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# Who Should Own the North Pole?

*Walter E. Block\**

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## INTRODUCTION

While it would be nice to stand on top of the world in many walks of life, standing on top of the Earth is no picnic. The top of the world, the North Pole,<sup>1</sup> is a barren ice sea where temperatures are known to go into the double-digit minus figures, both Celsius and Fahrenheit. You would likely be alone, with a rare chance of meeting a very hungry polar bear. It does not sound like a desirable place to lay claim to, and indeed nobody has. Several countries, however, are aiming to put the North Pole and the Arctic Region under their national sovereignty for reasons of defense, shipping, and potential resource extraction. This would require ownership of the North Pole. The legal concept of ownership denotes who has the right to sell, use, or prevent others from occupancy of an area. In this article, the authors refer to the land, natural or artificial, and sea surrounding the North Pole and all the ice floes<sup>2</sup> found therein: specifically, the ownership rights to resources such as transportation corridors, oil, and fish. While people of a certain age around the world can agree that there is no Santa Claus or group

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\*\* I would also like to thank the editorial team for their trust and fine work and my co-author, who yet again took time to teach me yet another great deal of his wisdom.

1. How much territory does the North Pole itself occupy? Presumably, less than one square inch, if that much. For shorthand, when we mention ownership of this terrain, we mean the North Pole *territory*, which encompasses tens of thousands of square miles of land and sea.

2. "Floating ice formed in a large sheet on the surface of a body of water." *Floe*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/floe> (last updated Feb. 20, 2018), <https://perma.cc/C6AZ-DQRC>.

of elves possessing or occupying the North Pole, there is not an agreement on who should have ownership rights.

The commercial implications of Arctic ownership and the needed institutional arrangements is an ongoing and debated topic in transportation research,<sup>3</sup> which will have significant consequences for economic and political agents.<sup>4</sup> An analysis of the underlying policy assumptions driving the future institutional arrangement, so as to optimally derive those arrangements for commerce, peace, and the environment is missing from the literature.

This article applies Lockean principles to the ownership question.<sup>5</sup> The authors argue that the North Pole Region should be treated in the same manner as any other part of the surface of the Earth that has been dealt with successfully. As the economic development of the region ultimately depends on private market actors and their entrepreneurial choices,<sup>6</sup> it seems timely to take the argument to the full extent and argue for a market-based governance structure for the North Pole area.

The authors present this contribution in three ways. First, they ask policymakers and the public to question the assumptions behind the current Arctic policy. These assumptions have not been questioned, let alone answered. Second, the authors use the unique situation of a sudden expansion of human interest in the area to test the private governance theory, the theory that governance can be derived spontaneously from private individuals in market exchanges.<sup>7</sup> Finally, they argue that the Arctic Policy theatre should be elevated to a policy test center for future human habitation expansion, such as going into space.

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3. See N. R. Thomson & J. F. Sykes, *Route Selection Through a Dynamic Ice Field Using the Maximum Principle*, 22 *TRANSP. RES. PART B: METHODOLOGICAL* 339 (1988); Frederic Lasserre, *Case Studies of Shipping Along Arctic Routes. Analysis and Profitability Perspectives for the Container Sector*, 66 *TRANSP. RES. PART A: POL'Y AND PRAC.* 144 (2014).

4. See Saran Somanathan, Peter Flynn & Jozef Szymanski, *The Northwest Passage: A Simulation*, 43 *TRANSP. RES. PART A: POL'Y AND PRAC.* 127 (2009); Cariou Pierre & Fauray Olivier, *Relevance of the Northern Sea Route (NSR) for Bulk Shipping*, 78 *TRANSP. RES. PART A* 337 (2015).

5. "Lockean" refers, in broad terms, to the ideas of political philosopher John Locke (1632-1704). ANDREA OLIVE, LAND, STEWARDSHIP, AND LEGITIMACY 94 (2014).

6. See Taedong Lee & Hyun Jung Kim, *Barriers of Voyaging on the Northern Sea Route: A Perspective from Shipping Companies*, 62 *MARINE POL'Y* 264 (2015).

7. EDWARD STRINGHAM, PRIVATE GOVERNANCE: CREATING ORDER IN ECONOMIC AND SOCIAL LIFE (2015).

Part I of this article introduces the background for the sudden interest in the North Pole. Part II considers Lockean theories of water ownership. This presents seven questions about the current process in Part III. Building on these questions, three alternative models are outlined in Part IV. The conclusion offers further considerations as to why the answer to the question of Arctic governance might be relevant beyond the North Pole and the current time in history.

## I. BACKGROUND

An understanding of what constitutes the Arctic Region, and the relevance of contesting private ownership and nation state claims is necessary for further discussion of the issue of North Pole ownership.

### *A. What is the Arctic Region?*

The Arctic Region sits at the top of the globe and is mainly covered in ice.<sup>8</sup> Ice coverage has declined in recent years; hence, the region has become more economically attractive to shipping companies and companies extracting natural resources, particularly in summer months.<sup>9</sup> The region consists of a mix of high seas, territorial seas, Exclusive Economic Zones (which lie within 200 nautical miles from the coast of a nation-state), internal waters, and land.<sup>10</sup> The ownership controversy concerns mainly the North Pole and the geographical area surrounding it. While the North Pole and the Arctic are used as synonyms in the vernacular, some precision can be beneficial. The North Pole itself is the northernmost point of the Earth and the place where the rotation of the planet meets the surface. The Arctic Region is the area of the Earth found North of the Arctic Circle (66° 33'N).

### *B. What is the Relevance of Private Arctic Ownership?*

For most of human history, the North Pole has been a barren, frozen wasteland. Whatever resources might be there were not utilized by humans

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8. It is covered in Arctic sea ice. *Quick Facts on Arctic Sea Ice*, NATIONAL SNOW & ICE DATA CENTER, <https://perma.cc/3N3W-X5L6> (last visited Mar. 5, 2018).

9. Nathanael Melia, Keith Haines & Ed Hawkins, *Sea Ice Decline and 21st Century Trans-Arctic Shipping Routes*, 43 GEOPHYSICAL RES. LETTERS 9720, 9726-27 (2016).

10. Eleonora Milazzo, *Prospects of Arctic Governance: Critical Analysis of Current Trends and Future Scenarios 20 (2014-2015)* (unpublished thesis, LUISS Guido Carli), <https://perma.cc/AS3R-2FGK>.

as the process of attaining them was too costly.<sup>11</sup> The ice coverage made shipping in the area very dangerous, if not impossible.<sup>12</sup> As technology expands human capabilities, however, and with the ice letting go of its deadly hold on the region,<sup>13</sup> the possibility of access to valuable resources such as competitive shipping routes, natural resources, and fishing looms.<sup>14</sup> Incentives matter, and this is particularly true when the stakes are high, as they are here. For instance, finding alternative shipping routes can have large economic potential but also open up new national defense policies. Alternative sources of rare minerals also hold similar potential.

There are only two alternatives to private ownership: non-ownership and property held by government.<sup>15</sup> The first alternative is subject to the tragedy of the commons.<sup>16</sup> Such a tragedy resulting from a lack of responsibility and accountability would lead to unsustainable use patterns and likely deteriorate the area permanently as a result. The second constitutes socialism. This form of economic organization is earmarked by government ownership of the means of production.<sup>17</sup> As the examples of North Korea, the U.S.S.R., Venezuela, and Cuba eloquently attest, this is a dead end, and not only economically speaking.<sup>18</sup> As the 20<sup>th</sup> century

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11. *Arctic Oil and Natural Gas Resources*, U.S. ENERGY INFO. ADMIN. (Jan. 20, 2012), <https://perma.cc/R4VY-VFNP>.

12. *See id.*

13. For the claim that the polar ice is melting, *see Sea Ice Tracking Low in Both Hemispheres*, NATIONAL SNOW AND ICE DATA CENTER (Feb. 6, 2018), <https://perma.cc/55Q7-7URC>.

14. Amy Harris, *Natural Resources in Northern Polar Regions*, SCIENCING (Apr. 25, 2017), <https://perma.cc/NW6V-GDS5>.

15. *Ownership Structures*, THE FOUR LENSES STRATEGIC FRAMEWORK, <https://perma.cc/22UB-FZ7E> (last visited Mar. 5, 2018).

16. *See* Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243 (1968). The theory describes a situation where each individual, independently pursuing his own self-interest in a common shared resource pool, acts contrary to the common welfare of long-term resource pool preservation since no ownership means no accountability.

17. Free-forming prices coordinate the most optimal use of resources and their relative worth. With central planning, this mechanism is obstructed, which results in inefficient resource use, ultimate chaos, and end of production of even highly demanded resources. *See* LUDWIG VON MISES, *ECONOMIC CALCULATION IN THE SOCIALIST COMMONWEALTH* (1920).

