

## **A Conceptual and (Preliminary) Normative Exploration Of Waste<sup>i</sup>**

It is often thought that Locke’s famous (first) proviso on property appropriation—the requirement that there must be “enough, and as good, left in common for others”—can’t be satisfied in the modern world.<sup>ii</sup> On the other hand, it is usually thought that Locke’s waste or spoilage (second) proviso—the requirement that we must “make use of” that which we want to claim as property “before it spoils” if it is legitimately to be our property—is rendered otiose by the existence of a means of exchange (money) as it allows us to store value so that nothing need spoil. C. B. MacPherson, for example, claims that “The spoilage limitation imposed by natural law has been rendered ineffective in respect of the accumulation of land and capital”<sup>iii</sup> and Thomas Lewis claims the waste proviso is “somewhat superfluous,” at least as a “constraint on labour.”<sup>iv</sup> I think this is backward and that the second proviso is likely more problematic for the institution of private property than the first (sufficiency) proviso.<sup>v</sup> The reason for this confusion, I suspect, is a lack of clarity with regard to precisely what waste is. One cannot conclusively determine if waste should limit property if one does not have a clear understanding of what waste is. Hence, in this paper, I offer a conceptual analysis of waste. I also sketch an argument for the claim that waste is immoral at least in some cases. My purpose, then, is twofold. First and foremost, I seek to clarify precisely what we mean when we talk of waste. Secondly, I suggest why waste might be morally problematic; in this regard, however, I will be more suggestive than conclusive. I do not spend time explicating, defending, or rejecting the first proviso as it has received extensive attention in the literature.<sup>vi</sup>

In the first section of this paper I briefly look at the two provisos Locke places on legitimate appropriation in order to set the stage for the broader project. In section two, I provide my conceptual analysis of waste, largely bracketed from normative questions and the question of

its relation to property. I argue that waste is best understood as (a) any process wherein something useful becomes less useful and that produces less benefit than is lost—*where benefit and usefulness are understood with reference to the same metric*—or (b) the result of such a process. In the third section, I use that definition to sketch possible lines of argument for the claim that we have a moral duty not to waste. I briefly sketch two lines of argument that I do not think can succeed and then, in more detail, sketch a more promising route—one that I still think has difficulties to be overcome, but that is nonetheless promising. My concluding suggestions there are that (W1) if one person needs something for her preservation and a second person has it, is avoidably wasting it, and refuses to allow the first to make some greater use of it, the second *may be* morally wrong and that (W2) if one person needs something for her preservation understood according to her metric and a second person has it, is avoidably wasting it according to *his own* metric, and refuses to allow the first to make some greater use of it, the second *is* morally wrong. The difference in the two suggested principles is that whereas in both someone’s preservation is imperiled, only in W2 is it clear that the person wasting is wasting according to his own conception of the good. For that reason, only W2 indicates a definite moral wrong. W1 indicates that there may be a wrong, but in any particular case where it indicates there may be a wrong, further consideration will be required to determine if there is a wrong. I do not, in this paper, seek to determine the proper way that waste should be conceived of as limiting legal property. That project must be saved for another occasion.

## I. TWO LOCKEAN PROVISOS

The now famous Lockean proviso—the claim that there must be “enough, and as good, left in common for others” if what one mixes one’s labor with is to count as one’s property—has

been much discussed.<sup>vii</sup> Some believe that this proviso can no longer be met as there is very little left in common and what remains in a commons is unlikely to be “as good” as what has been appropriated. David Schmidtz and others have shown that this is mistaken and that the proviso actually demands, in many cases, that we appropriate in order to avoid tragedies of the commons.<sup>viii</sup> Appropriated materials—property—tend to be taken care of better than unappropriated materials. Owners tend to work to guarantee that their property will last. Indeed, they tend to use their property to make more (of many things). The natural supply of a particular species of turtles eaten as a delicacy, to use one of Schmidtz’s examples, may be depleted—tragic—if left in common. If divided into private property, owners have incentive to breed the turtles so as to guarantee future income. Put simply, “private appropriation facilitates the development and the full use of a resource.”<sup>ix</sup>

Less discussed than the famous (first) proviso is a second Lockean proviso, which Nozick calls simply a “further condition”.<sup>x</sup> “As much as any one can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in: whatever is beyond this, is more than his share, and belongs to others.”<sup>xi</sup> This condition is less discussed, it is safe to assume, because most think it easily satisfied since the advent of money.<sup>xii</sup> To use a Lockean style example, if one has an orchard of apples producing too many apples for one to possibly eat on one’s own, one need not let them waste but can sell them, accumulating money that does not spoil and so can be saved and used to secure one’s future. It is indeed fairly easy to satisfy the second proviso in such cases. Nonetheless, I think more needs to be said about this oft-ignored condition.<sup>xiii</sup> People waste things all the time and such does strike some of us, at least, as morally problematic.

Consider the Misanthropic Apple Farmer. This particular farmer has been growing and selling apples for years, making a tidy profit. One year, though nothing else changes, he has a change of heart and decides not to tend his orchards. He re-enforces his fences, fires his workers, and sits on his porch with a shotgun watching the apples grow and eventually fall to the ground. Workers come to collect them and he informs them their services are not desired. They offer to pick the apples, sell them on their own, and give him some percentage of the income. He declines the offer and tells them to vacate his premises or he will call the police. They leave. The next day, some passing college students stop and pick a few apples for their dessert. He grabs the apples from them and forces them off “his land.” The next day, some five year olds do the same and again he angrily forces them to leave without apples. There are now apples all over the ground. As time passes, they spoil.<sup>xiv</sup>

In the example just provided, Locke’s second proviso is, perhaps oddly, satisfied. As written (in the passage cited above), the proviso reads: “as much as any one *can* make use of ... before it spoils.” Our misanthropic farmer *can* make use of the apples (by selling them), but chooses not to. Reading Locke literally in II. 31, the proviso is satisfied. Reading the passage that literally, though, would be a mistake. Not only would it be right that the proviso is easily satisfied given the advent of money, but it would turn out to be vacuous. It would be impossible to imagine a scenario wherein someone would fail to satisfy the proviso—for anything they had *could* be sold, thus not spoiling. The proviso, clearly, has to be read somewhat differently. Indeed, Locke himself gives what may be a stricter version of the second proviso later in the text. In II. 38, he says:

whatsoever he tilled and reaped, laid up and made use of, before it spoiled, that was his peculiar right; whatsoever he enclosed, and could feed, and make use of, the cattle and

product was also his. But if either the grass of his inclosure rotted on the ground, or the fruit of his planting perished without gathering, and laying up, this part of the earth, notwithstanding his inclosure, was still to be looked on as waste, and might be the possession of any other.

This passage may read as providing a too strict proviso, wherein one risks losing ownership of anything one holds that one *allows to waste*.<sup>xv</sup> The proviso needs to be more carefully formulated. On the one hand, the Misanthropic Apple Farmer is plausibly acting immorally and in a way that threatens his ownership of the apples. On the other hand, the Absent-Minded Gardener, who simply fails to see a ripe tomato in her garden and thus fails to pick it before it rots, is at least clearly not acting immorally. While both may be wasting, one is doing so meanly, the other accidentally.<sup>xvi</sup>

I do not intend to engage in textual exegesis here to determine the best way to read Locke.<sup>xvii</sup> Nor do I intend here to determine the most accurate plausible spoilage proviso. My concern, instead, is to begin the prior conceptual and normative work—determining what waste is and whether there is a moral failing involved in wasteful behavior—i.e., whether there is a duty not to waste. It is a separate (and, I think, conceptually later) project to determine if waste should limit property. I note here only that the first version of the waste proviso mentioned is too weak to do so and that the second version is too strict; the first version leaves the proviso vacuous while the second allows for a far more intrusive governmental system than most would be comfortable with: any spoilage at all would leave ownership questioned and thus invite state interference and coercive redistribution.<sup>xviii</sup> What is important for my purpose here is to recognize that the waste proviso—and by extension waste itself—deserves more attention than it has traditionally received.

For a reasonable property system to treat the waste proviso seriously, it must be understood in some more sophisticated way—with a clearer understanding of what waste is—than that already discussed. I do not here offer such a revised proviso, but begin the work necessary prior to such an undertaking. In the next section, I attempt to determine the best way to understand waste (which should be how a Lockean should conceive of waste in the waste proviso). In section III, I sketch an argument that waste is immoral (and that we have a moral duty not to engage in certain sorts of wasteful behavior). What I present there is only a sketch and needs more argument to be made conclusive.

## §II. WASTE: A CONCEPTUAL ANALYSIS

### *A. Preliminaries, Especially on Waste as Inversely related to Need*<sup>xix</sup>

Edward McCaffery discusses possible definitions of waste (and uses of those definitions) from the classical literature (esp. Blackstone and Veblen) but none, I think, captures the core notion. He is clearly right to mark a distinction between dissipation (“pure loss of value” with not even pleasure gained from the loss) and extreme frivolity (“selling the farm for a sack of beans”) and also right that they are related.<sup>xx</sup> One seems to waste if one burns dollar bills or if one lets them loose in the wind. John Simmons marks another distinction: “waste includes not only holding without using, but frivolous destruction.”<sup>xxi</sup> I am looking, in this section, for what makes these and all forms of waste related—i.e., for the core notion. “Non-urgent, frivolous or excessive consumption”<sup>xxii</sup> won’t do since dissipation is none of these and since vacations, for example, are (usually) non-urgent but nonetheless not (at least not necessarily) wasteful. Dissipation (or destruction) also cannot be the core notion since excessive and useless consumption is not dissipation, because destroying fuel (etc.) is *how it is used* and thus not

wasteful, and because destroying something that has no value cannot be a waste.<sup>xxiii</sup> Nor is simple non-use<sup>xxiv</sup> the core notion since, as we will see in §II.B, there are things we don’t use but do not thereby waste.

Intuitively, we tend to think of waste as related to need. The idea is clear: if we did not waste, there would be less need. There is a positive correlation: more waste usually makes more need. While this is true, it does not mean waste is “unmet need,” “a failure to meet a need,” or “the failure to use X to satisfy a need.”<sup>xxv</sup> There must be conceptual space between the unneeded and the wasteful. We might not need to take a family vacation, but taking the vacation doesn’t seem wasteful nonetheless.<sup>xxvi</sup> Moreover, needs may go unmet because of genuine scarcity rather than waste and even when what is needed is present there may be good reasons not to use it to satisfy the need.

That waste and need are (often) related seems clear—and will be an important consideration later. Even single persons can be said to waste things when they need them—perhaps Harry is lost in the wilderness, freezing, and uses his last match to light a cigarette instead of lighting a fire to keep warm, for example. Nonetheless, not all waste is a failure to satisfy a need. I can waste things I don’t need (destroying the umpteenth car in my extensive collection for no reason) and it may be that no one needs what I waste (say the cars are all old clunkers). On the other hand, it seems that there are things we have that *no one* needs and that don’t seem like a waste at all (Picasso paintings, for example) as well as things we have that no one needs that are a waste (\$150 running shoes, for example, esp. when it’s been shown that they don’t help as much as less expensive variants). Simply put, we can waste even when there is no need. There can even be waste on the proverbial island deserted but for one inhabitant.<sup>xxvii</sup> Even if the island produces more food than he can eat, some of us have the intuition that the inhabitant

would be wasting foodstuffs if he carries them to the top of a cliff and tosses them into the ocean in a weighted bag so that they sink to the bottom.<sup>xxviii</sup> Something's being needed (by someone) seems not to be a necessary condition for its (possibly) being wasted.

Just as something might be wasted though it is not needed by another, something might be wasted though no one has an intention to waste it. That this is so can easily be seen. I may foolishly believe that I should invest all my extra money in the production of carcinogenic pills, believing that the return on my investment will be substantial. I would be wrong and will have wasted my money, without intending to do so (recall, though, that whether there is a moral injunction against such an act of waste is a distinct question). That I don't intentionally waste my money does not mean I do not waste it. In such a case, I am wasteful, even though it is not my intention. Indeed, it is not only the case that I can waste without intending to, but also the case that I can waste even when I have no intention whatsoever. I can waste time,<sup>xxix</sup> for example, by failing to form any intention whatsoever. This is not unusual. If I watch in shock as my car rolls to the edge of a cliff and form no intention, it will be true that I wasted time I could have used trying to save the car when it falls over the cliff.

### ***B. Waste as nonuse or under-usage***

Simmons and others note the importance of use in Locke's conception of property.<sup>xxx</sup> Given that clear importance, we get a better start in defining waste by thinking of it as "the non-use of something."<sup>xxxi</sup> The intuition here is clear: when the apples spoil because unused, there is waste. Of course, we are not close to an adequate definition yet; there are many things we don't use that are not wasted. We don't use some rocks, for example, but we don't say we waste them.



Perhaps we should take care not to limit ourselves to considerations of use to *our* use. The rocks may be used by insects as homes, for example. I think we can exclude such worries here; if we include use by insects (and bacteria, etc), there is likely nothing that is unused on the earth and so this definition would not do as there would be nothing wasted, which seems clearly false.<sup>xxxii</sup> As already indicated, excluding such considerations, this definition won't work since there are things we don't use that we do not waste.

Perhaps I have already been too quick. After all, we sometimes hear people say that nature itself can be wasteful.<sup>xxxiii</sup> We might say the biological nature of humans is wasteful, for example, given the existence of spontaneous abortions. In such cases, it seems like the biological material that is the fetus is wasted.<sup>xxxiv</sup> If an animal kills another animal but does not eat or otherwise use the whole carcass—as happens—there is also, plausibly, waste. I think such claims are correct: non-human animals can waste and, plausibly, nature as a whole can waste. My final analysis can accommodate such claims, but it is worth temporarily bracketing such thoughts.

The concern with waste as a moral issue suggests that wasting is an action done by an agent.<sup>xxxv</sup> Someone may waste paper, for example, but it is not the wasted paper that is of moral interest; it is the fact that the paper *is wasted by someone*.<sup>xxxvi</sup> The waste we are interested in, then, seems to involve an *agent's* non-use of something. As we've already seen, it can't, though, be simply “an agent's non-use.”

