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The Compatibility of Absolute Property Right in Liberal State: A Critique of Locke and Blackstone

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The modern conceptualisation of the absolute property right has been observed in Locke's Two Treatises of Government. In the Commentaries of the Laws of England, Blackstone also remarked on the characteristics of private property rights. The paper critically appraises the compatibility of the establishment of private property rights in a liberal state apparatus holding the attributes of absoluteness. The article follows a discursive method.

Keywords: Property Rights, Absolute Right, Labour Theory of Value, Liberal State, John Locke, William Blackstone

Where there is no law, there is no freedom.

John Locke (Locke, 2003, p. 124)

Law is to be considered a matter of practice and a rational science; it cannot be improper or useless to examine more deeply the rudiments and grounds of these positive constitutions of society.

William Blackstone (Blackstone, 1893, p. 393)

Property is intended to serve life, and no matter how much we surround it with rights and respect, it has no personal being. It is part of the earth man walks on. It is not man.

Martin Luther King Jr (King, 2010, pp. 56–57)

"Property Right", specifically the private property right and its characteristics, is a debating concept among political philosophers, legal scholars, and of late economists (Blackstone, 1893; Coase, 1960; Hohfeld, 1923; Honore, A M, 1961; Locke, 2003; Marx, 1970, 1971; Marx et al., 1906). To pin down economic analysis of property rights, it is inevitable to understand how the concept of property rights was put forth and evolved through political and legal philosophy and how it became a classical discussion since the work of *the problem of social cost* (Coase, 1960) and *toward a theory of property rights* (Demsetz, 1967). However, these economic ideas of property have a historical continuity from the great Greek philosophers *such* as Plato and Aristotle (Aristotle, 2009; Plato, 2008)[1] to the classical English

[1] The critical appraisal of the Greek philosophers such as Plato, Aristotle et al., been found in the excellent presentation in the chapter "Plato's "communism", Aristotle's critique and Proclus' response" in (Garnsey, 2007) and for the philosophical discussion see (Mayhew, 1993; F. Miller, 1991). The brilliant commentary on Aristotle's Politics by

enlightenment writers such as Locke Blackstone (Blackstone, 1893; Locke, 2003) et al. and the socialist thinkers such as Marx[2], to modern legal scholars such as Hohfeld and Honore (Hohfeld, 1923; Honore, A M, 1961). Of late, a more comprehensive idea of property rights was crystallised in economics by Coase, Alchian, Demsetz, Buchanan (Alchian, 1959, 1961, 1965; Alchian & Demsetz, 1972, 1973; Buchanan, 1975; Coase, 1960; Demsetz, 1967) and a host of others invoked an omnibus of research on economic analysis of property rights. Though there is a different strand of discussion on the conceptualisation of private property and its most important characteristics as whether it is an absolute one or not, the work attempt to limit its argument around the concept of private property right having a fundamental characteristic of exclusion which discusses in the works of John Locke in the Two treatises of Government and William Blackstone in the Commentaries of the Laws of England. The discussion advances here will clarify the economic interest of property as a matter of research from both the law and economics and political economy perspectives.

Locke on Property Rights

The genesis of modern[3] property rights could be asserted since Hobbes' *Leviathan* (Hobbes & Tuck, 1996)[4] and Locke's *Two Treatises of Government* (Locke, 2003)[5]. However, the genesis of the enlightenment could often be traced from the works of Plato and Aristotle. Plato treated the property as a *source of trouble*; to get out of this trouble, he insists on making the powerful property-less and the propertied powerless (Breen, 2011; Garnsey, 2007; Plato, 2008). The idea of Plato envisages a Utopia, however far from the concept of property we conceived (Breen, 2011; Ryan, 1987). This Utopia was thoroughly repudiated by Aristotle (Aristotle, 2009; Garnsey, 2007; Mayhew, 1993; F. Miller, 1991; Newman, 2010); according to him, man as a social animal lives in search of the common good. This common good is characterised by conflict and resolving it by putting terms in society and negotiating and renegotiating on their terms rather than simply tending the trouble and advocating for being idle. "Laws ...regulate the devolution of property ... not only enforce certain outward acts, but they create dispositions." (Newman, 2010, p. 76).

