Self-Ownership vs. Divine Ownership: A Lockean Solution to a Liberal Democratic Dilemma

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While the role of religion in the public life of contemporary liberal democracies constitutes a significant and ongoing topic of debate in political theory, scholars have thus far stopped short of addressing the root of this contentious issue in the apparent contradiction between self-ownership and Divine ownership. I argue that a hitherto unnoticed and persuasive means of resolving this contradiction is implicit in the thought of John Locke. In fact, one of the more controversial issues in recent Lockean scholarship concerns the manner in which Locke’s assertions of human self-ownership cohere with his prominent theological commitments. These two sides of Locke’s thought may be reconciled, and a potential pathway through the liberal democratic dilemma illumined, by elaborating upon a sophisticated theory of ownership that is implicitly present in Locke’s Two Treatises of Government and An Essay Concerning Human Understanding.

During the course of his famously insightful and eloquent observations of the early United States, Alexis de Tocqueville noted that

By the side of every religion is to be found a political opinion, which is connected with it by affinity. If the human mind be left to follow its own bent... it will endeavor, if I may so speak, to harmonize earth with heaven. (Tocqueville [1835] 1990, 300)

As controversial as Tocqueville’s statement might sound today, it has received clear confirmation throughout American history. The Declaration of Independence, after all, famously appealed not only to the “Laws of Nature” but also to “Nature’s God,” and asserted that the human rights governments were formed to “secure” had been granted not by these governments nor even by nature itself, but rather by the “Creator.” The current form of the Pledge of Allegiance explicitly places the United States “under God,” and the official motto of the United States clearly proclaims, “In God We Trust.”

Despite the noteworthy cooperation between the religious and liberal democratic components of the “American amalgam” (Zuckert 1996, 241), these components have stood in a certain tension with one another from the beginning, and this tension has occasionally been manifested in actual political-legal conflicts that recall the more characteristically European example. Liberal democracy is, in fact, a secular or nonreligious political form in its predominant emphasis if not in its inherent essence. This point is clearly evidenced by the fact that the first clause of the First Amendment to the U.S. Constitution prohibits Congress from making any laws “respecting an establishment of religion, or prohibiting the free exercise thereof.” Thomas Jefferson’s writing of The Virginia Act for Establishing Religious Freedom (1779) and James Madison’s famous Memorial and Remonstrance Against Religious Assessments (1785) underscore the importance of this distance between, or even separation of, Church and State. More recently, John Rawls’s widely influential conception of political liberalism emphasizes the distinction between private “comprehensive doctrines,” such as religious...
beliefs, and the generally accessible “public reason” (Rawls 1999, 573). Notable Supreme Court decisions in Wisconsin v. Yoder,1 Mozert v. Hawkins,2 and the Ten Commandments cases,3 as well as recurrent outcries over an alleged “War on Christmas,” all witness the persistence of heated controversy regarding the proper relationship between private religious beliefs and the public life of American liberal democracy.

While it is quite easy to notice and describe concrete manifestations of the tension between religious belief and liberal democracy, it is considerably more difficult to formulate a coherent theoretical framework that both explains and offers genuine remedies for this tension. Drawing on the thought of John Locke, I argue that such a framework may be built upon two distinct premises regarding the ownership of the individual and the distinct perspectives regarding moral foundations with which these premises are naturally associated. Perceived tension between the original premises gives rise to a similar tension between their corresponding moral perspectives, and both together contribute significantly to the possibility of concrete political-legal conflicts. In this way, contemporary debates regarding the proper role of religion in public life are intimately tied to the long-standing quarrel between traditional natural law-based and more modern natural rights-based perspectives, and this quarrel in turn stems from the competing premises of Divine ownership and self-ownership.

The premise of individual self-ownership constitutes, in fact, a primary justification for the inherent legitimacy of contemporary liberal democracies, whether this self-ownership is expressed in terms of autonomy (Macedo 1990; Raz 1986), the possession of “certain unalienable Rights,”4 or a “realm of personal sovereignty” (Zuckert 2002, 185). Cornerstones of contemporary liberalism such as J. S. Mill’s harm principle or John Rawls’s first principle of justice reflect a profound commitment to one’s legitimate exclusive control over, or ownership of, oneself (Mill [1859] 1989; Rawls 1971). It is no accident, moreover, that a form of government built in large part upon the premise of self-ownership would favor a predominantly natural rights-based perspective rather than a natural law-based one.

The premise of self-ownership appears, however, to constitute a potential denial of the crucially important religious tenet that God possesses legitimate control over, and indeed owns, individual human beings. It is thus not surprising that prominent contemporary critics of liberalism, such as Robert George, John Finnis, or Christopher Wolfe, are themselves religious; nor, moreover, is it surprising that each of them advocates natural law-based perspectives as opposed to natural rights-based ones (Finnis 1980; George 1996; Wolfe 2006). While many ordinary citizens may be able to hold these two ownership premises together in a way that is not generally problematic, scholars treating this topic have always found it necessary to resort to characteristically medieval distinctions and perspectives in order to do so (Tierney 2006; Tully 1980; Wolfe 2006). The predominance of such a tactic suggests that self-ownership and Divine ownership, as well as natural rights and the natural law, may be simply irreconcilable from a modern perspective that takes the former concepts far more seriously than did its medieval counterpart. The impasse represented by this supposed irreconcilability has, in turn, precluded the articulation of a clear and persuasive theoretical framework for alleviating the subsequent tension between private religious beliefs and the public life of liberal democracies.

This article argues that a seminal contributor to the liberal democratic perspective, John Locke, grappled mightily with the potential contradiction between self-ownership and Divine ownership, as well as the related tension between modern natural rights and the traditional natural law, and that his writings indicate a persuasive theoretical lens through which to view the resultant relationship between the political commitments of liberal democracy and private religious beliefs. A new and coherent explication of Locke’s thought with respect to these matters provides a unique opportunity for outlining a new and coherent solution to an important contemporary dilemma. The argument to follow thus aims both to provide a defensible interpretation of Locke’s philosophical philosophy in itself and to indicate the contemporary relevance of this new interpretation to ongoing debates regarding the relationship between religious belief and the public life of liberal democracies.

