Locke's Two Conceptions of Property

It has long been noted that Locke's famous definition of property as "Lives, Liberties and Estates" (¶123) in his *Second Treatise of Government* contains a narrower sense ("material goods") as well as a broader meaning ("ideal benefits").[1] What has not sufficiently been appreciated in the extensive secondary literature on Locke, however, is that in fact two *distinct* conceptions of ownership operate in his thought and that these two are, in many instances, conflictory. The present article argues this claim. It begins by setting forth and delineating the two conceptions — what I call "stewardship" and "private property" respectively — and argues that numerous perplexities found in Locke's thought (regarding suicide, the alienation of labor, and so on) may be clarified by keeping these two notions distinct. Further, many of the controversies in the Lockean secondary literature (in particular, that between Macpherson and Tully)[2] can be shown to result from the respective ignoring of one or the other of these conceptions. Finally, the article concludes by suggesting that the two conceptions of property may indeed underlie the thought of the majority of modern political theorists, as well as much of our ordinary everyday practice. That is, *both* conceptions appear to be central (contrary to A.M. Honoré's recent claim) to the "Western type of ownership."[3] Where both conceptions cannot be found (such as in the recent writings of Nozick), this points not to the dominant "Western" notion of ownership at all, but only to the inadequacy of such theories.

The Two Conceptions

Before distinguishing Locke's two conceptions of ownership it is necessary to recall that his famous argument for private proper-

ty in Chapter V of the *Second Treatise* is but a subpart of his more general critique of royal absolutism. The full extent to which Locke in both treatises of government operates from within the natural law tradition — and is primarily preoccupied with the theory not only of Hobbes, but of Sir Robert Filmer (1588–1652) — has recently been stressed by scholars.[4] A theorist of the divine right of kings, Filmer had argued in his *Patriarcha* (republished in 1680) that the source of political power lies in the will of the sovereign on the grounds that God originally gave the world and all authority to Adam. Society was conceived on the model of a patriarchal kingship and *Dominium* — both political power and property — was inherited (and distributed) by the descendents of kings as God's representatives on earth.

In the face of the abuses of the reign of Charles II, however, and in the midst of the Exclusion Crisis, Locke was led to emphasize the people's right of resistance to an arbitrary and absolutist government, as well as to deny that either tradition or property could be the rightful basis of political authority.[5] But for this purpose Locke needed, not only a new justification for legitimate political power (which he now argued lay in the realm of individual consent), but he also needed a new justification for the rights and property of individuals prior to and independent of government. In light of these aims Locke, appealing to both Scripture and natural reason, begins his famous chapter "Of Property" with the notion of the earth as original common property in explicit contrast to Filmer's version of it as a gift to a patriarchal head. Since Locke at the same time wished to distance himself from such radical positions as that of the Levellers (who argued against all private property on Biblical grounds), the task he explicitly sets for himself is to show how rightful individuation of the common gift is possible, and this prior to "any express compact of all the Commoners," that is, prior to the formation of government (¶ 25). Ashcraft has recently emphasized the degree to which Locke's property theory is designed to tread this fine line between Tory and Leveller positions.[6] As I hope to show, the result of Locke's political program is an inevitable tension in his conception of ownership.

In explicating Locke's theory, we must first stress that his notion of "common property" is no longer used in the sense still intended by various natural law thinkers (such as Aquinas) before him, that is, in the sense of a *positive* community of things which are jointly owned and in respect to which each has an already well-defined share.[7] Rather, the notion of common property for Locke edges closer to what Pufendorf distinguished as a *negative* community — one where the earth and its fruits are as yet unassigned, but equally available to all.[8] It is from amidst this lack of prior "assignation" (¶ 28), independently of whether others are around to consent or not (the consent of all being deemed impractical), that Locke must account for the right of private ownership. And this he does, of course, by way of his famous labor theory.

According to Tully the central intuitive idea underlying Locke's new property theory is that creative labor grants a right in and over its products.[9] And indeed, the first instance of this idea in the *Second Treatise* lies in the notion of God who has dominion over the earth and its creatures, not because He is omnipotent (as in Hobbes), nor their father (as in Filmer), but because He is their "Maker" (¶ 6). Such dominion may be called the "right of creation" — strictly speaking it applies only to God who has not only created the world *ex nihilo*, but continues to do so each moment.[10] As Tully also notes, Locke considers the responsibility for an effect of which the agent is the cause, to be a law of reason.[11] The human, in turn, is the "workmanship" of this infinitely wise maker; man is his rightful "property" and as such has a duty, usually pleasurable, to self-preservation (¶ 6). As we shall see, a derivative but clearly limited right of "making" will apply to man and his productive works, and again for the reason that these works are in part (but only in part) causally dependent on a now human activity.

It is thus from each person's duty of self-preservation, which we owe to the all-possessing God, that Locke first derives the sovereignty of each individual with regard to his own life and limb, that is, to his body, its free movements as well as to the immediate means of his sustenance (possessions) (¶ 6). Relative to other men, each has "a Property in his own Person" (¶ 27) and

each is "absolute Lord over his own Person and Possessions" (¶ 123). By the term "Person" Locke refers to the rational individual who is capable, not only of self-maintenance, but of directing his actions in accordance with the fundamental law of nature, that is, in accordance with reason (¶ 6).[12] The individual's "Person," which "no Body has any Right to but himself," may thus be viewed as the first instance in Locke of exclusive human property. And it is from this exclusive (near absolute) self-possession of the body that Locke will derive the individual's right to the labor of that body which is not clearly separable from it (¶ 27).

The notion of body-as-property, however, is already problematic. J.P. Day, for instance, raises the objection against Locke that in the "standard" or "paradigm case" of ownership,

> A *owns* X does indeed imply that A has powers of exclusive use, destruction and alienation over X.[13]

And since for Locke the individual's body may not be rightfully destroyed or alienated to another (God, not the individual, being the ultimate possessor, ¶ 23), Day concludes that it is illegitimate for Locke to consider it "property" in the first place. In response to this common objection (there does seem something peculiar in our calling our bodies "property"), we must nonetheless note that, even if Day is correct in assessing what corresponds to the contemporary "standard usage" of the term "property," his point as an objection against Locke fails.

First, it must be stressed that Locke remains peculiarly ambiguous in regard to the individual's right of self-destruction. That is, although Locke explicitly states,

> For a man, not having the Power of his own Life, *cannot*, by Compact, or his own Consent, *enslave himself* to any one, nor put himself under the Absolute, Arbitrary Power of another, to take away his Life when he pleases ...,

he yet grants in the very same paragraph that the individual can "forfeit" his life into the absolute power of another "by some act that deserves Death" (¶ 23). Assuming that by "some act" Locke has a free intentional act in mind (one for which the individual

may be held responsible), then he here appears to endorse a form of indirect suicide. For, Locke writes, if a man finds the hardships of slavery outweigh the value of his life "'tis in his Power, by resisting the Will of the Master, to draw on himself the Death he desires" (¶ 23). Man not only has the obvious non-moral physical "power" to end his life, but it appears according to Locke that he has — under special circumstances, that is, those of unbearable suffering — a legitimate power as well. This means, however, that it is not impossible on Locke's view to conceive the body as an instance of Day's "paradigm case" of ownership: as an "X" capable of alienation and destruction. Moreover, it is but a small step from Locke's position to a contemporary view such as Nozick's where (in part because God plays no role in the theory at all) the individual's legitimate power to alienate and destroy its own life and limb is wholeheartedly endorsed.[14]

But Day's criticism of Locke's claim that we "own" our individual bodies fails for a more important reason. It fails because Day stipulates in advance the conception of private, alienable property as the paradigm of *all* ownership and he thus prejudges the very issue in question, namely, the proper scope and the legitimacy of this paradigm. It has long been noted by scholars, for instance, that in the medieval period a fundamentally different conception of ownership predominated. Property was conceived primarily on the model of a stewardship of God's order. Ownership was viewed as temporary (in this world) and as something fundamentally inalienable (witness the institution of primogeniture).[15] Moreover, as we have begun to see, Locke to a great extent still operates with this medieval notion in mind; the body or person cannot (under normal circumstances) be alienated or sold because they ultimately belong to God and are in His service (¶ 6).