We might consider waste to be “an agent's non-use of something *designed to be used*.” This avoids the problem of including things in the category “waste” that are unused but which we have no use for (like some rocks). But it is not much of an improvement. At most, it is a *type* of waste, for we do use things that are not *designed* to be used (absent a theological story)—

like wood from trees—that we may *use in such a way that seems wasteful*. Chopping down a tree to enable planting a different tree one has a minimal preference for and simply burning the first tree (not for heat or such, but just to get rid of it) seems wasteful. Since, though, the tree was not designed to be used (again, absent a theological story), this would not count as waste if this definition were correct.

A further attempt to refine the definition is “an agent’s non-use of something *useful*.” This improves upon the last definition, as something designed to be used is presumably useful, but the category “useful” includes more than just things *designed* to be used. There are two problems, though. The first problem is that it will be unclear how to determine if something is useful. A boulder in the wilderness does not seem useful, but if it could be made into gravel for a driveway, might be. We would not want to say our failure to use the boulder (as raw material for gravel) is wasteful. The second (related) problem is that something useful (designed to be used or not) can be used in multiple ways and some ways will seem wasteful by comparison to others.<sup>xxxvii</sup> Turning the boulder into gravel is one thing, using it in my backyard as a paperweight to hold down a piece of paper with the number of my house on it, is another. This is not non-use, but seems wasteful. Sometimes using something in certain ways is wasteful.

The first problem just mentioned takes us from “an agent’s non-use of something useful” to “an agent’s non-use of something she *should* use.” The second problem takes us from that to “the agent’s non-use *or under-usage* of something she *should* use.” This version of the definition, I think, is promising (though I will ultimately reject it).<sup>xxxviii</sup> As non-use of something the agent should use is a form of under-usage of something she should use, the latter includes the former so that this definition is more simply written as “an agent’s under-usage of something she

should use.” For further simplicity, we can say it is “the under-usage of something one should use,” understanding implicitly that the under-usage is that of an agent.

The definition of waste as “the under-usage of something one *should* use” accords with Simmons’ view that “Locke’s real concern ... must be with *productive use* (and waste), *not* [mere] spoilage.”<sup>xxxix</sup> It also captures part of the intuition behind Bernard Baumrin’s claim that “to be wasted it [any object] needed to be made unavailable to others who might have made use of it” and that “To be made unavailable to others ... a kind of thing (e.g., apples) must become so transformed as to cease to exist as a thing of that kind and with it all its possible uses as a thing of that kind.”<sup>xl</sup> If it is unavailable for use, it is under-used. That the others might have used it implies there is a use for the thing (so plausibly should be used).

An objection might be raised. Using a tin can as a hammer (imagine wanting to drive in a nail that has come loose on a cupboard shelf) is not *under-use* though it may be *misuse*.<sup>xli</sup> Some might nonetheless think it is a waste (or wasteful use)—thereby arguing against the present definition. I think this is a mistake. I do not think we should say this non-standard use of the can is a waste even if we do want to say there is something wrong with it. What, after all, is wrong with it? One possibility is that the can used as a hammer might break open, spilling its contents that would then be wasted. That the contents might be wasted with the non-standard use of the can, though, does not make that use a waste. Perhaps the non-standard use of the can would, upon spillage of its contents, become a (beginning) part of the wasteful act that is the spilling of the can’s contents, but that does not mean the non-standard use of the can is itself a waste. If the nearest hammer is in the garage and would take precious time to retrieve, use of the can as a hammer might actually be efficient. Of course, storage of tools closer by may be more efficient and leaving them in the garage may seem wasteful. This suggests what is intuitively accurate:

waste and efficiency are (at least close to) antonyms.<sup>xlii</sup> This also supports the idea that waste is “the *under-usage* of something one should use.” Under-usage, I suggest, is a type of inefficiency.

Let’s consider an example: a very rich athlete has built a large home for himself with an extremely large two-story closet in it.<sup>xliii</sup> There are, I think, different ways waste can be involved here. It may be that the closet itself is underused by the athlete. This is plausibly waste—the athlete may have another smaller closet that he overuses instead of storing stuff in this larger closet (perhaps it is further from where he usually is with stuff that he normally stores) and he may think to himself “I should use the large closet more—it is far better designed for storage purposes” but not work up the will to bring the stuff to the large closet. (Perhaps he could end this waste by being more strong-willed). Alternatively, the athlete may be extremely organized and efficient and realize that the small closet suits his purposes better, perhaps thinking there is a different use of the space the large closet takes up that would be significantly better than the current use (as a large closet). Under that description, what is really wasted is the space in the home and not the closet itself. (Perhaps he could end this waste by redesigning this area of his home so as to create an office or entertainment room for himself.)

I suspect, though, that what many people consider waste in this scenario is different than either of the two possibilities just discussed. I suspect it is not the waste of the closet itself or of the space in the house, but the waste of the *resources used* to build the closet that is most disturbing. I suspect, that is, that when some people consider the closet “a waste” they are speaking indirectly, really meaning that “it was a waste of resources to make a closet like that for one person.” Here the real concern is that the resources used to build the closet could have been better used—perhaps to build a small home for an impoverished homeless person.

Consider, now, the closet example with reference to our working definition: “the under-usage of something one *should* use.” If this definition is right, the athlete could be speaking correctly if he claimed the closet was a waste because he could not make good use of it—it would be under-usage of something, the closet, he should use.<sup>xliv</sup> The athlete could also be speaking correctly if he claimed the space used for the closet was wasted—it would be under-usage of something, the space in his home, he should use. What about the final claim of waste—the possible waste of resources to make such a large closet like that for one person? The question is whether there is under-usage of those resources. Is it under-usage to build such a closet? I am sympathetic with those that say yes, but am not certain. Another example will push the intuition.

Consider the rich heiress who buys a \$3000 dress, wears it once, then hangs it in her closet to be forgotten and buys another for the next occasion, and repeats the process indefinitely.<sup>xlv</sup> We might say here that the heiress is under-using the dress and also that the resources that went into creating the dress were under-used. Again, I am sympathetic with those who would say such things and would thus say there was waste here. What should be clear from both this example and the parallel use of waste in the previous example (the waste of resources in building the closet) is that the normativity in the definition of waste now under consideration is not only in the second part, where we explicitly say that the item in question is something “one *should* use” (I take it to be obvious that whether one should use the boulder to create gravel is a normative question). The normativity is also in the first part, where we reference “the *under-usage* of something.” If that is an accurate understanding of waste, we will need some standard to determine if a particular use is *under-usage* or *proper* usage and this will be normative.<sup>xlvi</sup>

The current working definition is “an agent’s *under-usage* of something she should use.” There is an obvious worry about this sort of definition: it says nothing about the agent who is doing the wasting. If I under-use an apple, letting it spoil, I am the one wasting it. If I run water for no reason (or for the mild pleasure of hearing it), I am the one wasting the water. In other situations, though, it may be that the one under-using an item is not the one doing the wasting. Put differently, the one causing the under-usage may not be the same as the one who could make more or better use of the resource in question. If, for example, my leaving my water faucet on causes you to be unable to use water (to clean something, say), it may be *your* under-usage (or the combination of my minimal use with your complete lack of use) that is the problem though *I* am the cause of it. In such cases, I am the one that wastes—by making it such that you cannot act to use the water. Clearly, you do not do anything wrong in this scenario. Equally clearly, you do not waste the water—you do not even have *the chance to waste* the water because of my act. The conclusion to be drawn here is that waste cannot be simply “the *under-usage* of something one should use,” though it could be “the *causing* of the under-usage of something one should use.” While it is ordinarily the case that the one under-using X causes the under-use of X, they need not be the same.<sup>xlvii</sup>

There is a final and, I think, fatal problem in much of the above. I have been discussing waste as under-usage, but there are clearly times when *over-usage* is as problematic as under-usage and seemingly for the same reasons.<sup>xlviii</sup> Simple examples will make this clear: someone who shampoos her hair five times a day uses too much shampoo, someone who washes his hands every hour on the hour uses too much soap and water, someone who never writes a word using less than two inch lettering uses too much paper, someone who pours so much balsamic vinegar on her salad that a half inch remains in the bowl when the salad is gone uses too much, and so

on. In all of these cases, the issue is over-use. It is tempting to reply here that these are actually cases of under-usage of the money needed to buy the items in question (shampoo, soap, paper, balsamic vinegar)—since the agents involved could have gotten more for their money with better use—or that they are under-usage understood in a more detailed way (the balsamic vinegar remains in the bowl, perhaps, because underused; in all cases, less value is gotten from the uses than could be). While there is something right about such a reply, it is ultimately unpersuasive. Perhaps money was underused when the shampoo was purchased, for example, but the shampoo itself was wasted and *not* underused. It seems like we would say both that the persons involved wasted their money and that they wasted the items specified—and not because they underused what they poured (say) but because they over-used. So the current definition cannot be right.

One further refinement of the current definition is possible to try to improve it: waste may be “the causing of the *improper* (under or over) use of something one should use.” This may be thought of as an improvement over the previous definition as well as an improvement over another definition we noted in passing: simple misuse. Neither strikes me as acceptable. They both simply push the difficult question back. Instead of asking “what is waste?” we ask “what is misuse?” or “what is improper use?” and the difficult work returns to haunt us. To some extent the same is true of all definitions based on under-usage, though the question with these is at least somewhat narrower (i.e., “what is under-usage?” is narrower than “what is misuse?” since the latter includes the former and more). “Misuse” and “improper use” are simply too vague. So we try a different path.

### ***C. Waste as a process or the result of such a process***

Recall that Locke tells us that “if either the grass of his inclosure rotted on the ground, or the fruit of his planting perished without gathering, and laying up, this part of the earth, notwithstanding his inclosure, was still to be looked on as waste” and so possibly not the property of the one who allowed it to perish. Causing the fruit to be underused is waste. But notice that if we define waste that way, when we say “the apples are wasting” we can only be speaking derivatively, since the apples are not causing their own under-usage. Speaking precisely, we can say only that they are the product of waste. This is not really worrisome, but it suggests that we should extend the definition to include not only the *act of waste* but also the *product*. For reasons that will be apparent momentarily, we also do well to talk of the *process* of waste rather than the *act* of waste.

Consider that waste may be “(a) any process wherein something useful becomes less useful<sup>xlix</sup> or (b) the result of such a process.” Such a process would *usually* be caused by an agent but it need not be usefulness to the causing agent that matters and there might be some cases where no agent (or no moral agent) is causing the process—all three points of which are in accord with things said earlier. Some such processes are natural, requiring no intentional being for their initiation. Nature can thus be wasteful (consider spontaneous abortions as mentioned earlier). This definition also handles the last problem raised in the previous subsection—that of over-usage. When our over-shampooer washes her hair two, three, four, and five times in a day, she is engaging in a process wherein the useful shampoo becomes less useful. The third shampoo of the day simply does less good than the first (or is neutral or even bad, making the hair and scalp less healthy than they were) and the emptier shampoo bottle is less useful than it was with more shampoo in it.



That this definition handles over-usage so well may worry some about how it handles under-usage. Consider our athlete’s closet. We specified three ways waste may be involved there: it may be that the *closet itself* is wasted by the athlete, it may be that the closet is a waste of *space*, or it may be that what is wasted are the *resources used* to build the closet. These are all handled straightforwardly. That the closet is a waste is clear: it is the result of a (building) process wherein something—the space and the materials used—become less useful than they were; they would have been more useful if used to make a better designed house or if used to build a small home for a homeless person. The same is true of the space misused in the home. Finally, the resources themselves were wasted because they were made into something—the overly large closet—less useful than they themselves were; again, they could have been more useful in a better design. Note also how this works in simple cases: if you absent mindedly throw away a perfectly good apple (or pharmaceutical or ...) you initiate a process whereby something useful becomes less useful. The contaminated apple is now useless.

Of course, as currently formulated this definition will not do. Most things we use *well* go through a process wherein they become less useful (or cease to be useful).<sup>l</sup> When I eat my dinner, the foodstuffs are no longer useful (they no longer *are*). When I wear my favorite shirt for the thousandth time, it begins to form holes, becoming less useful. Presumably I am not wasting in either case. What matters in the sort of processes that we do consider wasteful, I think, is that potential is lost.<sup>li</sup> When a useful drug is accidentally dropped into a toilet, it is a waste because the drug had the potential, say, to cure an illness—and that potential is lost. When I wear my favorite shirt for the thousandth time, its potential is not lost; it has been used to its fullest (as its purpose is to be worn).

Not all lost potential is a waste. I may have had the potential to be a great salesperson, but chose to pursue philosophy instead. Even if I am not as good a philosopher as I could have been a salesperson, it would be odd to say I wasted my salesperson-attributes. Nothing was wasted because although I did not actualize one potential, I did actualize another in a way that offsets the loss. So what seems to matter is that potential is lost in a way that is not offset.<sup>lii</sup> We must thus improve on the current definition—“(a) any process wherein something useful becomes less useful or (b) the result of such a process.” We can do so in a way that addresses the worry about normal usage making an item less useful by incorporating a clause about the overall loss of potential. We can say that waste is “(a) any process wherein something useful becomes less useful *and that produces less benefit than is lost* or (b) the result of such a process.”<sup>liii</sup>

It may be thought that the definition just proffered can be shortened to “(a) any *process that produces less benefit than is lost* or (b) the result of such a process.”<sup>liv</sup> This is a mistake. I assume that we do not waste trees deep in the Amazon when we leave them untouched. As Damstedt indicates, “one does not violate the waste prohibition by removing too little out of the common.”<sup>lv</sup> If the shortened version of the definition were correct, we would have to say we waste the trees—for there is (at least plausibly) a process that produces less benefit than is lost (while there is no process wherein something useful becomes less useful). Granted, such a process is a *negative* process—the process of (or initiated by our) not using the trees—but such is arguably a process. What is produced from such a process (nothing)<sup>lvi</sup> is, at least plausibly of less benefit than is lost (by not farming the trees, for example). Hence, without a clause indicating that such processes are excluded, the shortened definition will not do. Adding such a clause may make the definition satisfactory, but will also make it lose its advantage (brevity)

over the unshortened version. To clarify the advantage of the longer version of the current definition over the shorter: on the lengthier version, the trees are not wasted simply because they do not become less useful when we do not use them. The first clause—"any process wherein something useful becomes less useful" is thus needed.