The Two (Contradictory?) Faces of Locke’s Political Philosophy

One of the more controversial issues in recent Lockean scholarship concerns the meaning of Locke’s repeated assertions in the Second Treatise of the self-ownership

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1 406 U.S. 205 (1972).
2 827 F.2d 1058 (1987).
4 The Declaration of Independence.
premise, or the proposition that “every man has a property in his own person” (Two Treatises II.v.27). Locke’s meaning is obscured by the apparent contradiction this assertion introduces when considered in conjunction with his simultaneous assertions of the Divine ownership premise, as in the famous “workmanship argument” in Chapter II of this work (II.ii.6). In this earlier passage, Locke declares human beings to be the property of “one omnipotent, and infinitely wise maker. . .whose workmanship they are.” The manner in which these two statements are reconciled within Locke’s thought goes very far toward determining the relationship between Locke and the Christian natural law tradition on the one hand and the Hobbesian natural rights doctrine on the other. Indeed, the most widespread and influential interpretations of Locke’s political thought may be broadly defined by their attempts to make sense of this apparent contradiction.

Insofar as Locke is taken to privilege the Divine workmanship model of property in human beings, he appears to be a natural law theorist following generally in the footsteps of Aquinas and Hooker. Locke’s natural rights, on this account, are derived from this traditional natural law in the manner indicated by the Spanish neo-Thomists (Tierney 2006, 185–92; Tully 1980, 64–65). Just as Locke’s understanding of self-ownership is equivalent to a “liberty to use” God’s property, so “natural rights” are a shorthand expression for indicating the permissions of the natural law (Tierney 2005, 36–40; 2006, 185–94). For Locke, since “The world belongs to God and its right disposal is determinable solely by his authority,” it follows that “all human values were to be elicited from [the] inexhaustible matrix” of the Creator-created relation (Dunn 1969, 24–26). With respect to his historical context, Locke’s purpose is to counter the various absolutist theories of Hobbes, Grotius, Pufendorf, and Filmer by showing how “a convincing resistance theory” could be derived from a theory of the natural law (Tully 1980, 54–55).

Insofar as Locke is taken to privilege the self-ownership model of property in human beings, on the other hand, he appears to be a modern natural rights theorist who continues the Hobbesian “aberration” from the medieval tradition in important ways (see Tierney 2005, 25). This Locke follows Hobbes’s rigid distinction between “right” and “law,” placing the former at the center and foundation of his political theory in contradistinction to and at the expense of the latter (Strauss 1953, 226–27). Far from deriving natural rights from the natural law in a benign neo-Thomist manner, Locke in fact reverses the order of priority by grafting a novel understanding of natural law onto a natural rights-based framework (Zuckert 1994, 272–75; 2002, 190–97). The “core” of Locke’s political philosophy is not the fact of God’s ownership of the world and His government by natural law, but rather “the notion of human beings as rights bearers by nature because they are self-owners” (Zuckert 2002, 193). Whether he is portrayed as a more cautious Hobbesian, a proponent of “possessive individualism,” or the innovative founder of a new and persuasive doctrine of liberalism, this Locke’s historical significance lies not in reestablishing the medieval understanding of natural law as a basis for political philosophy but rather in “launching” a modern political philosophy based upon natural rights and self-ownership (Macpherson 1962; Strauss 1953; Zuckert 2002).

Each of these conflicting interpretations, like the models of property with which they are intimately connected, possesses a substantial basis in Locke’s writings. In support of the first Locke (the traditional natural law theorist, or “NL Locke”), one may cite Locke’s early work on the law of nature, his commitment to and frequent arguments for natural theology, his reliance on Hooker and the notion of natural law in the Second Treatise, and his Christian convictions. Considering these points, it is indeed plausible to assert with Tully that Locke’s purpose in the Second Treatise is to “reestablish natural law as a basis for his rights theory” (Tully 1980, 55). While Hobbes asserted that in the state of nature “every man has a right to everything, even to one another’s body” (Hobbes, Leviathan I.xiv.4), Locke’s state of nature “has a law of nature to govern it, which obliges every one,” teaching that “no one ought to harm another in his life, health, liberty, or possessions....” (TT II.i.ii.6). It is only after establishing that everyone is “bound to preserve himself” as an implication of God’s workmanship and the command of the law of nature that Locke speaks of the Hobbesian-sounding “right of self-preservation” (TT II.ii.6–11). Moreover, the “state of perfect freedom” which characterizes Locke’s state of nature exists only “within the bounds of the law of nature” (TT II.ii.4; see also II.v.30 and II.vi.59). Locke’s natural rights, it seems, follow as a consequence from the prior duties and permissions of the natural law.

Proponents of the second Locke (the modern natural rights theorist, or “NR Locke”), however, may claim a similarly plausible basis in Locke’s texts for their interpretation. Despite Locke’s frequent invocations of the law of nature throughout the Second Treatise, it was nevertheless, as Laslett remarks, “always ‘beside his present purpose’ for Locke to demonstrate the existence and content of natural law” (1988, 82). Although Locke devoted his early Questions Concerning the Law of Nature to precisely this task, he declined to publish it even at the persistent urging of his

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5 Hereafter, Two Treatises will be abbreviated TT.
friend Tyrrell (Horwitz 1990, 44–45). Moreover, Locke’s treatment of the natural law in the Questions falls far short of either adequately addressing Laslett’s complaint or establishing the continuity of his thought with Aquinas and the Spanish neo-Thomists (Horwitz 1992). Locke’s Questions may, in fact, rather indicate his rejection of the traditional natural law framework and a closer affinity to Hobbes (Zuckert 1994, 187–215 and 272–75; 2002, 187–93). In Question VI, Locke considers the Thomistic contention that the natural law may be known “from the natural inclination of mankind,” and answers simply, Negatur (Questions fol. 61).8 Locke also denies Aquinas’s assertion that certain basic precepts of the natural law are “known to all,” frequently insisting that the natural law is known only to “the sounder and more perceptive part” of mankind and only with the application of considerable industry and self-control (Questions fol. 16–17).7 Further, Locke asserts in the Questions that the immortality of the human soul “must . . . be necessarily assumed for the existence of the law of nature,” since “law will have no force if there is no punishment” (Questions fol. 76).8 In the Essay, however, Locke carefully avoids the task of establishing the “certainty, or probability of a future State,” affirming only that such a state “is at least possible” (Essay II.xxi.70). In The Reasonableness of Christianity, Locke further states that “Before our Saviour’s time, the Doctrine of a future State, though it were not wholly hid, yet it was not clearly known in the World. ’Twas an imperfect view of Reason. . . .” (Locke [1695] 2002, 203).

