Locke's Theory of Property: A Re-examination

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Among the many contemporary interpretations of John Locke's political philosophy, the works of Leo Strauss[1] and C. B. Macpherson[2] stand out as having been especially influential, as well as controversial. Both of these interpretations maintain that Locke was not a natural law theorist, in the traditional sense, and that the purpose of his theory of property was to sanction the unlimited appropriation and accumulation of property without concern for the needs of others.[3] Macpherson concludes, Locke "went out of his way to transform the natural right of every individual to such property as he needed for subsistence and to which he applied his labor into a natural right of unlimited appropriation."[4] Moreover, he claims that one of Locke's major achievements was to transform and undermine the traditional view of property, which was based on the assumption that the earth was originally given to mankind in common, in order to justify an individual right of appropriation devoid of all moral obligations to others in society.

Both Strauss and Macpherson have argued that Locke's account of property represents the ideology of the rising bourgeoisie and is an attempt to provide a moral basis for laissez-faire capitalism. Furthermore, Macpherson has suggested that the present difficulties of modern liberal democratic theory lie in the contradictions inherent in the "possessive individualism" of the seventeenth century theorists, like Hobbes and Locke. The major problem with these theories, says Macpherson, is that they presuppose a modern concept of individualism, i.e., a belief that individuals are essentially possessors of rights, freed from all social obligations, except for a negative duty of non-interference, a belief that he claims is ultimately detrimental to human and social development.

In contrast, James Tully[5] has recently argued that Locke's conception of property is not to be understood in terms of a right in private property, but only as a right to use God's property for God's purposes. "The kind of exclusive right which Locke develops," says Tully, "is the uniquely English concept of the use which a trustee is said to have in another's proper-

Auslegung, Vol. XI, No. 1
ISSN: 0733-4311

ty."[6] Accordingly, there is no natural right to the appropriation of land in itself, but only an exclusive right to use the products of one's labour. Far from attempting to provide a moral basis for laissez-faire capitalism, Locke's main ideological aim was to demonstrate "that fixed property in land does not have a natural foundation."[7] Rather, private property in land is a purely conventional right established by government and based on mutual agreement. The point of departure for Tully's interpretation is the claim that Locke was seeking to ground property rights in accordance with traditional natural law theory, which typically treated private property, not as natural, but as a rational addition to the law of nature and as such, a product of convention or positive law.

It is my contention that these interpretations are examples of what Monson[8] calls "nothing but" interpretations, i.e., they make the mistake of reducing Locke's theory to one basic principle, instead of recognizing the complexity of his philosophical project. On the one hand, Locke did propound a social and political philosophy which remained firmly rooted in traditional natural law theory; on the other hand, I will argue that he modified this theory in order to defend a <u>natural</u> right in private property. Consequently, if both aspects of Locke's thought are fully considered, it can be shown that although Locke does justify private appropriation and accumulation beyond what is necessary for individual use, this is done, not for its own sake, but in order to bring about the conditions of greater productivity and wealth required to satisfy the natural law duty to preserve all mankind. This duty is correlated with the inclusive right that each man has to use those things necessary for his own preservation, a right which is prior to any exclusive right in property, and is the basis of Locke's own conception of an "original community." It is this assumption of an "original community" that establishes the natural law parameters for the distribution of property within a just society. In particular, any individual's exclusive right in property is always conditioned by a concommitant obligation to others, as determined by the inclusive right each man has to the means of self-preservation. What distinguishes Locke from a traditional natural law theorist, however, is that he also claims that rights in private property are completely <u>natural</u>, not conventional.

For the purposes of this paper, I will assume that Locke was neither a disguised Hobbesian nor that he was simply hiding behind traditional terminology, but was, in fact, a natural law theorist.[9] What I intend to demonstrate is <u>how</u> the principles of natural law delimit Locke's conception of property, by situating property rights within a complex matrix of interrelated rights and duties, both positive and negative; and

thereby indicate the true intention of Locke's justification of a natural right in property. If this project is successful, then it can be shown that, contrary to the extreme interpretations advanced by some recent commentators, Locke's theory of property is better suited to a defense of what is typically called social-welfare capitalism. In a time when the underlying values of liberal democratic society are being subject to increasing criticism, not to mention confusion, a reassessment of what these values really are is not without significance.

I

Locke begins chapter five of the Second Treatise with the supposition that the earth was originally given to mankind in common.[10] Given this supposition, which is said to be based on both natural law and Scripture, the problem is to demonstrate how anyone could ever come to have a property in any particular thing. Locke's purpose, then, is to solve this problem by showing "how Men might come to have a property in the several parts of that which God gave to Mankind in common." (2.25) In the next paragraph, Locke restates the problem, adding that since the earth was given to mankind in common, no one originally had a "private Dominion, exclusive of the rest of Mankind." (2.26) Locke's solution, of course, is the labour theory of ownership; for whatever a man mixes his labour with, he removes from its natural state and makes it his own property.

While most commentators are as anxious as Locke appears to be to provide an analysis and justification of private property, my immediate intention is not to critique the solution, but to examine the basic supposition that underlies the problem itself. How does Locke understand the proposition that the earth was given to mankind in common? Chapter five seems to furnish little insight into the content of this proposition. Most commentators are equally unenlightening.[11] Macpherson, for example, merely reminds his reader that the belief in an "original community" was the traditional view, found in both medieval and seventeenth century Puritan theory, and then adds that Locke accepted this position only to refute the conclusions usually drawn from it, which had made property "something less than a natural individual right."[12] Although Macpherson is correct in observing the traditional character of this view, such an observation adds very little to our understanding of it, since there was no common consensus amongst natural law theorists as to its precise meaning.

