

'All the World was America'
John Locke
and
the American Indian

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Abstract

This thesis examines the role played by America and its native inhabitants in John Locke's Two Treatises of Government. It begins by examining the large collection of travel books written by explorers to the new world in Locke's library. Locke uses the information from these sources selectively, employing those facts which support his view of natural man and ignoring those which do not. His reasons for using the Indians in his Two Treatises goes beyond simply providing empirical evidence. Locke, steeped in the colonial zeal of his patron, the Earl of Shaftesbury, is, particularly in the chapters on property and conquest, arguing in favour of the rights of English colonists. While it has been recognized that Locke's political philosophy reflects the domestic political needs of Shaftesbury, very little has been written in previous scholarship about the Earl's colonial aims. Locke, as secretary to both the Lords Proprietors of Carolina and the Council of Trade and Plantations, was immersed in the colonial questions of his day. Following in the steps of Hugo Grotius, whose notions of property and war were shaped by his employment in the East Indies Company, Locke uses natural law to defend England's colonization of America. His chapters on property and conquest delineate a very English form of settlement. By beginning property in a very specific form of labour, namely agrarian settlement, and denying the right to take over land by virtue of conquest, Locke creates the means by which England can defend its claims in America with regard to both other European powers and the native Indians. The strength of this argument is demonstrated by the extent to which it was used by ministers, politicians and judges in the early years of the American republic. In particular, Thomas Jefferson's powerful attempts to transform large groups of nomadic Indians into settled farmers can be traced back to Locke's ideas of the natural state and civil society.

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Introduction

'Thus in the beginning all the World was America.'¹

America, as it appears in these famous words from the Two Treatises of Government, is John Locke's political Genesis. For Locke, America is the beginning of civilization, to the extent that it reveals civil society's natural origins. But Locke's vision of the new world is a 'beginning' for the old world, in a different, although equally profound, sense. Steeped in the colonial zeal of his patron, the Earl of Shaftesbury, John Locke saw America as the second Garden of Eden; a new beginning for England should she manage to defend her claims in the American continent against those of the Indians and other European powers. America, like the world described in the original Genesis, is England's second chance at paradise, providing the colonial masters of the old world, with a land full of all the promise known in that first idyllic state. America thus represents for Locke and his readers a two-sided Genesis, a place to find both the origins of their past and the promise of their future.

It is the role of America and its native inhabitants in Locke's political theory which has been previously overlooked in scholarship on the Two Treatises. Given the number of specific references in this work to America, and Locke's lifelong involvement in the colonization of the new world, it is indeed surprising that so little has been written on the subject. The oversight is important for without considering Locke's use of

America and its inhabitants in light of the collection of American 'travelogues' within his own personal library and the political needs of Shaftesbury's colonial enterprise in Carolina, an important aspect of the Two Treatises will be missed. This thesis will argue that Locke's Two Treatises of Government were a defense of England's colonial policy in the new world against the counterclaims of the Indians and other European powers to the continent. In particular, it will be shown that the famous chapter on property, which contains most of the references to American Indians in the Two Treatises, was written to justify the dispossession of the American Indians of their land, through a vigorous defense of England's 'superior' claims to proprietorship.

Most scholarship on the Two Treatises does not take seriously Locke's repeated claims that the state of nature was an historical reality which existed in the Americas of his day. Scholars from John Dunn to C.B. MacPherson claim that the state of nature is essentially nothing more than a logical abstraction used by Locke as a mirror to reflect the origins of civil man and his society.² By denying the validity of Locke's historical examples, however, scholars have failed to see either the role America plays in Locke's theory or his reasons for including it in his analysis. Moreover, commentators have inevitably applied Locke's theory to civil man only, ignoring its implications for natural man, himself, that is the Indian of the Americas. This thesis will address these issues

directly, by accepting Locke's examples of natural men as written, and examining the role played by America in the Two Treatises.

I - A REVIEW OF THE LITERATURE

The reasons for ignoring the American dimension of Locke's work is twofold. Firstly, European scholars have concentrated on Europeans, that is men in civil society. They have, therefore, expressed little interest in what Locke said about natural man, beyond what he revealed about their own, civil society. The failure to consider the role of American Indians in Locke's thought also rests on the belief that Locke, himself, had no real reason to include them in his treatise beyond a superficial need to provide some empirical evidence for his abstract notion of a natural state. But Locke deliberately included America and its inhabitants in his treatise for very specific reasons originating in the colonial debates within which he, and his patron Shaftesbury, were enmeshed throughout the latter half of the 17th century. While much has been written during the last thirty years on the specific political events of the 17th century which shaped Locke's purposes in writing the Two Treatises, most scholars have limited themselves to the domestic policies of the day and have failed to consider the importance of foreign and, more specifically,

colonial concerns to the political ideas of Locke and his patron.³

In 1957, Maurice Cranston published the now classic biography, John Locke, which provided, through letters and other documentation, clear new evidence of Locke's activities, the politics which surrounded him, and the context of his compositions over the course of his life. In particular, Cranston destroys the attempts of Victorian biographers to make Locke a political innocent in all of Shaftesbury's intrigue, demonstrating that Locke was completely involved in many of the Earl's varied, and occasionally subversive, political interests.⁴

This domestic political context, within which the Two Treatises were first composed, was given full consideration in 1960, when Peter Laslett published, based on the documents in the Lovelace Collection, his edition of the Two Treatises of Government.⁵ His analysis suggests that the Two Treatises were originally written as one piece between the years 1679 and 1680, ten years prior to the traditional date of composition, at the same time that Locke's close friend, James Tyrell wrote and published, Patriarcha non Monarcha.⁶ Moreover, Locke wrote in response to Sir Robert Filmer, who was at the height of his fame in these years, and not in response to Thomas Hobbes, as had been traditionally thought. Central to the composition of the Two

Treatises, according to Laslett, was Locke's relationship to the Earl of Shaftesbury and the political intrigues of the day.

