LIVES, LIBERTIES, PROPERTIES: RIGHTS TO UNLOCK LIBERALISM

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Introduction - The Parameters of the Discussion

This discussion is centrally concerned to ask of Locke's *Two Treatises* questions unashamedly framed according to a particularly modern philosophical problematic. It seeks, within a restricted conceptual context, to relate to the text to the extent that the text relates to the 'liberal tradition', and is, therefore, whilst sceptical of his substantive claims, sympathetic to the view expressed by Robert C Grady II that 'if John Locke is considered a precursor of liberal democracy', a re-examination of his political works (with special reference to property rights and the relations inhering between individuals) 'can shed further light on the nature and values of liberal democracy as well as its empirical conditions'[1] This is not to deny the force of the now familiar revisionist charge of reading the doctrine 'as though the future had already happened' [2], so frequently made against those (particularly Macpherson), who would seek to unmask Locke as the 'progenitor' of 'some negative aspect of life under modern capitalism', and therefore tend 'to distort the reading of that work by viewing it through a prism shaped by our own concerns', as Ruth Grant puts the point. At the same time, however, Grant, *does* find that his work is indeed 'important to us in our thinking about political issues'; his text being an 'example of liberal political theory... it [is] examined to assess whether it is an adequate solution to the problems facing liberal theories'.[3] This almost tautological

'anachronism' (temporarily to adopt the revisionist style), combined with a somewhat arbitrary separation of political from property rights, at least has the benefit of pointing toward two broad features constraining this discussion.

(i) First, if it is absurd to seek in Locke the conscious begetter of *our* capitalist relations or *our* liberalism, nonetheless we are not required *a priori* to condemn as futile any reading of his text which seeks to uncover the extent to which a later ideology conforms to its principles. Indeed, such an undertaking seems particularly apposite in the case of the *Two Treatises* with respect to liberal theory, whose apologists have so frequently claimed the Lockean bequest. It might also be thought that the contemporary existence of a multiplicity of 'liberalisms' itself has contributed to the formidable array of conflicting interpretations of Locke proposed by historians of ideas, particularly during the postwar period. 'Liberalism' itself is a generic term which can plausibly be stretched to include theories of distributive justice as diverse as those of Dworkin and Nozick, and, in practical politics, incorporates both New Right economic liberalism (whose *laissez-faire* principles most resemble the 'Manchester' liberalism of the last century) *and* its primary target, a relatively modern social liberalism. If each of these strands of liberal thought lays claim to the Lockean tradition, we should not be surprised: after all, since the seventeenth century, a variety of more or less transient ideological movements, by no means restricted to the liberal 'tradition', has considered Locke's political and, what is usually of greater significance to them, *proprietorial* theories adducible to their causes.[4] Significantly, even revisionist contextualists fail to agree upon a central objective characterising his theory of property: Wood's Locke is the Whig apologist of agrarian

capitalism [5]; his 'main ideological conclusion' is that 'the common remains common and the persons remain tenants in common' (Tully) [6]; whilst Dunn argues against Macpherson that, 'for *Locke'*, his theory of property 'is a substantive doctrine which protects instances of property held under positive law against the arbitrary encroachments of political authorities'.[7] At least there is *textual* evidence for the latter conclusion, seemingly standing securely by itself, needful of no context beyond itself.[8] And if, historically and contemporaneously, contrasting versions of liberalism (and several versions of non-liberalism) have found in Locke each of them their own spokesman *avant la lettre*, we might certainly allow for textual inconsistency or a lack of content specificity in seeking *his* answers to *our* questions; yet the hermeneuticist's *caveat*, if it is not absolutely to deny the possibility of historical interpretation, ought not to disallow the possibility of seeking within the later ideology those normative and conceptual features it actually shares with the text, and those denied by it.

Given, as I have said, the historically self-proclaimed attachment of generic liberalism to Locke, this particular *famille spirituelle* suggests its amenability to the latter approach, which addresses the *Two Treatises* primarily (although not exclusively) with the (near-) contemporary problematic in mind. This seeks to draw our attention to what might be the presuppositions or values shared by diverse conceptions of liberalism, as an analytical prerequisite to the investigation of their mutual and divergent implications. As the discussion unfolds, the undertaking affirms the interconnectedness of historical and contemporary thought (a connection perhaps the stronger to the extent that later, uninformed by earlier, premisses *adapt* the historical conclusions they seek to *adopt*): a

series of dissimilar answers emerges to the particular question 'Does this principle (statement, belief, etc) provide us with any evidence for Locke's "liberalism"?' Unsurprisingly, then, it may be stated in advance that the *general* question 'Is the *Two Treatises* a liberal text?' (which, in the context outlined above, and subject to the qualifications that follow, claims to be a legitimate subject of inquiry despite and because of its prior recognition that this may not have constituted *Locke's* intention) is answered with an unambiguous but unenlightening 'It depends'.

(ii) This leads directly to the second motive constraining the context of this discussion. Two related qualifications to the inquiry's legitimacy are followed by an explanation of the limits it sets itself. First, the relatively long term *practical* achievements of liberalism, encompassing wide temporal, territorial and material variations, render the search for the expression of its principles in historical texts more problematic to the extent that the discursive flexibility entailed by changing circumstances is likely to engender change in the sense and/or reference of a term. Indeed, something like this process is likely to have assumed a role in the ascription of the generic label to the multitude of modern 'liberalisms' discussed above. In the present context, of particular relevance are the changed conceptual functions of such terms as 'property' and 'law', both of which carry a wider range of possible meanings for Locke than is usually ascribed to them today [9], the effect of which is to extend the potential range of later misinterpretations further even than the simple misascription of meaning from interpreter to interpreted text. Insofar as these textual meanings can be ascertained, the more intractable problem remains that *if* diachronic meanings can be reconciled, the difficulties

are multiplied at higher levels of abstraction, in the attempt, for example, to pronounce authoritatively upon the degree of isomorphism obtaining between differentially-interrelated meanings bundled together as principles, or values; still more problematic, then, is any attempt to ascertain the degree of conformability of the congeries of interrelated principles and values in one approximately discrete ideology to another, historically removed from it. Thus, a second qualification follows from the necessarily limited criteria that can be brought to bear upon the comparative undertaking. If this limitation denies the possibility of delineating *the* paradigmatic liberalism, then principles essential to, or incompatible with, the ideology, become matters, not only of degree, but also of judgement... and this can have no independent standard. A simplified example suffices to illustrate the problem. Assume that, on balance, I judge the essential principles of liberal justice to be captured in, say, the promulgation of a set of conventionally determined rules, applicable to each individual on an equal basis such that as much freedom accrues to each as affords as much to others. How far does the promulgation of similar rules, distributed on the same basis, accord with the principle of *liberal* law if it is premissed upon God's command? In the final analysis, there seems no definitive solution. Even Quentin Skinner sometimes acknowledges [10] that we have no choice but to bring to interpretation the attributes of our own social world, and this seems to be borne out by the history of 'Lockean' historiography. Perhaps in the postmodern world of multiple liberalisms even these criteria are insufficient to the task of interpretation, but, if so, then we can never hope to know anything of the values and empirical conditions of liberalism, which is precisely to subvert the present undertaking.