On the basis of these and other considerations, advocates for the “NR Locke” may conclude that Locke’s early work on the law of nature, which represents his fullest and most systematic treatment of this law, only raises more questions regarding the character and status of his natural law doctrine than it answers. Locke’s commitment to a doctrine of natural rights, on the other hand, is abundantly clear from the political philosophy of the Second Treatise. Locke’s stated purpose in the Second Treatise is, after all, precisely to show how “political power,” or a “right of making laws” (TT II.i.3), arises from the consent of natural rights-bearing individuals and to establish its proper end in the protection of these rights. Since Locke identifies “the Idea of Property” with “a right to any thing,” his many statements regarding “property” throughout the Second Treatise may be readily translated into rights-language without altering Locke’s meaning (Essay IV.iii.18). Thus, in concluding his detailed discussion of property (i.e., rights) in Chapter V, Locke in effect states that “man, by being master of himself, and having a right to his own person (proprietor of his own person), and the actions or labour of it, had still in himself the great foundation of rights (property)” (TT II.v.44). Locke’s frequently recurring formulation of the primary end or purpose of political society may also be accurately restated in terms of rights: “The great and chief end, therefore, of men’s uniting into common-wealths, and putting themselves under government, is the protection of their rights (preservation of their property)” (TT II.ix.124). The failure of a government to pursue this end, according to Locke, constitutes a justification for revolution. It appears from these considerations that natural rights, rather than the natural law, may indeed form the core of Locke’s political philosophy.

The fundamental disagreement between these two interpretations is a consequence of the shared assumption that a coherent Locke cannot travel both directions on a one-way street; he must either derive natural rights from the natural law, or the natural law from natural rights. Locke must be either “NL Locke” or “NR Locke,” traditional or modern; an “NLNR Locke” is an inconsistent or incoherent Locke. This assumption is precisely parallel to that of the incompatibility of Divine ownership and self-ownership of the individual human being. Locke, however, did not perceive, and need not have perceived, an insurmountable difficulty in reconciling the fact of God’s property in His workmanship with human beings’ property in themselves. However undeveloped and implicit it may be in Locke’s writings, the means of such a reconciliation is discernable throughout these writings. In drawing out and clarifying a Lockean solution to the troublesome notions of ownership and property with respect to individual human beings, a resolution of the conflict between the “NL Locke” and the “NR Locke” comes into view. This resolution stems ultimately from the Lockean distinction, drawn within the Essay, between the “person-self” and the “substance-man” aspects of the individual human being. While God makes and owns the individual considered as a “substance-man,” the individual considered as a “person-self” makes and owns herself.

The Origin and Limits of Divine Ownership: Locke’s “Potter-God”

An early indication of this crucial distinction may be discerned in Locke’s Questions Concerning the Law of Nature, a work that contains the germ of many of Locke’s later and more familiar writings. Locke’s Questions is,

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6 Cf. Aquinas, Summa Theologica I-II.94.2.
7 Cf. Aquinas, Summa Theologica I-II.93.2.
8 See also Locke, Essay II.xxi.55, II.xxviii.5.
according to Robert Horwitz, “uncommonly complex and perplexing, even when measured by the standards set by his other works” (1992, 252). As a result of such difficulties in interpretation, this early text provides pliable material which may be molded in support of a variety of interpretations of Locke’s more mature works. On the one hand, Locke’s Questions may be plausibly cited as evidence for the fundamental place of the traditional natural law and divine workmanship in Locke’s political thought (Tully 1980, 38–50, 63). On the other, it may in fact lend support to arguments depicting a more distinc-tively “modern” Locke who abandons the traditional natural law framework and the divine workmanship model in favor of the natural rights framework and the self-ownership model which prominently emerge in his later writings (Horwitz 1992; Zuckert 2002, 169–97). Alternatively, the complexity and interpretive difficulties present in Locke’s Questions may simply reflect Locke’s ultimate confusion regarding the status of a natural law framework which he stubbornly holds despite the insuperable difficulties of rationally establishing its existence (Dunn 1969, 25).

The most plausible interpretation of Locke’s Questions possesses elements of each approach. In his Questions, Locke sets forth a particular version of the natural law/Divine workmanship framework which he finds more persuasive than preceding versions (i.e., those of Grotius and Aquinas). Locke’s own version, however, is undoubtedly heterodox in its retreat to a minimalist conception of the Creator as little more than a necessary supposition for human existence and the ordered regularities of nature. This conception of the Creator in Locke’s preferred version of the natural law, besides introducing potential difficulties in establishing the natural law as a law,9 leaves sufficient philosophical “room” for the robust doctrine of natural rights and self-ownership which emerges in his later works. Thus, while the Questions does evidence the importance of the natural law/Divine workmanship framework to Locke’s political philosophy, it is a relatively controversial, minimalist, and undeveloped conception which does not preclude the emergence of a strong natural rights/self-ownership framework alongside it.

Throughout the Questions, Locke almost entirely avoids any reference to Revelation or the distinctively Christian conception of God in exploring the central elements of the natural law. Indeed, Locke explicitly removes Revelation from his discussion of the natural law as a possible “means of knowledge which . . . does not concern our present argument” (Questions fol. 23). Locke’s God in the Questions is, in fact, little more than a “potter-God” who effects the original formation of “clay” into a distinctive shape and possesses the power to destroy His vessel.10 In Question V, Locke presents his strongest argument for the existence of God, whose “superior will” is required for the existence of the natural law, by asserting simply that “all the multitude of inanimate beings or animals other than man cannot produce man, who is far more perfect than they; nor can man produce himself” (Questions fol. 12; fol. 54). Therefore, according to Locke, “there exists some creator other than ourselves, more powerful and wiser, who at his pleasure can bring us into being, preserve, and destroy us” (Questions fol. 55–56). Within Locke’s account, this creator is not identifiable as the God of the Old or New Testaments; it is simply “some superior power,” or “some powerful and wise being who has jurisdiction and power over men themselves” (Questions fol. 58). Although Locke explicitly invokes the analogy of the “potter” and “clay” at the conclusion of the argument, he does not quote or provide any reference to its biblical source. The important point, for Locke’s purposes, is that the “potter-God” possesses a “will” and the power to enforce obedience to this will (see Questions fol. 87).