The dating of its composition necessarily altered the domestic political event to which it was thought to be responding. As Laslett himself says, 'The Two Treatises is an Exclusion tract not a Revolution pamphlet.'⁷ Given the date of publication, Laslett argues, it was the attempt by Shaftesbury to exclude the Catholic James from the throne which provided the political inspiration, for Locke's political thesis, not the Glorious Revolution of 1688, as had been traditionally assumed. Laslett thus provides a new domestic political context within which Locke's essay was created.

The debate over the year of the Two Treatises' composition, the link between them and the domestic politics of Shaftesbury in England, and the relationship of Locke to his contemporaries, such as Sir Robert Filmer and James Tyrell had begun in earnest. Richard Ashcraft, in Revolutionary Politics and Locke's Two Treatises of Government, challenges Laslett's analysis.⁸ Ashcraft claims that the First Treatise was composed in 1680 and the Second Treatise over the next year or two, following the Oxford Parliament in March 1681, where the last attempt at exclusion failed. The Two Treatises were not written, as Laslett claims, to defend Shaftesbury's actions in the exclusion debate, but were a far more radical defense of

the Rye House plot, that is the plan to kidnap the King and his brother.

While this scholarship has demonstrated the influence of domestic English politics on Locke's political ideas, the impact of colonial policy has been left virtually untouched. Similarly, while much has been written about the British sources, such as Richard Hooker and James Tyrell, used by Locke to provide supporting evidence for his view of the state of nature, next to nothing has been written on the American and English colonial sources he used to illustrate the same natural state. By taking seriously Locke's references to America in the Second Treatise and incorporating the colonial sources available to him through his personal library and work, this thesis will cast new light on the definition of important terms, such as natural law and property.

Since the publication of Wolfgang Von Leyden's studies of Locke and the laws of nature in the 1950's, natural law has been considered by many scholars, such as James Tully, S.B. Drury and Karl Olivecrona, to underlie Locke's Two Treatises.⁹ Hugo Grotius and Samuel Pufendorf are often named as the two most important sources for Locke's developing views on natural law.¹⁰ While several scholars, such as Edward Dumbauld and Albert Hyma have analyzed the importance of colonialism in Grotius's ideas regarding the freedom of the seas, no such analysis has been applied to Locke's use of natural law to

explain his theories regarding property in land. More recently, Richard Tuck in a talk given at the London School of Economics on October 19, 1989, outlined the differences between Pufendorf and Grotius based on the differing colonial interests of their respective countries.¹¹

Tuck, Dumbauld and Hyma all conclude that natural law, evolving through a long history stretching back to the ancient Greeks, was transformed in the 17th century, by the needs of expanding colonial empires into the 'law of nations'. Foremost amongst the developments of these newly formulated laws were the arguments regarding the origins of private property. In England and Holland, in particular, it was of great importance to ascertain the conditions under which the land and sea, respectively, could be considered one's own, and therefore not open to someone else's appropriation. Locke, as it shall be argued in this thesis, writes in the tradition of 17th century English natural law, where the questions raised by the settlements in Carolina concern the origin of property in land rather than the sea.

The definition of property, which has been given such careful consideration, in works such as James Tully's, A Discourse on Property: John Locke and His Adversaries has been limited to how proprietorship in land has been defined in England.¹² Thus, Peter Laslett can claim that Locke's repeated use of 'wast' in the chapter on property is a reference 'to open field

tillage in England', even when Locke specifically refers to the land used by the American Indian.¹³ 'Wast', when one consults the colonial records, has a completely different meaning in the American context. The oversight in the context of defining the value of property is particularly surprising, given Locke's explicit comparisons between the Indian hunter and the Devonshire farmer.

The role of America and its inhabitants in Locke's political philosophy has, only recently, been given some cursory attention. At a 1990 conference on Locke, James Tully read a paper entitled, 'Rediscovering America'. In it he argued that the American Indian is central to Locke's theory of property and popular sovereignty.¹⁴ Another group of scholars have analyzed Locke's 'political anthropology'. William Batz, for example, compares Locke's analysis of the American Indian to the account given by Joseph D'Acosta, the Spanish explorer quoted in the Two Treatises. Recent articles by Jeremy Waldron and Ruth Grant argue that the anthropological record is irreconcilable with Locke's account of the natural state. Grant points out that traditional forms of authority do not provide evidence of the idea of consent. Waldron concludes that the radical change envisioned by Locke between the natural state and civil society is not supported by any anthropological studies. Both conclude that Locke's anthropology comes second to his need to develop a theory of government based on the natural rights of individuals and their consent to the

