

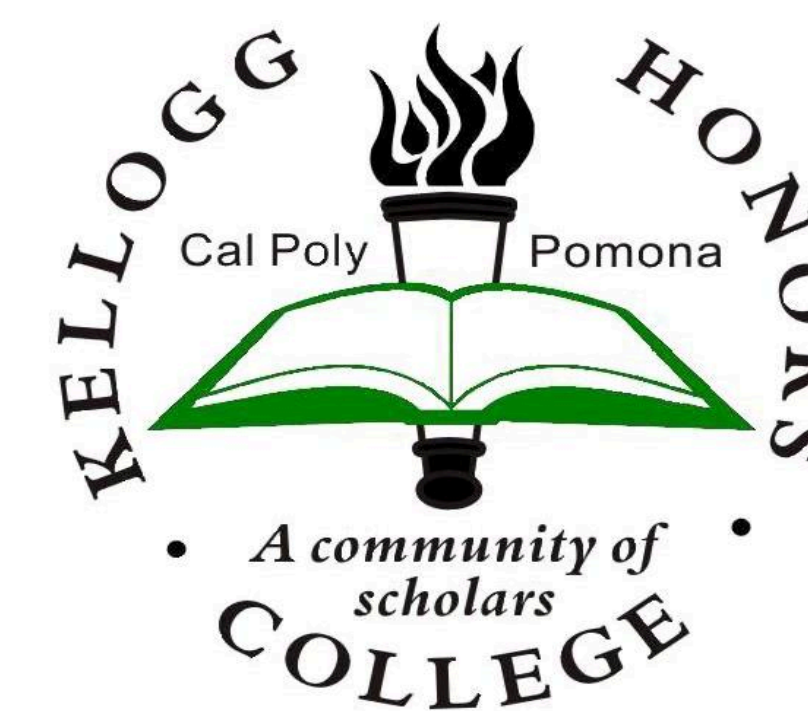
# Locke's Theory of Intellectual Property: How Our Laws Are Unjustified



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Kellogg Honors College Capstone Project