(Newman, 2010) is one of the best sources of the discussion and recommended for elaborate understanding of the different strand of Aristotelian view on property and other aspects. The property relation of Guardian and Farmers are beautifully presented in (Breen, 2011).

[2] The initial discussion of Marx on Property appeared in Marx, Karl (Marx, 1971) and subsequent works of Marx (Marx, 1970; Marx et al., 1906, 1906).

[3] The classification of "modern" refers mainly to post-renaissance Europe and its political, social, and intellectual advancement during that period, whereas the non-European world's contribution is seldom considered in the classification. A rough classification in manner figured out in Ryan (Ryan, 1987).

[4] This book axed down the concept of the 'divine right theory of monarchy and put up the idea of the social contract as an administration mechanism that the monarchy perhaps represented.

[5] John Locke's Two Treatises of Government explicitly argues against the divine right theory (in the first treaty) and on the breadth of civil government (in the latter treaty). In the latter treaty, Locke categorically conceptualised various sources of government power and its people, where Property got a remarkable place.

Through Aristotle justified the property and its potential advantage in *Politics*, the critical point from the Greek philosophy we try to show is that property rights were treated as a normative concern of acquisition and use, which influenced the economic conception of property in the economic analysis of property rights. Otherwise, it is not our intention to discuss much on the traditional philosophy and politics of Plato and Aristotle in determining what property is but to note what they conceived on the property, which was furthered by Locke and other post-enlightenment scholars and followed by economists to conceptualise economic man.

The criticism of John Locke's conception of property and the natural rights principle as a creation of God, the present work does not look at such an immaterial point of criticism; i.e., whether property and natural rights are Godly or not is not our concern. Instead, we explore that Locke's dependency on God is a starting point or ending point of the perpetual nature of the argument he took up to attempt a rational ground of private property.[6] Whereas, an economic rationale of private property does not care about such valuation of who the creator is but whether the right is admissible to have the absolute right or relative right or any contradiction of performing economic decision-making. In that context, Locke gives an illuminating picture of private property having a natural right doctrine of property powered by labour involvement.

The concepts like life, liberty, and estate (property) are the manifestation of Locke in his Two Treatises of Government. Property rights are considered one of the essential yardsticks of understanding the life and liberty of any modern society[7]. Locke is of the view that *the great and chief end, therefore, of men uniting into the commonwealth, and putting themselves under government, is the preservation of their property* (Locke, 2003, p. 155). Locke defines property as property that men have in their personal as goods (Locke, 2003, p. 178). He tried to understand the basis of property rights in natural law.[8] Furthermore, define Property as a private relation. Locke observes that men obtain resources from nature to sustain their needs and preserve the resource he receives, creating property rights. For Locke, the claim of property rights derives from the ability and labour to possess resources, which is a private effort compared to the nature of resources available in common (Locke, 2003, pp. 111–112). It indeed precedes the individual effort and labour; it instigates us to think that when we talk about a primordial state on the concept of property, it is not a private regime or a sense of privateness that existed. Still, the resources are common to all to possess and use. Under this circumstance, the rights of using resources are determined by the need of the resources and the ability to have the resources, which is mute about considering that common resource as private; shed light on the fact that the issue of acceptance of the ordinary people to

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[6] For instance, the work of Tully and Sreenivasan sheds light on some criticism in the theological ground (Sreenivasan, 1995; Tully, 1980).

[7] For example, the works of Blackstone and Proudhon were constructed in this direction and consider these elements as the pillars of modern organised society (Blackstone, 1893; Proudhon et al., 1994).

[8] In the "Two Treatises of Government," Locke discusses that "…men, being once born, have a right to their Preservation, and consequently to Meat and Drink, and such other things, as Nature affords for their subsistence… given it to mankind in common…, and all that is therein, is given to Men for the support and comfort of their being"; stands perhaps the illustrious note of natural right (Locke, 2003, p. 111).

make something personal not perhaps rationalised by Locke because the rationalisation of common property transformation to private property is so naïve and often contradicts Locke's ideas in his Two Treatises.