I intend, then, to assess the implications for liberalism in general and Locke's 'liberalism' in particular according to criteria selected by the array of 'liberal' theories listed on p.1, including Locke's as it appears in the *Two Treatises:* that is, according to premisses common to all modern liberal theories and also of central concern to Locke, in order (so far as it is possible) that none is prejudged according to arbitrary standards. First, Locke, like all modern liberal theorists, presupposes autonomous individual agents in 'a state of perfect freedom to order their actions, and dispose of their possessions as they think fit, within the bounds of the law of Nature, without asking leave or depending upon the will of any other man', as he explains at the start of the *Second Treatise*.[11] During the course of the following chapters Locke presents an account of the conditions that might obtain, given the exercise by individuals of their natural rights, until in Ch 7 he tells us why and how individuals should come to quit 'this natural power, resign it up into the hands of the community', which now becomes 'umpire', deciding according to 'indifferent rules'.[12] It is therefore evident that Locke satisfies at least a necessary condition of a definitively 'liberal' enquiry, from the viewpoint of its methodological individualism: as Waldron puts it, 'the view I want to identify as a foundation of liberal thought is based on [the] demand for a justification of the social world'.[13] There seems no reason, then, in the light of the similitude obtaining here, not to investigate the text, and modern variants of liberalism, in terms of this justification: what is the relationship that obtains between the individual and the community such that the former should believe the freedoms s/he alienates to be of less benefit than accrues to the agent *qua* social being and citizen? For it seems clear that self-conscious liberals, whatever the

(frequently considerable) substantive differences between them, conceive of the rights and duties of the individual as the fundamental datum of civil society.

If the first premiss seems unproblematic, the second, which I consider both to be ineluctably connected to the first and essential to liberalism, is less so: this is a shared commitment to private property as constitutive of freedom. We have seen that Grant considers it possible to separate an exegetical treatment of Locke's politics from his discussion of property, treating it as a necessary component of his reply to certain Filmerian criticisms of his political argument [14], rhetorically functional for Locke's liberal distinction between inheritance rights to property and rightful acquisition of political authority.[15] And Waldron, extolling the individualist premiss of their politics, seems to make a commitment to private property merely contingent for liberals: some fear 'social planners', 'others [only] are based on considerations of right', but 'the most persuasive argument remains that of economic efficiency'. His treatment of this concept is cursory here, amounting to no more than an appeal to Smith's 'hidden hand', the promotion of a ' "social good that was no part of anyone's intention" '[16] Yet this merely appears to turn his previously identified foundational premise of liberalism on its head, for this appeal to 'efficiency' is a justification, not of the social world from the viewpoint of the individual, but of self-interested individualism from the viewpoint of the social world; this is in any case an appeal to utilitarian consequentialism that at best sits uncomfortably with liberalism's *sine qua non,* the defence of individual right. The appeal to the *social* utility of the market, indeed, seems almost perverse here, cited as it is from Nozick, perhaps the most well known proponent of the 'nightwatchman state'[17], a

libertarian who takes the individualist premiss and the right to private property to their (almost) logical conclusion: 'redistribution', he asserts, 'is a serious matter indeed, involving, as it does, the violation of people's rights'.[18] Clearly, it is unreasonable to ascribe to Nozick all the qualities inherent to liberalism but, if his defence of absolute individual rights in 'holdings' represents the two essential features of liberalism identified above taken to their furthest extreme (and, to the extent that he defends a 'dominant agency' in the form of a minimal state at all, there seems a reasonable *prima facie* case for his inclusion here as liberal rather than as anarchist), something of them is constitutive of other variants. Thus, Rawls asserts as his starting point that 'the self is prior to the ends which are affirmed by it'; the state is neutral between competing conceptions of 'the good'; and, for all that Nozick's rights are violated by the inclusive, 'patterned' constraints of the maximin principle, Rawls' 'liberty principle' nonetheless shares with Nozick the requirement that each individual be ascribed private property rights.[19]

Liberal freedom, then, I take to entail as a first necessary condition the claim that individual self-determination should be the appropriate measure of justice, and that this entails a second, namely, that private property rights inhere in individuals.[20] Oddly, however, in theorising its *political* foundations, liberals such as Grant and Waldron exemplify a tendency to privilege the former, making it distinct from the latter, whilst liberal theorists of what is now known as distributive justice also preserve the distinction between, and mutual independence of, political rights and rights to property; this distinction, I think, is significant in the way we conceive of the liberal polity and the types of freedoms proclaimed by it. In order to address this claim, it is appropriate to return to

Locke's text, noting for now (without prejudgement) merely that Grant grounds her distinction in the text itself, in Locke's concern to distinguish between legitimate inheritance of property and illegitimate inheritance of political power. We may recall also that, as we have seen, contemporary liberal theorists also distinguish them, such that, in its *political* incarnation, liberalism is merely contingently related to private property. Yet this does not seem always to have been the case: in the eighteenth and nineteenth centuries, as successive European revolutions proclaimed the principles of national self-determination and destroyed monarchical power, the new property relations were self-consciously theorised, from Ricardo to Mill and Marx, in the emerging science of *political economy.* (One consequence of the more recent intellectual separation of the two, perhaps, has been to afford 'economics' an ever greater importance and independence from politics, resulting in the present crisis of political legitimacy and theory; the *substantive* theoretical consequences are discussed below.)

I want to suggest here that *every* concept and principle quoted or attributed to liberalism thus far does indeed conform to the prescriptive force of the *Two Treatises,* with one exception (which emerges in sections (b) and (c) below), namely, Rawls' familiar Kantian claim that the 'self is prior to the ends acclaimed by it'. Three possible implications for Locke's 'liberalism' flow from this: first, that in the (near-) coincidence of his and its interests, solutions and safeguards, Locke should truly be proclaimed a *philosophical*, not merely contingently historical, 'progenitor' of liberalism; second, in admitting of such divergent variants of the *genre* as are offered by Nozick and Rawls, the range of possible content allowable by the claim suggests (particularly in the light of

historical appeals to Locke made by illiberal ideologists) that only the imposition upon the text of an a priori interpretative matrix produces a liberal outcome; third, the outcome depends upon a further investigation of the Kantian exception, for its significance *per se* and for its relevance to other principles constituting the ideology. I think that a reasonable case can be made for all three possibilities, but shall be most concerned with the last of them, insofar as it penetrates the appearance of Locke's theory to reveal a historical dimension to his logic whose normative direction reverses that taken by modern liberalism, suggesting thereby a critique of its fundamental assumptions. Nonetheless, because the content of modern liberalism remains largely consistent with, and to some extent is entailed by, Locke's approach, I shall briefly detail his treatment of individual and property rights as they relate to the particular claims made by modern theorists of politics and justice adumbrated above. These are then recast into the historical and normative context that undermines the liberal's methodological individualism; I shall then summarise the theoretical implications that might flow from this.