We have already seen that the current definition handles the athlete's closet case and the case where food or pharmaceuticals are thrown away. Consider now the \$3000 dress(es). The materials used to make the dresses were wasted according to this definition, if they could have been used to create something(s) from which more use would have been gotten—as seems likely. The dresses themselves would only count as wasted if while they hang in the closet, their use value decreases. If it does not, they are not wasted—but, again, the resources used to make them, were. The current definition also appropriately handles—by means of the second clause, "produces less benefit than is lost"—the case of normal usage. The shirt worn for the thousandth time and the meal eaten are not wasted on this definition: far more benefit (the years of wear or the nutritive value) is gained than lost (say usefulness as a rag or as insect bait) so the process involved is not wasteful.

Throughout this section, I have been assuming that there are objective facts about use-value and this warrants further comment. Unfortunately, I can only give the most rudimentary indication here of the objectivity of use-value.

I admit (for present purposes) that raw materials have no intrinsic use. Hence, the objective use-value cannot come from the object itself. Some might suggest that if the value is not in the object itself, it must come from the individuals that use the object (presumably, but not necessarily, the owner) and that the use-value must therefore be subjective. On such a view, it might be said that the compulsive shampooer is not wasting shampoo, but merely satisfying her

preferences. But we can admit she is satisfying her preferences and still argue that she is wasting the shampoo when we recognize that her preferences are not rational.<sup>lvii</sup> What matters is that there is an objectivity to use-value even though the use-value is not intrinsic to the object itself. On my own view, the objective use-value of an item is relational, determined by how well it could serve the purpose of moral agents. This means that if I use the dollar bill in my pocket as kindling for my fireplace on a warm summer's day (when the fire does me no good), I am getting less value from the dollar than I should—for it could serve the purpose of moral agents in significantly better ways. I might use it, for example, to pay my overdue electricity bill, or to buy (part of) a meal for a homeless person.<sup>lviii</sup>

Importantly, the fact that there are objective facts about use-value (if I am right) does not mean interference will be warranted to attain that use-value. When such interference is warranted is a normative question I begin to address below.

#### ***D. A Concern, Three Objections, An Advantage, and a Final Refinement***

There is an interesting concern about the current definition (indeed, it may apply to all of the definitions thus far considered). When Locke's less sophisticated followers largely ignore the spoilage proviso it is because they think it too easily satisfied to be of concern. It is supposedly easily satisfied because things can be sold and money saved so that there is no spoilage. Of course, once money can be saved, the possibility arises that it can be hoarded.<sup>lix</sup> Those that believe resources were wasted in building a two story, largely unused, closet for our athlete above may also believe that hoarding is morally problematic. If some hoard, after all, others may have to do without. Thus hoarding, like waste, seems correlated with need—and so is perhaps the same as waste.

I sympathize with, but do not accept, the view that a billionaire wastes her money if she merely lets it earn interest and does no (other) good with it. The problem with that view is simply that it seems she doesn't *waste* it at all—after all, the process it is involved with is that of earning interest and thus becoming *more* useful. I think this ambivalence is both common and sensible.<sup>lx</sup> I suspect some hoarding is waste and some is not. If the billionaire simply stuffs her cash in her mattress, it would be wasteful as it not only makes something unavailable that could be used but also results in the item hoarded being less useful (as without interest the cash does not keep up with inflation). Such hoarding is thus wasteful according to the definition now on offer. On the other hand, other hoarding is not: if the billionaire puts her money into high-yielding investments, thereby increasing its value, it does not become less useful. (Moreover, it is not *unavailable* in any real sense—it is invested, thus available to those who can pay an acceptable return. That it is not available to you or me because the billionaire has access to better paying borrowers is irrelevant.)

It might be objected that we should not consider only the billionaire's needs. It might be suggested that the money could be used to produce shelter for the homeless, to feed the starving, and to educate the illiterate—and that all of this is clearly lost benefit that is greater, at least socially, than the interest she earns. There is something right about this—especially if we (foolishly, to my mind) ignore the fact that her investment is an *investment* and so enables something productive to be done that might be a greater benefit (say it's an investment in improved agriculture). What this shows is that what is wasteful will be indexed. What might not be wasteful to an individual may be wasteful to a society—and perhaps vice-versa. In the current sort of case, the hoarding may be wasteful from a societal perspective, but not from the individual's.

The idea that what is wasteful will be indexed fits well with the view, expressed at the end of the last subsection, that the objective use-value of an item is relational. The maximum objective value achievable with any item will be that which best satisfies the most purposes of moral agents. Of course, individuals will have their own purposes, some of which can only be satisfied if someone else’s are not—even when the other’s purposes are (in some sense) more important or more extensive. Given that, an individual may rightly think that someone else’s use of an item is wasteful while the other person rightly thinks it is not. In each case, the purposes considered are one’s own, leading to opposing conclusions about the sort of value created. Consider this example. It is perfectly reasonable for me to think Thelma wastes the filet mignon when she feeds it to her dog Fido—because my purposes (and those of others) are more important to me than Fido’s. Still, Thelma might rightly think she does not waste the steak since her purpose is to make Fido happy and she fairly weights that more heavily than my purposes.

A different example might help make the indexing point clearer.<sup>lxi</sup> Consider the destruction of a great work of art by a collector who somehow gets tremendous joy from the destruction.<sup>lxii</sup> Such destruction is not wasteful from the perspective of the collector (who gets great benefit), but is from the perspective of the society that loses the artwork with no benefit. The point is simply that whose purposes are taken as primary will determine what is considered wasteful and, in many cases, there are reasonable differences regarding whose purposes are primary; to say that “waste is indexed to P” is to say that P’s purposes are taken as primary in that evaluation. That waste is indexed, though, does not mean it is subjective. It would be an objective fact that indexed to the art collector/destroyer there is not waste and an objective fact that indexed to (the rest of) society, there is. It may also be that one of these is objectively more important than the other or that one is of no moral value (or is of disvalue).

Recognizing that waste is indexed allows us to answer another objection—that when I supposedly waste money it does not itself become less useful and so I cannot be actually *wasting it*. If I spend, say, \$300 on an ordinary umbrella, the storekeeper has \$300 which is not less useful than it was before I (mis)spent it. Hence, it might be said that there is no waste. Yet, surely I did waste.<sup>lxiii</sup> What we should say, I think, is that indexed to the shopkeeper, there is no waste, but indexed to me, there is—I could have gotten far more for the \$300 than the umbrella. (Alternatively, we can say that I wasted my resources—which includes, but is not identical to, the \$300.) Importantly, though, we can also say that it is or is not wasteful from an *all things considered* perspective. That is, all things considered (a) a process wherein something useful becomes less useful to all who could possibly make use of it and that produces less benefit (to all of them) than is lost (to all of them) or (b) the result of such a process is wasteful from the broadest possible perspective.<sup>lxiv</sup> None of this, I think, is problematic for the conceptual issue; it may raise worries for the moral issue.

There is one final objection to my conceptual analysis worth considering here. Some want to say that for an item X to be such that it can be wasted, it must be that X can rightfully be used.<sup>lxv</sup> Including such a condition, it can be said, allows us to say that trees deep in the Amazon are not being wasted (even if we otherwise adopt the definition discussed in §II.B above; as already indicated, on the current definition they are not being wasted whether or not we include a clause about rightful use). They are not being wasted, the interlocutor would presumably say, because no one has a right to use them. I think this is misguided. It is certainly clear that I can waste something I have a right to use. I have a right to use the dollar in my pocket, but I can tear it up and drop it in a sewer hole, for example. It is also clear, though, that I can waste something

I have no right to use. I can steal your car and use it as a doorstep, say. Clearly a waste. I can go into the Amazon and burn trees for fun. Again, clearly a waste.

How does the current definition fare with regard to the sort of case just mentioned? If waste is “(a) any process wherein something useful becomes less useful and that produces less benefit than is lost or (b) the result of such a process,” it is clear that I can waste your car (to which I have no right)—perhaps by blowing it up for fun, thereby making it into a useless charred wreck. The same is true of the trees in the Amazon. Its also the case that according to the current definition, non-use of trees deep in the Amazon is not a waste—for, as previously noted, the trees are not becoming useless or less useful (this is perhaps comparable to the non-wasteful sort of hoarding). Perhaps if we allowed a tree disease to destroy all of the trees, it would be a waste, but that is a different matter (perhaps comparable to the wasteful sort of hoarding).<sup>lxvi</sup>

The current definition has, it should be noted, another advantage over the previous definition—“the *causing* of the under-usage of something one should use.” That definition (and its immediate predecessor) was doubly normative—determining what *under*-usage is and determining what we *should* use are both normative issues. The current definition “(a) any process wherein something useful becomes less useful and that produces less benefit then is lost or (b) the result of such a process”—by contrast, only involves normativity, if at all, in determining usefulness. The usefulness of an item might be determined in economic terms, perhaps making use of talk of opportunity cost and using a cost/benefit analysis. Alternatively, as I’ve already suggested, it may be understood in terms of how much the item aids human flourishing or pursuit of the good.<sup>lxvii</sup>



Exactly how to flesh out the usefulness of an item is, I think, of the utmost importance. I also think, though, that how it is fleshed out will depend on who is doing the fleshing. This brings us back to our recognition that waste is indexed. When the art collector destroys the work of art for joy, he obtains a benefit: his own joy. From his perspective, his destruction of the painting is not a waste. For society at large, by contrast, there is a great loss: the sum of the joys others would have had if the work had not been destroyed along with the educational value and the like that is sacrificed. Given all of that value, a museum might offer to buy the painting to prevent its destruction—which would be a waste from the societal perspective. Public collections might be made to aid the effort to prevent the destruction. The collector, though, may so value the joy he receives by seeing the painting destroyed, that no monetary amount would alter his choice.<sup>lxviii</sup> There are other cases like this.

Consider a sacred object or place such as Shiprock in northwestern New Mexico, which plays a special role in Navajo culture. What Shiprock is good for—its usefulness according to Navajo cosmology—is precisely to play this special role. Using it for any other purpose—or at least any purpose incompatible or destructive of that role—would be a waste indexed to the Navajo. For example, if it were discovered that uranium (or a chemical that cured cancer) was abundant within this distinctive rock formation, there would surely be a move to mine it. From the Navajo perspective, mining Shiprock would be a waste since it would destroy this sacred site and no other benefit compares to what would be lost.<sup>lxix</sup> By contrast, from the perspective of those eager to gain from mining, the only waste (if any) would be to leave the formation untapped. Certainly, indexed to them, mining is not a waste: it would be a process wherein something basically unused becomes very useful and that produces tremendous benefit with little loss (to put the point more extremely than it need be).

I do not pretend to know how to determine, from an all things considered perspective, whether there is waste in such cases or not. I think it is clear, though, that we would not be warranted in simply assuming that the benefit to be gained from mining outweighs the loss incurred by doing so. Such an assumption would entail that waste is simply inefficiency, something like “the production of less benefit than is lost”<sup>lxx</sup> (where benefit and loss are understood in a purely instrumental or economic sense).<sup>lxxi</sup> Throughout this paper, though, I have been trying to clarify the concept of waste in a value-free way (without endorsing any particular substantive claims as to whether this or that activity—e.g. mining or not mining Shiprock—amounts to waste). To simply assume that instrumental monetary value should carry the day violates this goal. We should thus refine the definition one last time.

I shall understand waste as “(a) any process wherein something useful becomes less useful and that produces less benefit than is lost—*where benefit and usefulness are understood with reference to the same metric*—or (b) the result of such a process.” This refinement of the previous definition merely makes clear that the indexing matters and that we should not build into our definition of waste any prejudice in favor of one metric of usefulness (or value) over others. In the case of Shiprock, the metric used by the Navajo would be that of the sacred, blessed, consecrated, spiritual, etc. while the metric used by those believing it should be mined would be that of money or energy (or, best case scenario, medical cures and promotion of life). Given the different metrics used, there is no surprise that the two groups come to different conclusions about the question of waste.<sup>lxxii</sup> Fortunately, in many cases we actually face, we have a common metric with which to consider the question.

### III. THE DUTY NOT TO WASTE: A PRELIMINARY ANALYSIS

I began by discussing Locke’s provisos. Turning now to the morality of waste, consider the second proviso again briefly. Damstedt indicates that “The penalty associated with a violation of the waste prohibition is the loss of exclusionary property rights in the good, but the prohibition does not create an affirmative duty to prevent waste.”<sup>lxxiii</sup> While Damstedt indicates that a duty to avoid waste would not necessarily follow from the fact that violation of the proviso means loss of property, it is equally the case that having a duty to avoid waste does not necessarily mean that the proviso indicates a real limit to property. I discuss only the morality of waste in the rest of this paper. Here, I am not seeking to determine if the penalty should be loss of exclusionary property rights. My far more modest goal is not even to conclusively determine if there is an affirmative duty not to waste—though I would like to offer such an argument. Instead, I will sketch out possible routes someone might take to argue that waste is immoral. I begin by discussing two possible routes that might be thought fruitful in defending a duty not to waste. I then spend more time on the route I think actually works and propose two normative principles indicating when waste is immoral.

