

# Lockean Justice and the Law of Restitution: Reassessing Property Rights and Egalitarian Redistribution

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## Abstract

Debates on property rights within Lockean political philosophy have often been shaped by right-libertarian interpretations that emphasise strong individual entitlements and minimal redistribution. This article challenges such interpretations by arguing that a principled application of Lockean justice in property in fact supports extensive redistributive outcomes. The analysis begins by clarifying the core elements of the Lockean thesis of justice in property, including the moral conditions under which original acquisition and subsequent transfer of holdings are considered legitimate. Building on this foundation, the article develops a Lockean conception of the law of restitution as a normative response to holdings acquired in violation of Lockean principles. It argues that restitution provides a coherent mechanism for addressing historical injustices in property acquisition and transfer, particularly where present holdings cannot be traced to just origins. Within this framework, property lacking identifiable rightful owners ought not to remain concentrated in the hands of current possessors, but should instead be subject to egalitarian redistribution. The article further contends that the pervasive history of Lockean injustice—including feudal landholding systems, colonial expropriation, and coercive transfers—undermines the legitimacy of a substantial portion of existing global property distributions. When assessed through a Lockean restitutionary lens, these historical wrongs generate strong moral reasons for widespread redistribution aimed at restoring justice rather than merely preserving current entitlements. By situating restitution at the centre of Lockean property theory, the article demonstrates that Lockean justice is not inherently opposed to egalitarian outcomes. Instead, it may require significant redistribution as a matter of corrective justice, thereby offering a philosophically grounded challenge to dominant libertarian accounts of property and entitlement.

**Keywords:** Lockean justice; restitution theory; property redistribution; corrective justice; political philosophy

## 1. Introduction

The 17th-century philosopher, John Locke—often considered the founder of liberalism—outlined a Lockean thesis of justice in property that remains influential (Locke 1823). The thesis can be broken down into two main components: first, persons own their bodies (i.e., they may do what they wish with their bodies as long they do not infringe on the self-ownership or private property rights of another person); second, persons own their legitimately acquired property. Locke further outlined a thesis of justice in property acquisition, which has been subsequently clarified by Lockean theorists (Nozick 1974; Rothbard 1998). According to this thesis, there are three ways that a person can acquire

property which can be legitimately protected: (1) they may labor on (i.e., homestead) unowned natural resources; (2) they may receive justly held property via voluntary transfer from a legitimate owner; and (3) they may gain property as retribution/rectification/restitution for an injustice done against their person or their justly held property. Any aggression against persons or their justly held property is considered an infringement on rights. Proponents of Lockean property rights argue that they are natural rights, dictated by natural law.

The Lockean thesis of justice remains influential, with the Locke-influenced, US-based Libertarian Party gaining 4 million votes in 2016, becoming by far the third largest political party in the country. Meanwhile, self-declared libertarians such as Alex Jones have gained extensive media followings and regularly publicize the ideas of Lockean theorists including Murray Rothbard (see, e.g., Rockwell 2016). Furthermore, the ideas are unlikely to go away any time soon. As discussed by Cohen (1995), while the appeal of the Lockean justice thesis can be reduced via argumentation, the thesis cannot be strictly refuted.

If we accept Cohen's claim (which we do for the purpose of this essay), it must be concluded that the Lockean thesis acts as a powerful defense of private property rights. Or, to be more precise, it works as a powerful defense of private property rights in the abstract. This essay argues that due to the history of Lockean injustice in property acquisition in our actual world (feudalism, colonialism, etc.), it is not clear how far existing private property titles in the world can be justified by appeals to Lockean justice. In fact, it appears that according to Lockean justice, much property in the world should be divided in an egalitarian manner among all persons in the world and effectively become part of the global commons.