(a) Lockean politics and property rights: The modern liberal interpretation

Most fundamentally, then, Locke fulfils the demand of liberalism for a justification of the social world, detailing in Chs 7-8 *how* and *why* men, 'by nature all free, equal, and independent', should 'have, by the consent of every individual, made a community', in order to 'secure their comfortable, safe, and peaceable living' under the rule of law, to which 'every single person became subject equally'.[21] Similarly, notwithstanding the

well-known controversies generated by and around the issue, it is evident that Locke, *pace* Tully, is to be taken at face value when he claims that, in the more populous state of nature, men 'by consent, found out and agreed in a way how a man may, rightfully and without injury, possess more than he himself can make use of by receiving gold and silver'.[22] Private property rights contribute to 'transgressions' and the 'uncertain exercise' of individual power to punish them in the state of nature, and men therefore have good reason 'to unite for the mutual preservation of their lives, liberties and estates, which I call by the general name-- property'.[23]

Now, in thus satisfying the two hypothesised liberal premisses (the political liberal's justification of the social world from the individual viewpoint, and, what seems contingent to it, the justification of private property), Locke seems indisputably to proclaim, or at least permit, the claims made by Grant, Rawls and Nozick above. He is concerned to distinguish between property and political power, as Grant claims[24], in two respects, both conforming to liberal principles. First, he undermines Filmer's absolutist monarch by denying that power may be inherited as a title to property might;[25] and, second, arbitrary government of the commonwealth is denied legitimacy. Rather, laws must be applied equitably by disinterested agencies of government,[26] an expression of the principle of state neutrality. Locke's assertion that 'the great and chief end ... of men uniting into commonwealths, and putting themselves under government, is the preservation of their property'[27] seems to express precisely the function of Nozick's 'nightwatchman state', whose single duty resides in the protection of the life and liberty

of each agent to dispose of his/her holdings, these being constitutive of the full extent of rights for him.

Most remarkable, however, is Buckle's (accurate, I think) claim that Locke 'defends private appropriation on approximately "maximin" grounds'.[28] This is most evident in the contrast made by Locke between the material conditions obtaining in the developed world and the undeveloped 'nations of the Americans, ... rich in land and poor in all the comforts of life, ...[where the people] have not one hundredth part of the conveniences we enjoy, and a king of a large and fruitful territory there feeds, lodges, and is clad worse than a day labourer in England'.[29] If this consequence of private property allows of a fundamentally *liberal* defence of the principle, however, we may observe that it may do so on grounds that are merely contingent to liberalism itself, rather in the fashion of Nozick's understanding of the 'social good' that accrues as a consequence of the machinations of the 'hidden hand' in the market (see p.3 above). For Nozick, as for Waldron (insofar as the latter defends private property on the ground, not that we have reason to fear 'social planners', but of the 'efficiency' entailed by it), this social benefit is essentially independent of the individualist rights necessarily presupposing it. Accordingly, that Locke is unequivocal in his defence of private property, and that he thinks that it has as one of its consequences social benefits, does not support an inference that liberal descriptions parasitic upon his defence are, *ipso facto*, demonstrative of the correspondence of Lockean and liberal principle. The presence both of a 'maximin' justification *and* a separate description of how individual right to private appropriation

arises independently of this justification does not determine whether social benefit or prior right is the *principle* being upheld. If Nozick is explicit in subordinating the former to the latter[30], and, in case of conflict between 'civil liberties' and the difference principle, Rawls also privileges the former[31], to read such principled ordering into Locke's prescriptions is to risk imposing a normative force upon them corresponding to a priori premisses in conflict with his own.

What are we to make of this? First, these modern conceptions of liberal justice, to the extent that they conform to Locke's principles, undermine the assumption of the 'political' liberal that private property can be contingent to it, as for Waldron, and thus illustrate the implausibility of Grant's attempt to treat of Locke's theory of property as a context separable from the political. Ironically, the political liberal's scepticism about the social world, particularly as it is manifested in state interference, suggests that it is possible to reconcile the position of Rawls and Nozick here on Lockean terms. Nozick captures this spirit in his claim that 'patterned principles of distributive justice... involve a shift from the classical liberals' notion of self-ownership to a notion of (partial) rights in other people'. [32] For Locke, crucially, self-ownership *is* his conception of civil liberty. Waldron himself makes the point from the other way round against Tully: 'Time and again, [Locke] stresses that man enters political society "to preserve his property" (where "property" includes estate as well as life and liberty)'.[33] Clearly, then, as the world is not in fact a product of Rawls' contractors within the Original Position, he, like Locke and Nozick, must conceive of the right to one's estate as a 'human' right to be preserved as

any other by the liberal state, for it is not otherwise possible for the difference principle, which must presuppose material inequality, to conflict with civil liberties. Indeed, such a position appears close to Locke's own in several locutions of the theme: men, he says, 'in society having property, they have a right to such goods, which by the law of the community are theirs, that nobody hath a right to take them, or any part of them, from them without their own consent; without this they have no property at all'. .[34]

This, it seems, must clinch the case: the social benefits of private property rights, described in contemporary idiom as having the contingently utilitarian virtue of satisfying maximin criteria, placed alongside evidence favouring other modern assumptions of liberalism discussed above, stand as overwhelming evidence for the adducibilty of the *Treatises* to the liberal tradition itself. This may well be the case, but the second point flowing from the relation between political and proprietorial rights might cause us to doubt it, for it calls into question the fundamental *stated* premiss of modern liberalism (Waldron's demand for the justification of the social world, or Rawls' 'self', prior to the ends acclaimed by it), and suggests that the liberal world is by no means the only world entailed by the text; rather, it points in an entirely opposed direction, even if it seems evident that Locke justifies the institution of private property, the (frequently) unstated premiss. Where Grant and Waldron conceive property inhering in a context separate from the political (and, as we have seen, find a rightful warrant for this in Locke's denial of legitimacy to inherited official powers or arbitrary government), Nozick reduces political rights, insofar as they have any substantive governmental duties attached to

them, to the protection of rights inhering in private property. Both of these forms of separation can be read into the *Treatises* themselves at the expense of the historical and normative force attached to Locke's own iterated extended description of 'property' right, whose protection was the chief end of government, this being the rights of all to life, liberty and estate: in short, the right 'to secure their peace and quiet'.[35] If it is possible to speculate that, stripped of its historical and normative aspects, Locke's theory can perhaps lend itself to a separation of these rights, it seems odd that the tripartite slogan of Western liberalism, from the French and American Constitutions to the 1948 UN Declaration of Human Rights should be interpreted as making such an arbitrary division.