#### *A. Dismissing Two Lines of Argument*

First, it might be suggested that waste is immoral because it involves some sort of harm to oneself.<sup>lxxiv</sup> The idea here is that if I waste my resources, I will be less able to preserve myself or forward the pursuit of my goals. While I think there is something important in this line of reasoning, I do not think it can be the full story—for several reasons. First, whether it is true that waste makes me less able to self-preserve is contingent upon circumstances. If I happen to be born super-rich, my waste will not (at least not without tremendous waste) cause me harm. The

rich can waste with ease because they have much more than they need. Second, it is not clear to me that there is such a thing as “harm to self.” Following Feinberg, whose approach I will follow below (see footnote 85 and surrounding text), I would admit that I can hurt myself—this is to say that I could set my own interests back—but not that I can *harm* myself—which is to *wrongly* set my interests back. Since non-wrongfully setting back someone’s interests is not immoral, this argument can only provide a prudential reason not to waste. It is a prudential reason I take to be of obvious importance—wasting (often) makes life worse for oneself—but is also of limited domain (this prudential reason is unlikely to ever be of import to the super-rich).<sup>lxxv</sup>

A second route that might be pursued is what we might call the “disgust argument.”<sup>lxxvi</sup> Watching a gluttonous super-rich individual slothfully remain idle while using resources in wasteful ways strikes many of us as disgusting. Some might want to take such a feeling—or the fact that humans have always had such visceral reactions—to suggest wasteful behavior is immoral. The problem with this sort of argument is familiar. Historically, people have found many perfectly moral things disgusting. Some wanted miscegenation to be illegal because they thought it a disgusting practice and thus immoral. Homosexuality and same-sex marriage are more contemporary examples, as is cloning. Arguments against these practices tend to be of the sort that “we must recognize that we feel disgust for a reason” without providing much in the way of fleshing out what such a reason would be.<sup>lxxvii</sup> I take such arguments to be of no moral value with regard to those questions, so give them no weight when it comes to waste. Nonetheless, I share the visceral reaction against waste. So, I move now to what I take to be a more promising argument.

### ***B. Framing the Discussion in Terms of Toleration***

In II. 31, Locke says “nothing was made by God for man to spoil or destroy,” but at I. 39, he says “a right to destroy anything by using it” is “the utmost property man is capable of.” These two statements seem initially inconsistent, but if we read the first “nothing was made by God for man *merely* to spoil or destroy,” the inconsistency vanishes. On this reading, the first statement means we have no right to destroy anything *by wasting it*; the second means only that we can destroy property if doing so is part of (non-wastefully) *using it*. This is how John Simmons interprets Locke; he explains that “the right to destroy what one has property in is at least often a constituent part of property, but this is not a right to destroy the thing frivolously. We have a right to destroy things we own only in our *use* of them for ‘the comfortable preservation of (our) beings’ (I, 87).”<sup>lxxviii</sup> This seems the best reading of Locke. It also seems plausible in its own right.

To rehearse, waste is “(a) any process wherein something useful becomes less useful and that produces less benefit than is lost—where benefit and usefulness are understood with reference to the same metric—or (b) the result of such a process.” Although there may be some normativity built into this definition—in the metric of benefit and usefulness—most of the normative work is left to be done. It is not obviously or necessarily the case that waste is always immoral, so normative work is needed. Moreover, in cases where there are competing metrics, determining which should control will require extensive normative work.

One way to put the bigger question here is in terms of *jus abutendi*—*the right to waste*.<sup>lxxix</sup> If property includes *jus abutendi*, then just as I can practice throwing knives in my own yard so long as I am not throwing them at you, I can practice throwing them at my wall even if doing so will destroy them. Similarly, our Misanthropic Apple Farmer might insist that

as he is harming no one and the apples are his, no one has a right to interfere with his letting them rot, his sinking them in a weighted bag in the ocean, or his using them as fuel for a giant and useless barn-fire. Yet, some of us want to at least consider if interference is permissible here.<sup>lxxx</sup>

One way to frame the normative question is thus in terms of toleration: when should we tolerate waste and when should we not? This way of framing the normative question about waste sits between two others, perhaps more popular: When is there a moral duty not to waste? And, When does waste limit property? The question of toleration is related to the first of these since, arguably, we should tolerate when people satisfy their moral duties and can only even question whether we should not tolerate when a duty (e.g., not to harm another) is not being met. The question of toleration is related to the second alternative way to frame the normative concern since, arguably, when we do not tolerate waste, we effectively limit property. If someone wastes her own goods and we allow the state to interfere with—not tolerate—the waste, we effectively say “you do not have the right to waste what you own” which means ownership is limited and does not include the right to waste (*jus abutendi*). The question of toleration is not equivalent to either of these other questions, however. It is not equivalent to the question about a moral duty not to waste since sometimes we do tolerate when duties are not met. It is not equivalent to the question regarding property for two reasons. First, property-limitation involves only questions of waste with regard to what one owns (or otherwise takes oneself to own) and the question of toleration, here, is broader: should we tolerate your waste of your own goods, your waste of unowned goods, and your waste of other’s goods? Second, the moral question of toleration is also broader in a different way: it includes not only concern with what government can justifiably interfere with, but also concern with what individuals and non-governmental groups

could justifiably interfere with and, presumably, it is only justifiable governmental interference that sets a conceptual limit to property. That is, where property is a legal institution, it is law that sets its limits, not actions by other individuals. If a child takes her sibling's radio because she cannot tolerate the music he plays, she does not limit what counts as his property but only limits his use (i.e., the radio still belongs to him). By contrast, when the government makes cocaine illegal, it makes it the case that no one can have property in the narcotic (i.e., when the police officer confiscates it, the holder is not wronged). Similarly, then, my decisive failure to tolerate your waste may involve taking something from you, but leaves the taken item your property (I legally wrong you), whereas if the government decisively (and justifiably) fails to tolerate waste, it sets a legal limit to what can be held as property.<sup>lxxxii</sup>

My use of toleration to frame the normative question is not accidental. I use it because I *am* interested in the possible property-limiting nature of waste as well as the broader question of when toleration is required (though I consider neither at length here). I also use it because it provides a ready model within which to consider when waste is most problematic. In particular, it provides a model to determine when interference with an individual's waste is permissible and when it is not—even if waste is bad in the latter sort of case.

An initial possibility to consider when interference is permissible in an act of waste is economic: it might be thought permissible when the waste involves a substantial economic loss for society. This is, in large part, the path Strahilevitz takes.<sup>lxxxiii</sup> On his view, when there is only minor economic loss, even postmortem waste should be permitted (he discusses the ritual burying of the dead with jewelry). As an argument for including a limited *jus abutendi* in property, I think Strahilevitz' argument is quite persuasive. It does not, though, settle the

question of when non-governmental interference is permissible or whether toleration is required. It does not, that is, answer the question about the morality of waste (nor was it intended to).

As I’ve discussed elsewhere,<sup>lxxxiii</sup> interference is morally permissible when harm is done or credibly threatened. This is Mill’s basic view, his harm principle:

the sole end for which mankind are warranted, *individually* or collectively, in interfering with the liberty of action of any of their number is self-protection ... the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.<sup>lxxxiv</sup>

Following Feinberg, I understand a harm to be a wrongful setting back of interests.<sup>lxxxv</sup> The question we now address, then, is when waste constitutes a wrongful setting back of someone’s interests. That is, when does *(a) a process wherein something useful becomes less useful and that produces less benefit than is lost—where benefit and usefulness are understood with reference to the same metric—or (b) the result of such a process* wrongfully set back someone’s interests? The basic idea, then, is that if a specific instance of waste violates the harm principle,<sup>lxxxvi</sup> it exceeds the normative limits of toleration and thus makes interference morally permissible. We can thus say that people are not at liberty to act in that way—they have at least a prima facie duty not to act that way. But when is that?

### ***C. Getting the Question Straight***

The question of toleration that we are concerned with here is three-fold: must others tolerate your waste of your own goods, your waste of unowned goods, and your waste of other’s goods? The third part of the question is easily dismissed: if you have permission to waste someone else’s goods, the question is the same as if you owned it yourself; if permission is not



present, theft is involved and takes precedence. In any case, what is wrong with wasting someone else's goods without her consent is as obvious as what is wrong with stealing: it wrongfully sets back her interests in maintaining her property. Hence, the question of toleration here really centers on two sub-questions. The first question is whether ownership includes *jus abutendi* in such a way that it cannot be immoral to waste what one owns, if such waste is immoral but must be tolerated, or if interference in such waste is permissible. Answering this requires determining when waste is such that its presence overrides the presumption that a person may do with his belongings as he wishes without interference. When, to put the point bluntly, is the *jus abutendi*—the right to destroy or waste—morally overridden?<sup>lxxxvii</sup> The second question is about the waste of unowned goods (perhaps unownable goods) and can be dealt with along with the first.

What is wrong with wasting one's own goods or unowned goods (whether items still in a natural state unclaimed or perhaps items discarded by their previously rightful owners) is far less obvious than what is wrong with wasting someone else's goods. Some will insist either that one cannot (i.e., by definition) waste one's own goods or that one has a right to waste one's own goods so that it can't be wrong to do so. If the definition of waste I've offered is accepted, the first objection falls away. It is obviously conceptually possible to waste what one owns if my definition is correct. One might, for example, light one's last match and forget to use it to ignite a much-needed lantern, allowing the match to burn out as one watches in a daze. Surely, this is a process wherein something useful becomes less useful and where that process produced less benefit than what was lost (with benefit and usefulness understood with reference to the same metric). Wasting one's own goods is thus conceptually possible. Can it be wrong to do so? Here, it might help to remember that saying it is wrong to do something does not mean either

that it is illegal to do it or that it should be illegal. It is not the case that the government should interfere in every moral wrong (for example, the government should not interfere when one person lies to another unless the lying constitutes fraud). It is moral wrongness alone that we are discussing here, not legal wrongness or the morality of the law. With that qualification on the table, it should be easier to see that it is at least plausible to say that one can wrongfully waste goods that one owns—even if one has a right to waste those goods. It is not the case, after all, that it is always good or morally neutral to exercise one’s rights; nor is it the case that one never has a right to do what is wrong.<sup>lxxxviii</sup> Upon leaving a restaurant, one might have a right to pour ammonia on one’s leftovers in front of a starving homeless person, but it is surely at least plausibly immoral to do so.

#### ***D. The Answer (?)***

The Millian-Feinbergian analysis machine easily explains the wrongfulness of wasting others’ goods (as already indicated). It may also help us deal with the possible wrongfulness of wasting one’s own goods. In the rest of this section, I sketch what I take to be the most plausible line of argument to defend the immorality of waste.

The argument begins by recognizing that it is bad if a person starves.<sup>lxxxix</sup> In some cases, of course, it might be the all things considered best thing if one person starved (say, rather than a hundred people starving), but that does nothing to alter the fact that it is bad if a person starves.<sup>xc</sup> This follows from what we can call “the suffering principle”: suffering is bad (analytically true) and *prima facie* justifies interference to thwart it. Though the “prima facie” in the principle is important and the warrant to intervene is defeasible, Peter Singer would claim “if it is in our power to prevent something very bad from happening, without thereby sacrificing anything

morally significant, we ought, morally, to do it.”<sup>xcii</sup> Failing to do so is, on his view, a wrong.

The intuition behind this sort of view is clear: it is bad if people suffer; it is not bad if we save them; if we can save them without moral cost, we ought to. While this view rests on a plausible and perhaps obvious claim—that suffering is bad—it has difficulties and I reject it below in favor of the Millian-Feinbergian line. Would does that view tells us here?

Clearly, when people starve, their interests are set back (from the baseline of not starving, which they clearly have an interest in). Thus, if we allow them to starve, we allow their interests to be set back. What remains an open question is whether *allowing their interests to be set back* is morally comparable to setting them back oneself or is in some other way wrongful. In short, the question is whether an omission of this sort is wrongful.<sup>xciii</sup> Only if it is, would we have a case of a harm and so a case where interference is permissible according to this analysis.

James Rachels provides a persuasive case that at least in some instances, allowing suffering is morally equivalent to causing it.<sup>xciii</sup> His examples make the point. In the first, Smith drowns his baby cousin in order to inherit a sum of money while Jones merely lets his baby cousin drown (when he can easily save him) in order to inherit money. Jones seems blameworthy in much the same way that Smith does even though he “merely” lets the cousin die. In another example, a Down’s Syndrome baby with an intestinal blockage is allowed to die after birth; the blockage could be easily removed to save the baby, but the parents decline to have this simple procedure performed because they want a “normal” child. The parents seem no less guilty than if they refused to allow the child nutrition. Feinberg discusses another case, wherein B has a heart attack and reaches for medicine that would save him; in one version, A pushes the medicine out of B’s reach and in another version, he simply refrains from pushing it within B’s reach (because he wants B to die).<sup>xciv</sup> While some may quibble with Rachels and Feinberg about

the judgments made in these cases, the general point stands: at least sometimes it is as bad—and wrongful—to allow someone to suffer or die as it is to cause them to suffer or die. The case where we choose (perhaps extreme) waste rather than saving the starving person is arguably of this sort. Pouring ammonia over perfectly edible leftovers rather than letting the starving person eat them, seems to be like this. It seems, that is, to be an *allowing to suffer* that is as blameworthy as a *causing to suffer*. In this sort of waste, at least, there seems to be moral wrongness. Of course, this is an extreme case and other instances of waste may not be wrong.

Remember that to waste something is to begin a process wherein something useful becomes less useful and that produces less benefit than is lost—where benefit and usefulness are understood with reference to the same metric. If one wastes food or the resources to buy food, one makes the food or resources less useful than they could be. The food would be more useful if we gave it to the starving person so that they not starve; other wasted resources would be more useful if we used them in a better way so that we had more ability to provide food for the starving. That more or better use could be gotten from the resources, however, does not mean there is immorality.

Importantly, there are times when preventing waste involves significant cost. I may occasionally have to throw out spoiled food. Such does seem wasteful: I engaged in a process (say, leaving the food in the refrigerator instead of the freezer) wherein something (the food) became less useful and where less benefit was produced than lost. Nonetheless, there are costs to the sort of vigilance that would be necessary to prevent every instance of such waste (consider also the Absent Minded Gardener). In such cases, it is hard to imagine that the waste is such that interference is permissible—even though there are starving people who could have used the food. This is nothing unusual; it follows simply from the fact that ought implies can. That I

cannot always prevent the waste means I am not obligated to do so.<sup>xcv</sup> Of course, there are cases of waste that we can avoid. Such cases—wherein one wastes one's own goods but could (easily) avoid doing so—would presumably be of the sort that the avoidance thereof could allow for the prevention or cessation of the suffering of another. Such cases are at least plausibly immoral.