This argument possesses remarkable similarities both with Locke’s argument for the existence of God in the Essay Concerning Human Understanding and with the “workmanship” argument in the Two Treatises. In the Essay, Locke grounds his argument for God’s existence in the proposition that “Non-entity cannot produce any real Being,” or that “what had a Beginning, must be produced by something else” (Essay IV.x.3). Locke goes on to argue that the necessary eternal Being “must be also the most powerful” since “what had its Being and Beginning from another, must also have all that which is in, and belongs to its Being from another too. All the Powers it has, must be owing to, and received from the same Source” (Essay IV.x.4). These statements closely parallel Locke’s assertions in the Questions that (1) “nothing might be the cause of itself” and that (2) “we owe to him (the creator) and to him alone our body, soul, life, whatever we are, whatever we possess, and also whatever we can be” (Questions fol. 54; fol. 88). The Essay and the Questions present a remarkably similar conception of the relationship between God and humankind: (1) God is the necessary supposition for the fact that human beings are something rather than nothing, and (2) His will is the only explanation for why human beings possess the particular arrangement of powers, abilities, and


10 The reference here is drawn from Romans 9:21, Isaiah 29:16, and Isaiah 30:14.
The Emergence of Self-Ownership: Concurrent Univocal Property

In addition to providing the clearest account of Locke’s conception of the proprietary relationship between humankind and their Creator, an account that recurs in both the Essay and the Second Treatise, the Questions also intimates the manner in which God’s property in humankind may coexist with human beings’ property in themselves and external objects. In an important passage within Question VIII, Locke asserts that

Since god is superior to all things, and he holds as much right and authority [jus et imperium] over us as we cannot hold over ourselves . . . it is right that we live according to the prescription of his will. God has created us out of nothing and, if it is his pleasure, he will return us to nothing again. We are, therefore, subject to him by supreme right [summo jure] and absolute necessity [summa necessitate] (Questions fol. 88–89).

Although Locke is attempting to describe God’s “right and authority” over humankind, he begins by defining it negatively in terms of human beings’ right and authority over themselves. God’s right and authority over humankind is simply what is left over after the limit of human beings’ right and authority over themselves is reached; or, alternatively, it is the difference between the total “amount” of right and authority under which human beings exist and that portion which they hold over themselves. As circuitous and odd as this description appears, Locke’s phrasing (tantum . . . quantum) clearly indicates such an understanding. The sentence which follows clarifies this understanding by restating in concise form the central attribute of the “potter-God”: the ability to create ex nihilo and to preserve or destroy created beings at “his pleasure.” This unique ability is the source of God’s portion of right and authority over human beings and introduces a relation of dependence in addition to the independence that follows from human beings’ right and authority over themselves. Locke concludes by characterizing God’s right and authority over humankind, which has been described in both negative and positive terms in the preceding two sentences, as “highest,” “supreme,” or “absolute” (sumnum).

Later in the Questions, Locke returns to the problematic issue of the coexistence of Divine and human ownership or property with respect to the same object in refuting an objection drawn from the Bible. The argument Locke opposes claims that the obligation of the law of nature “can be suspended by the command of god,” and therefore that this law is not binding in a “perpetual and universal” manner (Questions fol. 102). In the particular Biblical example provided, Locke’s objector claims that God may suspend the law of nature which prescribes that “to each should be given what belongs to him or that no one should seize what belongs to another . . . ” (Questions fol. 102). Locke answers this objection by asserting that “were god to command a person not to return a thing he has received as a loan, the obligation of the law of nature would not cease, but the ownership [dominium] of the thing itself.” Locke goes on to explain how this is possible: “For the goods of fortune are never ours in such a way that they cease to belong to god. He is the supreme master [supremus dominus] over all things . . . ” (Questions fol. 102).

This passage indicates two important features of Locke’s understanding of the coexistence of Divine and human ownership of particular objects. First, the “thing . . . received as a loan” is not in any way conceived to be owned by the receiver prior to God’s special command; the receiver’s mere use of the thing loaned does not give him a property right in or exclusive ownership of it. Secondly, Locke’s depiction of the concurrent ownership of God and human beings in particular objects significantly differs from the lender/receiver structure of ownership. While the user of a thing loaned does not in
any way own the thing, the lender himself does despite the “supreme” ownership of God.

It is clear from both of these passages in the Questions that when Divine and human ownership coexist with respect to the same object, the object is God’s property to a higher degree than in a superior sense to that in which it is the property of the human being. What is not immediately clear, however, is precisely how this hierarchical structure of ownership ought to be understood or described. Perhaps the most widely accepted interpretation is encapsulated by Tully: “man’s property is the right to use and preserve what is essentially God’s property, similar to a tenant’s property” (1980, 114). Arguing in a similar manner, Tierney characterizes Locke’s doctrine of concurrent Divine and human property rights as the “standard medieval doctrine” which distinguishes between dominium directum (ultimate ownership) and dominium utile (ownership of use; Tierney 2006, 177).

The interpretation of Locke’s “property” given by Tully, Tierney, and others in a similar vein does indeed accurately represent the relationship between God’s property and that of humankind as a whole in creation considered also as a whole. The text which the proponents of this interpretation are wont to cite is Locke’s statement in the First Treatise that “In respect of God, the Maker of Heaven and Earth, who is sole Lord and Proprieter of the whole World, Man’s Propriety in the Creatures is nothing but a Liberty to use them, which God has permitted. . . .” (TT I.iv.39).11 The terms of Locke’s statement are (1) God, the Maker of Heaven and Earth; (2) the whole World; (3) Man in general, or humankind; and (4) Creatures in general, or Creation. The complex proprietary relationship arising out of the interaction of these four terms in Locke’s statement may be derived, according to Locke, both from “natural reason” and from “revelation.” Natural reason indicates that “men, being once born, have a right to their preservation, and consequently to meat and drink, and such other things as nature affords for their subsistence,” while Revelation indicates that, as a result of the “grants God made of the world to Adam, and to Noah, and his sons, it is very clear, that God . . . has given the earth to the children of men; given it to mankind in common” (TT II.v.25). The conventional interpretation of Lockean property expounded by Tully and Tierney adequately handles the proprietary relationship between the four terms identified within Locke’s quotation above; this proprietary relationship is Locke’s primary concern throughout the First Treatise within the context of his critique of Filmer. The conventional interpretation noticeably falters, however, once the terms of the proprietary relationship are altered to reflect other aspects of Locke’s doctrine of property which emerge in the Second Treatise.

