.

Napolitano, Andrew P. *The Constitution in Exile: How the Federal Government Has Seized Power by Rewriting the Supreme Law of the Land*. Nashville: Nelson, 2006.

National Public Radio Staff. "After Dump, After Dump, What Happens To Electronic Waste?" December 21, 2010. http://www.npr.org/2010/12/21/132204954/after-dump-what-happens-to-electronic-waste.

Nelson, Julie A. "Separative and Soluble Firms: Androcentric Bias and Business Ethics." In *Feminist Economics Today: Beyond Economic Man*, edited by Marianne A. Ferber and Julie A. Nelson, 81–99.

———. "The Study of Choice or the Study of Provisioning? Gender and the Definition of Economics." In *Beyond Economic Man*, edited by Marianne A. Ferber and Julie A. Nelson, 23–36.

Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic, 1974.

Okun, Arthur. *Equality and Efficiency: The Big Tradeoff*. Washington: The Brookings Institute, 1975.

O'Reilly, Charles A., III. *Hidden Value: How Great Companies Achieve Extraordinary Results with Ordinary People*. Boston: Harvard Business School, 2000.

Otis, James. "The Rights of the British Colonies Asserted and Proved." In *Pamphlets of the American Revolution*, *1750–1776*. Vol. 1, edited by Bernard Bailyn. Cambridge, MA: Belknap Press of Harvard University, 1992 [1764].

Paul, Ron. *A Foreign Policy of Freedom*, Lake Johnson, TX: Foundation for Rational Economics and Education, 2007.

———. *Liberty Defined*. New York: Grand Central, 2011.

Peffer, Jeffrey. *The Human Equation: Building Profits by Putting People First*. Boston: Harvard Business School, 1998.

Pufendorf, Samuel. *Of the Law of Nature and Nations*. 8 vols. 4th ed., translated by Basil Kennett. Based on the edition by Jean Barbeyrac. London. 1729 [1672].

Raphael, D. D., and A. L. Macfie, ed. "Introduction." *The Theory of Moral Sentiments*. Vol. 1 of the Glasgow Edition of the Works and Correspondence of Adam Smith. Indianapolis: Liberty Fund, 1982.

Rawls, John. *A Theory of Justice*. Cambridge, MA: Belknap Press of Harvard University Press, 1971.

Reynolds, Frank E., and David Tracy. *Myth and Philosophy*. Albany: State University of New York Press, 1990.

Rickless, Samuel C. "Locke's Polemic against Nativism." In *Locke's "Essay Concerning Human Understanding,"* edited by Lex Newman. 2007. Cambridge: Cambridge University. 2007.

Robertson, Lindsay G. *Conquest by Law: How the Discovery of America Dispossessed Indigenous Peoples of Their Lands*. Oxford: Oxford University, 2005.

Rorty, Richard. *Objectivity, Relativism, and Truth*. Cambridge: Cambridge University, 1991.

Rosenthal, Elisabeth. "Smuggling Europe's Waste to Poorer Countries" *New York Times*. September 27, 2009. http://www.nytimes.com/2009/09/27/science/earth/27waste.html?pagewanted=all&_r=2&#.

Scalia, Antonin. *A Matter of Interpretation*: *Federal Courts and the Law*. Princeton: Princeton University, 1997.

Schlosser, Eric. *Fast Food Nation: The Dark Side of the All-American Meal.* New York: Houghton Mifflin, 2001.

Schochet, Gordon J. "The Family and the Origins of the State in Locke's Political Philosophy." In *John Locke: Problems and Perspectives*, edited by John W. Yolton, 81–98, 1969.

Schwartz, Howard I. *Liberty in America's Founding Moment: Doubts about Natural Rights in Jefferson's Declaration of Independence*. San Francisco: Other Ideas Press, 2010.

———. "Liberty is Not Freedom," FreedomandCapitalism.com, April 2007.

———. "Liberty and the Public Good: Endorsing Suicide and Slavery as Part of a Free Society." FreedomandCapitalism.com, February 2007.

———. "Why "Market Liberals' Are Not "The True Liberals' or Who Really Inherits the Liberty Tradition?" FreedomandCapitalism.com, March 2007.

———. "Why Can't My Daughter Drive a Tank? Reflections on the Meaning of Liberty and Freedom in a Civil Society." FreedomandCapitalism.com, April 2007.

Sen, Amartya. *Development as Freedom*. Anchor: New York, 1999.

———. *On Ethics and Economics*. Oxford: Blackwell. 1987.

———. *Rationality and Freedom*. Cambridge, MA: The Belknap Press of Harvard University, [2002].

Shain, Barry, ed. *The Nature of Rights at the American Founding and Beyond*. Charlottesville: University of Virginia, 2007.

Sibley, Angus. *The "Poisoned Spring" of Economic Libertarianism*. Paris: Pax Romana, 2011.

Simmons, John. "Locke's State of Nature." In *The Social Contract Theorists*, edited by Christopher W. Morris, 97–120. Lanham, MD: Rowman and Littlefield, 1999.

Skinner, Quentin. *The Foundations of Modern Political Thought*. 2 vols. Cambridge: Cambridge University, 1998.

———. *Hobbes and Republican Liberty*. Cambridge: Cambridge University, 2008.