18. Socialist economies among capitalist economies can survive longer than normal by using the price signals from the surrounding free markets, but ultimately, the end result is the same with the varying factors being speed, national resource configuration, and policy choices. *See* MURRAY N. ROTHBARD, *MAN, ECONOMY, AND STATE WITH POWER AND MARKET* (1962).

economist Mises has amply demonstrated, when socialist central planning removes markets for resources, there is no way to know and compare the value of alternatives.<sup>19</sup> Without free-forming prices reflecting wants and availabilities, there is no rational economic planning possible.<sup>20</sup>

### C. What are the Current State-Based Ownership Claims?

Currently, the North Pole and large areas of the Arctic area are not socialist or a private property economy. The Arctic is non-owned, which creates the tragedy of the commons situation. In more detail, most of the Arctic is currently categorized as the high seas and, as such, is not owned by any country, individual, or corporation.<sup>21</sup> It is governed by international law. Specifically, the United Nations Convention on the Law of the Sea (UNCLOS) governs, though it requires ratification by the individual U.N. member states to be in effect.<sup>22</sup> The area in question is considered a “heritage of all mankind,”<sup>23</sup> and under UNCLOS, resource extraction would be administrated by a U.N. Agency: the International Seabed Authority.<sup>24</sup> The concept of “heritage of mankind” is used by the U.N. for areas that should be protected from exploitation by current generations, be they in the form of nation states, corporations or individuals, for the benefit of future generations. However, as Hardin points out, the legal nicety does not solve the issue of the tragedy of the commons when some human agents decide it is desirable to exploit the “hereditary” areas. The problem is that while the concept of common human heritage argues a form of philosophically shared ownership, it does not uphold any governance and is, in fact, non-ownership by another name.

In addition to the de facto non-ownership of the U.N. concept of assigning heritage, and by extension, philosophical ownership, to all of mankind, UNCLOS also provides U.N. member nation-states an option to, within ten years of UNCLOS ratification,<sup>25</sup> make claims to the extended northern

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19. MISES, *supra* note 17.

20. As Hayek demonstrated, freely fluctuating market prices are information conveyers. Without them, we have informational arteriosclerosis. See F. A. Hayek, *The Use of Knowledge in Society*, 35 AM. ECON. REV. 519 (1945).

21. Convention of the High Seas, Apr. 29, 1958, 13 U.S.T. 2312, 450 U.N.T.S. 11.

22. United Nations Convention on the Law of the Sea art. 308, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS]. It is currently ratified by 168 parties and signed, but not ratified, by another 14.

23. *Id.* art. 136.

24. *Id.* art. 156.

25. Table 1. *Submissions, Through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, Pursuant to Article 76, Paragraph 8, of the United Nations Convention on the Law of the Sea of*

continental shelf.<sup>26</sup> These claims must be presented to the U.N. Commission on the Limits of the Continental Shelf.<sup>27</sup> The claims are required to be empirically evident from geographical evidence relating to the seabed and resources underneath it.<sup>28</sup> The Commission subsequently judges the scientific significance of the evidence, but it allows the nation-states to ultimately settle the issues of ownership and jurisdiction, including solving conflicting claims.<sup>29</sup> The U.N. Commission does not address the question of artificially expanding jurisdiction via seasteading technologies (permanently establishing dwellings outside sea territory currently claimed by a government), but this article assumes this expansion to be an option if the seabed claim is accepted. There are four likely claimants under these provisions: Canada, Denmark, Norway, and the Russian Federation. The U.S. would also be a likely claimant if it were to ratify the UNCLOS.<sup>30</sup>

#### Nation-state claimant of North Pole Ownership

Likely Claimants	Ratifying Nations and Dates	Resulting Claim Deadline	Claim Submitted
Canada	Canada, 7 November 2003	2013 (included)	Not submitted. Rumored to submit in 2018.
Denmark	Denmark, 16 November 2004	2014 (included)	14 December 2014.
Norway	Norway, 24 June 1996	2006 (included)	November 27, 2006.
Russia	Russia, 12 March 1997	2007 (included)	On December 20, 2001 2002: UN requested further research August 2015: Further data submitted February 2016: Further data submitted August 2016: UN started to work on new data submitted.
U.S.	N/A	N/A	N/A

10 December 1982, OCEANS & LAW OF THE SEA, <https://perma.cc/5FCH-8K56> (last updated Oct. 26, 2017) [hereinafter *Submissions*].

26. UNCLOS, *supra* note 22, Annex II, art. 4.

27. *Id.*

28. *Id.*

29. *Id.* art. 3.

30. Keith Johnson, *GOP Scuttles Law-of-Sea Treaty*, WALL STREET J., July 16, 2012, <https://blogs.wsj.com/washwire/2012/07/16/gop-opposition-scuttles-law-of-sea-treaty/>.

### 1. Canada

Despite the requirement to stake a claim by 2013, Canada has yet to officially file.<sup>31</sup> According to national Canadian press sources, Canada plans to do so in 2018.<sup>32</sup> Canada has been very verbal regarding her intent to defend what Canadians view as Canadian lands, especially by investing in military presence and competencies in the North Pole area.<sup>33</sup> For instance, following the Russian flag planting in August 2007, the former Canadian Prime Minister Stephen Harper went on a three day Arctic trip, and Canada completed military sovereignty exercises<sup>34</sup> in the area involving warships, submarines, fighter jets, and hundreds of infantry.<sup>35</sup> Furthermore, the Canadian government has committed to installing a military training base and a deep-water port in Resolute Bay, which is close to the North Pole.<sup>36</sup>

### 2. Denmark

The Danish claim is via the country of Greenland, which is part of the Kingdom of Denmark.<sup>37</sup> Greenland has the nearest coastline to the North Pole, and the Danish Government claims Greenland is connected underwater to the Lomonosov Ridge.<sup>38</sup>

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31. *Submissions, supra* note 25; see also Levon Sevunts, *Canada to Submit its Arctic Continental Shelf Claim in 2018*, RADIO CANADA INTERNATIONAL (May 3, 2016), <https://perma.cc/BM9T-NV2S>.

32. Sevunts, *supra* note 31.

33. Associated Press in Toronto, *Canada to Claim North Pole as its Own*, THE GUARDIAN (Dec. 9, 2013, 9:50 PM), <https://perma.cc/Z33Z-E7BL>.

34. Sovereignty exercises are large-scale military exercises that serve both to train military personnel and show willingness to use force.

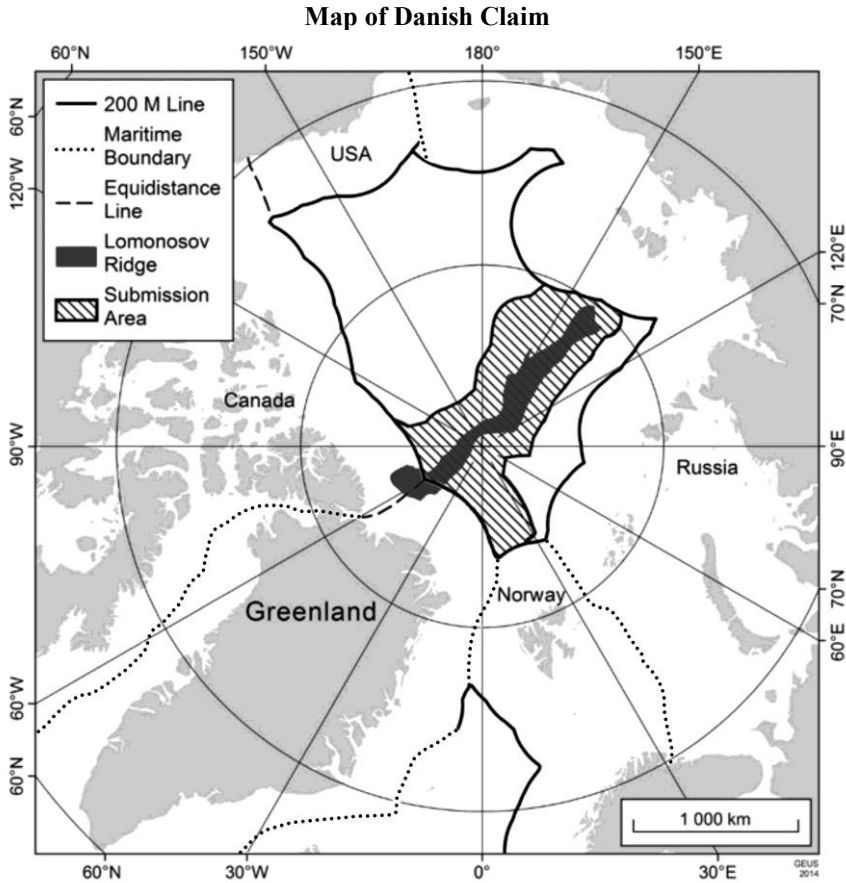
35. Daina Lawrence & Daniel Dombey, *Canada Joins Rush to Claim the Arctic*, FIN. TIMES, Aug. 8, 2007, <https://perma.cc/R64J-6VL7>.