We understand from the two treatises that there is no right of ownership of possession assured.[9] Beyond the limits of the law provided the fact that right is a guarantee of a third party called state or the law of the land, which implies from the clause of Locke – "if there is no law there is no freedom." Therefore, the right of private property is the manifestation of law, which Locke did not emphasise but moved around the abstraction of natural rights. We do discuss this in a moment. However, even in the conception of natural right, John Locke's point is that there must be a necessary condition of having private property beyond the limits of the law – the content of labour involved. For Locke*, property rights are a function of labour, determined by need and ability to obtain and possess*. The labour theory of property of Locke could influence the economic theory of "labour theory of value" (Locke's idea of labour as the basing point of property right could affect the labour theory of value of Smith.[10] And the computed value of labour in Ricardo (Ricardo & Kolthammer, 2004, pp. 11–66); and Marx's theory of labour as a source of value and accumulation (Marx et al., 1906, pp. 44–47).

Another notable point of Locke on property rights and its valuation lies in labour involved and not the resource *per se*[11]. However, the bias of Locke did not exactly rest with labour theory. Still, in his subsequent introduction of money to preserve the value of the property, he decomposed the idea of Property into a dynamic sphere – 'property rights in abundance' and 'property rights in scarcity.' (Olivecrona, 1974). Before coming to the scarcity paradigm, the relevance of labour theory needs a projection. Talking labour as the basing point of the property and transforming from common to private property, it is not clear how society sanctions such a move. Considering property right in abundance, mixing labour with nature only helps him get his subsistence. Since the work cannot store beyond his life, all he can do is to assure a property of subsistence till his death, but this is insufficient to have a claim of right as private property, which is theoretically a different paradigm of right. In the observation of Sreenivasan, Locke's jump from common property to private property characterises two issues – the *apparatus of the consent problem* and the *doctrine of maker's rights*. The former consists of the legitimacy of appropriation from the requirement that everyone consent to it, together with an ingenious device for doing so – the stipulation that appropriation does not impair anyone's access to the materials needed to produce her subsistence where the latter talks about the principle which individuals entitled to a property in the products of their making, provided that there is no legitimate objection to their use of the relevant materials (Sreenivasan, 1995, p. 5).

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[9] As we know, in the primordial social conditions, it might rule the right.

[10] The actual price of everything, what everything costs to the man who wants to acquire it, is the toil and trouble of acquiring it. Everything is worth to the man who has acquired it and who wants to dispose of it or exchange it for something else is the toil and trouble it can save to himself, which it can impose upon other people (Smith & Cannan, 2008)

[11] This view of resources as a reason for value is sceptical, at least in economics under Locke's argument (Locke, 2003, pp. 112–113).

The 'consent problem' parallels our argument on the difficulty of drawing a conclusion from 'common ownership and mixing with labour' to create a private property right. In this situation, Locke may be implicitly viewing two systems of property into the minds of individuals – a common property and a private property! A conclusion of Locke in this concern follows as the necessary condition of labour to make a property private is not sufficient to argue for the transition of property regime from shared to private. In this concern, the question of sufficiency is left blank. Since Locke accepts an initial condition of property rights (common), it does not preclude us from arguing a sufficient condition backs in Locke's view.[12]. The sufficiency condition of the transition from common property to private property is the law or sovereign, which was implicit in the series of arguments placed by Locke. On the contrary, Locke viewed that the foundation of a property is man himself (through his labour), which seems inadequate to prove a theory of property right as the function of labour and its transition from a common property regime to a private property right.