Hence Day's (as well as perhaps our) discomfort with Locke's talk of our "owning" our bodies may be accounted for differently. It may be accounted for by recognizing how broad Locke's notion of "property" in fact is — in the end it means no more nor less for him than that which an individual may "properly consider his own."[16] And given this broad meaning, Locke indeed equivo-

cates between two narrower and distinct conceptions of property which it is now time to set forth explicitly. The centrality of *both* to Locke's labor theory of property (as well as to our contemporary ways of thinking) I shall deal with presently.

What I am calling ownership *qua stewardship* is intimately connected with the notion of possessing something originally obtained as a gift. By the notion of (an authentic) "gift" I have in mind some unearned value intentionally "bestowed" upon us by another (a donor) for our benefit.[17] (If the bestowal has, as its purpose, some specific benefit for the donor it comes closer to being a bribe, and so forth.) In Locke, primary examples of such gift-property are our life, limb, natural freedom and the equal political jurisdiction granted us all by God in the state of nature. We did not "earn" such values; they were freely and generously given. Second, a gift is something which may be rejected, but only at the cost of offending the donor. I reject gifts from those persons I no longer wish to have any relations with. If the donor should be God, of course, such rejection is far more serious (on the Christian view it amounts specifically to sin). Third, "owning" such gift-property is fundamentally a form of guardianship; gift-giving and acceptance is far more than a simple transfer of value between agents. As Camenisch has shown, the gift is a moral reality laden with subtle but very real "oughts"; it brings into being a new moral relationship.[18] That is, implicit with the acceptance of an authentic gift are appropriate and inappropriate uses of it, and these uses are, at least in part, determined by the intentions of the donor.[19] In accepting a gift I become a participant, as it were, in the way of life of the giver.

In Locke, although property in our life and person is exclusive relative to other men, we are yet always morally responsible and grateful to God our benefactor. We are in His "service," we are His stewards, and there are strict limits this awareness imposes on our conduct. The most visible expression in Locke of such inherent limitations imposed by our guardian roles are the two provisos he cites on our natural right to appropriate things in the state of nature. What may be called the "spoilage clause" (that we appropriate only so much as we can use before it spoils (¶ 31), as

well as the "sharing clause" (that there be "enough and as good" left in common for others (¶ 27), follow directly from the performance of our most primary duty to God of preserving mankind in general; such preservation is proclaimed by the first fundamental law of nature (¶ 6).

We thus find in Locke's theory a form of ownership where i) various items are obtained as gifts (our life, limb, equal juridical freedom, and so on), ii) we relate to these (normally inalienable) items as guardians, and importantly, iii) our particular relations to others (to, or by way of, the donor) remain in the foreground; our moral relation to others directly conditions and circumscribes our legitimate private use and enjoyment. In short, authentic gift-property is distinguished by the continuing moral obligation the recipient has to the will of the donor. And unlike the strict obligations which are set forth in contract (obligations which are explicit, precisely defined and narrowly limited), the moral "pull" of gifts is far more open and flexible; there remains an indeterminateness in the content of the obligation at the heart of gift. In Locke one finds this insofar as the individual in the state of nature is left a certain latitude in determining what specific forms his grateful response to God's gifts should take; the individual himself interprets natural law, decides how much is "enough and as good" for others, and so forth. Indeed, in the practice of gift-exchange, there is not only an opportunity for interpretation and creativity, but creativity appears to be a must.[20]

I may here just add (and as A. Gurevich has shown) that in the high medieval period what was "properly considered one's own" importantly included one's relations to others: one's relation to kinship and inheritance groups.[21] The term "property" was not confined to a relation to physical objects or land; it referred as well to the quality of "belonging" to a specific clan. Such inclusive membership was considered a natural (given) presupposition of a free and propertied being. Moreover, we might recall that for much of the medieval period there were no abstract and absolute standards of land measurement.[22] The measurement of size of plots was not uniform but varied from place to place; area measurements such as the "journal" or "morgen" were based, for

instance, on a "morning's work." Hence, standards of ownership were linked to a particular area, type of land, and its specific cultivator. This well-known medieval "contempt for calculation" illustrates further how qualitative considerations — and our ascribed duties and responsibilities to particular others — predominates in ownership *qua* stewardship. Such considerations remain primary, even when the issue is the possession of physical objects or land, and they heavily restrict and condition our private use and enjoyment.

It is quite certain, on the other hand, that Locke's *Second Treatise* also operates with, and gives a first important grounding to, the modern conception of private property.[23] From this perspective, "property" is viewed as a) something I have essentially earned by my own efforts, and hence it is b) something I can freely dispose of at will. And it is this new conception of ownership which is progressively modeled — not on the relationship between two moral agents as symbolized by a physical thing — but on a single human being's exclusive relation to a single material object.[24] In the following section I shall argue that Locke's theory of ownership can only properly be understood as the result of the tension between *both* these conceptions. In contrast to Macpherson's influential interpretation, I shall stress that the more fundamental normative notion in Locke's theory is in fact ownership *qua* stewardship; this background conception continues to justify and regulate all private property even in civil society. In contrast to Tully's recent work, on the other hand, I hope to show at what point the older category of stewardship in Locke's thought does indeed begin to succumb (whatever Locke's original intentions) to the modern notion.

The Argument for Private Property

Having initially distinguished the two conceptions, it is clear that for Locke each person owns his own life and limb primarily in the sense of an exclusive, inalienable stewardship before God,

and it is from such a form that Locke derives the claim that "the Labour of his body, and the Work of his hands," are properly the individual's as well (¶ 27). This Locke believes to be "unquestionably so" assuming, as he does, that labor is a necessary means to our positive duty of preserving life and limb. Locke then goes on to formulate the more controversial claim that that with which man has "mixed " his labor becomes his exclusive property too. But before focusing on this famous metaphor, we must note that the manner in which a man's labor and actions are "his" is already different from the manner in which he "owns" his life and limb. A man's labor and actions , importantly for Locke, are *alienable*, while his life and limb (as we have seen) are normally not (¶ 28,85). [25] This indicates that for Locke ownership of our actions and labor (being to a greater degree results of our individual effort and will) may come in the end to be more fully our own alienable "private" property. And if the reader here perhaps has the suspicion that the distinction between the two forms of ownership I am proposing may hold for Locke's time, but is of little interest for our own, I briefly offer the following considerations.

