IAIN HAMPSHER-MONK

John Locke's ambiguous Theory of Property

I. Introduction

The theory of property famously outlined in John Locke's *Two Treatises of Government* emerged from two interrelated contexts, one intellectual, one political. The political context generated a need on the part of the opposition to Charles II, and later to James II, for a theory of private property right which, consistent with ensuring material support for government, was sufficiently strong to deny to it arbitrary rights of taxation or other imposition, over the property of its subjects. The intellectual context was that provided by the court party's revival and their republication of the works of the deceased royalist pamphleteer, Sir Robert Filmer, to articulate their aspirations in support of the Stuarts.

The wider significance often claimed for Locke's work has been that in providing an account whereby political authority could be established consistently with the guarantee of individual property right, he first clearly articulated the basic elements of a liberal political order. On these grounds, it has been argued, any evasions or biasses traced in his work, can by implication be attributed to that social order, the theory of which he supposedly presaged. Now there are serious interpretive difficulties in holding Locke responsible for the moral failings of a future social order, details of which may well not have been apparent to him; more especially since the work in which he supposedly committed this solecism was concerned to rebutt the particular and very specific challenge to private property posed by a theory of absolutist monarchy, and not at all devised to address the possible discri-

minations that might desirably be made amongst other regimes of political economy.

However, theorists can no more than other men or women chose the role that history alots to them, and there are two [one should say at least two] quite distinct constructions that have been put on Locke's theory of property. The purpose of this essay is simply to develop a kind of abridgement of these two interpretations in order to bring out this important ambiguity which played and still plays such an importand role, not only in "Locke studies" but in the way we theorise about property.[1]

Filmer had written during the Civil War, and was recruited posthumously as champion of the later Stuarts' apparent bid for absolute monarchy. His original target had not been Locke, then a schoolboy, but contractualists and natural rights theorists of an earlier generation, in particular Grotius and Selden. Grotius, in *De Jure Belli et Pacis*, and his antagonist John Selden in his *Mare Clausum*, had argued that rights to the earth derived from a divine grant, were once common, and had become private as a result of convention or agreement amongst humans.[2] Filmer's case rested not merely on the Biblical fundamentalist argument that God gave the world to Adam, not to mankind in general (thus differing from his opponents in his reading of Genesis.) More importantly [at least for posterity] he advanced a more general argument against any contractualist account of the origin of private property, and in doing so determined the ground on which Locke had to construct his reply.

If all were once common, Filmer questions, how could it now, rightfully, be private? Even granting that there may once have been a universal and unanimous agreement (for such it would have had to have been) to assign privately what was held in common - "a rare felicity" he notes ironically, and one for which there is no evidence - but even granting that: "how the consent

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[1] One reworking of Locke which was in political terms vastly symptomatic, if not indeed politically influential was that of R. NOZICK in his Anarchy, State and Utopia, Oxford 1974.

[2] Sir ROBERT FILMER, Patriarcha and other Political Works, ed. P. LASLETT, Oxford 1974.

of mankind could bind posterity when all things were common, is a point not so evident."[3] Indeed it is so inevident, Filmer argues, that it effectively disqualifies the contractualists' claim that both kingly rule (also a result of a grant) and private property "depends perpetually on the will of them that constitute, and upon no other necessity". The implications of such positions are clearly "desparate inconveniences", leading to anarchy in politics, and instability and communism in economics.[4] Filmer thus seeks to impale his opponents on the horns of a dilemma: either God's grant was to Adam as an individual and so to the archetype, if not the ancestor of all Kings, or, as Grotius and his followers say, it was a grant to Adam as the representative of mankind, in which case community of goods follows. Then (*per impossibile*) it must be explained how property could legitimately come to be privately owned *in perpetuity*. Since it is impossible to overcome the problems involved in the second position, we must revert to the first: private property must have derived from the grant of a monarch, descended from, or representative of Adam, and inheritor of his *dominium*. But what a monarch could grant he could recall. If private property existed, he concluded, it must derive from, and be susceptible to, political authority. The two forms of dominion, over men and over goods, were ultimately indivisible.[5] This proposition formed one of Locke's central targets.

Locke accepted Filmer's analysis of the problem, and so acknowledged that his task was to "shew, how Men might come to have a property in several parts of that which God gave to Mankind in common, and that without any express Compact of all the Commoners."[6] Moreover, having accomplished the task to his satisfaction, Locke pressed the point that he believed he had shown that such private property could legitimately emerge prior to, and thus independently of political authority: "This partage of things, dots men have made practicable out of the bounds of Society, and without compact dots".[7]

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[3] FILMER, Patriarcha, p. 65; Observations on H. Grotius p. 273.

[4] FILMER, Patriarcha, pp. 70, 71.

[5] Filmer, Patriarcha, p. 78.

