

1. Introduction

On June 29 2017 Judge Marc Dight authorised the eviction of a community project established to protest against the third runway at Heathrow Airport, on the grounds that a 'private landowner [is] entitled to put its land to any form of lawful use, including doing nothing with it.' (cited Laville, 2017) Using the arguments of John Locke in what some may see as a counter-intuitive way, this article aims to advance a critique of the judgement. I will begin by giving some context regarding the Grow Heathrow project and the rationale for putting Lockean arguments to this purpose, before advancing the main thrust of my argument. I will then engage with some of the more likely pitfalls of such an argument, and conclude that these can be overcome.

Established in March 2010, Grow Heathrow occupies an abandoned market garden site in Sipson, a village under threat of demolition to make way for Heathrow Airport's third runway. Their stated objective is 'to return the Berkeley Nurseries site back to its previous purpose – a thriving market garden that will provide our community with locally produced, organic fruit and veg as well as a venue for new and interesting projects and workshops.' (Transition Heathrow, 2017a) The project has been under threat of eviction since 2014 (*Ibid.*) and the recent ruling amplifies the threat. The land had previously been left untended by the owners, becoming a site for antisocial behaviour and a source of problems for the local community. (*Ibid.*) The dilemma (in moral if not strictly legal terms) is thus specifically between the ownership claim of Lewdown Holdings and the productive, value-adding labour put into the site by Grow Heathrow, and more generally between the differentiated claims of ownership *per se* and of the addition of value through labour.

Many classic interpretations of Locke's theory would posit him as firmly on the side of the first of each pair of claims, due to the priority given to property ownership in his overall theory. However, a case can be drawn from the nuances of his arguments on spoilage and productive use which suggests that his theory aligns more closely with that of Grow Heathrow than we may at first suspect. The first element I will draw from here is his spoilage proviso, intended as a limit on the initial appropriation of property. Here, he states that 'As much as anyone 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 and destroy.' (Locke, 2nd Treatise, section 31) The second, related element is the emphasis Locke places on improvement and cultivation: the Earth is given 'to the use of the industrious and rational, (and labour was to be his title to it;) not to the fancy or covetousness of the quarrelsome and contentious.' (2nd, section 34) Such statements place the moral emphasis not on the initial claiming of a title to a piece of land, but on the subsequent addition and maintenance of value. I will also draw from the possibility that a landowner's rights over her property do not encompass putting it – or allowing it to be put – to antisocial uses, and finally I will engage with the question of expropriation.

It scarcely needs to be said that I am not aiming for a high level of congruence between Locke's arguments and those of Grow Heathrow, particularly with regard to their respective overall positions on capitalism and property ownership. In this I am being less daring than Richard Ashcraft (1987), who draws from Locke's arguments support for contemporary revolutionary (and specifically land occupation) movements. My use of Locke's theories here is a case in which, to quote Alan Ryan, 'Works outlive their authors and take on lives their writers might be perturbed to see'. (Ryan, 1984 p. 4) We can, as with the example Ryan uses,

accept that Locke may have neither ‘said nor implied’ (*Ibid.*) the arguments contained in this paper, but, as with Ryan’s example, ‘it is not going too far to say that *what Locke wrote* implied it.’ (*Ibid.*, emphasis in original) With that in mind, I am going to develop a cautiously Lockean rebuttal to the judgement cited above.ⁱ

Why a Lockean analysis? Firstly because it is useful to examine this case from the perspective of a largely unequivocal defender of private property, whose argument nonetheless contains an element of controversy on the relevant points. If a theory which overwhelmingly comes out on the side of the property owner can be drawn from to defend an act of (partial) expropriation, this can indicate both a line of defence for the expropriators and an interesting ambiguity in the theory concerned. As regards the latter point, applying Locke’s theory to current social issues regarding contested property rights can help to fill out the ambiguous areas in the theory. On the former, it can help us define parameters for deciding whether an expropriative act can be morally justified. I should also note that many Locke scholars (for example Macpherson, 1962) dismiss the idea of Locke making any serious exceptions, arguing instead that he provides opportunities to elide these when they occur. While it is not the main function of this paper, I aim to advance a critique of such interpretations alongside the argument regarding the reoccupation of abandoned land.

