**Who Owns the World?** [Joe Mintoff, 22/8/22]

According to John Locke, labor can create rights to un-owned things, and in particular rights to un-owned land. He starts from the axiom that **(1)** God has given the world to man in common for the "best advantage of life and convenience" (*Second Treatise*, ¶26). But that fruit on that tree will advantage me only if there is some way I can rightly remove it from the commons and use it for myself. Luckily, there *is* a way, for **(2)** "though the earth and all inferior creatures be common to all men, yet every man has a property in his own person; this nobody has any right to but himself. The labor of his body, and the work of his hands, we may say, are properly his. [**(3)**] Whatsoever [eg, the fruit] he then removes out of the state that nature has provided and left it in, he has mixed his labor with, and joined to it something that is his own, and thereby makes it his property" (¶27). But **(4)** there are two provisos. First, you may take only what you can use: "as much as any one can make use of to any advantage of life before it spoils, so much may he by his labor fix a property in; whatever is beyond this is more than his share and belongs to others" (¶31). Second, you must leave enough and as good for others: "no man but he can have a right to what [his labor] is once joined to, at least where there is enough, and as good left in common for others" (¶27).

Introduction

In this essay, I'm interested in Locke's claim that God gave the world to humans in common. On the face of it, this claim has two rather obvious problems.

First, there is no God and no-one actually gave us the world. Accordingly, I shall talk instead about humans *owning* the world in common, since that would have been the result if God *had* giving us the world in common. I shall say, as a first approximation, that someone **owns** something when they have an enduring exclusionary right to use it, in that (a) it is morally permissible for them to use it, without anyone else's consent, and (b) it is morally impermissible for anyone else to use it, without their consent. This applies in the obvious way to land ownership. Further, I shall assume that morality exists in the state-of-nature. Two individuals (or nations) are in a **state-of-nature** with respect to each other when there is no one sovereign to whose laws they are both subject. Thus, in 1788, the British and the Eora were in a state-of-nature with respect to each other, there being no law-making body covering them both. Even so, they all had various (natural) rights to treated in certain ways, which depended in no way on their having been *granted* those rights, whether by some individual, by some community, or even by God. Our question will concern the extent to which humans have rights to *land*.

Second, even if humans originally owned the world in common, right now humans own much less of it in common. Actually, this is not much of a restriction. For there is still plenty that is (or was) un-owned: (a) the land occupied by indigenous peoples, before they first arrived, the discussion of which is highly relevant to the issue of whether they owned the land when European incursions began; (b) the oceans and skies today, except for maritime and airspace exclusion zones (which, being the result of international agreements, only establish *conventional* rather than *natural* rights over them), as well as (b') the fish and birds that occupy them, again excluding the claims of some indigenous peoples and some nation-states to (eg) exclusive fishing rights in various zones, and (b") the land under the oceans, currently being exploited by deep-sea mining; finally, (c) the moon and other heavenly bodies (eg Mars, asteroids), also potential sites of mineral exploitation, and also the subject of international treaties (such as the [Moon Agreement](https://www.unoosa.org/pdf/gares/ARES_34_68E.pdf)). Our question will concern the extent to which humans have *natural* rights to land.

My aim, therefore, is to determine in what sense it is true that humans own the world in common.

The World as Commons – What Might it Mean?

There are familiar ways of conceptualizing the claim, more generally, that that some community owns some portion of land in common.

(i) That it is no-one's property (***res nullis***)—it belongs to no-one (no individual, nor group, nor the community as a whole), so that each individual *may use and appropriate* portions of it as they please, though perhaps subject to various constraints. Locke seems to think that in the beginning the world was *res nullius*, since he says that each could use and appropriate as they pleased, so long as they left "enough and as good" for others.

(ii) That it is a **common possession** (*res communis*)—it belongs to no-one, in the stronger sense that each individual *may use, but not appropriate*, portions of it as they please (again, perhaps subject to various constraints). The high seas are a current example, the relevant constraints in this case being the laws of the sea. Leasehold (for mining, logging, grazing, etc), which permits extraction of resources but not ownership of land, also provides a good model, except that these rights operate in civil society rather than the state of nature.