## Basics of Locke's Theory

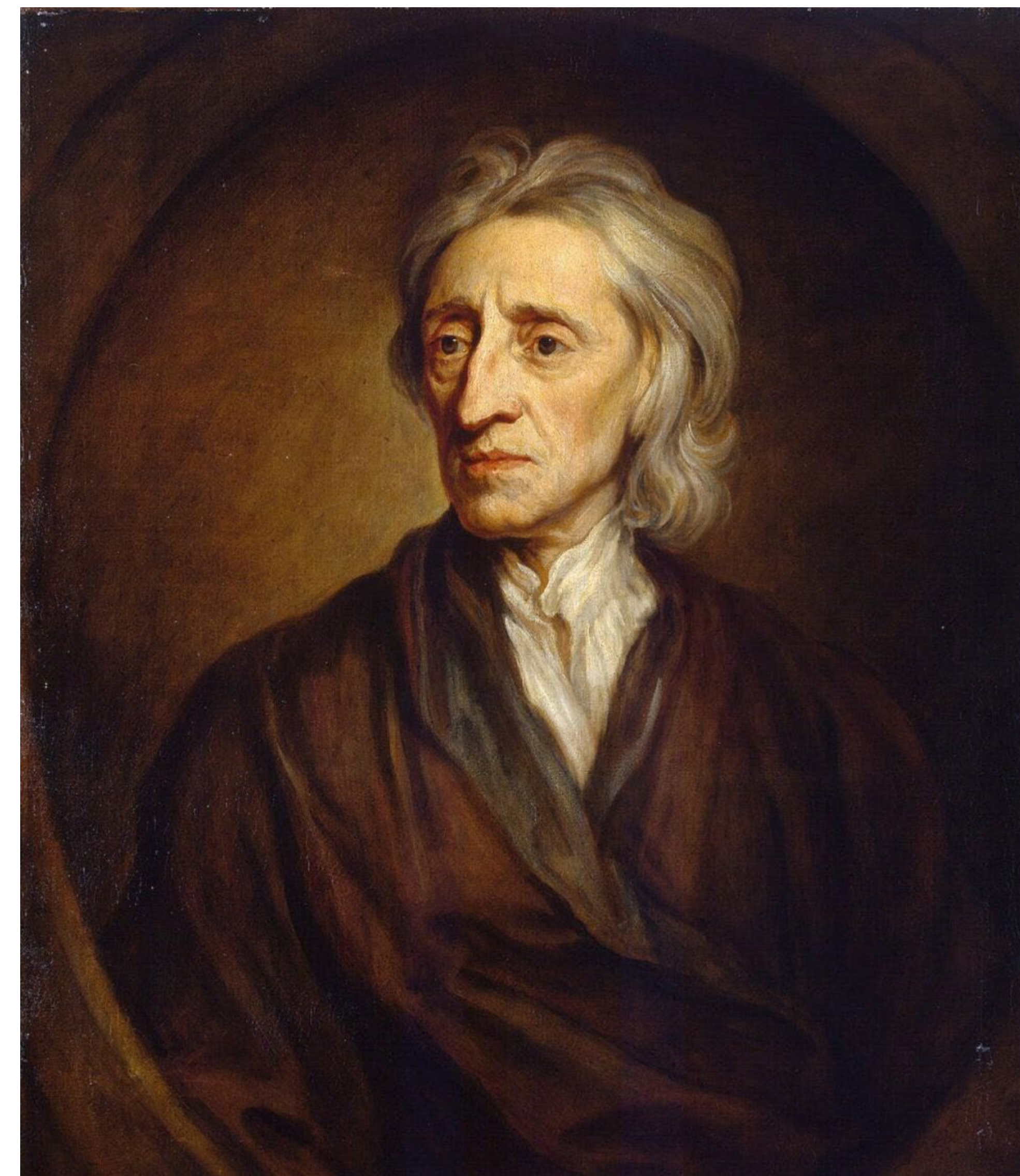
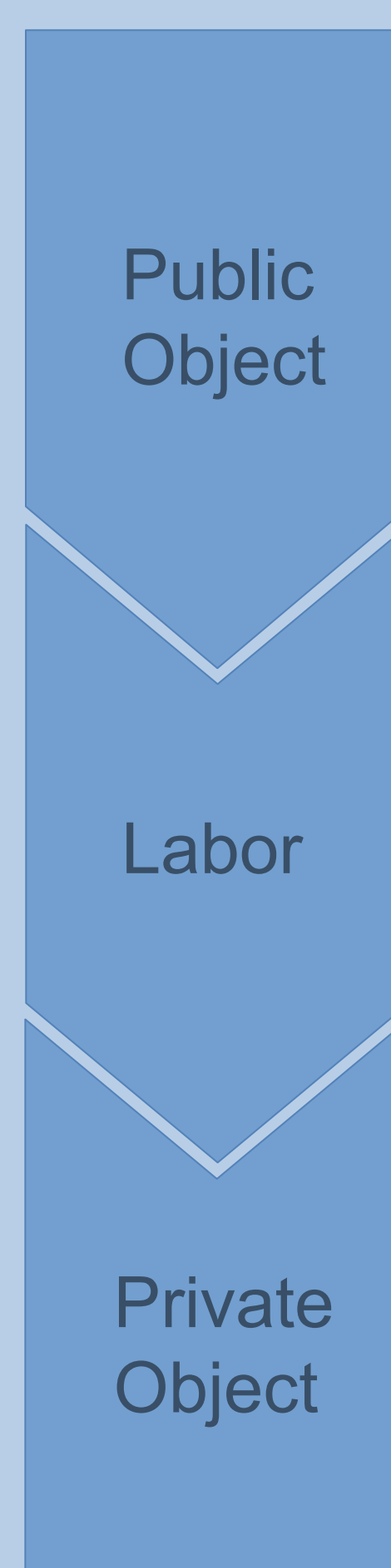
In Locke's Second Treatise, private property initially begins as public property in the commons. The commons is everything that God has gifted to humans in order for them to make use of it for support and comfort (§26). People in the commons only owned two things: themselves and their labor (§27). Everything else was open for everyone to use. When a person mixes her labor with an object in the commons, however, that mixing of owned and unowned means that what was previously in the commons is now out of the commons and is only owned by a single person (§30). In other words, the combination of private labor and a common object results in a private object. There are two limitations to this: the Good and Enough Provision and the Waste Provision