The second paradigm of Locke – the property right in scarcity (Olivecrona, 1974). Where men create their property right and consider it as "maker's right." (Sreenivasan, 1995, pp. 5 & 62–88). As Macpherson paraphrased Locke: "every man has a property in his person; this nobody has any right to but himself," and that, when he mixes his labour with nature, "this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to" – is not at all inconsistent with the alienation of one's labour in return for a wage (Macpherson 1951). This argument is in tandem with the idea that being waged as one's (X's) right (claim) and how that right could transfer and perpetuate to the next generation or anybody other than X, due to the fact that the labour gained the property right is the person X and none other than X. However, the following passage of Locke creates a sort of confusion: "thus the grass my horse has bit; the turfs my servant has cut; and the ore I have digged in any place, where I have a right to them in common with others, become my property, without the assignation or consent of anybody. The labour that was mine, removing them out of that common state they were in, hath fixed my property in them" (Locke 2003[1690] p. 112). The perplexity of this passage is that some labour is only entitled to have a claim of right, not all the labour, which is questionable when comparing with the absolute claim of labour-power as the base of property right. It seems to be an abrupt end to the logic of Locke's argument that the natural right of a person is obtained through the natural right over their labour which is now sold out to a third party who cannot own the natural labour of "*my servant*." Macpherson discussed the jump of Locke's logic due to his commitment to the Whigs and their mindset of "capitalist appropriation." (Macpherson, 1951). On the contrary, the mystery of money makes us sceptical that the law of nature commands the acquisition of property rights by mixing labour with nature. In contrast, an unnatural creation such as "money" perpetuates such property could boil down to an artefact, which inherently contradicts the initiation of Locke's concept of property as a natural right.

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[12] Ashcraft's criticism of Locke gives some glimpses on the motivation of Locke. He argues that it is the interest of the Whigs which is reflected in Locke's idea of individual Property. (Ashcraft 1987) A detailed description can also be seen in the introduction and second chapter of Sreenivasan, (1995).

Conversely, an exciting concern of Locke on the appropriation tendencies of human beings and their possible claim of absolute right on private property introduced two provisos to curb the claim of an absolute right in labour-based property right – "proviso of spoilage" and "proviso of sufficiency." These two provisos make us believe the functional characteristics of the property which ruled by Locke, than the notion of absolute characteristics of property prevailed among the English theorist[13]. These functional characters are discussed here. The principle of spoilage discusses limiting the waste of resources. If the resource is perishable, putting more labour and accumulating more resources may get wasted due to the resources' nature of perishability, depriving others of using it. Therefore, such resources are not advised to accumulate much, limiting the claim of right on labour beyond a point. (Locke, 2003, p. 113). This hints at the functionality involved in acquiring or accumulating property based on the labour theory of property. In a similar vein, under the paradigm of abundance, the provision of spoilage limits the accumulation but does not rationalise in any sense as a means of transferring Common Property to Private Property.

On the other hand, the proviso of sufficiency tries to ensure the opportunity to possess resources for everyone[14]. Unlike the spoilage proviso, Waldron views that the "enough, and as good left" clause of Locke is not a natural law limitation imposing an absolute restriction on the appropriation of resources (Waldron, 1979). This could be argued in two ways – one, either Locke believes that there is no possibility of absolute right claim; second, the right could be claimed and possessed based on the function of property. For example, from the words of Locke: "property, whose original is from the right a man has to use any of the inferior creatures, for the subsistence and comfort of his life…."(Locke 2003[1690] p. 59); and "men, being once born, have a right to their preservation, and consequently to meat and drink and such other things as Nature affords for their subsistence…."(Locke 2003[1690] p. 110), this implies resource appropriation permitted to keep the subsistence of human beings even though they are not mixing their labour with nature to make their property right. It implicitly says that a property right exists before mixing labour with nature based on the function of keeping life with humans. The need for private property rights is nowhere mentioned in between lines to interpret the survival of human beings. Putting Ashcraft's view – "not only is it true that we are each responsible for securing the right of everyone to subsistence, but it is also true that this right claim is *not* tied to the labour of the individual or framed in terms of it." (Ashcraft, 1987). It suggests that the absolute claim based on labour mixing with nature is not sufficient to argue the labour theory of property right.