36. David Pugliese, *Canadian Forces to Expand Nunavut Training Centre as Russia Plans More Bases in the Arctic*, NATIONAL POST (Feb. 23, 2016, 2:35 PM), <http://nationalpost.com/news/canada/canadian-forces-to-expand-nunavut-training-centre-as-russias-plans-more-bases-in-the-arctic>.

37. GEOLOGICAL SURVEY OF DENMARK AND GREENLAND, THE NORTHERN CONTINENTAL SHELF OF GREENLAND (Nov. 2014), <https://perma.cc/HXE9-63WL>.

38. *Id.* at 12; *Denmark Challenges Russia and Canada Over North Pole*, BBC (Dec. 15, 2014), <https://perma.cc/KE7U-KSPF>. Figure 1. MINISTRY OF FOREIGN AFFAIRS OF DENMARK, <http://um.dk/en/> (last visited Mar. 6, 2018).





Denmark carried out extensive geographical research to back its claim. The claim consists of an area of 895,000 square kilometers extending from Greenland and past the North Pole to the limits of the Russian Exclusive Economic Zone.<sup>39</sup> Denmark further stated that despite ratifying the UNCLOS, it will maintain the claim, believing the matter settled by former conventions, mainly the Copenhagen Treaty of 1857.<sup>40</sup> Denmark and Canada already have an ongoing dispute about the ownership of the small

39. See MINISTRY OF FOREIGN AFFAIRS OF DENMARK, KINGDOM OF DENMARK: STRATEGY OF THE ARCTIC 2011-2020 (Aug. 2011), <https://perma.cc/2M4Y-WPYV>.

40. *Denmark Makes New Claim for Arctic Seafloor*, THE ARCTIC JOURNAL (Nov. 28, 2013), <https://perma.cc/C25A-Y329>.

and barren Hans Island, as it is right on the border of the territory of Canada and the Danish Commonwealth.<sup>41</sup>

### 3. Norway

The Norwegian claim was submitted and related to three areas: the Barents Sea “Loop Hole,” the Western Nansen Basin in the Arctic Ocean, and the Norwegian Sea “Banana Hole.” Norway reserved a right to claim more land at a later date, but the legal validity of this claim is uncertain. Norway also ratified an agreement relating to the Barents Sea, which it contested with Russia for forty years. However, both Canada and Denmark contested the Norwegian-Russian agreement.<sup>42</sup>

### 4. Russia

In 2001, Russia submitted its first claim,<sup>43</sup> which was neither accepted nor rejected but recommended for more research by the U.N. Russia invested heavily in proving its claim, including planting a Russian flag on the seabed in 2007. Further, President Putin made clear statements as to the importance and value of the claim to Russia, including militarily. In both 2015 and 2016, Russia submitted additional scientific (mainly geological) data,<sup>44</sup> but the Commission has not yet provided an official answer.

### 5. United States of America

The strategy of the U.S. is a special case and differs from the other four approaches. It is the only likely contestant that did not ratify UNCLOS and, therefore, has not officially entered the game of North Pole ownership. It seems likely that the U.S. will eventually stake a claim. In

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41. The island is very small (1.3 km<sup>2</sup>, 1,290 m long, and 1,199 m wide). It is located in the center of the Kennedy Channel of Nares Strait, which separates northern Greenland and the Canadian Ellesmere Island. The dispute has been ongoing since the early 1980s. See Jeremy Bender, *2 Countries Have Been Fighting Over an Uninhabited Island by Leaving Each Other Bottles of Alcohol for Over 3 Decades*, BUSINESS INSIDER (Jan. 10, 2016, 10:30 AM), <https://perma.cc/99EP-R2MB>.

42. See Luke Harding, *Russia and Norway Resolve Arctic Border Dispute*, THE GUARDIAN (Sept. 15, 2010, 12:25 PM), <https://perma.cc/C7FS-QQED>.

43. *Submissions*, *supra* note 25.

44. *Id.* To the best of the authors' knowledge, no strategy paper has been published by Russia in English.

May 2013, under President Obama, it initiated research into the area and developed a national strategy for the area.<sup>45</sup> The strategy is to secure U.S. security interests in and from the region, protect the environment, and provide economic possibilities for U.S. companies.

### 6. *Non-Arctic States*

The rest of the world's nation-states are not idle. Whether they are concerned about the potential economic value, possible adverse environmental effects, or peace, other countries are showing interest in the issue. This is evidenced by the increasing number of countries seeking "permanent observer" status in the Arctic Council. China, France, Germany, Japan, the Netherlands, Poland, South Korea, Italy, India, Singapore, Spain, Switzerland, and the United Kingdom, as well as thirteen IGOs and thirteen NGOs now have this status.<sup>46</sup>

Respect among the competitors in the current U.N. process for settling ownership claims is limited at best, and several countries do not adhere to deadlines or decisions. Furthermore, there is a great willingness to bring military action into play, even at this early stage, which is worrisome. The difficulty with the current claims is that they are predicated mainly on contiguity.<sup>47</sup> It is, however, not questioned why geographical proximity should matter to the issue of ownership at all. It does not apply to Antarctica, and no comparable criterion is utilized on that continent, either by the U.N. or any other organization or person. In Antarctica, geographical closeness plays no role whatsoever in terms of territorial claims. There should not be a different standard applied in determining ownership of the North Pole.

Consider an analogy to the moon and Mars. Suppose Earthlings are in a dispute with the Jupiterians for the ownership of Mars. As it happens, the third planet from the Sun is closer, in mileage, to the fourth than is the

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45. See PRESIDENT OF THE U.S., NATIONAL STRATEGY FOR THE ARCTIC REGION (May 2013), <https://perma.cc/VQ9E-NERY>; see DEP'T OF DEF., REPORT TO CONGRESS ON STRATEGY TO PROTECT UNITED STATES NATIONAL SECURITY INTERESTS IN THE ARCTIC REGION (Dec. 2016), <https://perma.cc/3LJM-33UN>.

46. *Observers*, ARCTIC COUNCIL (Jan. 17, 2018), <https://perma.cc/Y33A-FSP6>.

47. If mere approximation to the North Pole is the defining characteristic of a legitimate claim to these territories, what about Sweden and Finland? They are located in the neighborhood, too. True, they are cut off from a direct connection (Norway is situated in such a way as to block this off), but it cannot be denied that they are northern countries. But if this is the criteria to be employed, why exclude the United Kingdom, Iceland, and Japan? They, too, have direct access, via the sea, to these territories under dispute.

fifth. Would any rational person<sup>48</sup> regard this as definitive? Hardly. Surely a more rational mode<sup>49</sup> of dividing up the Red Planet would be on the basis of which species arrived there first and started to homestead the terrain. Consider, in this regard, the ownership of the land that now forms the continental United States. European countries first colonized it,<sup>50</sup> but if the UNCLOS criteria were employed, the Mexicans and Canadians would have had far superior claims since they were located right next door. The North Pole area should not be unique to all of history in this regard.<sup>51</sup>

## II. OCEAN GOVERNANCE AND WATER CAPITALISM

The world's oceans suffer from a deficit of governance resulting in a tragedy of the commons.<sup>52</sup> Both under- and over-fishing, piracy, pollution, and similar activities are taking place.<sup>53</sup> Lockean ideas derive from the starting point that governance comes in two forms: coercive and contractual. Under coercive governance, a third-party, typically a government, dictates the rules and sanctions. Contractual governance is locally entered into by the concerned parties. The former is state-based while the latter is private.<sup>54</sup> When no previous governance, ownership, or property right is established, it falls initially to the first person to mix their labor with the resource in question, in this case, land or water areas. Therefore, the person who exerted labor into the resources would only acquire a property right to the portion of resources his labor was applied to. Due to the nature of maritime activity, including its international nature and physical distance from national jurisdiction, there exists a long tradition of private governance in maritime activity.<sup>55</sup>

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48. Or Jupitarian or Martian.

49. E.g., Lockean.

50. We ignore, *arguendo*, that there were people already living there at the time. See Adam Creppelle & Walter E. Block, *Property Rights and Freedom: The Keys to Improving Life in Indian Country*, 23 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 315 (2017) (proposition that Europeans were not the first inhabitants).

51. Analogies along these lines could also be constructed for the settlement of South America and Asia, and, indeed, everywhere else on Earth.