How, for instance, does this relationship look once the four terms are expressed as (1) God, the Maker of Heaven and Earth; (2) the whole World; (3) a particular human being; and (4) himself? This is another way of asking how the property rights of Locke’s “potter-God” cohere with Locke’s assertion of a particular human being’s ownership of a particular object, or how Divine ownership coheres with self-ownership. Many scholars, including Tully and Tierney, simply apply Locke’s characterization of the “inclusive” or general proprietary relation to the “exclusive” or particular case.12 Just as the property of humankind in creation as a whole (“inclusive” property) is nothing but a “liberty to use” creation in an inclusive manner, so the property of a particular human being in a particular object (“exclusive” property) is nothing but a “liberty to use” the particular object in an exclusive manner. This simple application of the general to the particular case, however, leads to conclusions which are both at variance with much of Locke’s texts and lack the moral implications of exclusive property or private rights.

First, the application of a distinction between dominium directum and dominium utile, or ultimate ownership and use-ownership, to particular or exclusive property is nowhere indicated by Locke himself. Indeed, even the term “exclusive property” is redundant in the context of Locke’s doctrine; Locke’s “property,” which remains undifferentiated and univocal throughout his writings, consistently implies exclusivity. In discussing proprietary claims in particular objects, Locke distinguishes between the relative nobility of the ownership attributed to God and to human beings as well as the object of the ownership of each. These are distinctions of quality and relation; neither occurs at the level of the kind of ownership. The distinctions between “ultimate” ownership and “tenant” ownership, or “inclusive” and “exclusive” property, on the other hand, do occur at this higher-order level. Locke’s distinction with respect to the relative nobility of ownership emerges most clearly in the Questions, while his distinction with respect to the object of ownership is primarily treated in the Essay and the Two Treatises.

In the Questions, Locke divides the “right and authority” under which human beings exist into two portions: God’s, or that portion which we “cannot hold over ourselves,” and ours (that portion which we can hold over ourselves) (Questions fol. 88–89). He then designates God’s portion as the higher or nobler one by attributing the “supreme right” over human beings to God.


12The terminology of “exclusive” and “inclusive” rights or property is taken from Tully (1980, 60–61).
Instead of utilizing more rigid distinctions and marking out God's ownership as the "essential" or "real" kind, however, Locke describes God's ownership as somehow different in degree, or "the highest." Similarly with respect to particular objects other than human beings themselves, Locke designates God as the "supreme master over all things" without either denying the concurrent dominion of a human being or invoking a clear essential/derivative or owner/user distinction (Questions fol. 102). In these passages, Locke affirms the simultaneous or concurrent ownership by God and human beings of particular objects, including human beings themselves, and distinguishes between higher and lower (or more and less noble) forms of ownership. Far from drawing a distinction in kind between the ownership attributed to each, Locke's text indicates that the concurrent ownership of God and human beings ought to be understood univocally.

The proprietary claims of two distinct entities, such as God and a human being, can only be both concurrent (in the same object) and univocal (identical in kind or meaning) if there is a way in which the object owned may be understood to be two within one. In other words, if an object may be divided into two by the understanding while remaining unified in its concrete existence, each object distinguished by the understanding may have a different owner. In the present case, if a particular human being may be divided into two by the understanding, the concurrent univocal ownership of a human being by God and the human being herself is possible. Such a division is, in fact, implied throughout Locke's texts, and especially within the Essay and the Second Treatise. Locke consistently employs a twofold consideration of human beings, in terms of (1) the particular arrangement of powers or faculties which distinguishes humankind from other creatures (and simple nonbeing), and (2) the self-consciousness and personhood which distinguishes one human being from another. Considering the human being in light of (1), he is owned by God; considering the human being in light of (2), he owns himself.13

In the Second Treatise, the "workmanship" argument presents a clear instance of Locke's consideration of human beings in light of the powers which distinguish humankind in general from other creatures. Locke begins the argument by identifying the "law of nature" with "reason," i.e., a power or faculty specific to humankind but not unique to any particular human being. Immediately after the assertion that human beings are "his property, whose workmanship they are," Locke refers to the "like faculties" with which human beings are similarly "furnished" (TT II.ii.6). The "workmanship" argument speaks only of human beings as particular members of a species or kind and endowed with the powers or faculties proper to this kind. Considered in this way, and leaving aside the ways in which one particular human being is distinguished from another, human beings are clearly owned by the "potter-God" of the Questions who originally fashioned them out of nothing.

In Chapter V of the Second Treatise, Locke moves away from the common and toward the particular. Locke first reiterates that "the earth, and all inferior creatures, [are] common to all men," i.e., humankind in general has been given dominion over the earth and inferior creatures by the grant of God and the duty of self-preservation (TT II.v.27).14 Thus far, humankind is the property and workmanship of God and human ownership is, if it exists at all, a simple use-ownership (the standard medieval dominium utile). "Yet," Locke continues, "every man has a property in his own person: this no body has any right to but himself. The labour of his body, and work of his hands, we may say, are properly his." This brief passage speaks strongly, and even definitively, against applying the interpretations of Tully and Tierney to Locke's arguments in the Second Treatise.

First, Locke draws a clear distinction between what is "common" and what he describes as the "property" of human beings; the earth, and all inferior creatures, are evidently not the property of humankind in general. If Locke had intended to distinguish between two kinds of property, or two instances of the same kind of property, his use of the locution "though . . . yet" is simply inexplicable. If the earth, and all inferior creatures, are to be understood as the property of humankind in the standard mode of use-ownership or "inclusive" property, there is no reason why the fact that "every man has a property" in something would seem to be excluded by Locke's initial statement about what is "common." Similarly, if Locke understands the exclusive property every man has in his "own person" as a "Liberty to use" his own person in a manner similar to his liberty to use "the earth, and all inferior creatures," one would expect the two statements to be conjoined rather than sharply contrasted.

The sharp contrast drawn in this key passage between what is "common" and "property" is, in fact, the organizing theme of Chapter V of the Second Treatise as a whole.

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13 Tully affirms a superficially similar distinction in his interpretation of Lockean property (1980, 105–10), but the understanding of this distinction offered herein diverges widely from that provided by Tully.