b) Historical and normative force in Lockean rights

The most critical issue here, I think, is the status of rights and law. For Locke, an unconditional sphere of what is now termed 'negative liberty' does not and cannot exist[36], as he makes clear in his description of the state of nature in Ch 2. Living under the Law of Nature, men, as 'God's workmanship', are bound to live by the 'rule of reason and common equity which is that measure God has set to the actions of men for their mutual equity'. Here the right to life, liberty and 'possession' (Locke only allows God 'property', in human beings themselves, in this natural, premonetary condition) is reduced to the *duty* of each to 'preserve himself, and... when his own preservation comes not in competition, ought as much as he can to preserve the rest of mankind'.[37] We see

immediately that these two sides of the Law, the preservation of oneself and the rest of mankind, carry with them a positive prescriptive force that is lost in a secular age: we no longer standardly think of our right to life as a duty to preserve it (witness the decriminalisation of suicide) any more than we are likely to think of our right to liberty as a duty not to enslave ourselves. Rather, *qua* 'natural' rights, these liberties have become, in their purely negative colouration, 'absence of restraints'; moreover, to the modern liberal, *qua* liberal, it is the state itself (even in its Lockean incarnation) which is thought to be the perennial violator of them, obstructing the lives of its citizens, restricting their freedoms of speech, and so forth. The only guarantor of such freedoms, insofar as the existence of 'state' is presupposed, becomes the liberal state, which sometimes ascribes to itself the character of (positive) creator of (negative) liberties. Such, indeed, was the imagery of the *pax Britannica* in the nineteenth, and American liberalism in the twentieth, centuries; it is captured in the enabling character of the 'American Dream', in the *active* vigilance represented by (the Statue of) Liberty, and in the liberating function of US armed forces. It is also that positive, activist side that provokes the wrath of modern, particularly American, libertarianism, and marks the point of its departure from that liberalism whose presuppositions it shares.

Now there is a sense in which I think that this positive aspect of liberal politics (as creator of a sphere of individual rights) coheres with Locke's own view of the commonwealth and its rightful government; but there is also a fundamental flaw that negates the coherence. Both aspects feature in the following claim made by Grant: 'For

Locke, liberal government is the solution to the problem of defining legitimate government, because only the liberal state is compatible with the liberal premise.'[38] While this assertion is unambiguously contradicted by Locke's own formulation of legitimate legislative power, this taking any form from 'perfect democracy' to 'hereditary monarchy' where the form and persons of authority are agreed by the original community,[39] what I take to be significant are, first, the divergence, between the *modern* 'liberal' premiss, which Grant ascribes to Locke, and that actually given by Locke; and, second, the divergence thus entailed between Locke's and the liberal's legitimate government. Locke is said by Grant to confront the perpetual problems of all liberal theorists 'because they arise from the starting premise of liberal thought-- natural freedom. If men are naturally free and equal individuals, the formation of political community and political authority requires explanation. And if there is to be legitimate political subjection, it must somehow be compatible with natural individual rights. Liberalism finds that compatibility in equal subjection to reasonable laws.'[40] At first glance, this appears unproblematic. It ceases to be so when it is recalled that, in the state of nature, men are *already* in a condition of 'equal subjection to reasonable laws'-- the preservation of self and (then) others constituting both positive duties as well as rights contained in Grant's description of 'natural freedom'. The importance of this point emerges in her move to political authority, where only 'natural individual rights' remain in her account. What is critical here, representative as it is of an assumption made by all liberals, is the assumption that a 'naturalist' account of (negative) rights can be derived from Locke's account of positive rights *and* duties that are given by men's understanding of natural law. Consequently, Grant, in common with all those who read their own

liberalism into Locke's theory, confuses apparent conformity with normative coherence. Locke, after all, could hardly be more explicit: with political authority, the individual gives up both his natural 'powers' ('to do whatsoever he thinks fit for the preservation of himself and others' and 'to punish the crimes committed against that law') to the community.[41] In the same section, indeed, we find that, 'were it not for the viciousness of degenerate men', all men should be combined within a single community, the law of nature being 'common to them all'. Certainly, distinctively 'liberal' injunctions apply, as we have seen: the individual joins the commonwealth the better to preserve his property; the state must remain neutral between all citizens; its authority derives from the consent of all, etc.. What seems indubitably to differentiate him from the liberal, however, is the normative force of Locke's prescriptions-- and this has profound consequences for the 'rights' to 'life', 'liberty' and 'property', as well as for the nature of the laws that govern them.

> 'Being now in a new state, wherein he is to enjoy many conveniences from the labour, assistance, and society of others in the same community, as well as protection from its whole strength, he is to part also with as much of his natural liberty, in providing for himself, as the good, prosperity, and safety of the society shall require, which is not only necessary but just, since the other members of the society do the like.'[42]

> '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.'[43]

> 'The reason why men enter into society is the preservation of their property; and the end while they choose and authorise a legislative is that there may be laws made, and rules set, as guards and fences to the properties of all the

> society, to limit their power and moderate the dominion of every part and member of the society.'[44]

> 'Law, in its true notion, is not so much the limitation as the direction of a free and intelligent agent to his proper interest, and prescribes no further than is for the general good of those under the law.' [45]

What is evident from all of these remarks is that, within the civil society, the (stated) liberal premiss is deprived of its force, the will of the citizen being sublimated to the will of the whole society, on the sole condition that the law as it applies to himself applies equally to all others. Positive law, then, consisting in those rules promulgated *by* the community, *for* the community, in accordance with the fundamental law of nature, is a *prerequisite* for individual liberty; it is both the 'direction of a free and intelligent agent to his proper interest' and at the same time is directed *only* toward the 'general good'. Of primary significance in the context of liberal rights is that the powers of the individual to preserve life and liberty are passed to the community, in such a fashion as to deny the separate political critiques of the liberal and the libertarian from a Lockean viewpoint. For, to the extent that the liberal state is sometimes conceived as the *enabling* polity, it nonetheless claims to demarcate a sphere of individual *negative* liberty. As Raymond Plant puts the point: 'A negative view of freedom is central to the liberal tradition of political thought and underpins the liberal conception of political and economic freedom as well as their critique of socialist views of liberty. Any attempt to secure positive rights to resources, to income, to work, to welfare are bound to be coercive and to violate my basic negative rights, which include my right not to have my property taken away if I acquired it legally and non-coercively'.[46] But this is unacceptable to Locke, for whom it

is readily apparent in his chapters on the state of war and slavery that these are conditions that obtain in the absence of *positive* rights to life and liberty. By submitting to the community his freedoms to preservation, the individual recognises in the government his positive expression of personal liberty in the promulgation of the public will through laws which liberate *because* they constrain the extent of legitimate private activity.