I also intend to fill a slight gap that is currently evident in the theoretical literature on property rights: a discussion of how to deal with neglected, dangerous and inappropriately used property in cases where the owner’s abandonment or misuse is causing problems in the local area. In the specific area of Locke scholarship, discussion has also tended to be lacking on how the exceptions he puts forth regarding the appropriation and retention of property may apply in these cases. Ryan, Waldron and Reeve all put forth good general guidelines for how Locke’s theory might be operationalised regarding the limits of property rights (indeed, at times they address cases relevant to this one), but all stop short of explicitly and thoroughly investigating where the problem lies in cases where property is left to decay until it is recovered by someone other than the otherwise legitimate owner.ⁱⁱ

2. Spoilage and ‘enough and as good’

While Locke favoured largely unrestricted appropriation of property through labour, such claims to the then-bountiful resources provided by nature were tempered by two factors. One, the spoilage proviso, is outlined above and hinges on not appropriating more perishable resources than one may in practice go on to use in a constructive way. The other proviso, often considered to be the weaker of the two, is the claim that an individual’s appropriation of resources as her own does not negatively impact on others ‘since there was still enough, and as good, left; and more than the yet unprovided could use.’ (2nd Treatise, section 33) In these circumstances, an individual who ‘leaves as much as another can make use of, does as good as take nothing at all.’ (*Ibid.*) It is debateable whether Locke is making an empirical point at a time when natural resources were regarded as unlimited and the world as ripe for European colonisation (as per Waldron, 1988), or a normative one regarding the morality of unchecked appropriation. Nonetheless, in the Anthropocene era, it becomes more difficult to distinguish between the implications of these discrete points: as resources become scarcer, a normative framework along these lines becomes a more pressing need. The spoilage proviso will provide the main plank of the coming argument, with some reference to the other claim where needed.

The initial rationale for the accumulation of property through labour was to obtain the means of survival, without the complications thrown up by the consent-based arguments Locke aimed to challenge. Seeking the consent of all one's countryfolk to pick an apple or indeed plant the tree on which the apples grow would, he argued, lead to mass starvation: appropriating the apple or patch of land through one's labour, however, makes for a legitimate means for all to be fed sufficiently. At the time Locke was writing, it most likely seemed that there was indeed enough and as good left for the rest of the population provided that each individual exercised some sense in her appropriative endeavours. Wasteful over-appropriation of more than an individual or family could use had, taken in this context, the potential to accelerate a point at which 'enough and as good' no longer applied. As can be seen in many of today's conflicts, 'quarrels and contentions about property' (2nd Treatise, section 31) will ensue: hence, Locke sets forth 'bounds, set by reason of what might serve for his use' (*Ibid.*). Spoilage is the key indicator that an individual has overstepped these bounds.

Beyond the provisos mentioned above, Locke gives little guidance on what might constitute wasteful use of appropriated property or tip the balance towards a person taking more than her share to the point that the surplus belongs to others. By some reckonings, this could be a sign that Locke does not take restrictions on appropriation sufficiently seriously. However, subsequent Locke scholars have attempted to draw a clearer line. I aim to establish where this line lies, and extend the existing trajectory of these arguments in order to investigate Waldron's interpretation in particular suggests that disuse comes under the spoilage proviso. He argues that 'Goods which are not used become common again despite someone's labour having been mixed with them. The property of labour cannot outweigh the fact that natural goods were intended by their creator to be used.' (Waldron, 1988 p. 207) Furthermore, constraints may legitimately be placed on the type of use to which appropriated resources can be put. Early in the Second Treatise, Locke establishes that no person has 'liberty to destroy himself, or so much as any creature in his possession, but where some nobler use, than its bare preservation calls for it.' (2nd Treatise, section 6) This implies disapproval of the person, invoked by Ryan, who 'enjoys watching apples decay, or playing bowls with them' (Ryan, 1984 p. 37) and of Waldron's *Grapes of Wrath* inspired example in which oranges are deliberately allowed to rot in order to 'maintain the market price' (Waldron: 1988 208). Neglect or destruction, then, must be justified by more than mere ownership: there must be a 'nobler' rationale in place,ⁱⁱⁱ however this may be defined. Such a rationale does not appear to be in place in the case of the Berkeley Nurseries site, where which the owners' only attempt at productive use appears to have been somewhat half-hearted and dubious in the light of local planning regulations (London Borough of Hillingdon, 2015).

