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Locke and Limits on Land Ownership

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Revisionist history often upsets our ordinary ideas of right and wrong. We once believed, for example, that the Europeans who discovered and settled the new world were courageous in bringing civilization and its benefits to a new continent. It is now more common to recognize that some, perhaps many, of these explorers and settlers were tyrants who stole land from native Americans and often violently destroyed indigenous cultures.

Just as scholars have provided a revisionist account of the history of settling America, in this essay I provide a revisionist analysis of Locke's theory of property rights. After providing a brief overview of his theory, I explain that Locke has traditionally been hailed as the defender of unlimited capitalistic appropriation of property, including land. Arguing that both the traditional capitalist-bourgeois and the Marxist-socialist interpretations of Locke have serious shortcomings,¹ I opt for a middle ground between these two extremes and suggest that, although Locke ought not be interpreted in any doctrinaire, ideological way, his account may be ambiguous enough to support restriction of certain property rights in natural resources like land. If so, then Locke's writings may provide a philosophical basis in traditional political theory for a welfare-state capitalism that includes land-use planning.

My arguments for the plausibility of this revisionist account of Locke attempt to avoid (what Quine called) "nothing but" explanations. Such simplistic explanations focus only on one aspect of complex views, and they may be responsible for whatever bias is exhibited in both the capitalist and the socialist views of Locke. Appropriating neither of these interpretations, I believe that Locke's own words provide a basis for limiting or denying property rights in land and other natural resources. My belief rests on at least four theses,

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¹ For a discussion of recent broadsides against the bourgeois thesis, see N. Wood, *John Locke and Agrarian Capitalism* (Berkeley, 1984), 15ff. and R. Lemos, "Locke's Theory of Property," *Interpretation*, 5 (1975), 226ff.

for each of which I provide arguments: (1) Locke makes property subject to the requirements of the original community and to natural law. (2) The first proviso, that land may be appropriated, provided that as much and as good remains for others, holds for all time. (3) Because the value of land is not derived completely from labor, some control over property rights to it rests with the community, not merely with those who labor over it. (4) All property, including land, is subject to the productivity criterion and hence to the control of the community regarding its use. Moreover, although Locke does not always present his moral beliefs as philosophical arguments (some are based on religion, for example), I show that at least one of these beliefs tends to support the four arguments already given. This is Locke's view that desiring more than we need is the root of all evil. For all five reasons, we claim that it is possible to find Lockean grounds for asserting that the community has at least a partial right to control certain property rights, especially in land. We maintain that, although the *historical* Locke may not have meant to do so, his writings provide a basis for such control.

Locke's Justification of Property Rights

Locke's basic justification for the acquisition of private property is the labor theory. According to this theory, people are entitled to hold as property whatever they produce by their labor, intelligence, and effort. The labor-theory justification has such a foothold, in the minds of scholars and the common person, that Becker calls it "virtually unchallengeable." As he puts it, "One might ignore it [the labor theory] (as Hume did), but would not deny it, even if one were attacking the whole notion of 'primitive acquisition.'"²

Locke's general argument is as follows: because one owns one's body, one owns the product of the labor accomplished by one's body. One can appropriate (from the commons) anything with which one's labor has been "mixed," provided that there is enough and as good left for others and the property does not spoil but is used. Thus, for example, the settlers in the early days of the West could fence off land for farming and grazing, and their labor established a moral claim to it as their property. As Locke puts it:

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 joined to it something that is his own, and thereby makes it his *Property*. It being by him removed from the common state Nature placed it in, it hath by this *labour* something annexed to it, that excludes the common right of other Men. For this *Labour* being the unquestionable *Property* of the Labourer, no Man but he can have a right to what

² L. C. Becker, *Property Rights* (Boston, 1977), 32.

that is once joined to, at least where there is enough, and as good left in common for others.... Thus this Law of reason makes the Deer, that *Indian's* who hath killed it; 'tis allowed to be his goods who hath bestowed his labour upon it, though before, it was the common right of every one.... The same Law of Nature, that does by this means give us Property, does also *bound* that *Property* too.... But how far has he given it us? *To enjoy*. As much as any one can make use of to any advantage of life before it spoils; so much he may by his labour fix a Property in. Whatever is beyond this, is more than his share, and belongs to others. Nothing was made by God for Man to spoil or destroy.³

Moreover, the argument continues, because the invention of money made it possible to exchange every commodity for pieces of metal, we no longer need to worry about owning only as much as does not spoil. Through implicit consent to the use of money, we “have agreed to disproportionate and unequal Possession of the Earth.”⁴

In Locke's words:

This *measure* [the laborer being able to appropriate as much as he could without its spoiling] did confine every Man's *Possession*, to a very moderate Proportion, and such as he might appropriate to himself, without Injury to any Body.... That same *Rule of Propriety*, (*viz.*) that every Man should have as much as he could make use of, would hold still in the World, without straitening any body ... 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;... This partage of things, in an inequality of private possessions, men have made practicable out of the bounds of Societie, and without compact, only by putting a value on gold and silver and tacitly agreeing to the use of Money. For in Governments the Laws regulate the rights of property, and the possession of land is determined by positive constitutions.⁵

One of the difficulties with Locke's argument, of course, as commentators from Hume to Nozick have pointed out,⁶ is why one should think that mixing one's labor with a thing is a way of making it one's own, rather than a way of losing one's labor. If one dumped a can of tomato juice into the sea, for example, wouldn't one lose the juice rather than own the sea?

³ John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge, 1960), II, pars. 27, 30, 31. Hereafter cited as Locke, followed by treatise and paragraph.

⁴ Locke, II, 50.