For the purposes of this essay, we set aside the numerous critiques of the Lockean approach to justice (Carson 2004, 2006; Cohen 1995; Proudhon 1890). We also set aside many of the major debates between Lockeans over details of the approach (Vallentyne 2009). Instead, we move straight to our main theme, of how Lockean theory deals with the problem of historical injustice in property acquisition. Note that unless specified otherwise, where we use words such as "legitimate," "illegitimate," "just," and "unjust," we use them in Lockean terms.

The plan for this essay is to first outline why addressing the problem of unjustly gained holdings is important from a Lockean perspective. Second, it notes that Locke himself did not discuss how to address the problem. Third, drawing upon natural law theory, it argues that a reasonable approach to the problem is a Lockean version of the law of restitution. It then defends the Lockean law of restitution against two alternative Lockean approaches to the problem of unjustly gained holdings. The alternative approaches are (1) Nozick's rectification principle and (2) what we refer to as Rothbard's "innocent homesteader scheme". It is argued that Nozick's and Rothbard's approaches are inconsistent with Lockean theory and fail to address all Lockean injustice, respectively. However, the Lockean law of restitution does not suffer from these problems. In the course of defending the Lockean law of restitution against Rothbard's scheme, the article outlines some implications of the law—notably that it appears to require much egalitarian property redistribution.

## 2. Lockean Justice in Property and the Need to Address Injustice in Holdings

Before looking at possible ways of addressing the problem of unjustly gained holdings, let us first look at Rothbard's explanation of why, from a Lockean perspective, it is important to address the problem. Rothbard pointed out that having a conception of legitimate and illegitimate property is necessary to be able to use force in order to recover unjustly held property. He further added that "we cannot simply talk of defense of 'property rights' or of 'private property' per se. For if we do so we are in grave danger of defending the property of the criminal aggressor—in fact, we logically must do so" (Rothbard 1998: 52). In this context, he criticized right-libertarians that base their right-libertarianism on utilitarian considerations rather than natural rights ones. He wrote:

[The] utilitarian, who has no conception, let alone theory of justice, must fall back on the pragmatic, ad hoc view that all titles to private property currently existing at any time or place must be treated as valid and accepted as worthy of defense against violation. This, in fact, is the way utilitarian free-market economists invariably treat the question of property rights. Note, however, that the utilitarian has managed to smuggle into his discussion an unexamined ethic: that all goods "now" (the time and place at which the discussion occurs) considered private property must be accepted and defended as such. In practice, this means that all private property titles designated by any existing government (which has everywhere seized the monopoly of defining titles to property) must be accepted as such. This is an ethic that is blind to all considerations of justice, and pushed to its logical conclusion, must also defend every criminal in the property that he has managed to expropriate. We conclude that the utilitarian's simply praising a free market based upon all existing property titles is invalid and ethically nihilistic. (Rothbard 1998: 52)

With this point in mind, let us now look at how the problem of unjustly gained holdings might be addressed.

## 3. Lockeanism and Restitution

Here we must mention that when Locke was writing, there was already a well-established body of theory for addressing the problem of unjustly gained holdings. This is a body of theory which still exists today. It is known as the law of restitution. This law developed in Middle Ages Europe, but there are similar laws that trace back to ancient societies all over the world. As the jurist Graham Virgo (2015) has explained, the aim of the law of restitution is to deprive defendants of unjust gains. For example, people are not allowed to handle stolen goods under English restitution law. Where goods are known to be stolen, they are confiscated, and where possible, returned to the victim. As another example, where a defendant is known to have exploited a vulnerable person, the defendant owes the gains of exploitation in restitution (Virgo 2015).

It should be noted that what counts as an unjust gain will look different in different times and places, depending upon the legal regime in which restitution is applied. For example, St. Thomas Aquinas argued that money lenders should pay back the interest on their loans in restitution (Aquinas 1947: SS QQ62, QQ67). This is not a part of modern English restitution law. A Lockean version of restitution law would come into play where property has been acquired outside of Lockean justice.