———. *Liberty before Liberalism*. Cambridge: Cambridge University Press, 1998.

Smiley, Gene. "Great Depression." In *The Concise Encyclopedia of Economics*. 2008. Library of Economics and Liberty, [2013]. http://www.econlib.org/library /Enc/GreatDepression.html.

Smith, Adam. *The Theory of Moral Sentiments*. New York: Prometheus, 2000 [1759].

———. *Wealth of Nations*. Amherst, NY: Prometheus Books, 1991 [1976].

Smith, N. Craig, Andrew D. Dyer, and Todd E. Himstead. "Dow Corning Corporation: Marketing Breast Implant Devices." In *Case Studies in Business Ethics*. 4th ed., edited by Thomas Donaldson and Al Gini, 39–52.

Stannard, David E. *American Holocaust: The Conquest of the New Worl*d. Oxford: Oxford University Press, 1992.

Stiglitz, Joseph E. *The Price of Inequality*: *How Today's Divided Society Endangers Our Future*. New York: W. W. Norton, 2013.

Strauss, Leo. *Natural Right and History*. Chicago: The University of Chicago, 1950.

Springboard, Patricia, ed. *The Cambridge Companion to Hobbes's Leviathan*. Cambridge: Cambridge University, 2007.

Sunstein, Cass R. *Free Markets and Social Justice*. New York: Oxford University, 1997.

———. *The Second Bill of Rights: FDR's Unfinished Revolution and Why We Need It More Than Ever*. Basic: New York, 2004.

Syse, Henrik. *Natural Law, Religion, and Rights*: *An Exploration of the Relationship between Natural Law and Natural Rights*. South Bend, IN: St. Augustine's Press, 2007.

Taylor, Robert J., et al. *Papers of John Adams*. Vol. 1. Cambridge, MA: The Belknap Press of Harvard University, 1977.

Tierney, Brian. *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law 1150–1625*. Grand Rapids, MI: William B. Eerdmans, 1997.

Tindal, Matthew. *Christianity as Old as Creation*. London, 1730.

Trible, Phyllis. *God and the Rhetoric of Sexuality*. Philadelphia: Fortress, 1983.

Tuck, Richard. *Hobbes: A Very Short Introduction*. Oxford: Oxford University, 1989.

———. *Natural Rights Theories: Their Origin and Development*. Cambridge: Cambridge University Press, 1979.

———. "Introduction." In *The Rights of War and Peace* [De Iure Belli ac Pacis]. Edition by Jean Barbeyrac. Liberty Fund: Indianapolis, 2005. http://oll.libertyfund.org/title/1425.

———. *Philosophy and Government*, 1572–1651. Cambridge: Cambridge University, 1993.

———.*The Rights of War and Peace. Political Thought and the International Order from Grotius to Kant*. Oxford: Oxford University Press, 1999.

Tully, James. *A Discourse on Property: John Locke and His Adversaries*. Cambridge: Cambridge University, 2006.

Vattel, Emer de. *The Law of Nations or the Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and of Sovereigns.* London: C. G. and J. Robinson, 1797 [1758].

Velasquez, Manuel G. *Business Ethics: Concepts and Cases*. 5th ed. Upper Saddle River, NJ: Prentice Hall, 2002.

Viguerie, Richard A., and David Franke. *America's Right Turn: How Conservatives Used New and Alternative Media to Take Power*. Chicago: Bonus Books, 2004.

von Leyden, W. "Introduction." *Essays on the Law of Nature*, by John Locke. Oxford: Clarendon, 1954.

Waldron, Jeremy. *The Right to Private Property*. New York: Clarendon University, 2002.

White, Eugene N. "The Stock Market Boom and Crash of 1929 Revisited." *Journal of Economic Perspectives* 4:2 (Spring 1990), 67–83.

Williams, Bernard. "The Idea of Equality." In *Problems of the Self*, 230–250. Cambridge: Cambridge University Press, 1973.

Williams, Robert A., Jr. *The American Indian in Western Legal Thought: The Discourses of Conquest*. New York: Oxford University, 1990.

Wills, Gary. *Inventing America. Jefferson's Declaration of Independence*. Garden City, NJ: Doubleday, 1978.

Wilson, Bryan R., ed. *Rationality*. Oxford: Basil Blackwell, 1970.

Wilson, James. *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament.* In *Collected Works of James Wilson,* edited by Kermit L. Hall and Mark David Hall. Indianapolis: Liberty Fund, 2007 [1770].

Wolterstorff, Nicolas, "Locke's Philosophy of Religion." *The Cambridge Companion to Locke,* edited by Vere Chappell, 172–198.

Wootton, David. *The Essential Federalist and Anti-Federalist Papers.* Indianapolis: Hackett Publishing, 2003.

Wrigley, E. A., and R. S. Schofield. *The Population History of England: 1541–1871.* Cambridge: Cambridge University Press, 1989.

van Velthuysen, Lambert. *Epistolica dissertatio de principiis justi et decori, continens apologiam pro tractatu clarissimi Hobbaeit De Cive*. Amsterdam: L. Elzevit, 1651.

Yolton, John, ed. *John Locke: Problems and Perspectives*. Cambridge: Cambridge University Press, 1969.

Zuckert, Michael P. *Natural Rights and the New Republicanism*. Princeton: Princeton University Press, 1994.

Index