⁵ Locke, II, 36-37, 50. See H. George, *Progress and Poverty* (New York, 1955), 334ff for a discussion of the labor theory of property.

⁶ David Hume, *Treatise of Human Nature*, ed. L. A. Selby-Bigge, rev. P. H. Nidditch (Oxford, 1978), II, 209. Robert Nozick, *Anarchy, State, and Utopia* (New York, 1974), 174-75. See also J. Hospers, “Property,” *The Personalist*, 53 (1972), 263-73.

Locke's rationale for believing that mixing one's labor with a thing gives it value—and gives one property rights to it or to its product—is fourfold. The rationale is based on need, efficiency, desert, and on a labor theory of value.⁷ First, Locke claims that there is a *need* for appropriation based on labor; if such appropriation were not permissible, then people would perish while waiting for consensual agreements about property to be set up. He says that

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.... Was it a Robbery thus to assume to himself what belonged to all in Common: If such a consent as that was necessary, Man had starved, notwithstanding the Plenty God had given Him.⁸

Second, Locke maintains that it is *efficient* for appropriation to be based on labor. He claims that

he who appropriates land to himself by his labour, does not lessen but increase the common stock of mankind ... he, that encloses Land and has a greater plenty of the conveniencies of life from ten acres, than he could have from an hundred left to Nature, may truly be said, to give ninety acres to Mankind.⁹

Likewise, Locke notes, for example, that nations in the Americas "have the materials of Plenty, i.e., a fruitful Soil;... yet for want of improving it by labour, have not one hundredth part of the Conveniencies we enjoy: And a King of a large and fruitful Territory there feeds, lodges, and is clad worse than a day Laborer in *England*."¹⁰

Third, Locke attests that those who labor are industrious and rational persons who, because of their initiative, *merit* the results of their labor. He says, for example:

He that in Obedience to this Command of God, subdued, tilled and sowed any part of it, thereby annexed to it something that was his *property*, which another had no Title to, nor could without injury take

⁷ Locke II, 50; see K. Olivecrona, "Locke's Theory of Appropriation," *The Philosophical Quarterly*, 24 (1974), 230. See also Becker, PR. C. Beitz, "Tacit Consent and Property Rights," *Political Theory*, 8 (1980), 487-502. M. Davis, "Nozick's Argument for the Legitimacy of the Welfare State," *Ethics*, 97 (1987), 576-94. A. Gibbard, "Natural Property Rights," *Nous*, 10 (1976), 77-86. K. Vaughn, "John Locke and the Labor Theory of Value," *Journal of Libertarian Studies*, 2 (1978), 311-26. David Miller, "Justice and Property," *Ratio*, 22 (1980), 1-14. J. Waldron, "Two Worries About Mixing One's Labour," *The Philosophical Quarterly*, 33 (1983), 37-44.

⁸ Locke, I, 86; II, 28.

⁹ Locke II, 37.

¹⁰ Locke II, 41.

from him.... He that had as good left for his Improvement, as was already taken up, needed not complain, ought not to meddle with what was already improved by another's Labour: If he did, 'tis plain he desired the benefit of another's Pains, which he had no right to.¹¹

Fourth, Locke claims that, because labor is often responsible for so much of the value in a thing, the laborer is entitled to the resource in much the same way that the creator is entitled to his creation. He says that

if we will rightly estimate things as they come to our use, and cast up the several Expenses about them, what in them is purely owing to *Nature*, and what to *labour*, we shall find, that in most of them 99/100 are wholly to be put on the account of *labor* ... *labour makes the far greatest part of the value* of things, we enjoy in this World: And the ground which produces the materials, is scarce to be reckon'd in, as any, or at most, but a very small, part of it; So little, that even amongst us, Land that is left wholly to Nature, that hath no improvement of Pasturage, Tillage, or Planting, is called, as indeed it is, waste; and we shall find the benefit of it amount to little more than nothing.¹²

Various commentators have argued that Locke offers a labor theory of value to justify acquisitions of property rights.¹³ Some authors, however, have claimed that Locke's property rights are based both on labor and on merit or desert.¹⁴ Other scholars have argued that Locke's theory also is tied to utility or efficiency,¹⁵ while a few persons have argued that Locke's justification is based on all four rationales (need, efficiency, merit, and labor).¹⁶

I shall not discuss the extent to which Locke relied on claims of labor rather than on efficiency, merit, or need, since there is some textual basis in Locke to support all four claims and since there are numerous disagreements among Locke scholars, including allegations of inconsistencies in his texts.¹⁷ I shall focus on what consequences follow from Locke's four claims if one is interested in the question of ownership of natural resources. Nor shall I address either the

¹¹ Locke II, 32, 34; see S. Schwartzbach, "Locke's Two Conceptions of Property," *Social Theory and Practice*, 14 (1988), 154ff.

¹² Locke II, 40-42.

¹³ See, for example, C. Du Rand, "The Reconstitution of Private Property in the People's Republic of China: John Locke Revisited," *Social Theory and Practice*, 12 (1986), 337-50.

¹⁴ See, for example, Becker, PR, and L. C. Becker, "The Labor Theory of Property Acquisition," *The Journal of Philosophy*, 73 (1976), 656, and Miller, 6-7ff.

¹⁵ See Schwartzbach.

¹⁶ Waldron, 37ff.