52. See Hardin, *supra* note 16.

53. See generally WALTER E. BLOCK & PETER J. NELSON, *WATER CAPITALISM: THE CASE FOR PRIVATIZING OCEANS, RIVERS, LAKES, AND AQUIFERS* (2015).

54. See Edward Peter Stringham, *The Importance of Voluntary Governance*, CATO UNBOUND (Oct. 19, 2015), <https://perma.cc/XRU6-G8A4>.

55. See generally Franco Furger, *Accountability and Systems of Self-Governance: The Case of the Maritime Industry*, 19 U. DENVER L. & POL'Y 445 (1997).

The full answer as to why oceans suffer from a governance deficit is complex and beyond the scope of this paper. Part of the explanation is historical and part is due to cost.<sup>56</sup> When dealing with global matters, such as sea laws, nation-states are typically not involved due to the lack of sovereignty outside their borders.<sup>57</sup> Those that attempt to offer solutions often do so very inefficiently.<sup>58</sup> They negatively impact agents by constraining contractual possibilities or negotiation outcomes. Policing the sea by one nation-state would be very costly and inefficient for people who suffered grievances. It would also impose large costs with subsequent welfare losses.<sup>59</sup> The constant warfare nations provoke is an example of this. Another case in point is that nations impose sanctions upon one another and interfere with international trade in other ways like increasing the cost of doing business for foreign companies or giving special consideration to national companies.<sup>60</sup>

In sharp contrast, it is fruitful to look at private counterparts, which also function on a global basis. The economist Stringham, for instance, argues that the real competitive advantage of the global auction site eBay, with their mutual rating system, is a superior market chosen by the private governance system.<sup>61</sup> In terms of efficiency and cost, this outstrips all statist institutions.<sup>62</sup> Just like the Internet, maritime activity is often global,

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56. R. H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960) makes great use of the concept of transactions costs, and this is highly relevant to the present case.

57. ELIAS G. CARAYANNIS, ALI PIRZADEH & DENISA POPESCU, *INSTITUTIONAL LEARNING AND KNOWLEDGE TRANSFER ACROSS EPISTEMIC COMMUNITIES* (2012).

58. For a classic analysis of the negative welfare effects of war, see FREDERIC BASTIAT, *WHAT IS SEEN AND WHAT IS NOT SEEN* (1848), *reprinted in* *SELECTED ESSAYS ON POLITICAL ECONOMY* (George B. de Huszar ed., Seymour Cain trans., 1995).

59. Kyriaki Remoundou & Phoebe Koundouri, *Environmental Effects on Public Health: An Economic Perspective*, 6 INT'L J. ENVTL. RES. & PUB. HEALTH 2160, 2168-69 (2009).

60. Brent Radcliffe, *How Economic Sanctions Work*, INVESTOPEDIA (Aug. 18, 2016, 7:05 PM), <https://perma.cc/S6CA-ZHWX>. For data and readings, see *Doing Business Data*, THE WORLD BANK, <https://perma.cc/BEU6-9ZQA> (last visited Mar. 6, 2018).

61. Stringham, *supra* note 54.

62. For empirical evidence to buttress this claim, see Terry L. Anderson & Peter J. Hill, *Appropriable Rents from Yellowstone Park: A Case of Incomplete Contracting*, 34 ECON. INQUIRY 506 (1996); STEVE H. HANKE, *PROSPECTS FOR PRIVATIZATION* (1987); STEVE H. HANKE, *PRIVATIZATION AND DEVELOPMENT* (1988); ROGNVALDUR HANNESSON, *THE PRIVATIZATION OF THE OCEANS* (2006); Hans-Hermann Hoppe, *Of Private, Common, and Public Property and the*

and it therefore seems beneficial to consider alternatives to a nation-state based coercive governance. Maritime activity is similar in this respect to the private status of the World Wide Web, which private agents would not wish the government to take over, unless they could personally benefit arbitrarily from this policy, such as gaining certain economic interest in the recent net neutrality debate shows.

Private governance in Lockean theory has several components. These components are predicated upon natural right property rights and the non-aggression principle.<sup>63</sup> The non-aggression principle holds that aggression

*Rationale for Total Privatization*, 3 LIBERTARIAN PAPERS 1 (2011); Jonathan Karpoff, *Public versus Private Initiative in Arctic Exploration: The Effects of Incentives and Organizational Structure*, 109 J. POL. ECON. 38 (2001); William L. Megginson & Jeffrey M. Netter, *From State to Market: A Survey of Empirical Studies on Privatization*, 39 J. ECON. LITERATURE 321 (2001); Walter Block, *Homesteading City Streets; An Exercise in Managerial Theory*, 5 PLAN. & MARKETS 18 (2002); Amy Motichek, Walter Block & Jay Johnson, *Forget Ocean Front Property, We Want Ocean Real Estate!*, 11 ETHICS, PLACE & ENV'T 147 (2008); T. M. OHASHI, T. P. ROTH, Z. A. SPINDLER, M. L. MCMILLAN & K. H. NORRIE, PRIVATIZATION THEORY & PRACTICE: DISTRIBUTING SHARES IN PRIVATE AND PUBLIC ENTERPRISES (1980); E. S. SAVAS, PRIVATIZATION: THE KEY TO BETTER GOVERNMENT (1987); WALTER BLOCK, THE PRIVATIZATION OF ROADS AND HIGHWAYS (2009); E. BUTLER, THE MECHANICS OF PRIVATIZATION (1988); Laurent Carnis, *The Case for Road Privatization: A Defense by Restitution*, 13 JOURNAL DES ECONOMISTES ET DES ETUDES HUMAINES 95 (2003); Stephen Moore, *Privatizing the U.S. Postal Service in PRIVATIZATION* (Stephen Moore & Stuart Butler, eds., 1987); Dr. Madsen Pirie, *Privatization in Theory and Practice*, ADAM SMITH INSTITUTE (June 1, 1985), <https://www.adamsmith.org/research/privatization-in-theory-and-practice> [<https://perma.cc/87NZ-TCLA>]; PRIVATIZATION: TACTICS AND TECHNIQUES (Michael A. Walker, ed., 1988); Lawrence H. White, *Privatization of Municipally-Provided Services*, 2 J. LIBERTARIAN STUDIES 187 (1978). Why should this be the case, the world over? One reason is that when a private firm fails in the market place, it loses money and eventually tends to go bankrupt, leaving the assets to others who might be able to do better with them. In the public sector, this does not at all occur. If anything, a failing government enterprise, like the post office, garners still more tax funds.

63. See Walter Block, *Earning Happiness through Homesteading Unowned Land: A Comment on "Buying Misery with Federal Land" by Richard Stroup*, 15 J. SOC. POL. & ECON. STUD. 237 (1990); Block, *Homesteading City Streets; supra* note 62; Walter Block, *On Reparations to Blacks for Slavery*, 3 HUM. RTS. REV. 53 (2002); Walter Block & Michael Edelstein, *Popsicle Sticks and Homesteading Land for Nature Preserves*, 7 ROMANIAN ECON. & BUS. REV. 7 (2012); Walter Block & Guillermo Yeatts, *The Economics and Ethics of Land Reform: A Critique of the Pontifical Council for Justice and Peace's "Toward a Better Distribution of Land: The Challenge of Agrarian Reform,"* 15 J. NAT. RES. & ENTVL. L. 37 (1999-2000); Walter Block & Richard Epstein, *Debate on Eminent Domain*, 1

in all else but self-defense is wrong. If property rights are already assigned, say by a current established owner, the governance question becomes one of a contract and mutual negotiation. Specifying ownership of assets and rights is integral to this system.<sup>64</sup> Ownership does not need to be total. It can be limited to specific rights. For example, one may lay an oil pipe along the seabed without also owning all of the water above. Or a firm may have the right to fish in a certain quadrant of the sea but not to obtain oil from below or vice versa.<sup>65</sup>

The controversy concerning the North Pole, however, is not at the contractual level because it is not owned yet. For situations such as these,

