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as a Theory of Just Settlement**

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# **Man the Maker *versus* Man the Taker: Locke's Theory of Property as a Theory of Just Settlement**

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## **Abstract**

Locke rejected Spanish justifications of colonization based on a right of conquest and tried to show how English settlement could be both just and orderly. His theory of property in the *Second Treatise*, though it aimed at defending property at home against confiscation from above or below, was also geared toward English colonization. Though Locke's argument began by justifying the natural right to property of indigenous peoples, it was extensively employed to rationalize indigenous dispossession in North America and Australia. This paper explains how Locke accomplished this through a rhetorical tour de force that skillfully elided two distinct but seldom distinguished theories: one of simple appropriation—a theory of Man the Taker; and the other of value—a theory of Man the Maker. These are conceptually connected by their common element, the efficacy of labor in rights creation. In the state of nature an individual's use of labor to appropriate part of nature's bounty defined the simple rights of Man the Taker. But labor can also add value (utility) to natural materials that in-themselves are of little value, simultaneously creating property rights in the improved material. In the case of land, industrious labor adds value by 'improving' productivity and creating the superior title of Man the Maker, trumping the simple occupation and use of unimproved commons. This was the basis of a theory of complex commercial civilization that, applied in the colonial context where occupied lands were regarded as 'waste,' allowed the just displacement of indigenous peoples.

## **I. Introduction**

John Locke's *Two Treatises on Civil Government* first appeared in 1690, but the exact time of its writing has long been a matter of scholarly debate. Ever since Maurice Cranston's biography revealed the depth of the philosopher's involvement in the politics of his day, it has seemed of some importance to situate his thought precisely in order to determine its real purposes.<sup>1</sup> The traditional date of around 1690, which made the *Treatises* seem a justification for the Glorious Revolution of 1688, was pushed back a decade earlier by Peter Laslett who argued that it was written as the political manifesto of the 'exclusionist' Whig movement inaugurated in 1679 by Locke's patron, friend and confidant, the Earl of Shaftesbury.<sup>2</sup> Shaftesbury's aim was to exclude the Catholic James, Duke of York, from succeeding his brother, Charles II, to the throne of England, possibly to impose a French-style absolutist monarchy. Richard Ashcraft, however, argued that the *Treatises* were written somewhat later to justify a much

<sup>1</sup> Maurice Cranston, *John Locke: A Biography* (London: Longmans, 1957).

<sup>2</sup> Anthony Ashley Cooper, first Baron Ashley, then Lord Ashley, and later the Earl of Shaftesbury and Lord High Chancellor of England. See Laslett's analysis in John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1960).

more radical revolutionary Whig conspiracy of 1683. The so-called Rye House plot of 1683 sought to end the succession crisis by either kidnapping or killing Charles II, and several Whig notables were arrested and some beheaded for their alleged part in it.<sup>3</sup> Ashcraft traced Locke's activities as friend and adviser to Shaftesbury (whom Locke followed into exile in Holland in 1683) to show that the philosopher was a true radical revolutionary up until the Glorious Revolution.<sup>4</sup> David Wootton, however, challenged Ashcraft's view of a revolutionist Locke by arguing that he was a social conservative, a fact that was especially brought out by Locke's colonial interests and involvement in Carolina.<sup>5</sup>

Others also began to look at the neglected colonial dimension to reconsider the meaning and origins of Locke's theory of property, expounded in the famous Chapter V of the *Second Treatise*, which had hitherto been interpreted almost exclusively within the English context.<sup>6</sup> Locke's library of travel books, his frequent use of the example of America as a 'state of nature' in the *Second Treatise*, his work in drawing up the *Fundamental Constitutions for the Government of Carolina*, and his concerns as secretary of the Council for Trade and the Plantations from 1673-75,<sup>7</sup> now all became relevant to a proper understanding of his work. James Tully argued that Locke had opposed official British views that aboriginal peoples constituted independent, self-governing nations and were to be treated as individuals in a state of nature rather than as sovereign entities. If this were so, then their transgressions of natural law would justify the colonists in punishing them by violently expropriating their lands. John Pocock concurred in this view and argued that Locke implicitly supported wars of conquest that became 'ethnocidal or genocidal' because they were fought outside of the rules of international law.<sup>8</sup>

Barbara Arneil disagreed. She argued that, while Locke had indeed willfully misconstrued the political condition of 'Amerindians,' his purpose

<sup>3</sup> The Earl of Essex was arrested and committed suicide in the Tower of London; Lord William Russell, Algernon Sidney, and Sir Thomas Armstrong were tried, found guilty of treason, and beheaded.

<sup>4</sup> Richard Ashcraft, *Revolutionary Politics and Locke's 'Two Treatises of Government'* (Princeton: Princeton University Press, 1986), 202-203. Ashcraft situates Locke's *Two Treatises* in a long line of exclusionist Whig tracts.

<sup>5</sup> David Wootton, "John Locke and Richard Ashcraft's *Revolutionary Politics*," *Political Studies* 40 (1992): 79-98.

<sup>6</sup> As Laslett did, for example, and James Tully, *A Discourse on Property: John Locke and his Adversaries* (Cambridge: Cambridge University Press, 1980). Tully, however, was one of the first to call attention to the colonial context; see his "Placing the *Two Treatises*," in *Political Discourse in Early Modern Britain*, ed. Nicholas Phillipson and Quentin Skinner (Cambridge: Cambridge University Press, 1993), 253-80.

<sup>7</sup> Both these functions were obtained through the offices of Shaftesbury who, as Lord Ashley was 'Lord Protector' of the Carolina colonies, and who later, as Lord Chancellor, established the Council.