(iii) That it is **public property** (*res publica*)—it belongs to the community as a whole, in the sense that each individual may use (or appropriate) any portion of it only *with the permission of the community*. For example, public parks allow regulated use but no appropriation, while leasehold land permits some form of ownership as well, but with the understanding that the community remains the ultimate owner.

The public property conception needs to be tweaked. On this view, an individual may use (or appropriate in) the commons only with the consent of the community. This seems to refer to the *actual* consent of an *actual* community. But if so, then, while this might be fine in a small face-to-face community, or a large impersonal community with organized governance, there is an obvious problem with applying it to humanity as a whole: since, as Locke puts it, "if such a consent as that was necessary, man [and groups] had starved, notwithstanding the plenty God had given him" (¶28). Humanity is not an actual community, and, even if it were, it might take too long get actual consent. So this had better refer to *hypothetical* consent. According to Kant, appropriation in the state-of-nature is permissible when doing so conforms with "the Idea of a possible united will" (*Metaphysics of Morals*, p. 258[80]), which I interpret to mean that it is *a priori* that it would be legalized by any civil society were to unite the wills of all affected, which is to say that this is true depending only on the *pure idea* of a hypothetical united will and not at all on any *empirical claim* about any actual civil society. Humanity is not united, and an individual cannot wait on humanity before using or appropriating some portion of the world, but they *can* ask themselves whether their actions would be approved by any body (approximated by the United Nations?) that were to unite the wills of all humans. A better understanding of the public property conception is therefore that, even if the individuals in a commons do not comprise a community, they all still own it, in the sense that each may use (or appropriate) any portion of it only in accord with the would-be permission of their would-be community.

(iv) That it is their **common heritage** (*res communis humanitatis*)—it belongs to the community, in the sense that each individual may use (or appropriate) any portion of it only if they *share the benefits with the community*. For example, according to the [Moon Agreement](https://www.unoosa.org/pdf/gares/ARES_34_68E.pdf), the benefits of the natural resources of the moon are to equitably shared, "whereby the interests and needs of the developing countries, as well as the efforts of those countries which have contributed directly or indirectly to the exploitation of the moon, shall be given special consideration" (Article 11, Clause 7(d)).

The World as Commons – In What Sense True?

So, in which of these senses does humanity own the world in common?

First, we can eliminate the common heritage conception, in general, since it reduces to the public property conception. In the first place, the latter is the *default* conception of the two. Both assert that the relevant community owns the relevant portion of land. But we have said that an agent owns something when (a) it is permissible for them to use it and (b) others may not use it without their consent. It follows that individuals (or groups—I won't keep mentioning this) may not use that land without the consent of that community, which is simply the public property conception. In the second place, it is also the *preferable* conception. For it *might* be best for the community *not* to require that the benefits of using land be "shared" with the community, contrary to the common heritage conception—thus, it turns out that the Moon Agreement has not been ratified by any of the space-faring nations, who seem deterred by the obligation to share the natural resources they extract with less-developed non-contributing nations, and if this really is the explanation, then it might best for the international community not to require any such thing—assuming that to "share" the resources they extract, mining nations need to do more than just offer them for sale, but must also offer some portion of them gratis to non-contributing nations, just as the Americans distributed some of their moon rocks from the Apollo program. But if the community decides that privatization is in its best interests, *and if it really owns the land*, then what grounds is there for prohibiting such a decision? If individuals should share the benefits they take from it, then the best explanation of this requirement will be that *that* is what the community decides is in its own best interest. Accordingly, the world is *not* the common heritage of humanity.