¹⁷ See, for example, H. Rashdall, "The Philosophical Theory of Property," in *Property: Its Duties and Rights*, ed. C. Gore (London, 1913), 37ff. See also P. Cvek, "Locke's Theory of Property," *Auslegung*, 11 (1984), 390-411.

question of whether Locke himself would have argued for controls on the property of wealthy owners such as his patron, the Earl of Shaftesbury, or the question of whether Locke's views are defensible.¹⁸ Instead, my aim is to determine whether the consequences of Locke's own words, correct or not, support restrictions on property rights in land. Much U.S. property law is grounded in Jeffersonian and Lockean notions,¹⁹ as well as in common law; if one can show that Locke's texts might be used to support such limitations, then this is a powerful argument that at least some U.S. traditions and institutions might support land-use restrictions.²⁰

Traditional Interpretations of Locke's Theory

Scholars such as C. B. Macpherson and Leo Strauss have typically thought of John Locke as the classical defender of capitalism and the right to private property, especially property in land.²¹ One of the many reasons that scholars have interpreted Locke as a defender of unlimited capitalistic appropriation is his claim that consent to the use of money has provided for "disproportionate and unequal possession of the earth."²² In other words, because (as Locke notes) money can be exchanged for land and other properties, therefore there is no upper limit on a person's owning only what can be used before it spoils. Avoiding the constraints of the second proviso, this argument is that one can pay others to work the land for him.²³ In subsequent paragraphs we shall argue, on the contrary, that there are a number of continuing Lockean constraints that provide an upper limit on what and how a person may own.

Other scholars who interpret Locke as a proponent of unlimited appropriation claim that his first proviso, that as much and as good will be left for others, is a fact about acquisition in the early days and not a normative restriction on all appropriation. Hence they argue that this proviso does not stand in the way of

¹⁸ See Rashdall, 37ff.

¹⁹ See D. Post, "Jeffersonian Revisions of Locke," *JHI*, 47 (1986), 147-57. For different opinions of Locke's influence on U.S. law and government, see O. and L. Handlin, "Who Read John Locke?" *The American Scholar*, (1989), 545-56 and replies to the Handlin article in subsequent issues of *The American Scholar*.

²⁰ For an argument that Locke's theory can be applied to contemporary situations, see Lemos, 226ff.

²¹ See C. B. Macpherson, *The Political Philosophy of Possessive Individualism* (Oxford, 1962). See also Leo Strauss, *Natural Right and History* (Chicago, 1953). G. C. Lodge, *The New American Ideology* (New York, 1975), 103-4. H. S. Holland, "Property and Personality," in *Property: Its Duties and Rights*, ed. C. Gore (London, 1913), 170-92. R. Schlatter, *Private Property* (New Brunswick, N.J., 1951), 151. K. Minogue, "The Concept of Property and Its Contemporary Significance," in J. Pennock and J. Chapman (eds.), *Property, Nomos XXII*, (New York, 1980), 7. See also Du Rand; J. P. Day, "Locke on Property," *The Philosophical Quarterly*, 16 (1966), 207-20; and K. M. Squadrito, "Locke's View of Dominion," *Environmental Ethics*, 1 (1979), 255-58.

²² Locke II, 50.

²³ See Du Rand, 339.

unlimited accumulation.²⁴ As one capitalistic interpreter of Locke put it, “a developed market economy with a system of money exchange removes any practical limit on the quantity of nature that can be made one’s own by means of labor.”²⁵ Both Strauss and MacPherson have argued that Locke’s account of property provides an ideology of the bourgeoisie and a moral basis for laissez-faire capitalism.²⁶ We shall argue, on the contrary, that both the law of nature and the first proviso—in addition to Locke’s religious views—prevent his account from being interpreted in the ways that Strauss and Macpherson prefer.

There is also a traditional but less influential Marxist interpretation of Locke. On this view the Marxist notion that value derives from labor is based in part on the fundamental Lockean ideas that labor creates just ownership and that anyone who appropriates the unpaid labor of others (as capitalists are said to do) violates the Lockean strictures on appropriation of property. Although the Marxist view of Locke is important, we shall not pursue it here. Because our goal is to show that the logical consequences of some of Locke’s views support severe restrictions on property rights in land, our main theoretical target is the traditional capitalist interpretation. Moreover, we believe that the Marxist interpretation errs largely because it fails to take adequate account of Locke’s theory of value and natural rights and his law of nature. Engels, for example, argued that Locke’s theory of value and natural rights does not express basic principles of justice but rather a historical formulation of political demands arising out of particular economic institutions.²⁷ As later paragraphs of this essay will make clear, such a Marxist view fails to account for the moral demands of Locke’s “Law of Nature” and its eternal, rather than historical, character.

Even Tully’s brilliant anti-capitalist analysis fails to do justice to important aspects of Locke’s views. It errs in interpreting all Lockean property rights as use rights, in affirming that, in civil society, all Lockean property is owned by the community, in claiming that Locke believed it was “logically impossible for an agent to alienate his labor,” and in denying that in civil society there is a natural right to property.²⁸

Labor and the Limits on Property in Land

Although traditional theorists are surely correct that Locke does justify individual appropriation of property beyond what is necessary for individual

²⁴ See, for example, T. Mautner, “Locke on Original Appropriation,” *American Philosophical Quarterly*, 19 (1982), 260.

²⁵ Du Rand, 339. See also D. Ellerman, “On the Labor Theory of Property,” *Philosophical Forum*, 16 (1985), 320. E. Hargrove, “Anglo-American Land Use Attitudes,” *Environmental Ethics*, 2 (1980), 141ff.

²⁶ Macpherson; Strauss; see Lodge, 103-4.

²⁷ Engels, “Preface,” to Karl Marx, *Poverty of Philosophy*, tr. H. Quelch (Chicago, n.d.), 14-15. See also Schlatter, 271ff.