My claim is that Locke's intuition regarding the fundamental stewardship of our bodies is very much alive today even if the surrounding theological justification has been dropped. (I shall return to this point). Legally, I may not cut off my hand and sell it, nor may I alienate the totality of my life to another (as in slavery). My point is that still today we continue to view our bodies and lives as, in large part, "gifts." The original value of our lives and limbs, after all, we did not create; they were "bestowed" upon us. Further I wish to suggest that mature self-possession of one's life, body and actions entails the capacity to consider them under *both* property descriptions. As we grow older, for instance, our early stewardship over our life and actions (although never normally abandoned) does become more fully "subject to our wills." [26] Further elaboration of this point, however, I leave to the final section of this paper. Having indicated the possible continuing relevance of Locke's basic notions, I return to the main line of argument.

In Locke's pronouncement that man has an exclusive right, not only to his labor, but to that with which he has "mixed" his labor,

at least two major strands of argument may be distinguished.[27] The first I shall call the argument simply for "taking"; it is an argument based on the principle of need and on the common inclusive right of all in the state of nature to make use of things necessary for their preservation (¶ 25). Because without individual appropriation the common is of no use and man would have starved (¶ 26, 28), the privacy of the means of appropriation (individual human hands, labor, mouth, and so on) necessarily extends a privacy to the object appropriated (¶ 26). Locke cites the example of gathering acorns and apples, the direct appropriation and consumption of which is necessarily individual and exclusive. One strand of Locke's argument thus rests on the conceptual model of individual biological incorporation, on "mixing one's labor" in the sense of gathering or "taking" from the environment for the sustenance of life.

The second, quite different (and more complex) argument which Locke gives for the exclusive right to the object appropriated (and which eventually applies to more extensive cases such as land) refers to the productive aspect of labor, that is, to mixing in the sense of "adding" or "making." Locke writes that individual labor "adds something" to the thing, namely "value," which both distinguishes the thing from, and removes it out of, the common state of nature (¶ 27). This second argument embodies Locke's recognition of the "productive" power of the human; man is now conceived as an active cause.[28] Human labor not only puts nine-tenths of the value on things (¶ 39, 40) — in contrast to the earth and nature which are now seen to furnish "only the almost worthless materials" (¶ 43) — but human labor in an important sense even "constitutes" them. Man transforms wheat into bread, leaves into cloth, grapes into wine (¶ 42). And it is in acknowledgment of this power of making — of this God-like bringing into existence of new useful things — that Locke assigns it in his theory of property an appropriate return: the newly constituted thing. Again, responsibility for an effect of which the agent is the cause, appears for Locke to be a self-evident law of reason. Ownership in accordance with productive labor is most just because God commanded men to subdue the

earth and to "improve it for the benefit of Life" (¶32). With the introduction of the mixing metaphor, Locke has answered the question of how the earth, given to men in common, comes to be unequally divided among them; different degrees of industry and ability were apt to give men possessions in different proportions (¶ 48).

The criticisms of Locke's claim that man owns that with which he has originally "mixed his labour" have a long history. Here I wish only to note that any purely "naturalistic" interpretation of the claim misses Locke's actual argument.[29] That is, the physical act of laboring does *not* grant a right to the product labored upon for Locke, at least not *qua* physical (causal) laboring. My act of labor grants a right to its products in Locke, not because the latter is some sort of physical (or some claim even metaphysical) extention of "me," but only because my producing, or causing such things to be, furthers God's underlying intentions for the preservation of mankind. Only insofar as my labor is "productive"— turns barren land into lucrative fertility and furthers the "conveniences of life" (¶41) — does it obtain its title.[30] This normative dimension of "labor," as a positive duty to God, is explicit in the two provisos Locke places on labor and accumulation; both the spoilage and the sharing clause mean that Locke fully recognizes in his natural state the conditional nature of, and the *direct* communal restrictions surrounding, ownership. Moreover, it is only to the extent that our fundamental duty of preserving mankind can be satisfied in *alternative* ways, that the two limitations on accumulation in the state of nature cease to impose serious restrictions once man enters civil society.[31]

It is important to focus on this last point because it can illuminate the recent controversy between Macpherson and Tully. Macpherson's general position is that Locke's property theory seeks to provide "a moral foundation for bourgeoise [that is, unlimited individual] appropriation."[32] Tully, on the other hand, who contends that neither the capitalist nor the wage-laborer appears in Locke's thought, argues Locke in fact justifies a form of communal property — one in which "the share of the goods of the community belonging to each is determined by the labour of each for the public good."[33] The extent to which both views con-

tain elements of Locke's position may now be seen by the following considerations.

According to Locke, the inconveniences of the state of nature, where each is his own interpreter and executor of natural law, as well as the inadequate protection and regulation of property in its extended sense ("Lives, Liberties and Estates"), drove men to set up an "Authority to determine all Controversies" (¶ 89). Men set up government and henceforth civil laws were to regulate the right of property (¶ 50). Already in the last stage of the natural state, however, the spoilage clause aimed at uneconomical waste (which restricts appropriation to what a man can make use of) is largely rendered inoperative by the introduction of barter and money. Especially money, which may be hoarded without injury to anyone, allows each to hold more than he can immediately enjoy (¶ 36, 50). It is important to note as well that the direct communal dictates of the sharing clause are weakened with the introduction of money also. This is so because the institution of money, to use economist's parlance, is considered "pareto efficient;" it allows each in the end, even those with minimal possessions or no land, the expectation of a larger absolute share of the nation's wealth (¶ 41, 50).

That Locke in fact believes that a money-economy can better satisfy the sharing clause is attested to by his claim that an American Indian king of a large and fruitful territory (in the state of nature) "feeds, lodges and is clad worse than a day Labourer in England" (¶ 41). Men have tacitly consented to unequal portions of wealth (even before the social compact) due to the efficiency of a money economy (¶ 50). But thereby, we must note, it is not the case as Macpherson has claimed, that Locke seeks to remove the natural law limitations on property in civil society.[34] Locke's aim is precisely the reverse: his aim is to show that the natural law restrictions are more certain to be satisfied within civil society. Once within the state (men having left the insecurities of the last stage of their natural condition), the job of interpreting the provisos is given over to government representatives who henceforth (in accordance with them) regulate property in the public interest (¶ 50, 222). We might here note (and to this extent Macpherson is correct) that from the individual citizen's point of

view the natural law limitations have indeed been removed. That is, after the social compact, the provisos no longer dictate directly to the individual as they once did in the state of nature. The natural law restrictions — from the average citizen's perspective (and but for perhaps grossly unjust regimes) — now require no more of him than strict adherence to the civil law of the land.