<sup>8</sup> Tully, "Placing the *Two Treatises*;" and J. G. A. Pocock, "A Discourse of Sovereignty: Observations on the Work in Progress," in *Political Discourse in Early Modern Britain*, 419-20.

was not to justify conquest—which on his theory did not give title to land—but to explain how colonial agricultural settlement could be just, orderly and peaceful. Locke had argued (in refutation of Spanish justifications of their occupation of South America) that conquest did not provide a legitimate title to land—only industrious labor that turned land to agriculture could do that.<sup>9</sup> Locke (in his task of writing a constitution for the Carolinas) claimed that, since the Indians occupied more land than they could properly make productive use of, the colonists had a right, without doing injustice to the Indians, to claim some for agricultural purposes—but only as much as they could properly till and defend given their numbers. The basis of English colonialism would therefore, according to Locke, be peaceful agrarian settlement, not war. These arguments were enthusiastically adopted by European writers like William Blackstone, Emeric de Vattel and William Paley. Vattel in particular pushed the superior rights given to the ‘honest labour of cultivators’ to the mere usage rights of ‘idle’ occupiers. The cultivation of the soil was, for him, and obligation imposed by nature and every nation was bound by natural law to cultivate.

It is asked whether a nation may lawfully occupy any part of a vast territory in which are to be found only wandering tribes.... We have already pointed out, in speaking of the obligation to cultivate the earth, that these tribes can not take to themselves more land than they have need of or can inhabit and cultivate. Their uncertain occupancy of these vast regions cannot be held as a real ... possession; and when the nations of Europe ... come upon land which the savages have no special need of and are making no present and continuing use of, they may lawfully take possession of them.<sup>10</sup>

On Arneil’s account, America was not only central to the shape of Locke’s theory, but Locke’s theory—transmitted *via* the work of Blackstone, Vattel and Paley to prominent Americans like Thomas Jefferson<sup>11</sup>—was in turn of seminal importance to America.

<sup>9</sup> Locke’s “strange Doctrine” is that conquest gives the conqueror power over the lives of the conquered but no title over their possessions: *Second Treatise on Civil Government*, para. 180.

<sup>10</sup> Emeric de Vattel, *Le droit des gens: ou, principes de la loi naturelle: appliqués à la conduite et aux affaires des nations et des souverains* (1758), cited in Barbara Arneil, *John Locke and America: The Defence of English Colonialism* (Oxford: Clarendon Press, 1996), 182-83.

<sup>11</sup> Arneil’s book was part of a swing back to a positive assessment of Locke’s significance in the American founding that had been orthodoxy since Carl Becker’s *The Declaration of Independence: A Study in the History of Political Ideas* (New York: Harcourt Brace, 1922), but had been questioned by such works as Caroline Robbins, *The Eighteenth-Century Commonwealthman* (Cambridge, MA: Harvard University Press, 1959); Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: Harvard University Press 1967): 86-92; Gordon Wood, *The Creation of the American Republic* (Chapel Hill, NC:

It is not my intention here to engage these various historical controversies, though I believe it is a mistake to separate Locke the exclusionist from Locke the revolutionary, or Locke the radical from Locke the social conservative, or the English Locke from the American. Whatever inconsistencies there may have been within his thought, Locke seems politically all of a piece. He shared the clear and constant principles of his friend and patron Shaftesbury—a safely constitutional monarchy, a Protestant succession, the rule of Parliament, civil liberty, religious toleration, and the economic expansion of Britain. The defense of property at home was linked to the successful defense of the plantations by virtue of the fact that, underlying both, was a progressive vision of the great scientific-commercial civilization that liberal Britain represented. Locke's new theory of property therefore needed to accommodate several goals at once, and this it ingeniously did.

My purpose here is to revisit the argument on property in Locke's *Second Treatise, An Essay concerning the True Original, Extent, and End of Civil Government*, to show how he managed rhetorically to accomplish three aims: 1) the defense of property against confiscation from above; 2) the defense of property from disappropriation from below; and 3) the justification of orderly agricultural settlement in the colonies. In particular I want to emphasize Locke's rhetorical but seldom noticed elision of a theory of appropriation in nature that outlined the rights of Man the Taker, and a theory of value that emphasized the superior rights of Man the Maker. The fact that human labor founded both these rights allowed Locke to accomplish an almost imperceptible move from just equality at subsistence level to the just inequality of an expanding commercial civilization, providing a theory of property right that was extremely influential in the colonial setting.

## **II. Defending property from above and below**

The possibility of a Catholic succession made the great English issue of the day property and how it might be justly defended. The exclusionist Whigs feared that a Catholic monarch, equipped with a standing army and allied to a clergy that upheld the divine right of kings, would persecute dissenters and dispossess them of their lands in order to people them with monks and friars. Popery implied slavery in the form of the loss of property rights. The exclusionists therefore made appeal to anyone who had

University of North Carolina Press, 1969); J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975); Gary Wills, *Inventing America: Jefferson's Declaration of Independence* (Garden City, NJ: Doubleday, 1978); J. G. A. Pocock, "Between Gog and Magog: The Republican Thesis and the *Ideologia Americana*," *Journal of the History of Ideas* 48 (1987): 325-46; Lance Banning, "The Republican Interpretation: Retrospect and Prospect," in *The Republican Synthesis Revisited: Essays in Honor of George Athan Billias*, ed. Milton M. Klein, Richard D. Brown and John B. Hench (Worcester, MA: American Antiquarian Society, 1992), 91-118.

something to lose by such threatened dispossession, creating a broad constituency that included great landowners, small gentry, industrious tradesmen, yeoman farmers, merchants and tradesmen.<sup>12</sup>