A case emerges, then, for the expiry of the title conferred by the initial appropriative activity, brought about by neglect of a (presumably surplus) resource. Waldron indicates that 'Once land has been improved by labour, it is for the labourer to decide how it shall be used. His title to make that decision lapses *only if he fails to exercise it or exercises it in such a way as to prevent the land from ever being useful in any way to anyone at all*' (Waldron, 1988 pp. 207, 208, emphases mine). Lewdown Holdings have so far stopped short of the latter course of action – notwithstanding that they have allowed the land to be used for purposes, such as drug dealing, which are detrimental to the local community – but have certainly left themselves open to the former accusation. Here, a possible counterpoint can be raised, namely the changes Locke sees coming about from the emergence of money. After all, the existence of currency – metal in Locke's day and often electronic in ours – is intended to invalidate the spoilage proviso. Here, we should note that while money itself does not spoil, the items one 'appropriates' with it are still liable to perish uselessly in one's possession, and

Locke's argument does not indicate that this becomes morally acceptable. Rather, money can be taken 'in exchange for the truly useful, but perishable supports of life' (2nd Treatise, section 47), a course of action which Grow Heathrow have mooted and Lewdown Holdings refused.

In conclusion, Locke's overall theory of property may allow for accumulating more land and goods than an individual strictly needs, but the spoilage proviso nonetheless indicates an objection to outright neglect and disuse of appropriated resources: in other words, according to one of the original theories of private property, a landowner cannot justify the level of inertia to which the Berkeley Nurseries site had been subject.

3. The improvement condition

The second criticism of the judgement to be drawn from Locke's theory relates to the initial claim that, through applying her labour to some product of nature, the appropriating individual is improving the condition or use value of the item concerned. Again, this does not apply in the case of a piece of land disused by its legal owner. The Earth, in Locke's view, is given to humans that we may 'make use of it to the best advantage of life, and convenience' (2nd Treatise, section 26), provided that we join our labour to the products of nature in order to 'put a distinction between them and common' (2nd Treatise, section 28). The need for humans to be 'industrious and rational' (2nd Treatise, section 34) in using natural resources reinforces this view of property as something that is deserved by those who work to acquire it.

The reward for this labour is generally considered to be the exclusive, uninterrupted use of the laboured-upon resource. Reeve, for example, argues that 'To be serene in his enjoyment of an individualised incentive a person must be able to exclude others from the reward which he receives.' (Reeve, 1986 p. 119) Hence, an individual who has exerted her own labour (or bought that of another) to cultivate a plot of land gains the entitlement to prevent others from cultivating it or (subject in some instances to the spoilage proviso) using the crops grown on it. What, however, if she stops cultivating the land, and furthermore allows it by omission to be used antisocially? At this point it becomes necessary to investigate the permanence or otherwise of the exclusive right conferred by appropriation.

