

# A BRIEF PHILOSOPHICAL HISTORY OF THE SOCIAL FUNCTION OF PRIVATE PROPERTY IN THE PHILIPPINES<sup>1</sup>

*Una breve historia filosófica sobre la función social de la  
propiedad privada en Filipinas*

Solomon Fernando Lumba<sup>2</sup>

Assistant Professor  
College of Law  
University of the Philippines

[http://dx.doi.org/10.18543/ed-68\(1\)-2020pp89-154](http://dx.doi.org/10.18543/ed-68(1)-2020pp89-154)

Recibido: 07.11.2019

Aceptado: 20.12.2019

## ***Abstract***

According to the Buddha, we all seek the eternal cessation of suffering. It is the ultimate end goal of our existence over which we have no choice. Due to this “ultimateness,” it explicitly or implicitly permeates everything that we do. Due to the lack of choice, whatever conduces towards it must necessarily be moral. On its face, this article is about a legal principle for regulating and allocating private property – the Social Function. However, since this principle is a human creation, it is unavoidably an expression of a moral philosophy on how to bring about best what we are

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<sup>1</sup> This article was presented during the V International Scientific Congress: Five Centuries Sailing the Legal World at the University of Deusto, Bilbao, Spain on June 17-19, 2019.

<sup>2</sup> The author is an Assistant Professor of the University of the Philippines College of Law. He is currently a student in the Programa de Doctorado en Ciencias Jurídicas y Sociales of the Facultad de Derecho of the University of Malaga, Spain. This article is part of his doctoral thesis entitled “A Brief Philosophical History and Future of the Social Function of Private Property in the Philippines and Spain.”

compelled to pursue, and the role that property plays in that pursuit. As a philosophy, it is a collection of asserted truths. But in order to properly evaluate these assertions, it is necessary to first have an appropriate theory of truth (epistemology) and a theory of reality (ontology) because, like the unity of space-time, they are epistemo-ontolo-moral. To make a mistake in one is to make a mistake in all. Accordingly, Section B is devoted to the development of an epistemo-ontological framework that will allow us to compare, apples to apples, all philosophies in terms of their truth values. In the process, we will correct the epistemo-ontological errors of the Western philosophical tradition using the Buddhist philosopher Nagarjuna's solution to the Problem of Induction that has bedeviled this tradition since the time of Hume in the 1700s. In Section C, we will apply this framework to compare and evaluate two (2) moral philosophies – Locke's and Grotius' natural law. We will show that their truth values are both "false." Afterwards, we will extrapolate their probable solutions to this fictional problem: Suppose that there are nine (9) healthy adults and a terminally ill baby on an overcrowded sinking lifeboat cast adrift at sea. To survive, one of them has to be thrown overboard. The adults decide to sacrifice the baby. Is their decision moral? The solutions will highlight their differing notions of the common good and positions on the redistribution of wealth: Is it moral to take from the rich and give to the poor? This in turn will accentuate the difference of the Social Function from other regulatory and allocative legal principles. In Section D, these philosophies will be situated within a historical context to trace the philo-historical evolution of the Social Function of the Philippines. In Section E, we will integrate our epistemo-ontology with a Buddhist theory of morality to understand why correct epistemology and ontology is an indispensable prerequisite to attaining the ultimate purpose of our lives. Lastly, in Section F, we will conclude that, since the Social Function, as currently constructed, is based on a false philosophy, it is at most an expedient while the Philippines searches for the correct path to true freedom.

### **Keywords**

Social function of property, social function, philosophy of private property, philosophy of property, Buddhism, Nagarjuna, western philosophy, Hume, Kant, Locke, Grotius natural law, problem of induction.

### **Resumen**

Según el Buda, todos buscamos el cese eterno del sufrimiento. Es el objetivo final de nuestra existencia sobre el cual no tenemos otra opción. Debido a esta "supremacía", impregna explícita o implícitamente todo lo que hacemos. Debido a la falta de elección, lo que sea que conduzca hacia él debe ser necesariamente moral. A primera vista, este artículo trata sobre un principio legal para regular y asignar la propiedad privada: la Función Social. Sin embargo, dado que este principio es una creación humana, es inevitablemente una expresión de una filosofía moral sobre cómo lograr lo mejor que estamos obligados a perseguir, y el papel que juega la propiedad en esa búsqueda. Como filosofía, es una colección de verdades afirmadas. Pero para evaluar adecuadamente estas afirmaciones, primero es necesario tener una teoría de la verdad (epistemología) y una teoría de la realidad (ontología) apropiadas porque, como la

unidad del espacio-tiempo, son epistemo-ontolo-morales. Cometer un error en uno es cometer un error en todos. En consecuencia, la Sección B está dedicada al desarrollo de un marco epistemo-ontológico que nos permitirá comparar, manzanas con manzanas, todas las filosofías en términos de sus valores de verdad. En el proceso, corregiremos los errores epistemo-ontológicos de la tradición filosófica occidental utilizando la solución del filósofo budista Nagarjuna al problema de inducción que ha afectado a esta tradición desde la época de Hume en la década de 1700. En la Sección C, aplicaremos este marco para comparar y evaluar dos (2) filosofías morales: la ley natural de Locke y Grotius. Mostraremos que sus valores de verdad son ambos “falsos”. Luego, extrapolaremos sus soluciones probables a este problema ficticio: supongamos que hay nueve (9) adultos sanos y un bebé con enfermedad terminal en un bote salvavidas hundido y hacinado a la deriva en el mar. Para sobrevivir, uno de ellos tiene que ser arrojado por la borda. Los adultos deciden sacrificar al bebé. ¿Es su decisión moral? Las soluciones resaltarán sus diferentes nociones del bien común y las posiciones sobre la redistribución de la riqueza: ¿es moral tomar de los ricos y dar a los pobres? Esto a su vez acentuará la diferencia de la Función Social de otros principios legales regulatorios y asignativos. En la Sección D, estas filosofías se situarán dentro de un contexto histórico para rastrear la evolución filohistórica de la Función Social de Filipinas. En la Sección E, integraremos nuestra epistemo-ontología con una teoría budista de la moralidad para comprender por qué la correcta epistemología y ontología es un prerrequisito indispensable para alcanzar el objetivo final de nuestras vidas. Por último, en la Sección F, concluiremos que, dado que la Función Social, tal como se construye actualmente, se basa en una filosofía falsa, es como mucho un expediente mientras Filipinas busca el camino correcto hacia la verdadera libertad.

### ***Palabras clave***

Función social de la propiedad; filosofía de la propiedad privada; budismo; Nagarjuna; filosofía occidental; Hume; Kant; Locke; Grotius; Derecho natural; problema de inducción.

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**SUMMARY:** I. INTRODUCTION. II. EPISTEMO-ONTOLOGY. 1. *Western philosophy*. a. Observation. b. Deduction. c. Induction. d. Opinion. e. Sub-section summary. 2. *The fatal flaw in Western philosophy*. 3. *Correcting the fatal flaw*. 4. *Non-duality and quantum mechanics*. a. The Wave-Particle Duality. b. Quantum entanglement. 5. Quo vadis induction?. III. EVALUATING AND COMPARING THE NATURAL LAW PHILOSOPHIES OF LOCKE AND GROTIUS. 1. *John Locke*. a. Its truth value. b. Locke's solution to the fictional problem. 2. *Grotius' natural law*. a. Its truth value. b. Grotius' solution to the fictional problem. 3. *Natural versus conventional right*. IV. THE HISTORY OF THE PHILOSOPHY OF PRIVATE PROPERTY OF THE PHILIPPINES. 1. *France*. 2. *Spain*. 3. *Philippines*. a. From the Treaty of Paris of 1899 until before the 1935 Constitution. b. From the 1935 Constitution until before the 1973 Constitution: From Locke to Grotius. c. From the 1973 Constitution until before the 1987 Constitution: Introducing the Social Function. c.1. Textual expansion of social justice provisions. c.2. Introducing the Social Function. d. From the 1987 Constitution to the present. V. EPISTEMO-ONTOLOGY AND MORALITY: DOES TRUTH MATTER?. 1. *Happiness and suffering are just opinions*. 2. *The object conditions of temporary happiness or suffering*. 3. *The strategy of inferior persons*. 4. *The strategy of the wise*. VI. CONCLUSION. BIBLIOGRAPHY.

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## I. INTRODUCTION

This work will start and end with the teachings of the Buddha. Not the Buddha as a religious figure, or of mythology, or popular culture, but as a philosopher par excellence. According to the Buddha, all sentient beings seek the eternal cessation of suffering.<sup>3</sup> How so? Suffering is a term we

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<sup>3</sup> This is a natural consequence of the Buddha's Four Noble Truths, which was the subject of his first discourse after enlightenment, and was recorded in the Dhammacakkappavattana Sutta. These are the Noble Truths of Suffering, the Origin of Suffering, the Cessation of Suffering, and the Path Leading to the Cessation of Suffering. As to the First Noble Truth, the Sutta states that: "The Noble Truth of Suffering (dukkha), monks, is this: Birth is suffering, aging is suffering, sickness is suffering, death is suffering, association with the unpleasant is suffering, dissociation from the pleasant is suffering, not to receive what one desires is suffering — in brief the five aggregates subject to grasping are suffering." As for the Second Noble Truth, it says: "The Noble Truth of the Origin (cause) of Suffering is this: It is this craving (thirst) which produces re-becoming (rebirth) accompanied by passionate greed, and finding fresh delight now here, and now there, namely craving for sense pleasure, craving for existence and craving for non-existence (self-annihilation)" On the Third Noble Truth: "The Noble Truth of the Cessation of Suffering is this: It is the complete cessation of that very craving, giving it up, relinquishing it, liberating oneself from it, and detaching oneself from it." And for the Fourth Noble Truth:

ascribe to a feeling that we do not want. As a result, while we might sometimes be willing to bear suffering, we can never want the suffering in itself. Whenever we are suffering, we want it to stop. Whenever we are not, we want that to go on. Thus, we are always in a state of not wanting to suffer, and for that non-suffering to continue without end.

Alternatively, we can also say without contradiction that the Buddha taught that we pursue eternal happiness. In what way? Because suffering and happiness are logical and conceptual opposites.<sup>4</sup> As such, they mutually recall, define and delimit each other. To explain, the logical opposite of *white* is *not white* because there is nothing observed or imaginable in the entire universe that does not belong to either of these categories. In the same manner, the logical opposite of suffering is *non-suffering*. But this non-suffering is none other than happiness. Why? Because there is no excluded middle or in-between state. To the extent that we do not suffer, in the same proportion we are happy, and vice-versa. Suffering and happiness are a continuum. They are just two sides of the same coin. They are relative. That which we call happiness is just temporary reduced suffering.

Hence, the Buddha said in his First Noble Truth that all life is suffering: “The Noble Truth of the Origin (cause) of Suffering is this: It is this craving (thirst) which produces re-becoming (rebirth) accompanied by passionate greed, and finding fresh delight now here, and now there, namely craving for

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“The Noble Truth of the Path Leading to the Cessation of Suffering is this: It is the Noble Eightfold Path, and nothing else, namely: right understanding, right thought, right speech, right action, right livelihood, right effort, right mindfulness and right concentration.” Pi-yadassi Thera (trans.), <https://www.accesstoinight.org/tipitaka/sn/sn56/sn56.011.piya.html>.

<sup>4</sup> “Logical contradiction is a property of propositions. A logical contradiction involves two terms, a proposition and its logical denial. For example, if P is a proposition, then a logical contradiction is involved in asserting simultaneously that P and not-P are both true. A conceptual opposition, on the other hand, is a property of a relation between concepts in a particular context—it therefore need not involve a logical contradiction between propositions. A conceptual opposition consists of three elements—the first term, the second term, and the context or relationship by which they are opposed. x x x If we say that red and green are opposite colors in a traffic light, we are not saying that they logically contradict each other. Rather, they are opposed with respect to the meanings these colors are given in traffic signals. The context of conventions concerning traffic signals makes them opposites. In another context, they may be seen as similar to each other. For example, red and green are both colors of the natural spectrum, or colors associated with Christmas, while lavender and brown are not. Thus red and green are seen as different in some contexts, and are seen as having similar properties in others.” Jack M. Balkin, *Nested Oppositions*, Faculty Scholarship Series, Paper 281, p. 6, available at [http://digitalcommons.law.yale.edu/fss\\_papers/281](http://digitalcommons.law.yale.edu/fss_papers/281).

sense pleasure, craving for existence and craving for non-existence (self-annihilation)”<sup>5</sup> He reiterated this in the *Fire Sermon*,<sup>6</sup> to wit:

Bhikkus, all is burning. And what is the all that is burning?

Bhikkus, the eye is burning, the visible forms are burning, visual consciousness is burning, visual impression is burning, also **whatever sensation, pleasant or painful or neither-painful-nor-pleasant, arises on account of the visual impression, that too is burning.** Burning with what? Burning with the fire of lust, with birth, aging and death, with sorrows, with lamentations, with pains, with griefs, with despairs.<sup>7</sup> (emphasis supplied)

On the other hand, when cultural or personal context is taken into account, the conceptual opposite of white might be *black*, although there are an infinite number of other colors and shades. Ergo, for some, when they talk about a white man, it will be in relation to a black man. One’s whiteness is construed in terms of one’s non-blackness.

So why did the Buddha generally speak in terms of suffering instead of happiness? Would it not be more “optimistic” to do so? On this point, we can only surmise. But even with the passage of more than two millennia, it appears, even today, that his approach is pedagogically sound. Had he approached the human condition from the standpoint of happiness, a hedonist might argue that, “because I like to scratch my balls, my life purpose is to make that feeling last forever.” By referencing suffering, the Buddha

<sup>5</sup> The First Noble Truth should not be interpreted to mean that the Buddha denies the possibility of happiness in this life, only that it is a mundane type of happiness because it is always permeated with suffering and impermanence, and not the eternal happiness that we all ultimately seek. As Rahula comments: “The First Noble Truth is generally translated by almost all scholars as ‘The Noble Truth of Suffering,’ and it is interpreted to mean that life according to Buddhism is nothing but suffering and pain. Both translation and interpretation are highly unsatisfactory and misleading. It is because of this limited, free and easy translation, and its superficial interpretation, that many people have been misled into regarding Buddhism as pessimistic. . . . It is true that the Pali word dukkha in ordinary usage means ‘suffering,’ ‘pain,’ ‘sorrow’ or ‘misery,’ as opposed to the word sukha meaning ‘happiness,’ ‘comfort’ or ‘ease.’ But the term dukkha as the First Noble Truth, which represents the Buddha’s view of life and the world, has a deeper philosophical meaning and connotes enormously wider senses. It is admitted that the term dukkha in the First Noble Truth contains, quite obviously, the ordinary meaning of ‘suffering,’ but in addition it also includes deeper ideas such as ‘imperfection,’ ‘impermanence,’ ‘emptiness,’ ‘insubstantiality.’ It is difficult therefore to find one word to embrace the whole conception of dukkha as the First Noble Truth, and so it is better to leave it untranslated, than to give an inadequate and wrong idea of it by conveniently translating it as ‘suffering’ or ‘pain.’” Walpola Rahula, *What the Buddha Taught*, Gordon Fraser Gallery, Ltd. (1959), pp. 16-17.

<sup>6</sup> Walpola Rahula, *What the Buddha Taught*, Gordon Fraser Gallery, Ltd. (1959), p. 95.

<sup>7</sup> In the rest of the *Fire Sermon*, the Buddha repeats the same formula for the ear, nose, tongue, body and mind, in short, the other (5) senses.

forestalls such fraudulent types of reasoning that can arise by extending specific instantiations of happiness. Rather, it becomes clear that the eternal cessation of suffering in all its forms is equivalent to eternal happiness. Accordingly, henceforth, in this work, when we speak of eternal happiness, it should be understood in this way. We are not talking about scratching balls here.

If the Buddha is correct, then we sentient beings have an ultimate objective not of our own choosing. It explicitly or implicitly permeates all our actions. Furthermore, since we are not at liberty on this matter, then whatever actions that will conduce towards that end must necessarily be moral in the sense of “something we ought to do.” The focus then shifts to discovering whether those actions exist and what are they. In short, is there a path to eternal happiness? Is that even possible?

Consequently, this work is fundamentally about morality. While on its face, it is about a legal principle for regulating and allocating private property – the Social Function, this principle is also a human creation. As such, it is impliedly, but necessarily, part of our journey as a species to figure out how best to bring about that which we are compelled to pursue despite our doubts and gnawing uncertainties. Otherwise stated, this principle is in reality, and unavoidably, a moral philosophy about the path that we think, at this juncture of our collective history, will lead towards eternal happiness, and the role property plays in it.

As a moral philosophy, it is a collection of asserted truths. But in order to properly evaluate these assertions, we must initially answer the first two of three questions – “What is truth?” “Where is truth?” and “Why does truth matter?” From the standpoint of philosophy, the first question is classified under epistemology, the second under ontology<sup>8</sup> or the nature of reality, and the third under morality. However, like space-time, they are actually epistemo-ontolo-moral because they are inseparable. In the same way that you cannot affect space without affecting time and vice-versa, you cannot answer one question without having answered the others, consciously or subconsciously. To make a mistake in one is to make a mistake in all. Thus, Section B is devoted to epistemo-ontology. Here, we will develop an epistemo-ontological framework that will allow us to compare, apples to apples, all philosophies in terms of their truth values. In the process, we will be correcting the epistemo-ontological errors of the Western philosophical tradition.

In Section C, we will begin our comparative and evaluative effort by applying the epistemo-ontological framework to establish the truth values of two (2) moral philosophies. These are the natural laws of John Locke and

<sup>8</sup> Ontology is used in this article to include metaphysics.