Locke's conception of the move to civil society, then, is more accurately represented, not by the traditional liberal assumption that he wants to demarcate a sphere of individual rights liberated from encroachment by the social world, but, rather, by conceiving of the subjection of *all* private interests (whether those now thought to inhere in the private realm of civil society, or those inhering in government itself) to the interest of the whole community, expressed by its positive laws; in *this* context, the liberal intention imputed to Locke in his delegitimisation of arbitrary rule misconstrues the actual direction of his critique. For in this, as for the remaining categories with which he engages, Locke's entire text acquires considerable consistency when it is recognised that his objective is to subordinate the private to the public interest, allowing self-interested action only to the extent that it is permitted by the laws of the community, which continue to be constrained by the positive freedoms of natural law, including, in political society, the *positive* right to life (including the provision of sustenance, conceived as those provisions of nature necessarily 'engrossed' by men to secure their survival) and liberty (the protection of citizens against enslavement). (The powers alienated to the commonwealth, it should be recognised, are the *executive* powers of preservation and punishment; insofar as the law is

applicable to citizens without discrimination, the preservation of each and all is more likely. Moreover, the citizen himself is ruled by the law of nature to the extent that the exercise of his free will consists in his reasoned recognition of the limits of his freedom 'within the permission of that law', on the occasion of his majority).[47] Thus, *contra* Dunn, it is sensible to think of Locke's rejection of arbitrary rule as the expulsion of (arbitrary) private interest from the sphere of positive law: 'political authority' and 'arbitrary encroachment' are contradictory notions for Locke, the latter, insofar it subverts the former, being always the wrongful assertion of *private* over *public* interest by tyrant, despot or usurper. The subordination of individual right in civil society is apparent in the contrast between the natural law powers of the presocial individual, who preserves others only 'when his own preservation comes not into competition',[48] and the rights of citizens: in alienating their natural powers to the legislative, they, like it, are now governed by 'the first and fundamental natural law itself is the preservation of the society and (*as far as will consist with the public good*) of every person in it.'[49] Freedom for the individual here consists in rational, consensual membership of the indissoluble commonwealth. Isolation from the community governed according to its generalised interest is simply irrational: it would be to subject oneself to the mean equality of the Americas, or to the instability inherent to a world whose laws are encroached by the arbitrary interests of their individual executors, and whose people therefore is vulnerable *in extremis* to death or enslavement, evils most manifest in the subversion of a whole people to the will of one man. Even the meanest of citizens is liberated in the power of community against such invasions of his self. In this context, the Humean critique of Locke's right to emigration loses its force since, for Locke, the legitimate polity affords no ground for rejection from

the rational perspective, whose reason *consists in* recognising the rightfulness of social constraints against private license and in the realisation of freedoms through them. Since the polity is legitimate to the extent that it exercises the will of the entire community, the rational individual, by definition conscious of his social obligations and the personal benefits accruing from them, can have no ground for dissent... provided only that the commonwealth, *qua* legitimate polity, continues to observe the communal, without regard to private, interest, except insofar as a sphere of non-arbitrary private right is *determined by* the interest of the community.

(c) Liberalism and Lockean rights: theoretical implications

If, then, liberalism conceives of political freedoms as 'natural' rights to life and liberty, the adjectival ascription acquiring in its modern form a secular character that disguises its positive, God-given force for Locke, what are we to make of private property rights? Here I want to address the significance for the respective theories of the liberal and Lockean treatment of this principle, which, it is suggested, accounts for considerable confusion in modern readings of Locke and, I intend to show, points to a problem at the heart of liberal theoretical assumptions. There seems no reason to treat of private property right according to principles other than those that conceive of freedom as residing in the society to which men have given 'up the equality, liberty, and executive

power they had in the state of Nature'.[50] For, if consistency ought not artificially to be imposed upon the text, neither should its appearance be ignored arbitrarily; and Locke is meticulous in his construction of the preconditions of civil society. Here, it is crucial to recognise the normative assumptions attaching to his historical ordering of the developmental process: Locke does not include unequal ownership rights in his description of primitive society, beyond a right to that essential (*literally* natural *because* God-willed) to the fulfilment of the preserving duties of self and (then) others prescribed by natural law[51]; such right extends no further than the acquisition in labour of what is useful without prejudice to another. Consensual arrangements, seemingly 'tacit' by dint of their piecemeal, *ad hoc* acceptance according to empirical evidence of their individual and mutual utility, establish, with money, the principle of unequal possession and, as a result,

> enlarged with the need of them; but yet it was commonly without any fixed 'as families increased and industry enlarged their stocks, their possessions property in the ground they made use of till they incorporated, settled themselves together, and built cities, and then, by consent, they came in time to set out the bounds of their distinct territories and agree on the limits between them and their neighbours, and by laws within themselves settled the properties of those of the same society.' [52]

In submitting his natural freedoms to the will of the majority, the putative citizen,

> 'by his uniting himself thereunto, annexes also, and submits to the community those possessions which he has, or shall acquire, that do not already belong to another government. For it would be a direct contradiction for any one to enter 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 the society [which are 'directed to no other end but the peace, safety and public good of the people'], should be exempt from.. [its] jurisdiction... [W]hereby 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.'[53]

Locke's historical account positions the right to private property relative to the rights to life and liberty in three key respects: firstly, private property (unlike rights to life and liberty) is shown not to be a universal positive prescription of natural law; second, consent arising from mutual utility nonetheless makes unequal *possession* legitimate, money being functional for the *fundamental* law of nature in its encouragement of productive, life-preserving labour; third, it is only *subsequent* to the establishment of unequal possession that property acquires the positive legal force that allows it, along with the inalienable rights and duties, to be subsumed under the 'general name--property',[54] and settled by the will of the whole community. Various failures to appreciate the historical conditions under which, for Locke, conventional rights come into being, as increasing population and production draw the 'obligations of the law of nature' closer together[55] in an increasingly isomorphic relationship between particular and general interest, have contributed to characteristic misinterpretations of the text. Thus, we have seen [n 22 above] that Tully is correct to the extent that the most primitive state of nature conforms to the fundamental Laws of Nature, but he assumes that this state *alone* satisfies them, and thus ignores the possessive rights legitimately brought to the commonwealth by the individual from the state of nature. More characteristically liberal interpretations are equally selective, also bringing presuppositions to the text that tacitly undermine Locke's own principles, yet to radically different effect. Waldron, for example, in refuting Tully, merely commits a corresponding error from another direction -- and thereby illuminates the several normative departures from Locke characteristic of

the liberal *genre* in general. Tully's claim to the effect that, on entering society, the Lockean individual surrenders his property to the legislature for permanent redistribution is 'a nonsense' according to Waldron, who denies that such legislative 'confiscation' can ever be legitimate in Locke's eyes.[56] More explicitly still, Locke is said by Waldron to articulate the 'correct interpretation' in the passage cited above [at the end of the previous paragraph]: 'Unless Tully wants to suggest that the citizen's own *person* also becomes "the possession of the community", his interpretation is hopeless, since... person and property are subject to the community only to the same extent.' This is defined, as Waldron says, by their subjection to legitimate laws, a condition of which 'is that the legislature "cannot take from any Man any part of his property without his own consent".[57]