formation of civil society. Herman Lebovics's 'The Uses of America in Locke's Second Treatise of Government' attempts to link England's colonial interests in the new world with Locke's views of natural man. Lebovics, as I shall argue, is mistaken in concluding that Locke's goal was to move the poor of England to the new world. Shaftesbury and Locke were far more interested in moving the rich, that is, those who had money and the ability to plant, to the new world in order to insure the success of the plantation. Finally, there has been a debate between Thomas Flanagan and Nicholas Griffin, in recent editions of the Canadian Political Science Review, over the basis of European appropriation of Indian land. While both Flanagan and Griffin touch on Locke's role in the development of this theory, neither fully consider the links between Locke and other colonial thinkers of his time, or the importance of his thought in the early American republic. ¹⁵

While the role of America and its inhabitants in the development of Locke's political thought has been mainly overlooked, the reverse proposition, that is, the role of Locke in the development of American political thought has been studied intensely. We shall be examining the influence of the Two Treatises in the United States in the final chapter of this thesis, but rather than analyze the implications of Locke's thought for just the early American citizens and their state, we shall also consider the implications of his thought for the Indian.

Of the literature which has examined Locke's influence on American history, the traditional view is articulated by Carl Becker in his book, The Declaration of Independence (1922).¹⁶ Becker concludes that Thomas Jefferson and his colleagues used Locke's political treatise to form the philosophical basis of the American constitution, thereby placing the Declaration of Independence in a 'liberal', rights-based, tradition.¹⁷ This view has been challenged over the last twenty-five years from scholars both of American history and of John Locke.

American historians were the first to take up the challenge. In the fifties, books such as The 18th Century Commonwealth Man, by C. Robbins and Seedtime of the Republic, by C. Rossiter, examine other philosophical traditions in the founding of the American republic.¹⁸ Robbins emphasizes America's libertarian heritage and looks to Algernon Sidney and other English Whig thinkers. Rossiter looks at the history of modern republicanism, beginning with Machiavelli, to find the source of American revolutionary thought. Finally, B. Bailyn in his book, The Ideological Origins of the American Revolution, published in 1967, traces five different philosophical sources for the American Revolution, including the thought of classical antiquity, the Enlightenment, English Common Law, New England Puritans and lastly the English Whigs.¹⁹ Like Robbins, Bailyn concludes that the Whig pamphlets had the most impact.

Lockean scholars added their own analysis. In 1969, John Dunn published an article entitled, 'The Politics of John Locke in England and America in the 18th Century', which claimed that Locke's Two Treatises were virtually unknown in America for the first half of the 18th century, while Locke's political theory, far from being the revolutionary liberal treatise needed by the signators of the constitution, was very conservative indeed. The Two Treatises were, according to Dunn, 'the dignifying of the legal order of the polity'.²⁰

Martyn Thompson in a 1976 article analyzing the degree to which Locke's Two Treatises were known in the early part of the 18th century, agrees with Dunn that Locke was seen at the time as a conservative thinker and those who wanted a more 'liberal' philosophy turned to Algernon Sidney, James Tyrell or Montesquieu.²¹ Gary Wills' 1978 book, Inventing America: Jefferson's Declaration of America, challenged the long-standing belief in the most fundamental philosophical relationship in the liberal orthodoxy of American history, namely that between John Locke and Thomas Jefferson. Wills argues that Jefferson's political ideas are less products of Locke's thinking than that of the Scottish Enlightenment.²² Chaudhuri Joyotpaul and George Mace also conclude that Locke's impact on the American revolutionaries was minimal.²³

Recent scholarship has witnessed the inevitable backlash against this view and commentators have, once again,

reevaluated the impact of Locke's political thought on American history. Many have concluded that the traditional view, in many respects, still holds true. Richard Stevens argues, in a recent article, that the American Constitution is the practical manifestation of Locke's political philosophy.²⁴ Thomas Pangle strongly disagrees with what he considers to be the prevailing revisionist view of American history that Locke had little impact on the fathers of the American constitution.

What we have traced through the pages of Locke is the most completely worked out presentation of that current in political philosophy which exerted the strongest pull on the Framers [of the Constitution] as they struggled to formulate...their ultimate goals.²⁵

Other writers, such as R. Hamowy and Morton White have provided strong evidence that Wills' interpretation of Jeffersonian thought may be faulty.²⁶ It will be argued in the final chapter of this thesis, in line with this second school of thought, that Locke had an important influence on Thomas Jefferson. The focus, however will move from the Declaration of Independence, to consider the development of Jefferson's policies towards the Indian, and more specifically, his attempts to bring the Indians into 'civil society' by converting them from hunting to farming.

While Lockean scholars and American historians have failed to draw any links between the Two Treatises and the American Indian, scholars of native Indian history, have provided plenty of evidence that such connections, in a broader sense, do exist. Scholars such as James Axtell, Bernard Sheehan and J.E. Chamberlain provide strong evidence that the colonial interests of 17th century writers had an important influence on the development of their ideas; the most important being the fundamental distinction drawn between the civil society of England and the savage state of the American Indians.²⁷ A necessary consequence of this dichotomy, for European thinkers, was the transcending of the latter state by the former. While this transcendence was often depicted as a religious event, Locke transformed it, as I shall argue, into a more purely political form of conversion.