14 See also II.v.25. This passage gives a kind of recapitulation of Locke's arguments throughout the First Treatise, in which he is concerned to refute Filmer's conception of private property rights by arguing for the existence of an original commons.
Locke begins the chapter by introducing “a very great difficulty,” namely, “how any one should ever come to have a property in any thing” on the supposition that the earth has been “given . . . to mankind in common” (TT II.v.25). In effect, Locke here questions whether his refutation of Filmer’s doctrine of property in the First Treatise on the basis of what is “common” has actually ruled out the only possible means by which property may be acquired. At the conclusion of the chapter, Locke recapitulates his answer to this difficulty as an explanation of “how labour could at first begin a title of property in the common things of nature. . . .” (TT II.v.51). In other words, Locke agrees with Filmer’s contention that an individual may possess a “title of property in the common things of nature.” Locke disagrees, however, with the mechanism by which particular property comes into being within Filmer’s account; it is not a combination of God’s private grant and successive inheritance, but “labour” which gives a title of property. Although Locke speaks of the “joint property of this country, or this parish,” even this quasi-common property is clearly distinguished from that which is “common . . . to all mankind” (TT II.v.35). At no point during this discussion does Locke invoke an understanding of “common” or “inclusive” property (Tully 1980, 53–65); Locke’s “unquestionable property” is definitively particular and exclusive in contradistinction to the inclusive commons (TT II.v.27; see also II.v.28–29, 32).

Neither, moreover, is Locke’s property differentiated into “ultimate” or “essential” and “tenant” or “use” kinds. The very passage from the First Treatise which Tierney and others chiefly rely upon in locating such a distinction does, in fact, speak strongly against reading this distinction into Locke’s doctrine. A more careful interpretation of this passage serves both to connect the mistaken interpretations of Tully and Tierney with one another, and to more clearly illuminate Locke’s unique doctrine itself. The passage, whose latter section is widely quoted in isolation, reads as follows:

...however, in respect of one another, Men may be allowed to have propriety in their distinct Portions of the Creatures; yet in respect of God the Maker of Heaven and Earth, who is sole Lord and Proprietor of the whole World, Man’s Propriety in the Creatures is nothing but that Liberty to use them, which God has permitted. . . . (TT I.v.39)

The second section of this passage corresponds to the first section of the passage in Chapter V of the Second Treatise (TT II.v.27); although Locke appears to be defining “Man’s Propriety” as a “Liberty to use,” he is in fact reject human property in favor of the property of “God the Maker of Heaven and Earth.” This second section, “in respect of God. . . .” expresses the relationship (as noted above) between God and humankind in general with regard to “the whole World.” Considering this relation, God is “sole Lord and Proprietor” (emphasis added), and humankind’s supposed property in other creatures is “nothing but” a liberty to use in accordance with God’s permission.

The first section of the passage from the First Treatise similarly corresponds to the second section of the passage in Chapter V of the Second Treatise. Locke indicates that human beings in fact do “have propriety in their distinct Portions of the Creatures” when they are considered as individuals, i.e., “in respect of one another. . . .” Thus, with respect to one another as individuals and with regard to “distinct Portions of the Creatures” rather than “the whole World,” a human being may have property which “no body has any right to but himself” (TT I.iv.39; II.v.27). It is in this manner that Locke speaks of human property and natural rights throughout Chapter V of the Second Treatise, in explicit contradistinction to the “liberty to use” of the First Treatise which humankind in general enjoys with respect to creation as a whole.

The “workmanship” argument, on the other hand, treats human beings “in respect of God the Maker of Heaven and Earth.” Considered in this way, human beings are not individuals possessing property and rights but, rather, parts of a community of beings who are “furnished with like faculties,” are under a “law of nature,” are the property of God rather than themselves, and are given a “liberty to use” the earth and inferior creatures. This argument, like those in the Questions, does not ground Locke’s doctrine of natural rights or the exclusive property of an individual in himself; it does, however, ground Locke’s version of the natural law. Moreover, the workmanship model provides the key to understanding how human beings, considered as individuals, may acquire a property in their persons and actions similar to the manner in which God’s workmanship engenders His property in humankind in general.

Explaining Self-Ownership: Substance-Man vs. Person-Self

The source of God’s title to property in humankind and creation as a whole is not difficult to surmise in Locke’s texts; God’s “workmanship” has caused their very existence. A more difficult question to answer is how Locke
understands the source of individual human beings’ title to property in their “persons” or selves. Since (1) Locke appears to affirm a univocal meaning of property in both instances, and (2) differences in the justificatory source of property constitute differences in the meaning of the term,15 it would seem that human beings could only possess a property in their persons or selves if they somehow caused the very existence of these entities. From the conception of the “potter-God” developed throughout Locke’s texts, God only directly or immediately causes the existence of the various powers or faculties which distinguish humankind from other creatures. He does not, however, immediately cause the full individuation of human beings into distinct persons with distinct consciousnesses of themselves. This task is directly accomplished by a form of human “workmanship” which grounds the exclusive title to property of individual human beings in themselves.

By marking out the object of the property described in Chapter V of the Second Treatise as the “person” or the “self” (TT II.v.27, 44), Locke directs the reader to his developed discussion of these particular terms in the Essay Concerning Human Understanding. In Book II of the Essay, in his treatment “Of Identity and Diversity,” Locke carefully distinguishes between the terms “Substance,” “Man,” “Person,” and “Self.” Substance, according to Locke, is that which “we take to be the substratum, or support, of those Ideas we do know” (Essay Liv.18). “Substance” establishes the most basic level of distinction between something and nothing, being and nonbeing. Man, by Locke’s definition, is “an Animal of such a certain Form,” or a particular “Shape and Make” (Essay II.xxvii.8). “Man,” therefore, establishes the distinction between beings of a certain kind or type and other creatures of different “shapes and makes.” Person, according to Locke, is “a thinking intelligent Being, that has reason and reflection, and can consider it self as it self, the same thinking thing in different times and places; which it does only by that consciousness, which is inseparable from thinking, and as it seems to me essential to it” (Essay II.xxvii.9). “Person” establishes the distinction between particular individuals, or “thinking things,” of a common “shape and make.” Self, finally, is defined as “that conscious thinking thing, which is sensible, or conscious of Pleasure and Pain, capable of Happiness or Misery, and so is concern’d for it self, as far as that consciousness extends” (Essay II.xxvii.17). “Self” is thus Locke’s term for a “person” (a “thinking thing” which can “consider it self as it self”) which actually does “consider it self as it self . . . by consciousness.”16