[6] JOHN LOCKE, Two Treatises of Government, ed. P. LASLETT, Cambridge ^{2}1967, Second Treatise, 25; and having shown it Locke reiterates the point: 39

[7] Second Treatise, 50.

As is well known, Locke achieves this intellectual feat by combining an assertion of original common right, with an individual right of appropriation through the "mixing of one's labour" with what was common, thus individuating an entitlement originally held jointly, and so establishing private property.

This much will, I think, be agreed by all Locke scholars. But from here on matters become more contentious. For there is wide disagreement as to just how absolute and individualist are the entitlements so established. Two recent full-length studies by established Locke scholars have reached apparently opposed conclusions. For Neal Wood

> Locke's thought was in part expressive of certain basic social changes occurring in England, of a transition to the early stages of capitalism, and...he began to conceive of the social relations of production in a manner suggestive of an embryonic capitalist outlook...some of Locke's ideas symbolise or represent the "formal" subjection of labor to capital, and perhaps the beginnings of the real subjection...Locke's thought testified to important changes in agriculture and the social relations of agricultural production, the necessary conditions for the eventual emergence of English industrial capitalism.[8]

Whereas for Dick Ashcraft,

> by framing his argument in such a way as to knit together "labor", "cultivated land" and "the common good" Locke produced a powerful natural law critique of those individuals in society who neither laboured nor contributed to the common good of society. Indeed Locke's chapter on property is one of the most radical critiques of the landowning aristocracy produced during the last half of the seventeenth century.[9]

The more discerning reader, synthesising these two quotations through marxist categories, will perhaps see less conflict between them than might appear to the innocent reader. After all, if, as an orthodox marxian schema would suggest, "agrarian capitalist" is regarded, not as a synonym for, but as the dialectical negation of "landowning aristocracy", then the critique of the latter is indeed consistent with the recognition or celebration of the former.

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[8] N. WOOD, John Locke and Agrarian Capitalism, Los Angeles/London 1984, p. 92.

[9] R. ASHCRAFT, Revolutionary Politics and Locke's Two Treatises of Government, Princeton, N.J. 1986, p. 275.

The support for an emerging order of capitalist property is not only consistent with, but requires a critique of its precapitalist forms; a fact which few of the protagonists in the debate seem willing to acknowledge. This issue, however, turns out to be beside the point, or at least, beside one of them. For Locke is mainly concerned to defend property rights *against absolutist rulers* and is, not surprisingly, lax about discriminating between the different kinds of proprietors whose rights such a ruler might offend.[10] The debate has, in consequence, understandably focussed more on the purely analytical question of how collectivist or individualist Locke's theory of property was.[11] Although on the face of it a less historical question, it is not obviously less so than the question of where Locke should be located in a yet-to-be-articulated historic-oeconomic schema. Two interpretive paraphrases of Locke's argument have thus been built up, one depicts Locke supporting an unencumbered individualistic right to property. The other sees his defence of private right persistently vulnerable to and limited by collectivist criteria and institutions.

II. Locke's case for unrestricted individual property

According to this view, the right to property is an absolute right which becomes wholly emancipated from its collectivist origins. In the original state of nature, the right to privatise what was held in common derived, Locke thought, from the basic right of survival. Whereas Filmer had seen the condition of original communism precluding the development of private

[10] Having said this Richard Ashcraft's study nevertheless makes tremendous efforts, in large part successful, to persuade the reader that Locke had a particular kind of proprietor in mind - the active, energetic, involved and socially responsible owner, not the foolish country gentleman or the absentee rentier living an idle life in London. ASHCRAFT, Revolutionary Politics, p. 266 ff.

[11] WOOD, John Locke and Agrarian Capitalism, is most sensitive to thesubtleties of capitalism's development, "what we should be searching for is some discernible sign [of the beginnings of capitalism] not some miraculous premonitions of the end result." (p. 92). He stresses the importance of the fact that for Locke, "servant... represented a juridically free man who was being paid for his time, so that all he mixed his labour with - the turfs he cut - belonged to the employer according to their contracted agreement." (p. 88), and that Locke "began to envisage the labor in general as a commodity to be exchanged for wages in the market." (p. 114).

property, through the impossibility of collecting the necessary consent from all the rightsholders, Locke turns this impossibility *into a reductio ad absurdum* which subverts Filmer's argument. "If such a consent as that was necessary, Man had starved, notwithstanding the Plenty God had given him."[12] God's grant in common would have been cruel and meaningless, if there had not been some way of making use of it: "there must of necessity be a means *to appropriate* them some way or other before they can be of any use, or at all beneficial to any particular Man."[13] That means of appropriation is insinuated into the very act of "making use" of God's grant to ensure our survival. Consuming what we need from nature both turns what is natural into us (biologically) and follows morally (since "ought" implies "can") from the right and duty of self-preservation.[14] Thus the two conditions of property - "right" and "possession" - are both fulfilled.