Second, consider Kant's argument that the world is public property, or, as he puts it, we have an **original community** in land. For I have a right to some portion of land only if others are obliged not to use it without my consent (p. 245[68]). But my mere *declaration* that it is mine or that I intend to use it does not by itself imply that it *is* mine or that I *may* use it, since others may well disagree given that they will also want land (p. 267[87]) and given that there is only so much to go around (p. 262[83-4]), and since my unilateral will cannot bind others to refrain from using a thing (p. 261[82]). Rather—a fundamental premise, about the nature of morality—all rights and obligations require "a will that is omnilateral, that is united not contingently but a priori and therefore necessarily, ... for only in accordance with this principle is it possible for the free choice of each to accord with the freedom of all" (p. 263[84]). That is, I acquire a right and others an obligation ultimately only by the decision of some single will that unites all our individual wills—as would occur if we each agreed, in general, to have our dispute decided by some single objective process, or, in particular, to enter into civil society precisely to resolve this and other matters of disagreement—for only in this way is the freedom of everyone respected even if in the end some win and others lose. But if my right (or not) to use or appropriate some portion of land it is ultimately determined by the will of all joined together, then *the land must originally be owned by all of us* (joined together) who would approve (or forbid) my actions (p. 250[72]). And, by definition, this means that the land is *public property*, owned by humanity as a whole.

This is an interesting argument, but we need not be convinced.

Basically, the fundamental premise is false, since it contradicts the individual's right of free association. For if, as it states, individuals in the state of nature have a duty to use and appropriate land in accord with the *hypothetical* united will of all, then they must also have a duty to *actually* unite all their wills in this manner—for why should we obey the decisions of some hypothetical umpire, if we are not obliged to appoint any umpire in the first place?—which is to say that they have a duty to enter the civil condition. Kant says as much, and claims further that the duty comes with "a right to constrain [!] everyone with whom we could have any dealings to enter with us into a constitution in which external objects can be secured as mine or yours" (p. 256[78]), though he does not say what this "constraint" consists in. But we have *no such duty*, since we have the right to choose our relationships with others (if they will have us)—perhaps with our parents and family, but certainly with complete strangers in our own nation and overseas—and if we may reject any relationship with (say) complete strangers in which they would have a (no doubt small) say in our actions, then obviously we may reject any such relationship with humanity as a whole, of which they are a part.

Therefore, given all this, we must distinguish between the duties we have to others. For humanity is not a community. Not as a matter of fact, since each of us know so very few members of humanity, and what sort of community is that? Nor as a matter of obligation, as we saw in the last paragraph. So we must distinguish between the duties we have to others based on our common humanity, and the (further) duties we have to others based on our common membership of some community. You and I disagree over my use of some plot of land. If we are members of the same community, then we *are* obliged to submit our disagreement to be judged by the united will of our community, and this *does* imply that our community ultimately owns the land. But if we are not, if we do not belong to the same community, then we are obliged only to respect the other's humanity, and—without further argument—this is unlikely to imply that the land is owned by some more encompassing "community" that includes both of us, let alone by humanity as a whole.

In fact, it seems that the world itself *cannot* be the public property of humanity as a whole. There are two arguments for this claim.

The first argument is simply that humanity did not make the world. Some people advocate a natural resources tax, and make the mistake of quoting Thomas Paine in support: "Men did not make the earth ... It is the value of the improvement only, and not the earth itself, that is individual property. ... Every proprietor owes to the community a ground rent for the land which he holds" (quoted at Pop, *Who Owns the Moon?*, p. 96). True, individuals did not make the land, but, by that token, nor did any particular community. (Obviously, Dutch polders are an exception.) True—at least in my view—a person primarily owns the useful qualities they impart, rather than the material into which they imparted them, though there is no reason why the earth itself might not be improved. (Polders are an example this time). But it hardly follows from this that *the community* owns the land. More to the point right now, humanity did not make the land any more than any individual did, and so, by this argument, humanity does *not* naturally own the land at all. This controversially assumes, however, that the only way of first acquiring *natural* ownership of something is by laboring on it, and while I find this convincing, others may not.

The second argument is more general, therefore, that humanity does not have *any* substantial relationship to the world. To own anything, you must have some "substantial" relationship to it—for example, mixing labor with it, but also possibly through some historical connection it, or in some other way. Just looking at it won't do, nor just thinking about it, so that if (at the limit) you don't know anything about it or you can't do anything with it then you cannot be said to own it. For this reason, no-one owns the moon, and so you do not need anyone's permission to go there. But most of humanity have the same relationship to the small plot of land you now occupy as they do to the moon—which is to say, no relationship at all, not knowing anything about it and not being able to do anything with it. So, for exactly the same reason, most of humanity do not own that plot, and you do not need their permission to use it. But if you need not seek the permission of *most of humanity* as you tend to your plot, then you need not seek the permission of *humanity as a whole*, of which they (ie "most of humanity") are all but a very small part. This is just to say that humanity as a whole does not own your plot, or, generalizing, any other plot. Accordingly, the world is *not* the public property of humanity.