One of Locke's aims was to attack the assumption that a king could lawfully deprive his subjects of their possessions. He therefore set out in the *First Treatise* to destroy Sir Robert Filmer's famous patriarchal theory of the divine right of kings.<sup>13</sup> His more constructive task, however, was to show how the right to property could be convincingly founded in an ancient natural law tradition rather than in the God-given authority of monarchs. In the seventeenth century, as European powers competed for colonial possessions, this tradition had been transformed by people like Hugo Grotius and Samuel Pufendorf into a 'law of nations' that addressed the origins of private property. Pufendorf's view that property was occupation sanctioned by state authority was of no use to Locke, for a number of reasons.<sup>14</sup> Grotius had more promisingly founded both property and sovereign authority in historical contracts concluded among originally naturally free and equal people with a right to the whole world in common. Grotius had also speculated that the terms of this contract *may* have, under extreme conditions, sanctioned civil resistance to authority and the redistribution of property. But Filmer had very effectively ridiculed this idea by asking how anyone could possibly know when or if such a contract had ever been concluded, or what its terms might have been if it had.<sup>15</sup>

<sup>12</sup> An extended argument has been conducted over Locke's true ideological intent and real class sympathies ever since C. B. McPherson labeled him a 'possessive individualist' who condoned unlimited capitalistic accumulation in *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Oxford University Press, 1962). This need not detain us here, but see Ashcraft, *Revolutionary Politics*; Neal Wood, *John Locke and Agrarian Capitalism* (Berkeley: University of California Press, 1984); Gordon Schochet, "Radical Politics and Ashcraft's Treatise on Locke," *Journal of the History of Ideas* 50 (1989): 491-510; Louis G. Schworer, "Locke, Lockean Ideas, and the Glorious Revolution," *Journal of the History of Ideas* 51 (1990): 531-48; Jerome Huyler, *Locke in America: The Moral Philosophy of the Founding Era* (Lawrence, KS: University Press of Kansas, 1995).

<sup>13</sup> Filmer had died in 1653, but his political tracts were republished during the exclusion crisis and his major work, *Patriarcha*, was published for the first time in 1680.

<sup>14</sup> If state sanction were withdrawn, occupation alone, it seemed, would not defeat an authority determined to confiscate. If mere occupation originated title to property, on the other hand, then aboriginal peoples would seem to have a defensible title to the lands they dwelt upon. Samuel Pufendorf, *De jure naturae et gentium libri octo*, ed. James Brown Scott (Washington, DC: Classics of International Law Series, 1934).

<sup>15</sup> Grotius, in *De iure belli ac pacis* (1.4.7), wrote that the right of the sovereign to punish subjects "seems to depend upon the Intention of those who first entered into civil Society, from whom the Power of Sovereigns is originally derived.... [However] it may be presumed ... they would have declared that one ought not to bear with every Thing [that the sovereign may impose], unless the Resistance would infallibly occasion great Disturbance in the State, or prove the Destruction of many Innocents." Cited in Richard Tuck, *Philosophy and Government, 1572-1651* (Cambridge: Cambridge University Press, 1993), 200. Filmer, *Anarchy of a Limited or Mixed Monarchy* [1648], and *Observations concerning the Originall of Government* [1652]; see Gordon Schochet, *Patriarchalism in Political Thought: The Authoritarian Family and Political Speculation and Attitudes* (New York: Basic Books, 1975), 125-29.

Locke avoided the Grotian trap by transforming historical contract into present consent: men were obligated in civil society not because their distant forebears had contracted together but because each, through his own acts, had personally consented to be bound by a just authority that did not violate its trust.<sup>16</sup> The essence of that trust, according to Locke, was the preservation and defense of private property, for “Government has no other end but the preservation of Property.”<sup>17</sup> And the origins of property lay in pre-civil nature, not in the pleasure or prerogative of kings. Locke’s political theory thus aimed to show that, far from a monarch’s right being absolute, it is conditional upon their preserving the public good, which in essence means defending the rightful property of individuals.

While thus defending the Englishman’s right to property against threats from above, Locke had also to guard against threats from below (which the Tories were understandably concerned to represent as far more serious). The radical case that the Levelers had put to Cromwell’s army in 1647—that men’s estates should be drastically ‘leveled’—had not been forgotten. Any argument, therefore, that began with an assumption that God had given the world to all men in common for their preservation and enjoyment had to explain how the current, very unequal distribution of property could possibly be just. In addition, Locke had to deal with Filmer’s further cogent objection that, if all men had been originally free and equal and with a right in common to all things, any agreement among a portion of them to institute private property would be an injustice to the rest, who had not been party to it. Even a unanimous agreement among all (supposing *per impossibile* that such a thing could be achieved) would represent an injustice to succeeding generations whose natural right and freedom could not be thus bound.

In response to this, Locke defined his essential task as an attempt “to shew, how Men might come to have a *property* in several parts of that which God gave to Mankind in common, and that without any express Compact of all the Commoners.”<sup>18</sup> He began his argument with the observation that, if the consent of everyone were necessary to rightly claim any of the fruits of the Commons as one’s own, “Man had starved, notwithstanding the Plenty God had given him.” Every man had both a right and a duty to preserve himself, and should therefore be regarded as having a “*Property*” in his own “*Person*” and in the “*Labour*” that his body must exert to ensure self-preservation.<sup>19</sup> With this assumption Locke defined the nature of the Commons much as Grotius had done before him: God had not literally given ownership of the whole earth to mankind in common; He had merely granted to each person an equal liberty to own and use as much as he needed for his own preservation—so long as “enough, and as good” was

<sup>16</sup> Schochet, *Patriarchalism*, 252

<sup>17</sup> Locke *Two Treatises* II.vii.94.

<sup>18</sup> Locke, *Two Treatises* II.v.25; and see his satisfaction with his proof, II.v.40.