In order for a particular case of waste to be immoral, it is clearly not enough merely that someone claims there is waste. So too—and more importantly—it is not enough that the instance be one of waste indexed to someone other than the actor.<sup>xcvi</sup> The art museum cannot simply claim the art collector is wasting the Picasso when he sets out to destroy it and expect that mere claim to justify interference. Nor is such destruction immoral or interference-warranting simply because the art museum is correct that indexed to it, the destruction would be an instance of waste. Similarly, when Mr. Snob pours ammonia on his leftovers rather than proffering them to the homeless person, it is not enough that the homeless person claims there is waste or that he is right that there is waste indexed to him. The art collector's interest (no matter how perverse) in destroying the painting may matter. Similarly, if Mr. Snob gets joy from so contaminating his food, that joy may matter. I also think it should matter in both cases that the actors have the characters they do—lacking virtue. I will not pursue that line of inquiry here, but because the perversity of the characters may make these examples less illuminating for our purposes, I use another.

So, consider again Shiprock. Say Big Pharma wants to mine the formation for the cancer cure it holds. It stands to profit financially; cancer-victims stand to profit medically. The benefit gained from both perspectives is clear; indexed to Big Pharma or to cancer victims, mining the formation is not waste. Indexed to the Navajo, though, it may well be. We cannot simply assume the value of mining to Big Pharma or to the cancer victims outweighs the value of

not mining to the Navajo or that the former matters in a way that the latter does not. Surely, if we are going to say that there is an immorality here, it should be that there is waste from the all things considered perspective. That is, if waste is to be considered immoral it must be waste that is (a) a process wherein something useful becomes less useful to all who could possibly make use of it and that produces less benefit than is lost (again, to all of them)—*where benefit and usefulness are understood for each of them with reference to their own single metric*—or (b) the result of such a process.<sup>xcvii</sup> As already indicated, in cases such as Big Pharma vs. Navajo, determining whether there is waste all things considered will be a difficult task. This does not change if we assume that Big Pharma owns the formation.<sup>xcviii</sup>

Unfortunately, there will be cases of waste significantly like Big Pharma vs. Navajo. Someone might, for example, want her house destroyed when she dies because she cannot bare the thought of anyone else living there,<sup>xcix</sup> but their neighbors and township may want the house sold and left standing to maintain the community. Indexed to the owner, there may not be waste in the destruction of the house; indexed to the others, there may be. These cases will all be difficult if we remain neutral between the parties and their metrics (as I think we should). I cannot here offer a means of adjudication. Cases where there is a single metric for all involved parties (some cases of which may involve only one party), however, should be somewhat easier to adjudicate. In those cases, if there is waste from the all things considered perspective—taking into consideration the loss that would be incurred if the waste were avoided—it is plausibly immoral.

If one accepts that it is morally wrong to allow suffering (which is also a setback of interests), what was said above is as true of wasting unowned goods when such is easily avoided, as it is of wasting one’s own goods when such is easily avoided. If I find a stash of canned foods

in an abandoned 1950's era bomb shelter (say the food maintains its nutritional value for 100 years) and decide to blow up the cans for some minimal amount of fun, I waste the food. I took the presumably unowned food (assume the abandoned shelter has no legitimate owner),<sup>c</sup> and used it in a process that removed its usefulness and produced less benefit (in the explosion I created) then was lost. The lost (nutritional) usefulness could have been used to save a starving person.

There is, in the above, an empirical claim that should be made explicit: that there are starving persons. Given this empirical claim, the conclusion is limited: so long as (1) there are starving persons and (2) allowing starvation when one can easily stop it is wrong, easily avoidable waste (all things considered) which results in an inability to prevent starvation is morally wrong. Since there are starving persons, the conclusion that we have a duty to avoid waste should be accepted if one accepts that we are blameworthy if we let someone suffer in this way. Indeed, if avoiding the waste is costless and the saving immediate, there would seem at least as much of a duty not to waste (in such cases) as there is to save the mythical child in the pool that can be saved with a turn of the arm.

Obviously what has been said thus far is at best support only for a limited duty not to waste. If there were no starving people (or people otherwise in need of help that could be provided were it not for waste), there would be no duty not to waste according to the above argument. More importantly, in a case where one was not blameworthy for letting someone starve when one could prevent it, there would be no duty not to waste. This happens more regularly than might be thought. For example, I could eat half of my dinner and give the rest to the homeless person outside the restaurant, but choose to eat it all (not quite, but almost, gluttonously). Some might think that in a case of that sort, there is a duty not to waste and,

indeed, a duty to provide half the meal to the homeless person. After all, Singer might suggest that doing so doesn't require "anything morally significant" compared to the very bad thing that can be prevented.

Others have shown significant difficulties for the Singeresque view.<sup>ci</sup> The challenge has to do with incentives and unintended consequences. The basic idea, put starkly, is this: if we aid those who are starving, we provide an incentive for others to appear to be starving. Worse, if we aid those who are starving now, we may encourage the births of more people into conditions of starvation.<sup>cii</sup> Providing for those who are starving has moral hazards. Of course, it may be insisted that we cannot but have "dirty hands." Still, if providing for those who are starving now is likely to bring it about that there are twice the number of starving people later—an empirical question—that would be a bad thing. In that case, wasting foodstuffs (or other resources that can be turned into foodstuffs) may be a *better* option than saving these things to provide for those who are starving. While this clearly does not support a *duty to waste*, it does disallow the hoped for support for a *duty not to waste*.

While Singer's principle seems mistaken once one considers the broader impact of following it, Rachels' claim about allowing sometimes being as wrong as doing seems to stand. The claim, modified for this discussion, is that sometimes one is as morally blameworthy for allowing another to suffer (by starving, for example) as one is for causing the other person to suffer. Even assuming that the possible unintended consequences of preventing the suffering could not in any way be bad (because of a decree from God, say), this claim is of limited help with regard to a duty not to waste. While we likely agree that one must save the mythical drowning child when one is sunning poolside and can almost effortlessly reach over to pull him out of the water (so that there is no cost to oneself), cases of waste will not (usually) be that



costless or that immediate. At best, then, Rachels' claim only helps support a substantially limited duty not to waste.

A fuller argument for my Millian-Feinbergian analysis would require a discussion of the proper baseline from which to consider whether one sets back the starving person's interests. That is, we would need to determine what level of interest fulfillment counts as the starting point from which our action or inaction is to have set back the interests of the suffering (starving) individual. Four possibilities quickly suggest themselves: (a) where the person is now—starving, (b) a minimally acceptable level of welfare, (c) where the person would be if not for the fact that they are now starving, and (d) where the person would be if not for way the world is set up. I suspect the relevant baseline is (a). If that is right, though, when I waste and thereby refuse to help alleviate the suffering of the starving person, I do not set his interests back—he simply is in a bad way to begin with, through no action of mine. I thus do not harm him by not helping and so have no duty to refrain from doing so—to refrain from wasting so that I can help him.

Let's briefly consider the other candidate baselines. Option (d) is of no help here since there is no way to tell how well off the suffering person would be if the world were set up differently. The world could be set up in a variety of ways that would leave more people suffering and suffering worse than those who now suffer. Option (c) is also of no help since it merely asserts that the baseline is "not where we are" without indicating anything more—i.e. it says what the baseline *is not*, not what it is. Option (b) is obviously the best hope for strengthening an argument for a less limited duty not to waste, but it is an unlikely baseline from which to consider if one sets back another's interests. If it *is* accepted as the appropriate baseline, then even helping someone can be seen as harmful if it does not bring them above the accepted minimum—any action, even those that helped the other, would "wrongfully set back

interests" if it resulted in the other rising to anything less than the minimum.<sup>ciii</sup> In such cases, we would have to say there was both help and harm and while it may be that one act can be both helpful and harmful, we would then need further discussion indicating what combinations of help and harm are acceptable. That the help and harm are, as it were, on the same scale, though, seems to make such judgments unnecessary; if one fails to bring the sufferer above the accepted minimum one harms him (or leaves him in a harmed condition) and that justifies interference. This simply leaves too much room for interference. Perhaps further argument could show that mistaken, but I remain unconvinced.

Progress in defending a less limited duty not to waste may be possible. Talk of starving *others* may obscure a central fact we considered earlier: waste is correlated to need. This is not a conceptual necessity, as we saw in section II.A, but it is an important consideration nonetheless. What is obscured, then, in considering *others* is that it is need in general that may go unmet when we waste, not just need of others. Indeed, it may be *our own need*. Most of us accept that we have a moral duty to self-preserve when possible, but even if this is not accepted as a genuine moral duty, it is surely a matter of prudence. We should not waste because when we do, we risk our own preservation. Indeed, "the waste restriction is a natural complement to the principle of self-preservation [since] ...If we waste the resources we have appropriated, then we are not investing labour in them to preserve ourselves."<sup>civ</sup> As others have indicated, Locke argues that we have a moral duty to labor and he surely would not encourage wasteful labor over productive labor.<sup>cv</sup> Helga Varden, for example, indicates that "the spirit of the waste restriction is that labour subject to the proviso gives us an enforceable right and duty towards one another to pursue *productive uses* of the resources."<sup>cvi</sup> Being productive rather than wasteful has clear

instrumental value in aiding self-preservation.<sup>cvi</sup> Intrinsic moral value might also be aided in being productive rather than wasteful.

Adopting John Simmons's Lockean view that labor should be understood as "a kind of purposive activity aimed at satisfying needs or supplying the conveniences of life,"<sup>cvi</sup> one is led to conclude that waste is morally unacceptable. On that sort of view, Locke is concerned to prevent property from causing harm. (Indeed, he tells us "it would always be a sin, in any man of estate, to let his brother perish for want of affording him relief out of his plenty."<sup>cix</sup>) Hence, the first proviso forbids appropriation that leaves others worse off than they would be without that appropriation because it is wrong to leave others in a harmed condition.<sup>cx</sup> Of course, there are different sorts of harms; as I have previously suggested,<sup>cx</sup> some harms are only infringements of autonomy while others include theft or battery. Infringing autonomy is interfering with an agent's purposive activity, infringing upon her right to self-government. This can be done in various ways, including not allowing her what she needs to self-govern—including subsistence.<sup>cxii</sup> Hence, on the Locke-Simmons line, our treatment of our property "must do no 'harm' or 'prejudice' to others"<sup>cxiii</sup> which it does if it "denies others an opportunity equal to one's own for self-preservation and self-government."<sup>cxiv</sup> Put more simply, "If I waste what others would otherwise use, I deny them the opportunity of productive use (and show that I do not respect them or their projects). Since their right is to make property by their labor in whatever fair share of the common they choose, I infringe their right by precluding their choice of the goods I waste.... Waste harms others, even in conditions of relative plenty."<sup>cxv</sup> As discussed, it is not only about the instrumental value of productivity (especially as opposed to waste) for self-preservation; it is also about disallowing hindrances to the intrinsic moral value of autonomy. Of

course, there is no denying the importance of the instrumental value for self-preservation.

"[W]aste is clearly contrary to the best (i.e., most efficient) preservation of humankind."<sup>cxvi</sup>

### ***E. Suggested Normative Principles***

What we should conclude now is that the moral problem with waste (if there is such a problem) is related to need (generalizing from the need for food). Taking need to be that which is required for the preservation of life—or, perhaps, for a minimally decent life—need is, *prima facie*, something that should be met where possible. It is, in other words, bad that people live in need. As (some) waste can cause or exacerbate need when it can be avoided without sacrifice, it is morally problematic. Truly wasteful activity—activity that results in waste all things considered (see §II.D and §III.C), seems to be of this sort. Still, whether there is a moral duty not to waste is unclear. This is because it is unclear if someone sets another's interests back by not satisfying a need they did not cause. Even given this difficulty, we must admit waste is a problem since it is not conducive to the preservation of others and ourselves.

Clearly, we are not responsible for preventing all bads that are in our power to prevent. Considering a previous example, the fact that I could forego my family vacation and use the money instead to pay for other people's needs is not enough to show that I have done something wrong when I take my family on vacation. I propose that my failure to alleviate someone else's need (when they cannot) is a wrong at most when my failure includes easily avoidable waste of something that could satisfy her need. Hence, W1, *if one person needs something for her preservation and a second person has it, is avoidably wasting it, and refuses to allow the first to make some greater use of it, the second may be morally wrong.*<sup>cxvii</sup> Since I do not waste my resources when I take a vacation with my family, my action is not counter to any duty.<sup>cxviii</sup>

How wrong would a violation of W1 be? This will be difficult to determine. If a person is wasting an item, he is treating it in such a way that it becomes less useful. The less useful the item is made, the more good is foregone and so, presumably, the worse (morally) the act of waste. If instead of alleviating a child’s starvation, I burn the extra money in my wallet, it is surely worse than if I stuff it under my mattress. Per our earlier discussion, cash becomes less useful when stored in the mattress, but not as much less as when it is burned. Moreover, in the mattress-stuffing case, there is a possibility that the waste will end. We can add that if there are no hungry individuals to eat his apples, the Misanthropic Apple Farmer is less bad than he would be if there were—partly because his misanthropy has no effect on others. No harm is done or can be done since there is no one to be hurt. Similarly, if the worst that occurs because of my wasteful burning of cash is that a child gets one less toy than she would have, it is not as bad as if someone starved. The interest set back matters; if the interest set back is an interest in a need, it is worse than if it is an interest in a mere want. I will say no more about this here.