Presuppositions abound here; but most revealing is Tully's alleged dependence upon the rhetorical 'contrivance' that Waldron seems to think self-evident in his cursorily dismissive disposal of it: 'Natural entitlements, according to Tully, may be redistributed as the legislature thinks fit; whereas conventional entitlements acquire all the protection of natural law'.[58] It is interesting here that Waldron, by implication, treats of prepolitical property right as any other (natural) right brought from the state of nature, a treatment that finds warrant in the expansive property Locke ascribes to the individual; he also thereby (tacitly) reconnects the liberal premisses that we have seen are separated by Grant and, in another voice, by Waldron himself. Yet the text permits, demands even, the analytic reseparation of these rights in order to point up the contradictory normative orientations

of either liberal treatment when compared to the Lockean exposition of rights. For Locke, possessive rights are not 'natural entitlements' in the unconditional and negative sense that Waldron ascribes to them: the only unconditional rights for Locke are the two preserving duties entailed by natural law. And *these* account for the simple, (literally) 'natural' rights to the fruits of the common and to the non-prejudicial use of such land as could usefully be worked in the early state of nature. But only *consent* establishes the principle of unequal possession, and does so precisely to the extent that it is justifiable in terms of a creative and expansive conception of the fundamental duty to preserve mankind; and only positive human laws, fixed by the majority of its representatives in civil society, settle the limits of rightful individual holdings. It is simply not the case that the possessions brought to the commonwealth are 'natural' entitlements for Locke, beyond their existence as merely *ad hoc local* agreements in the state of nature. Thus, insofar as it is correct in a secular context to separate the liberal premisses into political rights in life and liberty and analytically distinct property right, an approximation to a Lockean position might permit the description of *political* rights in purely negative, naturalistic terms, although I think that even this is denied by the positive powers ascribed to the communal will, 'for the essence and union of the society consisting in having one will, the legislative, when once established by the majority, has the declaring and, as it were, keeping of that will'.[59] But if it is evident that all right is for Locke an expression of positive law correlating it with duty, what is critical for liberalism itself beyond mere misinterpretation is that *property* right is not only a product of positive law for Locke, but of *human* law, and is expressive of the will of the *community* at that.

Only in this broad historical and normative context do the full implications of Locke's theory of civil society emerge, containing within them a critique of its pseudo-progeny that transcends the centuries. That even the fundamental executive rights inhering in the individual are given up to the community, which acquires the power to direct each citizen in the activity of self and communal preservation *provided only that the interest of the whole is expressed, and duties distributed disinterestedly*, suggests the extent to which Locke is concerned to constrain that which liberalism wants maximally to extend as its *raison d'être*, the sphere of negative individual liberty. In Locke's civil society, it is the community itself that possesses an immutable duty to preserve all its members so far as this meets the needs of the whole. This being so, Waldron's assertion that the 'submission' and 'settlement' of property is no more than the assertion of national territorial jurisdiction and the fixing of existing holdings appears arbitrarily to deny an aspect of Locke's meaning that in fact constitutes his primary context. Waldron simply ignores Locke where he distinguishes between holdings in the state of nature and those under positive human laws: 'it is plain that the consent of men have agreed to a disproportionate and unequal possession of the earth - I mean out of the bounds of society and compact; for in governments the laws regulate it'.[60] The putative clinching argument against Tully's reading of Lockean property, however, consists in Waldron's *assumption* that Locke simply could not intend that the 'citizen's own person also "becomes the possession of the community" '; it is claimed here that this is indeed Locke's intention to the extent that only in civil society does the individual securely attain the *positive*

freedoms of self-realisation - the right to subsistence, prevention of slavery and legal defence of private possessions, *so far as the legislature permits.* This is not to deny that Locke is evidently convinced of the social utility accruing from private property; it is its central importance, deriving from its capacity to benefit mankind in general and hence serve the fundamental law of God, that merits the inclusion of money and unequal possession in the state of nature. Neither do I seek to deny that liberals who do conceive of private property as a bulwark against external encroachment capture something of Locke's intention; yet in this limited articulation no more than an illusory representation of his text is generated. Civil society *qua* legitimate, non-arbitrary authority, can never encroach on private right, because for Locke such right is defined by the positive legal expression of the will of the whole, and is only violated in the assertion of private might against the social body. Indeed, where the public authority exercises its legitimate right against private interests, including the 'fencing' of property, the citizen can have no complaint against it; only where private property rights are infringed by an authority itself usurped by private interest are its actions deemed to be illegitimate.

Conclusion

The failure to conceive of possessive right as it accords with (in its positive character and, *qua* property, in its qualitative relation to) rights to life and liberty and where it diverges from them (in its historically-mediated social utility and non-natural origin) in the historical construction of Locke's normative map produces a reading of it that celebrates shared landmarks, making them selectively visible, and draws a veil over contiguous topographical features that protest against the liberal interpretative matrix imposed upon the text. It is in these misascriptions that the text is deprived of coherence, yet here also that the soft underbelly of modern liberalism is exposed. It is implicit in Grady's argument against Laslett that Locke presupposes essentially 'self-regarding' men as a prerequisite for his justification of 'unlimited accumulation';[61] and it is present also in Waldron's exegetical blindspot, which leaves him no option but to treat Locke's explicit articulation of the limitations to natural rights to property as if they are no more than optional extras, essentially independent of the main body of the theory itself. They are 'by now well known' requirements of 'charity and the demands of abject need,[62] says Waldron. Yet these requirements of Locke's gain their force as they are placed alongside the other restrictions of possessive right, unmentioned by Waldron, and the whole set understood in the context of positive rights and duties delineated by the community. It has been noted that Locke makes individual freedom contingent upon the reasoned recognition of the limits of personal will within the confines of the law itself, and this condition of rightful property ownership demands that the fundamental laws of nature be