The act of consumption is, however, invariably preceded by an act of abstraction, performed by our hands upon external nature. It is this that proves crucial in establishing the right: "'tis the taking any part of what is common and removing out of the state Nature leaves it in, which begins the Property without which the Common is of no use."[15] This action - an act, if only a minimal one, of labour - is presented by Locke as the more generalised source of individual proprietory right:

> every Man has a *Property* in his own Person. This no Body has any Right to but himself. The *Labour* of his Body, and the Work of his Hands we may say are properly his. Whatsoever then, he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joyned to it something that is his own, and thereby makes it his *Property*.[16]

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[12] LOCKE, Second Treatise, 28.

[13] Second Treatise, 26.

[14] The idea that acquisition "turns nature into us" is found in the following passage: "he that is nourished by the Acorns he pickt up under an Oak, or by the Apples he gathered from the Trees in the Wood, has certainly appropriated them to himself. No Body can deny but the nourishment is his." Follows...since "ought" implies "can": "If such a consent [the consent of all mankind] as that was necessary, Man had starved, notwithstanding the Plenty God had given him." (both Second Treatise, 28).

[15] Second Treatise, 28.

[16] Second Treatise, 27.

That this "right of appropriation" is held to establish an unencumbered right is immediately made clear by what, paradoxically, has often been viewed as a condition applied to it. For Locke sums up the argument thus far by insisting that what is appropriated through labour is "the unquestionable property of the Labourer, no man but he can have a right...at least where there is enough, and as good left in common for others."[17] So firstly, not only does Locke insist on the absolute and exclusive nature of the right established by labour, but secondly, far from (as many commentators suggest) stipulating the condition under which the right obtains, he specifically opens up the possibility that the right might obtain *in any case*. For "at least where" should be read as "certainly under the following conditions, and possibly in other circumstances too"; and not, as it has been commonly, if perversely understood, to mean "if and only if the following conditions are met".[18]

There is, however, one clear limitation to private appropriation, and that is that we may only take "as much as any one can make use of to any advantage of life before it spoils."[19] This limitation follows from the intention of God in granting the world to mankind for the survival of all.

The right so established applies both to consumed goods - Locke instances wild fruit, game and water - and to the land itself. Thus the private appropriation of the soil is legitimate as long as the appropriator labours on it, and does not take more than he can use without going to waste (sc. lie fallow). Not only do property rights arise from labour, but so does value itself, or at least, "the *far greatest part of the value* of things, we enjoy in this World".[20] There is then, both a labour theory of property and a labour theory of value to be found in Locke's account.

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[17] Second Treatise, 27.

[18] See J. WALDRON, Enough and as good left for others, in: PhQ (1979), pp. 321-323.

[19] LOCKE, Second Treatise, 31, see also 37 "if they perished in his Possession,...he offended..." and 46 "the exceeding of the bounds of his just Property not lying in the largeness of his Possesion, but the perishing of any thing uselesly in it."

[20] Second Treatise 42, in 40 commodities are reckoned to have 99/100ths of their value imparted by labour, in 43 the product of cultivated land is reckoned at 1000 times that of its natural product.

These conditions of appropriation outline the limits of legitimate appropriation, true "property". It follows that if these constraints are observed, the rights established are absolute and enduring. No individual (or group) can rightfully lay claim to another's private property-right once established. And by implication, the right, once rightfully established, continues inviolable even if the title is transferred, through trade, inheritance or donation to another. Indeed this was an essential point of the *political* context of the *Two Treatises*, since it was the disastrous effects on trade of insecurely held property rights, that was one of the reasons for wanting to oust the absolutist and crypto or openly Catholic Stuarts.[21]

This limited right of appropriation applied only in "the first Ages of the World", although Locke writes that it would hold still

> had not the *Invention of Money* and the tacit Agreement of Men to put a value on it, introduced (by Consent) larger Possessions, and a Right to them; which, how it was done, I shall, by and by shew more at large.[22]

This demonstration involves showing that the invention of money "some lasting thing that men might keep without spoiling, and...take in exchange for the truly useful, but perishable Supports of Life", overcomes the spoilage limitation.[23] In doing so Locke "removed the previous natural limitations of rightful appropriation, and in so doing...invalidated the natural provision that everyone should have [only] as much as he could make use of."[24] This leades to, and justifies the possibility, indeed the likelihood, of an extremely inegalitarian society.

Locke acknowledged that from the earliest times men have "different degrees of industry".[25] But the original, natural, limitations on acquisition come into play long before that differential could create an significant

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[21] R. ASHCRAFT, Revolutionary Politics and Locke's Two Treatises of Government, p. 230 ff.

[22] LOCKE, Second Treatise, 36.

[23] Second Treatise, 47.

[24] C. B. MACPHERSON, The Political Theory of Possessive Individualism, Oxford 1962, p. 204.