²⁸ See James Tully, *A Discourse on Property* (Cambridge, 1980), 138. For a textual analysis of flaws in Tully’s account, see Wood, Chapters Two-Five.

use, there are grounds in Locke for believing that there are limits on this appropriation, especially in the case of land. The basis of such limits arises not only because of our duties to make the land productive and to practice Christian charity but also because such limits include the degree to which there is an “original community” that establishes a natural-law framework for just distributions of goods in society. Admittedly, if Locke is a natural-law theorist, he is certainly not one in the traditional sense, because he claims that rights to private property are completely natural, not conventional or based on solely on consent.²⁹ Other reasons for Lockean restrictions on property rights to land are that the first proviso holds for all time; that land value is not derived solely from labor, that ownership of property is subject to the productivity criterion, and that desire for more than we need is, for Locke, the root of all evil.

Property, the Original Community, and Natural Law

Beginning his discussion of property, Locke points out that God gave the earth

to Mankind in common ... all the Fruits it naturally produces, and Beasts it feeds, belong to Mankind in common, as they are produced by the spontaneous hand of Nature; and no body has originally a private Dominion, exclusive of the rest of Mankind, in any of them, as they are thus in their natural State.³⁰

Locke’s explicit starting point, then, is that the earth is common property given by God. Indeed, Locke speaks of the “common right” of other persons which is excluded by the labor of one person when he makes property his own.³¹ This means that Locke has to explain the conditions under which common property, to which we all have common rights, can give way to private property.

Many philosophical, political, and environmental commentators, however, have missed this starting point and, like Nozick,³² have claimed that Locke is explaining how what is *unowned* can become private property. Schwartzbach speaks of “this lack of prior assignation”; Stone claims that Locke believed in a “‘natural right’ to unowned goods”; and Mautner talks of things that are “nobody’s” property.³³ Griffin claims that Locke tells how “one may appropriate *unowned* land.”³⁴

²⁹ See Cvek, 391, 400.

³⁰ Locke, II, 25-26.

³¹ Locke, II, 25-27.

³² Nozick, 174.

³³ Schwartzbach, 143. Mautner, 267. C. D. Stone, *Earth and Other Ethics* (New York, 1987), 212-13.

³⁴ N. Griffin, “Aboriginal Rights,” *Dialogue*, 20 (1981), 694.

When Nozick and others simplify Locke and speak of “unowned” property such as land, their words eliminate more than a redundant theological framework.³⁵ They also fail to recognize Locke’s original state of liberty and equality in which the world belonged equally to all persons, and they eliminate what Locke called “the common state” or the “State of Nature” in which there was an “Original” community.³⁶ In this “Original” community,³⁷ although Locke did not define it clearly, humans enjoyed common ownership of the goods of the earth, “a State of perfect Freedom ... and ... Equality ... by Nature.”³⁸ In this state, Locke says that “the Law of Nature ... willeth the Peace and *Preservation of all Mankind*, the *Execution* of the Law of Nature,”³⁹ “the law of *reason* and common Equity.”⁴⁰

The law of “reason and common Equity,” the law of nature, “still takes place,” says Locke.⁴¹ For example, it governs the distribution of common properties, like the “Fish any one catches in the Ocean,”⁴² or “the Possessions of a Private Man [that] revert to the Community,” if he has no heirs.⁴³ Moreover, for Locke, whenever anyone becomes a member of a commonwealth, he thereby subjects his property to the government of that commonwealth. Locke writes:

Every Man, when he, at first, incorporates himself into any Commonwealth, he by his uniting himself thereunto, annexed also, and submits to the Community those Possessions, which he has, or shall acquire, that do not already belong to any other Government. For it would be a direct Contradiction, for any one, to enter into Society with others for the securing and regulating of Property: And yet to suppose his Land, whose Property is to be regulated by the Laws of Society, should be exempt from the Jurisdiction of that Government, to which he himself the Proprietor of the Land, is a Subject. By the same Act therefore, whereby any one unites his Person, which was before free, to any Commonwealth; by the same he unites his Possessions, which were before free, to it also; and they become, both of them, Person and Possession, subject to the Government and Dominion of that Commonwealth, as long as it hath a being. *Whoever* therefore, from thenceforth,

³⁵ O. O’Neill, “Nozick’s Entitlements,” *Inquiry*, 19 (1976), 476. One person who does not misconstrue Locke as asserting that land is “unowned” in the state of nature is R. P. Wolff. See R. P. Wolff, “Robert Nozick’s Derivation of the Minimal State,” in J. Paul (ed.), *Reading Nozick* (Totowa, N.J., 1981), 101.

³⁶ Locke, II, 4, 27, 28.

³⁷ Locke, II, 4; see Cvek.

³⁸ Locke, II, 4-5.

³⁹ Locke, II, 6.

⁴⁰ Locke, II, 8. For further discussion of Locke’s beliefs about the Law of Nature, see Maurice Cranston, *John Locke* (London, 1957), 64-67, 208-9.

⁴¹ Locke, II, 8; II, 30.

⁴² Locke, II, 30.