Within this general dichotomy of civil and savage states was the central question of property. It has been noted, by scholars of native history, that the shift in attitudes towards the Indians' land in the latter half of the 17th century was a direct consequence of the change in England's colonial ambitions. Francis Jennings, Loren Pennington and Gary Nash have described how the dispossession of the Indians became a central goal only when English objectives in America shifted from trade and mining to settlement.²⁸ Jennings, in particular, describes how the definition of property was changed to suit the new goals of the colonists.²⁹ The

implications for the American natives, as she points out, were devastating. Not only did the Indians have to be removed from the land but attempts were made, over the next two hundred years to make them farmers rather than hunters. The centrality of agrarian labour to the dispossession and conversion of Indians during the first few decades of the United States has been described in depth by historians such as Wilcomb Washburn and Francis Paul Prucha.³⁰ Wilbur Jacobs in his book, Dispossessing the American Indians, identifies Locke's Two Treatises as the original source for this theory of private property.³¹ He does not, however, explore, in any depth, the relationship between Locke, America and the native Indians, but chooses, instead, to point out how the argument was developed by subsequent American leaders.

Thus, no body of scholarship has yet drawn the links between the colonial plans of England in America, Locke's involvement in such projects, the development of his theory of property as a response, in part, to these needs, and the ultimate implications of his thoughts for the natives of America.

II - JOHN LOCKE AND THE AMERICAN INDIAN: A SYNOPSIS

In attempting to explore all facets of this relationship between Locke and the new world, this thesis will pose for

itself five fundamental questions. Firstly, what evidence does Locke draw from the American sources contained in his own personal library? Secondly, to what extent do Locke's colonial experiences, as Secretary to the Lords Proprietors of Carolina and Secretary to the Council of Trade and Plantations, shape his political ideas? Thirdly, what are the exact colonial debates, within which Locke, through his Two Treatises, is engaged? Fourthly, what specific implications are there for his theory of property? Finally, what impact has Locke's theory had in America, not in terms of the development of civil society, but in terms of natural man? In answering all of these questions, this thesis will provide an original interpretation of the Two Treatises. Let us consider each of these questions further.

The question of empirical evidence is, for Locke, an important one. One of the main criticisms Locke makes of his rival, Sir Robert Filmer, is that he fails to support his basic theory of government with any empirical examples. Locke believes that the elucidation of one's theories is enhanced by the use of concrete evidence from the empirical world. Within his own library were dozens of travel books, written by individuals who had been to the 'new world', which recorded details of the people who lived there. It is from these travel books that Locke derives some of his evidence for his conception of the state of natural man. The first chapter of this thesis contains an analysis of Locke's library of travel books to

America and his use of them in the Two Treatises. It will be argued that the evidence contained in these books on the new world is employed in a very specific and selective way by Locke in order to elucidate certain aspects of his theory. He ignores those writings, amongst his books on the Indians of America, which are opposed to his conception of natural men; for the goal is not to understand the Indians themselves, but only to use them to illustrate his own ideas.

The second question, regarding Locke's work in the colonization of America, will be addressed by examining the correspondence, memos and notes for which Locke was responsible as secretary to both Carolina and the Council of Trades and Plantations. The problems encountered and the solutions suggested by Locke and his patron Shaftesbury, will be shown to reflect the general experience of all the English colonies. The views of the English colonizers towards the 'Indian problem' will be given particular consideration.

Locke's views on English colonization of America develop within the context of several specific debates occurring in England during the latter half of the 17th century. Firstly, Locke writes in the tradition of English economic writers of his time, including Thomas Mun, Sir Josiah Child and Charles Davenant, who defend the English plantation before a highly skeptical audience at home.³² Until the beginning of the 18th century, most of England's politicians were opposed to English

settlements in America, because it was perceived to be a drain on English fortunes. Both Locke and his patron Lord Shaftesbury had considerable personal, political, and philosophical interests in the well-being of the English plantations of America, and Locke uses his Two Treatises to defend the cause, using the same arguments as Child and Davenant to defend the plantation against the skeptics.

Secondly, Locke adopts, in his defense of England's plantations, a specific set of arguments made against those Englishmen in America who claim England's right to land is limited by the prior occupation of the Indians. Locke, in the tradition of John Witherspoon, Samuel Purchas, William Strachey, and others, argues that England has the right to take land claimed by the Indians for a variety of reasons which shall be considered when we come to that chapter.³³

After we have examined the travel books, Locke's colonial experience and the intellectual traditions within which he wrote about political theory, we shall turn specifically to the Two Treatises and the fourth question to be asked, namely, to what extent is Locke's theory of the natural state and its central focus on property an articulation of his ideas on colonial issues? The fifth chapter of the Second Treatise is noteworthy for containing three quarters of the references to American Indians in the work as a whole, while including, concurrently, almost all the examples of property defined as

land, rather than life or liberty as it is conceived elsewhere in the Two Treatises. These figures are not coincidental but rather a reflection of Locke's decision to write a political justification for England's appropriation of land claimed by the Indians in America. It will be argued that Locke's Two Treatises was a response to England's need, by virtue of its colonial aims in America, for a new definition of property. Until the end of the 17th century, when the English actually settled in the new world, property had been defined as occupation. However, this definition became a problem in America when the Indians claimed, by virtue of their occupation, proprietorship in certain tracts of land, coveted by the English. A new definition of property, which would allow the English to supercede the rights claimed by virtue of occupation, was needed. The Two Treatises of Government provided the answer. Labour, rather than occupation will begin property and those who till, enclose, and cultivate the soil will be its owners. England supercedes the right of occupation by the Indians by virtue of their specific form of labour. Suddenly a whole continent was open to English colonization, and agrarian labour became the basis of both England's colonial claims and Locke's Two Treatises.