Hugo Grotius. Afterwards, we will continue our efforts by extrapolating their probable solutions to the fictional problem described below which is adapted from the fact pattern of *Regina v. Dudley and Stephens*:<sup>9</sup>

Suppose that there are nine (9) healthy adults and a terminally ill baby on an overcrowded sinking lifeboat cast adrift at sea. To survive, one of them has to be thrown overboard. The adults decide to sacrifice the baby. Is their decision moral?

The solutions will highlight their differing notions of the common good and positions on the redistribution of wealth: *Is it moral to take from the rich and give to the poor?* This in turn will accentuate the distinction between the Social Function and other regulatory and allocative legal principles.

In Section D, these philosophies will be situated within a historical context to trace the evolution of the Social Function in the Philippines. As a caveat to this philo-historical journey, when we say that this or that country has such and such philosophy, we mean it only in the blackletter, official or formal sense, and not how it is in practice. Since society is a hodgepodge of many competing and often irreconcilable ideologies, this caveat should allay any fears that we are engaged in over simplification.

In Section E, we will answer the question, “Why does truth matter?” by integrating our epistemo-ontological framework with a Buddhist theory of morality to understand that correct epistemology and ontology is an indispensable prerequisite to attain the ultimate purpose of our existence.

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<sup>9</sup> 14 QBD 217 DC (December 9, 1884). This case involves the four-man crew of the English yacht named the *Mignonette*. They were trapped in a storm and had to abandon ship on a lifeboat. They had very little provisions and were about 1,100 kilometers away from the nearest land. Around twenty (20) days into the ordeal, one of the crew members was in a coma from drinking sea water. Two of the crew, Dudley and Stephens, killed him so that they and the other crew member could survive by drinking his blood and eating his body. Eventually, the three (3) survivors were rescued. Dudley and Stephens were tried and convicted for murder. The court disposed of their defense of necessity in this wise: “Though law and morality are not the same, and many things may be immoral which are not necessarily illegal, yet the absolute divorce of law from morality would be of fatal consequence; and such divorce would follow if the temptation to murder in this case were to be held by law an absolute defence of it. It is not so. To preserve one’s life is generally speaking a duty, but it may be the plainest and the highest duty to sacrifice it. War is full of instances in which it is a man’s duty not to live, but to die. The duty, in case of shipwreck, of a captain to his crew, of the crew to the passengers, of soldiers to women and children, as in the noble case of the *Birkenhead*; these duties impose on men the moral necessity, not of the preservation, but of the sacrifice of their lives for others from which in no country, least of all, it is to be hoped, in England, will men ever shrink, as indeed, they have not shrunk. It is not correct, therefore, to say that there is any absolute or unqualified necessity to preserve one’s life.”

Lastly, in Section F, we will conclude that since the Social Function, as currently constructed, is based on a false philosophy, it is at most only an expedient while the Philippines searches for the correct path to true freedom.

## II. EPISTEMO-ONTOLOGY

### 1. *Western philosophy*

We employ four (4) tools to assert the truth or falsity of something – observation, deduction, induction/abduction and opinion. Each of these have their respective domains and truth values. The relationship between tool, domain and truth value is that only the tool associated with a particular domain can establish the truth value of an assertion that falls within that domain to its fullest extent. This will become clearer as each tool is explained below.

#### a. Observation

This tool uses the ability of the six (6) senses (visual, auditory, olfactory, tactile, gustatory and mental) to apprehend an object. Its domain is EXISTENCE and NON-EXISTENCE. Its truth value is either TRUE or FALSE. For instance, if I assert that “There is a table in front of me,” that assertion is true if there exists before my eye consciousness an object to which I ascribe the name “table.” Otherwise, it is false.<sup>10</sup>

Included in existence/non-existence are assertions of regularities or constant conjunctions. An example of a regularity is fire and firelight. Whenever there is fire, there is firelight; never darkness. Another is seed and seedling. Whenever the seed disappears, the seedling appears. They follow the syntax, “IF THIS, THEN THAT.” Now, if we assert that observation establishes the existence of fire and firelight, or the non-existence/existence of seed and seedling, we will also have to assert that it establishes the existence of their

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<sup>10</sup> An observational assertion is what Hume would call a “matter of fact” proposition and what Kant would call a “synthetic a posteriori” proposition. “Synthetic” because the predicate of the proposition is claimed to add something to the subject of the proposition, such as in “fire (subject) burns (predicate).” “A posteriori” because its truth or falsity depends on observation (experience). Bryan Magee, *Confessions of a Philosopher*, Chapter 9, Weidenfeld and Nicolson (1997), pp. 150-151; Ed L. Miller, *Questions That Matter: An Invitation to Philosophy*, McGraw-Hill, 2nd Shorter Edition (1998), pp. 199-201. To say that the proposition is synthetic a posteriori is equivalent to saying that the subject and predicate are within the domain of observation because the existence of subject and predicate is established through observation. For instance, in “fire burns,” you must see “fire” and feel it “burn.”

regularity because we apprehend these events simultaneously. As Hume says, “If we examine the operations of [inanimate] bodies and the production [in them] of effects from their causes, we shall find that our faculties can never give us more knowledge of this [cause-effect] relation than merely to **observe that particular objects are constantly conjoined together.**”<sup>11</sup> (emphasis supplied) Another way of saying that objects are constantly conjoined is that they are “object conditions” for each other.

#### b. Deduction

This tool uses reason. Its domain is ENTAILMENT and CONTRADICTION. Its truth value is either TRUE or FALSE. For instance, if I assert that “All dogs are animals. Fido is a dog. Therefore, Fido is an animal,” the conclusion is true if it necessarily follows from the premises. If contradicted by them, it is false.<sup>12</sup>

#### c. Induction<sup>13</sup>

This tool also uses reason. Its domain, from the standpoint of most of Western philosophy due to the works of Hume and Kant, is CAUSATION

<sup>11</sup> David Hume, *An Enquiry Concerning Human Understanding*, section 8, available at <https://www.earlymoderntexts.com/assets/pdfs/hume1748.pdf>.

<sup>12</sup> A deductive assertion is what Hume would call a “relations of ideas” proposition and what Kant would call an “analytic a priori” proposition. “Analytic” because the predicate is asserted to be included in the subject, such as “a barking dog barks.” “A priori” because their truth or falsity depend on reason. Bryan Magee, *Confessions of a Philosopher*, Chapter 9, Weidenfeld and Nicolson (1997), pp. 150-151; Ed L. Miller, *Questions That Matter: An Invitation to Philosophy*, McGraw-Hill, 2nd Shorter Edition (1998), pp. 199-201. To say that the proposition is analytic a priori is equivalent to saying that the subject and predicate are within the domain of deduction because the entailment or contradiction between subject and predicate is established through deductive reasoning.

<sup>13</sup> Philosophers usually distinguish between induction and abduction but this article will not do so for the reasons set forth later in this note. An induction is customarily defined as one based on the statistical frequency of an event. For instance, “Sixty-four percent of Filipinos above the age of five speak English. Jose is a twenty-year old Filipino. Therefore, he probably speaks English.” An abduction supposedly adds an explicit or implicit causal explanation to this statistical frequency. An example of an explicit assertion is, “Whenever I see fire, there is light. Therefore, when I light the candle, there will be light, because fire causes light.” An example of an implicit assertion is to just delete the phrase, “because fire causes light.” Elliott Sober, *Core Questions in Philosophy*, Prentice-Hall (1995), pp. 20-25. However, even inductions ultimately assume the operation of a hidden cause(s). Why? Because without such assumption, it would be impossible to make inductions because everything would be random. For this reason, and because the finer distinctions between induction and abduction are not indispensable to the project of eternal happiness, and because induction is the more familiar term to the general public, “induction” will henceforth be used in this article to include “abduction.”

and NON-CAUSATION. For Hume, its truth value is either MAYBE TRUE or FALSE. For instance, if I assert that, “Fire and firelight are constantly conjoined. Therefore, fire causes light,” the conclusion is maybe true at best. Why? Because neither observation or deduction, which are the only tools that can establish anything with one hundred percent certainty, can do so. As this is so, there is, in the words of Hume, no “necessary connection” between fire and firelight or, for that matter, between any other object. You cannot observe by which power fire causes firelight. Neither can you deduce why fire should cause it. It is for this reason that when we see for the first time something like a cellular phone, we have to fiddle with it to discover what each button and icon does. As Hume explains:

**When we look about us towards external objects, and consider the operation of causes, we are never able, in a single instance, to discover any power or necessary connection; any quality, which binds the effect to the cause, and renders the one an infallible consequence of the other. We only find, that the one does actually, in fact, follow the other.** The impulse of one billiard-ball is attended with motion in the second. This is the whole that appears to the outward senses. The mind feels no sentiment or inward impression from this succession of objects: Consequently, there is not, in any single, particular instance of cause and effect, anything which can suggest the idea of power or necessary connection.

**From the first appearance of an object, we never can conjecture what effect will result from it.** But were the power or energy of any cause discoverable by the mind, we could foresee the effect, even without experience; and might, at first, pronounce with certainty concerning it, by mere dint of thought and reasoning.

**In reality, there is no part of matter, that does ever, by its sensible qualities, discover any power or energy, or give us ground to imagine, that it could produce anything, or be followed by any other object, which we could denominate its effect.** Solidity, extension, motion; these qualities are all complete in themselves, and never point out any other event which may result from them. The scenes of the universe are continually shifting, and one object follows another in an uninterrupted succession; but the power of force, which actuates the whole machine, is entirely concealed from us, and never discovers itself in any of the sensible qualities of body. **We know, that, in fact, heat is a constant attendant of flame; but what is the connection between them, we have no room so much as to conjecture or imagine. It is impossible, therefore, that the idea of power can be derived from the contemplation of bodies, in single instances of their operation; because no bodies ever discover any power, which can be the original of this idea.**<sup>14</sup>

<sup>14</sup> David Hume, *An Enquiry Concerning Human Understanding*, section 2, available at <https://www.earlymoderntexts.com/assets/pdfs/hume1748.pdf>.

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**In short, every effect is a distinct event from its cause. So it can't be discovered in the cause, and the first invention or conception of it a priori must be wholly arbitrary.**<sup>15</sup> (emphasis supplied)

But while the best truth value for an inductive assertion is maybe true, its worst is false. Falsifiability is possible if the induction crosses into the domain of observation or deduction. An example of the former is the assertion that, "Because of a low pressure area in the Pacific, there will be a typhoon tomorrow over Japan." If the prediction is not observed, the assertion is falsified. An example of an induction that does not cross-over is, "Because of capitalism, the workers of the world will eventually unite, take control of the factors of production, and establish a communist paradise."<sup>16</sup> Even if the prediction is not observed in a trillion years, the assertion is still not falsified because it only says "eventually."<sup>17</sup>

An induction that is falsifiable is considered "scientific." As Popper said, "One can sum up all this by saying that the criterion of the scientific status of a theory is its falsifiability, or refutability, or testability."<sup>18</sup> It is because of its scientificity that we keep on testing Einstein's theory of gravity even though it has survived every experimental challenge thrown at it since 1915. Nevertheless, since his theory is inductive, from a Humean perspective, it is at most only maybe true.

The failure of observation and deduction to establish any necessary connections between objects raises the Problem of Induction: *How can we have total certainty that the past and present regularities that are established by observation will continue into the future?* Hume believed this problem to be insoluble. He declares:

**My experience directly and certainly informs me that that fire consumed coal then; but it's silent about the behaviour of the same fire a few minutes later, and about other fires at any time. Why should this experience be extended to future times and to other objects, which for all we know may only seem similar? — that's what I**

<sup>15</sup> David Hume, *An Enquiry Concerning Human Understanding*, section 4, available at <https://www.earlymoderntexts.com/assets/pdfs/hume1748.pdf>.

<sup>16</sup> See Popper's discussion on Marxism in *Conjectures and Refutations: The Growth of Scientific Knowledge*, Routledge (1963).

<sup>17</sup> An example of an induction that crosses into the domain of deduction is, "Since fire and firelight are constantly conjoined, fire is the cause of firelight." Why this is within the domain of deduction will be explained later on in the discussion of the Buddhist philosopher Nagarjuna's analysis of production.

<sup>18</sup> Karl Popper, *Conjectures and Refutations: The Growth of Scientific Knowledge*, Routledge (1963).

**want to know.** The bread that I formerly ate nourished me; i.e. a body with such and such sensible qualities did at that time have such and such secret powers. But does it follow that other bread must also nourish me at other times, and that the same perceptible qualities must always be accompanied by the same secret powers? It doesn't seem to follow necessarily. Anyway, it must be admitted that in such a case as this the mind draws a conclusion; it takes a certain step, goes through a process of thought or inference, which needs to be explained. These two propositions are far from being the same:

- I have found that such and such an object has always had such and such an effect.
- I foresee that other objects which appear similar will have similar effects.

The second proposition is always inferred from the first; and if you like I'll grant that it is rightly inferred. **But if you insist that the inference is made by a chain of reasoning, I challenge you to produce the reasoning.**<sup>19</sup> (emphasis supplied)

In the last sentence of the above quote, Hume challenges us to show the reasoning that will establish the continuation of past and present regularities into the future. Kant takes up Hume's challenge in this way. First, he conjectured that there is an independent external world, i.e., a world not caused by our consciousness. He believed that because the world appears to our senses as real, then it is probably real, which is an ontological claim about the nature of reality.<sup>20</sup> Second, he opined that there exists the Forms of the Sensibility

<sup>19</sup> David Hume, *An Enquiry Concerning Human Understanding*, section 4, available at <https://www.earlymoderntexts.com/assets/pdfs/hume1748.pdf>.

<sup>20</sup> In expounding upon the improbability of omniscience in his chapter on Kant, Magee explains Kant's ontological position as follows: "The simple truth is that as far as we can ever know there is no limit to what can exist outside the possibility of our knowledge. Of course, because there is no limit on it, one of the infinitely many possibilities is that there is nothing outside the possibility of our knowledge. But that is infinitely unlikely. An additional assumption is needed to make it even in the smallest degree implausible, and that is that all reality is the product of our minds. Kant firmly disbelieved that. He believed as confidently as anyone can ever believe anything that there is an independent reality outside the world of all possible experience. He called this the world of the noumenal, the world of things as they are in themselves, and of reality as it is in itself. He called the world as it appears to us – the directly known world of actual experience with its penumbra, the postulated world of possible experience – the world of phenomena . . . the world as we ordinarily think of it, the actual world, the world of material objects in space and time, the world of common sense and of science: what we are used to calling the empirical world." Bryan Magee, *Confessions of a Philosopher*, Weidenfeld and Nicolson (1997), pp. 151-152.

that superimpose order or structure to the sensory data coming from the supposed real world as they reach the senses. These superimpositions include causal connection, space, time, physical identity and general scientific laws.<sup>21</sup> Finally, based on these conjectures, he concludes that past and present regularities will certainly continue into the future, not because of observation or deduction, but because the Forms impose the necessary causal connections between objects.<sup>22</sup>

In effect, if Kant is correct, induction will have a truth value of TRUE, MAYBE TRUE or FALSE. “True” refers to assertions that past and present regularities will proceed into the future. “Maybe true” refers to assertions that the *convergence of continuums of regularities* (hereafter, just “Convergences”) will give or has given rise to an event. A well-known illustration of Convergences is the so-called butterfly effect. Will the flapping of the wings of a butterfly in Madrid set-off a storm in Manila? Since a storm involves a potentially infinite number of convergences stretching out from the potentially infinitely distant past (visualize infinite ripples in an infinite pond propagating over infinite time), one cannot have absolute certainty which ripples will come together at the precise moment for the storm to arise.<sup>23</sup>

<sup>21</sup> Bryan Magee, *Confessions of a Philosopher*, Weidenfeld and Nicolson (1997), pp. 149-152.

<sup>22</sup> An inductive assertion of the continuation of past and present regularities into the future is what Kant would call a “synthetic a priori” proposition. “Synthetic” because the predicate of the proposition is claimed to add something to the subject of the proposition, such as in “fire (subject) will always burn (predicate).” “A priori” because its truth or falsity depends on Forms of the Sensibility. Prior to Kant, Western philosophy believed that only synthetic a posteriori (observations) and analytic a priori (deductions) propositions were capable of being true. Kant called his Forms his Copernican Revolution in philosophy because it meant that, because of the Forms, objects conform to knowledge and not the other way around, as hitherto thought. Bryan Magee, *Confessions of a Philosopher*, Chapter 9, Weidenfeld and Nicolson (1997), pp. 150-151; Ed L. Miller, *Questions That Matter: An Invitation to Philosophy*, McGraw-Hill, 2nd Shorter Edition (1998), pp. 199-201. In hindsight, maybe Western philosophy should not have been so enamored with Kant’s Forms since being conjectural, its truth value is at best “zero.” But then again, maybe it cannot be faulted because as the saying goes, in the land of the blind, the one-eyed man is king. In any event, the Buddhist philosopher Nagarjuna’s analysis of production, to be discussed later in this article, if correct, will establish why Kant’s Forms is “false.” “How anyone in the twentieth century can take Kant’s transcendental philosophy seriously is baffling, even though it may always remain admirable in certain respects as an extraordinarily elaborate and ingenious intellectual invention.” Mortimer J. Adler, *Ten Philosophical Mistakes*, Collier Books (1985), p. 98.