⁴³ Locke, I, 90.

by Inheritance, Purchase, Permission, or otherwise *enjoys any part of the Land*, so annex to, and under the Government of that Commonwealth, must take it with the Condition it is under; that is, of submitting to the Government of the Commonwealth, under whose Jurisdiction it is, as far forth, as any Subject of it.⁴⁴

The law of nature induces humans to join together in societies and to leave the state of nature so as “to supply those Defects and Imperfections which are in us.” “[L]iving singly and solely by our selves, we are naturally induced to seek Communion and Fellowship with others ... in Politick Societies ... all Men are naturally in that State [of Nature], and remain so, till by their own Consents they make themselves Members of some Politick Society.”⁴⁵ Humans consent to join some society because they are unable to enforce the law of nature and to protect their property either because of the ignorance of others or their own lack of power. That is, “though the law of Nature be plain and intelligible to all rational Creatures; yet Men being biassed by their Interest, as well as ignorant for want of study of it, are not apt to allow of it as a Law binding to them in the application of it to their particular Cases.”⁴⁶ Because humans consent to the law of society so as to insure that the law of nature is understood and enforced, the law of nature continues to govern human communities, even after the end of the state of nature. Indeed, Locke says that the law of nature continues to limit the actions of society:

Their Power in the utmost Bounds of it, is *limited to the public good of the Society*. It is a Power that hath no other end of preservation, and therefore can never have a right to destroy, enslave, or designedly to impoverish the Subjects. 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 enforce their observation. Thus the Law of Nature stands as an Eternal Rule to all Men, *Legislators* as well as others.⁴⁷

Moreover, Locke asserts that humans have by virtue of the law of nature, a fundamental obligation not only to preserve themselves and all other humans but also to avoid harming “another in his Life, Health, Liberty, or Possessions.”⁴⁸ Because of this obligation “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.”⁴⁹

⁴⁴ Locke, II, 120.

⁴⁵ Locke, II, 15.

⁴⁶ Locke, II, 124.

⁴⁷ Locke, II, 135; See L. J. Macfarlane, *Modern Political Theory* (London, 1970), 59.

⁴⁸ Locke, II, 6.

⁴⁹ Locke, I, 42.

In the *Second Treatise* Locke stresses that one has obligations to others in need and that the state of liberty is not a state of license, in part because all persons and possessions are the property of their Maker.⁵⁰ This is consistent with Locke's claims in the first *Treatise*, that rights to property are subservient to rights of persons to what they need to live.⁵¹ "The same Law of Nature that does by this means give us Property does also bound that Property."⁵²

Why have a number of commentators apparently missed the Lockean point that, in the state of nature, land and resources were common property? Or Locke's claim that the law of nature and hence the foundation for property rights are eternal? One reason may be that they have overemphasized Locke's distinction between the state of nature and civil society, between natural property rights that hold in a state of nature and those that arise later with the introduction of money and the creation of government. Or commentators may have overemphasized the role of consent after the creation of society. Thomas Scanlon, for example, claims that once money is introduced and society is created, "the original moral foundation for property rights is no longer valid, and a new foundation is required. Locke takes consent to be this foundation."⁵³

In the passage just cited, however, Locke does not seem to posit a "new" foundation of property rights. Rather he appears to say that the foundation, "the fundamental law of nature," remains in part the same. In both the state of nature and civil society, the law of nature is (for Locke) a necessary condition for the justification of property rights. After the introduction of money and the creation of society, however, consent also becomes a necessary condition for the exercise of property rights. Scanlon and others, in presenting Locke's view of consent, seem to suggest either that consent is a sufficient condition for the exercise of property rights in civil society or that, with the transition from the state of nature to civil society, the necessary condition for property rights changes from the law of nature to consent. For Locke, according to Maurice Cranston, "the consent of the people was the sole basis of a government's authority." Cranston also claimed that protection of property was "the chief end" of political society for Locke, and that Locke was an early champion of the minimal state.⁵⁴ This view, however, is to overemphasize consent, to ignore the continuing role of the law of nature, and to overlook the fact that, for Locke, consent to the laws of society is predicated in part on their conformity with the eternal law of nature.

Even if one denies, contrary to Locke, that the law of nature is eternal and instead says (as Scanlon and others appear to do) that the laws of society, justified by consent alone, govern rights to property, one is still not able to claim

⁵⁰ Locke, II, 6.

⁵¹ V. Held, "John Locke on Robert Nozick," *Social Research*, 43 (1976), 171ff., hereafter cited as Held. J. H. Reiman, "The Fallacy of Libertarian Capitalism," *Ethics*, 92 (1981), 85-95.

⁵² Locke II, 31.

⁵³ Thomas Scanlon, "Nozick on Rights, Liberty, and Property," in J. Paul (ed.), *Reading Nozick* (Totowa, N.J., 1981), 126.

⁵⁴ See Cranston, 210-11.

that property rights are unlimited and exclusive because, to the degree that one separates the “Law of Nature” from the laws of society (after the introduction of money), one loses the *natural* foundation for property rights. If there were no law of nature after the introduction of money, then property rights would be conventional, and there would be no sacrosanct (non-conventional) protections against violations of property. These are additional reasons for believing that the law of nature continues to circumscribe property rights and that Locke’s own words provide a basis for arguing that government ought to regulate property in accord with the principles of natural law.⁵⁵

The belief that natural law or the law of nature could provide a basis for government regulation of property is quite consistent with Locke’s attempt to limit the power of the sovereign over the property of subjects. Locke was eager to establish the natural rights of laborers to property and to assert that “the king has no right to take what the subject has acquired by the sweat of his brow” and that government has no right arbitrarily to take the earned property of citizens.⁵⁶ If Locke believed that the king and government ought to be subject to the dictates of natural law and natural right, so as to protect the welfare of citizens, it would seem to follow that others—those who appropriate great amounts of property—should also be subject to the dictum that they not injure the life, health, liberty, or possessions of others (see note 48). In other words just as Locke employed natural law to counter the power of the sovereign, so also it is reasonable to infer a rationale for employing natural law to counter the economic and political power of persons who injure others through their accumulation of vast properties, although the historical Locke may not, given his career and the revolutionary epoch in which he participated, have intended such a rationale.