In this section of the paper, I will outline two possible interpretations of the proposition that originally the earth was given to mankind in common. The first interpretation is that provided by the late six-

teenth century Spanish Jesuit, Francisco Suarez, who produced one of the best summaries of the political philosophy of Neo-Thomism. Samuel Pufendorf, a German Protestant, who attempted a reconstruction of natural law theory in the latter portion of the seventeenth century, will furnish the material for the alternative interpretation. This will be followed, in the second section, by an attempt to ascertain the interpretation which Locke himself must have assumed, and a consideration of how this position would condition his conception of the right in property. It should be noted throughout this discussion that, despite our differences in interpretation, I am greatly indebted to the excellent historical analyses of Locke and other seventeenth century natural law theorists recently provided by James Tully and Richard Tuck.[13] Both of these works have established new standards for the understanding and appreciation of Locke's philosophical enterprise.

The notion of an "original community" is defined by Suarez in terms of the conception of a subjective right (ius). In his De Legibus ac Deo Legislatore (1612) Suarez presents a two-fold analysis of the concept of a subjective right:

> . . . . this name is properly wont to be bestowed upon a certain moral power which every man has, either over his own property or with respect to that which is due to him. For it is thus that the owner of a thing is said to have a right (ius) in that thing, and a labourer is said to have that right to his wages by reason of which he is declared worthy of his hire. Indeed, this acceptation of the term is frequent, not only in law, but also in Scripture; for the law distinguishes in this wise between a right (ius) [already established] in a thing and a right to a thing . . . .[14]

According to this analysis, a subjective right designates either that which is rightfully one's own or that which is rightfully due to a person. In other words, within the conception of a subjective right two senses may be distinguished: (1) a right already established in a thing (ius in re) and, (2) a right to a thing (ius ad rem). The right to a thing may be conceived as a morally valid claim to that which is due to a person as a matter of justice, but which he does not yet possess. The right in a thing is a right in that which morally belongs to a person, and which he does, in fact, possess. In either case, a person is related to some thing in a way that is morally justified, although the exact nature of the relationship varies in each case. This dual relationship is rooted in the particular sense of "justice" as that which renders unto each person that which is his due.

> Again, it would seem that ius is so understood in the Digest in the passage (I.1.10), where justice is said to be the virtue that renders to every man his own right (ius suum), that is to say, the virtue that renders that which belongs to him. Accordingly, this right to claim (actio), or moral power, which every man possesses with respect to his own property or with respect to a thing which in some way pertains to him, is called ius; and appears to be the true object of justice . . . .[16]

Suarez then applies this dual conception of a subjective right to the notion of an "original community" which he describes in the following way: "nature has conferred upon men in common dominion over all things, and consequently has given to every man a power to use these things; but nature has not so conferred private property rights in connexion with that dominion . . . ."[16] Following Aquinas, he notes that the institution of private dominion (exclusive property rights) is not opposed to natural law, but is merely a rational addition to the law of nature, based on human agreement.[17] This is not to say, however, that a positive right to property did not exist prior to the division of the common stock, for within the "original community" every man has a positive right to those things existing in common. "Common ownership of property would also pertain in a certain sense to dominion held by men by virtue of natural law, if no division of property had been made, since [in that case] men would have a positive law and a claim to the use of common property . . . ."[18] According to this notion of a "positive community," each man has a positive right (ius ad rem) to use the things of the earth, a right to his due; a right to be included, not excluded, from the use of the common stock. Moreover, the (exclusive) right in a thing (ius in re) is simply the realization of this prior (inclusive) right to one's due (ius ad rem).

In contrast with this notion of a "positive community," Pufendorf suggests a very different view of dominion in common, that of a "negative community." In his De Iure Naturae et Gentium, he argues that the "right" of the first man (Adam) over all things was not a dominion in the proper sense of the word, but an "indefinite dominion not formally established but only conceded, not actually, but potentially so."[19] With respect to Adam, there was neither private dominion nor common dominion, but "indefinite dominion." According to this latter notion, "things are said to be nobody's, more in a negative than a positive sense; . . . . They are, furthermore, called 'things that lie open to any and every person'."[20]

Pufendorf has, in effect, reduced the notion of dominion to that of private property, an exclusive

right based on mutual agreement. Since he equates "dominium" with "proprietas," common property is than referred to as "indefinite dominion" or "negative community." It is not that the earth originally belongs to everyone, each man having a right to use what he needs. Rather, the earth belongs to no one, with each man having the ability to acquire exclusive property rights.[21]

The difference between these two conceptions of "original community" is subtle, but significant. A classic example borrowed from Cicero's On Ends may help to illustrate this point.[22] If I choose to attend a public lecture, the seats in the hall are open to all. When I occupy one of the available seats it becomes my own, that is, I have an exclusive right to use it and others have a negative duty not to interfere with my use. But what is to occur once all of the seats have been occupied and there are still others who wish to be seated? On Suarez's reading of the right to the common, those remaining still retain their right to be included in the use of the hall, even after all of the seats have been occupied. If they are to be treated justly, i.e. given their due, it would appear that those with seats have an obligation or duty to accomodate their claim, in some way. On Pufendorf's reading, however, once all of the seats have been occupied, the remaining individuals have no positive claim to be included in the use of what was previously open to all. Those with seats, therefore, have no duty to give them their due, although they may attempt to accomodate them from feelings of charity.