It is at this same point in Locke's discussion that the premises of his final argument for a more extensive right to private property emerge. We have seen that the argument for "taking" in the state of nature extends a right only to immediate subsistence goods. Moreover, the argument for "making" is restricted by the two provisos to those produced items which can be used before spoilage, and on the condition that there is "enough and as good for others." Neither argument is capable of justifying (as the socialists have long pointed out) an exclusive right to fixed property in land where it remains unclear whence the right to exclude others from equally availing themselves of the soil comes from. To mix one's efforts with the land (in the sense of a negative community available to all), and in the name of mankind's general preservation, reasonably grants, in the words of one author, a "recipient claim right" to the common gift.[35] One is owed physical possession of products made, continued use of the soil, perhaps even some share in managing the land, but not a private property right, a right which excludes equal use and benefit by others. The two arguments from the state of nature clearly do not justify a right to capital, rent, and transmissibility. Until this point Locke has explained nothing more by way of his labor theory than how someone could justly use and benefit from a communal property of numerous individuals without violating their inclusive rights, on the one hand, and without himself being excluded from the property on the other. If we consider only this first part of Locke's justification, he provides (as Tully has argued) a justification, not of private property in its modern sense, but of the English Common.[36]

Tully mistakenly goes on to claim, however, that such communal ownership is the primary objective of the whole of Locke's *Second Treatise*.[37] And yet Locke quite clearly intends to argue for a more extensive private ownership with its concomitant

rights to fixed property in land, income, capital and transmissibility. We have argued that Locke's ultimate concern was to legitimate an expanded realm of individual activity — one free from government's arbitrary encroachment — subject now only to the consent of persons (See pp. 2-3 above). But this expanded realm importantly included, not only the political, but the economic domain.[38] And consistent with this interpretation, we find in the *Second Treatise* a final and critical argument (never even discussed by Tully) for private ownership, an argument which pertains in particular to civil society and which legitimates (at the very least) a right to fixed private property in land. Let us call this the argument from "initiative"; it essentially has to do with the concept of money.

To give Tully his due, we grant that this argument remains rather sketchy in Locke's thought. (It is not, in fact, fully developed until nearly two hundred years later in J.S. Mill's *Principles of Political Economy*, Bk.II). But this hardly means that it does not exist; we have in fact already to some extent stated it. Let us begin by noting that the argument's first premise continues to be the proclaimed preservation and welfare of mankind (the law of nature continues to operate in the midst of civil society). Productive labor, according to Locke, continues to be regarded as the chief means to this end because it is at least ten times more efficient than nature. Furthermore, labor is assumed to be something unpleasant, enough so that people do it only in the expectation of a return. And yet without money, Locke asks, "what reason could any one have there [on an Island separated from all possible Commerce] to enlarge his Possessions beyond the use of his Family" and his own consumption? (¶ 48) Locke in this paragraph justifies the more extensive acquisition of non-perishable goods and money, in the name of the *initiative* this new form of property excites in the individual to produce beyond his needs (See also ¶ 37). Further, since Locke has already equated common land with "uncultivated" land (¶ 34), the private "inclosing of land" is now worth the bother, that is, in the event that the cultivator can "draw Money to him by the Sale of the Product" (¶ 48, see also ¶ 37).

Locke's main point, moreover, is that such private enclosure of land, contrary to what one might at first think, "does not lessen but increase the common stock of mankind"(¶ 37). For the provisions yielded by one acre of enclosed and cultivated land, are roughly ten times that "yielded by an acre of Land, of an equal richnesse, lyeing wast in common"(¶ 37). Again, given the assumption of trade and commerce (as well as of a just government which henceforth regulates the property right) this heightened productivity will actually benefit all. And therefore he that encloses and works ten acres of land, "may truly be said, to give ninety acres to Mankind" (¶ 37). The consequence of the institution of private ownership of land (including its concomitant rights to interest and capital)[39] is a productive efficiency and general increase in wealth, which not only now causes "no loss" to those who own no land (it having at some point become scarce), but even "betters" their lot relative to the absence of the institution in the state of nature (¶ 37, 38, 41).

The clearly superior position, in Locke's eyes, of the English day-laborer (who possesses no land) relative to the American Indian king who rules over a large territory, in terms of the conveniences of life, drives this point home (¶ 41). Men have willingly, and "by common Consent, *given up* their Pretences to their natural common Right" to the land (¶ 45) (emphasis mine). Men have "by *positive agreement, settled a Property* amongst themselves, in distinct Parts and parcels of the Earth"(¶ 45). And they have done this in the name of a greater security and material wealth: better food, clothing, and housing (¶ 41). Stated somewhat differently, the modern institution of private property fulfills what has been called Locke's "social contract criterion for legitimacy": it is rational from everyone's point of view.[40] Of course, for Locke to argue that this institution is the "surest way" to increase the common stock (and not merely one rational possibility among others), a tacit assumption about the self and its motivation must be accepted; Locke must maintain that laboring under the incentive of exclusive, private ownership is the most intense value creator.

Before taking a closer look at the newly emerging conception of autonomy underlying this final argument for private property,

it is important to stress that for Locke the natural law restrictions are never transcended as Macpherson has argued. The idea of the human community as fundamentally still in the service of one God who dictates (via natural law) that differences in ownership are legitimate if and only if they do not work to the disadvantage of others — this background condition continues to justify, as well as guide, the regulation of all property in political society. The twist in Locke's theory is that the role of interpreting the natural law provisos — at the time of the social compact — is taken from the hands of the average individual and given over to the new government officials (who now alone retain the role of stewards). The upshot of contract is that property *qua* stewardship — which entails a direct awareness of social duties and responsibilities to particular others — is a form which disappears from the everyday life of the average citizen. Henceforth, each individual goes forth in the world primarily on the private property model; there is no longer the requirement to interpret, or even to consider, the needs of others, but only to remain within the limits stipulated by the new civil law. In Locke's social compact one form of property has been exchanged for another.

Two Models of Autonomy

Just as there are two distinct conceptions of ownership operating in Locke's theory, so one may distinguish two respective underlying conceptions of self and individual autonomy. Tully has stressed that aspect of Locke's thought which emphasizes the social restrictions and responsibilities surrounding ownership. In claiming (wrongly on my interpretation) that "the only form of property in land which [Locke] endorses in the *Two Treatises* is the English Common,"[41] Tully not surprisingly focuses in turn on aspects in Locke's thought of what I shall here call an Aristotelian, "communal" self. This self is in an important sense an "older" self and reflects the medieval natural law tradition (also not surprisingly stressed by Tully's reading). Distinctive charac-

teristics of such a self are: a) a definite heirarchy exists among the various capacities of the individual. The individual's substantive personality — his reason, freedom, and equal political jurisdiction — are inalienable personality characteristics which set man above beasts and determine his essentially "dignified" nature; b) the exercise of these higher capacities cannot only in themselves motivate the individual to action, but their exercise is perceived as a fulfillment of his distinctively human nature. Such a self is clearly presupposed in Locke when he assumes the individual is capable of following the dictates of natural law (= reason) against his own immediate inclinations and self interest. Law, writes Locke, does not restrain man's freedom but ultimately preserves and enlarges it (¶ 57). As Tully notes, Locke's is "a duty theory of positive liberty."[42]

Macpherson, however, focuses on a second conception of the self in Locke, which will here be called (consistent with Macpherson's analysis) the "private acquisitive self." By this label I intend a) that the passion for material appropriation is viewed as fundamental, even primary, in motivating the creative acts of the individual. Further, and importantly, b) the self's very growth and fulfillment is perceived on the model of private acquisition. In the extreme case, even the "higher pursuits" such as freedom, the life of the mind, science, and so forth, are viewed as exclusive, private possessions of the individual. On this model, the self's growth and fulfillment consists in enlarging and preserving property in its extended sense (¶ 123).