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N.Y.U. J. L. & LIBERTY 1144 (2005); BLOCK & NELSON, *supra* note 53; Per Bylund, *Man and Matter: A Philosophical Inquiry into the Justification of Ownership in Land from the Basis of Self-Ownership* (2005) (unpublished M.S. thesis, Lund University); Per Bylund, *Man and Matter: How the Former Gains Ownership of the Latter*, 4 LIBERTARIAN PAPERS 73 (2012); HUGO GROTIUS, ON THE LAW OF WAR AND PEACE (1625); HANS-HERMANN HOPPE, THE ECONOMICS AND ETHICS OF PRIVATE PROPERTY (1993); Hoppe, *supra* note 62; Stephan N. Kinsella, *A Libertarian Theory of Contract: Title Transfer, Binding, Promises, and Inalienability*, 17 J. LIBERTARIAN STUD. 11 (2003); Stephan Kinsella, *How We Come to Own Ourselves*, MISES INSTITUTE (Sept. 7, 2006), <https://perma.cc/VX7V-BU3E>; Stephan Kinsella, *What Libertarianism Is*, MISES INSTITUTE (Aug. 21, 2009), <https://perma.cc/3MXL-DLJJ>; Stephan Kinsella, *Homesteading, Abandonment, and Unowned Land in the Civil Law*, MISES INSTITUTE (May 22, 2009), <https://perma.cc/S7AQ-JDAM>; JOHN LOCKE, AN ESSAY CONCERNING THE TRUE ORIGIN, EXTENT AND END OF CIVIL GOVERNMENT (1690), reprinted in SOCIAL CONTRACT (E. Barker ed., 1948); ELLEN FRANKEL PAUL, PROPERTY RIGHTS AND EMINENT DOMAIN (1987); SAMUEL PUFENDORF, OF THE LAW OF NATURE AND NATIONS (1672); MURRAY N. ROTHBARD, FOR A NEW LIBERTY: THE LIBERTARIAN MANIFESTO 32 (1973); Murray N. Rothbard, *Confiscation and the Homestead Principle*, PANARCHY, <https://perma.cc/882D-X63F> (last visited Apr. 4, 2018); Michael S. Rozeff, *Original Appropriation and Its Critics*, LEW ROCKWELL (Sept. 1, 2005), <https://perma.cc/98SP-QM5G>; Carl Watner, *The Proprietary Theory of Justice in the Libertarian Tradition*, 6 J. LIBERTARIAN STUD. 289 (1982).

64. Oliver E. Williamson, *Asset Specificity and Economic Organization*, 3 INT'L J. INDUS. ORG. 365 (1985).

65. What about the right to interfere with the view from the beach with offshore wind parks? Or to build a "spite fence" blocking a neighbor's view of a mountain? Motichek, Block & Johnson, *supra* note 62 takes the position that this is an exception to that general rule, in that one cannot own the view of anything, on the ground of overdetermined and thus, conflicting property rights. For example, if people may own the views of others, they can legally object to their haircuts, choice of clothing, etc., which is a *reductio ad absurdum*.

the Lockean theory would evoke the homesteading principle,<sup>66</sup> which assigns ownership to capital and labor investments. Property rights are rewarded to those who infuse previously un-owned resources with value. In plain terms, if a person labored on North Pole terrain, it would lead to ownership of those parts with which one's labor is mixed. This does not mean that the first to drill for oil owns all oil deposits, but he or she would own that specific one.<sup>67</sup> Likewise, while representatives of the Russian state certainly have mixed their labor with part of the North Pole by planting a flag on the seabed, that does not give Russia ownership rights to all of the northern territory but only to that precise point or, more practically, a small area around it.<sup>68</sup>

### III. LOCKEAN QUESTIONS TO THE CURRENT OWNERSHIP PROCESS

In this part, seven core questions to the process of determining ownership of the North Pole are discussed. The questions are based in Lockean theory.

#### *A. Why Should a Nation-State Own the North Pole?*

It will undoubtedly seem natural to many people that vast areas of the Earth are owned, controlled, and governed by nation-states; however, that is neither theoretically nor empirically absolute. A theoretical justification for the nation-state institution is not forthcoming. One possible counter-argument to that proposition is that the governments of the various countries were formed through a voluntary process, which violated no one's rights. This is a difficult contention. Consider, for example, the United States. Only nine of the thirteen colonies initially agreed to its formation. The rights of the four dissenters were abrogated. Also, there was nothing like a unanimous vote in any of those nine colonies; "consent" took place only on the basis of majority vote.<sup>69</sup> Not everyone who took part agreed to honor the results of these plebiscites. Thus, minority rights

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66. JOHN LOCKE, *TWO TREATISES* (1689); Walter Block & Matthew Block, *Roads, Bridges, Sunlight, and Private Property Rights*, 7 J. DES ECONOMISTES ET DES ETUDES HUMAINES 351 (1996); MURRAY ROTHBARD, *THE LOGIC OF ACTION* (1997).

67. There is always a continuum problem in such matters. Where, precisely, does our oil deposit end and yours begin? For an analysis of this challenge, see Walter E. Block & William Barnett, *Continuums*, 10 ETHICS & POL. 151 (2008).

68. For a discussion of how much (well, little) territory the planting of a flag generates in the Lockean perspective, see *supra* note 63.

69. LOCKE, *supra* note 66, at 208.



were trampled upon. The obvious rejoinder to this criticism is that if the losers of these votes did not like the results, they were free to leave. But why should they be forced to give up the property they honestly came by, through homesteading and/or purchase from the initial rightful owners?<sup>70</sup> If they did not want to be ruled by the U.S. government, could they not secede from it, much in the manner that the country itself separated from Great Britain in 1776—only without bloodshed? The events in 1861 seem to settle that issue.<sup>71</sup>

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70. This is also a circular argument. It assumes true the very issue under dispute: that the majority had a right to set up a government in the first place that would rule over dissenters.

71. For the anarchist case against government on theoretical grounds, see Anthony Gregory, *Abolish the Police*, LEW ROCKWELL (May 26, 2011), <https://perma.cc/64DW-AVXX>; Gil Guillory & Patrick Tinsley, *The Role of Subscription-Based Patrol and Restitution in the Future of Liberty*, 1 LIBERTARIAN PAPERS 1 (2009); Hoppe, *supra* note 62; JACOB HUEBERT, LIBERTARIANISM TODAY (2010); Robert P. Murphy, *But Wouldn't Warlords Take Over?*, MISES INSTITUTE (July 7, 2005), <https://perma.cc/PZZ6-UXZN>; Murray N. Rothbard, *Society Without a State*, 7 LIBERTARIAN F. 3 (1975); MURRAY N. ROTHBARD, THE ETHICS OF LIBERTY (1982); EDWARD STRINGHAM, ANARCHY AND THE LAW: THE POLITICAL ECONOMY OF CHOICE (2007); MORRIS TANNEHILL & LINDA TANNEHILL, THE MARKET FOR LIBERTY (1970); Patrick Tinsley, *With Liberty and Justice for All: A Case for Private Police*, 14 J. LIBERTARIAN STUD. 95 (1999); Jakub Bożydar Wiśniewski, *Defense as a Private Good in a Competitive Order*, 1 REV. SOC. & ECON. ISSUES 2 (2014); JARRET B. WOLLSTEIN, SOCIETY WITHOUT COERCION: A NEW CONCEPT OF SOCIAL ORGANIZATION (1969); WILLIAM C. WOOLRIDGE, UNCLE SAM AND THE MONOPOLY MAN (1970). See also Terry Anderson & P.J. Hill, *An American Experiment in Anarcho-Capitalism: The Not So Wild, Wild West*, 3 J. LIBERTARIAN STUD. 9 (1979); Bruce L. Benson, *Enforcement of Private Property Rights in Primitive Societies: Law Without Government*, 9 J. LIBERTARIAN STUD. 1 (1989); Bruce L. Benson, *Customary Law with Private Means of Resolving Disputes and Dispensing Justice: A Description of a Modern System of Law and Order Without State Coercion*, 9 J. LIBERTARIAN STUD. 25 (1990); Walter Block, *Anarchism and Minarchism; No Rapprochement Possible: Reply to Tibor Machan*, 21 J. LIBERTARIAN STUD. 91 (2007); Walter Block & Michael Fleischer, *How Would Child Abuse be Handled in an Anarchist Society?*, LEW ROCKWELL (Oct. 13, 2010), <https://perma.cc/V466-3TST>; Walter E. Block, *Governmental Inevitability: Reply to Holcombe*, 22 J. LIBERTARIAN STUD. 667 (2011); Doug Casey, *Doug Casey on Anarchy*, CASEY RESEARCH (Mar. 31, 2010); Thomas J. DiLorenzo, *The Culture of Violence in the American West: Myth Versus Reality*, 15 INDEP. REV. 227 (2010); John Hasnas, *The Myth of the Rule of Law*, 1995 WIS. L. REV. 199 (1995); David J. Heinrich, *Justice for All Without the State*, LIBERTARIAN STANDARD (May 6, 2010), <https://perma.cc/Q2AS-979F>; Robert

Now consider the latter perspective. The empirical case against this institution is that it murders many millions of people. The best estimates are that in the last century, all governments did away with some 200 million people by way of famine, poorly designed health policies, and pollution from poorly defined and protected property rights.<sup>72</sup> This is