I will conclude this section with one last illustration of the significance of "positive community," this time taken from Hugo Grotius' De Jure Belli ac Pacis.[23] In this text, Grotius asks whether men in general possess any right over things which have already become the exclusive property of another. He comments that this appears to be a strange question, since it would seem that the right of private ownership has completely absorbed the right which had its origin in the state of community. Responding to this question, however, Grotius argues that such is not the case, for one must consider that the intention of those who introduced private ownership was to deviate as little as possible from natural equity. Hence it follows, "That in direst need the primitive right of users revives, as if community of ownership had remained."[24] The reason for this is not based on charity, but justice; it rests on the demands of a prior right to one's due, for "all things seem to have been distributed to individual owners with a benign reservation in favour of the primitive right."[25]

The above illustration is based on the assumption that Grotius accepted some conception of a "positive community." It should be noted, however, that this as-

sumption is subject to considerable dispute among commentators.[26] The key to the resolution of this issue is found in an earlier text entitled De Iure Praedae in which Grotius analyzes the concepts of "dominium" and "proprietas." In this analysis, Grotius states that according to the usage of his own day these two concepts are identical in meaning, that is, both refer to a right of exclusive ownership. Now if Grotius maintained that this usage exhausted the meaning of "dominium" then, like Pufendorf, he would have had to reject the notion of a "positive community" with "common dominion." However, Grotius goes on to argue that: "because of a certain degree of similitude and by analogy, the above-mentioned expression descriptive of our modern customs are applied to another right, which existed in early times."[27] According to this earlier usage, "dominium" denotes "the power to make use rightfully of common property."[28] In this way, natural man, prior to the establishment of exclusive property rights, can be said to possess an inclusive right to use what is necessary for his subsistence. Such a right is analogous or similar to that of an exclusive right. And although this "primitive right" seems to have been absorbed by exclusive property rights, it can be revived in cases of extreme need. Consequently, Grotius appears to be much closer to Suarez, then to Pufendorf and Hobbes, in advocating some conception of an inclusive right to common property, at least by analogy. All of them agree, however, that exclusive property rights are the product of convention, based on common consent, and therefore, fall under the jurisdiction of positive law.

II

As previously stated, Locke assumes a conception of an "original community" in his discussion of property in the Second Treatise. He does not, however, clearly define what this concept means nor does he explicitly distinguish between the notions of a positive or negative community. By a brief examination of Locke's comments on Scripture directed against Filmer in the First Treatise, and particularly through an analysis of Locke's running discussion of natural law in the Second Treatise, I intend to show that Locke must have assumed the notion of an original "positive community." I will then indicate how such an assumption would necessarily condition his understanding of the right in property.

Part of Locke's aim in the First Treatise was to refute Filmer's contention that according to 1 Gen. 28, God had granted to Adam (and his successors) the right of private dominion over the whole earth, exclusive of all other men. Like Pufendorf, Filmer equates dominion with private property. But instead of acknowledging the existence of an original "negative community"

Filmer maintains that Adam was given an exclusive right of private property over the earth. To counter this claim, Locke argues that whatever dominion Adam had, "it was not a Private Dominion, but a Dominion in common with the rest of Mankind." (1.29) Thus Locke reasserts the traditional view of an "original community," although he does not state explicitly what sort of community he has in mind. Various passages, however, tend to suggest that he supposed that of a "positive community." For instance, this God given common dominion is described in terms of a right to use the products of the earth as a means of self-preservation. "God gave his sons a Right to make use of the Earth for the support of themselves and Families." (1.37) Again, "God . . . himself gave them all a Right, to make use of the Food and Rayment, and other conveniences of Life, the Materials whereof he had so plentifully provided them." (1.41) By admitting a right to use the earth, prior to the establishment of exclusive property rights, Locke's Scriptural remarks seem, at least, to favour the notion of a "positive community."

Once Locke has shown that common dominion is in agreement with Scripture, he must also demonstrate that the notion of an original "positive community" is in accordance with natural law. Consistent with the tradition of natural law theory, Locke states, in various ways throughout the Two Treatises, that the fundamental law of nature is that mankind ought to be preserved.[29] The validity of this appeal to natural law is not justified by Locke, he merely notes that "it is certain there is such a Law" and that it is "as intelligible and plain to a rational Creature, and a Studier of the Law, as the positive Laws of Common-wealths, nay possibly plainer." (2.12) Such a reluctance on the part of Locke to undertake a formal defense of natural law theory has led some commentators to deny that Locke really was a proponent of natural law. The task of presenting Locke's credentials as a natural law theorist is, of course, beyond the scope of this paper. In lieu of such a defense, I will continue to take Locke at his word, considering what he actually says, not what he may have wanted to conceal by such words.

According to Locke, "the fundamental law of Nature (is) the preservation of Mankind." (2.135) Although stated in general terms, such a law or principle is meant to serve as a rational rule or guideline which directs human activity toward its proper end, and as a "law," one is said to be obliged or bound to act accordingly.[30] At this level, the end or purpose under consideration is the preservation of mankind. By reformulating this principle as "all the Members of the Society are to be preserved" (2.159) Locke indicates that the "end" is to be understood in both its collective and distributive senses; not only is the human

species to be preserved, but each member of that class is to be preserved as well.