While Locke writes in the context of, and with the same interests as, those defending England's colonial aims, his argument is wholly original for two main reasons. The first is that he bases England's claims over American land on natural

right rather than natural law or a grant from God or King, as previous defenders of England's colonies had done. Secondly, he provides a peaceful means by which the English may take over the land. As shall be discussed, Locke argues forcefully against the right of property by virtue of conquest. This argument is a direct attack on the views of Hugo Grotius and, more particularly the Spanish who justified appropriation of land by right of force.

In the last chapter of this thesis, we shall consider the impact Locke's theory has had in America, not in terms of its account of civil society but in terms of 'natural man', that is, the American Indian. Locke's influence on policies towards the Indians, it will be argued, was greatest during the period from the revolution until the decisions of Supreme Court Justice Marshall regarding the Indians which began in 1823.³⁴

Agrarian labour as the basis for one's right to property will be a theme heard first from the pulpits of 18th century New England, where preachers, such as Revs. John Bulkley, Ezra Stiles and John Witherspoon used Locke's theory to justify the American's right of property with regard to both the English, and the Indians.³⁵ Politicians, likewise, began to adopt Locke's theories, not only from their readings of Locke himself, but also from the work of other European thinkers who had used Locke as the basis of their own views on property, such as Sir William Blackstone, Emeric de Vattel and William

Paley.³⁶ No other political figure better demonstrates the use to which Locke's theory was put during this period than Thomas Jefferson. His views went beyond simply limiting Indians to certain parcels of land to a belief, as articulated by Locke in his Two Treatises, that the natural state must eventually succumb to civil society and the hunter's life to that of the farmer.

Notes

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17. For a discussion of Locke's ideas see, Ibid., p 63ff.
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Chapter 1: Locke's Travel Books

There has been a great debate surrounding John Locke's state of nature as described in his Two Treatises of Government. How natural man lives, his essential character, the level of internal peace or discord in such a state and its historical validity have all been subjects of controversy. Political philosophers have demanded a coherent answer to all the questions raised by Locke's ambiguous natural state, for upon it depends his account of the rights and obligations ascribed to man in civil society.

Most modern scholars have argued that the state of nature holds no historical validity, concluding that Locke drew the state of nature to be an analytical rather than historical abstraction. John Dunn, for example, posits that the state of nature is an 'ahistorical condition', a 'topic for theological reflection, not for anthropological research'. Dunn argues that Locke was attempting to 'devise a criterion which was outside of history, in terms of which to judge the moral status of the present political structure.' He concludes emphatically, 'it is neither a piece of philosophical anthropology nor a piece of conjectural history. Indeed it has literally no transitive empirical content whatsoever.'¹ C.B. MacPherson comes to a similar conclusion:

Locke, like Hobbes, introduces the 'natural' condition of mankind not as an historical

condition existing before the emergence of civil society but as a logical abstraction from the essential nature of man.²

Locke, however, did see his state of nature existing in an historical sense. Clearly he believed that governments exist in relation to one another as in a state of nature but, more significantly, Locke conceived of native Americans as examples of natural men and thus uses them to draw conclusions about conditions in the state of nature.

The confusion over the historical authenticity of Locke's state of nature arises when commentators assume that the state of nature is an historical model of European society. Thus, those who conclude that Locke was only using the state of nature as a purely hypothetical construct reject the idea that such a state existed prior to that of every part of European civilization. Nevertheless, one can reject this historical notion of a universal natural state while still recognizing that Locke believed that such natural states did exist at the time of his writing, amongst the Indians of America. While many modern scholars have overlooked the American dimension of Locke's state of nature, a few, such as Richard Ashcraft have recognized the importance of the new world to Locke's understanding of natural man.

Since [Locke's] arguments rest upon appeals to historical, demographic and sociological evidence derived from records of voyages to the new world, this aspect of Locke's discussion of the state of nature has a distinctly empirical cast to it.³

Thus, while Locke believed that his state of nature helped him to draw logical conclusions about civilized man, it was by no means based upon pure hypothetical conjecture. Locke based his account of natural man on the descriptions provided by the dozens of travel books he had in his library on the Americas. Many modern commentators overlook the fascination amongst the learned men of 17th century England in the 'new world'. Locke was not alone in his fascination with the 'new world'. Many of his contemporaries were equally absorbed by the discoveries being made by European explorers, as evidenced by the wide circulation amongst the 17th century English elite of such books as Sir Walter Raleigh's History of the World, or Samuel Purchas's Pilgrims or Richard Hakluyt's Principle Navigations.⁴

Locke owned all of these works and used them, along with other accounts of the new world in his library to provide concrete evidence of the character of 'natural man'. While his choice of information, was of 'a distinctly empirical cast', it was not scientific, as Locke only chose those historical examples which would support his overall theory. Locke's selective use

of information from his library can be accounted for by his view that one's theoretical principles should be established before examining history for examples. Thus he writes in his journal,

'One who hath well settled in his mind the principles of of morality and knows how to make a judgement on the actions of men...may learn great and useful instructions of prudence from a study of history.'⁵

As such moral principles are primary, a 'study of history' must be reconcilable to these foundations. It is this pattern he seems to have adopted in his Two Treatises, when he uses historical examples of natural man to support his theories regarding the nature of property and civil obligation.