On this point, Ryan offers the clearest analysis of the point at which property rights begin to wither away: for the most part, he frames this as a question of continuing rather than continuous use. He points out that 'we should not wish to lose our beds the moment we rose from them, or our clothes the moment we took them off' (Ryan, 1984 p. 34), but that nonetheless an individual 'may hold the land on condition that it is productively employed, and should lose it if it is not' (Ryan, 1984 pp 35, 36). This is the difference between squatting a derelict building and a briefly-vacated family home; or between stealing a colleague's lunch from the break room fridge and disposing of a rotting health hazard which may have once been food. The distinction comes about when it becomes clear that the owner has not merely taken a break from using their land, their building or their lunchbox, but has in fact abandoned it to become at best unproductive and at worst a danger to others in the surrounding area. The health hazard point will be returned to shortly, but the underlying issue requires further attention. Although Locke's theory of appropriation could be said to allow perpetual ownership on the basis of that first act of adding one's labour, it is far from clear that this interpretation can withstand sustained scrutiny when the implications are examined. Meisels, for example, draws a distinction between use of any sort and outright disuse when

determining a potential Lockean framework for the distribution of land. Her aim is to find a culturally neutral workaround for the (in today's terms) unpalatable aspect of Locke's original argument pertaining to colonial appropriation of land 'improperly' (according to the value judgements of the day) used by nomadic tribes. While she does not distinguish significantly between more or less productive uses, for example giving mere residence on a patch of land the same weight as growing crops on it, she argues that we should retain 'the basic distinction between utilisation of land in various forms – which I argue should have something to do with establishing title to it – and virtually no use of land, which might bring entitlement into question.' (Meisels, 2002 p. 967) In the case of the Berkeley Nurseries site, the ambiguities Meisels raises do not consistently apply, since it had been largely disused by the legal owner for some time. As such, her defence of those whose use of their land might not be seen universally as productive – the nomad who pitches a tent, for example, or the small-in-numbers community who maintain a low population density in a large area, or indeed the hunter-gatherer who does not aim to grow crops – does not convincingly apply to the owners of the site. However, her suggestion that a claim to a piece of land be contested if it is obviously *disused* offers a defence to the occupiers if their aim is productive use.

The addition of value through labour is crucial to Locke's understanding of appropriated property and the associated rights. It is this labour, after all, which unlocks the potential of the natural world to sustain human life. The centrality of labour is clear in his comparison of cultivated and uncultivated land: 'For I ask whether in the wild woods and uncultivated waste of America left to nature, without any improvement, tillage or husbandry, a thousand acres [will] yield the needy and wretched inhabitants as many conveniences of life as ten acres of equally fertile land do in Devonshire where they are well cultivated?' (2nd Treatise, section 37) The purpose of property ownership is thus negated at least partially if the owner allows her land to revert to 'uncultivated waste' (or worse). The land is, after all, worth very little in Locke's terms if it is abandoned, since 'Tis labour then which puts the greatest part of value upon land, without which it would scarcely be worth anything' (2nd Treatise, section 43). There may, of course, be valid exceptions, such as a fallow period to allow the nutrients in the soil to regroup. Here we can once again invoke Ryan's distinction between continuous and continuing use: the question is not whether the land is being steadily improved every day, since this will be impossible past a certain point. Rather, it is whether the intention is in place to reverse the apparent decline through further labour. Absent such a clear intention on the part of Lewdown Holdings, the Heathrow case does not appear to be one of continuing use. If we take Ryan's interpretation to its logical conclusion, it would be feasible to say that a landowner has a right to merely cease improvements on her land for a period of time: the contention here is that this right tapers off in cases of outright abandonment.

Here it is necessary to draw some extrapolations from the distinction originally drawn by Ryan. When, for example, might continuing use be said to cease? A line would need to be drawn at some point between the final effort exerted by the owner on her land – the end of the continuous use – and the full reversion of the land to uncultivated waste with negative impacts on the surrounding area. Being overly lenient with the creation of this line leaves communities open to rules-lawyering over the exact allowed absence or level of overgrownness, while being overly cautious runs the risk firstly of the arbitrary expropriation Locke feared and secondly, conversely, of allowing no recourse to make use of abandoned land. Sadly, it would be impossible to locate such a line with complete precision to apply in all cases: however, given Locke's general commitment to the wellbeing of humanity, it might be said to lie somewhere in the zone where the abandonment or disuse of one's property

begins to impinge on others in the surrounding area. The following section engages with this issue.