Given the general character of this principle of action, it is not immediately evident what particular activities are morally obligatory in order to guarantee that the "end" be achieved. To satisfy this need, Locke manages to generate a complex web of interrelated rights and duties, thus defining in more detail certain types of normative behaviour.[11] To begin with, each individual is said to have "the right to self-preservation." (2.11) And as one might expect, this right is correlated with the negative duty on the part of others not to interfere with the exercise of that right by the right holder. In general, "no one ought to harm another in his life, Health, Liberty, or Possessions." (2.6) Thus far, Locke has said nothing that a typically "modern" natural rights theorist would find objectionable. Locke, however, restates this right of self-preservation in terms of a duty, i.e. "every one . . . is bound to preserve himself." (2.6) Hence, the right of self-preservation is also a duty which obliges the individual to preserve himself in existence. It is not a right which one is free to exercise or not, for no man is at liberty to terminate his own life.

Locke's translation of the right of self-preservation into a corresponding duty is justified by the following argument: (1) each man's life is the product of God's creative labour. Assuming the labour theory of ownership, (2) each man's life is not properly his own, but the property of God, its maker. And since (3) no man has a right to destroy that which does not belong to him, (4) no man has a right to destroy his own life. Furthermore, the right not to destroy one's life is equivalent to the negative duty that one must not interfere with one's life by destroying it. When viewed from the perspective of natural law, this negative duty can be transformed into a positive duty: for if the law of nature commands that each man be preserved in existence and it is morally wrong to act contrary to that command, and moreover one is obliged to act accordingly, then it is also one's positive duty to actively pursue that end. Consequently, each man has the positive duty to preserve his own life.

In addition to the duty to preserve oneself in being, every one has a similar duty "to preserve the rest of Mankind." (2.6) Locke also refers to this as "the Right (each man) has of Preserving all Mankind." (2.11) Although Locke does not explicitly explain how this duty is derived, it appears to follow from the original dictate of natural law, this time from its collective aspect. If the end designated by natural law is the preservation of all mankind, then one's behaviour must be normatively directed toward the realization of that end, both positively and negatively. Hence, each man has a negative duty not to interfere with the preserva-

tion of his fellow man, as well as a positive duty to promote that preservation, in so far as he is able; both duties being designed as a means of preserving mankind as a whole.

To summarize: if the law of nature commands that all men ought to be preserved, then all men are equally obligated to work toward the realization of that end. It has been shown that such an obligation entails a complex of normative behaviour defined in terms of rights and duties, both positive and negative, toward oneself and others. Anything less would jeopardize the fulfillment of this obligation and undercut the fundamental law of nature.

Now, if all men have a right (and a duty) of self-preservation, then they must also have a right to the means of preserving themselves. This right is grounded in the right of self-preservation, and implies the prior right to use those things necessary for the preservation of life. For if one has a duty to preserve one's life, then prior to the actual acquiring of some thing, one must already possess a right of access to the available means of subsistence. "He that is Master of himself, and his own Life, has a right too to the means of preserving it . . ." (2.172) In the context of the "original community" each man possesses the right to use those things necessary for his subsistence (ius ad rem), a right which is prior to any exclusive right in a thing (ius in re).[32] Locke's conception of the law of nature, then, appears to support the notion of an original positive community.[33]

This returns us to Locke's original problem; to show "how Men might come to have a property in the several parts of that which God gave to Mankind in common." (2.5) Our previous analysis, however, places this problem in a clearer light. More specifically, since the earth originally belonged in common to all mankind, the problem is to show how an individual might justly acquire something as his own, without violating the common right of other men. Locke's solution to this problem seems to be something like the following: although the earth and all it contains was given to mankind for its use, "yet being given for the use of Men, 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." (2.26) This right to appropriate, Locke derives from what is typically called the labour theory of ownership.[34] Since "every Man has a Property in his own Person. This no Body has a Right to but himself. The Labour of his Body and the Work of his Hands, we may say are properly his." (2.27) Consequently, whatever a man mixes his labour with, he removes from its natural state and makes it his own property. The application of one's labour, what is exclusively one's own, thus transforms an inclusive right to use what is common

into an exclusive property right. "The labour that was mine, removing them out of that common state they were in, hath fixed my Property in them." (2.28) After justifying the appropriation of the produce of the earth, Locke applies the labour theory of ownership to "the chief matter of Property," i.e. the possession of the earth itself. "As much land as a Man Tills, Plants, Improves, Cultivates, and can use the Product of, so much is his Property. He by his labour does, as it were, inclose it from the Common." (2.32)

What is significant about Locke's solution to the problem of individual appropriation is that, in contrast with the traditional natural law account, which grounded private property in consent, he is careful to emphasize that individual appropriation is natural and "does not depend on the express consent of all the commoners." (2.28) As such, Locke's labour theory is a continuation of his refutation of Filmer begun in the First Treatise. In this case, he is directly responding to Filmer's criticism of those natural law theorists who grounded private property in the common consent of mankind.[35]

While the right in property is usually derived from the right to self-preservation, it must also be viewed in its relationship to the positive duty, not only to preserve oneself, but to preserve all of mankind as well. Although each man is entitled to that which he has justly acquired through his labour, such a right is not absolute. Everyone's exclusive right in property is conditioned by the inclusive right that each man possesses to use whatever is necessary for his own preservation. Exactly what this entails is not immediately evident. But at least one consequence of this inclusive right is that every man has a positive duty to render assistance to those in need, while those in need have a genuine right to receive such assistance. Locke makes this conclusion explicit in the First Treatise:

> But we know God hath not left one Man so to the Mercy of another, that he may starve him if he please: 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. And therefore no Man could ever have a just Power over the Life of another, by Right of property in Land or Possessions; since '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. (1.42)

Locke further describes this duty to render assistance in terms of the relationship between Justice and Charity:

> As Justice gives every Man a Title to the product of his honest Industry, and the fair Acquistions of his Ancestors descended to him; so Charity gives every Man a Title to so much out of another's Plenty, as will keep him from extream want, where he has no means to subsist otherwise . . . (1.42)

In these passages Locke compares the exclusive right that each man has to the products of his labour (justice), with the inclusive right that each man has to use those things necessary for his own preservation (charity). Both claims are grounded in the natural law dictate that commands the preservation of all mankind. Justice requires that property justly acquired is to be respected, while charity refers to the "title" each man has to the means of subsistence, as well as the correlated duty on the part of others to see that this is provided, even if it would require some access to what one has justly acquired. This is in direct opposition to Strauss' assertion that " . . . need as such is not a title to property."[36] For Locke, such a title is based on the right to use those things necessary to preserve one's life (jus ad rem), a right which is prior to the title derived from one's labour (ius in re). To argue that Locke sanctions unlimited accumulation without concern for the needs of others is to deny what Locke explicitly says. Moreover, it fails to consider the general theoretical framework within which Locke is working.

The reason why Strauss and Macpherson see Locke as justifying unlimited accumulation without concern for the needs of others, is that they fail to understand Locke's theory of property from within the perspective of natural law and an original "positive community." Since they do not recognize the existence of a positive right to property prior to the establishment of individual (exclusive) property rights, they cannot see how the former has priority over the latter. Consequently, they misinterpret the complete significance of Locke's initial limitations on private property: (1) use, non-spoilage (2.31), and (2) leaving as much and as good in common for others. (2.27) For while it is correct to observe that these initial limits are "transcended" by the tacit consent to money, this is not to say that they are removed.[37] Since money does not spoil, the consent to its use does allow the first limitation to be transcended. A man is able to accumulate more land than he is able to use the products of, since it is now possible to exchange the surplus for money which does not spoil. This, however, creates the potential for

the extension of land-holdings to the point where there is no longer any land left to be appropriated--an apparent violation of the second limit. This limit is also transcended in that it is replaced by a new standard of justice which maintains that since the private appropriation of land has led to an increase in productivity and therefore a greater standard of living for all, it is a more just arrangement than that which existed in the "state of nature," wherein land was unappropriated. Macpherson warns that "this assumes . . . that the increase in the whole product will be distributed to the benefit, or at least not to the loss, of those left without enough land. Locke makes this assumption."[38] But for Locke, this is not merely an assumption; it is a moral duty imposed by the law of nature.

Both of the initial limitations on property acquisition were intended to guarantee that the common right of all men to the means of subsistence was not violated. With the introduction of money, this right is not simply denied; it is re-established on a higher level. So while it is true that Locke does justify individual appropriation and accumulation beyond what is necessary for individual use, this is done in order to promote the conditions of greater productivity and wealth required to satisfy the duty to preserve mankind. This process of accumulation is grounded in the prior supposition that private appropriation is always conditioned by the inclusive right of each man to use what is necessary for self-preservation, as well as the correlated duty on the part of others to assist those in need. Locke, therefore, has not gone out of his way to justify an unlimited exclusive right in property for its own sake. Rather, his justification is based on the assumption that the right of appropriation, although greatly extended, is always conditioned by the prior inclusive right to one's due. In this way, the assumption of an original "positive community" establishes the parameters for his understanding of private property, in accordance with the law of nature.

Before continuing this discussion, however, an examination of Tully's conclusions are in order. Contrary to the above interpretation, Tully has suggested that Locke's "property in" is not equivalent to "private property," but refers to a conditional right to use what has been given by God for man's support.[39] On this reading, labour does not ground private property rights, but merely serves to individuate one's inclusive right to the common-stock by transforming it into an exclusive, albeit conditioned, use right. There is, therefore, no right in land as such, but only a use right in improved land conditioned upon the appropriate use of its products in fulfillment of the ends established by the law of nature. "This unique construction," says Tully, "serves to establish Locke's

main ideological conclusion: that fixed property in land does not have a natural foundation."[40] Moreover, once money is introduced and men are able to enlarge their possessions, no appropriation is justified. It is not that the initial limitations on appropriation are transcended, rather, individual appropriation itself is transcended by governmental determination of property rights for the common good. The distribution of property is then conventional and the consequence of man's consent to enter political society.[41]

Since Locke does not explicitly define what he means by "property," it is difficult to determine the accuracy of Tully's claim that "property in" is merely a conditional use right and does not at least approximate a full right of private ownership, as I have suggested. The concept of property rights is, of course, a complex notion involving a "bundle of rights" which are not always clearly distinguished.[42] Locke's own running discussion of property rights shares this complexity. Nevertheless, it seems evident that Locke's notion of property is not easily reducible to a "right to use" and nothing more. Even if the primary focus of Locke's account is to establish (through labour) an individual's right to use some thing, it is difficult to imagine what such usage would mean if it did not imply a right to appropriate or possess that thing as well. As we have seen, Locke's right in property includes a right to exclude others from use, at least when such exclusion is not life threatening. (2.6) Locke repeatedly insists that one's property cannot be taken without one's consent. He also notes that the right in property includes the power of transmissibilty, since every man has a right to "the fair Acquisitions of his Ancestors descended to him." (1.42) Of course, the distinctive stipulation is that one also has a duty to use one's property productively for the common good. But I do not see how this condition detracts from the conception of property rights as rights of ownership. Rather, it merely adds to the list of "rights" a duty of productive use, and there seems to be nothing incompatible in holding that owners of private property incur a duty to use that property for the benefit of society.[43] While this enumeration of property rights (and duties) does not constitute a conclusive argument against Tully's analysis, it does, I think, render it somewhat doubtful.