kept in view-- reason is the fundamental internal constraint of negative liberty, where the community itself is fundamental, the 'supreme' external constraint. As positive community, the duties of charity and taxation are entailed by the duty of the community to preserve each member (so far as possible) and society itself (as an absolute imperative). The extent of the powers inhering in the community itself completely eludes Waldron, so that he indulges in precisely that (unconscious) selective reading attributed to Tully. Thus, Waldron first assumes that Locke cannot mean that the community in any sense 'takes possession' of the person; as a result, he is next able to deny that property can be so possessed; and he then assumes, in neglecting the historicised quality with which Locke conditions his concepts, that the ongoing power of the atomic individual to decide how far s/he will contribute resources to the state (' "with his own consent" ') fully determines the limits of state control of property. But for Locke, in giving up my freedoms to preserve self and other, and the terms and conditions upon which I hold my possessions, I express the historically advanced freedom, the improved quality and quantity of human life, inhering in the pooled will of the community-- and, although Waldron perceives nothing of this, the same is true for 'my consent' also, at least so far as positive law requires. Hence, the legislature determines the rules of possession, and, subsequently, what is held is subject to non-arbitrary requisition where the majority agree that the public interest requires it. *Outside* civil society, 'his own consent' is exclusive to him; *inside* it, as Locke makes abundantly clear within the sections cited by Waldron himself, it is not: 'it must be [given] with his own consent, i.e. the consent of the majority, giving it either by themselves or their representatives chosen by them'.[63] No doubt Locke does favour inequalities of wealth (although they are justified in utilitarian

terms), but he, as a rational citizen, gives up to the community of rational citizens the right to settle the issue, for, where there is civil society, the individual has no prior rights in property before the society determines what they are.

To the extent that liberalism celebrates its privileging of the individual, it finds textual support in the *Treatises*, yet obscures Locke's purpose by obscuring appropriate *textual* contexts. Where this celebration is connected with a supposition that liberalism maximises freedom in the removal of social obstacles to the individual, its adherents assert a negative liberty that is a contemptible state of license for Locke, far removed from his positive liberties. Even where this seems to be obvious in Locke's text (and indeed in modern liberalism itself), the liberal blind spot intervenes. Thus, since liberalism takes it for granted that its 'political' rights to life and liberty are the negative freedoms proscribing interference (hence, for Waldron, that prior right not community law settles Lockean property is demonstrated simply by asking, rhetorically, whether the 'person also becomes the possession of the community'), no inferences are drawn from contrary evidence. Grant, for example, justifies the power given the community by Locke to command a soldier even 'where he is almost sure to perish' on the ground that the individual's consent is a 'calculated risk': having calculated that his preservation is better secured within than without society, his consent nonetheless then requires him to fight when justly commanded.[64] That this is an explanation entirely consistent with Locke's own merely denies the negativity of the political right to life, and asserts *contra* Rawls (in this instance at least) the overriding power of the society, through positive law, to will the

'ends' asserted by the 'self' - the 'end' here amounting to the preservation of the society. If *liberals* must treat this as a special case for Locke and liberalism, as an exceptional encroachment by political authority upon negative individual rights and justifiable because instrumental to their preservation, it is not exceptional for *Locke*. It accords with the logic of the duties to preserve society (in proportional taxation) and its members (in charity); it accords also with the powers of the majority to determine the laws of property ownership on utilitarian grounds. For the right to preserve 'property' in lives, liberties and estates resides as positive right *and* duty in the community *for* the community, and the reassertion of individual executive powers in the assertion of ends or means, by ruler or citizen, is disallowed by Locke, except where the law permits. The positive laws of political society generate *liberty* from slavery by 'fencing' private dominion over men themselves; they preserve the *lives* of community and people in assuming the power to conduct the activities of citizens, or their duties, to this end; and its laws which constrain *property* holdings assert and guarantee the prior right of existence of the society and all citizens over the right to possessions surplus to individual need.

That private ownership is itself a 'fence' against arbitrary power and also socially productive for Locke can only be seen in the context I have described. As protection against arbitrary power, private property is at the disposal of the community in order to subordinate the powers at the disposal of private interests to the limits only of the public interest; as socially productive, private property is *rightful* according to the 'fundamental' law of nature and it is a right only to the extent that the public determines the precise

means by which property arrangements conform to the fundamental law. If, then, Locke is to be seen, in the light of all that has been claimed on behalf of his text, as the 'progenitor' of modern liberalism, clear sightedness and myopia must be judiciously employed in reading his words, for it is clear that Locke is an apologist for practices that have become synonymous with liberalism, but the contingency of the apparent relationship as it emerges in the text itself reveals that what Locke is seeking to justify in these practices is not what liberalism seeks to justify. If placing these practices, and those more problematic for liberalism, in the context of the historical and normative framework Locke himself describes, however, deprives him of his liberalism, then the force of the judgement should not be directed against Locke: he makes no claim to ancestry; it is claimed *of* him. But the very consistency of his theory of politics and property, of law and rights, demands of liberalism solutions to problems that remain submerged in its claims to a Lockean ancestry. The demands multiply as Locke's principles are distorted: without God, 'natural' rights seem to be negative rights, and the possessor of them has no right against anyone else beyond the right not to be interfered with. This being so, the 'political' rights of modern liberalism are almost deprived of content (where the content remains, as in the active protection of life and liberty by army and police, it must do so at the expense of the negative freedom of individuals deprived of their lives and liberties), such that what remains are commitments by the state *not* to do things, its inactions disguised as 'freedoms' of speech, etc.. But if these seem intuitively more accurately to describe 'natural' rights than Locke's positive law descriptions of them, the same cannot be said for rights to private property, which are, for Locke, rights inhering in the individual subsequent to, and instrumental for, the rights of the community. And here,

certainly, Locke's unequivocal articulation of the positive law origin of private ownership is consistent with the history that is denied by the broad thrust of liberal thought. In asserting the supremacy of negative freedom, the contemporary liberal state is vulnerable to the libertarian critique; but both liberal and libertarian critic are vulnerable to their mutual assumption that private property is indeed such a liberty, a conception (explicitly shared, as we have seen, by Waldron) that regards one's possessions as a natural attribute of the individual, essential to one's self-description. When the implications of Locke's theory of rights are understood, the non-natural conditions of private ownership are seen to grate against the description of them across the entire range of liberal theory. Why, otherwise, when all pretences to any functional role in preserving 'political' liberties are removed in the final logical move in this direction, taken by Nozick, does the fully-formed world of negative liberty assign but one function to public authority, i.e. the protection of private holdings? If the natural freedom of the individual is preserved precisely to the extent that the state is denied competence in directing the activities of citizens, it must be a unique negative liberty that requires a nightwatchman to care for it. That such a world is not one envisaged by Locke is, I think, evident, despite (some) appearances to the contrary; it is vulnerable to the enslaving tendencies of self-interest. If other liberalisms are less vulnerable, this is so only in degree, for their premisses are shared-- and, whatever verdict the age passes upon Locke, its justice depends upon an objectivity that, in its interpretation of Locke, extends to *him* a right of judgement in *it*; but, were liberals to agree that the premisses they share are built upon a commitment to *positive* liberty, they might look again for their philosophical connections to Locke... or to any other theorist of positive liberty hitherto denied membership of the liberal tradition on

the grounds of spurious assumption. For to undermine Plant's liberal critique of socialism is to beg the question of just what it is that differentiates liberalism from the positive freedoms advocated by Marxism, or by any other positive doctrine often pejoratively dismissed as 'totalitarian' by the twentieth century liberal.