Third, therefore, we are left with the common possession conception as a default, with the onus on advocates of *res nullius* to provide an account of original acquisition. Recall that we are talking about portions of the world that are *not* already owned by any individual, nor, as we have just seen, by humanity as a whole. Given our definition of ownership, this implies that, for each individual, either (a') they may *not* use that portion, or (b') others *may* use it without their consent. But all individuals are moral equals, and humanity as a whole is out of the picture, so that if *the individual in question* may not use it then nor may anyone else, and if others may use it without their consent then *they* may use it without the others' consent. This means that, in fact, either (a") no-one may use that portion, or (b") everyone may use it without the consent of others. Since the first is implausible—Locke says God gave us the world to use, and even atheists will think that we may use the world—it follows that any individual may *use* any un-owned portion of the world as they please, a claim shared by both the *res nullius* and the common possession conceptions. But may they *appropriate* it as they please? Arguably not. For appropriating something un-owned involves asserting the prerogative to exclude others from using it, but how can that be right, if it is not yours in the first place? How could such aggression be consistent with respecting the humanity of others? Without further argument, we must assume that it is *not* permissible for individuals to appropriate land as they please, which is to say that the common possession conception is the default.

In short, if humanity owns the world in common, it is in the sense that every individual may use the world as they please, without the consent of others.

Conclusion

This means that, if one thinks that the world *can* be owned, one will need to explain how portions of it can permissibly go from being un-owned to being owned. I conclude by enumerating (without argument) some (but not all) of the key suggestions.

(i) Sovereign Command. According to Hobbes, the Sovereign creates rights in general: "the notions of Right and Wrong, Justice and Injustice have there [where men live without a common Power to keep them all in awe] no place. Where there is no common Power, there is no Law; where no Law, no Injustice" (*Leviathan*, ch. 13, pp. 185, 188). This implies that you have rights over your land if, and only if, the government has the will and the power to enforce those rights.

(ii) Mixing One's Labor­. According to Locke, when land was plentiful, mixing one's labor with it gave one rights to it: "it is plain that property in that [viz, the earth itself], too, is acquired as the former [viz, the fruits of the earth and the beasts that subsist on it]. As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. He by his labor does, as it were, enclose it from the common" (¶32).

(iii) Mutual Agreement. However, when increasing demands made land more scarce, he thinks there was another way: "the leagues that have been made by several states and kingdoms either expressly or tacitly disowning all claim and right to the land in the others' possession ... have, by positive agreement, settled a property amongst themselves in the distinct parts and parcels of the world" (¶45).

(iv) First Possession. According to Kant, if a person is the *first* who **(a)** takes physical possession of some external object that they can use (consistently with other people's rights), and **(b)** declares their choice to exclude others from it, then **(c\*)** their taking control of that object is legitimate, and they (provisionally) own it. This applies to land: "By being the first to take [exclusive] possession he originally acquires a definite piece of land and resists with right anyone else who would prevent him from making private use of it" (p. 250[72]).

(v) Compensated Exclusion. My own favorite, however, derives from Locke's *proviso*, rather than his ideas of mixing labor and mutual agreement. He says that appropriation must leave "as good" for others, which I generalize as the claim that it must leave others in "as good" a situation. When land was plenty, the latter condition was automatically satisfied, and the appropriation of land was automatically justified. But when land becomes more scarce, when my fencing off some plot makes you worse off, it is not satisfied, and my appropriation of land is not justified—*unless I compensate you for the exclusion*, to make your situation no worse off than it was before my appropriation. So we end up with Thomas Paine's view, above, that every proprietor owes to the community a ground rent for the land which he holds, *not* because the community owns the land (it doesn't, naturally, any more than he does), but rather as compensation for being excluded from the land (to which they have as much right, naturally, as he). Or so I am inclined to think.