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Higgs, *Why We Couldn't Abolish Slavery Then and Can't Abolish Government Now*, LEW ROCKWELL (Aug. 20, 2009), <https://perma.cc/CMR8-UPP3>; Robert Higgs, *Why be a Libertarian Anarchist?*, LEW ROCKWELL (Jan. 16, 2012), <https://perma.cc/3278-XGLH>; Hans-Hermann Hoppe, *Reflections on the Origin and the Stability of the State*, LEW ROCKWELL (June 23, 2008), <https://perma.cc/T4VD-5FAY>; Seth King, *Interview with Walter Block*, DAILY ANARCHIST (Sept. 9, 2010); Roderick Long, *Libertarian Anarchism: Responses to Ten Objections*, LEW ROCKWELL (Aug. 19, 2004), <https://perma.cc/Q3PJ-QNVZ>; Michael McConkey, *Anarchy, Sovereignty, and the State of Exception: Schmitt's Challenge*, 17 INDEP. REV. 415 (2013); Stefan Molyneux, *The Stateless Society: An Examination of Alternatives*, LIBERTARIAN ENTERPRISE (Feb. 1, 2008), <https://perma.cc/RXL6-GNX6>; FRANZ OPPENHEIMER, *THE STATE: ITS HISTORY AND DEVELOPMENT VIEWED SOCIOLOGICALLY* (1926); V for Voluntary Library, *Ron Paul on the Inner Contradictions of Limited Government*, YOUTUBE (June 19, 2008), <https://perma.cc/9QWR-PTJR>; Llewellyn H. Rockwell, Jr., *What Would We Do Without the State?*, LEW ROCKWELL (Mar. 31, 2013); MURRAY N. ROTHBARD, *Do You Hate the State?*, in *THE COMPLETE LIBERTARIAN FORUM 1969-1984* 4029 (2010); LYSANDER SPOONER, *NO TREASON: THE CONSTITUTION OF NO AUTHORITY AND A LETTER TO THOMAS F. BAYARD* (1870); Stringham, *supra* note 54; Robert Wenzel, *Robert Ringer's Strawman Anarchist*, LEW ROCKWELL (Feb. 2, 2013), <https://perma.cc/DKS5-3BYS>; Mises Media, *Four Things the State is Not, Tom Woods*, YOUTUBE (July 26, 2014), <https://perma.cc/L5PV-CM7T>. In the view of ROTHBARD, *NEW LIBERTY*, *supra* note 63 (emphasis added):

For centuries, the State (or more strictly, individuals acting in their roles as “members of the government”) has cloaked its criminal activity in high-sounding rhetoric. For centuries the State has committed mass murder and called it “war”; then ennobled the mass slaughter that “war” involves. For centuries the State has enslaved people into its armed battalions and called it “conscription” in the “national service.” For centuries the State has robbed people at bayonet point and called it “taxation.” *In fact, if you wish to know how Lockeans regard the State and any of its acts, simply think of the State as a criminal band, and all of the Lockean attitudes will logically fall into place.*

72. Walter Block, *Deaths by Government: Another Missing Chapter*, LEW ROCKWELL (Nov. 27, 2006); Fred Branfman, *World's Most Evil and Lawless Institution? The Executive Branch of the U.S. Government*, ALTERNET (June 26, 2013); ROBERT CONQUEST, *THE HARVEST OF SORROW* (1986); ROBERT

strictly apart from the massive deaths emanating from the wars nation-states are continually fomenting against each other.<sup>73</sup>

National policy addresses problems by commanding them away, which rarely works well, or by superseding complexities, thereby creating other new problems.<sup>74</sup> There is little case, then, for giving this failed institution control over even more territory. Instead, there is a strong argument for precluding government from this region. Ocean water bodies, being far removed, are naturally subject to very few statist laws but potentially much private governance. Furthermore, there is a processual sub-question which touches both on the role of the U.N. and national governments staking ownership claims. It seems a mechanism is missing for the U.N. to grant ownership of a given area from us all (the supposed “heritage of mankind” stated in UNCLOS) to a small section of us (a few nations), which has not stopped the organization in attempting just that. It seems unclear from where the U.N. has a sudden right to give away what it has ratified is not the U.N.’s to give. If all of mankind owns the North Pole, why suddenly should it belong to only a fraction of the World population, be that Danish, Norwegian, Canadian, American, or Russian? The U.N. must serve all peoples of its member states, not the special nation-state interests of some of them.

### *B. Is Land Connection a Definable Base for Ownership?*

The current nation-state claims and the U.N. process are based on contiguity. That is not a justifiable reason for assigning ownership. By that logic, Africa should be one single nation belonging to Egypt, as it was the first nation on that continent.<sup>75</sup> People would reject such a theory of

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CONQUEST, THE GREAT TERROR (1990); STEPHANIE COURTOIS ET AL., THE BLACK BOOK OF COMMUNISM: CRIMES, TERROR, REPRESSION (Jonathan Murphy & Mark Kramer trans., 1999); Thomas DiLorenzo, *Death by Government: The Missing Chapter*, LEW ROCKWELL (Nov. 22, 2006); R. J. RUMMEL, DEMOCIDE: NAZI GENOCIDE AND MASS MURDER (1992); R. J. RUMMEL, DEATH BY GOVERNMENT (1994); R. J. RUMMEL, STATISTICS ON DEMOCIDE: GENOCIDE AND MASS MURDER (1997).

73. It also excludes automobile fatalities, which kill some 800,000 people globally per year, about a billion deaths per decade during the later 20th and early 21st centuries. For a demonstration that these losses, too, are to be laid at the feet of government, rather than to speeding, drunken driving, driver error, etc., see BLOCK, PRIVATIZATION OF ROADS, *supra* note 62.

74. BASTIAT, *supra* note 58.

75. IAN SHAW, THE OXFORD ILLUSTRATED HISTORY OF ANCIENT EGYPT (2004).

assignment with rightful ridicule both empirically and philosophically; African tribes each have histories, institutional setups, and cultures that distinguish them from others and make them unique.<sup>76</sup> But even if only a few people inhabit an area, hence its uniqueness is not well established, Lockean theory would not say that a bordering area could justly claim legal jurisdiction over it. If one labors and continues the labor into unclaimed land, that would be justifiable, but laboring in one field gives no right to the surrounding fields. History is ripe with examples of this: the Roman expansion into Germania or Scotland comes to mind as an early example.<sup>77</sup> It was a given, in the view of some, that the whole British Isle or all of Europe should belong to the greatest then-empire in Western civilization, but it would be difficult to reconcile this with the Lockean theory of property rights and non-aggression.<sup>78</sup> Indeed, the Romans failed to claim these lands, as they did not mix their labor with virtually any of the land.<sup>79</sup>

It is possible to find evidence contrary to the contiguity principle among the current North Pole contesting nations. Having already dealt extensively with the U.S., and to some extent Canada, let us now focus on Denmark, Norway, and Russia. Denmark is ethnically, culturally, and to an extent linguistically and religiously very similar to Germany. It is also connected to Germany via the Jutland peninsula. Yet the 1,000 years of Danish history can be summed up as asserting Denmark's place as a non-German independent state.<sup>80</sup> Norway only became independent in the year 1814, having spent most of its history under Danish or Swedish rule.<sup>81</sup> It is, however, not likely that a Norwegian national would take kindly to being called either Danish or Swedish. The precise extent of Russia is not determined by contiguity. Even the Soviet Union was—at least officially—a union of independent nation-states, not one country.<sup>82</sup>

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76. J.S. OLSON, *THE PEOPLES OF AFRICA: AN ETHNOHISTORICAL DICTIONARY* (1996).

77. A.K. GOLDSWORTHY, *IN THE NAME OF ROME: THE MEN WHO WON THE ROMAN EMPIRE* (2016).

78. LOCKE, *supra* note 66, at 208.

79. GOLDSWORTHY, *supra* note 77.

80. After World War II, the Danish-German question, or the Schleswig matter as it is also known, was finally settled in a referendum drawing the border along majority lines. This solution is, however, not advisable for the North Pole, as most of it is uninhabited, and that solution does not address minority rights well.

81. *See generally Norway: Government and Society*, ENCYCLOPEDIA BRITANNICA, <https://perma.cc/63TK-PN54> (last visited Mar. 20, 2018).

82. *See* JERRY F. HOUGH, *DEMOCRATIZATION AND REVOLUTION IN THE USSR, 1985-91* (1997).

Another example could be the Finnish wars where brave Finnish nationals and international volunteers certainly showed that contiguity was not the important determination of appropriate jurisprudence.