Once again, elements in both conceptions are operative in Locke's thought; his ultimate position is not to be found by ignoring the first (as Macpherson does) nor by overlooking the latter (as Tully does). The issue, rather, for the property theorist is to assess the relative weightings and respective scope of these two conceptions in Locke's thought or elsewhere (a task I by no means carry out definitively). We have seen that the weakness of Macpherson's interpretation is that it neglects the fundamental justificatory role in Locke's thought played by the notion of "stewardship"; so too all aspects of a socially responsive, communal self in Locke are eliminated. On the other hand, Tully refuses to recognize any private "capitalist" elements in Locke's

thinking. But he thereby neglects, not only Locke's various elements to the enclosure movement, to the day-laborer, but he ignores as well what I have called Locke's final argument for the institution of private ownership (pp. 13-16 above).

Despite Macpherson's overstating his case (and his reading in the end remains ahistorical), the omission by Tully of what is radically new in Locke — and historically most influential — is a serious omission indeed. In concluding this study of Locke's two conceptions of property I wish to show, in yet another way, how the model of stewardship and its respective conception of self does indeed begin to succumb to the private property model. My claim is that, at least in the realm of everyday ordinary life (I am thus not concerned with contrary claims Locke makes elsewhere concerning education, civil servants, and so on), the acquisitive self not only surfaces in Locke's thought, but ultimately even, "wins out" — it "triumphs," as it were, just as the paradigm of private, alienable property will historically.

Let us focus one more time on Locke's comparison between the American Indian king and the English day-laborer. I wish to argue that it is *only* by already presupposing a private acquisitive self at the time of the social compact — a self which considers a vast range of human experiences and characteristics on a par and as attributes to be individually acquired or alienated — that a long-standing difficulty in Locke's property theory can be resolved. This difficulty has been noted by numerous scholars[43] and may be formulated as follows: at first sight it appears highly irrational that individuals in Locke's state of nature, which is a state of equal political jurisdiction, should agree in the social contract to inequalities of property ownership. For, it turns out, these inequalities inevitably lead in civil society — on Locke's own account — to an inequality of the vote (and hence to an inequality in political representation). That is, the "true proportion" of legislative representation which any part of the people can pretend to, according to Locke, proceeds "in proportion to the assistance, which it affords to the publick" (¶ 158). And, given that Locke had earlier stated (¶ 140) that appropriate levels of assistance are a function of amounts of taxable estate, any agreement to property differences in the social contract is in effect an automatic agree-

ment to *unequal* political jurisdiction in civil society.[44] The social compact seems to result in an arrangement whereby rational individuals — originally juridically equal — exchange their position for "the worse" relative to the state of nature. The move appears to violate Locke's criterion for a legitimate social institution (See note 40).

It is important to recognize, however, that for individuals to exchange equal political jurisdiction for unequal political representation remains irrational only if the self continues to be viewed on the older Aristotelian model: that model on which equal political jurisdiction remains an inalienable characteristic of a free and rational being. If the self is conceived on the private appropriative model, by contrast, the inconsistency in Locke's view suddenly disappears. In this case, equal political jurisdiction becomes the object of but one more private exchange among many. What at first sight appears to be its inalienable, dignified, and essentially public character makes no difference; equal political jurisdiction is treated as an object of personal exchange and is being traded for secure protection of property, greater material wealth, as well as what is often called freedom from the necessity of active jurisdiction or Aristotelian citizenship.[45] Only if such a private, acquisitive individual is already presupposed by Locke's social contract, is it no longer surprising that a self could rationally prefer the material advantages of the English day-laborer — without the vote — to the political autonomy of an Indian king ruling over a vast and fruitful territory in the state of nature.

Applications and Implications

Few still consider philosophy to be the activity of deducing necessary conclusions from a set of self-evident premises. At least political philosophy, in a post-Quinean era, is often conceived as the attempt to reach a "reflective equilibrium," as the search for a match between general, moral principles rooted in our tradition and way of life, on the one hand, and evolving particular judgments in the light of new experience, on the other. The influence

of Locke's thought on our tradition — in both epistemology and political philosophy — can hardly be overemphasized. And yet in approaching this pillar of our tradition, it is important to recognize that what we consciously recall of the theory is often but a small part of the story. The aim of the foregoing has been to reveal that Locke operates with not one, but two, conceptions of property, both of which fall under the more general concept of that which man may "properly call his own." I now wish to suggest that these two conceptions underlie, not only Locke's thought, but much of our current practice as well. That is, after careful scrutiny our own practices emerge (like Locke's actual position) as far richer than our theories; our practice in general is underdetermined by theory.

The attempt to reduce one of the above conceptions of property to the other, moreover, appears pointless: in part because the two entail essentially conflicting characteristics.[46] With stewardship the ascriptive aspect of ownership predominates; my inalienable responsiblities to particular others (including to my own substantive personality) remain foremost. My private use, plans, and enjoyment are secondary to fulfilling a prior and fundamental social role. With the conception of private property the reverse is the case; on this conception my personal use, plans and rights of disposal are primary and checked only by my not (legally) infringing on the like plans of others. The attempt to reduce one of these conceptions to the other, we can now see, will have the undesirable consequence of either positing all individual aims as essentially social ones, or all social aims as "really," "in the end," individual ones. In either case, subtle practical distinctions are lost and our theoretical world impoverished.

A different approach is to consider these two conceptions as denizens of different language games (and from here to proceed to investigate such games). The conceptions might then be recognized as twin poles between which the many shades and variations of "mine" — and different practices of ownership — fall. In Locke, the different language games (and practices) are kept apart insofar as he distinguishes life before and life after the social compact. But they touch upon one another and overlap as well. I have tried to show how at numerous points his theory reveals the tension: Locke wavers between viewing the relation

to my own life, limb, labor and equal political jurisdiction as an inalienable stewardship, on the one hand, and as a private disposable possession, on the other. Finally, I have argued that the stewardship model does indeed begin to give way in Locke's thought to the newer paradigm of private ownership which, in turn, historically grows in strength and stature. Hence, we frequently find in contemporary political theory (in the work of Nozick, J.J.Thompson and many others) no equivalent to "stewardship" at all, and most of us acquiesce to Honoré's claim that private property is the "paradigm" of the West.

In this final section, I wish to stress the impoverished nature of such recent theories; the paradigm of private ownership has not won out altogether. In practice, at least, stewardship (or whatever we decide to call it today) is still very much alive. Furthermore, for many pressing issues of our time — issues in medical ethics (regarding how to conceive our relation to our bodies and body-parts, say), in business ethics (regarding what can be sold and what not), or in developing an adequate conception of socialist property, and so forth — it may be necessary to clarify or explicitly reintroduce aspects of the older notion as a distinct alternative to the private property model. And, as this paper has tried to show, this alternative lies at the heart of our modern tradition and need not be imposed from without. The question now becomes how? How might a renewed political awareness of the category of gift-property, guardianship, and the priority of social responsibility in ownership explicitly be brought back to our theory and practice, after almost three centuries of their secondary role? (And the aim is to do so, of course, without simultaneously binding ourselves in the fetters of medieval life.)

Here I can only offer numerous suggestions and lack of space will necessarily render my remarks (which I have argued more fully elsewhere) schematic.[47] The first issue to be dealt with is the question of how one might reinterpret the category of "gift-property" once the theological dimension of political justification has receded (that is, since the Reformation). If a shared belief in God can no longer be assumed, how is each (politically speaking) to conceive of his or her relation to their life, limb and freedom? As a gift from whom?