<sup>19</sup> Locke, *Two Treatises* II.v.28 and 27.

left for all others. This last condition was presumed easy to meet in a sparsely populated world where the inhabitants remained in a state of nature, a condition imagined to be similar to that of contemporary American Indians. On this account property was being continuously created in the natural state. Items were removed from the common fund and turned into one's rightful property by an exertion of individual labor, whether in catching a fish, killing a deer, or picking an apple. Such appropriating action required no consent from one's fellows who suffered no injustice since they too could, by mixing their labor with the plentiful fruits of the earth, obtain what they needed to survive.

It is important to note that Locke's theory, while it discovered the origin of private property in the choices and actions of free individuals, also included an obligation to mankind at large which ensured the justice of the appropriation. The same law of nature that gave a right to property also bounded how much of it an individual might engross. Locke surmised that labor gave a right only to as much as one needed and could properly use.<sup>20</sup> Accumulating more fruits of the earth than one could use would be to have them spoil, thus depriving others of their inherent right to appropriate and use them. This restriction on "Waste" applied to agriculture as much as to hunting and gathering. One could enclose and farm only as much land as one could productively use for one's own (and one's family's) preservation. To enclose land and then let it and its products rot was to forfeit proprietorship, for "this part of the Earth, notwithstanding his Inclosure, was still to be looked on as Waste, and might be the Possession of any other."<sup>21</sup> Such a theory seemed to restrict just appropriation to the level of mere subsistence. The question for Locke was, then, how to get beyond this apparently crippling limitation in order to establish a defense of the kind of property inequalities that existed in seventeenth century England and founded a great civilization.

His answer, famously, was the invention of money, something of little worth in-itself but given value by the common consent of mankind. Money did not spoil however much of it one might have, so it could be endlessly accumulated without injustice.<sup>22</sup> Implied here, of course, was a right of accumulation by means of commerce. As Locke makes clear, one would labor to produce items surplus to one's requirements only in the expectation of exchanging that surplus for money. Moreover, different individuals could be expected to show different levels of industry in producing in order to accumulate money. God gave the earth, said Locke, "to the use of the Industrious and Rational, (and *Labour* was to be *his Title* to it;) not to the Fancy or Covetousness of the Quarrelsome and Contentious."<sup>23</sup> Such differences among people would mean that material inequalities would

<sup>20</sup> Grotius, *De iure praedae commentarius*; cited in Tuck, *Philosophy and Government*, 169.

<sup>21</sup> Locke, *Two Treatises* II.v.38.

<sup>22</sup> Locke, *Two Treatises* II.v.46-47.

<sup>23</sup> Locke, *Two Treatises* II.v.34.



naturally arise, yet all perfectly justly and with mankind's consent following directly from its consent to valuing money.<sup>24</sup>

### III. From labor theory of appropriation to labor theory of value

Yet why should the mass of people really consent to the large resultant inequalities? Lacking other considerations, Locke's introduction of money would seem a simple trick to overcome the obstacle that restrictions on wastage placed on just ownership. Money, merely because it did not spoil, allowed unlimited accumulation and justified, in effect, the dispossession of the many poor by the few wealthy. The thing that prevents this move from being mere sleight of hand, however, is the fact that Locke's simple labor theory of appropriation was supplemented by a labor theory of *value*. Though these are skillfully elided in Locke's account they are in fact logically separate, and had somewhat separate intellectual histories after his time.<sup>25</sup>

In the state of nature the fruits of the earth obviously *have* value for people, which is why they labor to appropriate them for their use. The labor expended on picking acorns from a tree, drawing water from a stream, or pulling a fish from the sea gives people property rights to valuable items that they did not themselves create. This is the theory that I label that of *Man the Taker*. But human labor also has the peculiar ability to *add* value to natural products. A person adds value when he or she fashions a bow from a sapling, weaves a shirt from natural fiber, or builds a dwelling of hide, wood or stone. Locke argues, indeed, that by far the greatest part of the value that things possess comes from the application of human work to almost valueless natural objects.<sup>26</sup> This is a theory that I label that of *Man the Maker*.<sup>27</sup> Of course the mixing of labor that creates value also, on Locke's theory, creates proprietorship in the valuable object produced. Yet one remains bound by the rule of wastage that forbids making and possessing more than one can properly use. However, things can be regarded as properly 'used,' even though surplus to one's requirements, when they are bartered for other things that one lacks. Obviously the extent to which such mutually profitable and just exchanges can occur will be very

<sup>24</sup> Locke, *Two Treatises* II.v.48-50.

<sup>25</sup> Adam Smith and David Ricardo, most famously, would adopt the labor theory of value without presuming that labor gave ownership. Classical economics would drop the labor theory of value but retain assumptions about the connections between industry and just reward. Marx would in some respects retain both though the connections between them are highly complex and debatable; see Ian Shapiro, "Justice and Workmanship in a Democracy," in idem, *Democracy's Place* (Ithaca: Cornell University Press, 1996). PAGES?

<sup>26</sup> Locke makes estimates of anywhere between nine-tenths to ninety-nine hundredths parts of the value of anything as due to labor; *Two Treatises* II.v.40.

<sup>27</sup> James Tully in *Discourse on Property* called this the 'workmanship ideal'—that is, we own (or should own) what we make or produce. Locke's version has theological underpinnings: God owns us because He made us but he made us to be intelligent makers like Himself, so that the things we create are also properly our own. The inherent moral appeal of this ideal gave it, in various secularized forms, a remarkably long life in political and economic theory; see Shapiro, "Justice and Workmanship in a Democracy," 53-78.

limited in the absence of something that can act as a medium of exchange and store of value.<sup>28</sup>

And herein lies the reason that mankind's consent to valuing money also implies consent to inequality. Money encourages the greater and more complex production of goods to which labor has added immense value, thus providing the means for large-scale exchanges that cause general enrichment *without spoilage*.