More importantly, it is not at all clear that Locke intended to claim that property rights are completely "determined" by government within political society. Rather, the role of government is to preserve and regulate property for the common good; i.e., in accordance with the principles of natural law. (2.45) This is not to ignore the fact that not all of Locke's statements are perfectly consistent. For instance, he appears to conflate this distinction between "determination" and

"regulation": "For in Governments the laws regulate the right of property, and the possession of land is determined by positive constitutions." (2.50) But, as I have already argued, Locke's major innovation in traditional natural law theory was to make property natural and antecedent to government, while still remaining within a natural law context. The natural foundation or justification of an individual's property is his labour, for his labour is "perfectly his own." (2.44) And it is the natural condition of human life as requiring labour which "necessarily introduces private Possessions." (2.35) Nowhere do I find Locke saying that such natural aquisition is eventually invalidated, only to be re-established by government. With the tacit consent to money, a man is able to enlarge his possessions, yet Locke is careful to point out that this is not an injustice to anyone, nor does it demand the abandonment of natural appropriation, as long as this increased wealth is properly used. (2.46) In this situation of increasing wealth and diminishing natural resources, the task of government is not to invalidate the natural process of appropriation, but to guarantee that property be used to satisy the natural law dictate to preserve all mankind. As always, property rights and duties must be understood from within the parameters set by the law of nature.

The problem now is to ascertain more precisely what these parameters are in their application to given concrete situations. As previously stated, Locke claims that an individual's exclusive right in property is conditioned by the inclusive right of those in need to use what is necessary for their self-preservation. This latter right could take a variety of forms, although Locke does not clearly specify what these forms might be. In the First Treatise he simply compares the claims of justice and charity, pointing out that each generates a "title" to something: the first based on the just deserts of one's labour, the second on the required satisfaction of one's fundamental needs. In the Second Treatise, Locke again repeats these two claims, this time in terms of inclusive and exclusive rights:

> Now of those good things which Nature hath provided in common, every one has a Right (as hath been said) to as much as he could use, and had a Property in all that he could effect with his labour: all that his Industry could extend to, to alter from the State Nature had put it in, was his. (2.46)

In neither case does Locke explain how these two equally valid moral claims are to be sorted out. It is one thing to demonstrate how one's common right to use things can be transformed into a property right in some

particular thing through labour, and this, of course, is Locke's primary concern in the Second Treatise. But once most, if not all, of the land has been appropriated; what does one's inclusive right entitle one to, how is this right to be satisified, and to whom is this right ultimately addressed? I will attempt to answer each of these questions in turn.

Thus far it has been determined that an inclusive right entitles the right-holder to use what is necessary for the preservation of his life. For Locke, the measure of what is necessary is fixed by the conditions of life as they exist in the "state of nature," i.e., one is entitled to whatever is necessary to preserve one's life at the (natural) level of subsistence. The establishment of this measure is part of Locke's overall justification of unlimited accumulation of property, even when the results of such accumulation are inequalities in holdings. For such accumulation is just if and only if the least advantaged individuals are benefited or at least are made no worse off than they would have been if property had not been appropriated. In other words, their standard of living is at or above what it would have been in the baseline situation of the "state of nature."[44] It is for this reason that Locke observes that an Indian in America, where land has not been appropriated, is worse off than a day-labourer in England, where most of the land has been appropriated. (2.41) Given this fact, the appropriation of land in England is justified, even though it did not, in any direct sense, leave as much and as good for others. Nonetheless, every individual is still entitled, by right, to the means of subsistence. Before considering how this right is to be satisfied, one further comment is in order.

Whether or not this minimal (subsistence-level) standard would be acceptable to the moral conscience of a modern industrialized society is perhaps doubtful, although it may have seemed quite obvious to Locke's contemporaries. Since standards of living are, for practical reasons, dependent upon the real development of economic power, the minimally acceptable standard of living may also be somewhat relative. In a developing economy, for example, one might expect that the least advantaged would be increasingly better off. If what constitutes "need" cannot be defined in absolute terms, but is relative to the levels of social and economic development, then "need" could ultimately mean whatever is necessary for an individual to enjoy a decent standard of living as determined by a general moral consensus and available economic resources. In order to meet this standard, a variety of redistribution schemes may be justified. Finally, I am inclined to believe that a similar conclusion is at least implicit in Locke's concern, not only for the right to property, but for the right to life and liberty as well; for these rights

can only be enjoyed effectively under conditions which surpass the level of mere subsistence.[45]

The right to use what is necessary for the preservation of life may be satisfied in a number of ways. In a situation where all the land has not been appropriated, individuals could be granted access to what is still available. Where most of the land is already owned, a variety of options remain open. Locke assumes that under such conditions, the opportunities to obtain the means to life are greater than they would be in the unimproved natural state. Those without land should have sufficient opportunities to sell their labour in order to obtain the necessities of life. However the minimal standard of life is determined, the labourers would be entitled to a just renumeration for their efforts. Moreover, those who are unable to obtain their own means of subsistence, through no fault of their own, are still entitled to whatever is appropriate to preserve their lives. This obligation might be fulfilled by direct transfers of goods or payments to those in need.