It is significant that restitution was promoted in the 13th century—over four centuries before Locke was writing—by the foundational natural law theorist, St. Thomas Aquinas,

as the tool for addressing unjustly gained holdings, dedicating a chapter of his book *Summa Theologica* to the topic (Aquinas 1947: SS QQ62). As a natural law theorist himself, it would have been reasonable for Locke to follow Aquinas and say that restitution is the correct tool for addressing historical injustice. He could have outlined a Lockean version of the law of restitution which entails depriving people of all forms of property gained outside of Lockean justice.

However, Locke did not do this. In fact, he avoided addressing the problem of historical injustice. Instead, he repeatedly implied, despite the historical record, that property allocations in the world had actually emerged in the way that he saw as just—through homesteaders in a state of nature laboring on land and then trading with each other until contemporary property allocations had arisen. For example, in the last section of his discussion of justice in property, he wrote:

I think, it is very easy to conceive, without any difficulty, how labor could at first begin a title of property in the common things of Nature, and how the spending it upon our uses bounded it; so that there could then be no reason of quarrelling about title, nor any doubt about the largeness of possession it gave. Right and conveniency went together. (Locke 1823: chapter 6, § 51)

This claim from Locke overlooked the history of feudalism and colonialism from which many property titles derived. It seems that until the late 20th century, subsequent Lockean theorists similarly failed to address the problem of historical injustice. Thus, in 1982 the Lockean theorist, Murray Rothbard, complained that the question of how to address historical injustice in holdings from a Lockean perspective had “unfortunately been almost totally overlooked” (Rothbard 1998: 51).

However, this author is aware of two Lockean approaches to the problem of historical injustice that were developed in the late 20th century. The first is Nozick’s rectification principle. The second is what I label Rothbard’s “innocent homesteader scheme”. The remainder of this essay argues that the Lockean law of restitution is more compatible with Lockean theory than either of these approaches. It also discusses some possible implications of enacting a Lockean law of restitution.

#### 4. Nozick’s Rectification Principle

Nozick argued for what he referred to as a “rectification principle” (Nozick 1974: 152). According to this principle, attempts must be made to make people as well-off as they would have been had historical injustice not taken place. Nozick suggested that ideally all historical injustice suffered by persons, including injustice to one’s ancestors, and injustice by governments as well as individuals, should be taken into account when considering how well-off persons could have otherwise been. Lacking the historical information to do this, Nozick suggested that patterned redistribution from the best off in society toward the worst off (e.g., welfare) may be justified to address historical injustice if it is assumed that the best off in society have disproportionately benefitted from injustice and that the worst off have been disproportionately harmed. However, Nozick offered little detail on how much redistribution would be justified.

Litan (1977) has expanded on Nozick’s approach. According to Litan, the mathematical formula likely to bring us closest to rectifying past injustice in line with Nozick’s approach, and getting us closest to a just distribution of holdings, is to give each person the mean average of the possible holdings they could have gotten without injustice taking place.

Due to the fact that we can never gain a good understanding of all the relevant injustices that have historically taken place, Litan suggests that we cannot say that people have different distributions of possible ideal holdings. Thus, we should treat everybody in a given society as having the same possible holdings. Litan explains that this would actually require attempting to equalize all property holdings between members of the society in question.

A problem with this Nozick-Litan approach is that it appears to clash with the core Lockean principles of justice in property. According to Lockeanism, you cannot take justly held property from people. You can only take identifiably unjustly held property from people. The Nozick-Litan approach ignores this rule and does not specify that it is the only property that was gained through an identifiable injustice that should be redistributed. However, a Lockean law of restitution would not suffer from this problem, as it would only work to confiscate holdings gained through identifiable injustices.