In the Two Treatises, Locke criticizes Sir Robert Filmer, for failing to reconcile his philosophy with the facts; a point, according to Richard Ashcraft, which is central to Locke's critique:

The telling argument against Filmer's theory is that for all its reliance upon 'scriptural history', it cannot 'be accomodated to the nature of things', nor can it 'be made to agree with that

constitution and order which God had settled in the world.'⁶

Locke sets out, instead, to develop a theory based upon his principles governing civil society, supported by historical examples. Locke's method, however, is problematic for in reconciling fact with theory, when the latter is established first in order to 'make a judgement' on the former, one must necessarily fashion 'things' to elucidate the theory rather than to understand the things in themselves. As a result, Locke chose only those aspects of native American life which fit his theory. While native Americans, are used by Locke to explain his principles of natural rights and civil obligation; an understanding of the real natural man is partial and distorted.

Locke's perceptions of the new world derived from two principle sources. The first was his collection of travelogues; volumes written by European explorers to the new world about what they encountered during their voyages. The second was his more practical involvement in colonial administration; first through his secretarial work to the Lord Proprietors of Carolina, secondly through the Council of Trade and finally as a Commissioner on the Board of Trade. In both cases, he and his colleagues were absorbed by the question of British colonial practise toward native Americans. Locke's perceptions of native Americans are both revealed through

his work on behalf of the Empire and shaped by the colonial experiences he encountered.

I -THE TRAVEL BOOKS: LOCKE'S HISTORICAL EVIDENCE

In this chapter, we shall consider the former source, namely his impressive collection of travelogues. In 1965, John Harrison and Peter Laslett published The Library of John Locke, within which they listed 195 titles under the category of voyages and travels. Most of these describe trips to the Americas by European explorers.⁷

Such voyages were very expensive to mount and were usually sponsored either by the monarchy or by the church in Europe. It must be born in mind in analysing these texts that writers were interested in two main goals in relaying their descriptions of native Americans back to Europe, namely the enlargement of a kingdom or church. Thus Father Joseph D'Acosta, head of a Jesu'it College and quoted by Locke in his Second Treatise, writes in his Natural and Moral History of the Indies,

The intention of this Historie is not onely to give knowledge of what hath passed at the Indies, but also to continue this knowledge, to the fruite

we may gather by it, which is to helpe this people for their soules health, and to glorifie the Creator and Redeemer, who hath drawne them from the obscure darkenes of their infidelitie and imparted unto them the admirable light of his Gospel.⁸

Father Cristoval D'Acuna makes clear that the objective is not just Christian but political.

Such is the sum of the new discovery of this great river which excludes no one from its vast treasures, but rewards all who wish to take advantage of them...those who are most interested in this discovery, are the zealous men who seek the honour of God and the good of souls...faithful ministers of the Holy Gospel, that, by its brightness, they may dispel the shadow of death in which these miserable people have lain for so long a time...this new vineyard will always require fresh and zealous labourers to cultivate it, until it is made entirely subject to the keys of the Roman church.⁹

Similarly Gabriel Sagard Theodat was appointed, as is made clear in the preface of his book, to bring the church to North

America. M. De La Salle, a French explorer, expresses most succinctly the dual nature of his voyage:

The design of travelling from the Lake of Frontenac in Canada, to the Gulf of Mexico through a vast unknown country, [is] to bring the inhabitants to the knowledge of the Christian religion, and extend the dominions of France.¹⁰

The purpose of the expeditions necessarily shaped the resulting descriptions. In order to understand how these travelogues were used by Locke, we must examine what he chose both to include and ignore in his final description of natural man and the implications such choices had on native Americans.

From the earliest accounts of explorers to North America, Locke would have found descriptions of a 'state of nature'. Sir Walter Raleigh, the first Englishman to attempt colonizing New England, wrote extensively about the peoples of America and his travels there. In 'A Discourse of the Original and Fundamental Cause of Natural, Arbitrary, Necessary and Unnatural War', he introduces the 'state of nature':

The mere state of nature, of men out of community, where all have an equal right to all things; and I shall enjoy my life, my substance, or what is dear to me, no longer than he that has more cunning or

is stronger than I, will give me leave: for natural conscience is not a sufficient curb to the violent passions of men out of the laws of society.¹¹

It should be noted that Raleigh bases his state of nature on his observations of American Indians. He claims a fundamental freedom and equality in this natural state. Moreover, even though natural law exists, man will still, eventually, succumb to the greater forces of passion within himself. This is similar to Locke's conception of natural man. Raleigh goes on to say:

A people leaving the state of nature have entered into a community, and made laws, as they justly may to preserve that community, which laws are to be obeyed under the penalty of displeasing God himself; yet the administrators of those laws, being visibly and incurably defective in preserving the whole may be removed; for...where the people have no such right, they have lost all liberty.¹²

Here we see that Raleigh's natural men, like Locke's, enter into a community and thereby form laws to insure its preservation. Moreover, Raleigh allows for a dissolution of government where the 'administrators' can no longer preserve

the whole. The people's right to dissolve such governments is clearly based on their more fundamental right of natural 'liberty' and is reflected, in part, in Locke's important chapter in the Second Treatise on the dissolution of government.