[25] LOCKE, Second Treatise, 48.

variations in property right: "*As much land* as a Man Tills, Plants, Improves, Cultivates, and can use the Product of, so much is his Property."[26] The operation of this limitation "did confine every Man's *Possession*, to a very moderate proportion."[27] The invention of money, however, gives men not only the opportunity, but an interest in using their differential industry to acquire more.[28] Indeed it may even have changed men's psychologies, for the invention, of money is at the very least accompanied by, if it does not in fact cause "the desire of having more than Men needed [and] altered the intrinsick values of things."[29] The introduction of money through a "tacit and voluntary consent" effectively constituted an agreement to a "disproportionate and unequal Possession of the Earth,...an inequality of private possessions."[30]

The development of trade is the mechanism through which the invention of moneey leads to larger possessions. Without an imperishable store of value, why accumulate more than one could consume? But even with that store, what would one use it for? Without money,

> What would a man value Ten Thousand, or an hundred Thousand Acres of excellent *Land*, ready cultivated, and well stocked too with cattle, in the middle of the inland Parts of *America*, where he had no hopes of Commerce with the other parts of the World, to draw money to him by the Sale of his Product.[31]

However there is another aspect to the story, perhaps only partly expressed, but clearly implied by Locke. Originally man may only take as much land as he can work, as well as use the product of, without laying waste. Money overcomes the problem of spoilage, but labour remains as a kind of limitation, for "it was a foolish thing as well as dishonest to hoard up [or enclose]

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[26] Second Treatise, 32, and see 38.

[27] Second Treatise, 36.

[28] Second Treatise, 46, 47.

[29] Second Treatise, 37; see also the reference at 111 to the "*Golden Age* (before vain Ambition, and *amor sceleratus habendi*, evil Concupiscence, had corrupted Men's minds...". cf. Macpherson's famous but incautious claim that "Locke has evidently started from the position that accumulation is morally and expediently rational *per se*.", p. 235.

[30] Second Treatise, 50.

[31] Second Treatise, 48.

more than he could make use of."[32] Labour is the cost of meeting human wants;[33] it is imposed on mankind by God and "the penury of his Condition".[34] Enclosing is an act of Labour, and enclosing more land than we can work is not only dishonest, but foolish for it is a cost with no return - unless that is, we can command the labour of another to work the land so acquired. Locke clearly assumes this to be a possibility. The references to "larger estates" intensively cultivated (and justified as being more productive for this reason) reveal his assumptions that the introduction of money and inequality brings about, or at the very least is accompanied by, the emergence of wage labour.[35] There is moreover a famous reference to the alienation of the right accruing to employed labour. Locke, in exemplifying his claim that labour establishes a property right gives three instances:

> Thus the Grass my Horse has bit; the Turfs my Servant has cut; and the Ore that I have digg'd in any place where I have a right to them in common with others, becomes my Property.

"My servant's labour" is then immediately described as "The *labour* that was mine..."[36] Thus from an initial situation where all is held in common, Locke demonstrates, first a right to individual sustenance, then an equal right to property in land, establishable by and also held under the condition of labour, and limited by a prohibition on waste. Then he demonstrates how the invention of money overcomes the wastage limitation, and by implication too, the limitation of personal labour through allowing the institution of wage labour. This vastly increases the possibilities of wealth accumulation, a motive for which is also provided by the opportunities for trade which are opened up by a money economy.

Once again we should perhaps supply some of Locke's assumptions here. For there would only be wage labourers if there were a shortage of land.

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[32] Second Treatise, 46.

[33] Second Treatise, 35.

[34] Second Treatise, 32.

[35] The central passage (37, II 10-29) justifying this increased productivity was inserted by Locke into the Fourth edition, of the Two Treatises. See LASLETT'S edition, p. 476, and see MACPHERSON, p. 211.

[36] Second Treatise, 28. The significance of the passage was first stressed by Macpherson, Possessive Individualism, p. 215.

Why would anyone work for another for less than they could gain in working for themselves? If access to land is unimpeded, no one would work for less than the value of what they produce. But who would employ someone who demanded the whole of their product? The existence of wage labour requires the landlessness which the increasing inequality of property brings about. Even whilst assuring us that there is still land available in many parts of the world, Locke points to localised scarcity as a factor in enlarging estates, and stresses that the persistence of free land can "scarce happen amongst that part of Mankind that have consented to the Use of Money."[37]

This argument presupposes some lowering of the rate of return on labour to the employee, a consideration of which Locke is clearly aware in his economic writings.[38] Yet this does not matter. The crucial point for Locke is to justify "the preservation of mankind". This is assured in the unequal, wage-labour economy, by its phenomenally greater productivity. Land under the intensive cultivation which only large estates under wage labour can generate, is ten, a hundred, or even a thousand times more productive.[39] As a result, however close to subsistence they are, English wage labourers live better than aboriginal kings.[40]

Thus on both the specific grounds of the law of nature and the more general utilitarian considerations Locke takes care to demonstrate that property rights, once established, are inviolable. It is the circumstances surrounding the *establishment* of property right that determines its legitimacy once and for all, not those in which it is *exercised* once established.