<sup>23</sup> The term “butterfly effect” comes from a question posed by meteorology professor Edward Lorenz during a meeting of the American Association for the Advancement of Science where he posed the question, “Does the flap of a butterfly’s wings in Brazil set off a tornado in Texas?” The purpose of his question was to illustrate his findings that in

#### d. Opinion

This last tool uses non-deductive and non-inductive reasoning, emotions and feelings. Its domain is everything outside the domain of the other three. Its truth value is ZERO if the truth asserted is purely personal or conventional. For instance, if I assert that “you are handsome or beautiful,” its truth depends on my preference or those of a community. Its truth value is FALSE if the opinion intrudes into the domain of observation or deduction and is falsified by them.<sup>24</sup> Hence, if a thought just crossed my mind that there is someone standing behind me, yet when I turn around, there is no one there, then that opinion is false because the existence or non-existence of that person is within the domain of observation.

And even if there was someone standing behind me, the truth value is still zero. There are two (2) reasons for this. First, consider a meteorologist who inductively asserts that, “Because of a low pressure area in the Pacific, there will be a typhoon tomorrow over Japan.” Even if the prediction happens, its truth value is still “maybe true.” Then take a shaman who conjectures that, “I have faith that there will be a typhoon over Japan tomorrow.” Even if his faith comes true, it cannot have a higher truth value than the meteorologist’s prediction because the latter asserts Convergences which are within the domain of induction. Second, by Western philosophy’s standards, the minimum requirement for an assertion to plausibly be considered knowledge is Justified True Belief.<sup>25</sup> “Justified” means it is supported by rational argu-

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complex dynamic systems, outcomes are unpredictable because small variances in initial conditions can have profound effects. Jamie L. Vernon, *Understanding the Butterfly Effect*, americanscientist.org, available at <https://www.americanscientist.org/article/understanding-the-butterfly-effect>. Lorenz’s findings are consistent with the truth value of inductive assertions of Convergences. At most, it is “maybe true.”

<sup>24</sup> Even if an opinion is falsifiable, it does not make it scientific because science requires assertions that are rationally justified through deduction or induction. Thus, instinct, faith, hope, etc. do not qualify as justifications from a scientific point of view.

<sup>25</sup> Some Western philosophers feel that Justified True Belief is an insufficient standard for knowledge. For instance, Edmund Gettier demonstrated through two (2) counterexamples that you could have Justified True Belief even though you just got lucky. Edmund Gettier, *Is Justified True Belief Knowledge?*, *Analysis* (1963). His counterexamples came to be known as “Gettier Problems.” Here is one from Bertrand Russell: Suppose that there is a clock that has always been correct located in the town square. The current time is 9:55. Unbeknownst to you, the clock stopped exactly 24 hours before. You look at the clock and assert that it is 9:55. Hence, you met all the requisites of Justified True Belief. You believed that it was 9:55, that belief was true, and it was justified inductively through previous experience of the clock’s accuracy. Yet, you were only correct by accident. Is that knowledge? Elliott Sober, *Core Questions in Philosophy*, Prentice-Hall (1995), pp. 158. Western philosophy generally accepts that observation and deduction are sources of knowledge. The problem is with induction and opinion. Can inductions be a source of

ments. While the shaman's prediction was true and he believed it, it was non-rational. Thus, it cannot be given a truth value of "true."

#### e. Sub-section summary

The tool employed to make an assertion controls its truth value unless the assertion intrudes into the domain of observation or deduction in which case the minimum truth value is controlled by them. For instance, if I assert based on a hunch that "there is a cat in a hat," its truth value will at best be "zero." Why? Since a hunch is not an observation, deduction or induction, it is an opinion. But since the existence or non-existence of the cat is within the domain of observation, the minimum truth value is "false." If I check and see that there is no cat in the hat, then the opinion is falsified. If there is a cat in the hat, then its truth value is still zero.

If my assertion is based on seeing cat fur outside the hat, then it is at most "maybe true" since it is inductive. Even if it turns out that there is a cat in the hat, it is still "maybe true" because I am implying a convergence of events that somehow left a trail of cat fur as the cat came to be in the hat. The minimum is "false" because the assertion again intrudes into the domain of observation.

If my assertion is based on seeing a cat placed in the hat and an assumption that nothing has occurred for the cat to disappear from the hat, then it is "true" because it is purely deductive. It does not matter whether or not there is a cat in the hat because the conclusion necessarily follows from the premises.

The foregoing Western epistemo-ontological frameworks can be combined and summarized through the table below:

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knowledge even if their maximum truth values are only "maybe true?" If yes, how well supported should the inductions be to be considered knowledge? Can opinions be a source of knowledge if they are the result of non-deductive and non-inductive lines of reasoning such as those employed in theoretical philosophy? Adler says yes: "In the light of what has just been said, we can divide the sphere of knowledge into (1) bodies of knowledge that are methodically investigative and (2) bodies of knowledge that are noninvestigative and that employ only common, not special experience. To the first group belong history, geography, and all the empirical sciences, both natural and social. To the second group belong mathematics, logic, and theoretical philosophy." Mortimer J. Adler, *Ten Philosophical Mistakes*, Collier Books (1985), p. 103. This article does not delve into Western philosophy's debates on how knowledge should be defined or propose a definition. It is concerned with tools, domains, and truth values because that is sufficient for its purposes. Hopefully, the epistemo-ontological framework developed here will help inform these debates, because it appears that they ultimately stem partly from the premise that the nature of reality cannot be known through deduction. If Nagarjuna's analysis of production, to be discussed later, is correct, then that premise is mistaken.

TOOL	DOMAIN	TRUTH VALUE
Observation	Existence and non-existence (of objects and past and present regularities)	True or False
Deduction	Entailment and contradiction	True or False
Induction	Causation and non-causation (between regularities and Convergences)	Maybe True or False (Hume) True to False (Kant)
Opinion	Others	Zero or False

2. *The fatal flaw in Western philosophy*

While the above epistemo-ontological frameworks will suffice to compare all philosophies apples-to-apples, it contains a fatal flaw. It is fatal because it has prevented Western philosophy from coming up with definitive answers to the most basic questions about the nature of reality and morality. Is there a real external world? Is there a creator God?<sup>26</sup> Is there life after death? Is there life before life? Are there other consciousnesses? Is there such a thing as chance? Does free will exist? Is morality absolute? Can eternal happiness be achieved? Simply put, incorrect epistemology is at the root of the inaccuracies and uncertainties of Western philosophy regarding the central mysteries of life and the universe. This is such a tragedy because philosophy has the potential to solve many of the world’s problems, but it must be correct philosophy. Otherwise, it just misleads humanity and brings it down a path of self-destruction.<sup>27</sup>

<sup>26</sup> People usually conflate the question, “Is there a God?” with “Is there a creator God?” The two are not the same. The first is within the domain of observation, and the second, deduction, as will be gleaned from the discussion on Nagarjuna’s analysis of production later in the article.

<sup>27</sup> Riemen attributes the cyclical rise of fascism to truth relativity because it gives birth to the mass-man or the man of the crowd who, when he gains influence in a democracy, will naturally undermine the belief in the absolute moral and spiritual values on which it was built. He says: “But this historical opportunity was rejected by a new type of person who quickly won influence in society: the man of the crowd, the mass-man. The term refers not just to quantity but also to quality, to a certain mindset or, more accurately, to an absence of mind. Moreover, this mass-man appears in every rank or class, rich or poor, educated or not. According to Ortega y Gasset, the rise of the mass-man – the revolt of the masses! – is a direct threat to the values and ideals of liberal democracy and European humanism, traditions in which the spiritual and moral development of the free individual form the basis of a free and open society.” Riemen’s solution is for society to recover the European spirit, the spirit of true philosophy which is metaphysics. He says: “So

Although we will not be responding directly to most of these queries in this work because they are outside its scope, we will be improving upon these frameworks so as not to regurgitate the errors of the past to the detriment of future generations. After we have done so and explained why it must be so, the solutions should be evident to those who are willing to carry the result of these efforts to their logical conclusion.

The flaw we are referring to concerns assertions of cause and effect. Western philosophy locates them within the domain of induction. This flaw is attributable principally Kant and secondarily to Hume.<sup>28</sup> Kant built on

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what can we do? In his speech about democracy, Thomas Mann claimed that education is the heart of democracy. This is remarkable because for us democracy is always measured by freedom and suffrage, freedom of expression, the rule of law, and human rights. Mann would not deny this, but he points to a pillar of democracy that reaches much further: education. The question, of course, is: Education in what?" Riemen answers this by quoting his friend Radim, a student of Patocka, who died in 1977 under interrogation by the Prague Communist regime: "Patocka knew that, and so he saw it as his task to rediscover the spirit of true philosophy and educate us about it. He started to read Plato, and Plato became his teacher, his Virgil in the search for the soul of Europe. The first thing he learned from Plato was that true philosophy is metaphysics. It is philosophy that surpasses empiricism, the everyday world, because it tries to understand the deeper significance of being human. That is what makes European culture unique. Europe is not a tradition of customs passed down – no, Europe is first of all that quest for true humanity." Rob Riemen, *To Fight Against This Age: On Fascism and Humanism*, W.W. Norton and Company (2018), pp. 41, 152-153, 162-163. Education in metaphysics is not enough. It must be correct metaphysics. Otherwise, history will just repeat itself. Society will return to truth relativity, then back to fascism, then back to education in metaphysics, in an endless cycle. You cannot just reset the clock without changing anything.

<sup>28</sup> Hume's brilliant contribution to Western philosophy was to identify the Problem of Induction. His fatal error was to consider it insoluble. Kant's fatal error was to solve it incorrectly through his Forms of the Sensibility (to be discussed later). By doing so, he has led Western philosophy down a very wrong road by providing an ostensibly plausible theoretical justification for moral relativity with appalling consequences to society. The gullible would take his distinction between noumenon and phenomenon as reason enough not to search for or believe in absolute moral truths since it is impossible to know anyway. Linguistic determinists would try to replicate his so-called Copernican revolution by replacing his Forms with language. Since language is not the same for everyone, then there is no absolute moral truth. On this point, Saussure, the father of linguistic structuralism, the progenitor of poststructuralism, says: "Psychologically our thought - apart from its expression in words - is only a shapeless and indistinct mass. Philosophers and linguists have always agreed in recognizing that without the help of signs we would be unable to make a clear-cut, consistent distinction between two ideas. Without language, thought is a vague, uncharted nebula. There are no pre-existing ideas, and nothing is distinct before the appearance of language." Ferdinand Saussure, *Course in General Linguistics*, ed. by Charles Bally and Albert Sechehaye in collaboration with Albert Riedlinger, trans. by Wade Baskin, McGraw-Hill, pp. 111-112.

Hume's work to become the central figure of modern Western philosophy. From Kant's lineage, we have one line to Schopenhauer, Nietzsche and the existentialists. Another line to Wittgenstein and the analytic philosophers. Then another to Hegel and Marx. And another to Popper and the critical and science-based rationalists. Then separate lines to Cassirer, Langer and Chomsky. From Hume's lineage, we have Mill and Russell. Collectively, these philosophers have built the bulk of the Western philosophical tradition today.<sup>29</sup>

Why were Hume and Kant mistaken? **Because assertions of cause and effect are within the domain of deduction, not induction.** Unfortunately, Hume and Kant missed the deductive argument that establishes this. Why does this matter? Because correcting Western epistemology automatically resolves at the theoretical level the core ontological problem of philosophy and science: *what is the nature of reality?* This in turn will lead to the theoretical resolution of the core problem of morality: *what should we do in life and how to achieve it?*

Why only theoretical? Because knowing that E-MC<sup>2</sup> is not the same as building a nuclear bomb. Theory must be actualized. From the perspective of Buddhism, this is the sole point of all its trainings in generosity, ethical discipline, patience, joyous perseverance, meditation and wisdom.<sup>30</sup> It is to correct one's theory and then transform this dry, sterile intellectual understanding to realization or enlightenment, and then help others do the same.

### 3. Correcting the fatal flaw

The deductive argument that Hume and Kant missed can be found in the writings of the Buddhist philosopher Nagarjuna. It involves an analysis of how objects are produced, arise or come into existence. Nagarjuna says, "No thing is ever born from itself, from something else, from both or without a cause."<sup>31</sup> "From itself" is called *self-production*. "From something else" is *other production*. "From both" is a combination of self-production and other production. "Without a cause" is *spontaneous* or *random production*.

<sup>29</sup> Bryan Magee, *Confessions of a Philosopher*, Weidenfeld and Nicolson (1997), p. 166.

<sup>30</sup> These are collectively known as the six (6) perfections or paramitas. Tsongkhapa, *The Great Treatise on the Stages of the Path to Enlightenment*, trans. by the Lamrim Chenmo Translation Committee, Chapter 24, Volume 2, Snow Lion Publications (2000), pp. 113-224.

<sup>31</sup> Nagarjuna, *Fundamental Verses on the Middle Way*, trans. by Stephen Batchelor, available at <https://www.stephenbatchelor.org/index.php/en/verses-from-the-center>.

To explain this passage, the experiential world of sentient beings consists of consciousness and the objects of consciousness. Furthermore, this world is characterized by regularity. That is to say, observation establishes the constant conjunction between consciousness and objects, and objects with other objects. Speaking of the latter, Hume says: “It is a general maxim that no objects have any discoverable connection with one another, and that all the inferences we can draw from one to another are based merely on **our experience of their constant and regular conjunction**.”<sup>32</sup> (emphasis supplied)

From this division of the world into consciousness and its objects, Nagarjuna asserts that there are only two (2) possibilities. Either consciousness causes its objects to come into existence or not. If not, then there are four (4) other possibilities. Either objects cause themselves to exist (self-production), cause other objects to exist (other production), cause themselves and others to exist (self and other production), or causelessly come into existence (spontaneous or random production).

Nagarjuna refutes self-production as follows. First, if objects are self-produced, then they do not need conjunction. For instance, firelight will not need fire to arise since it only needs itself to arise. Also, a seed will never become a seedling, because for the latter to appear, the former must disappear. But the former will never disappear since it will keep on arising in an infinite loop. However, this is refuted by the observation of regularities. Second, for objects to cause itself, it must already have arisen. But if it has already arisen, then it is a contradiction to assert that it causes itself to arise. Third, if an object needs only itself to arise, if it hasn't arisen, then it will never arise since the cause (itself) does not exist. In that case, there will never be objects, which is contradicted by our observation of objects. As the Buddhist philosopher Tsongkhapa expounds:

“If a seedling were produced from itself, its production would be pointless because production means that what is produced has come into being. If it were produced from itself, a seedling would already have come into being—as in the case of a seedling that is clearly manifest. Production also would be endless because if an already-arisen seed were to arise again, the very same seed would have to arise repeatedly. In that case, there is the fallacy that since the seed itself is arising continuously, there is never a chance for the production of seedlings and such.”<sup>33</sup>

<sup>32</sup> David Hume, *An Enquiry Concerning Human Understanding*, section 10, available at <https://www.earlymoderntexts.com/assets/pdfs/hume1748.pdf>.

<sup>33</sup> Tsongkhapa, *The Great Treatise on the Stages of the Path to Enlightenment*, trans. by the Lamrim Chenmo Translation Committee, Chapter 24, Volume 3, Snow Lion Publications (2000), pp. 312-313.

Nagarjuna also refutes other production. Since observation and deduction cannot establish any necessary connection between objects, there is no reason why an object should be in constant conjunction with another specific object when the former's relation to the latter is exactly the same as its relation to every other object. Accordingly, if one arises, then either everything or anything should arise. Nevertheless, both of these possibilities are refuted by regularity. Otherwise, the world as we know it would not exist. Tsongkhapa says:

If effects were produced from intrinsically different causes, then thick darkness could arise even from a flame because those two are other. Furthermore, all things – whether or not they are effects – would be produced from all other things – whether or not they are causes – because they are alike in their otherness. This means that if you assert that seed and seedling exist essentially or intrinsically, then it is evident that the way that a rice seedling essentially or intrinsically differs from things that cannot produce it, such as fire, is identical to the way that a rice seedling intrinsically differs from its cause, a grain of rice. That is, when it appears to be intrinsically different from something that cannot produce it, a seedling seems different in the sense of being autonomous and independent, and it would seem different in the same way when it appears from its own seed. If the way they seem different is that they appear to be essentially or intrinsically different, then it is completely impossible to make the distinction that the rice seedling is not produced from fire and such, but is produced from a rice seed.<sup>34</sup>

Nagarjuna likewise refutes a combination of self-production and other production by combining his refutations for each.<sup>35</sup> Finally, he refutes spontaneous production since it is also contradicted by regularity. Objects would just pop up and everything would be senseless. Tsongkhapa states:

For if production were causeless, then production such as exists at one place and time would have to exist at all places and times, or else must never exist anywhere. This is because things arise at one place and time, and not at another, due to the presence or absence of their causes – something you do not accept. The “eyes” on the tail feathers of peacocks would also be present on crows and the like.

In brief, if something were produced causelessly, then it would have to be produced from everything, or else it would never be produced. Worldly

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<sup>34</sup> Tsongkhapa, *The Great Treatise on the Stages of the Path to Enlightenment*, Chapter 24, Volume 3, translated by the Lamrim Chenmo Translation Committee, Snow Lion Publications (2000), pp. 313-314.