### 5. Rothbard's Innocent Homesteader Scheme

We now turn to a critique of Rothbard's innocent homesteader scheme, the problems of which require more extensive discussion. In *The Ethics of Liberty*, Rothbard starts by claiming that it is only legitimately gained property that persons have a right to keep. It is in this context Rothbard expressed support for the expropriation of the property where such property is unjustly held. However, he claimed that this does not entail a "chaotic enquiry into everyone's property" (Rothbard 1998: 56). This is because, Rothbard said, all goods justly belong to the first person "who finds and transforms them into a useful good (the 'homestead' principle)" (1998: 56).

Therefore, if a piece of property is possessed by someone and it cannot be clearly shown that the possessor or his ancestors to the title were criminal, then the person who has been possessing and using it (the possessor) must be considered the legitimate titleholder in line with the homestead principle. Rothbard explained further:

...if we do not know if Jones's title to any given property is criminally derived, then we may assume that this property was, at least momentarily, in a state of no-ownership (since we are not sure about the original title), and therefore that the proper title of ownership reverted instantaneously to Jones as its "first" (i.e., current) possessor and user. (Rothbard 1998: 57)

It is only property that is "clearly identified as criminally derived" that can be considered illegitimately held (Rothbard 1998: 56). Rothbard then considers the question of what happens if a piece of property is identified as criminally derived. He asks if this means the current possessor must give up the property. For Rothbard, the answer to this question depends on two things: firstly, whether the victim or the victim's heirs are identifiable; and secondly, "whether or not the current possessor is himself the criminal who stole the property" (Rothbard 1998: 57).

To make his point, Rothbard asks us to consider that Jones owns a watch which was given to him by an ancestor that either stole the watch or bought it from a thief (it is irrelevant for Rothbard whether this was done knowingly or not). If we can identify the victim or the victim's heirs, then Jones's title is invalid, and the watch must be returned to the victim or heir. However, if we know that the watch was criminally gained but we cannot find the victim or victim's heirs, two other paths must be taken. If Jones himself was the thief, then he cannot be allowed to keep it, as a "criminal cannot be allowed to keep the reward

of his crime” (Rothbard 1998: 58). However, if Jones was not the criminal, but he inherited it or innocently purchased it from a thief, then, in that case, Rothbard claims, the watch goes into a “state of no-ownership” (Rothbard 1998: 56) with no legitimate owner. Therefore, the property belongs justly “to the person to come along and use it to appropriate this now unowned resource for human use” (Rothbard 1998: 56). However, Rothbard continues to explain that this first person would actually be Jones, who had already been using the watch. Rothbard thus concludes that “even though the property was originally stolen... if the victim or his heirs cannot be found, and if the current possessor was not the actual criminal who stole the property, then the title to that property belongs justly, and ethically to its current possessor” (Rothbard 1998: 58).

Rothbard then offers an overall summary of his scheme:

To sum up, for any property currently claimed and used: (a) if we know clearly that there was no criminal origin to its current title, then obviously the current title is legitimate, just and valid; (b) if we don’t know whether the current title had any criminal origins, but can’t find out either way, then the hypothetically “unowned” property reverts instantaneously and justly to its current possessor; (c) if we do know that the title is originally criminal, but can’t find the victim or his heirs, then (c1) if the current titleholder was not the criminal aggressor against the property, then it reverts to him justly as the first owner of a hypothetically unowned property. But (c2) if the current titleholder is himself the criminal or one of the criminals who stole the property, then clearly he is properly to be deprived of it, and it then reverts to the first man who takes it out of its unowned state and appropriates it for his use. And finally, (d) if the current title is the result of crime, and the victim or his heirs can be found, then the title properly reverts immediately to the latter, without compensation to the criminal or the other holders of the unjust title. (Rothbard 1998: 56)

Block (2002) has applied Rothbard’s scheme to the question of slave descendant reparations in the United States. Block argues that slave descendants should be entitled to what they can prove their ancestors produced. Thus, he explained that in the case of an estate with 500 slaves where only one descendant could be found, this descendant would be entitled to one five-hundredth of the value of the estate, in line with “the estimate of the productivity of their own ancestor alone” (Block 2002: 56). This is because the slave estate’s heir should be considered the legitimate owner of the rest of the property—in line with Rothbard’s scheme—unless the rest of the descendants of the slaves can be found.