This is shown by the notorious care Locke takes to exclude political interference in property rights. Famously "The great and *chief end* therefore, of

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[37] Locke intermittently insists that there is still enough land available for those who wish to work as subsistence peasants. Second Treatise, 36, 45.

[38] "...the labourer's share, being seldom more than a bare subsistence..." Some Considerations of the Consequences of the Lowering Interest and Raising the value of Money, in: Works, 4 vols. (1759), vol. II, p. 36.

[39] LOCKE, Second Treatise, 40 (ten, one hundred), 42 (one thousand).

[40] This not only contradicts Locke's own views in his economic writings [see fn 34, but the modern evidence is against Locke on this. See M. SAHLINS, Stone Age Economics, London 1974, esp. chapter 1: The original affluent society.

Mens uniting into Commonwealths, and putting themselves under Government, *is the Preservation of their Property.*"[41] As a consequence it is an absolutely fundamental rule of legitimate government that it

> *cannot take* from any Man any part of his *Property* without his own consent...For I have truly no Property in that, which another can by right take from me, when he pleases, against my consent...For this would be in effect to leave them no *Property* at all.[42]

This is not only a very strong practical claim, it also emphasises what a conceptually strong right property is. A property right that was *in any way* susceptible to other claims is not actually a property right at all. Thus the preservation of rights claiming to be property rights *entails* their absolute inviolability. Even the acknowledged material needs of a contractually established Government can only be met through taxation specifically agreed to by the individual or his representative.[43]

Locke's conception of property is then, an absolute and highly,individualist one. In common with others of his time he recognised property as "the highest right a man can have to a thing".[44] Although Locke recognised communal limitations on the circumstances surrounding the *original appropriation* of property, once these had been successfully complied with, or circumvented by the development of institutions such as money, the resulting rights were unencumbered by any social considerations. Locke's argument virtually encapsulates the historical movement from a medieval, morally responsible, socially embedded conception of property, to the modern, irresponsible, individualistic and emancipated idea.

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[41] Second Treatise, 124, and inter alia 85, 134, 138.

[42] Second Treatise, 138, 139.

[43] Treatise, 140, 142.

[44] An English Dictionary (1676).

III. Locke's Case for socially limited Property Right.

Locke's theory of property right is, like all his thought, permeated throughout by the moral requirements of the Law of Nature: that man is to be preserved. The responsibility given to each of us for our own preservation, is only marginally more salient a moral consideration than what must follow closely behind it: our concern for the preservation of our fellows.[45] Since our right of self-preservation derived from the fact of our having been created by God, we are duty bound to be concerned about the preservation of others who are also his creation. Such Natural Law morality provides a *continuing* criterion of all human action and institutions and is not at all left behind once civil society or a more complex economy comes on the scene. However immaculately conceived a property right may originally have been, its integrity is not guaranteed in the face of subsequent need:

> The Obligations of the Law of Nature, cease not in Society, but only in many Cases are drawn closer, and have by Humane Laws known Penalties annexed to them, to inforce their observation. This the Law of Nature stands as an Eternal Rule to all Men, *Legislators* as well as others. The Rules that they make for other Men's Actions, must...be conformable to the Law of Nature, *i.e.* to the Will of God, of which that is a Declaration, and the *fundamental Law of Nature*, being the *preservation of Mankind*, no Humane Sanction can be good, or valid against it.[46]

It is against this moral backcloth that we must assess the implications of Locke's arguments about property rights.

The Law of Nature's fundamental preoccupation with the survival of *all* mankind clearly underlies both the individuality of the original rights of appropriation and the communitarian constraints placed on them. The moral permission to appropriate follows from the need and duty of survival, the - or better a - means of actualising that duty is labour. The labour provision might be best seen in origin as a practical way of enacting what is effectively

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[45] "Every one, as he is *bound to preserve himself*,...so by the like reason when his own Preservation comes not in competition, ought he, as much as he can, to preserve the rest of Mankind..." LOCKE, Second Treatise, 6, see also 159, 183.