Perhaps the most profound element included in almost all of the travel books read by John Locke was the essential distinction between the civilized Christian man and the pagan, American savage. The latter, by virtue of the Christian faith, had to be converted to the former. The starting point in these analyses was European civilization; explorers, therefore, soon ascribed to the mythical 'savage', the 'other', attributes which were the antithesis of those found in European philosophy and religion. Natural men were perceived either as innocents still existing in a garden of Eden, or followers of the devil. This seeming contradiction in the moral worth of 'natural' man can only be understood in relation to the view such thinkers took of civilization.

Those who viewed European civility as essentially good saw the savage of North America as bad; conversely those who viewed civilization as primarily a set of restrictive and binding obligations on the freedom of natural man saw the same savages as essentially good. This distinction between the noble and ignoble savage has been explored in some depth by various scholars. According to Bernard Sheehan,

Savages might be either noble or ignoble, either the guardians of pristine virtue or the agents of violent disorder. Savagism assumes meaning only in the sense that it inverted the civil condition.¹³

What is essential to both types of descriptions, is the central idea that savagery is a condition both theoretically defined by and historically prior to civilization and must necessarily yield to its onslaught.

Once classified as a savage, the Indian could be expected to play out his role in relation to the civil order. Either he would make the transition to civility or he would resist the influence of European society and face destruction.¹⁴

The 'savage' described in these travelogues grew progressively more ignoble as conflicts grew between the natives and European settlers.

In the history of political thought we can certainly see both the ignoble and noble savage described in the writings of Thomas Hobbes and Jean Jacques Rousseau respectively. Both men, familiar with exploration in the new world, could certainly find the data to support their own perceptions, but their differing accounts of natural man depend on their

views of civilization. Thus Hobbes, searching for the order and stability of civil society, paints its inversion as a bleak and ignoble natural state. Conversely, Rousseau's natural man, noble and free provides the perfect counter-point to a degenerative civilization which enslaves individuals and creates inequalities.¹⁵

John Locke seems to incorporate both in his natural state. This ambiguity is essential to Locke's civil state as both conceptions, the noble savage living peacefully and in recognition of the law of nature and the ignoble savage entering the state of war over 'every the least difference', are needed if Locke is to argue that man by virtue of his natural rights may both recognize civil authority and dissolve it. Thus Locke used the descriptions in the travelogues to create first a reason for entering civil society (thus the ignoble tendency toward a state of war) and then also an alternative preferable to absolute tyranny (namely the noble savage living peaceably together.) Both descriptions can be found in European descriptions of native Americans. Each will be considered in turn.

II - NATURAL MAN: NOBLE vs IGNOBLE SAVAGE

The idea of the noble savage can be traced in the Christian tradition to the ideal of Adam in the Garden of Eden. Many of the early descriptions of the Americas which Locke would have read refer to the new world in terms of such a paradise. For example, Acuna describes his new world as follows:

But of the river of Amazons it may be affirmed that its banks are a paradise of fertility, and if the natural riches of the soil were assisted by art, the whole would be one delightful garden.¹⁶

Father Sagard Theodat also speaks of the great plethora of plants and animals, referring to the area as 'notre jardin'. Within these settings the natives are often likened to Adam and Eve.

An important aspect of the noble savage inhabiting the garden of Eden is the plentitude of available resources. Repeatedly authors describe the abundance of fruit, vegetables and other materials available to natural man. These observations are usually coupled with a comment on the small amount of labour necessitated by such an easily available cornucopia. Sheehan comments:

Paradism exaggerated the resources of the new world and the ease with which they could be exploited. In this process the Indians played an ambiguous part. For all their virtues, they had failed to use what nature provided.¹⁷

Locke adopts this paradisaical view of America when he describes it as, 'rich in Land...with the materials of Plenty, i.e. a fruitful Soil, apt to produce in abundance'. The inhabitants, Locke goes on to say have failed to improve what nature has provided.¹⁸

The final aspect of the noble savage described in these accounts is the recognition that civilization has degenerated with the evolution of man. Likewise, those still existing in the innocence of the natural state must, by virtue of the biblical account, inevitably fall from grace. It is this fall which transforms the noble man into the ignoble savage. John Locke clearly shared this view. The Christian influence on Locke's conception of the state of nature is revealed in a note he wrote about the origins of man in 1693:

[Man, created by God, was] put into possession of the whole world...instinct and reason carried him the same way, and being neither capable of covetousness or ambition when he had already the first use of all things...[fall of Adam mentioned]

and when private possessions and labour which now the curse on the earth had made necessary by degrees made a definition of conditions it gave room for covetousness, pride, and ambition which by fashion and example spread the corruption which has so prevailed over mankind.¹⁹

The progression in Locke's state of nature as outlined above is one of an increasingly degenerate existence, culminating with the introduction of money, inequality, and conflict between people; in essence it is the political philosopher's version of Adam's fall. As Richard Ashcraft writes of Locke, 'Beneath the veil of 'history' of course is the Christian view of man's fall from Grace.'²⁰ The transformation of natural man from the peaceful and free nomad to the vicious savage within the state of war is as inevitable as the fall of Adam from the Grace of God. Thus we arrive at the ignoble savage. For many European explorers the native Americans encountered went well beyond fallen man; he was described as violent in nature, without any discipline or industry, uncivilized in his personal habits and a worshipper of the devil.