Given our discussion of varying metrics of usefulness and benefit, W1 will be somewhat unsatisfying as a normative principle since we want to know if the waste is waste according to the metric of the one doing the (supposed) wasting or of the one in need (or of the conjunction or disjunction of the two).<sup>cxix</sup> Fortunately, we can alter W1 to gain an additional principle that is more definitive (because less inclusive). I thus propose that, W2, *if one person needs something for her preservation understood according to her metric and a second person has it, is avoidably wasting it according to his own metric, and refuses to allow the first to make some greater use of it, the second is morally wrong*. The item suspected of being wasted must be something needed by the first person according to *her* metric, not the metric of the person doing the wasting, but the waste must be measured by the metric of the second person—the one supposedly doing the

wasting. Presumably, in many cases these overlap: we all need food and water for self-preservation after all. In some cases, though, they may diverge. A member of the Navajo tribe, to return to that example, might claim he needs the Shiprock for his self-preservation *as a Navajo*. Let us take that claim at face value. Even if it is true, it is not necessarily the case that Big Pharma acts immorally when it mines the formation for the cancer cure—because according to its metric and that of those with cancer, the mining is tremendously beneficial and not at all wasteful. As I've said, I don't know how to adjudicate such a case to determine if the mining is waste all things considered. If, though, there is waste according to the metric of the one doing the wasting—i.e., the one doing the wasting gets less benefit from the process than is lost in the process—there is simply no excuse for not providing the item to the other party. Both parties would gain—the one who would waste would have less loss by providing the item to the other instead of wasting it and the other would have her need satisfied—and only mean-spiritedness could stand in the way of the clearly better outcome. W2 indicates a definitive wrong, but will only be helpful where the metrics of the parties overlap (or are identical). In cases where they do not, I suspect the persons accused of waste will be able to truthfully indicate how what might be waste if indexed to another is not waste indexed to them. Still, W2 will be helpful in a significant, though limited range of cases.

So, W1, waste may be immoral if one person needs something for her preservation and a second person has it, is avoidably wasting it, and refuses to allow the first to make some greater use of it and W2, *if one person needs something for her preservation understood according to her metric and a second person has it, is avoidably wasting it according to his own metric, and refuses to allow the first to make some greater use of it, the second is morally wrong.*<sup>cxx</sup> We can add to this only that waste is worse the less useful it makes the item wasted and worse when an

interest in a need is setback than when an interest in a mere want is setback. Put simply, waste is morally worse when it entails more forgone good and when it entails a failure to meet more important interests. Perhaps none of this is surprising.

## CONCLUSION

I have defended the view that waste is best understood as (a) any process wherein something useful becomes less useful and that produces less benefit than is lost—where benefit and usefulness are understood with reference to the same metric—or (b) the result of such a process. I have used that definition to sketch possible lines of argument for the claim that we have a moral duty not to waste, including one based on harm to self and one based on disgust. Both of these were addressed briefly and rejected. After reframing the question, I offered a Millian-Feinbergian line of argument for a duty not to waste that I take to be promising. That argument begins with the plausible suffering principle—suffering is bad (analytically true) and *prima facie* justifies interference to thwart it—and the additional idea that sometimes allowing an evil is as morally wrong as doing an evil. The argument requires further discussion of baselines for determinations of when interests are setback, but is strengthened by considering how waste impairs purposive activity. If the argument goes through, (W1) if one person needs something for her preservation and a second person has it, is avoidably wasting it, and refuses to allow the first to make some greater use of it, the second may be morally wrong and (W2) if one person needs something for her preservation understood according to her metric and a second person has it, is avoidably wasting it according to his own metric, and refuses to allow the first to make some greater use of it, the second is morally wrong. Two projects remain: to determine if the

argument just indicated can be strengthened to avoid the problems mentioned and then to determine if property ought to be limited by a proviso against waste.

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<sup>i</sup> I am grateful to the Social Philosophy and Policy Center for the impetus to write this paper, the folks at PublicReason.net for much input early on, and the other participants at the Social Philosophy and Policy Conference on Moral Obligation for generous comments. Additionally, Andy Altman, Andrew I. Cohen, Bob Fudge, Jim Taggart, Chase Turner, and Matt Zwolinski all read earlier drafts and made very useful suggestions for improvement. Ellen Paul’s comments on the penultimate draft helped me to improve the paper significantly. I appreciate all of the input from these and others named throughout.

<sup>ii</sup> For indications of this, see David Schmidtz, *The Limits of Government: An Essay on the Public Goods Argument* (Boulder: Westview Press, 1991), 17-20, where he cites several authors making this sort of claim.

<sup>iii</sup> C.B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Oxford University Press, 1962), 208. See also Naomi Zack, “Lockean Money, Indigenism and Globalism,” *Canadian Journal of Philosophy Supplement* 25 (1999): 31-53, 33.

<sup>iv</sup> Thomas Lewis, “An Environmental Case against Equality of Right,” *Canadian Journal of Political Science* 8, no. 2 (1975): 254-273, 260. See also John Seaman, “Unlimited Acquisition and Equality of Right: A Reply to Professor Lewis,” *Canadian Journal of Political Science* 11, no. 2 (1978): 401-408, where he argues that while money does not spoil and so the second proviso causes no problem for those that hoard (money), hoarding nonetheless “violate[s] equality of right” and the “sufficiency constraint of leaving enough and as good for others” that he thinks it requires (ibid, 403). He seems to think the problem will be that there will not be enough and as good land for all and that all have a right to such.



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<sup>v</sup> A. John Simmons, *The Lockean Theory of Rights* (Princeton: Princeton University Press, 1992) notes that the two provisos may conflict and that at II. 46 (see footnote 7 below), Locke treats the spoilage proviso as more fundamental than the first (ibid, 282); he also indicates that the two provisos may be consistent (ibid, 283-284). On 288 (ibid), he notes that it is “at best an odd reading of Locke” to think—as many do—that the first proviso is “the most important limit on property in Locke ... a limit that renders the waste limit pointless or of distinctly secondary importance.” He also notes others who recognize the correct order of importance in his note 164 (ibid, 289). One of those, Waldron, argues that the waste condition is the *only* real restriction on property (see Jeremy Waldron, “Enough and as Good Left for Others,” *Philosophical Quarterly* 29, no. 117 (1979): 319-328, 320-1 and Jeremy Waldron, *The Right to Private Property* (Oxford: Oxford University Press, 1988), 209-218). See Waldron, *The Right to Private Property*, 209 for a clear statement that the waste proviso “is not abrogated or rendered ineffective” by money but that “it loses the quantitative delimiting character” it has without money. Waldron thinks the first proviso is “an effect of the early operation of” the second (ibid, 211). Against Waldron’s view, see Gopal Sreenivasan, *The Limits of Lockean Rights in Property* (NY: Oxford University Press, 1995), 37-40, who treats the waste proviso as more fundamental than the first (sufficiency) proviso, but thinks the latter also sets a real restriction (see, e.g., 34). On Simmons’ view, the first proviso sets an “outside limit of our share” while “our own capacity to use what we appropriate” sets an “inside limit” and “violating either the outside or inside limit is unjust (wrong)” (*The Lockean Theory of Rights*, 283; see also 298).

<sup>vi</sup> For an argument that the first proviso is not problematic for contemporary accumulation of property, see footnote 8 below.

<sup>vii</sup> John Locke, *Two Treatises on Government*, ed. Peter Laslett (NY: Cambridge University Press, 1960, original 1698), II. 27. All references to this work will be to Treatise number (I or II), section number. I will not be considering Locke's view that it is labor-mixing that makes property possible. That view has been criticized, of course, but I think Simmons' reconstruction and defense of Locke's argument is successful (see especially *The Lockean Theory of Rights*, 272-274).

<sup>viii</sup> See David Schmidtz, "When is Original Appropriation Required?," *Monist* 73, no. 4 (1990): 504-518; *The Limits of Government*, 20-27; David Schmidtz and Robert Goodin, *Social Welfare and Individual Responsibility: For and Against* (Cambridge: Cambridge University Press, 1998), 31-33; or David Schmidtz, *Person, Polis, Planet* (Oxford: Oxford University Press, 2008), 197-198. Cf. Lewis, "An Environmental Case against Equality of Right," 262.

<sup>ix</sup> Seana Valentine Shiffren, "Lockean Arguments for Private Intellectual Property," in Stephen Munzer, ed., *New Essays in the Legal and Political Theory of Property* (Cambridge: Cambridge University Press, 2001), 156.

<sup>x</sup> Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 176.

<sup>xi</sup> Locke, II. 31. In II. 37, Locke indicates that no one has the right to allow spoilage and that such is against natural law. For Locke, that assumes a theological basis I do not rely on here.

<sup>xii</sup> See Sreenivasan, *The Limits of Lockean Rights in Property*, 35 and Lewis, "An Environmental Case against Equality of Right," 263, for the plausible argument that land becomes scarce because money can't spoil (so more land can be used to produce, resulting ultimately in store-able money rather than perishable goods). While that is likely both to be correct and to be Locke's view (see Locke, II. 47-50), it does not mean money (or land) can't be wasted. Of course, it can; "throwing money in the sea or melting it down and sprinkling it over the earth

might well count as a kind of waste prohibited by natural law" (Simmons, *The Lockean Theory of Rights*, 300 n. 195). See also Benjamin Damstedt, "Limiting Locke: A Natural Law Justification for the Fair Use Doctrine," *The Yale Law Journal* 112, no. 5 (2003): 1179-1221, 1196, for the view that the invention of money removes (most) worries about waste (as, again, perishable goods can be sold for nonperishable money) but also for the view that while the waste proviso is negligible with regard to tangible goods (as they can be sold), it is more important for intangible goods (ibid., 1182). Damstedt is worried about wasted intellectual property (ibid, 1212 ff.) but is led to the implausible view that "the laborer cannot maintain property rights in the intangible units [that is, the actual intellectual material] of the book she does not sell" (ibid., 1215)—i.e., if one writes a book (or a song, etc.) that no one is willing to pay for, one cannot have property in it because the book (better, the ideas therein) would go to waste. I think this is either an odd tautology (because no one wants it there is no need for excludability) or wrong (one can own something no one *else* wants and in the case of intellectual property this may not be wasteful since, presumably, one wants what one creates). Of course, if *no one* including oneself wants the unit of intellectual property created, its creation may have been a waste, but the question of *property* would not even arise! None of this is to deny that intellectual property can be wasted; it can, but such cases would be cases of *refusal to sell* rather than refusal to buy. See Lior Jacob Strahilevitz, "The Right To Destroy," *The Yale Law Journal* 114, no. 4 (2005): 781-854, 809-812 for an excellent case in patent law and Shiffren, "Lockean Arguments for Private Intellectual Property," 140 note 6 for discussion of why "[t]he value of information may be time-dependent."

<sup>xiii</sup> As I've already indicated, the better Locke scholars do not ignore it. Simmons, Waldron, and Sreenivasan, for examples, recognize its importance.

<sup>xiv</sup> Waldron indicates a wonderful example in Steinbeck’s *Grapes of Wrath* (chapter 25) where oranges are guarded as they rot to prevent anyone from eating them because the owners wish to inflate the price of oranges by limiting supply. This is, Waldron says, a violation of the proviso because someone “accumulates resources purely to beggar his neighbors, to diminish their ability to satisfy their needs” (*The Right to Private Property*, 208).

<sup>xv</sup> Consider Lawrence C. Becker, *Property Rights: Philosophical Foundations* (London: Routledge & Kegan Paul, 1977), 82. On Waldron’s account (see *The Right to Private Property*, 218-219), spoilage seems only to limit property retrospectively so that we cannot say until after the apples spoil that they were not the property of the Misanthropic Apple Farmer. This may be so (it fits with the passage from II. 38 just cited), but seems unlikely. Citing the same section, Simmons indicates that “Locke allows ... that property in external goods must continue to be used by the owner, else it returns to the common” (*The Lockean Theory of Rights*, 230). I think this is an accurate read of Locke; if it is correct, it can’t be that the limit is only retrospective because from a retrospective viewpoint, there is nothing to return to the common (the apples are gone, spoiled). In any case, if there is a moral problem, it begins before the actual spoilage is complete.

<sup>xvi</sup> I will not here seek to determine if these intuitions are correct, I merely use them to motivate the view that how the proviso is formulated matters. For Locke, I think, both cases are such that the purported owner loses the right to exclude—that is, both the apples and the tomato cease to belong to the cultivator and others can permissibly take them.

<sup>xvii</sup> As already indicated, I do not seek to determine if his argument *for* property—as opposed to his view that waste limits property—is sound. See Becker, *Property Rights*, 32-56 and Simmons, *The Lockean Theory of Rights*, 236-277 for excellent discussions of that argument.

Becker includes helpful discussion of Mill’s reconstruction of Locke’s argument (in Mill’s *Principles of Political Economy*, Book II, Chapter 2, section 6).

<sup>xviii</sup> This would be *intrusive* as it is not part of a system that one could become accustomed to.

Taking “holdings” (or “possessions”) as a broader category than property, so that one may have a holding with or without full property rights in the item (as in “possession is 9/10s of the law”) we can say that a system wherein property was more-or-less a life-long lease on holdings—as in Michael Otsuka’s *Libertarianism Without Inequality* (New York: Oxford University Press, 2005)—need not be intrusive. It would be, at any rate, no more intrusive than our current income tax system. By contrast, stepping in to take anything allowed to go to waste would require constant vigilance of all citizens who would constantly worry that something they (take themselves to) own would go to waste and thus be confiscated.

<sup>xix</sup> For a discussion of the historical definitions of waste, see Pierre DesRochers, “How did the Invisible Hand Handle Industrial Waste? By-product Development before the Modern Environmental Era,” *Enterprise and Society* 8, no. 2 (2007): 348-374, 349-351. DesRochers is interested in waste-recovery. I would suggest that “waste” that is recovered (used for further productive purposes) is not waste at all, but merely a by-product. If it were not recovered, it would be waste (all waste is a type of by-product but at least some by-products are not waste). Part of DesRochers’ point is indeed that industrialists have an incentive to make the most of the by-products of their industries so as to waste as little as possible. He indicates many ways this has been done.

<sup>xx</sup> Edward McCaffery, “Must we have the Right to Waste?” in Stephen Munzer, ed., *New Essays in the Legal and Political Theory of Property* (Cambridge: Cambridge University Press, 2001): 76-105, 85-87.

<sup>xxi</sup> Simmons, *The Lockean Theory of Rights*, 285; while the second item in Simmon’s distinction is McCaffery’s “dissipation,” the first is something distinct from either item in McCaffery’s distinction—perhaps a type of hoarding.