[46] Second Treatise, 135.

a preexisting right to subsistence.[47] True, it is normally labour that "put a distinction between them and common", [sc. that designates what has been individually acquired], but the right of subsistence is clearly there already, for example in the case of children.[48] Even in the extreme case of a justly defeated enemy, the subsistence rights of defeated belligerents' dependants override the undoubted property-rights of thewronged party to reparations.[49] Since this right to reparations is an absolutely fundamental and explicit clause of the basic law of nature, we may be assured that the right to subsistence - here clearly irrespective of labour - is even more so.[50]

The uncontentious "spoilage limitation" is a clear recognition that we must not thwart the provisions God has made for our collective survival.[51]

Finally, whilst the "enough and as good" clause, may be infelicitously phrased, it is perverse to read it permissively. If Locke meant "at least where..." to be construed in the strictly logically permissive way that Waldron suggests, it is impossible to understand why Locke should continually mount arguments to show how it could be legitimately overcome a preoccupation which undoubtedly reveals an intention to construe it restrictively.[52] Thus the development of original property rights is described as taking place in such a way that "in effect there was never the less left for others..."[53] and that "his Neighbour... would still have room, for as good, and as large a Possession...as before...without straightning any body, since there

[47] The right of subsistence, irrespective of labour is explicitly claimed on behalf of children, with a correlative duty in parents, at First Treatise, 89, and the right of subsistence is asserted again, more generally at 87, with a promise that Locke will show how individuation can be established, a promise realised with the "labour theory" in Chapter V of the Second Treatise which opens by again referring to "a right to...[what] Nature affords for their subsistence." (25).

[48] Second Treatise, 28, First Treatise, 87. I am indebted to correspondence with Richard Ashcraft for this understanding of the importance of the right to subsistence. But see briefly his Locke's Two Treatises of Government, London 1987, p. 88.

[49] LOCKE, Second Treatise, 183.

[50] LOCKE, Second Treatise, 10.

[51] LOCKE, Second Treatise, 37 perishing "without their due use...offended against the common Law of Nature".

[52] Even the most individualistic modern exponent of Locke's argument reads it this way. See NOZICK, Anarchy, State and Utopia, chapter 7, esp. "the Lockean Proviso".

[53] LOCKE, Second Treatise, 34.

is enough Land in the World to suffice..."[54] Yet again the appropriation of more land "does not lessen but increase[s] the common stock of mankind."[55]

The original appropriation of property, then, takes place against a series of restrictions which express the general injunctions of the Law of Nature to preserve human life by ensuring there are appropriate rules regarding the *distribution* of the means of survival to all. Individualist property rights should be read only as one possible second-order specification of this higher-order Law.

On this view, the *distributive outcome* of private property appropriations is crucial, and cannot be absolute against the claims of the indigent, for the whole rationale of the institution of private property rights is to provide specifications of the law of nature which would enable *each one* of us to survive.[56] This is not an occasional view, adopted for the purposes of the *Two Treatises*; it is worked out in detail in his *Essays on the Law of Nature*, and *Thoughts Concerning Education*.[57] In the Two Treatises Locke keeps this broader goal in sight, frequently asserting that as a matter of fact the development of a more complex economy and unequal property rights does indeed fulfil this ultimate goal - in particular stressing the greater productivity of enclosed land, and the continued existence of unclaimed land.[58] However, the very care he takes to argue this is further testimony to the fact that he regarded the background requirements of the Law of Nature as a *continuing* criterion of legitimate proprietorship, and not just a condition of its *creation*. Yet greater productivity (and its appropriate distribution), and the continuing availability of unowned land are clearly recognised as contingent facts; and if they once fail to obtain, the legitimacy of current holdings (no matter how scrupulously they were originally acquired) ceases forthwith. Outcomes as well as origins are morally relevant. It is "a most specious

[54] Second Treatise, 36.

[55] Second Treatise, 37.

[56] "else man had starved notwithstanding the plenty God had given him." If this argument justifies the institution of the conventions of private property in the state of nature, it can also justify the suspension of them in that form when, as in the commercial economy, there is a danger of man "starving in the midst of plenty."

[57] See the discussion in: ASHCRAFT, Locke's Two Treatises of Government, p. 132-133.

[58] LOCKE, Second Treatise, 37, 45.

thing" to suggest that if someone were to become "the Proprietor of the whole World, [they] may deny all the rest of Mankind Food...God never gave any such *Private Dominion*."[59]

Since the continuing Law of Nature commands human survival, and since "the conditions of human life require labour and materials to work on",[60] any set of property institutions (and the holdings derived from them) that resulted in some human beings being in a position to deny others the opportunity to labour or materials needed for life, contravenes the law of nature. This is emphatically not a question of charity, in the sense of being an act of supererogation by property-owners. It is a question of the very *definition* of property. Proprietors simply do not have any property in that which their fellows need for their survival. This is straightforward scholastic property-theory:

> God the Lord and Father of all, has given no one of his Children such a Property, in his peculiar Portion of the things of this World, but that he has given his needy Brother a Right to the Surplusage of his Goods; so that it cannot justly be denyed him when his pressing Wants call for it...'twould always be a Sin in any Man of Estate, to let his Brother perish for want of affording him Relief out of his Plenty.[61]

This has implications - which Locke is at pains to draw out - for economic and other contracts. Coerced agreements are void.[62] But if the indigent have a *right* to subsistence which the property-owner's (invalid) claim denies them, it is, *a fortiori*, illegitimate to threaten to withhold that right from the poor in order to establish with them contracts of employment. Thus,

> a Man can no more justly make use of another's necessity, to force him to become his Vassal, by witholding that Relief, God requires him to afford to the wants of his Brother, than he that has more

[59] LOCKE, First Treatise, 41.