If one of the greatest virtues for Locke was industriousness, the other was the use of reason. He presumed that God had given man the gift of reason to be used for his own improvement. Locke was not interested in mere human survival but in advancement through science, industry and innovation. He was especially interested in the agricultural improvements that had produced huge gains in primary production in his time. "God gave the World to Men in Common; but since he gave it them for their benefit, and the greatest Conveniencies of Life they were capable to draw from it, it cannot be supposed he meant it should always remain common and uncultivated."<sup>29</sup> The state of nature was a state of penury in which man was forced to labor for his very survival. Money was the great invention that enabled the leap from subsistence to plenty, providing the material basis for a growing population and for the advancement of the arts, sciences and general refinement.<sup>30</sup>

In this the labor theory of value was as collaterally important as the labor theory of just appropriation. Money allowed the just accumulation of property not only because money itself was not subject to spoiling, and therefore to waste, but because it stimulated advances in the production of value-added goods which, once circulated and exchanged, were also properly 'used' and not wasted. Money, along with the institution of civil government to protect property, provided the essential foundations for an expanding civilization. If the enclosure of all productive land in great estates meant that, in the populous countries of Europe, there was no longer 'enough and as good' left for others to cultivate, it had to be remembered that this proviso existed to protect men's equal entitlements to what they needed for their welfare and survival. If productivity, commerce and a civilization based on the division and specialization of labor ensured their better flourishing, then the spirit of the condition had been properly

<sup>28</sup> Locke, *Two Treatises* II.v.46.

<sup>29</sup> Locke, *Two Treatises* II.v.34. Ashcraft, using a note of Locke's from 1693, argues that Locke's history of the passage from a natural (innocent) state to one of property and money (accompanied by covetousness, pride and war) veils the traditional Christian view of man's fall from Grace. This is no doubt true, but Locke's use of biblical injunctions for man to subdue the earth, and his insistence on the efficacy of reason in pursuing that task, suggests that he thought God had provided man the means to transcend his fallenness; Ashcraft, "Locke's State of Nature: Historical Fact or Modern Fiction," *American Political Science Review* 62 (1968): 898-915, at 910.

<sup>30</sup> See Arneil, *John Locke and America*, 181.

fulfilled.<sup>31</sup> If economic development was inevitably accompanied by a marked increase in inequality, it had also to be remembered that, “a King of a large and fruitful Territory ... [in America] feeds, lodges, and is clad worse than a day Labourer in *England*.”<sup>32</sup>

There has been a debate over whether Locke’s theory supported an agrarian capitalism or whether he laid the general intellectual foundations for commercial and industrial capitalism. Without engaging that debate, I must note that the emphasis that Locke generally placed on agriculture had particular significance for the colonies. It is instructive, therefore, to look a little more closely at the special case of ownership of agricultural land. Locke’s theory of property begins with usufruct but ends with the private ownership of land, said to occur by the mixing of labor with the earth. But on the usufructuary assumption, to what exactly would cultivation grant entitlement—to the things one grew on the land or to the land itself? There is no obvious reason, on the labor theory of appropriation, why the earth itself should not remain in common though the useful products of one’s labor upon it be one’s own property.

It is here that the labor theory of value played an essential role. Locke did not think that mere *use* or occupation of land, whether for grazing or mining, gave effective title to the land itself. Why? Because such use implied no *improvement* of the land. In mining I mix my labor with the earth, but only to pull things out of it, thing to which my labor gives me title. I am not interested in the land itself. This was, on Locke’s view, very much the Spanish attitude to colonization. But to till, to fertilize, to irrigate, to manage the land is to mix one’s labor with it in such a way as to improve it, and make it more productive. In mining and grazing I *extract* value from the land, in agriculture I *add* value. It is not, therefore, the *fact* of laboring that provides secure title, but the purpose and result of laboring.<sup>33</sup> We can now correctly interpret the significance of the following passage from the *Second Treatise*, where the elision between the labor theory of appropriation and the labor theory of value essentially occurs:

Nor is it so strange, as perhaps before consideration it may appear, that the *Property of labour* should be able to over-balance the Community of Land. For ’tis *Labour*

<sup>31</sup> On the debate over whether the introduction of money meant the transcendence of Locke’s provisos, see McPherson, *The Political Theory*, 203-221; Ashcraft, *Revolutionary Politics*, 270-85, and idem, *Locke’s Two Treatises of Government*, (London: Allen & Unwin, 1987), 123-50. Locke was well aware of the specializations that must occur to produce the complex goods of an advanced civilization; see *Two Treatises* II.v.43.

<sup>32</sup> Locke, *Two Treatises* II.v.41. Stephen Buckle also notes the importance of the productivity argument and the ‘trickle-down’ effect that makes everyone better off, though he rather too-narrowly interprets Locke’s purpose as legitimizing “self-interested, self-preservative behaviour;” Buckle, *Natural Law and the Theory of Property: Grotius to Hume* (Oxford: Clarendon Press, 1991), 151.