Does this mean that one is morally required to give up or share what one has justly acquired, either by labour or inheritance? In part, this question has already been answered. One's right to property is never absolute, it is always dependent upon the condition that one's ownership does not worsen the position of others. As we have seen, according to Locke, "charity gives every Man a Title to so much out of another's Plenty, as will keep him from extream want, where he has no means to subsist otherwise . . ." (1.42) The question now is exactly who has the duty to satisfy this right.

If, as Locke says, individuals in the "state of nature" have rights and duties which are derived from the moral principles of natural law, and if the "state of nature" consists of individuals prior to the establishment of civil government, then these rights must be addresssed to other individuals. Such rights, especially the right of self-preservation, imply both positive and negative duties on the part of other men. Among the rights which individuals have in the "state of nature" is the "executive power" to punish violators of the law of nature. Given the obvious difficulties in guaranteeing fair judgments in this situation, Locke argues that civil government is the proper remedy for the inconveniences of the "state of nature." (2.13)

Now, one might add to the list of inconveniences, the problem of guaranteeing that each individual is provided with the appropriate means of subsistence. For if an individual finds himself in need, then he is entitled to assistance from those who have enough. But which individual is required to act is subject to a variety of contingent factors. In order to be obligated to assist someone in need, one must possess the

means of rendering assistance. Furthermore, one is not obligated to assist another in need, if the providing of aid would reduce the provider to a similar state. This condition is in accordance with Locke's claim that every one has a duty to preserve himself, and "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 . . ." (2.6) Even if these conditions are met, for practical reasons, one must be in some proximate relationship to the needy individual in order to be able to provide assistance. If we include these factors among the inconveniences of the "state of nature," then the remedy for these problems will be civil government as well. Consequently, within a given society, it is the duty of government to satisfy the right that each man has to the means necessary to preserve his life. In a just society, organized according to the principles of natural law, every individual is able to fulfill his respective duty to preserve mankind in the most effective manner by the redistribution of goods and services, as carried out by the operation of appropriate governmental institutions and agencies. These obligations would be guaranteed by the organization of society, "for the end of Government (is) the preservation of all." (2.159)

If the above analysis is correct, it seems clear that Locke's theory of property cannot, without some distortion, serve as a moral basis for the ideology of bourgeois individualism and laissez-faire capitalism. In fact, his theory appears to be more compatible with the ideals of social-welfare capitalism, including the role of government to redistribute property in order to guarantee a decent standard of living for all citizens.[46] Ironically, Locke's conception of an "original community" and the inclusive right of every man to the means of self-preservation could serve as a basis for some of Macpherson's own arguments concerning the concept of property in a real liberal democracy. According to Macpherson, "the rationale of property . . . requires the recognition of property as a right not to be excluded--either the right not to be excluded from a share in the society's whole material output, or the right not to be excluded from access to the accumulated means of labour."[47] As I have attempted to show, a right not to be excluded is already present in Locke's own theory and justification of property.[48]

NOTES

[1]Leo Strauss, Natural Rights and History, (University of Chicago Press, 1953), pp. 166-251.

[2]C. B. Macpherson, The Political Philosophy of Possessive Individualism, (Oxford, 1962), pp. 194-262.

[3]Strauss, p. 243. It has become commonplace in histories of political philosophy to distinguish between traditional natural law theory and modern natural rights theories, i.e. Hobbes and Locke. See especially Leo Strauss, The Philosophy of Hobbes, (Chicago, 1952), p. xii.

[4]C. B. Macpherson, "The Social Bearing of Locke's Political Theory," in Life, Liberty, and Property: Essays on Locke's Political Ideas, edited by Gordon J. Schochet, (Wadsworth, 1971), p. 71.

[5]James Tully, A Discourse on Property: John Locke and his Adversaries, (Cambridge, 1980), pp. 95-130.

[6]Ibid., p. 122.

[7]Ibid., p. 122.

[8]Charles Monson, "Locke and His Interpreters," Political Studies, 6 (1958), pp. 120-35, reprinted in Schochet (1971), p. 33-48.

[9]For a discussion of Locke's arguments concerning the existence and binding force of natural law see W. von Leyden, "John Locke and Natural Law," in Philosophy, vol. 21, (1956), pp. 23-35. For an opposing view see Strauss, Natural Rights and History, pp. 204-34, and Heinrich A. Rommen, The Natural Law, (Herder Books, 1947), pp. 88-91.

[10]John Locke, Two Treatises of Government, the critical edition by Peter Laslett. All selections are quoted from this text and noted within the paper.

[11]Strauss does not even mention this supposition.

[12]Macpherson, The Political Philosophy of Possessive Individualism, pp. 199-200.

[13]For a more complete and indepth discussion of the history of natural law theories in the sixteenth and seventeenth centuries, see Richard Tuck, Natural Rights Theories, (Cambridge, 1979) and James Tully, A Discourse on Property: John Locke and his Adversaries, (Cambridge, 1980).

[14]Francisco Suarez, De Legibus Ac Deo Legislatore, in Selections From Three Works, translated by G. L. Williams, (Oxford, 1944), p. 30.

[15]Ibid., p. 31.

[16]Ibid., p. 278.