[60] LOCKE, Second Treatise, 35.

[61] LOCKE, First Treatise, 42, and see Second Treatise, 183. And cf. St. THOMAS AQUINAS, Summa Theologica, II-II, Qu.66, art 8: "...human right cannot derogate from natural right...the division and appropriation of things which are based on human law do not preclude the fact that men's needs have to be remedied by means of those very things. Hence whatever certain people have in superabundance is due, by natural law, to the purpose of succoring the poor."

[62] LOCKE, Second Treatise, 186.

> strength can seize upon a weaker...and, with a Dagger at his Throat offer him Death or Slavery.[63]

The implications of such a practice would be to sanction coercion as a foundation of human relations and society, a position which, needless to say, Locke rejects out of hand.[64]

Although Locke is indeed concerned to show that political authority plays no role in the *establishment* of private property right, he does not draw from this the conclusion that political authority, once rightfully constituted, has no role to play in *regulating* it. The individualist interpretation depicts governments being faced with a distribution of possessions, established *ex ante*, with which no interference is possible, without the express consent of the possessor. However Locke clearly presumes, and in various places describes, a more active role for government. It can establish common ownership where this serves the common good.[65] It is a residuary legatee.[66] More particularly once an individual joins a commonwealth, his land becomes inextricably a part of it's territory - "Commonwealths not permitting any part of their Dominions to be dismembred".[67] All of which represents a considerable restriction on absolute individual property right:

> By the same Act therefore, whereby any one unites his Person...to any Commonwealth; by the same he unites his Possessions...to it

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[63] Ibid.

[64] "any thing by this Rule that may be an occasion of working upon anothers necessity...may be made a Foundation of Sovereignty, as well as property." LOCKE, First Treatise, 43. Wood's refutation of Tully on this point is misleading. Tully quotes the passage, cited above, denying the right to make use of another's necessity in establishing contracts. Wood rejects this as a "misreading", and quotes from 43 that "the Authority of the Rich Proprietor, and the Subjection of the Needy Beggar began not from the Possession of the Lord, but the Consent of the poor Man, who preferr'd being his Subject to starving." Wood presents this as though Locke endorsed the situation. However Locke's point is directed against the possibility of Filmerian absolutism, and he is saying that *even* such a 'perverse use of God's Blessings...[as the conditions described above by Locke]' doesn't establish Filmerian subjection, it would all depend on the contract. WOOD, John Locke and Agrarian Capitalism, p. 91, cf. J. TULLY, Discourse on Property: John Locke and his adversaries, Cambridge 1980, p. 137.

[65] LOCKE, Second Treatise, 35, point was first made, to my knowledge, by R. GRANT, John Locke's Liberalism, Chicago 1987, p. 113.

[66] LOCKE, First Treatise, 90.

[67] LOCKE, Second Treatise, 117.

> also; and they become, both of them,...subject to the Government and Dominion of that Commonwealth, as long as it hath a being.[68]

The entry of property rights into political society is not a passage through a transparent medium. The establishment of governments requires them to "regulate the Properties of the private Men of their Society, and so *by Compact* and Agreement *settle the Property* which Labour and industry began."[69] Quite what "regulation" would involve is unclear at this point. It would seem, however, to allow more than the mere positive endorsement and legal specification of existing titles. Could it involve acts of redistribution?

This might seem an outrageous suggestion. The overriding duty of government, Locke continually insists, lies in the protection of property. Just so. But the question is not "can a government take it on itself (or be delegated) to redistribute private property rights amongst its subjects?" For on Locke's understanding of the concept of property the answer is, by definition, "No". The true question is: "What are the extent of the citizens" property rights? And if individuals' conventional holdings of goods fall out of line with their true entitlement is there anything government can do to rectify the situation? Here, I suggest the answer is much more permissive. As we have seen, according to natural law, a man or woman has no property in that which another needs for his subsistence, and legitimate political power is duty bound to uphold the law of nature. Private property is a means of discharging the requirements of the law of nature - but only a means, and a potentially fallible one. Inasmuch as conventional property holdings depart from the requirements of the law of nature, those holdings cease to be "property", and to that same degree also, legitimate government, committed to the implementation of the Natural Law, might have a duty to redistribute to the indigent.

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[68] Second Treatise, 120.

[69] Second Treatise, 45. Once again, a refutation of Tully relies on imprecision. It is not all, but only part of this section that refersto the establishment of the territories of nations (as claimed by *J. Waldron*, Locke, Tully, and the Regulation of Property, in: PolSt 32 (1984), p. 103).