In summary, Lockean property rights appear to hinge not merely on the initial appropriation but also on the subsequent improvement made to a product of nature through labour. In particular, since an individual owns her labour (or buys that of others), she is adding value to her appropriated land by taking pains to dig, fertilise and seed it. As such, thorough abandonment and neglect of the patch of land can be said to be outwith the purview of the rights conferred by appropriation and initial cultivation.

4. Antisocial uses as a limit

I have alluded above to the possibility that a dangerously neglected property – be it a crumbling building, a patch of land used for antisocial activities or a sandwich developing a new super-mould in a communal fridge – may add a new dimension to the issues raised here. At the very least, these examples can be used to demonstrate additional limits to an individual's right to do as she wishes with her property, beyond those that were easily imagined in Locke's day. More concretely, it can help to narrow the grey area between continuing-but-not-continuous use and outright disuse, and in particular to determine a more precise point at which a neglectful landowner's exclusive use rights are forfeited.

The clearest example of such limitations is provided by Reeve (1986) in his discussion of what an individual may or may not do with her car. In brief, Susan's ownership of her car confers upon her the right to prevent others from entering, driving or damaging it. It does not confer the right to park on a double yellow line, run anybody over or blow her horn loudly all night in a residential area. Correspondingly, Susan's neighbours do not have the right to steal or destroy her car in order to prevent her antisocial behaviour, but they may summon the relevant authorities (which, remember, Locke deems necessary for the purpose of keeping such responses proportionate) to curb her actions by less egregious means. 'Absolute ownership', (Reeve, 1986 p. 19) as such, exists as a purely 'conceptual device' (*Ibid.*) which is in practice continually interrupted by restrictions on an individual's use of her property.

While Locke's theory contains many individualist elements, it is worth remembering at this point that the obligations he considers common to all humans include the preservation of not only oneself but also 'the rest of mankind' (2nd Treatise, section 6). By the law of nature, 'no one ought to harm another in his life, health, liberty or possessions' (*Ibid.*) and, once humans leave the state of nature, a significant part of the subsequent magistrate's role is to enforce this principle in a more consistent and proportional manner than the law of nature alone allows for. On this note, Shrader-Frechette suggests that 'one could imagine a contemporary Locke arguing for extensive restrictions on property rights in land (e.g., prohibiting filling in wetlands) and for agricultural zoning or preservation, for example to prevent fertile land from being developed or paved.' (Shrader-Frechette, 1993 p. 217) I find this a convincing interpretation in the light of Locke's overall theory. While he does not place any specific, explicit limits to the uses to which an individual may put her appropriated property, he indicates throughout the *Second Treatise* that humans should not act in ways which are to the clear detriment of those around them.

The relevance of these possible limitations to the Heathrow case hinge on the uses that were being made of the site in the absence of any intervention from the owners. For example, a local resident describes how '[t]he site at Vineries Close Sipson has been a major problem for

some years. As a committee member of the Harmondsworth and Sipson residents Association, I have had to deal with continuing problems on this site. The owners used it for car breakage, storage and maintenance in violation of planning laws. The site became seriously polluted and the continuing high noise levels reduced the quality of life for local residents.' (Alan Boyd, cited Transition Heathrow undated) Others describe the site as 'an unwanted mess and area of trouble' (James and Maxine Payne, cited *Ibid.*) and the previous occupants as 'entirely selfish' and showing 'no concern for the local environment whatsoever' (Dave Robins, cited *Ibid.*). If the mere neglect of the land does not in itself sustain a Lockean moral objection to the judgement regarding the site, the antisocial uses made of it first by the owners and then by others with the owners' tacit agreement^{iv} can be said to give such a case some ballast.

5. The expropriation issue

I have hitherto shied away from discussing the largest elephant which may appear in the room when building an argument such as the one advanced here on Lockean grounds: that of expropriation. After all, the reason for the court judgement was to remove a group of squatters who were occupying and making (admittedly productive) use of the land against its owners' wishes. I have devoted few words to this aspect of proceedings since it is of minor relevance to the question of whether a landowner has the right to neglect her land to such an extent. However, it is a question which needs to be addressed before concluding.