<sup>xxii</sup> McCaffery, “Must we have the Right to Waste?,” 86

<sup>xxiii</sup> Waldron may treat waste as complete destruction. With regard to land, he claims it is only wasted if used in such a way as to “prevent the land from ever being useful in any way to anyone at all” and claims that it is not mere destruction that matters for Locke’s second proviso, but “the negligent or deliberate loss of use-value without use, so that an object becomes useless for any human purpose” (*The Right to Private Property*, 208). “The terms of the Spoilation Proviso ... are not breached unless the goods in question actually perish” (*ibid.*, 218-219). I doubt this is Locke’s final view (Waldron convincingly cites II. 46), but textual exegesis is not my concern. It seems likely to me that things can be wasted without actually perishing. (Significant diminishment can be wasteful.) Strahilevitz seems to use “destruction” and “waste” interchangeably. He provides a narrow definition (“the elimination of all the value in a productive resource”) and a broad definition (that “includes both consuming nondurable assets and failing to exploit economic opportunities fully”). As he notes, with the first, almost nothing counts and with the latter too much counts (“The Right To Destroy,” 792). He recognizes that there can be definitions between these and that there are sociological understandings as well (I suspect these are not about the meaning of the term but either about what is valuable or about when it is acceptable to destroy) (*ibid.*, 793). His own definition (of destruction) is as follows: “Destruction occurs when an owner’s acts or omissions eliminate the value of all otherwise valuable future interests in a durable thing.” He admits this is “relatively narrow” and “more doctrinal than analytical” (*ibid.*, 793).

<sup>xxiv</sup> McCaffery, “Must we have the Right to Waste?,” 88-89.

<sup>xxv</sup> These were suggested by Gordon Hull. In his analysis, presented in his “Clearing the Rubbish: Locke, the Waste Proviso, and the Moral Justification of Intellectual Property,” *Public Affairs Quarterly* 23, no. 1 (2009): 67-93, you only have waste if “(a) there is irrevocably unmet demand, (b) the goods to satisfy that demand already exist,” and “(c) property claims prevent satisfaction of those demands.” I am inclined to think, though, that the product of a great musician is wasted if there is no demand for the work because existing persons are too unsophisticated to appreciate it or because it is simply unknown—buried somewhere in a musty library, waiting for discovery. In neither case would there be an irrevocably unmet demand and neither case would it be property claims interfering. Hull’s analysis has the virtue of providing a direct relation of waste to property. My account, by contrast, leaves that for a later stage.

<sup>xxvi</sup> Matt Zwolinski indicated this; I appreciate it. Working out the relation between need and waste would also entail an analysis of need (as opposed to want); I can’t offer such here.

<sup>xxvii</sup> Andrea Scarantino pushed me on this question.

<sup>xxviii</sup> Some people apparently do not think there is waste in the case as I specified it since (I think) the food would go unused in any case. This strikes me as mistaken as a conceptual issue. I agree that the act of destroying the excess foodstuffs might not be immoral in this case (or in a case where food arrives as manna from heaven), but the act still seems accurately described as waste. If the definition I endorse below is correct, it is. Importantly, I will note shortly that the foodstuffs might “go to waste” without the interference of the inhabitant, but this would not be the waste of the inhabitant (it would be nature’s waste).

<sup>xxix</sup> James Michener has an excellent essay “On Wasting Time” (*Readers Digest* 105, no. 631 (October 1974): 193-200) in which he argues for the value of wasting time. I don’t disagree with

his basic sentiment, but suspect that what he describes as wasting time is not actually *wasting* time. It is more like usefully passing time in a way that allows one to refresh.

<sup>xxx</sup> See e.g., Simmons, *The Lockean Theory of Rights*, 282-298. For Sreenivasan, the spoilage condition “actually imposes a due-use condition on nonmonetary goods, in addition to the requirement that one not allow one’s possessions to spoil” (*The Limits of Lockean Rights in Property*, 101).

<sup>xxxii</sup> This is likely the first intuitive definition of waste. For Damstedt “[w]aste occurs where a unit of a product of labor is not put to any use” (“Limiting Locke,” 1194; at 1183, though, he also indicates that the waste proviso is violated when there is a combination of nonconversion (into money) and nonuse.

<sup>xxxiii</sup> On the other hand, I don’t think we should simply ignore the uses made of various objects by non-human creatures—this is the view that nature only exists for us, which strikes me as an impoverished view of nature.

<sup>xxxiii</sup> Jessica Berry suggested I consider this possibility.

<sup>xxxiv</sup> I am inclined to think this is often also a confused way to speak or a shortcut for something different: disappointment with the loss.

<sup>xxxv</sup> Marcel Weber suggested this. As suggested in the last paragraph, I reject this claim in my final analysis. If this view were correct, nature could not waste (unless it were taken to be an agent).

<sup>xxxvi</sup> This may not be the only moral concern. If the thing wasted is of moral value, it is of moral concern that it be wasted and this is distinct from the moral concern with the agent who does the wasting. Jim Taggart pointed out the need for this qualification.



<sup>xxxvii</sup> Bernard Baumrin, "Waste," *Journal of Social Philosophy* 24, no. 3 (1993): 5-18, notes that waste may be a comparative term at 7-8.

<sup>xxxviii</sup> Note that if this definition were correct, our deserted island inhabitant would not be wasting when he tosses foodstuffs into the ocean in a weighted bag if the island produced so much that he should not use (eat) it all. If this were correct, we could say that nature wastes here, but not that he does. Those that think these conclusions are correct may disagree with my rejection of this definition. Thanks to Bob Fudge for pointing this out.

<sup>xxxix</sup> Simmons, *The Lockean Theory of Rights*, 285.

<sup>xl</sup> Baumrin, "Waste," 6-7. See also footnote 23 above.

<sup>xli</sup> Lewis seems to consider waste to be only misuse: "Waste, meaning a misuse of property, is excluded as a possible constraint because it is inconsistent with the initial assumption of freedom to govern oneself" ("An Environmental Case against Equality of Right," 260). Against this view, see the final paragraph of this subsection (II. B).

<sup>xlii</sup> Helga Varden thinks that "trying to produce tomatoes in the north of Finland (an environment naturally hostile to successful tomato farming)" is wasteful and that we cannot maintain a distinction "between waste and inefficiency when the inefficiency is so great as to call into question the rationality of the alleged 'productive' activity" (Helga Varden, "Locke's Waste Restriction and His Strong Voluntarism," *Locke Studies* 6 (2006): 127-141, 135). This captures, I think, the normal intuition that even successful activities can be wasteful if the success is contingent upon great inefficiency.

<sup>xliii</sup> The example was suggested by Ari Kohen.

<sup>xliv</sup> This would be true even if he *could not* use it. In such a case, we might not say he shouldn't waste it (as he can't fail to do so), but that does not mean it wouldn't be waste.

<sup>xlv</sup> This example and the water-running example below were suggested by Simon Cubelea May.

<sup>xlvi</sup> Richard Chappell suggests that this is just the same normative element repeated twice since "whether it's 'under-usage' depends on how much it *should* be used." He thus thinks this definition might be reworded: "Using something less than one should." I think, by contrast, that it may be helpful, in various cases, to recognize that whether something should be used, and how much it should be used if it should, are distinct questions. Running water, for example, should be used, but how or how much it should be used is a separate question (I think we can say some ways it should not be used; for example, for one's listening pleasure).

<sup>xlvii</sup> It may be tempting to take a different tack here. The benefit to this new definition is that it would always allow us to say, should waste be blameworthy, that *the agent who wastes* is blameworthy (even when the waste involves someone causing someone else to underuse). It might be thought this can be accomplished while maintaining that waste is simply "the *under-usage* of something one should use." We can have blame in the appropriate place on that view if waste itself is not morally blameworthy but the *causing of waste* is. I will not dwell on this objection here.

<sup>xlviii</sup> Brandon Turner originally suggested this, but it did not become fully salient for me until a discussion with Donna Cohen.

<sup>xliv</sup> This includes becoming *useless*, ceasing to be useful.

<sup>l</sup> Simon Cubelea May reminded me of this.

<sup>li</sup> Kristin Nelson Jones suggested this.

<sup>lii</sup> This may be thought to push back to the previous definition, "the causing of the under-usage of something one should use." "Under-usage" is lost potential that is not offset. We rejected that definition, though, as it did not handle cases where over-usage was wasteful. If we refined it to

“the causing of lost potential without offsetting gain,” it would be similar to the first part of the definition I propose here. We could make it closer still: “(a) any process that results in potential being lost without offsetting gain or (b) the result of such a process.” I assume this could also be refined further to match the final definition I provide, but I see no advantage to doing so.

<sup>liii</sup> I should note that something that *seems* like waste might result from a process that produces more benefit than is lost. This would not, on this technical definition be waste. I would call it a “remainder” or a “byproduct.” The intuition against calling it waste is simply that it was part of a process that created value and that could not (we assume) have created such value without it. This is like the destruction of gas in the use of a motor that is necessary for some benefit—not a waste, but proper use. Of course, *this byproduct could be wasted once it is produced* (by being subject to another process that produces less benefit than is lost and wherein it becomes less useful) or it could be used productively. See footnote 19 above.

<sup>liv</sup> Or even shorter, “any inefficient process or the result thereof.” I believe this fails for the same reasons discussed in this paragraph and for the reason discussed in the penultimate paragraph of the next section (II.D).

<sup>lv</sup> Damstedt, “Limiting Locke,” 1198. It may be, as Pat Greenspan suggested in correspondence, that the trees *go to waste* even if *we* don’t waste them or it may be that *nature* wastes the trees. If so, we might ask whether we have a responsibility to prevent the waste, but we would not, I think, say *we* waste. Finally, it may be, as Matt Zwolinski suggested in correspondence, that *we waste an opportunity* by not using the trees. Still, we’re not *wasting the trees*. The case is a bit harder when we discuss things like wind and sun power. As Jim Taggart suggested in correspondence, it might seem we *do* waste when we don’t take advantage of them to help with our energy needs. Still, even here, I am inclined to think that what we waste (directly) is an

opportunity. The same, I think, holds for cases where although we do get (even tremendous) use-value out of a process, more could be gained by a different process. Andy Altman suggested in correspondence, for example, that it is not unreasonable to claim using agricultural land to directly grow crops for humans rather than for cattle would create more use-value. While I think that is true, I do doubt that we should say the use of land to raise cattle is wasting the land (I think we would more correctly say that we wasted an opportunity to get more use-value than we did). I think it natural to say, pre-theoretically, that as the land was used productively, it was not wasted.

<sup>lvi</sup> At least if we ignore the benefit of oxygen production and the like.

<sup>lvii</sup> Moreover, if it is assumed that revealed preferences can never be wrong there are worse difficulties than the (likely) fact that no one would ever be said to be wasting (for more on these difficulties, see my "On Hard-headed Economics Capturing the Soft Side of Life," *ms*, section V). From the other side, discounting revealed preferences does not mean giving priority to some governing body that is meant to decide what is best for everyone. I thank Andrew I. Cohen for prompting here and Ellen Paul for prompting on the entire question of the objectivity or subjectivity of use-value.

<sup>lviii</sup> Purposes of moral agents are not merely those things particular moral agents happen to want; they are objectively good for those agents—whereas they may want things that are not good, and may even be bad, for them. I cannot, of course, offer a full explanation of objective purposes here—and hence, cannot give a full explanation of the objectivity of use-value. I suspect a eudaimonist account, perhaps Aristotelean, would be the best way to approach this question. In any case, it may be that the best way to understand the objective value of the various possible

uses of an object requires counterfactuals of the following sort: if item X had been used as Y, it would have served purpose P for a moral agent. But I leave this question to the side.

<sup>lix</sup> Paul Gowder raised this concern.

<sup>lx</sup> I suspect the ambivalence is present in Locke’s thought. He seems, after all, to think European taking of land from Native Americans in his day was acceptable since the latter were “wasting” the land by not using methods of agriculture available in Europe (see II. 45; cf. Zack, “Lockean Money, Indigenism and Globalism,” 32). Surely they were not destroying the value of the land or even making it worth less than it was—they were simply not increasing its value. They were, it might be said, hoarding it. Indeed, “land can be wasted (e.g., by the idle rich) by lying unused” (Simmons, *The Lockean Theory of Rights*, 286-7). Yet, “Locke quite explicitly allows accumulation for comfort and convenience not just need-satisfaction” (ibid., 285, referring to M. Seliger, *The Liberal Politics of John Locke* (London: Allen Unwin, 1968)).

<sup>lxi</sup> The billionaire example is problematic as it assumes we should ignore the value of the investment *as an investment that allows other productivity*. As I have said, if we do not ignore that, the billionaire does not seem to be wasting at all; she is, rather, making money available—in the form of a capital to be borrowed—to others who can put it to more directly productive use than she can herself.

<sup>lxii</sup> See Joseph L. Sax, *Playing Darts With a Rembrandt: Public and Private Rights in Cultural Treasures* (Ann Arbor: University of Michigan Press, 1999).

<sup>lxiii</sup> This is not to say any interference is warranted in my purchase. Perhaps it would even be wrong for most people to even remark about the waste. Yet, surely a close friend would be justified in asking if there was some special reason I would make such an oddly expensive purchase and, of course, there may be special circumstances that make it more beneficial than it

appears. Perhaps the shopkeeper is someone I wish to help out but who would not accept the money unless I purchased the umbrella. Still, absent such circumstances, I do not believe we should shy away from the judgment that I would be wasting my money, even if it gave me satisfaction.

<sup>lxiv</sup> According to Waldron, Locke believes "An owner is not entitled to decide to allow his goods to perish uselessly in his possession (II. 46). In Locke's view, such a decision is tantamount to an abandonment of exclusive property in the goods. But what counts as use and what counts as useless destruction is for *the owner* to decide: briefly, anything he takes to be useful to himself counts as a use of the object however wasteful it may be to someone else" (*The Right to Private Property*, 161). Recognizing Waldron's implicit recognition that waste is indexed, I think the moral claim would reverse Waldron's final point: if waste is immoral, it must be so understood from the broader perspective, not the narrower.

<sup>lxv</sup> This objection comes from Justin Weinberg.