## **6. The Innocent Homesteader Scheme Leaves Certain Victims without Redress**

The primary problem with Rothbard’s scheme is that it overlooks the victims of the Lockean crime of monopoly. This crime is the Lockean version of the injustice Aquinas (1947: SS QQ62) outlined of unjustly preventing people from acquiring what they otherwise would have had. Let us discuss this crime and the implications it has for addressing historical injustice from a Lockean perspective.

As Rothbard discussed in *Ethics*, one form of monopoly is when someone unjustly prevents another person from homesteading unowned natural resources. Rothbard asked us to imagine that Crusoe is on an island. If Crusoe were to claim the whole island as his own—even parts which Crusoe himself had not used and homesteaded—and tried to exclude

Friday from joining him on the island, Crusoe would be “illegitimately aggressing” against Friday (Rothbard 1998: 47). Note that here the crime is separate from theft, as it does not necessarily involve removing property already owned by somebody else. It involves preventing people from homesteading unowned property. In this context, Rothbard (1998: 47) also criticized what he referred to as “Columbus complex” whereby people claim monopoly ownership over whole islands they discover upon arrival, including land they have not labored on.

The second form of monopoly is exercising monopoly ownership over stolen items. A monopolist over stolen items might be a person who buys, or in some other way comes into possession of stolen goods. However, the monopolist also might be the thief, who maintains possession of the item they stole. We can see that possession of stolen items also prevents would-be owners, such as heirs, from ownership of property they would otherwise have.

To see the difference between the Lockean law of restitution, which can address monopoly, and Rothbard’s scheme, which cannot, let us imagine a simple scenario with some similarity to actual historical events in at least one country. Let us imagine that Norman takes land from Smith, and then Smith soon dies, leaving no heirs. Let us then imagine that Norman advertises that the land is available for sale. The land will be sold to the highest bidder. All of the local villagers want a piece of the land but are prevented from homesteading it by Norman’s criminal ownership. Some locals make bids for the land but are rejected. Other locals want the land but don’t make a bid, as they think their bid won’t be successful. In the end, only one farmer, Johnson, is given the land by Norman, as he makes the highest bid.

We can notice that after stealing the land from Smith, the second crime Norman committed here was monopoly. He was committing monopoly when he prevented Smith from accessing his land and continued his monopoly aggression by excluding other people from homesteading the land after Smith’s death. Norman was not entitled to prevent other people from homesteading the land as he was not a legitimate owner.

According to the Lockean law of restitution, the victims of monopoly—that is, those who were unjustly barred by Norman from the land whilst Norman looked for the highest-bidding buyer—became owed the land in restitution. However, according to Rothbard’s scheme, Johnson should be considered the rightful owner of Smith’s old land. The monopoly victims are ignored. The Lockean law of restitution therefore clearly appears to be more compatible with Lockean theory than Rothbard’s approach.

## **7. Theoretical Implications of Restitution for Lockean Monopoly**

There are practical questions that arise when addressing monopoly with Lockean restitution. How do we judge who became owed Smith’s old land? Here we should recall that as restitution theorists since at least Aquinas have pointed out, restitution requires an attempt to make holdings as close to what they would have been had an injustice not taken place. Thus, when making judgments on restitution for monopoly, we should attempt to estimate who would have homesteaded what, had it not been for the monopolist’s aggression. This is similar to the common practice of estimating losses in cases where compensation is required for road traffic accidents and the like.

If it is unclear who would have homesteaded Smith’s old land, it may be the case that the closest neighbors of Smith should divide the land equally among themselves. However, in

the case that it is entirely unclear who was most likely to have homesteaded Smith's old land were it not for Norman's monopoly, the land should be divided equally among all members of the affected society because, strictly speaking, they were all unjustly barred from homesteading the monopolized holding.