Locke's theory undeniably contains a strong element of non-interference with the property of others, subject to the constraints outlined in the earlier sections of this paper. For example, he argues that 'He that had as good left for his improvement as was already taken up, needed not complain, ought not to meddle with what was already improved by another's labour: if he did, 'tis plain he desired the benefit of another's pains, which he had no right to...' (2nd Treatise, section 34) As such, assuming that the Grow Heathrow residents have the scope to obtain land of their own for the projects they are currently running on the site, it can be argued that Locke would disapprove of them occupying someone else's. Olivecrona's interpretation of this argument is particularly damning of expropriation: in his view, 'By working on an object, a man identifies with it and in a sense makes it part of himself. Once this happens, for us to allow anyone else to use the object without his consent would be to allow them to use a part of his personality.' (Olivecrona, 1974, cited Waldron, 1988 p. 195) Note, however, Olivecrona's use of the phrase 'working on an object'. This objection would certainly apply had Berkeley Nurseries been an active, flourishing market garden at the time the occupation began, or even a run-down one with actively involved owners. However, to say that Grow Heathrow are after 'the benefit of [Lewdown Holdings'] pains' would require some suspension of disbelief, since in this instance the would-be expropriators are the ones taking 'pains' to improve the site.

This is still, of course, the thorniest question when attempting to take a Lockean view of such a case. However, it raises important questions regarding the distinction between ownership claims *per se* and opportunities for subsequent productive use. As a general rule, once the initial appropriation by labour has taken place, it would make no sense by Locke's reckoning to allow it to be 'appropriated' once more. However, while Locke's theory specifically allows for a range of cases (inheritance after death, for example, and the requirement to sell, barter or give away one's surplus perishable produce), he does not explicitly discuss the long-term abandonment of land. As such, while his theory cannot be assumed to defend expropriative actions such as those of Grow Heathrow, since even

productive expropriation trespasses on an established property right which was (assumed to be) legitimately obtained in the first instance, neither can it be taken as an automatic condemnation given his claim that surplus perishable property belongs to others. The distinction between legitimate and illegitimate occupations may lie in the variety of rights the occupiers are seeking over the contested land. To claim ownership rights *per se* would be problematic, assuming the land was legitimately obtained by the legal owner in the first instance. The following argument therefore hinges specifically on use rights, and the role of abandonment in returning these to the common supply.

It is also often regarded as the case that the exclusive rights (of use if not of ownership) can expire in cases of disuse. This is particularly pertinent with regard to the spoilage proviso, as discussed above. However, the conception of Lockean ownership claims as a 'service tenure' (Ryan, 1984 p. 35) based on 'continuing rather than continuous use' (Ryan, 1984 p. 34) may equally apply to cases of garden-variety abandonment in which continuing use is clearly not taking place. Here it is worth returning to the distinction Meisels draws between use (of any sort) and disuse. Amy's belief that Belinda is not making correct use of her land, for example where Belinda has planted flowers for their aesthetic value instead of food crops, does not in itself qualify as grounds for arbitrary expropriation. This would also, of course, cast doubt on certain elements of Locke's own argument regarding the indigenous population of the Americas, since by Meisels' reckoning nomadic hunter-gatherers can be counted as users of the land to which they lay claim. However, this can arguably be put down to Locke's theory being a product of his time and Meisels' being a product of ours with its greater knowledge and acceptance of cultural variations, but nonetheless a legitimate adaptation for the changed circumstances. At any rate, her argument provides a reasonable basis for at least partial expropriation in cases of outright disuse and clearly evident neglect.

6. Beyond Grow Heathrow

The arguments advanced here would be of little value if their relevance did not extend beyond this specific contested patch of land. As such, I will now investigate the wider implications of adopting a framework in which the expropriation of surplus or abandoned land is justified on the provisos put forth by Locke.