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[1] Grady, p 102. The article attempts to refute, by reference to Locke's theory of property, Laslett's view that Locke believes men to be possessed of `natural political virtue'.

[2] Dunn, p 222.

[3] Grant, p 10/11.

[4] See Wood, p 113: For eighteenth century jurists Locke was the `classic theorist of landed society and the landowners'; and Tully, p. x: `Early nineteenth century English and French socialists took it as the major philosophical function of modern socialism: the workers' right to the product of their labour and possession regulated by need. In the twentieth century the tables were turned; Locke became the spokesman for limited private property, and more recently, for unlimited private property'.

[5] See eg, Wood, pp 96-101.

[6] Tully, pp 122f.

[7] Dunn, pp 215f.

[8] See, eg Locke, *Two Treatises*, ii, #6, #137, #222.

[9] For a clear exposition of both of these concepts in Locke's thought, see Buckle, Ch. 3, which clarifies the distinctions between Divine Law incorporating Natural Law and Revelation, Civil Law and the Law of Opinion and Reputation (pp 126f). Buckle also usefully sets out the key shifts in the natural law justifications for property ownership in Locke's thought, and the historical dimensions Locke affords to natural law and forms of ownership (pp 149ff).

[10] Skinner, p 248.

[11] Locke, ii, #4.

[12] ibid., ii, #87.

[13] Waldron 1987), p 135.

[14] Grant, p 8.

[15] ibid., pp 61-4.

[16] Waldron (1987), pp 148f.

[17] Nozick, p 162.

[18] ibid., p 168.

[19] See Kymlicka, pp 75-89, 199-221.

[20] Putting aside the functions of the state, this is a necessary and sufficient condition for Nozick, but only necessary for most liberals, such as Rawls, for whom sufficiency requires that *all* citizens should have positive title to property.

[21] Locke, # 94-6.

[22] ibid., # 50; cf Tylly pp 152-3. Tully's interpretation of this and other passages relating to private property right seems wholly misconceived here. He says (p 152) that with the presence of money, men `claim to be entitled to larger possessions` and that Locke is seeking to undermine the legitimacy of the claim in civil society. But, as Tully himself says of Macpherson's reading of this passage, `this contradicts what Locke says'. In fact, Locke does not say that men `claim to be entitled' to larger and unequal possessions but that they may do so `rightfully and without injury' by right of having *consented* to money. The textual evidence he gives in support of Locke's conception of property right (pp 151-4) is drawn exclusively from the description of a pre-monetary state of nature. Tully then ascribes to Locke the view that the `Compact and Agreement' established in the polity returns the land to its original state. `Perhaps the most important point' of Ch 5, he claims (p 153), is `explicitly to legitimise the rights of the commoners against the enclosing landlords'

Wood (p 33), however, quotes from an economic treatise written by Locke in 1692: `The landholder, who is the person, that bearing the gratest burthens of the Kingdom, ought, I think, to have the ratest care taken of him, and enjoy as many privileges, and as much wealth, as the favour of the law can (with regard to the commonweal) confer upon him`. Moreover, as men are explicitly state (ii, #50) to have *consented* to money, and therefore to unequal possession, Locke, if he is to be interpreted in accordance with Tully, is undermining unnecessarily the consensual foundations of the community itself, for here the consent of men must necessarily be rescinded with the abolition of money in the creation of civil society. In short, I can find no ground for Tully's claim that Locke is undermining rights to unequal private property holdings; whether there folwos from this a justification for capitalism is not dealt with here, although the subject seems to lend itself to the type of treatment afforded to Lockean `liberalism' here. What is significant for this discussion is the recognition of the *historical* dimension to Locke's theory, made explicit in the sections describing the moves from state of nature to commonwealth. Tully is a modern example of a theorist who fails correctly to perceive this, converting `a historical into a conceptual point' here, as Buckle puts it (p 187). TO the extent that the ideological prism brought to the text multiplies possible interpretations, Locke's historical description of rights, if unrecognised *qua* historical, presents still greater opportunity for misinterpretation.

[23] Locke, ii, #123-7.

[24] Grant, pp 58-61.

[25] Locke, i, #87-93.

[26] ibid., ii, #137-9.

[27] ibid., ii, 124.

[28] Buckle, p 155, n.

[29] Locke, ii, #41.

[30] Nozick, p 172: 'Patterned principles of distributive justice involve appropriating the actions of other persons...These principles involve a shift from the classical liberals' notion of self-ownership to a notion of (partial) property rights in other people'. cf p 177: The social benefits accruing from the `Hidden Hand' afford merely contingent `familiar social considerations favouring private property'.

[31] See Kymlicka, p 194, n 1.

[32] Nozick, p. 172.

[33] Waldron (1984), p. 98.

[34] Locke, ii, #142.

[35] ibid., ii, #137

[36] See Buckle, pp 170 ff

[37] Locke, ii, #6-7.

[38] Grant, p 6.

[39] Locke, ii, #132.

[40] Grant, p 5.

[41] Locke, ii, #128; cf Tully, p 158.

[42] Locke, ii, #130.

[43] ibid., ii, #120.

[44] ibid., ii, #122.

[45] ibid., ii, #57.

[46] Cited in Reeve, p 106.

[47] Locke, ii, #59.

[48] ibid., ii, #6.

[49] ibid., ii, #134.

[50] ibid., ii, #131.

[51] ibid., ii #24-29: Locke denies that Adam is given `private dominion' over the world; he repeatedly states that it is `given to mankind in common', implying *no* private dominion, nor posititve right beyond that which has utility for his, or others' self-preservation. See also Buckle./

[52] Locke, ii, #38.

[53] ibid., ii, #120 & 131.

[54] ibid., #123.

[55] ibid., ii, #135.

[56] Waldron (1984), p. 104.

[57] ibid., pp. 104f.

[58] ibiid., p. 104.

[59] Locke, ii, #212.

[60] ibid., ii, #50.

[61] Grady, pp. 97-101.

[62] Waldron, (1984), p. 105

[63] Locke, ii, #138-140.

[64] Grant, pp. 132-4’ cf Locke, ii, #139.