*C. Do Democratic States Have a Mandate to Expand?*

While national governments are expected to—and legally bound to—defend their borders and the property of their current citizens from foreign aggression, the question of expansion is quite different.<sup>83</sup> The enlargement of borders typically implies territorial war, and this is not a common policy of modern western democracies.<sup>84</sup> Posit that most voters would oppose territorial war and expect their politicians to refrain from such policies. If so, the same is likely true of other aggrandizements too. Denmark, for instance, is a relatively small welfare state with a fairly homogenous population located among friendly neighbors.<sup>85</sup> A completely different situation would result from owning a highly disputed, large, and remote area such as the North Pole. Such a mandate has not been given by the voters as they have not been asked.<sup>86</sup>

*D. Is it a Duty to Own Land?*

One possible objection to the Lockean rejection of national ownership is that it is not a matter of assigning rights, but rather one of assigning responsibility or duty.<sup>87</sup> Based on such logic, ownership is *de facto* punishment where one is required to endure whatever costs that ownership might entail with no way of escaping these costs.<sup>88</sup> If this were true, no one would want to own property. There would be no bidding for it and no competition to see who would emerge as the winner. There would be no positive price for land, buildings, and factories. Rather, a negative price

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83. The Danish Constitution, for instance, provides a precise separation in executive power between cases of defensive action and contentious land grabbing.

84. See BRUCE RUSSETT, *GRASPING THE DEMOCRATIC PEACE: PRINCIPLES FOR A POST-COLD WAR WORLD* (1993).

85. BO-BENGTSSON, PER STRÖMBLAD & ANN-HELÉN BAY, *DIVERSITY, INCLUSION AND CITIZENSHIP IN SCANDINAVIA*, 1-2 (2010).

86. Is the Louisiana Purchase on the part of the thirteen colonies of the U.S. analogous? Yes, and no. The mass of territory is similar, but that is where the similarity ends. One contains sub-marginal land (and ocean), while the other does not. One was a purchase, while the other was not.

87. LOCKE, *supra* note 66, at 208.

88. See ROBERT NOZICK, *ANARCHY, STATE, AND UTOPIA* (1974).

would ensue. Owners would pay others to take their property off their hands.

It is a basic component of property rights that ownership may properly be transferred to others, what Nozick<sup>89</sup> characterizes as legitimate title transfer, including to no ownership (as in the case of disposing of trash).<sup>90</sup> Historically, countries have given up ownership claims to lands for numerous reasons (for instance, the abandonment of European colonies), just like shareholders of companies that have filed for bankruptcies or private individuals have abandoned homes.

*E. Is Laying Claim to the Arctic a Free Lunch for the State With Expensive Hangovers for the Taxpayers?*

The business model of the nation-state revolves heavily on taxing economic activity and resources under its jurisdiction. Owning the North Pole is attractive for politicians and bureaucrats if such ownership is lucrative and will lead to increased tax revenues; however, that is far from certain.<sup>91</sup> It is not an unlikely outcome that the North Pole proves to contain no significant value to tax, especially given constraints by likely environmental protection legislation. In such a case, the “winning” nation will have incurred large sunk costs in acquiring ownership and a recurrent expense in maintaining it. Given this scenario, the taxpayers of the successful country will be significantly worse off. Even if valuable resources are found, there is no guarantee that this will lead to an improvement in the welfare of the long-suffering taxpayer.<sup>92</sup> Hence,

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89. *Id.*

90. *Id.* For the Lockean theory of property abandonment, see Walter Block, *Libertarianism, Positive Obligations and Property Abandonment: Children's Rights*, 31 INT'L J. SOC. ECON. 275 (2004); Walter Block, *Expiration of Private Property Rights: A Note*, 8 J. PHIL. ECON.: REFLECTIONS ON ECON. & SOC. ISSUES 43 (2015); Kinsella, *What Libertarianism Is*, *supra* note 63.

91. See Sarah Gulas et al., *Declining Arctic Ocean Oil and Gas Developments: Opportunities to Improve Governance and Environmental Pollution Control*, 75 MARINE POL'Y 53 (2017); Dongqin Lu, Gyei-Kark Park, Kyoungsoon Choi & Sangjin Oh, *An Economic Analysis of Container Shipping Through Canadian Northwest Passage*, 1 INTL. J. E-NAVIGATION & MAR. ECON. 60 (2014); Yevgeny Aksenov et al., *On the Future Navigability of Arctic Sea Routes: High Resolution Projections of the Arctic Ocean and Sea Ice*, 75 MARINE POL'Y 300 (2017).

92. JAMES M. BUCHANAN, *THE LIMITS OF LIBERTY: BETWEEN ANARCHY AND LEVIATHAN* (1975).

nation-state claims for North Pole control may be a free lunch for the national government but not for its citizens.

There is a sure way to obviate this possibility: allow private people to homestead these territories, both land and ocean. Whether they make a commercial success of this or not, we shall have an answer to the question of economic viability. Relying on the private, not the public sector, in this regard guarantees that the right parties bear the costs and reap the potential benefits. When people risk their own money or that entrusted to them voluntarily—such as via stock market support—they tend to be more cautious than bureaucrats doing so with funds mulcted from the taxpayer against his will. Also, bankruptcy looms as a continual threat in the marketplace, as long as governments do not bail out failing enterprises under the doctrine of “too big to fail.”<sup>93</sup>

#### *F. Will Assigning Ownership to a Nation-State Maintain Peace?*

This is likely the most important objection to the current path. While nation-states can share interests and negotiate solutions, ultimately the nation state is a “them vs. us” mechanism driven by politics. As nations trade, they have the war option as well—unlike private parties. Politics is hence famously stated to be just war by other means.<sup>94</sup> While states can attempt to negotiate, ultimately they have access to proactive violent resolution attempts too, even with the cost from legal repercussions and loss of lives and resources that option entails. Lockean theory, on the other hand, hails peaceful exchange.<sup>95</sup> While a company or other private owner can defend its property, it cannot proactively engage in violent acts against others and their property. Nation-states may legally do so. What happens if the U.N. decides to assign ownership to one of the claimants and one or more of the others do not accept?

There is already mounting evidence that the claimants’ faithfulness is more to their military prowess than the U.N. process. The thought is a scary one indeed. Especially as three to four of the contending parties (depending on whether the U.S. bids or not) are members of NATO, and Russia is not, which could make the Arctic the starting point of global military conflict of significant scale.

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93. See generally ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, ENVIRONMENTAL TAXATION: A GUIDE FOR POLICY MAKERS (Sept. 2011), <https://perma.cc/5SC2-VNHZ>.

94. CARL VON CLAUSEWITZ, ON WAR (1873).

95. It is not a pacifist philosophy. It only abjures the initiation of violence, not its employment for defense and retaliation.

The danger of war with national ownership is recurrent in maritime matters, and a modern illustration is found in the South China Sea. The local People's Republic is building up islands out of semi-submerged reefs.<sup>96</sup> That is not the problem. The difficulty is that this country claims a twelve-mile area as its own sovereign part of the ocean.<sup>97</sup> There are many military bases, so travel for foreign ships becomes difficult or impossible. The twelve-mile area is, amazingly, derived from the distance that a cannon ball could reach when fired.<sup>98</sup> Initially, a one-mile limit was derived from this principle.<sup>99</sup> But, then, when cannons became more effective, the nation states of the world moved to a two-mile limit and then to the twelve miles of the modern era.<sup>100</sup>

One difficulty with this system is that it involves countries whose land boundaries lie within a dozen miles of each other.<sup>101</sup> From a Lockean point of view, this is problematic in that the distance a weapon can fire has nothing to do with homesteading.

### *G. Is Nation-State Ownership a Guarantee for Desirable Public or Global Outcomes?*

Giving jurisdiction to any nation is no guarantee that it will govern in a way that generates desirable public or global outcomes for humanity as a whole. A country can choose to not only allow pollution<sup>102</sup> but may even encourage it.<sup>103</sup> If that were to happen, and the polluting state refused to

96. *Territorial Waters*, ENCYCLOPEDIA BRITANNICA (Feb. 10, 2010), <https://perma.cc/4AV8-U6L9>.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. In the days of "cannon" that could fire missiles for thousands of miles, there would be a vast over determination of property rights, e.g., conflicts between different claimants of the same area.

102. For a Lockean analysis of this issue, See Murray N. Rothbard, *Law, Property Rights, and Air Pollution*, 1 CATO J. 55 (1982).

103. We tend to think of pollution as an international occurrence. But Chinese pollution, among the worst in the world, seeps out into neighboring countries. See Samantha Jakuboski, *The Impact of Asian Air Pollution on the World's Weather*, SCITABLE (Jan. 23, 2014), <https://perma.cc/C9MB-UMQY>; Joseph Stromberg, *China's Air Pollution May be Bad, but India's is Much Worse*, VOX (May 12, 2014, 12:50 PM), <https://perma.cc/M66P-LQYH>; Claire Topal & Yeasol Chung, *China's Off-the-Chart Air Pollution: Why It Matters (and Not Only to the Chinese)*, NATIONAL BUREAU OF ASIAN RESEARCH (Jan. 27, 2014); Larry West,



change its policy, the only available solution of inflicted parties outside the nation state in question would involve appeals to aggression like sanctions or war. Aggression is vastly inferior to dealing with private actors with whom marketable peaceful local solutions not only can be attained, but typically are.