Certainly, the morality of productively expropriated land raises questions across the world. The cases I will discuss here are drawn from European and Latin American countries, due to the relative plethora of literature on the subject: however, it is likely that the relevance of this discussion goes further than these specific occupations or regions. Cattaneo (2013), for example, speaks of the rural squatters' movements of Spain as the possible key to a solution for a likely economic or ecological disaster. The movements he discusses take over rural land which has been effectively abandoned by owners who have joined a mass migration to the city. He argues that 'both urban and rural squatters provide a micro model for local solutions to the ecological and economic crises such as making the best use of urban waste materials, skipping for food, developing ingenious DIY applications, promoting cooperation, sharing know-how, practising mutual aid, farming with organic agriculture, integrated ecosystem management, sharing of experiences in communal life and challenges in its organization.' (Cattaneo, 2013 p. 140) As such, Cattaneo considers the rural squatters as the creators of social innovations which are more sustainable in the long-term than the technological innovations which go with urban growth.

The question of rights over land, and whether this is consistent with ownership of the legal deeds, can also be seen in multiple permutations in Brazilian politics. Santos and Carlet (2010) discuss three major groups fighting for the use of land to which they arguably have a valid claim. Firstly, the indigenous population of Brazil have certain historical territorial rights over swathes of land which were stolen from them by colonisers: their claim was officially recognised in 1988, but has been contested in court by those who hold the deeds to land within the designated territories. The second key group is the *Quilombola*, the descendants of runaway slaves, who practice collective ownership and use of their land. While their claims are grounded in legal statute and precedent, they often have to contend with the threat of expropriation from land-grabbers. The third group, and the best known outside the region, are the landless agricultural workers. Their case is the most similar in practical terms to the one contested at Heathrow, since it constitutes the clearest example of expropriation of disused or neglected land through labour. Santos and Carlet describe how the norm in Brazil is for large farming estates and corporations to grow exportable monocrops such as sugar cane, while family smallholders are largely responsible for growing food to be eaten within Brazil. As such, this form of agriculture can be said to have positive effects with regard to sustainability and biodiversity. It is also often the case that the larger estates possess significant amounts of disused land, of which the landless workers aim to make use. The motto of these movements is 'land for those who work it' (Santos and Carlet, 2010 p. 66), and this is generally manifested in the form of collective, democratically organised occupations of disused farmland. These occupations take over 'unproductive ranches that are failing to fulfil their social function' (Santos and Carlet, 2010 p. 67) and use the land to provide basic temporary housing and a source of food for the inhabitants.

Both the Spanish rural squatters and the Brazilian landless agricultural workers would fall foul of Locke's theory if we take it as a blanket defence of property owners' rights in the spirit of Macpherson. If we use the more nuanced framework discussed in this paper, however, then the various provisos Locke puts forward can provide some guidance on the morality of the situation. In neither case is there 'enough and as good' unappropriated land for all who need it: sufficient land exists, but the deeds are held at a distance. The spoilage proviso, meanwhile, suggests that it is better for the land to be used productively in the ways outlined above than to be left desolate, the exception being if the legal owner can demonstrate some 'nobler use' (Locke, 2nd Treatise section 6) that requires it to be temporarily fallow. The indigenous Brazilians and the *Quilombola* are somewhat different. In the former case, the historic territorial rights pre-exist the legal deeds of possession; in the latter, the collective land ownership is enshrined in law, but nonetheless faces regular challenges. Neither group would unequivocally meet the approval of Locke's original theory: however, both would qualify if we apply Meisels' modified, culturally neutral variation. In all four cases, meanwhile, there is clear evidence that the occupiers are applying their labour to the land in constructive ways.