<sup>35</sup> Tsongkhapa, *The Great Treatise on the Stages of the Path to Enlightenment*, Chapter 24, Volume 3, translated by the Lamrim Chenmo Translation Committee, Snow Lion Publications (2000), pp. 314-315.

beings, in order to obtain a desired effect, would not have to work to create the causes of that effect, and everything would be senseless.<sup>36</sup>

Since Nagarjuna has refuted the possibility that objects are not caused by consciousness through a refutation of self-production, other production, both self and other production, and random production, then the remaining possibility, no matter how incredible it may seem because it is in total opposition to how the world appears to us, must perforce be true – **that objects are caused by consciousness!**

Consequently, by fixing our epistemology, we automatically gain theoretical knowledge of the nature of reality – **there is no real external world!** While observation establishes that objects exist, deduction establishes the manner in which they exist: **they are just projections of consciousness.** Being projections, they are unreal, just like things in a dream, reflections in a mirror, mirages, holograms or hallucinations. In Buddhist parlance, they are **empty, essenceless, selfless, substanceless or without own-being, own-nature, or intrinsic nature.** As Tsongkhapa elucidates:

Therefore, what exists objectively in terms of its own essence without being posited through the power of a subjective mind is called “self” or “intrinsic nature.” The absence of this quality in the person is called the selflessness of the person; its absence in phenomena such as eyes, ears, and so forth is called the selflessness of objects.<sup>37</sup>

Our mistaken perception of an essence for each object makes them appear to us as having the characteristics of *independence or self-existence, identity, and permanence or immutability.* Take for instance the place where you are right now. Look around. Does anything there appear to be dependent on other objects? Of course not! They all appear that they would exist even if all the objects in the universe including the universe itself disappeared.

Going further, does anything there appear to be identity-less. Of course not! They all appear to have something in them that makes them distinct or unique; to have a “soul.” I am I, you are you, and the world is the world. Our essences are different, unlike the waves of the ocean which, though not the same as each other, still have the same “wetness.”

Finally, returning to where you are, does anything there appear to be impermanent? Of course not! They all appear that even if you chop them up

<sup>36</sup> Tsongkhapa, *The Great Treatise on the Stages of the Path to Enlightenment*, Volume 1, translated by the Lamrim Chenmo Translation Committee, Snow Lion Publications (2000), p. 315.

<sup>37</sup> Tsongkhapa, *The Great Treatise on the Stages of the Path to Enlightenment*, Volume 3, trans. by the Lamrim Chenmo Translation Committee, Snow Lion Publications (2000), p. 213.

a trillion times, there would still be something left, like an atom or particle, that is unchanging and would subsist forever, combining and recombining with other atoms or particles to form other objects.

But those appearances break down under analysis. How can objects be independent when they are part of regularities? The elements of a regularity are co-dependent. They need each other to exist. How can they have identity when they are like images in a dream or in a painting, just part of one seamless tapestry. How can they have permanence when there is nothing to chop up? Can you cleave a hologram into pieces? Of course not because while it exists, it is insubstantial. There is really nothing there. Thus, objects are all just appearances in your consciousness. That is why the Buddha said:

The **primary misconception** about the mind and body is the false view that the mind dwells in the physical body. You do not know that the physical body, as well as the mountains, the rivers, empty space, and the great earth are all within the wonderful bright true mind. It is like ignoring hundreds of thousands of clear pure seas and taking notice of only a single bubble, seeing it as the entire ocean, as the whole expanse of great and small seas.<sup>38</sup> (emphasis supplied)

It should be clear to the reader that independence, identity and permanence are parasitic on this imputed “self.” That is why the Buddha identified it is the “primary misconception” and why it is the fundamental object of Nagarjuna’s refutation. Tsongkhapa takes pains to emphasize this because it is of critical importance to the project of the utter and eternal extinction of suffering. To quote:

*Opponent:* The object to be negated is an intrinsic nature that has three attributes: (1) **causes and conditions do not bring it into being**, (2) **its condition is immutable**, and (3) **it is posited without depending on some other phenomenon**.

X X X

*Reply:* In general, if someone claims that internal and external things—e.g., seedlings—have “intrinsic nature” in this sense, then Madhyamikas<sup>39</sup>

<sup>38</sup> Shurangama Sutra, available at <http://www.cttbusa.org/shurangama/shurangama7.asp>.

<sup>39</sup> Madhyamikas are adherents of Madhyamaka or the Middle Way, a Buddhist philosophical school founded by Nagarjuna in India and Kumarajiva in China. There are several Buddhist schools. They differ from each other either in the way they present or interpret aspects of the Buddha’s teachings, their methods of teaching and training, and the principal Buddhist scriptures that they use for study. Nan Huai-Chin, *Basic Buddhism: Exploring Buddhism and Zen*, Samuel Weiser, Inc. (1997), pp. 90-93. However, the distinctions between schools are beyond the scope of and irrelevant to this article. Why? Because Nagarjuna presents his argument as deductive, similar to “1 + 1 = 2.” Thus, it is

indeed must refute such. However, here, identifying the object to be negated means identifying the fundamental object of negation. When you refute the fundamental object of negation, then the Madhyamaka view—knowledge that phenomena lack intrinsic nature—develops in your mind-stream.

X X X

Many Madhyamaka texts adduce arguments such as: **If things existed essentially, then they could not depend on causes and conditions, they would have to be immutable, and so forth. However, these statements indicate fallacies that would be entailed if things existed essentially; they do not identify the object of negation on its own terms.** It is the case that if something existed ultimately, existed in reality, or truly existed, then it could not depend on causes and conditions, and so forth; however, that is not what ultimate existence means. For example, even though being a pot entails being impermanent, impermanence is not the proper meaning of pot; rather you have to say that it means a “bulbous splay-based thing able to perform the function of holding water.”

**Likewise, if something existed ultimately, etc., it would have to be a partless thing; still, here in Madhyamaka we do not suggest that “partless thing” is the fundamental object of negation.** Since partless things are merely imputed from the unique perspective of advocates of philosophical tenets, such notions are not the fundamental cause that binds embodied beings in cyclic existence. Further, even if you determined that those partless things lack intrinsic nature and then meditated on that, this would not at all counter the ignorant conception which has operated from beginningless time. Therefore, even optimal and direct knowledge of that would not overcome the innate afflictions.

Thus, when making philosophical determinations, make your principal task to determine that an object as conceived by innate ignorance does not exist. Ancillary to that, refute objects of acquired misconceptions. **If you do not understand this, and fail to eradicate the perspective of innate ignorance, then, when you refute a personal self, you will only refute a self that is permanent, unitary, and independent.** When you refute an objective self, you will only refute things that are imputed by the advocates of philosophical tenets—such as objects that are partless particles, partless moments of experience, or a natural substrate (pradhana) with three gunas (“strands”) asserted by the Samkhyas.<sup>40</sup> This is completely inappropiate.

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to be engaged on its own terms. By way of analogy, if our purpose is to arrive at the truth, it does not matter who first said that “ $1 + 1 = 2$ .” Its truth or falsity depends on its own merits and not on who said it. In the same way, since our purpose for bringing up Nagarjuna’s argument is to arrive at correct epistemo-ontology, we do not have to study every other belief system in the world, Buddhist or non-Buddhist. If Nagarjuna is right, we automatically know that every other system that has a contrary position is wrong.

<sup>40</sup> Samkhya is the oldest of the six (6) orthodox or Brahmanic philosophical schools in India during the time of the Buddha. The others were Yoga, Vaisheshika, Nyaya, Mimamsa and Vedanta. They are orthodox because they accept the authority of the Vedas.

**If you think otherwise, then when you make philosophical determinations, you will establish nothing more than this shallow selflessness. As philosophical determinations are made for the purposes of meditation, when you meditate you will have to meditate only on this. Therefore, even if you actualized such a selflessness in meditation and consummated your cultivation of it, nothing would come of it.** It would be extremely absurd to claim that you can overcome innate afflictions by seeing as nonexistent the two selves imputed by acquired misconceptions.<sup>41</sup> (emphasis supplied)

Furthermore, if objects are empty, **then consciousness too must be empty!** How so? First, since objects have no identity, then consciousness necessarily has no identity because to have identity requires another entity to be differentiated from. For “me” to be me, there must be something else that is not me. They are relative. Conversely, if consciousness had identity, then objects would have identity, as well, but this has already been refuted.

Second, consciousness and objects are part of a regularity. If there are objects, then there must be consciousness since it is their cause. On the flip-side, if there is consciousness, then there must be objects because you cannot be conscious without being conscious of something. That is why it is called “consciousness.” As this is so, neither of them are independent.

Accordingly, as both consciousness and its objects are empty, they are neither the same or different from each other. Why? Because their sameness is refuted by observation (they exist) and their difference is refuted by deduction (they have no identity). In Buddhist terminology, **they are non-dual.** As Maitreya, the Buddha’s regent, explains:

**Once it has been established that what appears to be apprehended does not exist,<sup>42</sup>**

**It has also been established that what appears to apprehend does not exist either.**

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The unorthodox schools were Buddhism, Jainism and Worldly Secularism. As explained by Nan Huai-Chin: “The worldview of the Samkhya school was dualistic. It maintained that at the basic source of the world there were two original principles: a material inherent identity and a spiritual self. . . . The Samkhya philosophers propounded the theory that the result is there in the cause.” Nan Huai-Chin, *Basic Buddhism: Exploring Buddhism and Zen*, Samuel Weiser, Inc. (1997), pp. 12-13; Shantideva, *Guide to the Bodhisattva’s Way of Life*, trans. by Neil Elliott under the guidance of Geshe Kelsang Gyatso, Tharpa Publications (2002), p. 207. Nagarjuna’s argument refutes the Samkhya position that the world is dualistic, and that the result is present in the cause (self-production).

<sup>41</sup> Tsongkhapa, *The Great Treatise on the Stages of the Path to Enlightenment*, Volume 3, translated by the Lamrim Chenmo Translation Committee, Snow Lion Publications (2000), pp. 195-197.

<sup>42</sup> “Exist” here means “intrinsically exist.”

Due to this, access to the nonexistence  
 Of what appears as apprehended and apprehender  
 Is established because of the full emergence  
 Of that which has no beginning.

**The reason for this is that the complete lack of establishment  
 Of duality is fully established.**<sup>43</sup> (emphasis supplied)

Obviously, ordinary sentient beings do not view the world in this way. We only see its existence aspect. This leads us to notions of “I” and “others,” of “subject” and “object,” the very basis of language. We only perceive what separates, never what unites. On the other hand, there are extraordinary beings who can turn their attention around from this aspect to see the same-ness aspect – the **Essence or Dharmakaya**.<sup>44</sup> It is inexpressible because language requires a subject and an object. This is not an ordinary type of perception because here, **All is One**.<sup>45</sup> But only those who have become Buddhas see the **unity of both aspects, non-duality, things as they truly are, the realm of reality**. And since these two (2) aspects combined, of phenomena and noumenon, encompass all that there is, was or will ever be, they enter into **omniscience and the final and absolute liberation from suffering**.

<sup>43</sup> Maitreya, *Distinguishing Phenomena from Their Intrinsic Nature*, translated by the Dharmachakra Translation Committee, Snow Lion (2013), p. 26.

<sup>44</sup> “Dharmakaya, the body of reality, the truth-body, is the ontological essence of all things.” Nan Huai-Chin, *Working Toward Enlightenment*, Samuel Weiser, Inc. (1993), footnote 4, p. 27.

<sup>45</sup> Buddhism divides truth into conventional and ultimate. For the Madhyamaka school of Nagarjuna, conventional truth is within the domain of observation and deduction. Tsongkhapa says: “How does one determine whether something exists conventionally? We hold that something exists conventionally (1) if it is known to a conventional consciousness; (2) if no other conventional valid cognition contradicts its being thus known; and (3) if reason that accurately analyzes reality – that is, whether something intrinsically exists – does not contradict it. We hold that what fails to meet those criteria does not exist.” On the other hand, the ultimate truth is outside the domain of any of the epistemological tools used by ordinary sentient beings. While it can be established conventionally through deduction as Nagarjuna did, it is just an intellectual understanding. Knowing that water consists of H<sub>2</sub>O is different from seeing, swimming in, and drinking it. One who has never done so will never really understand. As the Buddha cautions: “You still listen to the Dharma with the conditioned mind, and so the Dharma becomes conditioned as well, and you do not obtain the Dharma-nature. It is like when someone points his finger at the moon to show it to someone else. Guided by the finger, that person should see the moon. If he looks at the finger instead and mistakes it for the moon, he loses not only the moon but the finger also. Why? He mistakes the pointing finger for the bright moon.” *Shurangama Sutra*, available at <http://www.cttbusa.org/shurangama/shurangama7.asp>.

#### 4. *Non-duality and quantum mechanics*

To help visualize non-duality for pedagogic purposes, it might be advantageous to make an analogy with two (2) experimental results from quantum mechanics. This is not to say that these results prove or disprove non-duality and vice-versa. Only that they may be beneficial in imagining it.

Quantum mechanics is science's most successful theory about the physical world. Every digital electronic device that you have ever used owes its existence to it. Nevertheless, no one understands what it means.<sup>46</sup> It is like accepting the Pythagorean Theorem ( $a^2 + b^2 = c^2$ , where "a" and "b" are the shorter sides of a right triangle, and "c" is the hypotenuse) yet not knowing why the Theorem is correct. With this formula, you can build such marvels as the Pyramid of Giza but at the end of the day, you are still an ignoramus.

##### a. The Wave-Particle Duality

One of the quantum mechanical experiments conducted by scientists is called the Double Slit experiment. Quantum objects such as photons are shot sequentially at a first screen with two (2) vertical slits and hits a second screen positioned behind the first. Whenever there is an observer, the pattern on the second screen indicates that the photons are behaving like particles by passing through one slit or the other. However, when there is no observer, there is an interference pattern in the second screen which indicates that each photon is behaving like a wave by passing through both slits at the same time.<sup>47</sup> The results give rise to the question, "What is the nature of reality?" Is it particle-like? Wave-like? Both? Neither? Scientists do not know.

For our visualization, we can interpret these results as follows. Whenever we observe the objects of the world, we cannot help but see them as particles. They seem to have self, independence, identity and permanence. In short, they appear dual. But in reality, as established by Nagarjuna, they are non-dual. They are waves.

Why would waves be analogous to non-duality? If we look at a wave that is propagating, we can never observe the "break" that separates the immediately preceding and succeeding moment of any segment of that continuum. These moments are not the same because the past, present and future are not the same. Yet, they are also not different because being a regularity, we apprehend the present and its immediate past simultaneously. When the

<sup>46</sup> Adam Becker, 'Einstein's Unfinished Revolution' Looks at the Quantum Physics and Reality Problem, available at <https://www.npr.org/2019/04/19/714600205/einsteins-unfinished-revolution-looks-at-the-quantum-physics-and-reality-problem>.

<sup>47</sup> Tim Wogan, Do Atoms Going Through a Double Slit 'Know' When They are Being Observed?, Physicsworld.com, available at <https://physicsworld.com/a/do-atoms-going-through-a-double-slit-know-if-they-are-being-observed/>.

present becomes the past, the future becomes the present without any interval. This is similar to our previous example in Section B about the seed and the seedling. When the seed disappears, the seedling appears at the same time. Not the same, not different, that is precisely non-duality.

#### b. Quantum entanglement

Quantum entanglement sometimes known as Spooky Action at a Distance or Non-Locality is the result of a thought experiment conducted by Einstein, Podolsky and Rosen, and subsequently confirmed by physical experiments. These experiments show that when two (2) objects are entangled, a change in the behaviour of the first object appears to be mirrored in the second object *instantaneously*, even when they are separated by light years. This is problematic for scientists because it implies faster-than-light communication between objects which is not allowed by Einstein's theory of relativity, or that there is some undiscovered physical law or property of the universe at work.<sup>48</sup>

For our visualization, one way to look at quantum entanglement is this. If objects are in reality waves, these problems disappear. For what reason? Look at the waves in an oscilloscope. The crests of these wave and their troughs are mirroring each other instantaneously. As the former goes up or down, the latter goes down or up, as well, regardless of the distance between the crest and the trough. Ergo, while it may seem that faster-than-light communication is going on, there really is none. Neither is there a need to discover some hidden mechanism of nature. Instantaneity is just how waves function because they are non-dual.

### 5. *Quo vadis induction?*

Recall that in Western philosophy, causation is the domain of induction. Considering that Nagarjuna transferred it to deduction, and given that past and present regularities are within the domain of observation, what then remains of the domain of induction, if any? There are two (2) candidates: future regularities and Convergences.

To determine which of them belongs, we must solve the Problem of Induction which has bedeviled Western philosophy since Hume in the 1700s: *how can we have certainty that past and present regularities will proceed into the future?* Hume believed this to be insoluble. On the other hand, Kant's solution is a false opinion. Why? Because his Forms of the Sensibility

<sup>48</sup> Tom Siegfried, Quantum Spookiness Survives Its Toughest Test, Sciencenews.org, Parts 1 and 2, available at <https://www.sciencenews.org/blog/context/quantum-spookiness-survives-its-toughest-tests>.

is premised on an ontological conjecture that a real external world exists, which Nagarjuna has deductively debunked.

The answer can actually be found by extending Nagarjuna's analysis of production. Recall that each of Nagarjuna's refutations of self-production, other production, both, and spontaneous production uses regularity as one of the contradicting arguments. Thus, we can sum up his analysis in a simple formula: REGULARITY EQUALS EMPTINESS. This means that because there is regularity, everything is necessarily empty, and vice-versa. As the *Heart Sutra* explains:

O, Sariputra, form does not differ from voidness, and voidness does not differ from form. Form is voidness and the void is form; the same is true for feeling, conception, volition and consciousness.<sup>49</sup>

As a consequence, if past and present regularities will not propagate into the future like a wave, then that future, with all its objects and consciousnesses, when it becomes the present, will not be empty. If it is not empty, then it has identity like a particle. If so, the present which has become the past, with all its objects and consciousnesses, will also have identity. Why? Because identity needs another entity to be distinguished from. But Nagarjuna has already established that the past and present have no identity because they are empty. Hence, the future must be empty, as well, because it cannot have identity.