One of the most viable alternatives to a theological grounding of basic human rights is the approach taken by the later social contract tradition (including the thought of a number of the German Idealists). Our inalienable rights (to life, freedom, and so on) are here grounded on the notion of a society of free, reasonable beings and the necessary conditions for their reproduction. Whether this community is ahistorically conceived (as in Kant), or the product of a long historical development (as in Hegel, Habermas, or the later Rawls), the individual's fundamental rights (to his body, its free movements, original possessions, and so forth) may essentially be interpreted as a "gift" — as a recognized given with which each begins life — from the reasonable community at large (and this community is further to be distinguished from "the state").

In practice, our society clearly assumes such "gift-property"; I did not after all "earn" the honor of being born a freeman (rather than a slave), with an American Passport, a set of constitutional rights, and so forth. Moreover, if the gifts are authentic, I cannot do with them "what I will"; an implicit notion of stewardship operates. And recent theorizing has, indeed, begun to emphasize this once again. In Rawls's thought, for instance, the conditional and socially responsible nature of ownership is stressed by his difference principle — by his claim that inequalities in social and economic goods must benefit "the least advantaged members of society" not only materially (as on Locke's view), but in terms of the social basis of their self-respect.[48] The category of original "gift-property" (and the strict limits it imposes on our future actions) implicitly operates in both contemporary theory and practice.[49]

My concern here is whether there are not further indications that the dominance of the paradigm of ownership as private property is nearing its end. I believe there is one approach which has been, until recently, almost entirely overlooked. That is, if one indeed observes carefully the everyday language games in which "mine" and "thine" operate, a whole sphere emerges where "stewardship" continues to rule supreme: the sphere of close personal and familial relations or what I shall call the realm of *Philia*. As I am using the expression, *Philia* (a broad term covering the

friendship between parents and children, siblings, lovers and even fellow citizens) remains by definition outside the market in commodities and private property. As Aristotle already noted, relations of *Philia* — in their genuine form — are ends-in-themselves.[50] Significantly, such relations have also remained outside the scrutiny of the vast majority of modern political writing which has focused instead on the expanding marketplace.

Even where one might most have expected an analysis of relations of *Philia* — from the women's movement of the last twenty years — the analysis is only rarely forthcoming and little attempt has yet been made to connect women's traditional position with issues of ownership (or where attempts have been made they remain largely unsatisfactory, see below). And yet my claim is that women, throughout the last three hundred years, have primarily been stewards and not private-property holders.

In our tradition, for instance, women were not legally allowed to hold private property on their own until the end of the nineteenth century (before that even the wages they earned belonged legally to their husbands or fathers). And yet a woman could no doubt still say "mine"; custom and common law undeniably recognized the children, the home and its items, and so forth, as "hers" in an important sense. And the sense in which they were hers, I am suggesting, is the sense of stewardship (See pp. 6 ff above). First, personal enjoyment and use of (family) property was highly conditional on the prior fulfillment of social roles and responsibilities (as wife, mother, in-law, and so on). Second, what a woman has traditionally called "hers" retains strong aspects of "gift": her child, for instance, is normally considered "bestowed" upon her (and we still speak of the "gift of life"). More importantly, the passage of food and clothing within the extended family — which requires not only continuous interpretation of concrete need, but which importantly goes to binding the family together — stands in stark contrast to the exchange of commodities where the parties typically have divergent motives and are left relatively indifferent by the exchange. Finally, at least from the woman's point of view, the family property was essentially shared and non-private. And I may just add that al-

though the notion of "stewardship" has historically been tied to relations of unfreedom and dependency (the steward, wife or servant), it need not continue to connote inequality; there is nothing contradictory in the idea of a "joint stewardship" between persons of equal status (say, in the future).

Much feminist writing itself, however, appears to have been unduly influenced by the reigning paradigm of private ownership, and this despite the fact that the market and public sphere have for so long been closed to woman. Liberal feminists, for instance, in their call for greater equality, place great emphasis on the attainment of equal rights for women, on equal pay for equal work, on higher status jobs, and so on. Marxist feminists, on the other hand, insist on analyzing all relations, even those within the family, in terms of commodity-fetishism and the exploitation of labor by capital; they place such feminist demands in turn as explicit pay for house-work, child and elderly-care, and so forth.[51] I am not denying the contributions such thinkers have made. I am only claiming that in both cases the result has often been to *extend* the category of private property, rather than breaking its power.

Another approach has recently suggested itself, however, and with this approach the present work considers itself compatible: what has come to be called the "ethics of care."[52] The strength of this new turn in the women's movement lies precisely (on my reading) in its bracketing of market relations, at least temporarily: in its focus instead on the activities performed (as well as the responses required, reasoning exercised, and so on) by women in their traditional roles as care-takers. In so shifting our focus, it becomes obvious that women in particular have been trained over the centuries for very different sorts of activities and skills than those prized by the market-place. Elsewhere I have tried to capture in general terms what distinquishes women's activities of care by introducing the category of "reproductive labor"; the primary social role of women has not been the production of material goods, but the reproduction of human relationships.[53] And from within this "mode of reproduction," as it were, ownership *qua* stewardship and gift-property appear to be the more appropriate forms. None of this is to deny, of course, that men over the centuries have also performed reproductive labor. (In fact,

such activities as teaching, ministering, artistic performances, and the like, — insofar as their aim is not private ownership but the reproducing of certain types of human relationships — all partake in this form.) My point is only to stress the astonishing degree to which women have performed and been trained for it.

And thus my suggestion is, that to the degree that we focus on (and find important) the domain of relations between persons, the kind of "owning" which directly stresses these relations and our duties to others first (and personal enjoyment and rights only thereafter) is far from dead. Gift-property and stewardship, as I have tried to illustrate, is a form of ownership which serves the reproduction of specific types of human relations (and if authentic, one might say, they serve the reproduction of relations of *Philia*). If I am correct, new light may now be shed on the nature of Locke's social compact. It is not as if man left an "original" state of nature and, on entering the modern state, conclusively exchanged one form of property for another (pp.15-16 above). If what I have said above is correct, most of us do this each day as we leave home (the familial sphere) for work. That is, we continue to have things attributed to us under *both* property descriptions. Nothing I have said, of course, solves the problem of how to define more precisely that "free and reasonable" community which ultimately, on my reading, is to ground property rights in whichever form. I do think my brief account suggests, however, that whatever our ultimate definition of such a community turns out to be, we can no longer afford to overlook that form of labor which goes to maintaining relations of *Philia*, and hence we can also no longer afford to overlook aspects of stewardship and gift-property.