<sup>33</sup> Locke explicitly speaks of the “*appropriation* of any parcel of Land, by improving it” in *Two Treatises* II.v.33.

indeed that *puts the difference of value* on every thing; and let any one consider, what the difference is between an Acre of Land planted with Tobacco, or Sugar, sown with Wheat or Barley; and an Acre of the same Land lying in common, without any Husbandry upon it, and he will find, that the improvement of *labour makes* the far greater part of *the value*.<sup>34</sup>

The implication is that labor's ability to add value also improves labor's natural title to property. I say 'natural title' here because Locke held that, once civic society was established, property came under the essential regulation of government and human law. It is of some interest to note, in this regard, that the transition to regular government in the *Second Treatise* is said to be provoked by the increase in population and increased agricultural use of land that the money incentive promotes. Locke appears to introduce an alternative, demand theory of value here. He says that even rich land a long way from any possible market (as in much of then-America) is virtually valueless. But where the populations and stock of distinct natural communities had increased along with the use of money, the communities eventually became contiguous and land inevitably became scarce "and so of some Value." Yet the heightened demand is less a cause of value than a consequence of it, since closely settled districts, unlike remote lands, provide the opportunity to properly 'use' (that is, exchange) surplus product in accessible markets. Whenever this happened, says Locke,

the several *Communities* settled the Bounds of their distinct Territories, and by Laws within themselves, regulated the Properties of the private Men of their Society, and so, *by Compact* and Agreement, *settled the Property* which Labour and Industry began; and the Leagues that have been made between several States and Kingdoms, either expressly or tacitly disowning all Claim and Right to the Land in the others Possession, have, by common Consent, given up their Pretences to their natural common Right, which originally they had to those Countries, and so have, by *positive agreement*, *settled a Property* amongst themselves, in distinct Parts and parcels of the Earth[.]<sup>35</sup>

Note that, in this quasi-historical account, the international dimension is pictured as promoting, not just agreements about territory between distinct states or communities, but the regulation of property *within* these communities. For Locke, as for Hobbes, independent states remained in the

<sup>34</sup> Locke, *Two Treatises* II.v.40.

<sup>35</sup> Locke, *Two Treatises* II.v.45.

state of nature with respect to one other, since they had made no agreement to form a single “Body Politick” with a common superior having authority to judge between them. For Locke, however, they were still bound by the obligations of natural law to keep their consensual agreements.<sup>36</sup> Within sovereign states, by contrast, the regulation of positive laws—laws of entitlement, alienation, inheritance, land grant and so on—now “*settled the Property* which Labour and Industry began.”

But if sovereign law controls property within the state, why may not that law decree radical redistribution or confiscation? For Locke this would have been an absurdity, and an admission that undermined his whole rhetorical purpose. “The *Liberty of Man, in Society*,” he writes, “is to be under no other Legislative Power, but that established, by consent, in the Commonwealth, nor under the Dominion of any Will, or Restraint of Law, but what that Legislative shall enact, *according to the Trust put in it*” (last italics mine).<sup>37</sup> The last phrase is crucial, its meaning given by the assertion that, “The great and *chief end* ... of Mens uniting into Commonwealths, and putting themselves under Government, *is the Preservation of their Property*. To which in the State of Nature there are many things wanting.”<sup>38</sup> No man can give up more power and authority to government than he himself had in the state of nature, and in that state he had no arbitrary power over the life, liberty and possessions of another, but only enough for his own preservation and that of all mankind. Governmental power having no other end but preservation, it could never have the right to destroy, enslave or designedly impoverish subjects, for “[t]he Obligations of the Law of Nature, cease not in Society, but only in many Cases are drawn closer, and have by Humane Laws known Penalties annexed to them, to inforce their observation.”<sup>39</sup> Since government’s whole reason for existence was the preservation of property (including the property one had in one’s person and in one’s liberty),

[t]he *Supream Power cannot take* from any Man any part of his *Property* without his own consent. For the preservation of Property being the end of Government, and that for which Men enter into Society, it necessarily supposes and requires, that the People should *have Property*, without which they must be suppos’d to lose that by entering into Society, which was the end for which they entered into it, too gross an absurdity for any Man to own.<sup>40</sup>

<sup>36</sup> Locke, *Two Treatises* II.ii.14.

<sup>37</sup> Locke, *Two Treatises* II.iv.22.

<sup>38</sup> Locke, *Two Treatises* II.ix.124.

<sup>39</sup> Locke, *Two Treatises* II.xi.135.

<sup>40</sup> Locke, *Two Treatises* II.xi.138.

Thus the conventions of human law, by virtue of the intention of the civic compact, remain under the guiding control of natural law.

By this reasoning Locke had demonstrated to his own satisfaction that governmental power could not be absolute, and that the property of citizens was sacrosanct against the arbitrary interventions of monarchs. He had also simultaneously explained and justified the large inequalities that existed in property ownership that government was obliged to protect. In the process he had defended the justice of an expanding agricultural-commercial civilization in which the application of scientific reason increased the productivity of natural lands while imperishable money provided the means to ensure the resulting surpluses were properly used and not spoiled, supporting a growing population of increasingly specialized laborers.

One of the consequences of the move into civil society that regulated property was that failure fruitfully to *use* a property was no longer a valid criterion for its appropriation by others, as it had been in the state of nature. True, Locke noted with approval that it was said to be the custom in Spain that a person who made good use of 'waste' land, although not the legal owner, was 'left undisturbed' and indeed regarded as a benefactor for increasing the general supply of corn.<sup>41</sup> But he would hardly have been prepared to sanction civil confiscation of legal property because of the idleness of wastrel landowners, however much he despised them. The security needed to encourage commercial investment and expansion required that legal tenure be properly enforced and not subject to arbitrary governmental intervention.

The situation was inevitably different where the state of nature was held still to exist, and where relations among people remained under the law of nature and not the law of a particular nation, nor for that matter the general law of nations. Locke's followers took this to be the case in both America and Australia, and I want to conclude this essay by briefly indicating both the large influence and eventual overthrow of the Lockean theory in those two countries.