In our view, a plausible point Locke tries to convey through these two provisos is perhaps the idea of functional Property, which is a different point of exposition read from Locke's two treatises so far. By assigning these limits to property appropriation, Locke curbed the concept of absolute property rights claim. However, the ghost of absolute property right is not wholly exorcised from Locke, which played a contradictory position to convey property right and often followed the

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[13] Even Macpherson had a similar sort of scepticism on the view of Locke on the characteristics of Property. (Macpherson 1951)

[14] Locke insists that anyone can obtain Property only to the point of "there is still enough, and as good left." (Locke 2003[1690] p. 114)

conventional understanding of the English views on Property. From these observations, it is challenging to infer necessary and sufficient conditions of private Property through the principles underlined as labour-power needs to be involved in getting private property right and the limiting provisos curbs the appropriation of the property bounded refuted. Finally, Locke insists that the "State" was instituted to protect the natural right of Property (Schultz, 1991). Putting this perspective, we need to understand that a natural right exists even before constituting a State, whereas the State functions as a guardian of this right. It opens up a debate between the natural rights of Property and the State as its guardian. On the other side, it is not the natural right that drives the concept of Property but the artefact of society (State) that validates the conception of private property or the right as such. To inquire about such a nuanced idea, the learned commentaries of Blackstone may help us solve the puzzle.

Blackstone on Property Rights

For William Blackstone, rights and wrongs[15] are the manifestation of the municipal law of the State (Blackstone, 1893). The former represents the command to do or not to do, and the latter forbids from performing or not performing by the law of the land. It seems critical to Locke's idea of rights, which is natural. Even beyond recognising the criticality of natural rights, Blackstone strongly supports that rights can be natural but that natural rights cannot be established without any municipal Law or State. Contrary to Locke's proposition, we can read Blackstone's proposal as *the natural rights are natural if and only if it gets the sanction of municipal law or state or third party*. Let us consider how this proposition gets in shape.

To him, discussing the rights implies subordinate meanings such as either the rights of things or the rights of persons. On rights of "person" "Law divides persons into natural and artificial, where the former discusses the natural capacity of having rights and the latter is an artefact or devised by human laws or third parties." (Blackstone, 1893, p. 92) However, our earlier proposition of Blackstone hints that natural right can be established through the law, which has an absolute characteristic. This is a bit confusing because the consideration of "natural" is often recognised by the explicit approval of the law of the state. Similarly, the characteristics of an absolute right imply two possible worries – one, is it necessary to have a third party to obtain an absolute right; then, what makes (assures) the third party to permit the absolute right? Second, no complete owner needs anybody over them to exercise their absolute right. If so or otherwise, he is not the absolute owner! These two worries and the conceptualisation of natural rights as a result of law's/state's recognition are the basing points of property rights, especially considering property rights as absolute.

Commentaries divide natural rights into two – absolute and relative. "Absolute, which are such as appertain and belong to particular men, merely as individuals or single persons: relative, which is incident to them as members of society, and standing in various relations to each other" (Blackstone, 1893 p. 92). As Blackstone

[15] The first two books of "Commentaries" discuss the Rights of "Of Persons" and "Of Things," and the later books deal with wrongs, "Of Private Wrongs" and "Of Public Wrongs." We used a digital copy of the edition brought by Google books. The numbering we follow is from Google digital page.

observes, "the principal aim of the society is to protect individuals in the enjoyment of those absolute rights which were vested in them by the immutable laws of nature, but which could not be preserved in peace without that mutual assistance and intercourse which is gained by the institution of friendly and social communities." (Blackstone, 1893, p. 93) It implies that the natural right cannot be maintained if the consensus of people does not back it, which is actually a contradiction, and we cheerfully note it as a psychological advancement of Blackstone from the dogma of individuals' absolute right to societal consensus. Nonetheless, the interpretation of Blackstone is not unique to everyone. A typical example is the observation of Miller – "Blackstone had demonstrated that property was an *absolute* right vested in the individual by the immutable law of nature, a law which coincided exactly with the will of God." (Miller, 1965) also quoted in Burns (Burns, 1985, p. 67)). The problem of this sort of theorisation is the circularity of conceiving the idea of property as absolute and the cogency of arguing for absolute right as a theory. Therefore, the commentaries of Blackstone muddled with many contradicting positions of English law, which load the task of making a convincing theorisation complex, however, gives us some scope of having postmortem on the issue of private property right as an area of the unsettled domain of rights to propose a new idea.