### Good and Enough Provision

The first limitation is the Enough and as Good provision which states that laborers have to leave as enough property in the commons and it has to be just as good because when this is followed, it effectively means that nothing is removed at all (§33). To illustrate, Locke gives the example of a person upstream taking a drink from a river leaving enough and as good water left for people to take a drink downstream. Because the person upstream followed this provision, people downstream are not injured.

### Waste Provision

The second limitation is the Waste provision which states that laborers lose their rights to property if that property is going to be wasted (§30). God gave the commons to be used, and when a laborer wastes part of it, punishment is deserved because she invaded other people's right to it (§37). Locke writes that a person who wastes "invade[s] his neighbor's share, for he ha[s] no right, farther than his use called for..." (§37, emphasis in original). Locke gives the example of a laborer losing her rights to food that she acquired because she was going to let the food expire. In that case, her rights to the food are forfeit so that anyone else may have the right to use in order to prevent wastage.



## Intellectual Property in Locke's Theory

The biggest considerations for applying Locke's theory to intellectual property are his two limitations.

### Waste Provision

Locke's definition of waste is not exactly clear, so the definition I'm using is that waste occurs when an object can no longer be useful. Given that intellectual property can always have a potential future use, this means that it can never be wasted.

### Good and Enough Provision

Intellectual property does not seem to violate Locke's Enough and as Good provision. The reason why is due to the fact that intellectual property is non-rivalrous—someone else's possession of an idea does not prohibit my own possession of the same idea. To illustrate the difference between something being rivalrous versus something being non-rivalrous, take the example of fishing. When a fisherman catches a fish, a different fisherman next to him cannot catch the same fish (assuming that it was not released back into the water.) That makes fishing a rivalrous activity. On the other hand, two people can simultaneously use the same technique for making pasta without causing any problems for the other person. This is because the technique itself is non-rivalrous and due to this nature, it can do nothing but satisfy this provision because it's still technically available for others to come up with and use.

## Assumptions Made

There are a couple of necessary assumptions in order to be charitable. I've assumed that intellectual property exists (i.e. rejected Nominalism), people can intellectually labor, and intellectual labor can mix with intellectual objects to become intellectual property. Without these assumptions, my thesis is obviously true.

## Purpose and Motivation

The purpose of this project is to apply Locke's original theory of private property to intellectual property. The motivation behind this is that Locke has been very influential of the United States (most evidently seen in the "life, liberty, and pursuit of happiness" in the Declaration of Independence.)

## Intellectual Property Laws

What are the laws?

### Copyright

Copyright deals with written and other artistic works. Copyright has a set expiration date that is generally the life plus 70 years

### Patents

Patents deal with inventions. Patents automatically expire after 20 years and prevent independent creation.

### Trademarks

Trademarks deal with logos and other company-identifying marks. There's no set expiration, but instead legal actions are required for future protections.

### Trade Secrets

Trade secrets deal with processes that at least partially rely on secrecy. There's no set expiration, but instead requires intentional protection.

## Application

How should our laws change?

### Copyright

The set expiration date should be removed.

### Patents

The set expiration date should be removed and the prevention of independent creation should also be removed.

### Trademarks

The requirement of having to protect your own trademark should be removed.

### Trade Secrets

The requirement of having to protect your own trade secret should be removed.