Two clarifications must be made here. Firstly, the claims of the villagers or anyone else owed Smith's old land in restitution have priority over the claim of Norman's customer, Johnson. If Johnson refuses to give them the land in restitution, he becomes a monopolist himself. We see that in this way, once a holding becomes monopolized—hence owed in restitution—it remains monopolized and can never be considered justly held again until it has gone through a restitutionary process. No person that is gifted monopolized property, or buys, rents, or steals it, can be considered the legitimate owner. Monopolized property remains owed in restitution until it has gone through a restitution process.

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The second clarification that must be made is in reference to the fact that above when I said that Smith's stolen land should be redistributed equally among all members of "the society," it was not entirely clear which society I meant. The whole village? The country? The world? Who decides? I suggest that in lieu of good reasons otherwise, all unjustly held items with entirely unknown rightful owners should be distributed in an egalitarian manner among all people in the world. Any other cutoff point seems ethically arbitrary. The question arises of what it means to distribute ownership of an item among all people in the world. Perhaps such items could be deemed to be owned like joint-stock companies, with everybody in the world being a shareholder. This article does not go too much further into the practicalities of such redistribution, but we suggest that when items become owned by everybody in the world, they effectively become part of the global "commons". As such, it may be the case that ideas along the lines of those discussed by Ostrom (1990) in her book *Governing the Commons*, may be useful when it comes to practical considerations for managing such items.

### 7.1. Possible real-world implications of addressing Lockean monopoly

If it is the case that once items become monopolized, they remain unjustly held until they have gone through a restitution process, then, due to (1) the history of land monopoly throughout the world including monopoly by various feudal and colonial regimes, and (2) the fact that no property in the world has ever gone through a Lockean restitution process, it is likely that a lot of property in the world is currently held unjustly. Let us take England for example. All land in England was monopolized by the Crown in 1066, with everybody else becoming a form of tenant, including the aristocratic landlords who were referred to as the tenants-in-chief. None of this land has ever been through a Lockean restitution process, so it is all held unjustly according to the Lockean law of restitution. Additionally, any items made from English raw materials are also unjustly held. To see this, we can turn to Kinsella's argument that creating useful new items is not a necessary or sufficient condition for coming to own the item. Rather, whether one legitimately owns an item one creates depends on whether one legitimately owns the resources one uses in order to produce the item. Kinsella's argument can be seen in part as a retort to Rothbard's claim that sculptors should own the sculptures they make. According to Kinsella:

One cannot create some possibly disputed scarce resource without first using the raw materials used to create the item. But these raw materials are scarce, and either I own them or I do not. If not, then I do not own the resulting product. If I own the inputs, then, by virtue of such ownership, I own the resulting thing into which I transform them. Consider the forging of a sword. If I own some raw metal (because I mined it from ground I owned), then I own the same metal after I have shaped it into a sword. I do not need to rely on the fact of creation to own the sword, but only on my ownership of the factors used to make the sword. And I do not need creation to come to own the factors, since I can homestead them by simply mining them from the ground and thereby becoming the first possessor. On the other hand, if I fashion a sword using your metal, I do not own the resulting sword. In fact, I may owe you damages for trespass or conversion. Creation, therefore, is neither necessary nor sufficient to establish ownership. (Kinsella 2008: 37–38)

By extension, if the sword-maker makes a sword from metal owed in restitution to other people, then the sword is owed in restitution to those that were owed the metal. Furthermore, if the sword-maker then transfers that sword to someone else, the recipient does not become the just owner of the sword. The recipient now owes the sword in restitution to the people that were owed the metal. We must therefore conclude that all items ever made from unjustly held natural resources are themselves unjustly held and owed in restitution. As a start, this means all items made from natural resources in England. Due to the history of feudalism and colonialism throughout the world, the same surely goes for much other property in the world—perhaps all of it.