For Blackstone, the first and primary end of human laws is to maintain and regulate these absolute rights of individuals. Absolute rights are few and simple, whereas relative rights are numerous and complicated. (Blackstone, 1893, p. 93). Blackstone identifies the primary principle of absolute rights of the people of England as rests in three articles. (Blackstone, 1893, pp. 100-108) The first one is the right to personal security; the second is the right to individual liberty[16]; and finally, private property rights. For the time being, our concern is on the third – private property rights.

Blackstone was not free from the ghost of natural right and argued that the origin of private property could be found in nature, which is nothing but a carrying forward of what Locke conceived. To substitute this, he gathers the laws, statutes, and practices of antiquity. He noted that "the great Charter has declared that no freeman shall be deceased, or divested, of his freehold, or his liberties, or free customs, but by the Judgement of his peers, or by the law of the land. Moreover, by a variety of ancient statutes enacted that no man's lands or goods shall be seized into the king's hands, against the great charter, and the law of the land; and that no man shall be disinherited, nor put out of his franchises or freehold unless he is duly brought to answer, and be forejudged by course of law; and if anything is done to the contrary, it shall be redressed, and holden for none." (Blackstone, 1893, p. 107) This formulation, in a sense, is looking at the ownership or rights individually. It assures that an individual (no matter if it is a king or any other noble individual) has equal rights in their entitlement, where none can appropriate the other's property. The assurance is an individual's entitlement by the laws of the land or by the third party in a plain sense. The argument of Blackstone parallels the idea of Locke that the initial entitlement was common. However, it diverges on the view of occupation (for Locke mixing of labour with nature) and assurance of the right of use and

[16] The law of England regards, asserts and preserves the personal liberty of individuals. This personal liberty consists in the power of locomotion, of changing situations, or moving one's person to whatever place one's inclination may direct, without imprisonment or restraint, unless by due course of law. (Blackstone, 1893 p. 104).

possession through the means of law or the third party (very broadly State) where Locke gave mere a token attention to the legitimisation of property as the right.

Coming to the validity of the principle of Property as a naturally absolute one is not necessarily so because the character inherently absolute is nothing to do with the legitimation of that right. We argue that the concept of legitimacy is a product of the sovereign, which is not natural. Thus, legitimacy is not naturally absolute, but perhaps say that artificially absolute due to any change in laws or statutes could alter the legitimacy of individual ownership. If it is inherently absolute, no matter whether the law or statutes change, the right remains the same. On the other hand, reading the preceding quote of Blackstone does not give any idea of a theory of private property as naturally absolute. Hence we are of the view that Blackstone may not theorise the concept of absolute property right because the purpose of the "Commentaries'' was not to theorise the rights of the individual instead delineate the legitimacy of absolute right, which is an artefact and how the laws of the land pronounced such artefact in the course of the development of the rule of law.[17] In this regard, the interpretation of Blackstone was often misleading because the "commentaries" stand as a great interpretation of the laws of England, which itself try to exhibit the fact of laws that are not absolute but incorporate the changes in due course so as the rights. It could be understood by the inconsistency of interpretation of the law on economic and political grounds and not by the lack of clarity of Blackstone.