#### **IV. Locke's theory in America and Australia**

Locke chose to regard American Indians as in the state of nature with respect to one another, and not just in relation to white settlers (despite the evidence of the settled agricultural Indian nations of Eastern America). That is, they were held to have instituted no common superior who could judge between them and who could, moreover, negotiate terms with other sovereign, independent polities about mutual territorial borders. The rightful possessions of Indians, which they surely had under natural law, were still limited by what they could and did effectively use for their individual convenience. To be in the state of nature was to remain, that is to say, in the condition of Man the Taker; Indians had no title to land that they simply wandered over or hunted in, which remained part of the natural commons.

<sup>41</sup> Locke, *Two Treatises* II.v.36.

Any land surplus to their requirements was thus justly settled by anyone who could make effective agricultural use of it. The Indians had no cause to complain so long as they had enough and as good left for their own sustenance. Any attempt by the Indians to deprive settlers of their just entitlement could, moreover, be justly resisted.

The problem that the seventeenth-century American plantations had faced, and which Locke among others had had to deal with, was a tendency of colonists to claim much larger areas of land than they could properly cultivate or defend, given their numbers. This caused many in England to oppose colonization on the ground that it was a drain on Imperial resources rather than an augmentation of them. To ensure profitability, Locke's theory forbade the making of broad claims and argued for a more restrained and concentrated pattern of settlement and cultivation until such time as population increase allowed further just expansion and more assured commercial exploitation of natural resources. Locke's theory of property ensured that this pattern denoted just settlement and not conquest, as in the Spanish model. Nevertheless, the idea of 'dominion' was firmly associated, in Locke's mind, with the superior property rights created by Man the Maker. For Locke held that God was not content for mankind to remain forever a mere gatherer of the fruits provided by nature, but had commanded him to *subdue* the earth. This meant a necessary transition to Man the Maker who would make the earth productive by means of his labor, and this in turn meant transforming the universal commons into parcels of private property.

And hence subduing or cultivating the Earth, and having Dominion, we see are joyned together. The one gave Title to the other. So that God, by commanding to subdue, gave Authority so far to *appropriate*. And the Condition of Humane Life, which requires Labour and Materials to work on, necessarily introduces *private Possessions*.<sup>42</sup>

This theory, transmitted to America, proved immensely popular with preachers, politicians, and farmers, for it justified their own ever-increasing demand for agricultural land. Once the balance between settlers and Indians had decisively tipped in the former's favor, pressure on Indian lands grew acute and the 'Indian problem' arose to full prominence. Jefferson, who was an enthusiastic adherent of the Lockean theory, always expressed concern to safeguard the rights and welfare of native-Americans. He adopted a policy of persuading them to leave their supposedly 'natural' and ungoverned state to adopt agriculture and civil government, in order to assure them proper title to their lands. Indians who preferred to cling to their old ways, Jefferson argued, should be 'encouraged' to swap their lands for territories further west, beyond the Mississippi. In practice, he was prepared to harass

<sup>42</sup> Locke, *Two Treatises* II.v.35.

tribes into war, forced cessions of land or flight to ensure white expansion. Jefferson thus foreshadowed the policy of Indian removal that would become a controversial feature of Andrew Jackson's presidential reign.<sup>43</sup>

Though the Lockean theory was repeatedly deployed by prominent whites throughout the whole nineteenth century to justify Indian dispossession, its rationale was in fact destroyed by Justice John Marshall in the 1820s and '30s. In three judgments of the Supreme Court, Marshall rejected the Lockean argument that native Americans had acquired no title to the full extent of their lands because of their failure to cultivate. He argued that aboriginal Americans did not exist in a state of nature, but were divided into separate independent nations with laws and governmental institutions of their own, and had always been recognized as such by the United States. The entitlements of European settlers were based not on agricultural labor, therefore, but simply on *conquest*. Whether such entitlement was just or unjust in abstract terms, Marshall's court, as a court of the conquering power, was not at liberty to speculate.<sup>44</sup> Though Marshall's judgment became the basis for future claims to Indian title, it did not, notoriously, save the Indians, not even the so-called Five Civilized Tribes—Cherokee, Choctaw, Chickasaw, Creek and Seminole—who had made every effort to Europeanize after 1800, adopting government on the American model, agriculture, writing (in the case of the Cherokee, their own form of writing), even slavery. None were spared by the federal government, which forced them to march to Oklahoma in the 1830s in cruel and carelessly managed 'removals' that were supported by President Jackson.<sup>45</sup>

But at least American law had recognized quite early in the piece that there could be valid claims to territory based on occupation rather than on Lockean principles. (It was highly significant that Marshall had concluded

<sup>43</sup> Anthony F. C. Wallace, *Jefferson and the Indians: The Tragic Fate of the First Americans* (Cambridge, MA: Harvard University Press, 2001). Wallace regards Jefferson as hypocritical and duplicitous, and goes so far as to hold him responsible for inaugurating the westward removal policies of the nineteenth century that he labels as genocide or ethnic cleansing. Wallace's own careful examination of the complexities of the case hardly supports this extreme charge, though they clearly reveal the full tragic dimensions of the Indians' fate.

<sup>44</sup> The relevant cases were: *Johnson and Graham's Lessee v. M'Intosh* (1823); *The Cherokee Nation v. The State of Georgia* (1831); *Worcester v. The State of Georgia* (1832). On the legal niceties see Joseph C. Burke, "The Cherokee Cases: A Study in Law, Politics, and Morality," *Stanford Law Review* 21 (1969): 500-531; and Edwin A. Miles, "After John Marshall's Decision: *Worcester v. Georgia* and the Nullification Crisis," *Journal of Southern History* 39 (1973): 519-44.