It must also be noted that with regard to England, it appears impossible to know who would own what land—or the items made from such—without the history of monopoly. Therefore, it should all be owed in an egalitarian manner to all people in the world. Again, the same likely goes for much other property in the world.

### **8. Rothbard's Scheme Indirectly Supports Thieves**

Before moving on to discuss a second Lockean injustice that Rothbard's scheme is unable to address, it is worth looking at a secondary problem with Rothbard's failure to address monopoly. This secondary problem is that it contradicts Rothbard's assertion that a "criminal cannot be allowed to keep the reward of his crime" (Rothbard 1998: 58).

Rothbard classes stolen property as unowned if the original owners (the theft victims) cannot be found. He does not explain what he means by "cannot be found" or who is to judge whether or not a victim cannot be found. He takes an intergenerational approach to justice and is likely referring to slave descendants, the descendants of dispossessed Native Americans, and other descendants of historical crimes. However, it is also conceivable that victims of more contemporary crimes could not be found. For example, the victim of a theft within the last decade could have emigrated to some unknown place. Or the victim may have died recently with no identifiable heirs. In such scenarios, where victims or their heirs cannot be identified, then the stolen property is considered unowned. Rothbard writes, "the disappearance of the victim means that the stolen property comes into a proper state of no-ownership" (Rothbard 1998: 58). For Rothbard, in line with the homestead principle, the first person to use unowned property becomes its legitimate owner.

In a vacuum, Rothbard's approach to ownership and homesteading outlined in the paragraph above implies that if the thief is the first person to use an unowned stolen item—that is, a stolen item whose legitimate owners cannot be found—he should be considered the homesteader and thus legitimate owner. Rothbard considered this implication unacceptable. Therefore, in order to solve this problem, he made an additional stipulation: thieves cannot homestead the unowned loot they possess, as the “criminal cannot be allowed to keep the reward of his crime” (Rothbard 1998: 58). For Rothbard, as thieves are to be deprived of their loot, the next person to use their stolen item should be considered the legitimate homesteader and owner. Rothbard does not spell this out, but it is clear that this can include people that are gifted the property by the thief, buy or rent the property from the thief, and presumably—although this is less clear—steal the property from the thief.

A problem with this approach is that allowing people that are gifted stolen items, buy stolen items, or rent stolen items, to be considered the legitimate homesteaders of the items can help thieves benefit from their crime. Just because one is not directly in possession of an item, it does not mean that one is not benefitting from being able to steal the said item and then transfer it to whom one wishes. One of the benefits (or rewards) of owning property under Lockeanism is that owners can transfer their property to whom they wish. For example, if we allow a land thief, Jones Sr. to give stolen land to his son, we would be legitimizing his ownership privilege of being able to give the land to his son, which he gained by stealing the land. Thus indirectly, by legitimizing Jones Jr's title, we would be rewarding Jones Sr.. Therefore, we see the innocent homesteader scheme's failure to address monopoly means that the scheme fails to achieve Rothbard's stated goal of depriving thieves of the reward of their crime.

### **9. The Innocent Homesteader Scheme Cannot Address Exploitation**

The second form of injustice that the innocent homesteader scheme is unable to address is exploitation. We can describe exploitation as using the artificially weak bargaining position of a violently oppressed person to gain a benefit from that person. We suggest that there are two broad categories of exploitation: (1) exploitation of buyers by sellers, and (2) exploitation of sellers by buyers. Exploitation of buyers by sellers occurs when a seller of an item sells a good at a higher price than they would be able to if the purchaser did not have his or her choices restricted by violence. One example of exploitation Rothbard discussed was tariffs. Government tariffs allow domestic sellers of tariff-protected items to raise prices at least in the short term. The buyer of the tariff-protected item is violently oppressed because he or she is legally prevented from purchasing the item from a foreign seller at a free market price.