In conclusion, and in opposition to Honoré's claim, private property is only one part of the story of the "Western type of ownership." And perhaps as we begin to theorize the domain of reproductive labor, as we focus more closely on *Philia* (and again acknowledge, as did the Ancients, its political importance), and perhaps as women enter the work force *en masse* (together with an awareness of their newfound individual rights and freedoms), a novel appreciation may yet be brought to the public sphere: an appreciation not so much of the tired labor theory and work ethic,

but of aspects of gift, of grateful response, and of a form of "owning" long believed to have withered away.[54]

Notes

1. See for instance, K. Olivecrona's discussion "Appropriation in the State of Nature: Locke on the Origin of Property," *Journal of the History of Ideas*, 35 (1974): 211-130. All future references to John Locke's *The Second Treatise of Government* will be from the *Two Treatises of Government*, ed. P. Laslett (Cambridge: Cambridge University Press, 1960) and will be indicated henceforth by "¶" followed by the paragraph number.
2. See C.B. Macpherson's *The Political Theory of Possessive Individualism* (London: Oxford University Press, 1962) and J. Tully's *A Discourse on Property: John Locke and his Adversaries* (Cambridge: Cambridge University Press, 1980).
3. A.M. Honoré, "Property, Title and Redistribution" in *Equality and Freedom: Past, Present and Future*, ed. by Carl Wellman, Beiheft Neue Folge nr.10, *Archiv fuer Rechts- und Sozialphilosophie* (Wiesbaden: Franz Steiner Verlag, 1977), pp. 107-115.
4. See P. Laslett's "Introduction" to Locke's *Two Treatises of Government*, R. Tuck's *Natural Right Theories* (Cambridge: Cambridge University Press, 1979) and Tully *A Discourse on Property*.
5. See Laslett's introduction to *Two Treatises*, which convincingly argues that Locke wrote his *Second Treatise* between the years 1679-1681, at least one full decade earlier than traditionally has been supposed, and at a time when the Whigs under Schaftsbury (in hopes of establishing some control over the monarch's conduct of policy) attempted to exclude James, the younger brother of Charles II, from succession to the throne.
6. See Richard Ashcraft's *Revolutionary Politics and Locke's Two Treatises of Government* (Princeton: Princeton University Press, 1986) pp. 250ff.
7. Tully has recently disputed this point; he argues that "common property" for Locke is still being used in essentially Aquinas's sense of a positive community. However, Tully admits that, unlike Locke, Aquinas "lacked the terminology of subjective rights" (*A Discourse on Property*, p.65) which is really only another way of stating the point here being made. My claim is only that Locke begins his property theory with the notion of an individual (subjective) right and a lack of assigned shares in the state of nature, and proceeds to show how well-defined shares are possible. For his "common gift" to be properly considered a positive community the principle of individuation by labor must first be introduced, but this is the *end*, not the starting point, of Locke's argument.
8. Pufendorf, *De Jure Naturae et Gentium*, (1934): Book IV, 2-6. See also Olivecrona's discussion, "Appropriation in the State of Nature."

9. *A Discourse on Property*, p.118.
10. And it is for the reason that man is continually "dependent" upon God, that God has absolute and legitimate authority over him. See Locke's *Essays on the Law of Nature*, ed.W.von Leyden (Oxford: Clarendon Press, 1970) pp.185ff.
11. *A Discourse on Property*, p.118.
12. And we may already see at this point why "person" for Locke primarily refers to a male, household head; children below the age of reason, servants and to a large extent women (¶ 82), are not considered capable ofational self-maintenance because they are ultimately dependent upon another for their livelihood.
13. J.P. Day, "Locke on Property," *The Philosophical Quarterly* 16 (1966):14
14. See Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p.331, as well as J. Philmore's illuminating discussion in "The Libertarian Case for Slavery," *The Philosophical Forum* 14 (1982):433-58.
15. See for instance, Larkin, *Property in the Eighteenth Century*, (London: Longmans, Green, and Co., 1930), Ch. I. Also A. Gurevich, "Representations of Property During the High Middle Ages," *Economy and Society* 6 (1977):1-30.
16. Olivecrona's discussion of Locke confirms this point.
17. See Paul F. Camenisch's "Gift and Gratitude in Ethics" *The Journal of Religious Ethics* 9 (1981):1-34.
18. "Gift and Gratitude in Ethics," p.6.
19. If an old philosophy professor of mine has given me a rare edition of Kant's works, do I not violate the "spirit" of the gift (and the intentions of the giver) if I turn the books over to a paper recycling plant? Similarly, in many a fairy tale when the mother gives her child a gift of bread to make its way in the world, only a very circumscribed set of actions may be performed if the spirit of the gift is to remain alive (if the bread is not to turn to stone, and so forth).
20. That gift-exchange requires interpretation and creativity (and in this respect stands opposed to contract) may be seen by the fact that too precise repayment of a gift even if possible (giving you, say, the same gift as you gave me last year) not only reduces the flexibilty and openness of the gift relation, but its durability. My relation to you begins to resemble the precise, tit-for-tat contract in which indebtedness can be paid off and the relation between us brought to a neat and incontestable conclusion. See Camenisch's "Gift and Gratitude in Ethics."
21. See Gurevich's "Rèpresentations of Property During the High Middle Ages," where he argues that any account of medieval property forms which draws solely from the official Christian doctrine and the Latin legal codes of Roman Law necessarily remains one-sided and oversimplified. His own account, by contrast, draws from legal texts written

in the vulgar Germanic tongue (relating to practices in England, Scandinavia and Friesia), as well as from poetic and narrative texts.

22. See Gurevich.

23. A.M. Honoré has given perhaps the most careful account of what is entailed by the modern conception of private ownership. According to Honoré private property entails eleven "necessary ingredients": 1) the right to possess (exclusive physical control), 2) the right to use (personal enjoyment of), 3) the right to manage (decide how and by whom), 4) the right to income, 5) the right to capital (power to alienate, modify, waste or destroy the thing), 6) the right to security, 7) the power of transmissibility, 8) the absence of term (indeterminate length of one's ownership rights), 9) prohibition of harmful use, 10) liability to execution (to having the thing taken away for the repayment of a debt), 11) residuary character (existence of rules governing the reversion of lapsed ownership rights). Of the eleven standard incidents, 8 are liberties now and only 3 prohibitions. Moreover, Honoré explicitly states (something Locke would agree with) that the right to use as one pleases, the right to exclude others, the power of alienating and an immunity from expropriation are "cardinal features" of the institution. See his "Ownership," in *Oxford Essays in Jurisprudence*, ed. A.Guest (Oxford: Oxford University Press, 1961) pp.111ff.

24. See Honoré's discussion. Honoré claims, moreover, that the institution of ownership is still best studied against the background of this "basic model" (p.114), a point on which the present author diasagrees. See below pp. 19 ff.

25. Tully has argued against Macpherson that for Locke only a completed "service" may be sold to another and not an individual's "labor" as such (*A Discourse on Property*, p. 136ff). In defense of this reading one might note that it remains rather vague on Locke's theory of the person precisely how such bodily-dependent labor can in fact be separated from the person and alienated to another. Locke does not, for instance, make the distinction first carefully articulated by Hegel between "labor" and "labor-power" — between the management of the whole range of one's activities which is inalienable, and the capacity to labor which can, for a restricted period of time, be rented or sold to another (See Hegel, *The Philosophy of Right* (¶ 67)) Indeed, such a distinction would appear to entail a more complex conception of personality than that available to Locke. Nonetheless, in defense of Macpherson's position, Locke clearly has something like this distinction in mind. Locke does not, after all, only speak of the "servant" or "wage" relation, but explicitly mentions the "day labourer" (¶ 41). This reference in the *Second Treatise* Tully's interpretation cannot account for. See also N. Wood's extended critique of Tully's position in *John Locke and Agrarian Capitalism* (Berkeley: University of California Press, 1984).