The second possible interpretation from the preceding quote is that the king cannot appropriate individual rights for his purpose but can acquire that for the common goal. It could be validated as Blackstone puts up "what it is that gave a man an exclusive right to retain permanently on specific land, which before belonged generally to everybody but particularly to nobody" provides legitimacy to the king (state) to appropriate it for general purpose, but not for personal purpose. The point validates Blackstone and Locke's perspective, mainly because the land was common before the individual's occupation and labour mixing with nature. Nevertheless, this mixing of labour cannot be the yardstick of right, provided that the natural right is an acceptance of law that legitimises the occupation of land or the mixing of labour with nature to earn the right. It implies that that right cannot be absolute in its conception where the law accepts it for the common benefit. Therefore, the state can take over such a right when it seems beneficial to the common public than a mere private utilisation of the right. In this way, the commentary limited the power of the state/king and the individual from being a dictator himself (king/state/individual). Still, he is for society as a dictator (Hobbes & Tuck, 1996). It gave legitimacy to the state for having the power of an eminent domain. From the economic point of view, the collective will (State/king) is entitled to optimise the social wealth and not the individual. Ultimately, the social sanction would be the driving force of society and bearer of gain and loss in organised societies, not at the individual level. However, this sort of understanding of Blackstone's commentary could see nowhere, strengthening our reading of Commentaries appealing. For clarity, as Blackstone said, the law is necessarily a precondition to assure absolute

[17] A similar sort of observation and disagreements of considering the "Commentaries" as a theoretical work can be seen in Boorstin, Kennedy, and Doolittle (Boorstin, 1996; Doolittle, 1983; Kennedy, 1978; Kennedy & Michelman, 1979).

rights (this perhaps illuminates from the idea of Locke that "where there is no law, there is no freedom." (Locke, 2003, p. 124). Alternatively, from Cicero's observation – "law determines the right and wrong." (quoted in Blackstone, 1893, p. 91) This implies that the absolute right the law protects is an artefact that is relatively intact and not naturally absolute.

Though Commentaries approves that right is a social construction but, Blackstone's view on private property as – "there is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe" (Blackstone, 1893, p. 393), turns as an irony, which of course, leaves the scope of misquoting him widely. This excerpt nowhere assures that Blackstone theoretically constructed this view beyond his anxiety on dominion and exclusion, leading to a paradox. Similarly, the above quotation does not guarantee that private property is naturally absolute but sheer imagination. Let us discuss the cogency of this view.

To analyse the paradox of right over the domain, we can use Blackstone's criticism of Locke on how natural property right obtains[18]. As commentary accepts that rights can be validated only under the municipal law of the land, it is difficult to derive an absolute right of individuals themselves. Because individuals themselves do not assure any right but a simple occupancy, possession, mixing of labour with nature or use of that natural resource, does not imply that he has a "right," where Blackstone already is of the view that right is a command of the law. Then the right is a command of the law and not of the individual, explaining that the "absolute right" is a right of the command of the law and not the individual. On the other hand, if the right is a command of the sovereign and they (sovereign/rule) have the absolute right, then the question is who had given them the command, and so on. It makes us conclude logically that the concept of absolute right is neither derived nor exists with the condition in Blackstone or Locke. So the anxiety of Blackstone is evident that if we have an absolute natural right, it is difficult to prove the existence of this right, where the understanding of artificial absolute right gains its momentum.

Discussing the portion of exclusion-driven Property, we can show that the worry of Blackstone gets aggravated. Consider if Robison Crusoe[19] has an absolute right of Property on island X (indeed, he does not have according to Blackstone's conception) and excludes Friday. How did this notion of exclusion arise when Crusoe was on the island of despair? He excludes Friday with his norms or sense of law, but when Friday thinks that Crusoe has an absolute right on the island and who gave it to him, he finds none; therefore, he need not be excluded himself as Crusoe wishes. The fact is that there is nobody to correct them or teach their exclusion and inclusion mutually. In such a context, a Hobbesian vision of individuals never reaches agreements, or the economist's view of bargaining failure occurs. We know that none can exclude absolutely because Crusoe knows he has no right, and Friday

[18] He observes that for mixing labour "I had a right to the substance before any labour was bestowed upon it; that right still adheres to all that remains of the substance, whatever changes it may have undergone. If I had no right before, it is clear that I have none after….." (Blackstone 1893 p. 397)

[19] The anecdote used here is from the story of Daniel Defoe (Defoe, 1719).

knows neither he nor Crusoe have it, which inflicts chaos. The chaos happens if we assume a self-interest or utility maximisation of one or both and otherwise not. It means that if there is a third-party institution, then the concept of exclusion gets its validity. On the contrary, that third party's existence assures no absolute natural right of those individuals. Still, a relative right to them reminds them that the sovereign command (third party) has no absolute right, as we mentioned earlier! In this fashion, we can contend that Blackstone's (and of course Locke's) concept of property right as absolute and rests with the individual is either relative or anxiety of Blackstone due to its possible logical contradiction.