[17]Thomas Aquinas, Summa Theologica II-II, q. 66, a. 2. "Community of goods is ascribed to the natural law, not that the natural law dictates that all things should be possessed as one's own, but because the division of possessions is not according to the natural law, but rather arose from human agreement, which belongs to positive law."

[18]Suarez, p. 278.

[19]Samual Pufendorf, De Iure Naturae et Gentium Libri Octo, translated by C. H. Oldfather and W. A. Oldfather, (Oxford, 1934), p. 535.

[20]Ibid., p. 532.

[21]This compares favourably with Hobbes: "For where there is no commonwealth, there is . . . a perpetual war of every man against his neighbor; and therefore every thing is his that getteth it,and keepeth it by force; which is neither propriety, nor community; but uncertainty." Leviathan, chapter 24.

[22]This example is cited by Hugo Grotius, De Jure Belli ac Pacis, translation by F. Kelsey, (Oxford, 1925), p. 186; and by Tully, p. 71.

[23]Grotius, p. 193.

[24]Ibid., p. 193.

[25]Ibid., p. 193.

[26]For instance, John Winfrey, in "Charity versus Justice in Locke's Theory of Property," Journal of the History of Ideas, 43,3, 1981, p. 430, maintains that Grotius assumed an original positive community. Tully argues that Grotius conceived of the original community in negative terms, pp. 68-71. And Tuck convincingly interprets Grotius' position as one which advocates what might be called common dominion by similitude or analogy, pp. 60-62. I have followed Tuck's interpretation as the one most clearly supported by the text.

[27]Grotius, De Iure Praedae, (trans.) G. L. Williams (Oxford, 1950), pp. 226-27. Cited by Tuck, pp. 60-61.

[28]Ibid., p. 61.

[29]For example: 1.86, 2.6, 2.7, 2.11, 2.16, 2.23, 2.60, 2.79, 2.135, 2.159 . . .

[30]See Thomas Aquinas, Summa Theologica I-II, q. 90.

[31]This has also been noted by Willmore Kendall, John Locke and the Doctrine of Majority Rule, (University of Illinois, 1941), pp. 68-74.

[32]In the First Treatise, Locke appears to make this very distinction. While discussing man's right to make use of irrational creatures for his own preservation, he notes that "thus man's Property in the Creatures, was founded upon the right he had to make use of those things, that were necessary or useful to his Being." (1.86)

[33]Again, for a more complete discussion of the notion of an original positive community and the derivation of rights and duties in Locke see James Tully, especially pp. 53-64.

[34]For discussions and criticisms of the labour theory of ownership see, for example, Lawrence C. Becker, Property Rights: Philosophic Foundations, (Rutledge and Kegan Paul, 1977), pp. 32-56; or Robert Nozick, "Distributive Justice," Philosophy and Public Affairs, 3, (Fall, 1973), pp. 45-126.

[35]Filmer writes: "Certainly it was a rare felicity, that all men in the world at one instant of time should agree together in one mind to change the natural community of all things into private dominion: for without such a unanimous consent it was not possible for community to be altered." Robert Filmer, Patriarcha and Other Political Works, (ed.) Peter Laslett, (Oxford, 1949), p. 273. Cited by Tully, p. 98.

[36]Strauss, p. 236.

[37]See, for example, Macpherson, p. 203.

[38]Ibid., p. 212. Here I am more or less in agreement with those who maintain that the condition of leaving as much and as good for others is "transcended" by the increase in productivity resulting from private appropriation. For instance, Alan Ryan, "Locke and the Dictatorship of the Bourgeoise," Political Studies 13 (1965), as reprinted in Schochet (1971), esp. pp. 89-90; G. Parry, John Locke, (London, 1978), pp. 55-56; and, of course, C. B. Macpherson (1962), pp. 211-213.

[39]Tully, p. 124.

[40]Ibid., p. 122.

[41]Ibid., p. 165.

[42]See A. M. Honore, "Ownership" in Oxford Essays in Jurisprudence, A. G. Guest (ed.) (Oxford, 1961), pp. 107-47; Becker, pp. 7-23.

[43]It is interesting to note that a similar conjunction of private ownership and social duty has been a central feature of Roman Catholic social thought which, like Tully's interpretation of Locke, purports to be based on the Thomistic analysis of property and social justice. This dual notion is best summed up by the statements of Pope John XXIII in Mater et Magistra (1961): "private property, including that of productive goods, is a natural right possessed by all . . . . (yet) there is from nature a social aspect to private property . . . . (so that) he who uses his right in this regard must take into account not merely his own welfare but that of others as well." Cited in "Property, Private," New Catholic Encyclopedia, vol. II, (McGraw-Hill, 1967), pp. 849-855.

[44]For further discussion on this point see David Lyons, "The New Indian Claims and Original Rights to Land," Social Theory and Practice, 4,3, (1977), pp. 249-71.

[45]This issue is also discussed by Ramon Lemos, Hobbes and Locke: Power and Consent, (University of Georgia Press, 1978), pp. 148-53.

[46]Ibid., p. 159.

[47]C. B. Macpherson, "A Political Theory of Property," from Democratic Theory: Essays in Retrieval, reprinted in Property, Profits, and Economic Justice, Virginia Held (editor), (Wadsworth, 1980), p. 216.

[48]I am especially grateful to Professors Richard De George and Rex Martin for their helpful comments and criticisms of earlier drafts of this paper. Any errors which remain are, of course, of my own making.