26. How better might we account for the movement well underway today (such as the recent referendum in California) which claims that people have a right to end their lives when they are old and sick, at the same time as general consensus exists that there is something terribly wrong with teenage suicide?
27. J. Walden has shown that four different strands of a principle of need, efficiency, value and desert may easily be culled from Locke's text. See his "Two Worries about Mixing One's Labour," *The Philosophical Quarterly* 33 (1983):37-44. For our purposes here, however, the latter three principles — efficiency, value and desert — are together being subsumed under what I am calling the argument from "making" in Locke.
28. Elsewhere Locke defines a "cause" as something "extrinsical" which "makes any other thing, either simple Idea, Substance or Mode, begin to be." See his *An Essay Concerning Human Understanding*, ed.W.von Leyden (Oxford: Clarendon Press, 1970) 2.26.2.
29. For instance, Day's or Nozick's interpretations.
30. Wood, in *John Locke and Agrarian Capitalism*, has recently shown to what extent Locke operates from within the conceptual framework of the Baconian agricultural improvers; he argues that Locke was an early theorist of agrarian capitalism, then beginning to dominate and transform parts of rural England. See his *John Locke and Agrarian Capitalism* (Berkeley: University of California Press, 1984). I may here just add, in support of Wood's thesis, that the verb "to mix" (in Locke's mixing metaphor) in the seventienth century meant primarily to "manure" or "fertilize." (Oxford English Dictionary).
31. In what follows I use the terms "civil society" and "political society" interchangeably for the simple reason that Locke appears to do the same throughout. See, for instance, ¶ 94 where Locke clearly equates the two domains.
32. *Possessive Individualism*, p. 221.
33. *A Discourse on Property*, p. 168.
34. *Possessive Individualism*, p. 203.
35. L. Becker, *Property Rights, Philosophic Foundations* (London: Routledge & Kegan Paul, 1977) p. 41.
36. *A Discourse on Property*, p. 130.
37. *A Discourse on Property*, p. 153.
38. But for Tully's attempt to argue otherwise, this point is generally agreed to by most Locke commentators. For recent criticisms of Tully's position, see Wood's *John Locke and Agrarian Capitalism* and Ashcraft's *Revolutionary Politics*.
39. As Ashcraft writes "... there is no warrant for Tully's conclusion that Locke is attacking the enclosure of land" (*Revolutionary Politics*, p.271). Further, Locke recognizes the need for circulating capital and he "had no particular objections to the interest function of money" (p.278).

40. John Rawls has formulated Locke's criterion for legitimate institutions thus: a form of institution is legitimate if and only if it is such that it has been (or could have been) contracted into as part of a rightly conducted process of historical change (where everyone acts rationally and in accordance with the fundamental law of nature) beginning with a state of nature as a state of equal political right. As we shall argue further below, the institution of private property does indeed survive this more careful formulation. Moreover, Rawls notes that for Locke's position to be fully consistent this criterion for legitimacy must already be interpreted hypothetically (Lectures at Harvard, Spring 1984). See also J. Cohen's "Structure, Choice and Legitimacy: Locke's Theory of the State," *Philosophy and Public Affairs* 15 (1986): 301-24.
41. *A Discourse on Property*, pp. 153-54.
42. *A Discourse on Property*, p.45.
43. For instance, Macpherson *Possessive Individualism*, pp. 195, 251ff, Rawls (lectures) and J. Cohen, "Structure, Choice, and Legitimacy."
44. Tully, of course, disputes this point and claims Locke in fact supported universal manhood suffrage (*A Discourse on Property*, p.173). There is wide consensus among scholars, however, that this is hardly the case. See M. Seliger *The Liberal Politics of John Locke* (London: George Allen and Unwin, 1968), pp.283ff. See also John Dunn, *The Political Thought of John Locke* (Cambridge: Cambridge University Press, 1969) as well as Macpherson and Rawls . For specific refutations of Tully's argument see Wood, Ashcraft, and J. Cohen (p.302ff).
45. That political rights may be exchanged for greater material wealth at first sight sounds odd. And yet John Rawls also has this idea in mind when he speaks of his "general," in contrast to the "special," conception of justice (See *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971) p.83). In the general conception Rawls's difference principle applies to all the social primary goods including individual rights and liberties. The idea seems to be that at very low levels of material wealth (on the edge of starvation, say), people value material well-being above all else, including their political liberties. The more secure they become materially, however, the greater value liberties take on for them. In Rawls's thought the special conception of justice then comes into play; it secures equal basic rights and liberties directly, removing these primary goods from the possiblity of social bargaining. My claim is that Locke's state of nature contains features which still makes the social bargaining of political rights (in particular the vote) a rational thing to do.
46. That the two conceptions are marked by disjunctiveness has been shown by the fact that "alienability" is fundamental to the one form of property, but not to the other (See our discussion above pp.5-8). Moreover, I here wish to note that nothing I have said in regard to the two conceptions conflicts with Hohfeld's analysis of property as ultimately "a set of rights and interests" (*Fundamental Legal Conceptions as Applied in*

Judicial Reasoning) New Haven: Yale University Press, 1923, p.28). My approach, rather, will yield but one (hopefully illuminating) way of categorizing these sets.

47. See my *Towards a New Conception of Ownership*, (Harvard Dissertation, 1985), Ch.5. Also, Schwarzenbach, "Rawls and Ownership; The Forgotten Category of Reproductive Labor," *The Canadian Journal of Philosophy*, Supplementary Volume 13, (1987): 139-67.
48. Rawls, *A Theory of Justice*, pp. 75ff. See also his "Social Unity and Primary Goods" in Sen and Williams (eds.) *Utilitarianism and Beyond* (Cambridge: Cambridge University Press 1982).
49. We might here note that even in Nozick's theory the category, although vastly reduced, may not altogether be absent. That is, consistent with the paradigm of private alienable property, Nozick claims ownership of ourselves entails a right to suicide and self-sale into slavery. But not even Nozick argues for a right of the individual, say, to cut off a limb in exchange for a fee (let us call this a right of self-mutilation). In general wide consensus exists that a practice of consensual self-mutilation (actually found, for instance, among beggars in India) would be abhorrent and wrong. But why? If our culture operates solely on the model of private alienable property, what is to prevent me from doing with my hand what I will? Again, the answer must be that we do not so operate (and never have).
50. Nichomachean Ethics, Bk.viii.
51. I am here using the categories "liberal" and "Marxist" feminists as outlined in A. Jaggar's *Feminist Politics and Human Nature* (Totowa, N.J.: Rowman & Allanheld 1983).
52. By the "ethics of care" I refer to the basic thesis of C. Gilligan's *In a Different Voice* (Cambridge: Harvard University Press, 1982) and the discussion its has sparked. See also, N. Chodorow's *The Reproduction of Mothering* (Berkeley, CA: University of California Press, 1978), J. Elshtain's *Public Man Private Woman* (Princeton, NJ: Princeton University Press, 1981) as well as S. Ruddick's "Maternal Thinking," *Feminist Studies* (1980): 342-67.
53. See the work referred to in Footnote #47 above where this point is argued. It is also important to emphasize here that different property theorists have had very different political concerns over the centuries. Locke's primary aim, as we argued earlier, lay in defending an individual *Dominium* in the face of abuses by monarchical power (See pp. 2 ff above). His concern clearly did *not* lie with the problem of what it is which ultimately holds and binds a community together (let us call this "the problem of community"). In Locke's day, to the contrary, it was widely assumed that the positive ordering of community and family-life was still governed by a natural, if not divine, order. This is an assumption which in the twentieth century, however, has become highly problematic, as recent work in feminist theory illustrates.

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