#### IV. THREE ALTERNATIVE MODELS OUTLINED

The purpose of this article is to raise concerns based on Lockean theory about the current process concerning property rights in the frozen north. Below are outlined, very preliminarily, other Lockean-like solutions to the issue. The suggested models all take the authors' questions into consideration, although in varying degrees and with slightly different answers. The models are not developed in detail, but merely meant as an illustration of how Lockean ideas could inspire other solutions to the issue at hand; the authors are not committed to any of these models. Furthermore, Lockean theory puts a high degree of emphasis on entrepreneurial dynamic market process.<sup>104</sup> This entails a dynamic view of competition, where precise outcomes are unknowable and are best left to the market.<sup>105</sup>

##### *A. Model 1: An Anarcho-Capitalist North Pole*

Anarcho-capitalism is the political idea of a total abolishment of the state in favor of a free market based on private property and self-ownership. An anarcho-capitalist model entails no coercive or state-based governance at all. This is not a world without rules. It is likely one with more rules, but they are voluntarily and locally entered into, similar to business contracts. The homesteading principle rules supreme. Agents involved in economic or other activity would have to solve their potential conflicts under the jurisdiction of private courts.<sup>106</sup> A slightly less strict

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*Cross-Border Pollution: A Growing International Problem*, THOUGHT CO. (July 24, 2017), <https://perma.cc/LSM2-DNJG>.

104. See ISRAEL M. KIRZNER, *COMPETITION AND ENTREPRENEURSHIP* (1973).

105. M. S. SNOW, *Competition as a Discovery Procedure*, 5 Q. J. AUSTRIAN ECON. 9 (2002).

106. See Felix J. Dasser, *Incoterms and Lex Mercatoria: Applicability of Incoterms in the Absence of Express Party Consent?* (Mar. 7, 1990) (Emory University School of Law), <https://perma.cc/SZ4S-BY46>; *Free to Choose Network, Milton Friedman Speaks: The Role of Government in a Free Society*, YOUTUBE (Feb. 9, 1978), <https://perma.cc/4TYX-MRSY>; BRUCE L. BENSON, *THE ENTERPRISE OF LAW* (1990); Daniel Popeo, *Privatizing the Judiciary*,

anarcho-capitalist model could feature charters, where homesteading agents are required to pay a token fee to some predestined purpose such as an open access data collection portal, a reference fund for emergencies, or other areas that can be deemed desirable before the fact. This could be administrated as an “admission to homesteading” license.

*B. Model 2: North Pole Inc.*

If one accepts the original U.N. position of the North Pole being the property of all of mankind, a solution could be to convert the area to a publicly listed company and give every citizen on Earth one share. This solution is similar to some of what was done after the fall of the Soviet Union.<sup>107</sup> After the company is established, every citizen would be free to decide to sell this share or keep it. Such a company could then set up policies of governance, pursue commercialization, and pay out dividends. While this model requires the U.N. to meet some initial challenges, like startup capital and designing an initial shareholders agreement, it would, in the long run, solve the issue of both governance and resource exploitation, assuming that the current competing nation-states would honor this U.N. process.

A philosophical difficulty with this solution presents the question: why should people who have never been within thousands of miles of the North Pole and would not so much as recognize it if they were somehow plunked down in its midst deserve any ownership rights over this terrain at all? The economist Rothbard would give any such claim the back of his hand:

[I]f a producer is not entitled to the fruits of his labor, who is? It is difficult to see why a newborn Pakistani baby should have a moral claim to a quotal share of ownership of a piece of Iowa land that someone has just transformed into a wheatfield—and vice versa of course for an Iowan baby and a Pakistani farm.<sup>108</sup>

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FOUNDATION FOR ECONOMIC EDUCATION (Aug. 1, 1988); ROTHBARD, *NEW LIBERTY*, *supra* note 63, ch. 11; ADAM THIERER, *JUDGMENT DAY: THE CASE FOR ALTERNATIVE DISPUTE RESOLUTION* (1992); Adam Young, *Arbitration on Trial*, MISES INSTITUTE (July 17, 2002); Morris Tannehill & Linda Tannehill, *Arbitration of Disputes*, MISES INSTITUTE (July 1, 2011), <https://perma.cc/245Y-8GGA>.

107. See JOHN R. NELLIS, *TIME TO RETHINK PRIVATIZATION IN TRANSITION ECONOMIES?* 36 (1999) for a description of the system. While Russian outcomes were mixed, so was the background. There are reasons to believe the system could deliver more desirable results for the Arctic.

108. ROTHBARD, *NEW LIBERTY*, *supra* note 63, at 42.

This model is mentioned because, while not perfect, it rolls the process back to a legally ratified principle in UNCLOS as a shared starting point.

### *C. Model 3: The North Pole Confederacy*

If the homesteading principle is expanded to the national level, an argument could be made that the citizens or representatives of the nations that, within a certain period of time, have mixed their labor with the territory, all have a claim as a result. Such an approach could inspire a governance solution in which the area is governed by an alliance of the four to five nations.<sup>109</sup> Together the nations could design governance and competitive frameworks such as tax levels. The involvement of all would put clear checks and balances on individual national interests and maintain peace.

## CONCLUSION

When people first hear about the North Pole ownership issue, they become fascinated but also rather dismissive, thinking that this is a one-off event in human history. This is not the case. Rather, it is an assumption founded in a fallacious crypto-Malthusian assumption of the Earth as a limited resource.<sup>110</sup> This is also not the case. Throughout history, humans have expanded their livable or economic areas, and even today that

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109. Or indeed, from any other country.

110. For a critique of THOMAS ROBERT MALTHUS, *AN ESSAY ON THE PRINCIPLE OF POPULATION* (1798), see PETER THOMAS BAUER, *EQUALITY, THE THIRD WORLD, AND ECONOMIC DELUSION* (1981); Donald J. Boudreaux, *Comment on the Commentary of the Day*, GEORGE MASON UNIVERSITY (May 2008), <https://perma.cc/UBZ8-8RL5>; DAVID FRIEDMAN, *LAISSEZ-FAIRE IN POPULATION: THE LEAST BAD SOLUTION* (1972), <https://perma.cc/R9AH-N6AA>; Milton Friedman, *Nobel Lecture: Inflation and Unemployment*, 85 J. POL. ECON. 451 (1977); Oded Gaylor & David N. Weil, *Population, Technology, and Growth: From Malthusian Stagnation to the Demographic Transition and Beyond*, 90 AM. ECON. REV. 806 (2000); ROTHBARD, *Do You Hate the State?*, *supra* note 71; JEAN BAPTISTE SAY, *LETTERS TO MR. MALTHUS, AND A CATECHISM OF POLITICAL ECONOMY* (John Richter trans., 1821); JULIAN SIMON, *THE ULTIMATE RESOURCE* (1981); THOMAS SOWELL, *ETHNIC AMERICA: A HISTORY* (1983); Samantha Williams, *Malthus, Marriage and Poor Law Allowances Revisited: A Bedford Case Study 1770-1834*, 52 AGRIC. HIST. REV. 56 (2004); Lionel Robbins, *The Optimum Theory of Population in LONDON ESSAYS IN ECONOMICS: IN HONOUR OF EDWIN CANNAN* (T. Gregory & H. Dalton eds., 1927); LIONEL ROBBINS, *THE THEORY OF ECONOMIC DEVELOPMENT IN THE HISTORY OF ECONOMIC THOUGHT* 22-23 (1967); Donald Wittman, *The Wealth and Size of Nations*, 44 J. CONFLICT RESOL. 868 (2000).

happens—questions of who should govern the Internet are not that different. The future likely also holds many more policy theaters like the North Pole, and space expansion comes to mind.<sup>111</sup>

Most people would likely subscribe to the notion that efficiency of governance is to be measured on the governance structure's ability to generate peace and prosperity. This stems from the fact that wealth is generated by the individual pursuit of individual interest, which can also ultimately endanger peace. Most of our daily life is peaceful and privately regulated very efficiently via trading, so it is striking that humans are so traditionally and irrationally minded when presented with an issue like the North Pole. It is as if the average human assumes that a coercive governance must be established or assigned despite the fact that such a government is often not very efficient or even involved in the outcomes we ultimately want, peace and prosperity.

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111. See generally Konrad Szocik et al., *Political and Legal Challenges in a Mars Colony*, 38 SPACE POL'Y 27 (2016).