<sup>45</sup> There has been much work, mostly critical on Jackson and the Indians since the 1960s; see for example Michael P. Rogin, *Fathers and Children: Andrew Jackson and the Subjugation of the American Indian* (New York: Knopf, 1975); Ronald N. Satz, *American Indian Policy in the Jacksonian Era* (Lincoln, NE: University of Nebraska Press, 1975); Anthony F. C. Wallace, *The Long, Bitter Trail: Andrew Jackson and the Indians* (New York: Hill & Wang, 1993). A rare exception that tried, unconvincingly, to exculpate Jackson was Francis Paul Prucha, "Andrew Jackson's Indian Policy: A Reassessment," *Journal of American History* 56 (1969): 527-39, which was recently supported, hardly more convincingly, by Robert V. Remini, *Andrew Jackson and His Indian Wars* (New York: Penguin, 2001).



his *Worcester v. Georgia* judgment by asserting, Pilate-like, that the court could now wash its hands of the iniquity of oppressing the Indians and disregarding their rights.) In Australia, by contrast, such recognition was not made until the High Court's *Mabo* judgment of 1992.<sup>46</sup>

Unlike the United States, Australia has usually been regarded, and has regarded itself, as a 'Benthamite' rather than a 'Lockean' nation, meaning a polity based on the utilitarian calculation of the greatest happiness of the greatest number rather than an insistence on individual rights. Though there is much truth in this view, it overlooks the importance of Lockean theory for white claims to possessory rights to Australian land. It was a fixed assumption of Australian colonists that indigenous peoples did not really 'use' the lands they occupied but merely gathered the fruits thereof, and that the productive agriculture of white settlers therefore trumped their claims. (Indeed white Australians themselves were perennially fearful that their own thin occupation and uncertain development of a vast landmass, particularly the tropical north, would morally justify their dispossession by the 'teeming hordes' of Asia who were not only industrious but, so it was believed, better adapted to laboring in a hot climate.)<sup>47</sup> Nor did indigenous Australians have obvious governmental structures, laws or governors that would encourage treating with them as independent nations. They remained, as far as majority white opinion was concerned, in an authentic 'state of nature.' In the very few legal cases in which the issue of possible 'native title' to land was considered, the idea was rejected under the Lockean-inspired international law theory of Emeric Vattel. This held that, where no developed governmental structures existed in a potential colony, the land was to be considered as technically *terra nullius* – that is, legally unoccupied and therefore open to the just settlement of productive (white) agriculture.

The *Mabo* decision was momentous because it reversed an assumption that had underpinned 200 years of Australian land law; it was controversial because, by positing the possible survival of native title in Australia, it threatened existing claims of miners and pastoralists. Yet despite the fact that it overthrew Vattel's expanded idea of *terra nullius* and thus Locke's theory of property, the judgment remained curiously dependent on Lockean assumptions. The case had been brought by Eddie Mabo, a resident of the Meriam Islands (in Australian possession), who claimed against the State of Queensland that he had valid title to land which he and his ancestors had cultivated for generations. The fact that the claim was to land long cultivated in distinct plots undoubtedly made the case easier to argue. Thanks to Locke, these were precisely the conditions that Anglo-settlers regarded as creating a natural title to land that settled governments were

<sup>46</sup> *Mabo and Others v. State of Queensland* (1992), 107 ALR 1[?].

<sup>47</sup> See John Kane, "Racialism, Democracy and National Identity: the Legacies of White Australia," in *The Politics of Identity in Australia*, ed. Geoff Stokes (Melbourne: Cambridge University Press, 1997): 117-31.

obliged to recognize and protect. The leading judgment, effectively but tacitly leaning on this existing prejudice, argued the injustice of past dispossessions that had been based on mistaken understandings of the reality and complexity of indigenous law. It then extended the principle of the possible survival of native title to mainland Australia, where indigenous peoples had been, for the most part, hunter-gatherers, not cultivators.<sup>48</sup> So powerful was the Lockean theory, in other words, that even its eventual rejection in Australia had to be founded on its plausibility.

## V. Conclusion

There is no doubt that British colonization of America and the antipodes would have proceeded without Lockean assurances of the justice of white agricultural settlement. There is also no doubt that Locke's theory of a natural right to property was peculiarly adapted, not only to the defense of property against confiscation from above or below at home, where settled law ruled, but to the moral support of colonization in countries whose people could conveniently be regarded as still in a state of nature.

The power of Locke's argument for receptive minds lay in its deceptive simplicity. Starting from an intuitively plausible account of how individual property comes into existence by natural right in a world held in common by all humanity, he moved by apparently logical stages to the justification of large scale inequalities of regulated property ownership under instituted government. I have tried to show that this rhetorical progression depended on a scarcely perceptible move from a simple theory of rightful individual appropriation – the theory of Man the Taker—to a more complex theory of property based on the creation of value—the theory of Man the Maker. This move was both enabled and disguised by the fact that the concept of labor, taken to be the source of both property and value, was central to each. The productive power of Man the Maker, the foundation of a great and expanding commercial civilization, marked an epochal shift in human history, a shift from nature to government, from poverty to plenty. The property rights thus generated by Man the Maker were therefore clearly superior to those of Man the Taker who remained (according to Locke) in the primitive condition of the original commons. It was a commons that, by implication, must inevitably increasingly diminish, ultimately to be squeezed out of existence as areas of productive settlement expanded and grew contiguous, leading to the establishment of settled law and government across the face of the globe.

<sup>48</sup> The judgment held that such title might yet exist in areas where it had not been validly extinguished by acts of sovereign power, and where indigenous groups could show a 'continuing connection' with the land in question. What native title precisely implied was not wholly specified, it being partly left to the laws and customs of the people themselves to determine its incidents and the persons entitled under it. Its general characterization, however, was as a communal and inalienable title to 'use' of the land subject to traditional custom. Whatever exactly this implied, native title clearly remained inferior to white forms of land ownership.