The foregoing analysis deductively establishes that regularities are an endless continuum and must perforce extend infinitely into the past and future. Incidentally, this automatically answers the questions: *Is there life before life? Is there life after death?* Life has no beginning and no end. This makes it even more imperative for us to know if there is a path to liberation from suffering.

Given that future regularities are within the domain of deduction, only Convergences remain as the sole domain of induction. With this, we can now modify the Western epistemo-ontological frameworks as follows:

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<sup>49</sup> The Prajna Paramita Heart Sutra, trans. from Sanskrit into Chinese by Hsuan Tsang, commentary by T'an Hsu, trans. into English by Lok To, K'un Li, Shih and Dr. Frank G. French (eds.), Buddha Dharma Association, Inc. (1995), p. 5. In Buddhism, all phenomena can be grouped into five (5) skandhas or aggregates which ordinary sentient beings take individually or collectively for their real self and the real world. These are form, feeling, conception, volition and consciousness. The Heart Sutra says that these are all empty of that imputed reality. And since all phenomena are part of regularities, then the Sutra is effectively saying that REGULARITY = EMPTINESS.

TOOL	DOMAIN	TRUTH VALUE
Observation	Existence and non-existence (of objects and past and present regularities)	True or False
Deduction	Entailment and contradiction (includes causation and future regularities)	True or False
Induction	Convergences	Maybe True or False
Opinion	Others	Zero or False

### III. EVALUATING AND COMPARING THE NATURAL LAW PHILOSOPHIES OF LOCKE AND GROTIUS

#### 1. *John Locke*

##### a. Its truth value

The natural law can be a moral or legal philosophy.<sup>50</sup> John Locke's is both. As a moral philosophy, it claims that objectively true moral propositions can be derived, through reason, from the nature of human beings or the world.<sup>51</sup> "Nature" here means some permanent feature(s) that gives them identity. For example, what makes people different from other animals? Whatever is consistent with that nature must be moral. Why? Because human beings cannot go against who they are or what the world is.<sup>52</sup>

On the other hand, natural law as a legal philosophy posits some necessary connection between law and morality.<sup>53</sup>

Locke's line of reasoning for his moral philosophy can be broken down into five (5) assertions. First, he asserts that there is such a thing as a state of nature which is a state prior to government. Second, in that state, we are free to do what we want. Third, as such, we are by nature free. Otherwise stated,

<sup>50</sup> Philip Soper, *Some Natural Confusions About Natural Law*, Mich. L. Rev., Vol. 90, No. 8 (Aug 1992), p. 2393.

<sup>51</sup> Internet Encyclopedia of Philosophy, available at <https://www.iep.utm.edu/natural/>.

<sup>52</sup> There is no unanimity on how to define natural law except that it claims the existence of objective moral truths that can be derived through reason. Philip Soper, *Some Natural Confusions About Natural Law*, Mich. L. Rev., Vol. 90, No. 8 (Aug 1992), p. 2395.

<sup>53</sup> Philip Soper, *Some Natural Confusions About Natural Law*, Mich. L. Rev., Vol. 90, No. 8 (Aug 1992), p. 2395.

freedom is our natural right. Fourth, since we are by nature free, then we are by nature equal. Equality is also our natural right. Fifth, being equal, we ought to respect each other's freedom. This includes valuing people's lives because they cannot be free without being alive, their liberty so that they can pursue their happiness, and property because it aids them in that pursuit. To quote:

To understand political power correctly and derive it from its proper source, **we must consider what state all men are naturally in. In this state men are perfectly free to order their actions, and dispose of their possessions and themselves, in any way they like, without asking anyone's permission** —subject only to limits set by the law of nature.

**It is also a state of equality**, in which no-one has more power and authority than anyone else; because it is simply obvious that creatures of the same species and status, all born to all the same advantages of nature and to the use of the same abilities, should also be equal 'in other ways', with no-one being subjected to or subordinate to anyone else, unless 'God', the lord and master of them all, were to declare clearly and explicitly his wish that some one person be raised above the others and given an undoubted right to dominion and sovereignty.

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But though this is a state of liberty, it isn't a state of license in which there are no constraints on how people behave. A man in that state is absolutely free to dispose of himself or his possessions, but he isn't at liberty to destroy himself, or even to destroy any created thing in his possession unless its destruction is required for some nobler purpose. The state of nature is governed by a law that creates obligations for everyone. And reason, which is that law, teaches anyone who takes the trouble to consult it, that **because we are all equal and independent, no-one ought to harm anyone else in his life, health, liberty, or possessions.**<sup>54</sup> (emphasis supplied)

Locke's third and four assertions that we are by nature free and equal is an implied ontological assertion about the nature of reality. This places it within the domain of deduction and is refuted by Nagarjuna's analysis of production. There is nothing in the universe that has a nature that is permanent and gives anyone or anything a real identity. Accordingly, their truth values are "false" and makes Locke's entire moral philosophy false.

The last assertion that we "ought" to respect each other's life, liberty and property is not an observation since it is not an apprehension by the senses. Neither is it a deduction because it is not entailed or contradicted by the first

<sup>54</sup> John Locke, Second Treatise of Government, Chapter 9, available at <https://www.earlymoderntexts.com/assets/pdfs/locke1689a.pdf>.

four (4) assertions. Nor is it an induction because it is not about Convergences. This makes it an opinion. Thus, its truth value is “zero” at best.

Viewed in another way, this last assertion is an example of an “is-ought” fallacy. Just because we are by nature equal does not entail that we ought to respect other people’s freedom. The former is a fact; the latter a preference which puts it within the domain of opinion whose maximum truth value is “zero.” Accordingly, even if we grant the truth of the third and fourth assertions, the truth value of Locke’s philosophy is “zero” at best.

We can summarize our evaluation through the table below:

ASSERTION	DOMAIN	TRUTH VALUE
There is a state of nature.	?	?
In that state, we are free.	?	?
As such, we are by nature free.	Deduction	False
Being free, we are by nature equal.	Deduction	False
Being free and equal, we ought to respect each other’s life, liberty and property.	Opinion	Zero
		<b>FALSE</b>

#### b. Locke’s solution to the fictional problem

Is it moral to throw a terminally ill baby overboard if it will save the lives of nine (9) healthy adults on an overcrowded sinking lifeboat? Locke’s probable answer would depend on his notion of the “common good.” According to him, there are three (3) defects in the state of nature that can prevent us from exercising our natural moral rights to life, liberty and property:

So the great and chief purpose of men’s uniting into commonwealths and putting themselves under government is the preservation of their property. The state of nature lacks many things that are needed for this; I shall discuss three of them. **First, The state of nature lacks an established, settled, known law, received and accepted by common consent as the standard of right and wrong and as the common measure to decide all controversies.** What about the law of nature? Well, it is plain and intelligible to all reasonable creatures; but men are biased by self-interest, as well as ignorant about the law of nature because they don’t study it; and so they aren’t apt to accept it as a law that will bind them if it is applied to their particular cases.

**Secondly, the state of nature lacks a known and impartial judge, with authority to settle all differences according to the established law.** In that state everyone is both judge and enforcer of the law of nature, and few men will play either role well. Men are partial to themselves, so that

passion and revenge are very apt to carry them too far, and with too much heat, in their own cases; and their negligence and lack of concern will make them remiss in other men's cases.

**Thirdly, the state of nature often lacks a power to back up and support a correct sentence, and to enforce it properly.** People who have committed crimes will usually, if they can, resort to force to retain the benefits of their crime; this includes using force to resist punishment; and such resistance often makes the punishment dangerous, even destructive, to those who try to inflict it.<sup>55</sup> (emphasis supplied)

To remedy these defects, Locke says that we voluntarily gave up a portion of our moral rights to enter into a social contract in order to establish government. Hence, for him, the core purpose of government is to secure the common good, by which he meant to protect EVERYONE'S residual moral rights:

But though men who enter into society give up the equality, liberty, and executive power they had in the state of nature . . . each of them does this only with the intention of better preserving himself, his liberty and property (for no rational creature can be thought to change his condition intending to make it worse). **So the power of the society or legislature that they create can never be supposed to extend further than the common good. It is obliged to secure everyone's property by providing against the three defects mentioned above, the ones that made the state of nature so unsafe and uneasy.**<sup>56</sup> (emphasis supplied)

It follows then that the common good in Locke's view cannot be a numbers game. It is not about the good of the majority or minority. Rather, when he speaks of the common good, he literally means the COMMON good, with emphasis on the word "common." The common good is merely the individual good writ large. As he declares, "All the members of the society are to be preserved as much as may be."<sup>57</sup> Accordingly, for him, it would probably be immoral to kill the baby. Under no circumstance can the moral rights of any individual be sacrificed for the benefit of any person or group. Furthermore, since these moral rights include property, it stands to follow that Locke would probably oppose government taking from the rich and giving to the poor for the sole purpose of saving them.

<sup>55</sup> John Locke, *Second Treatise of Government*, Chapter 9, available at <https://www.earlymoderntexts.com/assets/pdfs/locke1689a.pdf>.

<sup>56</sup> John Locke, *Second Treatise of Government*, Chapter 9, available at <https://www.earlymoderntexts.com/assets/pdfs/locke1689a.pdf>.

<sup>57</sup> John Locke, *Second Treatise of Government*, Chapter 14, available at <https://www.earlymoderntexts.com/assets/pdfs/locke1689a.pdf>.

## 2. *Grotius' natural law*

### a. Its truth value

Grotius' basic line of reasoning is three-fold. First, we all desire society, not because it is in our interest, but because it is human nature. To desire society is not a choice. It is part of what makes us who we are as a species:

Interest, that Spring of Just and Right, if we speak accurately, is not true; for the Mother of Natural Law is **human Nature** itself, which, though even the Necessity of our Circumstances should not require it, would of itself create in us a **mutual Desire of Society**: And the Mother of Civil Law is that very Obligation which arises from Consent, which deriving its Force from the Law of Nature, Nature may be called as it were, the Great Grandmother of this Law also. But to the Law of Nature Profit is annexed: For the Author of Nature was pleased, that every Man in particular should be weak of himself, and in Want of many Things necessary for living commodiously, to the End we might more eagerly affect Society: Whereas of the Civil Law Profit was the Occasion; for that entering into Society, or that Subjection which we spoke of, began first for the Sake of some Advantage. And besides, those who prescribe Laws to others, usually have, or ought to have, Regard to some Profit therein.<sup>58</sup>

Second, since we have no choice, whatever is consistent with society must be moral:

**This Sociability**, which we have now described in general, or this Care of maintaining Society in a Manner conformable to the Light of human Understanding, **is the Fountain of Right**, properly so called; to which belongs Abstaining from that which is another's, and the Restitution of what we have of another's, or of the Profit we have made by it, the Obligation of fulfilling Promises, the Reparation of a Damage done through our own Default, and the Merit of Punishment among Men.<sup>59</sup>

Third, we can discover what is moral using reason:

From this Signification of Right arose another of larger Extent. For by reason that **Man above all other Creatures is endowed** not only with this Social Faculty of which we have spoken, but likewise **with Judgment to discern Things pleasant or hurtful, and those not only present but fu-**

<sup>58</sup> Hugo Grotius, *De Jure Ac Pacis*, Book 1, Richard Tuck (ed.) from the edition by Jean Barbeyrac, Liberty Fund (2005), pp. 93-94, available at <https://oll.libertyfund.org/titles/grotius-the-rights-of-war-and-peace-2005-ed-vol-1-book-i>.

<sup>59</sup> Hugo Grotius, *De Jure Ac Pacis*, Book 1, Richard Tuck (ed.) from the edition by Jean Barbeyrac, Liberty Fund (2005), pp. 85-86, available at <https://oll.libertyfund.org/titles/grotius-the-rights-of-war-and-peace-2005-ed-vol-1-book-i>.

**ture, and such as may prove to be so in their Consequences;** it must therefore be agreeable to human Nature, that according to the Measure of our Understanding **we should in these Things follow the Dictates of a right and sound Judgment,** and not be corrupted either by Fear, or the Allurements of present Pleasure, nor be carried away violently by blind Passion. And whatsoever is contrary to such a Judgment is likewise understood to be contrary to Natural Right, that is, the Laws of our Nature.<sup>60</sup> (emphasis supplied)

The truth value of Grotius’ first assertion is deductively “false” which makes the truth value of his philosophy also “false.” Why? Because like Locke, he posits the existence of a nature that makes humans inherently distinct from other animals and everything else: “For Man is indeed an Animal, but one of a very high Order, and that excels all the other Species of Animals much more than they differ from one another; as the many Actions proper only to Mankind sufficiently demonstrate. Now amongst the Things peculiar to Man, is his Desire of Society, that is, a certain Inclination to live with those of his own Kind, not in any Manner whatever, but peaceably, and in a Community regulated according to the best of his Understanding.”<sup>61</sup> Nagarjuna’s analysis of production debunks the existence of such a nature. Everything is empty.

As for his third assertion, it is again an example of an “is-ought” fallacy which, same as with Locke, makes it an opinion with a truth value of “zero.” To summarize:

ASSERTION	DOMAIN	TRUTH VALUE
It is our nature to desire society.	Deduction	False
We ought to do whatever is consistent with society.	Opinion	Zero
We can find what we ought to do through reason.	?	?
		<b>FALSE</b>

b. Grotius’ solution to the fictional problem

For Grotius, the common good is living in society because that is consistent with our nature. Consequently, he would probably not consider it

<sup>60</sup> Hugo Grotius, *De Jure Ac Pacis*, Book 1, Richard Tuck (ed.) from the edition by Jean Barbeyrac, Liberty Fund (2005), p. 87, available at <https://oll.libertyfund.org/titles/grotius-the-rights-of-war-and-peace-2005-ed-vol-1-book-i>.

<sup>61</sup> Hugo Grotius, *De Jure Ac Pacis*, Book 1, Richard Tuck (ed.) from the edition by Jean Barbeyrac, Liberty Fund (2005), pp. 79-80, available at <https://oll.libertyfund.org/titles/grotius-the-rights-of-war-and-peace-2005-ed-vol-1-book-i>.

immoral to throw the baby overboard if the very existence of society is at stake. This distinguishes him from the utilitarians who require only a majority of society. Bentham, its founder, says: “An action then may be said to be conformable to the principle of utility, or, for shortness sake, to utility, (meaning with respect to the community at large) when the tendency it has to augment the happiness of the community is greater than any it has to diminish it.”<sup>62</sup>

As for taking from the rich and giving to the poor, he would probably not consider that immoral if it would preserve or strengthen society. This distinguishes him from Locke. While both of them are natural law philosophers, private property for Grotius is not a natural right but only conventional, because it is established by mere agreement.<sup>63</sup> On this point, he says:

**X. And to this belongs a prudent Management in the gratuitous Distribution of Things that properly belong to each particular Person or Society, so as to prefer sometimes one of greater before one of less Merit, a Relation before a Stranger, a poor Man before one that is rich, and that according as each Man’s Actions, and the Nature of the Thing require; which many both of the Ancients and Moderns take to be a part of Right properly and strictly so called; when notwithstanding that Right, properly speaking, has a quite different Nature, since it consists in leaving others in quiet Possession of what is already their own, or in doing for them what in Strictness they may demand.**<sup>64</sup> (emphasis supplied)

### 3. *Natural versus conventional right*

Why would it matter if property is a natural or conventional right? Because if Locke is correct, then there are substantial limits to how much government can interfere with an individual’s power to acquire, use and dispose things beyond which it becomes objectively immoral (because it violates our natural right) and conventionally illegal (because it violates the social contract). In other words, private property would have an expansive

<sup>62</sup> Jeremy Bentham, Introduction to the Principles of Morals and Legislation, par. 6, available at <https://socialsciences.mcmaster.ca/econ/ugcm/3113/bentham/morals.pdf>.

<sup>63</sup> “According to Grotius, the existence of a property right presupposes the existence of the previous natural right to use something that has no owner. But it is important to stress that a property right is, nevertheless, a human institution and not a natural state of affairs.” Marcelo de Araujo, Contractualism, and the Concept of Private Property: An Institutional Interpretation, *History of Philosophy Quarterly*, Vol. 26, No. 4 (October 2009), p. 360.

<sup>64</sup> Hugo Grotius, *De Jure Ac Pacis*, Book 1, Richard Tuck (ed.) from the edition by Jean Barbeyrac, Liberty Fund (2005), pp. 87-88, available at <https://oll.libertyfund.org/titles/grotius-the-rights-of-war-and-peace-2005-ed-vol-1-book-i>.

core of negative moral and legal rights (rights against interference) that are non-derogable. It is expansive because, for Locke, that core is breached when government regulates private property to an extent greater than necessary for everybody to exercise theirs because that contradicts the very purpose of government under the social contract. He says, “So the power of the society or legislature that they create can never be supposed to extend further than the common good. It is obliged to secure everyone’s property by providing against the three defects mentioned above, the ones that made the state of nature so unsafe and uneasy.”<sup>65</sup> In addition, “the supreme power can’t take from any man any part of his property without his consent. What men enter into societies with governments for is the preservation of their property; so it would be a gross absurdity to have a government that deprived them of that very property! So men in society have property, which means that they have such a right to the goods that are theirs according to the law of the community, and nobody has a right to take any part of those goods from them without their own consent.”<sup>66</sup>

It is because of this core that Locke would probably consider it immoral to throw our fictional baby overboard just to save the nine (9) other occupants in the sinking lifeboat. It does not matter to him that the survival of the entire society is at stake. That core should never be breached. Extending this, it is also for him probably immoral for the government to take from the rich and give to the poor just because they are poor, even if it costs the latter their lives. Contrarily, Grotius finds no such core. Thus, it is probably not immoral for him if the baby is thrown overboard or property is take from the rich and given to the poor for the good of society.