The very passage cited by Waldron to deny this, is ironically however, at least presumptive evidence for its possibility.[70] Section 139, he claims, reveals Locke at "great pains to distinguish the regulation of property from its confiscation of redistribution". The relevant part reads:

> ...the Prince or Senate, however it may have the power to make Laws for the regulating of *Property* between the Subjects one amongst another, yet can never have a Power to take to themselves the whole or any part of the Subjects *Property* without their own consent.

This passage will not do what Waldron wants at all. For, firstly, the passage follows straight on from a section discussing the danger posed to property rights by absolutist rulers. The danger envisaged here is clearly their appropriation of citizens' property *for themselves*, which is of course ruled out. But, secondly, the exception made to this - "however it may have the power to make Laws for the regulating of *Property* between the Subjects one amongst another" - is precisely the case in point. "Regulation" is here being discussed in the context of transferring entitlements, in between a passage denying absolute rulers' rights of appropriation and one discussing how property could legitimately be taxed for the support of government. The distinction being made is not between transfer and "regulation" in the mere sense of establishing legal conventions - why would anyone think of that in the context of such a discussion? - but between transfer to the personal estate of the ruler (or even legitimate public uses of the government), and authoritative transfer *between* the members of the commonwealth. Locke's insistence on the stability of individuals' property rights invariably opposes their appropriation, "arbitrarily", "willfully" or "at pleasure".[71] But the whole point about transfers to meet subsistence needs is that they are neither arbitrary, nor made to serve a wilful ruler's pleasure. They are based on a fundamental Law of Nature, and directed toward not only the benefit of a needy fellow being, but the meeting of their *rights*.

To clinch such an interpretation would require us to demonstrate Locke in the act of asserting that this was what governments, by positive law, were required to do. This is a stern test, for there is little evidence for Locke

[70] WALDRON, The regulation, p. 104.

[71] LOCKE, Second Treatise, 138 has all three.

seeking such statutory articulation of other, much better established political principles, such as the need for all to consent to their governments. Yet it is to be found, and in an unlikely source. One of the most difficult documents for those seeking to present a collectivist Locke is his Memorandum to the Board of Trade on the Poor, cited to devastating effect by Macpherson and Wood, acknowledged as damaging to his case by Ashcraft.[72] But, however severe an attitude to social discipline Locke's reveals there, (and it is unclear how much allowance should be made for the sensibilities of the times) his proposals are crystal clear as to what those needy poor are entitled to as a right: "Everyone must have meat, drink, clothing and firing. So much goes out of the stock of the kingdom whether they work or no."[73] Moreover, parishes were to be made collectively responsible for poor law administration, and were criminally liable "if any person die for want of due relief in any parish in which he ought to be relieved."[74]

Locke is, therefore, not only insistent on the continuing limitation of individual right by the natural law claims of others, but, unusually in his case, we have evidence for him seeking to incorporate this in positive law.[75]

IV. Conclusion

The ambiguity of Locke's account of property right derives from the ambiguity of the context in which he articulated it. Not merely in the sense that Ashcraft has brought out - the need to appeal widely to the whole

[72] The Memorandum is quoted at length in H. R. FOX-BOURNE, The Life of John Locke, 2 vols., London 1876, vol II, pp. 377-391.

[73] FOX-BOURNE, vol. 2., p. 382.

[74] FOX-BOURNE, vol. 2, p. 390. It's worth remarking that this degree of accountability [and even, latterly, provision] goes well beyond that which applies in the administration of welfare in the modern British state. Moreover the degree of responsibility allocated to the parish goes some way in explaining the stringency of the rules defining what recipients must do to retain their eligibility.

[75] There is no evidence of Locke's political attempts to seek statutory articulation of other, supposedly better established, of his principles, such as the need for the active consent of all citizens to Government.

spectrum of interests in the revolutionary movement - but also in a more theoretically specific sense. Locke indeed seeks to defend property from arbitrary intervention *by the monarch*. To do so he must stress its inviolability. But Locke's more general theory of property rights locates them within the law of nature which stresses the mutuality of all claims and their vulnerability to others' needs. Government, as long as it acts legitimately, is duty bound to enforce these natural law criteria. Whilst in doing so it may invade conventional 'property rights', it will be enforcing those which are morally defensible. Thus to claim the inviolability of property rights against an invasive and arbitrary sovereign, is quite consistent with a *definition* of property right which incorporates the needs of others. Property rights are inviolable. But there simply is no property right, where natural law duty concerning the welfare of others are not being discharged.

Consideration and empirical identification of the socio-economic circumstances under which such duties may be said to be fulfilled is of course entirely another matter, and one which was to provide ample scope for both conservative apologists and radicals working within Lockean parameters for the succeeding three centuries.