The first two of these entities, “substance” and “man,” are the products of God’s workmanship and are thus His exclusive property. These in fact correspond closely to the two characteristic activities of Locke’s “potter-God” which appear in the Questions, the Essay, and the Two Treatises: original creation ex nihilo and the determination of a particular arrangement of powers or faculties which distinguishes one kind of being from another. The latter two, however, “person” and ”self,” are the immediate products of human workmanship and are thus the exclusive property of individual human beings. These entities come into being as a direct result of “that consciousness, which is inseparable from thinking, and . . . essential to it” (Essay II.xxvii.9). According to Locke, this consciousness is that which “makes every one to be, what he calls self; and thereby distinguishes himself from all other thinking things.” Therefore, it is the individual human activity of “thinking,” and the state of self-consciousness that necessarily accompanies this activity, which actually makes the “self” and “person” and fully individuates particular human beings.17

During the course of this discussion in the Essay, Locke clearly establishes the direct relevance of the notions of “person,” “self,” and “consciousness” to his discussion of particular human property in the Second Treatise by explaining how the interrelationship of these ideas establishes individual ownership of one’s actions. In a passage which is remarkably similar to those found in sections 27 and 44 of Chapter V in the Second Treatise, Locke states:

That with which the consciousness of this present thinking thing can join it self, makes the same Person, and is one self with it, and with nothing else; and so attributes to it self, and owns all the Actions of that thing, as its own, as far as that

15 This premise is derived from the distinction between property and mere possession. The latter is an empirical fact, while the former includes, in addition, a moral component that relies on some justification. Thus, this justification enters into the very definition of the term “property.”

16 Locke also describes the relation between “person” and “self” in the following manner in II.xxvii.26: “Person, as I take it, is the name for this self. Where-ever a Man finds, what he calls himself, there I think another may say is the same Person. It is a Forensic Term appropriating Actions and their Merit. . . .” These two formulations are related and consistent, though this consistency will not be fully explored here.

17 According to Tully, “Although ownership of one’s intentional actions is a paradigmatic case of maker’s rights, property in one’s person is less clearly explicable in the same terms” (1980, 109). While Tully accurately notes the difficulty in such an explication, I would suggest that property in one’s person or self is explicable in the same terms, and that such an explanation constitutes a fruitful area for future research.
consciousness reaches, and no farther; as every one who reflects will perceive. (Essay II.xxvii.17)

In this passage, Locke argues for the ownership of one’s external actions or labor on the basis of a prior or more fundamental act of “labor,” i.e., workmanship or “making,” accomplished by consciousness. In the Second Treatise Locke asserts that labor is “the unquestionable property of the labourer” because “every man has a property in his own person” (TT II.v.27). One’s property in his own person or self stems, in turn, from the appropriating or “joining” ability of consciousness described in the Essay. The appropriating, extending, and joining activity or “labor” of consciousness thus makes the individual human being “master of himself, and proprietor of his own person, and the actions or labour of it,” in a manner analogous to that in which God is “sole Lord and Proprietor” of creation as a whole (TT II.v.44; Liv.39).18

“Nesting” Property

Locke thus intimates a persuasive account of the concurrent univocal property of God and the human being in the particular human being himself. The particular human being is the property of God and himself in the very same sense of the word “property,” i.e., the product of workmanship or labor. The conflict or contradiction which this situation appears to present is circumvented by Locke’s division of the particular human being into two distinct objects by the understanding: “substance-man” and “person-self.” Insofar as the individual is a “substance-man,” she is the exclusive property of God whose workmanship she is; insofar as the individual is a “person-self,” she is the exclusive property of herself in virtue of the activity of her consciousness. When Locke speaks of human beings as the workmanship or property of God, he is speaking of human beings as substances and as members of a kind or type of creature. When he speaks of human beings as the workmanship or property of themselves, he is speaking of them as persons and as reflective or conscious selves.

Although the particular human being is concurrently and univocally owned by God and the human being himself, there is nevertheless an order of nobility and ultimate causality between the two “workmen” of the human being. Within the particular human being, the “substance-man” aspect is prior to and a necessary precondition for the production of the “person-self.” Without first existing, and possessing the powers of “reason and reflection,” the “person-self” cannot be produced by the individual activity of consciousness (Essay II.xxvii.9). Moreover, the “substance-man” is originally produced by Locke’s “potter-God” ex nihilo, whereas the “person-self” is fashioned out of the preexisting materials furnished by the senses and reflective experience. Therefore, although the “person-self” is immediately and directly produced by the individual activity of self-consciousness, it is mediately and indirectly produced by God as a first or ultimate cause. As a result of these considerations, Locke affirms the “supreme right” of God over human beings and His supreme ownership over all existing things.

The supremacy of God’s proprietary claim or right in the human being does not, however, render self-ownership merely derivative or insignificant. Self-ownership does not thereby become a matter of God’s (or the natural law’s) permission or of Divine Grace considered in the narrow sense. On a Lockean understanding, God creates the “substance-man” aspect of the individual in such a way that the human individual shares in His creative activity by making, in turn, the “person-self.” God does not allow human beings to own themselves, but creates them as potential self-owners. An intriguing corollary of such an account is that this understanding of self-ownership cannot come into conflict with Divine ownership in the case of the individual human being. The “person-self” cannot be disjoined from the “substance-man”; every human being exists as a “substance-man-person-self” complex. Although the actions of a “person-self” may be in tension or conflict with God’s ownership of the “substance-man” (in the case of suicide, for example), the distinction between one’s self and one’s particular actions is an integral aspect of the very consciousness which engenders self-ownership.

The picture of property in the individual human being that emerges from Locke’s complex treatment is thus a kind of “nesting” property. The property which the human being possesses in himself is identical in kind with the property which God possesses in the human being. God’s property in the human being, however, is more noble or higher than the human being’s property in himself. Both rights of property, moreover, coexist in a single human being. Although this understanding of the compatibility of Divine and self-ownership of the human being is implicit and undeveloped within Locke’s texts, the idea of “nesting” property rights both makes sense of Locke’s

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18 See Locke’s statement in TT Liv.30: “God makes him in his own Image after his own Likeness, makes him an intellectual Creature, and so capable of Dominion.” This analogy, as well as the manner in which the person or self is created by self-consciousness considered in terms of labor, is left largely unexplored by Locke and will not, due to space constraints, be further pursued here.
SELF-OWNERSHIP VS. DIVINE OWNERSHIP

apparently contradictory assertions and establishes the possibility of concurrent univocal property in particular human beings.