If our arguments and suggestions are correct, then Locke’s text provides arguments for adherence to a law of nature that exists both before and after the state of nature. His words also support a notion of community both in the state of nature and in civil society. The law of nature and the bounds of community that it includes (e.g., human freedom, equality, and a right to preservation) function as limits on the accumulation of property, including land. To argue that Locke sanctions unlimited accumulation without concern for the needs of other persons, thus denies what is explicit in Locke. He claims that “the end of government is the preservation of all,”⁵⁷ and that “the Law of Nature stands as an Eternal Rule” (see note 47). To argue that Locke sanctions unlimited accumulation is also to deny what is implicit (the original community) within his general theoretical framework.

Macpherson, for example, seems to ignore both these explicit and implicit points when he says that Locke developed a “conception of the individual as essentially the proprietor of his own person or capacities, owing nothing to

⁵⁵ Locke, II, 45. See Cvek, 403.

⁵⁶ See Schlatter, 155, 159.

⁵⁷ Locke, II, 159.

society for them.”⁵⁸ Both Macpherson and Strauss appear able to interpret Locke as supporting unlimited accumulation because they underemphasize Locke’s discussion of the law of nature and his “Original” community.

The First Proviso Holds for All Time

If the law of nature “stands as an eternal rule to all men,” not a temporary norm for the state of nature, prior to the introduction of money,⁵⁹ then certain consequences follow, particularly with respect to the way that we interpret the first proviso. One important consequence is that while Locke’s two provisos must be *reinterpreted*, as a result of the tacit consent to money, they are not completely removed, as many Locke scholars appear to have argued.⁶⁰ Other authors claim that, because of the introduction of money, the first (as-much-and-as-good) and second (spoilage) provisos still exist for Locke but are rendered inapplicable.⁶¹

On the contrary we believe that Locke neither denied the first proviso nor rendered it inapplicable but merely wished it to be reinterpreted as a consequence of civil society and its laws. After all, Locke never denied the right to preservation or subsistence as a consequence of the consent to money. He believed that the introduction of money justified an “inequality of Private possessions,”⁶² but he did not revoke his claim that such possessions ought *never* injure the life, health, or liberty of others (see note 48). In fact in the first treatise he writes:

Man can no more justly make use of another’s necessity, to force him to become his Vassal, by with-holding that Relief, God requires him to afford to the wants of his Brother, than he that has more strength can seize upon a weaker, master him to his Obedience, and with a Dagger at his Throat offer him Death or Slavery.⁶³

Moreover, he specifically affirmed the right of government and law (through natural law) to “regulate the right of property.”⁶⁴

Even Macpherson appears to have recognized this reinterpretation of the first proviso. He writes that, after all land has been appropriated and after humans have consented to the use of money, Locke assumes “that the increase

⁵⁸ Macpherson, PI, 3; see Lodge, 2; Lemos, 226ff.

⁵⁹ Locke, II, 135; see Squadrito, 260.

⁶⁰ See Macpherson, PI; Nozick; Steiner, “The Natural Right to the Means of Production,” *The Philosophical Quarterly*, 27 (1977), 44.

⁶¹ D. C. Snyder, “Locke on Natural Law and Property Rights,” *Canadian Journal of Philosophy*, 16 (1986), 741.

⁶² Locke, II, 50.

⁶³ Locke, I, 42; see II, 6.

⁶⁴ Locke, II, 50.

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 assumption⁶⁵—the assumption that persons will not be made worse off as a result of the scarcity of land. This assumption, however, is likely part of a larger Lockean argument that if accumulation of land/property is ethically acceptable, then no one will be made worse off, but that if someone is made worse off as a result of another's accumulation, then the accumulation is ethically unacceptable.

To the degree that Macpherson is correct in attributing this assumption to Locke and to the degree that the assumption is part of a larger Lockean argument like that just formulated, the first proviso must hold for all time, even after the introduction of money, at least in the sense that "having as much and as good" means "not being made worse off." In other words Locke's text supports the claim that the eternal law of nature, directed at human preservation, places at least some limits on property rights.⁶⁶ Because of the restrictions on property rights set by the law of nature, the first proviso ought not merely be applied at the moment of acquisition, as Nozick and others would have it, but for all time.⁶⁷

If so, it specifies a negative version of Rawls's principle that inequalities of wealth, power, and so on, are justified only if they work to the advantage of all members of society.⁶⁸ But if Locke's eternal law of nature entails the eternity of his first proviso and if this proviso, in turn, entails a negative version of one of Rawls's principles, then Locke's own words support a patterned conception of justice, a patterned principle of property like land. This, of course, is contrary to the position that Nozick and others attribute to Locke.⁶⁹

As a patterned principle, the first proviso specifies not that acts are unjust but only that resulting situations, or patterns, are unjust; and so it is relativized to material conditions. Moreover, because the proviso must invoke limits in transfers, limits based on distribution of resources, it has no significant procedural content but mainly a pattern content. It also mandates inspection and monitoring activities, both of which are characteristics of pattern principles.⁷⁰ Thus, once one accepts the logical consequences of Locke's claims, one is bound to support restricting property rights by means of a patterned (distributive) principle of justice. For the historical Locke, of course, such restrictions are generated in part by the duty of the property owner to achieve heightened productivity and to practice Christian charity. Hence, even though the historical

⁶⁵ Macpherson, PI, 212; see Cvek, 402.

⁶⁶ Locke, II, 135; see I, 42.

⁶⁷ See Held, 175; see J. Winfrey, "Charity vs. Justice: Locke on Property," *JHI*, 42 (1981), 432.

⁶⁸ J. Rawls, "Justice as Fairness," *The Philosophical Review*, 67 (1958), 164-94; see Held, 175.