The two portions of Blackstone's private property also lead to creating a liberal paradox as what Lincoln said – *the shepherd drives the wolf from the sheep's throat, for which the sheep thanks the shepherd as his liberator, while the wolf denounces him for the same act, as the destroyer of liberty. . . the sheep and the wolf are not agreed upon the definition of the word liberty*[20]. In other words, it is difficult to achieve a paradox free situation when we consider absolute liberty, security, and property together[21] or in a narrower sense, either liberty and property cannot go hand in hand (A. Sen, 2017, pp. 130–141 & 420–442; A. K. Sen, 1970, pp. 78–88). A similar view is shared by Caroline Rose that "when scholars read Blackstone's ringing words about the property as exclusion, they should read the rest of the paragraph too-to appreciate Blackstone's anxiety and to consider how much of that anxiety rebound back to the seemingly mighty axiom of exclusive dominion." Whereas, "more subtly conservative aspect of doctrinalism[22] is how its underlying presumption-that rights can be fully identified, specified, and labelled-implicitly nourishes a libertarian justification for existing property rights, a justification that is at once historical and oddly ahistorical" (Rose, 1998).

Conclusion

To conclude, the logical consistency of an absolute right and its persistence in any form of governmental system is relevant because, in any liberal economy (libertarian state), maintenance of such a right (private property) is impossible. Similarly, any libertarian principle could be successful without anarchy (which seems chaotic to freedom at the cost of liberty) only under a regulatory framework, whereas regulation assures optimal freedom. It makes us conclude a paradoxical notion that liberty is guaranteed under a regulatory framework that is not absolute freedom[23]. Our notion of property right derives a similar kind of understanding that "it is impossible to have an absolute property right under any governmental system other than the system of dictatorship." The notable point is that any form of government can be an

[20] A paraphrased version of Abraham Lincoln's Address at Sanitary Fair, Baltimore, April 18, 1864 quoted in Singer (Singer, 1982).

[21] The similar sort of idea was first observed in Proudhon (Proudhon et al., 1994). We may discuss Proudhon's contribution in another paper.

[22] In the legal literature, the word doctrinalism stands for the principle of stare decisions ("let the decision stand"). It will seek to extend these formerly interpreted decisions (one like the previous quote of Blackstone) to understand new cases and problems that arise in due course.

[23] A beautiful and concise presentation of the possibility of use and abuse of the freedom, power and property could be seen in Rousseau (Rousseau, 1920).

absolute owner if and only if it has a dictatorial right. Nonetheless, we discussed that the dictator does not possess an absolute right or a right per se because there is no one above his dictatorial domain as a third party! Where, as Blackstone pointed "property right is a product of a sole and despotic domain," and his subsequent sharing of thought and the loaded implication of this is the anxiety of inconsistency or trouble of natural absolute right instead of what we said as it an artificial right which evidently not absolute but a relative right.

Summarising the observation of two great English scholars, both Locke and Blackstone's arguments are not substantial enough to defend the concept of "absolute right of (private) property." Arguing or attempting to theorise the principle of "absolute right of property" often leads us to contradiction. Whereas the historicity and the economic merit of property rights perhaps rest upon the direction of an alternative view of the functionality of property rights. In a dynamic and reforming world, where change is the characteristics, the functional attributes of the property are to be addressed rather than the dogma of absolute property rights. A similar point is that the secondary character of the sovereign/State/third party by both Locke and Blackstone exhibits a naïve understanding of the third-party mechanism as a channel of rights. The validity of collective will rather than individual decisions since the framing of organised societies is so consequential. Hence, right is the manifestation of the state/sovereign/third party and not the individual who can withstand the undercurrent of individualism and the paradox of liberty.

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