<sup>lxvi</sup> Whether this counts as *our* wasting (since we don't interfere) or nature's wasting, I will not try to determine.

<sup>lxvii</sup> The opportunity cost idea was suggested by Mark Lebar; the idea about aiding pursuit of the good was suggested by Kristin Nelson Jones.

<sup>lxviii</sup> Perhaps the values are incommensurable, but this need not be the case as it could simply be that *as it happens* no monetary amount that could be raised in the situation at hand would alter his choice.

<sup>lxix</sup> I don't know that any actual member of the Navajo tribe believes this or that the tribe as a whole would endorse it. (But see Peter Nabokov's *Where Lightning Strikes: The Lives of American Indian Sacred Places* (New York: Viking Penguin 2006), especially Chapter 6.) Such

is not pertinent to my point as surely there could be other examples where some person or group did think this way about an object or place that others had a very different and perhaps merely monetary appreciation for. One thinks of the great pyramids, the Western Wall, the Dome of the Rock, Stone Henge, etc., but more mundane cases exist as I will discuss below (see footnote 99 and surrounding text). I owe the example of Shiprock and prodding about the point (and phrasing it) to Jim Taggart.

<sup>lxx</sup> I mean this to be neutral between various ways of understanding efficiency and inefficiency in economics.

<sup>lxxi</sup> This sort of assumption may have been behind much of Locke's thought on this matter. His failure to remain neutral with regard to the values considered arguably helps explain the limitations of his account of waste and the lack of contemporary interest in it. That is, Locke's account is likely partisan to the view of waste as nothing but inefficiency (i.e. something productive of less benefit than is lost in a purely economic sense).

<sup>lxxii</sup> To be clear, I take a metric to be related to a conception of the good, such that one measures benefit, usefulness, etc., against this metric and anything that helps attain that good is positive and anything that hinders it is negative.

<sup>lxxiii</sup> Damstedt, "Limiting Locke," 1195.

<sup>lxxiv</sup> Chase Turner provided the idea here as well as some of the objections.

<sup>lxxv</sup> A Kantian approach defending duties to oneself may fare better. I suspect, though, that a direct route here could at best defend an imperfect duty not to waste. In the last paragraph of section III.D below, however, I make use of this sort of approach (in more Lockean terms) as part of the argument I think fares best for showing waste to be immoral.

<sup>lxxvi</sup> Bob Fudge provided the idea here as well as some of the objections.

<sup>lxxvii</sup> See, for example, Leon R. Kass, “The Wisdom of Repugnance” in Leon R. Kass and James Q. Wilson, eds., *The Ethics of Human Cloning* (DC: AEI Press, 1998), 3-60.

<sup>lxxviii</sup> Simmons, *The Lockean Theory of Rights*, 233.

<sup>lxxix</sup> I assume the term is better translated “a right to (or *just*) abuse,” but from Roscoe Pound (1939) forward, it has been deemed a right to destroy, injure, or waste. The sixth edition of Black’s Law Dictionary (1990), for example, talks of an owner as one who has a right “to spoil or destroy” property (this is interestingly dropped in the seventh edition of 1999) (Strahilevitz, “The Right To Destroy,” 783).

<sup>lxxx</sup> We might want legal interference to be permissible (on Lockean grounds), claiming that such waste—his allowing the “fruit of his planting” to perish—is *such a waste* that the apples “might be the possession of any other.” We might want to say, that is, that his property right is limited by his waste. I will not discuss this here.

<sup>lxxxii</sup> The point here is that within a legal system, that system determines the conception of property within the society (cf. Waldron, *The Right to Private Property*, 31). This is not to say that property is only a legal construct. On my own view, property is a moral concept, but legal systems flesh out the concept to form the conception of property within their societies. In doing so, they greatly influence the resulting property schemes such that, for example, cocaine is not (conceptually) property (whether or not it should be legal). Any particular property scheme, of course, may be immoral, but this is a question of the morality of the legal system. I thank Andrew I. Cohen and Jim Taggart for pushing me to clarify this point.

<sup>lxxxiii</sup> See “The Right To Destroy,” 803 and 854. Strahilevitz also considers *ex ante* arguments on 808-821, but even these are based on the total economic value (fairly narrowly understood) that would be produced by allowing or disallowing the wasteful act.



<sup>lxxxiii</sup> Andrew Jason Cohen, "What the Liberal State Should Tolerate Within Its Borders,"

*Canadian Journal of Philosophy* 37, no. 4 (2007): 479-513.

<sup>lxxxiv</sup> J. S. Mill, *On Liberty*, ed. Elizabeth Rapaport (Indianapolis, IN: Hackett Publishing, 1978, originally 1859), 9 emphasis added. The harm principle is a moral principle about both individual and legal action. It indicates not only what sorts of justifications for state interference with individuals are legitimate, but also what sorts of justifications are legitimate for anyone to thus interfere. Here, I deal only with the broader category.

<sup>lxxxv</sup> See Andrew Jason Cohen, "What the Liberal State Should Tolerate Within Its Borders," 482. Feinberg: "For the purposes of the harm principle, we must think of harming as having two components: (1) it must lead to some kind of adverse effect, or create the danger of such an effect, on its victim's *interests*; and (2) it must be inflicted wrongly" (Joel Feinberg, *Freedom and Fulfillment* (Princeton: Princeton University Press, 1992), 3-4; emphasis in original).

<sup>lxxxvi</sup> Or a correlated principle like my Principle T (see Andrew Jason Cohen, "What the Liberal State Should Tolerate Within Its Borders," 494).

<sup>lxxxvii</sup> Here I simply assume *arguendo* that there is such a right in a just legal regime. If there is not, interference with waste of one's own goods is more likely to be morally permissible. This suggests that if there is no moral justification for a legal *jus abutendo* in property, there is more likely to be a duty not to waste. It does not imply, though, that there is no such moral duty if *jus abutendo* is part of property.

<sup>lxxxviii</sup> For more on this, see Jeremy Waldron, "A Right to Do Wrong," *Ethics* 92, no. 1 (1981): 21-39; Robert Audi, "Wrongs Within Rights," *Philosophical Issues* 115 *Normativity* (2005): 121-139; and Andrew I. Cohen "Famine Relief and Human Virtue" in Andrew I. Cohen and

Christopher Wellman, ed., *Debates in Applied Ethics* (NY: Blackwell Publishers, 2005), 326-342, here 330-333.

<sup>lxxxix</sup> I do not want to say that the starving person has a right to food. While I am not prepared to deny such a claim, I also have no defense to offer in its favor. This is somewhat unfortunate since if the starving person did have a moral (claim) right to food, waste would clearly be immoral in any case where it prevented satisfaction of that right.

<sup>xc</sup> Ending suffering is not the sole goal of a moral life. As Schmidtz notes, we could end all suffering by making the world uninhabitable to sentient life (see *Person, Polis, Planet*, 155). There are other moral values.

<sup>xc<sup>i</sup></sup> Peter Singer, "Famine, Affluence, and Morality," *Philosophy and Public Affairs* 1, no. 2 (1972): 229-243, 231.

<sup>xc<sup>ii</sup></sup> For Feinberg's discussion of how omissions can be understood as causes of harms, see Joel Feinberg, *Harm to Others* (New York, NY: Oxford University Press, 1984), 171-186. See also Patricia Smith's "Legal Liability and Criminal Omissions" (*Buffalo Criminal Law Review* 5, no. 69, 2002: 69-102).

<sup>xc<sup>iii</sup></sup> James Rachels, "Active and Passive Euthanasia," *New England Journal of Medicine* 292 (1975): 78-80.

<sup>xc<sup>iv</sup></sup> Feinberg (*Harm to Others*, 167). Feinberg attributes the example to Thomas Grey.

<sup>xc<sup>v</sup></sup> As Matt Zwolinski pointed out in correspondence, this is actually too quick. That I cannot always prevent waste means I'm not obligated to always prevent waste. I may still be obligated to prevent any particular instance of waste. The point in the text is that there are some occasions of waste I cannot avoid.

<sup>xc<sup>vi</sup></sup> I thank Jim Taggart for pushing me to discuss this.

<sup>xcvii</sup> As already indicated, none of this implies subjectivism. The metrics involved would be objective facts about the parties. See footnotes 57 and 58 and surrounding text above.

<sup>xcviii</sup> Some might think that in the real world since the Navajo Nation owns (or, as an independent nation, has sovereignty over) Shiprock, its metric is what controls. Others might think that given the life-saving potential, that is mistaken. I imagine more people will think that if Big Pharma rightly owns the formation, the questions we are asking here are irrelevant—that if Big Pharma owns the formation it can do with it as it likes, even destroying it. That, though, has yet to be established: it is the question of whether waste limits property. It is a question for another paper.

<sup>xcix</sup> From Strahilavitz, “The Right To Destroy,” 784 n 7: *See Eyerman v. Mercantile Trust Co.*, 524 S.W.2d 210, 217 (Mo. Ct. App. 1975).

<sup>c</sup> Plausibly, this taking is akin to an original acquisition. When I take the unowned food, it plausibly becomes my property. If it does, the question of wasting unowned goods reduces to the question of wasting one’s own goods.

<sup>ci</sup> See Schmidtz, *Person, Polis, Planet*, 145-164, esp. 148-149 and Andrew I. Cohen “Famine Relief and Human Virtue” for discussions of the limits of the principle Singer offers. Given those discussions, I think Singer’s principle needs to be understood differently than Singer himself does if it is to be accurate, but I will not discuss this here.

<sup>cii</sup> Garret Hardin, “Lifeboat Ethics: the Case Against Helping the Poor,” *Psychology Today*, (September 1974): 38-43 and 124-126. Hardin’s point is originally about the morality of government intervention; Schmidtz’s point is more general. In any case, I think both points can be applied to individuals. Nonetheless, as Matt Zwolinsik suggested in correspondence, it is clear that moral hazard arguments more easily justify institutions that allow waste than they justify waste by individuals.

<sup>ciii</sup> See Schmidtz, *Person, Polis, Planet*, 125-126, for similar worries. Andy Altman helped me see the need for the comments at the end of this paragraph.

<sup>civ</sup> Varden, "Locke's Waste Restriction and His Strong Voluntarism," 128.

<sup>cv</sup> See Lewis, for the view that Locke intends the waste proviso to be an "imperative to labour" ("An Environmental Case against Equality of Right," 260; cf. Shiffren, "Lockean Arguments for Private Intellectual Property," 147 ff). See Simmons, *The Lockean Theory of Rights*, 101, for defense of the view that while we must labor, we can productively do so in ways that fit into our own plans.

<sup>cvi</sup> Varden, "Locke's Waste Restriction and His Strong Voluntarism," 133.

<sup>cvii</sup> Hence, for Locke, "Productive labor ... is virtuous and God-fearing; while idleness is sinful as well as anti-social" (Waldron, *The Right to Private Property*, 147). Locke is against both the idle able poor and the idle rich; indeed, it is idleness per se he opposes (Sreenivasan, *The Limits of Lockean Rights in Property*, 47). He opposes idleness because it is a form of waste that is particularly pernicious (for the reasons I discuss in the text).

<sup>cviii</sup> Simmons, *The Lockean Theory of Rights*, 273.

<sup>cix</sup> Locke continues: "As justice gives every man a title to the product of his honest industry, and the fair acquisitions of his ancestors descended to him; so charity gives every man a title to so much out of another's plenty, as will keep him from extreme want, where he has no means to subsist otherwise." He seems to recognize no conflict between the two conjuncts. In any case, my own worry about Locke's view of charity here is that he makes it too much like a perfect duty, depriving it of the element that would seem to make it *charitable*. (Of course, it is not unreasonable to think that Locke treats charity as a third proviso on property.)

<sup>cx</sup> Compare this to Clark Wolf, “Contemporary Property Rights, Lockean Provisos, and the Interests of Future Generations,” *Ethics* 105, no. 4 (1995): 791-818, where the first proviso is read as a harm principle (esp. 803-809).

<sup>cx<sup>i</sup></sup> Andrew Jason Cohen, “What the Liberal State Should Tolerate Within Its Borders,” 485 n 9.

<sup>cx<sup>ii</sup></sup> On Sreenivasan’s Lockean view, property ends where there is not “*enough and as good direct means of subsistence ... available for others*” (Sreenivasan, *The Limits of Lockean Rights in Property*, 55)

<sup>cx<sup>iii</sup></sup> Citing Locke’s *Treatises* (e.g., I. 37; II. 33, 36, 37), Simmons (at *The Lockean Theory of Rights*, 292) is talking about appropriation, but the same presumably holds for what is done after appropriation. Indeed, on his view, there are four types of duties that are the content of natural law (see, *ibid.*, 51): duties to preserve oneself, to preserve others, not to ‘take away the life’ of another, and not to do what ‘tends to destroy’ others (*ibid.*, 60).

<sup>cx<sup>iv</sup></sup> *Ibid.*, 292.

<sup>cx<sup>v</sup></sup> *Ibid.*, 286.

<sup>cx<sup>vi</sup></sup> *Ibid.*, 284.

<sup>cx<sup>vii</sup></sup> Some might suggest that we need to qualify the moral claim with intentionality such that “if one person needs something for her preservation and a second person has it, is *intentionally* wasting it, and refuses to allow the first to make some further use of it, the second may be morally wrong.” I don’t think the qualification is needed. One can act immorally unintentionally—this is acting negligently by not forming an intention one should.

<sup>cx<sup>viii</sup></sup> I will simply assume that family vacations are at least sometimes morally permissible. In any case, at least some vacations are not wasteful. My family gains significant beneficial shared experiences and relaxation when we take vacations. Of course, in some cases, those benefits

should give way to others—imagine, for example, that either we take our vacation or a bomb kills a million innocent civilians.

<sup>cxix</sup> I owe thanks to Andy Altman for pushing me to clarify this issue.

<sup>cxx</sup> W2 is a narrower than W1. I take all violations of W2 to be violations of W1. In cases where violations of W1 are violations of W2, there is a definitive wrong. There may be other violations of W1 that are not violations of W2 but that are definitively wrong.