Divine Ownership vs. Self-Ownership, Natural Law and Natural Rights

By applying the Lockean notion of concurrent and univocal “nesting” property to the relationship between the natural law and natural rights in Locke’s political philosophy, the possibility of a coherent “NLNR Locke” also begins to come into focus. If the natural law and natural rights may be derived in a manner parallel to that of Divine ownership and self-ownership, i.e., according to the twofold structure of the individual as a “substance-man” and a “person-self,” they similarly need not be rigidly ordered as primary and derived.

Such a parallel is, in fact, suggested by the frequent association or conjunction of Divine ownership with the natural law, and self-ownership with natural rights, in many of Locke’s texts. Perhaps the clearest single example of the association between Divine ownership and the natural law occurs in the “workmanship” argument of the Second Treatise (TT II.v.43). In this passage, Locke first affirms a proposition: “The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind” that “no one ought to harm another in his life, health, liberty, or possessions.” This affirmation is substantiated by the “workmanship” argument which follows: “for men being all the workmanship of one omnipotent, and infinitely wise maker. . . .” Why would one be inclined to affirm the existence of a law of nature? Because humankind is “his (God’s) property, whose workmanship they are . . . .” Human beings are under a natural law insofar as the “workman” God exercises his proprietary claim over them. This right of property possessed by God is immediately in his proprietary claim over them. This right of property derived a natural law insofar as the “workman” God exercises the “workmanship” argument of the Second Treatise (TT II.v.44). In this discussion of natural rights, it is the individual human being who is explicitly marked out as the “workman,” indicating the similar or analogous basis of Divine and self-ownership of the individual human being (TT II.v.43). Whereas the natural law stems from the “substance-man” aspect of the individual, in respect of which he is God’s “workmanship,” natural rights stem from the “person-self” aspect of the individual, in respect of which the individual is himself a “workman.”

Although Locke’s natural law and natural rights need not be derived one from the other, the natural law nevertheless represents a higher or more noble source of morality than natural rights, standing above rights-based morality as Divine ownership stands above self-ownership. Locke’s political philosophy in the Second Treatise, however, appears to begin and end with natural rights rather than the natural law. While the “fundamental law of nature” is “the preservation of mankind,” or God’s property, the “great and chief end” of political society and government is “the preservation of their (i.e., human individuals’) property (i.e., rights)” (TT II.i.x.124; II.xi.135). What could explain this apparent disparity? First, as is evidenced from the analysis of Locke’s Questions Concerning the Law of Nature ventured above as well as other considerations adduced by proponents of the “NR Locke,” it is not clear that Locke was ever convinced of the existence of a natural law in what Strauss calls “the proper sense.”

19 I say “immediately” here in order to allow for the “mediated” ownership of the individual as an individual by God.

20 Even similar phrases occur only three times during the entire discussion: “law of reason” (II.v.30), “the bounds, set by reason” (II.x.v.31), and “the law man was under” (II.i.v.35).

21 Compare with Locke’s statement in TT I.iv.30 regarding this analogy.

22 Strauss (1953, 226). The proper or strict sense of the natural law here indicates that this law is “knowable to the unassisted
Moreover, political societies and human governments are formed in order to regulate the relations of individuals with one another and to effectively and harmoniously unite the individuals composing a community. They are thus primarily concerned with individual human beings “in respect of one another” or as individuals rather than as members of a species or kind of being (TT I.iv.39). And finally, the security of natural rights is a prerequisite for discharging the duties of the natural law; a slave is restrained from acting in accordance with his rational nature or the “substance-man” aspect of his particular existence. The protection of natural rights is thus a more urgent task for political society than that of enforcing the natural law.

**Conclusion: Contemporary Relevance of the Lockean Framework**

Where, then, does this analysis place Locke vis-à-vis the modern natural rights doctrine and the Christian natural law tradition? The “NLNR Locke” depicted herein attempts an ambitious twofold task: (1) to secure an element of truth in Hobbes’s individualism by underpinning natural rights with a notion of self-ownership, thereby giving these rights a moral component that implies correlative duties in others; and (2) to show how these natural rights and the notion of self-ownership need not imply a rejection of the natural law and God’s ownership of His creatures. In this way, Locke may be seen as a kind of ambassador for the modern natural rights perspective to the natural law tradition, narrowing the often-perceived abyss between the two approaches in their moral and political consequences.

In this ambassadorial role, Locke also illuminates a pathway toward alleviating the subsequent tension between religious belief and liberal democratic political commitments in a manner that significantly improves upon the currently predominant framework inspired by John Rawls’s political liberalism. Although Rawls does allow for a conditional expression of private religious beliefs in the public sphere and emphasizes the superiority of an “overlapping consensus” to a mere “modus vivendi” (Rawls 1999, 591, 432), Rawls’s framework remains more of a fragile compromise than a long-term solution since it begins with the irreconcilable dissensus of comprehensive doctrines and ends with a fortuitous overlap between them rather than a principled agreement.

The idea of “nesting” property rights intimated by Locke, on the other hand, both (1) articulates a point of consensus between various religious beliefs in the premise of Divine ownership and (2) encourages a principled agreement on the premise of self-ownership which grounds liberal democratic political commitments without appealing to this religious consensus. As the “nesting” image implies, the premise of self-ownership is not derived from, and may be conceived entirely independent of, the premise of Divine ownership. Similarly, the premise of Divine ownership may be conceived independently from the premise of self-ownership. The two premises considered together, however, are compatible and even in profound harmony with one another. The Lockean “nesting” framework is thus capable of alleviating potential conflicts and tensions between the private and public realms which are, and will continue to be, endemic to Rawlsian political liberalism. This framework opens up a true common ground, rather than a mere overlap, between atheist and religious citizens of liberal democracies in the idea of self-ownership despite persistent disagreement regarding the premise of Divine ownership. This common ground is also potentially open to citizens subscribing to very different religious doctrines; despite the persistence of heated religious controversy, both premises that enter into the “nesting” property framework may be accepted by such citizens. The Lockean solution to this liberal democratic problem in the “nesting” of the Divine ownership and self-ownership premises thus accomplishes on a profound and stable level what the Rawlsian solution, for all of its originality and cleverness, accomplishes only in a superficial and precarious manner.

**References**