#### IV. THE HISTORY OF THE PHILOSOPHY OF PRIVATE PROPERTY OF THE PHILIPPINES

##### 1. *France*

Locke’s natural moral and legal philosophy was first embraced by the legal order through France.<sup>67</sup> It was embodied in the Declaration of the

<sup>65</sup> John Locke, *Second Treatise of Government*, Chapter 9, available at <https://www.earlymoderntexts.com/assets/pdfs/locke1689a.pdf>.

<sup>66</sup> John Locke, *Second Treatise of Government*, Chapter 9, available at <https://www.earlymoderntexts.com/assets/pdfs/locke1689a.pdf>.

<sup>67</sup> Falla says: “Los pilares basicos de la nueva construccion se colocan por la Asamblea francesa de 4 de Agosto de 1789, al declararse abolidos los antiguos derechos feudales. Ahora bien, la nueva propiedad se configuae como un droit inviolable et sacre, como se desprende de las Declaraciones Revolucionarias. Asi, - x x x La Declaracion de

Rights of Man and of the Citizen which was approved by the French National Assembly on 26 August 1789:<sup>68</sup>

2. **The aim of all political association** is the preservation of the **natural and imprescriptible rights** of man. These rights are liberty, property, security, and resistance to oppression.

x x x

4. Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which **assure to the other members of the society the enjoyment of the same rights**. These limits can only be determined by law.

x x x

los Derechos del Hombre y del Ciudadano: de 26 de Agosto de 1789, artículo 17: “Siendo la propiedad un derecho inviolable y sagrado, nadie puede ser privado de ella sino cuando la necesidad publica, legalmente constatada, lo exija claramente, y con la condicion de una indemnization justa y previa.” Fernando Garrido Falla, *Comentarios A La Constitucion*, Tercera Edicion, Civitas Ediciones, S.L., (2001), p. 782. Translation by the author: “The basic pillars of the new construction were placed by the French Assembly of 4 August 1789, when it declared the ancient feudal rights abolished. However, the new property was configured as an inviolable and sacred right, following the Revolutionary Declarations. Thus, - The Declaration of the Rights of Man and of the Citizen of 26 August 1789, article 17: “Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified.””

<sup>68</sup> The legislative history of the Declaration of the Rights of Man and of the Citizen shows that there was much passionate debate in the French National Assembly on whether property was a natural or conventional right: “Many defended the right to property in Lockean terms as a natural right; others insisted it was purely social and conventional. The majority spoke mainly in terms of rights, but a number demanded a declaration of concomitant responsibilities. While most viewed property rights as essential to the creation of a proper constitutional order, some argued that issuing an express guarantee before the constitution had even been established would be foolish and even counterproductive.” Ultimately, those who saw it as a natural right won: “In the course of the following week, the entire Assembly heavily revised the draft of the Sixth Bureau article by article, with a number of sections completely rewritten. The result was a final draft that was markedly clearer, more forceful, and more felicitous in expression. The Lockean foundations underlying the Declaration as a whole and the right to property in particular were more sharply articulated. Thus on August 20, the initial articles were replaced by new material proposed by Mounier, leader of the moderates. The final version clearly declares in Article 2 that property is a natural right: “The aim of every political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and the resistance to oppression.”” Bret Boyce, *Property as a Natural Right and as a Conventional Right in Constitutional Law*, 29 *Loy. L.A. Int'l. & Comp. L. Rev.* 201 (2007), pp. 250, 259, available at <http://digitalcommons.lmu.edu/ilr/vol29/iss2/2>.

17. Since property is an **inviolable and sacred right**, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified. (emphasis supplied)

“Natural and imprescriptible rights of man” and “inviolable and sacred right” refer to his moral theory. “The aim of all political association” pertains to his legal theory. “Assure to the other members of the society the enjoyment of the same rights” concerns his idea of the common good.

## 2. *Spain*

Spain and its colony, the Philippines, followed suit in the early 19<sup>th</sup> century. Article 172 of the Constitution of Cadiz of 1812 provides that:

Tenth. The King may not take the property of any individual or corporation, nor disturb him in the possession, use and exploitation thereof, and if in case it is necessary to do so for a known common good, it may not be done without at the same time indemnifying him of the reasonable value thereof.

This provision is substantially the same as art. 17 of the French Declaration sans express reference to the “inviolable and sacred right” to private property. Nevertheless, contemporaneous legislations make it clear that property is a sacred right. For instance, the Decree of 6 August 1811 by the Cortes de Cadiz abolishing the feudal manors states<sup>69</sup> that, “Quedan abolidos los dictados de vasallo y vasallage y sus prestaciones, así Reales como personales, que deban su origen á título jurisdiccional, á excepción de las que procedan de contrato libre en uso del sagrado derecho de propiedad.”<sup>70</sup>

Article 172 (Tenth) is substantially repeated in the subsequent Spanish Constitutions prior to the Philippines’ independence from Spain on June 12, 1898. Title One designated as “De Los Espanoles” of the Spanish Constitutions of 1837 and 1845 states:

Art. 10. No se impondrá jamás la pena de confiscación de bienes, y ningún español será privado de su propiedad sino por causa justificada de utilidad común, previa la correspondiente indemnización.<sup>71</sup>

<sup>69</sup> Fernando Garrido Falla, *Comentarios A La Constitucion, Tercera Edicion*, Civitas Ediciones, S.L., (2001), p. 782.

<sup>70</sup> Author’s translation: “The dictates of vassal and vassalage and their obligations, whether Royal or personal, that originate from jurisdictional title, except those that come from a free contract in the use of the sacred right of property, are abolished.”

<sup>71</sup> Author’s translation: “Art. 10. The penalty of confiscation of property will never be imposed, and no Spaniards shall be deprived of their property except for public use, after

Title One designated as “De La Nacion y De Los Espanoles” of the Spanish Constitution of 1856 provides:

Art. 13. Ningún español será privado de su propiedad sino por causa justificada de utilidad común, previa la correspondiente indemnización.<sup>72</sup>

Title One designated as “De La Nacion y Sus Derechos” of the Spanish Constitution of 1869 stipulates:

Art. 13 – Nadie podrá ser privado temporal o perpetuamente de sus bienes y derechos, ni turbado en la posesión de ellos, sino en virtud de sentencia judicial. Los funcionarios públicos que bajo cualquier pretexto infrinjan esta prescripción, serán personalmente responsables del daño causado. Quedan exceptuados de ella los casos de incendio e inundación u otros urgentes análogos, en que por la ocupación se haya de excusar un peligro al propietario o poseedor, o evitar o atenuar el mal que se temiere o hubiere sobrevenido.

Art. 14 – Nadie podrá ser expropiado de sus bienes sino por causa de utilidad común y en virtud de mandamiento judicial, que no se ejecutará sin previa indemnización regulada por el Juez con intervención del interesado.<sup>73</sup>

Title One designated as “De La Nacion y Sus Derechos” of the Spanish Constitution of 1876 specifies:

Art. 10 – No se impondrá jamás la pena de confiscación de bienes, y nadie podrá ser privado de su propiedad sino por autoridad competente y por causa justificada de utilidad pública, previa siempre la correspondiente indemnización.

Si no precediera este requisito, los jueces ampararán y en su caso reintegrarán en la posesión al expropiado.<sup>74</sup>

payment of the corresponding compensation.”

<sup>72</sup> Author’s translation: “Art. 13. No Spaniard shall be deprived of his property except for public use, after payment of the corresponding compensation.”

<sup>73</sup> Author’s translation: “Art. 13 – No one may be temporarily or perpetually deprived of his property and rights, or disturbed in their possession, except by virtue of a judicial decision. Public officials that under any pretext infringe this prohibition, will be personally liable for the damage caused. Excepted from this are cases of fire and flood and other analogous emergencies, in which for the occupation the danger to the owner or possessor must be excused, or to avoid or mitigate the evil that is feared or would ensue. x x x Article 14 – No one’s property shall be expropriated except for public use and by virtue of a judicial order, which will not be executed without prior compensation regulated by the Judge with the intervention of the interested party.”

<sup>74</sup> The penalty of confiscation of property shall never be imposed, and no one shall be deprived of his property except by competent authority and for public use, always after payment of the corresponding compensation. x x x If this requirement is not met before expropriation, judges shall in every case protect and reinstate the possession to the person deprived thereof.

The substance of these constitutional provisions were also embodied in articles 348 and 349 of the Spanish Civil Code of 1889, to wit:

ARTICLE 348. Ownership is the right to enjoy and dispose of a thing with no limitations other than those established by law.

The owner has a right of action against the holder and the possessor of the thing to recover the same.

ARTICLE 349. No one may be deprived of his property unless it be by competent authority for some purpose of proven public utility and after payment of the proper compensation.

Unless this requisite has been complied with, it shall be the duty of the courts to protect the owner of such property in its possession or to restore its possession to him, as the case may be.

Commenting on article 348, Falla writes that, “The evolutionary process that has been mentioned explains clearly the full definition of article 348 of the Civil Code prior to its inscription.”<sup>75</sup> By “evolutionary process” and “full definition,” he meant that the historical context of article 348 reveals that it was originally intended to be an expression of Lockean philosophy.

The Spanish Civil Code continued to be in force in the Philippines even after its independence from Spain up until August 30, 1950 when the Philippines’ New Civil Code took effect. Articles 348 and 349 are substantially reproduced in this new code:

Art. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

Art. 435. No person shall be deprived of his property except by competent authority and for public use and always upon payment of just compensation.

Should this requirement be not first complied with, the courts shall protect and, in a proper case, restore the owner in his possession.

From the foregoing, we can say that the philosophy of private property in Spain and the Philippines at least up to the late 19<sup>th</sup> century was Lockean.

<sup>75</sup> “El proceso evolutivo de que se ha hecho mención explica claramente la rotunda definición del artículo 348 del Código Civil antes transcrita. Claro es que en este precepto se deja salvo la posibilidad de que la propiedad absoluta que en él se configure conozca limitaciones (<las establecidas en las Leyes>); pero las limitaciones previstas lo eran fundamentalmente pro ración de que el derecho de cada propietario había de cohererarse con el que a los demás propietarios correspondía.” Fernando Garrido Falla, *Comentarios A La Constitución, Tercera Edición, Civitas Ediciones, S.L.*, (2001), p. 783.

### 3. *Philippines*

#### a. From the Treaty of Paris of 1899 until before the 1935 Constitution

Spain ceded the Philippines, Puerto Rico, Cuba, Guam and other islands in the West Indies to the United States through the Treaty of Paris on April 11, 1899. Did the change in sovereignty result in a change in philosophy in the Philippines? To answer this, a little bit of American constitutional history is in order.

Locke's natural law influenced, not only the political landscape of Europe, but the then American colonies, as well. This is reflected in the 1776 American Declaration of Independence<sup>76</sup> which states, in part:

We hold these truths to be **self-evident**, that all men are created equal, that they are endowed by their Creator with certain **unalienable Rights**, that among these are **Life, Liberty and the pursuit of Happiness**. **That to secure these rights, Governments are instituted** among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. (emphasis supplied)

“Self-evident,” “unalienable Rights,” and “Life, Liberty and the pursuit of Happiness” come from Locke's moral theory. “That to secure these rights, Governments are instituted” pertain to his legal theory.

Notice that the American Declaration substitutes “pursuit of Happiness” in lieu of Locke's “property.” This has been taken to indicate a difference in views among the American Founding Fathers.<sup>77</sup> For instance, Jefferson believed at the time of the drafting of the Declaration that the right was

<sup>76</sup> Charles S. Desmond, *Natural Law and the American Constitution*, *Ford. L. Rev.*, Vol. 22, Issue 3 (1953).

<sup>77</sup> “With the emergence of the first modern written constitutions in the late eighteenth century, the right to property was enshrined as a fundamental constitutional right. Although Locke's influence was certainly critical, it would be incorrect to assume, as some have, that the framers of the first declarations of rights simply constitutionalized Lockean principles. Although the framers generally agreed on the importance of the right to private property, they did not agree on the essential nature of this right. Is it natural, pre-political, and essentially inalterable, or is it conventional and thus subject to redefinition? Is it exclusively a negative individual right, or does it entail social responsibilities?” Bret Boyce, *Property as a Natural Right and as a Conventional Right in Constitutional Law*, 29 *Loy. L.A. Int'l. & Comp. L. Rev.* 201 (2007), pp. 231-232, available at <http://digitalcommons.lmu.edu/ilr/vol29/iss2/2>.

merely positive or conventional. For him, there is no natural right to property that preexisted the State, only a legal right that was granted by the State for the good of society:

[I]t is a moot question whether the origin of any kind of property is derived from nature at all ... It is agreed by those who have seriously considered the subject, that no individual has, of natural right, a separate property in an acre of land, for instance. By an universal law, indeed, whatever, whether fixed or movable, belongs to all men equally and in common, is the property for the moment of him who occupies it; but when he relinquishes the occupation, the property goes with it. **Stable ownership is the gift of social law, and is given late in the progress of society.**<sup>78</sup> (emphasis supplied)

Opposing him, among others, was Madison who said:

It is sufficiently obvious, that Persons and Property are the two great subjects on which Governments are to act; and the rights of persons, and the rights of property, are the objects, for the protection of which Government was instituted. These rights cannot well be separated. **The personal right to acquire property, which is a natural right,** gives to property, when acquired, a right to protection, as a social right.<sup>79</sup> (emphasis supplied)

The debate on property as a natural versus conventional right has been one of ideological undercurrents to American constitutional discourse, with the pendulum swinging from one end to the other over the centuries.<sup>80</sup> But around the time of the Treaty of Paris, the displacement was towards natural rights. This was the tenor of the decision of the US Supreme Court in *Downes v. Bidwell* (1901).<sup>81</sup> The issue here was whether the US Constitution applied to Puerto Rico, an unincorporated territory, since by the terms of the Treaty of Paris, “The civil rights and political status of the native inhabitants of the

<sup>78</sup> Quoted in Bret Boyce, Property as a Natural Right and as a Conventional Right in Constitutional Law, 29 Loy. L.A. Int'l. & Comp. L. Rev. 201 (2007), pp. 238, available at <http://digitalcommons.lmu.edu/ilr/vol29/iss2/2>, citing Thomas Jefferson, An Autobiography, reprinted in Thomas Jefferson: Writings, Merrill D. Peterson ed. (1984).

<sup>79</sup> Speech given during the Virginia Convention of December 2, 1829, available at <https://rotunda.upress.virginia.edu/founders/default.xqy?keys=-FOEA-print-02-02-02-1924>.

<sup>80</sup> “The U.S. Constitution never adopted an explicit theory of the nature of the right to property, and throughout its history the Supreme Court’s jurisprudence of property rights has reflected a profound conflict between jusnaturalism and positivism.” Bret Boyce, Property as a Natural Right and as a Conventional Right in Constitutional Law, 29 Loy. L.A. Int'l. & Comp. L. Rev. 201 (2007), p. 270.

<sup>81</sup> 182 U.S. 244 (1901).

territories hereby ceded to the United States shall be determined by the Congress,” and Congress had not yet legislated on the matter. The Court held that while the Constitution generally did not apply, the Due Process Clause<sup>82</sup> did because “under the underlying principles of the Constitution,” the Puerto Ricans were entitled “to be protected in life, liberty and property.” What were these underlying principles that the Court was referring to? They were none other than those of Locke’s philosophy. In effect, *Downes* subsumed “property” in the Due Process Clause under “pursuit of Happiness” under the Declaration of Independence. To quote *Downes*:

We suggest, without intending to decide, that **there may be a distinction between certain natural rights, enforced in the Constitution by prohibitions against interference with them, and what may be termed artificial or remedial rights, which are peculiar to our own system of jurisprudence.** Of the former class are the rights to one’s own religious opinion and to a public expression of them, or, as sometimes said, to worship God according to the dictates of one’s own conscience; **the right to personal liberty and individual property**; to freedom of speech and of the press; to free access to courts of justice, to due process of law and to an equal protection of the laws; to immunities from unreasonable searches and seizures, as well as cruel and unusual punishments; and to such other immunities as are indispensable to a free government. Of the latter class are the rights to citizenship, to suffrage, (citation omitted) and to the particular methods of procedure pointed out in the Constitution, which are peculiar to Anglo-Saxon jurisprudence, and some of which have already been held by the States to be unnecessary to the proper protection of individuals.

Whatever maybe finally decided by the American people as to the status of these islands and their inhabitants—whether they shall be introduced into the sisterhood of States or be permitted to form independent governments – it does not follow that, in the meantime, awaiting that decision, the people are in the matter of personal rights unprotected by the provisions of our Constitution, and subject to the merely arbitrary control of Congress. **Even if regarded as aliens, they are entitled under the principles of the Constitution to be protected in life, liberty and property.** (emphasis supplied)

The Philippine Supreme Court reached the same conclusion in *United States v. Dorr* (1903)<sup>83</sup> which was affirmed by the US Supreme Court in *Dorr*

<sup>82</sup> The American Due Process Clause can be found in the Fifth and Fourteenth Amendments of the United States Constitution. The Fifth states that, “No person shall . . . be deprived of life, liberty, or property, without due process of law.” The Fourteenth states that, “. . . nor shall any State deprive any person of life, liberty, or property, without due process of law.”

<sup>83</sup> 2 Phil. 322 (1903).

*v. United States* (1904).<sup>84</sup> The issue again was whether the US Constitution applied to the Philippines after the cession. Mirroring *Downes*, the Philippine Court held:

1. That while the Philippine Islands constitute territory which has been acquired by and belongs to the United States, there is a difference between such territory and the territories which are a part of the United States with reference to the Constitution of the United States.