In developing a distinction between legitimate and illegitimate uses of land, it is worth returning to Ashcraft's arguments regarding the conception of public good he has perceived in Locke's theory. Ashcraft disputes atomistic interpretations of Locke's theory of human social relations, and as such argues that the role of the individual as a member of a 'natural community' forms the basis of interactions in both the state of nature and the subsequent political society. As a result, Ashcraft argues, 'Locke assumes that it is possible for an individual to act on behalf of or in the interest of the community.' (Ashcraft, 1987 p. 100) The interests of this 'community of nature' (2nd Treatise, cited *ibid.*) are, Ashcraft argues, at the heart of Locke's evaluation of social relationships in political society. Furthermore,

Ashcraft attributes a similar community-spirited motive to Locke's subsequent edicts, including those relating to property. Although this is a controversial reading of Locke, we can derive from it an overall principle of public good when evaluating the motivations of would-be expropriators: for example, that there must be some benefit to the wider human community in the use to which the reclaimed land is put. Such a principle can help us to distinguish, for example, the Grow Heathrow occupation from the actions of certain others who had previously made use of the abandoned land.

In short, while the Grow Heathrow verdict provides a useful starting-point for a Lockean analysis of the morality of productive land expropriation, it by no means indicates the finishing point. Rather, the framework provided here can be used to derive more general points regarding the use, misuse and disuse of technically owned land.

7. Conclusion

In conclusion, although generally seen to be on the side of the property-holder on the grounds of ownership *per se*, Locke's theory of property can be seen to hold the seeds of a critique of the legal situation which allows judgements such as that of Dight J. in the Grow Heathrow case. Of particular interest here are the spoilage proviso, which declares surplus perishable property to belong to others, and the improvement criterion which implies that the initial appropriative labour and subsequent use of a resource must be subject to (albeit largely unspecified) certain standards of constructiveness and productivity. By this reckoning, a landowner is not entitled to neglect her patch, and in particular not to the extent that it becomes detrimental to the surrounding community.

Although the expropriative element of this particular case poses problems for the strict Lockean purist, it is not insurmountable. The conditions Locke has placed on property ownership indicate that the right to exclusive 'use' (if not the strictest right to ownership) may lapse after a particularly lengthy period of abandonment or neglect. While Grow Heathrow could not justify claiming ownership of the site against the owner's wishes, their willingness to labour on the land, make it less of a hazard to the public and put it to constructive use count in their favour. While Locke's arguments do not intrinsically build a case for the use of another individual's land against her wishes, they do by some interpretations indicate that it would be sensible for her to yield the use rights to those who are prepared to take the necessary pains. In particular, while in general a landowner may make a legitimate claim to put her land to uses which would not be universally considered optimal, overt disuse may nonetheless be considered grounds for at least a temporary reallocation of the use rights to that land.

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ⁱ Some commentators, such as Ashcraft (1987), draw support for similar arguments from the historical Locke. While the focus of this paper is the conceptual Locke, I must nonetheless acknowledge the groundwork laid by Ashcraft with respect to countering the narrative of Locke's alleged callousness to the non-property-owning classes of his own day or by extension (*pace* Macpherson) the proletariat of a later era. (Thanks to Reviewer 1 for bringing Ashcraft's oft-neglected arguments to my attention.)

ⁱⁱ Waldron (1992) initiated a lively and still ongoing debate about the repercussions of unjust expropriation of, for example, tribal land and the claims this may or may not give the descendants of the wronged groups in subsequent generations. However, that is to a great extent a separate debate from the one covered here, which deals with land we can assume was acquired somewhat legitimately (and had it not been, this would not be the key point) in the first instance, is being occupied by members of the local community rather than a conquering colonial power, and is subject to a shift in use claims rather than outright ownership rights. It should also be noted that the case covered here deals with the disuse and neglect of land by its owner, tacitly admitted by the presiding judge, rather than a culturally-prejudiced value judgement regarding whether it is put to the 'right' or 'wrong' use. (Thanks to Reviewer 2 for the push to make this distinction clear.)

ⁱⁱⁱ It would be interesting, although a digression for this particular paper, to examine whether returning a patch of land to nature can be considered a nobler purpose in this context. To meet Locke's approval it would need to be argued for on anthropocentric rather than ecocentric grounds: I would venture, however, that such a thing cannot be automatically discounted on Lockean grounds.

^{iv} I say 'tacit' since there is no evidence that the owners gave permission to subsequent users to misuse the site: however, it is telling that the Grow Heathrow occupation was the first instance in which they took action regarding its use.

Notes on contributor

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