⁶⁹ Nozick, 176; see Held, 175; Steiner, 45; and H. Sarkar, "The Lockean Proviso," *Canadian Journal of Philosophy*, 12 (1982), 47-59, who say that Locke subscribes to a patterned conception of justice.

⁷⁰ See J. H. Bogart, "Lockean Provisos and State of Nature Theories," *Ethics*, 95 (1985), 828-36, esp. 830-31.

Locke might disagree with us regarding the precise nature of contemporary restrictions on property rights, there is nevertheless a precedent in Locke's text for the community decisions required by land-use planning and for societal limits on the exercise of property rights.

That there is no Lockean support for full property rights in land and other natural resources is suggested also by the fact that no humans have labored to create them. Locke himself claims that "'tis *Labour* indeed that *puts the difference of value* on every thing."⁷¹ Hence if labor puts the value on everything and if human labor did not create land, then human labor is able to put value only on the product of the land, not the land itself. Admittedly, Locke erred in believing that land on which humans had not labored was of little value, but he also admitted that there is some portion of land value not created by human labor:

of the *Products* of the Earth useful to the Life of Man 9/10 are the *effects of labour*; nay, if we will rightly estimate things as they come to our use, and cast up the several Expenses about them, what in them is purely owing to *Nature*, and what to *labor*, we shall find, that in most of them 99/100 are wholly to be put on the account of labour.⁷²

Locke's words suggest that, if there is some fraction of land value not created by human labor, then perhaps there is some fraction of property rights in land that cannot be appropriated from the commons. If it cannot be appropriated, then it must remain in the commons; and if all land, remains in some respects in the commons, then all land is subject in some respects to land-use planning on behalf of the common good.

Indeed, Mill and others recognized that full rights of ownership in land could not be created by reference to the deserts or labor of a person who cultivates it. Proudhon, for example, pointed out that

property is the daughter of labour!... we want to know by what right man has appropriated wealth which he did not create, and which Nature gave to him gratuitously ... the creator of the land does not sell it; he gives it; and, in giving it, he is no respecter of persons. Why, then, are some of his children regarded as legitimate, while others are treated as bastards?⁷³

Henry George reasoned similarly: "If production give to the producer the right to exclusive possession and enjoyment, there can rightfully be no exclusive possession and enjoyment of anything not the production of labor, and the

⁷¹ Locke, II, 40.

⁷² Locke, II, 40.

⁷³ P. J. Proudhon, *What Is Property?* trans. B. R. Tucker (1898), 103-4. See also Mill, *Principles of Political Economy* (London, 1867), II, ch. II, 5-6.

recognition of private property in land is a wrong.”⁷⁴ As a number of thinkers have recognized, the person who labors on land would, at most, deserve the rights of use and the right to the product. On this view Locke’s labor theory of value undermines an exclusively proprietary theory of ownership, full acquisition, with respect to land. Moreover, to the extent that most working on the fruits of nature is cooperative and most economies are complex, full acquisition of any private property rights (independent of other persons) in natural resources is impossible.⁷⁵

Yet another reason that no humans have exclusive and unlimited ownership of land, of property taken from the commons, is that most property rights are derivatively acquired, and almost no record of property rights is clear of fraud and conquest by force. In California, for example, land titles go back to the Mexican government, which took them from the Spanish King, who took them from the Pope when he divided yet-to-be-discovered lands between the Portuguese and the Spanish. Everywhere, as Henry George put it, the title to land goes back “not to a right which obliges, but to a force which compels.”⁷⁶

But if much contemporary private property in land has been illegitimately acquired and if “force and fraud have reigned supreme in the history of mankind,”⁷⁷ as one commentator put it, then it is questionable whether any alleged current owners of land have full claim to it. This is both because no human labor created the land, and because most land probably has not been transferred according to what Locke would call principles of the law of nature. If not, then it is arguable that land, in at least some respects, might be part of the commons, hence that the state or the people as a whole ought to have some voice in how such property is used.

Productivity and Lockean Limits on Private Property

If the first argument (about Locke’s positing an “Original” community and a “Law of Nature” that serves the value of preservation of life) is correct, then property rights, even after the introduction of money, are circumscribed by the requirements of this community, the law of nature, and human preservation. But if there is a Lockean obligation to help preserve humankind, then there must also be an obligation to use property in such a way that preservation is served. Using property in this way requires in turn that it be productive, that resources be used “to the best advantage of life and convenience.”⁷⁸ Locke states again and again that the purpose of property is that persons should not only use resources but make the best possible use of them. His argument is that extensive accumulation is justified because the practice works to the benefit of others. From this it

⁷⁴ George, 336. See Miller, 6-7; see Becker, PR, ch. 4.

⁷⁵ See Minogue, 20.

⁷⁶ George, 342. See Mautner, 267.

⁷⁷ Mautner, 267.

⁷⁸ Locke II, 25.

follows that, if the practice does not benefit others, then extensive accumulation cannot be justified.⁷⁹

One problem with Macpherson's interpretation is that he fails to take account of Locke's claim that extensive accumulation ought to benefit others. Macpherson, in other words, takes inadequate account of Locke's utilitarian justification for appropriation beyond need, that is, the benefit of accumulation to society as a whole.⁸⁰ Locke assumes that it is acceptable to appropriate more land than one can use, provided that this appropriation works to the benefit of all, provided that it serves the duty "of Preserving all Mankind," and provided that it distributes the productive benefits of land and hence fulfills the natural law. It follows that, to the degree that the appropriation does not work to the benefit of all, the excessive appropriation is not clearly justified.⁸¹

If owning property is tied to making the best possible use of resources, then we need to avoid waste even when there is no danger of violating the spoilage proviso, and we need to use property in the most advantageous way possible.⁸² Indeed, Locke believes that individual property ought to maximize production: "he who appropriates land to himself does not lessen but increase the common stock of mankind."⁸³ This is because the opportunities to preserve life ought to be much greater when one has improved land. If so, then the person with property rights in land has a duty to use them to improve the stock of humanity or at least to insure that persons are made no worse off. "Property rights are rights to use nature productively (improve it), not just to use it," as O'Neill puts it.⁸⁴ If so, then Locke's text does not support full property rights, including the right to destroy or to idle productive resources or to use them in less than productive ways. Instead, Locke makes property rights subject to the productivity/improvement criterion.