2. **That the Constitution was not extended here by the terms of the treaty of Paris, under which the Philippine Islands were acquired from Spain. By the treaty the status of the ceded territory was to be determined by Congress.**

3. **That the mere act of cession of the Philippines to the United States did not extend the Constitution here, except such parts as fall within the general principles of fundamental limitations in favor of personal rights** formulated in the Constitution and its amendments, and which exist rather by inference and the general spirit of the Constitution, and except those express provisions of the Constitution which prohibit Congress from passing laws in their contravention under any circumstances; that the provisions contained in the Constitution relating to jury trials do not fall within either of these exceptions, and, consequently, the right to trial by jury has not been extended here by the mere act of the cession of the territory. (emphasis supplied)

The ramification of *Downes* and *Dorr* was to confirm the continued efficacy of Locke's philosophy from the Spanish times to the American period. Consistent with this, the Philippine Supreme Court in *People v. Pomar* (1924)<sup>85</sup> struck down a piece of social welfare legislation that sought to impose on employers an obligation to pay maternity leave benefits to their female employees, holding that, "It has been decided in a long line of decisions of the Supreme Court of the United States, that the right to contract about one's affairs is a part of the liberty of the individual, protected by the "due process of law" clause of the constitution."

*Pomar* conformed with Locke's philosophy because the invalidated legislation sought to give preferential treatment to pregnant women at the expense of the employers, akin to taking from the rich and giving to the poor. From the foregoing, we can say that prior to the 1935 Constitution, the philosophy of private property in the Philippines was still Lockean.

<sup>84</sup> 195 U.S. 138 (1904).

<sup>85</sup> G.R. No. L-22008, 3 November 1924.

b. From the 1935 Constitution until before the 1973 Constitution: From Locke to Grotius

The 1935 Constitution was enacted during the period of American rule in preparation for the Philippines' eventual independence. Article II thereof entitled "Declaration of Principles" states that:

SECTION 5. The **promotion of social justice** to insure the well-being and economic security of all the people should be the concern of the State. (emphasis supplied)

Article XIV entitled "General Provisions" of said Constitution declares that:

SECTION 6. The State shall **afford** protection to labor, especially to working women, and minors, and shall **regulate the relations between the landowner and tenant, and between labor and capital** in industry and in agriculture. The State may provide for compulsory arbitration. (emphasis supplied)

The appearance of social justice provisions in the 1935 Constitution in relation to the Due Process Clause<sup>86</sup> marked an unmistakable shift in the philosophy of private property in the Philippines away Locke. This was in stark contrast to the United States which, to this day, is still debating the role Locke's philosophy in the interpretation of their own constitution.<sup>87</sup> As explained by the Philippine Supreme Court in *Antanamok v. Court of Industrial Relations* (1940),<sup>88</sup> the shift arose out of a realization that the Philippines' historical context requires an emphasis on community interests over individual interests if it wanted to avoid armed revolutions:

By and large, these provisions in our Constitution all evince and express the need of shifting emphasis to community interest with a view to affirmative enhancement of human conformity with the constitutional objective and cognizant of the historical fact that industrial and agricultural disputes had given rise to disquietude, bloodshed and revolution in our country.

Since Locke's philosophy privileged individual over community interests, it had to be abandoned, at least with respect to private property. In *Antanamok*, the Court indicated that the underlying philosophy of social justice,

<sup>86</sup> The Due Process Clause of the 1935 Constitution can be found in Section 1, Article III entitled the "Bill of Rights" and states that, "No person shall be deprived of life, liberty, or property without due process of law . . ."

<sup>87</sup> See note 74.

<sup>88</sup> G.R. No. 46892, 28 June 1940.

and property under the Due Process Clause, was now the natural law of Grotius, among others.

To recall, Grotius claims that it is human nature to desire society. Since we have no choice in this matter, the morality of an act is to be measured by how it strengthens society. According to the Court, the Philippines can strengthen society by re-conceptualizing private property as a trust held for the benefit of the community:

Embodying the spirit of the present epoch, general provisions were inserted in the Constitution which are intended to bring about the needed social and economic equilibrium between component elements of society through the application of what may be termed as the *justitia communis* advocated by Grotius and Leibnits many years ago to be secured through the counterbalancing of economic and social forces and opportunities which should be regulated, if not controlled, by the State or placed, as it were, in *custodia societatis*.

In *Calalang v. Williams* (1940),<sup>89</sup> the Court emphasized that this re-conceptualization is “neither communism, nor despotism, nor atomism, nor anarchy,” but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated.” Thus:

**Social justice is “neither communism, nor despotism, nor atomism, nor anarchy,” but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community,** constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*.

**Social justice, therefore, must be founded on the recognition of the necessity of interdependence among divers and diverse units of a society and of the protection that should be equally and evenly extended to all groups as a combined force in our social and economic life, consistent with the fundamental and paramount objective of the state of promoting the health, comfort, and quiet of all persons, and of bringing about “the greatest good to the greatest number.”** (bold supplied)

<sup>89</sup> G.R. No. 47800, December 2, 1940.

Many years later, in *Mataas na Lupa v. Dimayuga* (1984)<sup>90</sup> and *Sumulong v. Guerrero* (1987),<sup>91</sup> the Court called this re-conceptualization the “stewardship concept.” To quote from *Mataas na Lupa*:

The aforementioned Section 6 of Article II, which is a modified version of the original provision of the 1935 Constitution, “emphasizes the **stewardship concept**, under which private property is supposed to be **held by the individual only as a trustee for the people in general, who are its real owners**. As a mere steward, the individual must exercise his rights to the property not for his own exclusive and selfish benefit but for the good of the entire community or nation.” (emphasis supplied)

c. From the 1973 Constitution until before the 1987 Constitution:  
Introducing the Social Function

c.1 Textual expansion of social justice provisions

The Philippines became independent from the United States on July 4, 1946. Nonetheless, the 1935 Constitution continued to be in force and effect until it was replaced by the 1973 Constitution. This later document saw an expansion of social justice provisions both in number and express scope. Article II entitled “Declaration of Principles and State Policies” provides that:

SECTION 6. The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall **regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits**.

SECTION 7. The State shall **establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare, and social security** to guarantee the enjoyment by the people of a decent standard of living.

SECTION 9. The State shall **afford protection to labor**, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration.

Article XIV entitled “The National Economy and Patrimony of the Nation” provides that:

<sup>90</sup> G.R. No. L-32049, 25 June 1984.

<sup>91</sup> G.R. No. L-48685, 30 September 1987.

SECTION 12. The State shall formulate and implement an **agrarian reform program** aimed at emancipating the tenant from the bondage of the soil and achieving the goals enunciated in this Constitution.

SECTION 13. The Batasang Pambansa may authorize, upon payment of just compensation, the **expropriation of private lands to be subdivided into small lots and conveyed at cost to deserving citizens**. (emphasis supplied)

Thus, the State now had the express mandate to “regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits,” to provide for social security, and “formulate and implement an agrarian reform program.” The Constitution also authorized the Batasang Pambansa (Philippine Congress) to expropriate “private lands to be subdivided into small lots and conveyed at cost to deserving citizens.” All of these were anathema to Lockean philosophy because they were analogous to taking from the rich and giving to the poor.

### c.2 Introducing the Social Function

The 1935 and 1973 Constitutions do not mention the Social Function. Neither can it be found in the Court’s pre-1973 Constitution jurisprudence. But in *Alfanta v. Noe* (1973),<sup>92</sup> the Court read it into the above-cited Section 6, Article II, to wit:

**Thus, under the new Constitution, property ownership has been impressed with a social function. This implies that the owner has the obligation to use his property not only to benefit himself but society as well. Hence, it provides under section 6 of Article II thereof, that in the promotion of social justice, the State “shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitable diffuse property ownership and profits.”** The Constitution also ensures that the worker shall have a just and living wage which should assure for himself and his family an existence worthy of human dignity and give him opportunities for a better life.

*Alfanta* begs the following interrelated questions. First, how did the Court’s reading differ from the literal text of section 6, Article II?” Second, what is the relation between the section 6, Article II and social justice? Finally, does the Social Function Clause have a different philosophical basis from social justice? In other words, did the Court’s reading result in a change in the philosophy of private property in the Philippines?

To answer the first question, recall that the text of section 6, Article II only authorizes the State to “regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property

<sup>92</sup> G.R. No. L-32362, 19 September 1973.

ownership and profits.” It never said, as the Court interpreted it to say, that property owners have an “obligation to use his property not only to benefit himself but society as well.”

To answer the second question, the Court itself in *Alfanta* describes section 6, Article II as an implementation of social justice.

Answering the third question is a little bit more problematic because the Court never explained where it got the term “social function.” In *Ferrer v. Carganillo* (2010),<sup>93</sup> the most it said was that it was an ancient concept stretching out to the genesis of society itself: “The concept of social function of private property which today is presented as one of the possible justifications for agrarian and urban land reform **has its roots in the cosmogenic and philosophical concept which maintains that man must answer to the Creator for the use of the resources entrusted to him. It is an old concept and is ultimately related to the genesis of society itself.** Hence, the use, enjoyment, occupation or disposition of private property is not absolute. It is predicated on the social functions of property. It is restricted in a sense so as to bring about maximum benefits to all and not to a few chosen individuals.” (emphasis)

Given this ambiguity, we are now left to resolve this question through inference. One possible solution is that since the Philippines is a predominantly Catholic country, perhaps the obligation of property owners under the section 6, Article II is based on Catholic morality. To quote from the papal encyclical *Mater et Magistra*:<sup>94</sup>

#### *The Social Function of Property*

**119. Our predecessors have insisted time and again on the social function inherent in the right of private ownership**, for it cannot be denied that in the plan of the Creator all of this world’s goods are primarily intended for the worthy support of the entire human race.

Hence, as Leo XIII so wisely taught in *Rerum Novarum*: “**whoever has received from the divine bounty a large share of temporal blessings**, whether they be external and corporeal, or gifts of the mind, **has received them for the purpose of using them for the perfecting of his own nature, and, at the same time, that he may employ them, as the steward of God’s Providence, for the benefit of others.** ‘He that hath a talent,’ says St. Gregory the Great, ‘let him see that he hide it not; he that hath abundance, let him quicken himself to mercy and generosity; he that

<sup>93</sup> G.R. 170956, 12 May 2010.

<sup>94</sup> Issued by Pope John XXIII on May 15, 1961; See *Rerum Novarum* issued by Pope Leo XIII on May 15, 1891; *Quadragesimo Anno* issued by Pope Pius XI on May 15, 1931 to commemorate the 40th anniversary of *Rerum Novarum*.

hath art and skill, let him do his best to share the use and the utility thereof with his neighbor’.”(emphasis supplied)

However, it is doubtful that the Court would imply, through an act of interpretation, that Catholic morality is the ideological basis of private property in the Philippines, because that might go against the Constitutional separation between Church and State, and its own consistent self-declared limitations to its powers, as seen in *Leus v. St. Scholastica’s College Westgrove*.<sup>95</sup>

However, determining what the prevailing norms of conduct are considered disgraceful or immoral is not an easy task. An individual’s perception of what is moral or respectable is a confluence of a myriad of influences, such as religion, family, social status, and a cacophony of others. In this regard, the Court’s ratiocination in *Estrada v. Escritor* is instructive.

In *Estrada*, an administrative case against a court interpreter charged with disgraceful and immoral conduct, **the Court stressed that in determining whether a particular conduct can be considered as disgraceful and immoral, the distinction between public and secular morality on the one hand, and religious morality, on the other, should be kept in mind. That the distinction between public and secular morality and religious morality is important because the jurisdiction of the Court extends only to public and secular morality.**

Another possible solution to the third question is Leon Duguit’s functionalism. Duguit is a 20th century philosopher who proposed that private property should not be viewed as a right but as a social function. For him, since man has never been seen outside of society, there must be some mechanism at work which he calls the “laws of coordination” that leads all of us to society: “The cells which compose an organism are subjected to the law of that organism. Everyone recognizes this; and the law of that organism is the one which presides over its formation and development. In the same way, the individuals who compose a social group are subject to the law of this group, a law which presides over its formation and development. Both these laws are laws of coordination.”<sup>96</sup> He makes it “clear that the law to which man as a member of society is subjected is not a causal law.”<sup>97</sup>

<sup>95</sup> G.R. No. 187226, January 28, 2015. Also *Estrada v. Escritor*, A.M. No. P-02-1651, August 4, 2003 and June 22, 2006; *Concerned Employee v. Mayor*, A.M. No. P-02-1564, November 23, 2004; *Anonymous v. Radam*, A.M. No. P-07-2333, December 19, 2007; *Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014; *Capin-Cadiz v. Brent Hospital*, G.R. No. 187417, February 24, 2016; *Inocente v. St. Vincent Foundation*, G.R. No. 202621, June 22, 2016; *Tuvillo v. Laron*, A.M. No. MTJ-10-1755, October 18, 2016.

<sup>96</sup> Leon Duguit, *Objective Law*, Colum. L. Rev., Vol. XX, No. 8 (Dec., 1920), p. 827.

<sup>97</sup> Leon Duguit, *Objective Law*, Colum. L. Rev., Vol. XX, No. 8 (Dec., 1920), p. 823.

These laws supposedly create a social norm or obligation for individuals to act in ways that are consistent with interdependence because when that is disturbed, there is, by virtue of these laws, a spontaneous reaction within the social group against the individual to reestablish the equilibrium:

The object of the social norm is the regulation of individual activity, the determination of the acts which man is obliged to perform or not to perform. In speaking of obligation, it is understood, as I have already explained, that it is a question, not of an obligation modifying the substantial will of the individual, but of a **purely social obligation; that is, such that if it is not fulfilled, a certain instability is produced in the elements constituting the social group, and consequently a social reaction, that is, a spontaneous effort for the reestablishment of equilibrium.** In other words, the social norm forbids every action or abstention which can produce a social disorder, so that when such an agitation has been produced there is a tendency in society to reestablish order.<sup>98</sup> (emphasis supplied)

For Duguit, the obligation is not moral but merely social because it does not prescribe what an individual ought to do based on a superior principle but is merely descriptive of how the laws of coordination operate to compel individuals to act in certain ways to establish or reestablish group order. In other words, the individual “ought” to do something only in the sense that if he does not, he will be forced to do so. Thus:

**The obligation which results is not properly speaking moral, but only social.** If it is violated, there is no attack upon a superior principle of morality, but only upon the equilibrium of the social group; there is a certain disorder which results in a more or less energetic reaction against the violator of the norm.<sup>99</sup> (emphasis supplied)

From this, Duguit concludes that private property is not a moral right but a social function. It is just the natural outcome of the operation of the law of coordination and, as such, exists primarily for the purpose for benefitting society as a whole, even though it may have the secondary effect of benefitting the individual qua individual.

Given this, it is also doubtful that the Court was nodding its head to Duguit’s philosophy when it read the Social Function into section 6, Article II. Duguit’s philosophy is amoral. The Court is not. As it stated in *Leus*, “the jurisdiction of the Court extends only to public and secular morality.” The Court would also probably be mindful that in a very predominantly Catholic

<sup>98</sup> Leon Duguit, *Objective Law*, Colum. L. Rev., Vol. XX, No. 8 (Dec., 1920), p. 828.

<sup>99</sup> Leon Duguit, *Objective Law*, Colum. L. Rev., Vol. XX, No. 8 (Dec., 1920), p. 828.

country such as the Philippines, an amoral philosophy might not gain much acceptance with the people.

On the other hand, that property owners would have a moral obligation to society with respect their property is not inconsistent with Grotius' philosophy. For him, all things were originally held in a state of community. Thereafter, private property arose as a matter of convention for the purpose of furthering the interests of the members of that community. Due to this, it cannot be supposed that they would contract away the power to return to a state of community in case of absolute necessity for themselves or for the community. He says:

**VI. 1. Let us now see whether Men may not have a Right to enjoy in common those Things that are already become the Properties of other Persons;** which Question will at first seem strange, since the Establishment of Property seems to have extinguished all the Right that arose from the **State of Community**. But it is Property of Goods. **There is all the Reason in the World to suppose that they designed to deviate as little as possible from the Rules of natural Equity; and so it is with this Restriction, that the Rights of Proprietors have been established:** For if even written Laws ought to be thus explained, as far as possible; much more ought we to put that favourable Construction on Things introduced by a Custom not written, and whose Extent therefore is not determined by the Signification of Terms.

2. From whence it follows, first, that in a **Case of absolute Necessity, that antient Right of using Things, as if they still remained common, must revive, and be in full Force:** For in all Laws of human Institution, and consequently, in that of Property too, such Cases seem to be excepted.<sup>100</sup> (emphasis)

Because of these considerations, it is very reasonable to suppose that the philosophy of private property in the Philippines remains Grotian.

d. From the 1987 Constitution to the present

The Social Function was formally incorporated into the 1987 Constitution through Article XII entitled "National Economy and Patrimony," viz:

Section 6. **The use of property bears a social function,** and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the **duty of the State to promote distributive justice**

<sup>100</sup> Hugo Grotius, *De Jure Ac Pacis*, Book II, Richard Tuck (ed.) from the edition by Jean Barbeyrac, Liberty Fund (2005), pp. 433-434, available at <https://oll.libertyfund.org/titles/grotius-the-rights-of-war-and-peace-2005-ed-vol-2-book-ii>.

**and to intervene when the common good so demands.** (emphasis supplied)

This Constitution also saw a massive expansion in social justice provisions. Article II entitled “Declaration of Principles and State Policies” stipulates that:

Section 9. The State shall **promote a just and dynamic social order** that will ensure the prosperity and independence of the nation and free the people from poverty through policies that **provide adequate social services**, promote full employment, a rising standard of living, and an improved quality of life for all.