Under the innocent homesteader scheme, there is no way for the tariffed item buyer to gain redress from the seller. Under the innocent homesteader scheme, the only perpetrators of injustice that should have their gains taken from them are thieves. However, the seller of tariffed items is not a thief and commits no aggression him or herself. He or she merely benefits from the aggression of the government by raising prices. In terms of exploitation of sellers, we can look at the sale of labor in wage-labor relationships when such sales take place at an artificially low wage price due to the worker suffering violent oppression. As an example, let us imagine that Smith has his land stolen. This puts remaining property owners in the position to exploit Smith's labor.

If a property owner, who we will call Thatcher, knows that Smith is a landless proletarian and thus desperate for money, Thatcher can offer him the use of her property or “means of production” to produce commodities. Thatcher can pay Smith only a fraction of the value of the goods he produces for her, thus extracting surplus value from Smith. We suggest that this is exploitation insofar as Thatcher pays Smith less than Smith would have worked for (he may have refused to work for Thatcher, full stop) had he not suffered the aggression of having his land stolen. Thatcher would have used Smith’s artificially weak bargaining position to gain a benefit from him. Rothbard did not discuss the possibility of the exploitation of wage laborers, but it is clear that the same principle of extracting value from persons in artificially weak bargaining positions is at play here, as is at play with tariffs. Nevertheless, under the innocent homesteader scheme, there is no way for Smith to get redress from Thatcher.

### 9.1. Addressing exploitation

A Lockean law of restitution could address exploitation. All that is required is a slight alteration of the English law on exploitation. Under the English law, exploitation is defined as the “abuse of power” or influence by a defendant to gain a benefit from a claimant (Virgo 2015: 255). Virgo explains that transactions can be considered unjust “where the defendant has unconscionably exploited his or her superior bargaining position to the detriment of the claimant who is in a much weaker position” (Virgo 2015: 277).

We suggest that an approach to exploitation that is in line with Lockeanism looks at whether one party’s bargaining position is artificially weak due to being violently oppressed, as discussed above. Where exploitation has taken place, restitutionary claims arise. Furthermore, in light of the Lockean law of monopoly, the proceeds of exploitation can never be legitimately held until they have gone through a restitution process. Exactly which restitutionary claims arise in our world due to exploitation is a matter for further theoretical discussion and empirical research.

## 10. Conclusion

It is often assumed that the Lockean justice thesis works as a *prima facie* defense of existing titles to private property. It is assumed that in lieu of theft victims or victim’s heirs claiming ownership of particular pieces of property, all existing private property titles should remain as they are. However, this assumption is based on a problematic Rothbardian approach to addressing historical injustice in holdings. This approach is problematic, primarily because it cannot fully address the Lockean injustice of monopoly and secondarily because it cannot address exploitation. However, the Lockean law of restitution can address these problems. A restitutionary approach to addressing injustice also has a greater pedigree than the Rothbardian approach in natural law theory—the broad framework of ethics in which Lockean theorists place the Lockean justice thesis. The Lockean law of restitution therefore seems to be a more coherent approach to the problem of injustice in holdings than the Rothbardian one.

The Lockean law of restitution differs from the Rothbardian approach in two significant ways. First, it addresses monopoly. According to this law, once an item becomes unjustly held it cannot be considered justly held again until it has been returned to the rightful owner(s) through a restitution process. Where the rightful owner is (or owners are) unknown, the item should be redistributed in an egalitarian manner. Due to the history

of feudalism and colonialism throughout the world, it prima facie appears that much property in the world should be redistributed in an egalitarian manner according to this law. Exactly how much property in the world this applies to is a matter for further historical research. The second way in which the Lockean law of restitution differs from the Rothbardian approach is that it can address exploitation. Which restitutionary claims arise in our world due to exploitation is also a matter for further research.

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