For Locke productivity and improvement are required to satisfy the natural-law demand to preserve all humankind.⁸⁵ On this view, although the historical Locke may not have done so, one could imagine a contemporary Locke arguing for extensive restrictions on property rights in land (e.g., prohibiting filling in wetlands) and for agricultural zoning or preservation, for example, to prevent fertile land from being developed or paved. In other words, one could imagine a contemporary Locke concerned about land productivity, applying the consequences of his views in the light of current land-use problems, and arguing for various land-use controls.

⁷⁹ See O'Neill, 1976, 476. Locke added this "productivity argument" in a revision to the third edition of the *Treatises*; see Lodge, 104-5.

⁸⁰ See Squadrito, 260.

⁸¹ Locke, II, 11; see Locke I, 42; see Snyder, 749.

⁸² See Locke, II, 6; I, 92.

⁸³ Locke, II, 37.

⁸⁴ O'Neill, 478.

⁸⁵ For example, Locke, II, 6, 7, 11, 16, 23, 60, 79, 135, 159.

There is at least one moral reason for believing that even the historical Locke might not have been wholly opposed to such restrictions. In his discussion of the importance of curbing children's acquisitive tendencies, Locke wrote:

They would have property and possession; pleasing themselves with the power which that seems to give, and the right they thereby have to dispose of them as they please ... he who thinks that these two roots of almost all the injustice and contention that so disturb human life are not early to be weeded out, and contrary habits introduced, neglects the proper season to lay the foundations of a good and worthy man.⁸⁶

Locke also argued that children love dominion more than anything else and that "this is the first original of most vicious habits, that are ordinary and natural."⁸⁷ Moreover, although Locke obviously does not believe that owning property is evil, he is convinced that possessing more than one needs is wrong because of "covetousness" and because "the desire of having in our possession, and under our dominion, more than we have need of, being the root of all evil." As a consequence, he recommends that children be taught very early to give away some of what they have "easily and freely to their friends."⁸⁸

To claim that Locke's moral beliefs provide support for the interpretation of property rights discussed in this chapter, of course, is questionable on at least two grounds. First, it is not obvious that Locke's *Thoughts Concerning Education* are as reliable a source of his views as some of his other works. Second, this account of Locke's moral beliefs is contrary to what some major commentators claim about his position. Macpherson says "Not only is the desire for accumulation rational, according to Locke, but accumulation is the essence of rational conduct."⁸⁹ If Locke's words on education, the law of nature, and the duty to preservation are correct, however, then it is questionable whether his text provides an unequivocal defense of capitalism and unlimited appropriation as "the essence of rational conduct."

Conclusions

Admittedly Locke's educational remarks, about limiting possessions and covetousness, do not constitute arguments for restricting property rights in

⁸⁶ John Locke, "Essay, Some Thoughts Concerning Education," in *Works of John Locke* (London, 1823), pars. 103-5.

⁸⁷ Locke, *Essay*, pars. 103-5.

⁸⁸ Locke, *Essay*, par 110; see Schlatter, 156. See Squadrito, 258-59. See also F. Whelan, "Property as Artifice," in J. Pennock and J. Chapman (eds.), *Property, Nomos XXII* (New York, 1980), 103.

⁸⁹ C. B. Macpherson, "The Social Bearing of Locke's Political Theory," in *Locke and Berkeley: A Collection of Critical Essays*, ed. C. B. Martin and D. M. Armstrong (New York, 1968), 215.

land.⁹⁰ They do at least suggest, however, that some of his moral and educational injunctions might be consistent with the revisionist account we have given of the ethical and political views about property in the Lockean text. This consistency lends some credence to the revisionist arguments that we have sketched.

If my four arguments for limitations on property are correct, then contrary to traditional views, Locke's text does not provide clear support for bourgeois capitalism. The existence of these and other limitations on property rights might support, at best, a welfare-state capitalism in which property rights, especially in land, are restricted in ways necessary to serve the common good.

The revisionist interpretation of the Lockean text that is offered in this essay may be more plausible to the extent that we are willing to distinguish the "historical" Locke from the "conceptual" Locke, the Locke that must take account of the logical consequences of certain claims in his text. This revisionist interpretation also may be more plausible to the degree that Macpherson is correct in his assertion that Locke's theories about property and the state of nature are unclear.⁹¹ Other commentators claim that the relationship between Locke's natural law and property rights has a "central structural ambiguity."⁹² Locke also offered little guidance regarding how civil society might regulate property.⁹³ If indeed such notions are ambiguous or inadequately treated in Locke, then earlier commentators may have been too quick to read Locke as a Nozickian capitalist. However, if notions like the Law of Nature are not ambiguous and are treated adequately in Locke, then perhaps they deserve more of our attention, in part to see what guidance they might offer in areas like adjudicating claims to property rights in land.

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⁹⁰ See Cranston, 239-45.

⁹¹ Macpherson, *Possessive Individualism*, 241.

⁹² Snyder, 747.

⁹³ Macpherson, *Possessive Individualism*, 238-47.