Section 10. The State shall **promote social justice** in all phases of national development.

Section 21. The State shall promote comprehensive rural development and **agrarian reform**. (emphasis supplied)

Article XII entitled “National Economy and Patrimony” says:

Section 1. The goals of the national economy are a more **equitable distribution of opportunities, income, and wealth**; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

The State shall promote industrialization and full employment based on sound agricultural development and **agrarian reform**, through industries that make full of efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

Section 6. **The use of property bears a social function**, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the **duty of the State to promote distributive justice and to intervene when the common good so demands.** (emphasis supplied)

Article XIII is entitled and devoted entirely to “Social Justice and Human Rights.” Its social justice stipulations include:

Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove

cultural inequities by **equitably diffusing wealth and political power for the common good.**

To this end, the State shall **regulate the acquisition, ownership, use, and disposition of property and its increments.**

Section 2. The **promotion of social justice** shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and **equality of employment opportunities for all.**

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. **They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits** as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall **regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production** and the right of enterprises to reasonable returns to investments, and to expansion and growth.

Section 4. The State shall, by law, undertake an **agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof.** To this end, the State shall encourage and undertake the **just distribution of all agricultural lands**, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

Section 5. The State shall recognize the **right of farmers, farmworkers, and landowners, as well as cooperatives**, and other independent farmers' organizations to participate in the planning, organization, and management of the program, and shall provide support to agriculture through appropriate technology and research, and adequate financial, production, marketing, and other support services.

Section 6. The State shall **apply the principles of agrarian reform or stewardship**, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous

communities to their ancestral lands. The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

Section 7. The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. **Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.**

Section 8. The State shall provide incentives to landowners to invest the proceeds of the **agrarian reform program** to promote industrialization, employment creation, and privatization of public sector enterprises. Financial instruments used as payment for their lands shall be honored as equity in enterprises of their choice

Section 9. The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of **urban land reform and housing** which will make available at affordable cost, decent housing and basic services to under-privileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners.

Section 10. Urban or rural poor dwellers shall not be evicted nor their dwelling demolished, except in accordance with law and in a just and humane manner.

No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated.

Section 14. The State shall **protect working women** by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation. (emphasis supplied)

Article XVIII entitled “Transitory Provisions” also provides that:

Section 22. At the earliest possible time, the Government shall **expropriate idle or abandoned agricultural lands as may be defined by law, for distribution to the beneficiaries of the agrarian reform program.** (emphasis supplied)

## V. EPISTEMO-ONTOLOGY AND MORALITY: DOES TRUTH MATTER?

### 1. *Happiness and suffering are just opinions*

In the Introduction, we noted that epistemology, ontology and morality are like space-time because they are epistemo-ontolo-moral. You cannot assert something about one without explicitly or implicitly asserting something about the others. And to be wrong in one is to be wrong in all.

For instance, if you claim that the biblical ten (10) commandments are absolute moral truths because they were handed down from a creator God, you might also be supposing that, ontologically, there is a real world external where this God can be found and, epistemologically, that your senses are accurate as to the existence of that world.

As another example, you may be of the persuasion, like the Western linguistic determinists,<sup>101</sup> structuralists<sup>102</sup> and poststructuralists, that all morality is relative because reality is created by language. If so, ontologically, you

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<sup>101</sup> “In much of our social and political discourse, people simply assume that words determine thoughts. x x x And supposedly there is a scientific basis for these assumptions: the famous Sapir-Whorf hypothesis of linguistic determinism, stating that people’s thoughts are determined by the categories made available by their language, and its weaker version, linguistic relativity, stating that differences among languages cause differences in the thoughts of their speakers. x x x But it is wrong, all wrong. The idea that thought is the same thing as language is an example of what can be called a conventional absurdity: a statement that goes against all common sense but that everyone believes because they dimly recall having heard it somewhere and because it is so pregnant with implications. . . Think about it. We have all had experience of uttering or writing a sentence, then stopping and realizing that it wasn’t exactly what we meant to say. To have that feeling, there has to be a ‘what we meant to say’ that is different from what we said. Sometimes, it is not easy to find any worlds that properly convey a thought. When we hear or read, we usually remember the gist, not the exact words, so there has to be such a thing as a gist that is not the same as a bunch of words. And if thoughts depended on words, how could a new word ever be coined? How could a child learn a word to begin with? How could translation from one language to another be possible?” Steven Pinker, *The Language Instinct*, HarperCollins (1994), pp. 56-58.

<sup>102</sup> Saussure, the father of linguistic structuralism, the progenitor of poststructuralism, says: “Psychologically our thought - apart from its expression in words - is only a shapeless and indistinct mass. Philosophers and linguists have always agreed in recognizing that without the help of signs we would be unable to make a clear-cut, consistent distinction between two ideas. Without language, thought is a vague, uncharted nebula. There are no pre-existing ideas, and nothing is distinct before the appearance of language.” Ferdinand Saussure, *Course in General Linguistics*, ed. by Charles Bally and Albert Sechehaye in collaboration with Albert Riedlinger, trans. by Wade Baskin, McGraw-Hill, pp. 111-112.

might be assuming that a real external world exists and that the sensory data from this world is sieved through language before reaching your consciousness. Effectively, you are replacing Kant's Forms of the Sensibility with language. However, unlike the Forms which for Kant are uniform to everyone, there are many different languages. Consequently, there are many different realities and, therefore, no absolute morality. Epistemologically, you might be assuming once more that your sensory experiences of a real world are sufficient proof of that world.

If indeed epistemology, ontology and morality are inseparable like space-time, then what does the epistemo-ontology that we have outlined in Section B say about morality? How are they connected? How does the truth about truth (epistemology) and the truth about the nature of reality (ontology) relate to the project of eternal happiness (morality)?

To work this out, let us first recall the epistemo-ontological framework we built, then try to locate happiness and suffering within it:

TOOL	DOMAIN	TRUTH VALUE
Observation	Existence and non-existence (of objects and past and present regularities)	True or False
Deduction	Entailment and contradiction (includes causation and future regularities)	True or False
Induction	Convergences	Maybe True or False
Opinion	Others	Zero or False

Now whenever we cognize an impression of an object on our senses, we will also notice that that impression is accompanied by feelings of happiness or suffering. Suffering if we want to run away from that object, and happiness if not.

Some might claim that they have neutral or indifferent feelings towards an object. Nonetheless, that is still happiness because they are not running away from that object. In fact, if that object was replaced by something worse, they would be running back towards the former if they still could. Thus, you are never truly neutral to any object because you cannot help but cognize it relative to your feelings for other objects past or present.

Cognitions of impressions and feelings belong to the domain of observation because we are merely dealing with their existence or non-existence. But the feelings qua feelings belong to the domain of opinion. How so? Look back on your personal experience. You know that on some days, an impression of an object will give rise to happy feelings, while on other days, an

impression of the very same object will give rise to suffering. For instance, when you look at your spouse, sometimes you just want to love him or her to death, but there are times when you even wonder how you ever married this person. Furthermore, while you might feel that your spouse is the salt of the earth, others may consider him or her the devil incarnate.

This demonstrates that happiness and suffering are opinions because they are not always the same for everyone and are malleable. They can be changed. They are unlike those within the domain of observation, deduction or induction. For instance, even if you tell yourself a million times that the brick wall in front you does not exist, it is not going away, either for you or anyone else. Neither will “ $1 + 1 = 2$ ” change whatever corner of the universe you go to. Nor will you win the lottery until you buy a ticket to initiate a continuum of regularities that will hopefully converge with other regularities that will result in your number being drawn.

## 2. *The object conditions of temporary happiness or suffering*

There are only four (4) object conditions for each of the eight (8) ways by which temporary happiness or suffering can arise, endure or cease. These are summarized through the table below:

	1	2	3	4
A	Get	Real object	Want	Happiness
B	Get	Real object	Do not want	Suffering
C	Not get	Real object	Want	Suffering
D	Not get	Real object	Do not want	Happiness
E	Lose	Real object	Want	Suffering
F	Lose	Real object	Do not want	Happiness
G	Not lose	Real object	Want	Happiness
H	Not lose	Real object	We do not want	Suffering

“Want” encompasses need, desire, craving and addiction. “Object” means either a particular thing or a general state of mind. “Real” means an object that appears to have a self.

The table illustrates that there are only four (4) ways each for happiness or suffering to arise or endure. For happiness, either we get what we want (Row A), not get what we do not want (Row D), lose what we do not want (Row F) and not lose what we want (Row G). Suffering would be covered by Rows B, C, E and H.

### 3. *The strategy of inferior persons*

The strategy of most beings to attain eternal happiness can be found in Rows A, D, F and G. For example, if you are the romantic type, you might be searching for your “soul mate” (Row A) and, having found that person, try to be a couple forever (Row G). However, these strategies are bound to fail because, as established by Nagarjuna, everything is empty. Thus, nothing in the phenomenal world is permanent except impermanence. Everything is in ceaseless flux or change, like a wave. On this, the Buddha said:

Outer adornments will eventually deteriorate,  
 Inner body will likewise degenerate;  
 Only the unsurpassed Dharma is indestructible,<sup>103</sup>  
 All intelligent persons should carefully consider,  
 That age, sickness, and death are undesirable,  
 And a deformed figure and appearance are disgusting.  
 Youth and beauty remain just temporarily,  
 Before long all will be decrepit.  
 Even if the life span extends to one hundred years,  
 Ultimately no one is exempted from the persecution of impermanence.  
 The sufferings of age, death, and sickness always follow.  
 Persistently they do harm to all living beings.<sup>104</sup>

Hence, even if you get the object of your desire, you will eventually lose it, either because the object perishes (Column 2), or your preference changes (Column 3), or because it is taken away from you by your death or other circumstance (Column 1). It would not be so bad if there was nothing else after you die. But as established in Section B,<sup>105</sup> your life is a continuum that has no end. Ergo, even if you think that things are going great for you right now, there is one thing you should be sure of. That that will eventually end and you will most certainly suffer. And even if things are going badly, you never know if there is something even worse in store for you that will make your present suffering feel like a paradise. Accordingly, it is of the utmost urgency that we forever terminate this beginningless cycle of happiness and suffering at the soonest possible time.

<sup>103</sup> By this, the Buddha meant the Truth or the nature of reality.

<sup>104</sup> The Sutra of the Buddha’s Discourse on Impermanence, trans. into Chinese from Sanskrit by I Ching, trans. into English by Li Kuo Wei, [http://www.drbachinese.org/vbs/1\\_100/vbs23/23\\_4.html](http://www.drbachinese.org/vbs/1_100/vbs23/23_4.html).

<sup>105</sup> Subparagraph 5.

#### 4. *The strategy of the wise*

There is only one way to accomplish this. We must have the correct view of the nature of reality and then actualize it by seeing non-duality, things as they truly are, the realm of reality. In short, you must become a Buddha yourself.

But why would that lead to eternal happiness or the utter cessation of suffering? Because in non-duality, you no longer perceive real objects (Column 2). If there are no real objects, then it becomes impossible for wanting or not wanting (Column 3), getting or not getting (Column 1), losing or not losing (Column 1), and happiness or suffering (Column 4) to arise because they are all co-conditions for each other. It is like waking up from a horrible dream where you were being chased by a monster. Once you wake up, you have no more fears. Why? Because you realize that the monster was never real in the first place. As the Buddhist philosopher Buddhapalita explains:

What is the nature of entities as they truly are? They are insubstantial. Those who are ignorant of this because their insight is obscured by the darkness of the root – ignorance, imagine that entities have their own self-existence; and at that time those persons develop attraction and aversion. **When the darkness of delusion is dispelled by the light of knowledge of dependent-arising, one observes with the eye of insight that the entities have no self-existence. Deprived of any support, there is no opportunity, and in that person attraction and aversion do not arise.**<sup>106</sup> (emphasis supplied)

How do you actualize the correct view? The Buddha gives an overview through the Fourth Noble Truth: “The way leading to cessation of suffering, as a noble truth, is this: It is simply the noble eightfold path, that is to say, *right view, right intention; right speech, right action, right livelihood; right effort, right mindfulness, right concentration.*”<sup>107</sup>

“Right view” means correct theory, which includes correct epistemo-ontolo-morality. “Right intention”<sup>108</sup> means that our thoughts must always be

<sup>106</sup> Buddhapalita, *Indian Madhyamaka Buddhist Philosophy after Nagarjuna*, trans. and summarized by Richard H. Jones, Volume 1, Jackson Square Books (2011), p. 123.

<sup>107</sup> Dhammacakkappavattana Sutta,

Piyadassi Thera (trans.), available at <https://www.accesstoinight.org/tipitaka/sn/sn56/sn56.011.piya.html>.

<sup>108</sup> “Right Thought denotes the thoughts of selfless renunciation or detachment, thoughts of love and thoughts of non-violence, which are extended to all beings. It is very interesting and important to note here that thoughts of selfless detachment, love and non-violence are grouped on the side of wisdom. This clearly shows that true wisdom is endowed with these noble qualities, and that all thoughts of selfish desire, ill-will, hatred and violence are the result of a lack of wisdom – in all spheres of life whether individual,

consistent with the right view. Since there is no self, we must always think selflessly or compassionately. “Right speech,” “right action,” and “right livelihood” mean that our behaviour must always be consistent with the right view. Thus, we must always act selflessly or compassionately with respect to others and ourselves. “Right mindfulness” means always being vigilant that our thoughts and actions are completely consistent with the right view. “Right effort” means that we are always cheerfully and energetically diligent in practicing the Buddha’s Eight-Fold Path. “Right concentration” means having mastery over the two (2) types of meditation: non-analytic or non-conceptual, and analytic. Tsongkhapa is emphatic about the importance of analytic meditation to the project of actualization. In such meditation, one combines discursive thought on the various arguments that establish selflessness with the powerful concentrations developed through non-analytic meditation.

**What kind of meditation leads to liberation?** As cited earlier, the very next [verse of the *King of Concentrations Sutra*] says:

If you analytically discern the lack of self in phenomena  
 And if you cultivate that analysis in meditation  
 This will cause the result, attainment of nirvana;  
**There is no peace through any other means.**

The first line sets out the condition—if, after you have analytically discerned phenomena which are selfless, you develop the wisdom that understands the meaning of selflessness. The second line, “And if you cultivate that analysis in meditation,” refers to sustaining and cultivating in meditation the philosophical view of selflessness that you have gained. The third line, “This will cause the result, attainment of nirvana,” means that this is the cause of attaining the goal—nirvana, or liberation. Liberation is attained through cultivating that wisdom. Can you also attain liberation without that wisdom, by cultivating some other path? The fourth line of this passage says, **“There is no peace through any other means,” meaning that even were you to cultivate another path, you would not quell suffering and the afflictions without that wisdom.**

This scripture very clearly teaches that only the wisdom of selflessness severs the root of cyclic existence; Kamalasila quotes it in his second *Stages of Meditation* in order to discredit the assertions of the Chinese abbot Ha-shang.<sup>109</sup> Therefore, you must have certain knowledge of this. **For**

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social, or political.” Walpola Rahula, *What the Buddha Taught*, Gordon Fraser Gallery, Ltd. (1959), p. 49.

<sup>109</sup> Ha-shang believed that one can achieve realization, actualization, enlightenment or nirvana through mere non-conceptual meditation. Tsongkhapa, *The Great Treatise on*

**even non-Buddhist sages have many good qualities—such as concentration and the superknowledges—but, since they do not have the view of selflessness, they cannot escape cyclic existence at all.**<sup>110</sup> (emphasis supplied)

Unfortunately, we cannot go beyond the brief passages quoted above. The details of the Buddha's path are very profound and well, well beyond the scope of this work. Hopefully, the reader will only treat this article like a finger pointing to the moon.<sup>111</sup> We must all study hard and work harder if we are to save ourselves and others. There is no peace through any other means.

## VI. CONCLUSION

The natural law of Grotius is the philosophy of private property in the Philippines and underlies the Social Function. However, it is a false philosophy because it is mistaken epistemologically, ontologically and morally. Epistemologically because it fails to identify to proper domain of causation. Ontologically because, as a consequence of this epistemological error, it posits the existence of an inherent nature for persons and things. Morally because, as a consequence of these epistemological and ontological errors, it will not lead anyone to attaining the very purpose of their existence – the complete, utter, final, and absolute liberation from suffering, which is none other than eternal happiness.

Accordingly, the Social Function, as currently constructed, is at most, only an expedient until Philippine society finds the correct path to true freedom.

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<sup>110</sup> Tsongkhapa, *The Great Treatise on the Stages of the Path to Enlightenment*, trans. by the Lamrim Chenmo Translation Committee, Chapter 24, Volume 2, Snow Lion Publications (2000), pp. 113-224. Tsongkhapa, *The Great Treatise on the Stages of the Path to Enlightenment*, trans. by the Lamrim Chenmo Translation Committee, Chapter 24, Volume 2, Snow Lion Publications (2000), p. 108.

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#### *Dedication*

*This work and all its merits are dedicated to the benefit of all sentient beings. May they all attain their supreme aspiration in life.*

# A BRIEF PHILOSOPHICAL HISTORY OF THE SOCIAL FUNCTION OF PRIVATE PROPERTY IN THE PHILIPPINES<sup>1</sup>

*Una breve historia filosófica sobre la función social de la  
propiedad privada en Filipinas*

Solomon Fernando Lumba  
Assistant Professor  
College of Law  
University of the Philippines

[http://dx.doi.org/10.18543/ed-68\(1\)-2020pp89-154](http://dx.doi.org/10.18543/ed-68(1)-2020pp89-154)

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