Samuel Champlain comments: 'They have among them certaine Savages...which speak visibly with the Divell'. He concludes that, 'for the most part', Indians live like 'brute beasts'. Sir Walter Raleigh makes similar claims:

The Mexicans and other people of America were brought by the devil under his fearfull servitude in which he also holdeth the Floridians and Virginians at this day.²³

As both English settlers and natives became increasingly hostile towards each other, the European rhetoric about the vice of native life was raised to a feverish pitch. In a universe created by a Christian God, only Satan could be responsible for the native's fallen and degenerate way of life. The perennial Christian struggle between good and evil was thus imposed on the inhabitants of the new world. As Sheehan puts it:

Virtue could not exist without a corresponding vice. Christian theology accepted the role of Satan in a world created and government by God...[Thus] it involved a real struggle in the European soul to resist the temptations of incivility, the dangers of violence, brutality, and disorder that men found within themselves. The Indians saved European society from itself.²⁴

Once percieved as a threat to civil and religious order, in both a practical and philosophical sense, the native American was under attack, and his natural rights came into question.

For example, Samuel Purchas justifies the deprivation of natives rights due to their savage nature:

If they bee not worthy of the name of a Nation, being wilde and Savage: yet as Slaves, bordering rebels, excommunicates and out-lawes are lyable to the punishments of Law, and not to the priviledges; So it is with these Barbarians, Borderers and Out-lawes of Humanity.²⁵

For each of these explorers, natural man is ignoble to the extent that he is inferior to men in civil society. Locke adopts the ignoble savage written about in many of his travelogues in his discussion of the degeneration of the state of nature into the state of war.

Natural men or native Americans are inferior to Englishmen, according to Locke, primarily because his reason has not yet developed to the same extent, comparing the gap in understanding to that between children and adults. In An Essay Concerning Human Understanding, Locke draws a parallel between native Americans, idiots and children, asserting that all have a diminished sense of understanding and responsiblity before the law.²⁶ This parallel between natural men and children is extended in Locke's Second Treatise to a comparison between childhood and the state of nature.²⁷

If we may not suppose Men ever to have been in the State of Nature, because we hear not much of them in such a State, we may as well suppose the Armies of Salmanasser or Xerxes were never Children...For 'tis with Common-wealths as with particular Persons, they are commonly ignorant of their own Births and Infancies.²⁸

Perhaps the clearest example for Locke that native Americans are inferior to Europeans in their understanding is their religious beliefs. In contradistinction to Locke's own views on the unity and singularity of God, the native Americans often worshipped a plurality of Gods, something Locke, despite his views on religious toleration, clearly found unacceptable:

What are these people (polytheists), pray, if not disguised atheists? For it is just as impossible that many Gods either exist or can be apprehended, as that there is no God. In fact to increase the number of Gods means to abolish divinity.²⁹

In the Essay Concerning Human Understanding, Locke asks: 'What true or tolerable Notion of a Deity, could they have, who acknowledged, and worshipped hundreds?'³⁰

The inevitable conclusion for the explorers to the new world and thinkers like Locke is that the ignoble savage would be

converted to Christianity and civil life. Conversion became an important theme to the early colonists. It was often argued that force would be unnecessary because once the superiority of a Christian life had been demonstrated to the natives, they would, by virtue of their own untapped reason, inevitably convert. Acuna comments:

These tribes of infidels have good dispositions...
if they received notice of the true Creator of
heaven and earth they would embrace his holy law
with little hesitation.³¹

Acosta writes of his fellow explorers: 'When they shew the Indians their blind errors by lively and plaine reasons, they are presently perswaded and yeelde admirably to the trueth.'³² Like many of the explorers, Locke believes that Christianity will spread throughout the world by virtue of the growth in natural man's reason.

The suitableness of such a Notion [the Christian God] to the Principles of common Reason, and the Interest Men will always have to mention it often, must necessarily spread it far and wide; and continue it down to all Generations...some imperfect and unsteady Notions, conveyed thereby to the unthinking part of Mankind [my emphasis].³³

The conversion of the native Americans from paganism to Christianity, so pervasive in the accounts of explorers to the new world is not only endorsed by John Locke but, in the Two Treatises, is expanded to encompass the broader notions of the natural state and civility generally. Some explorers had argued that a conversion to civility was a necessary corollary to the natives accepting Christianity. Thus, Samuel Purchas concludes that the English were in America to:

recover them [the Indians] if it be possible, as by Religion, from the power of Sathan to God; so by humanity and civility from Barbarisme and Savagenesse to good manners and humaine polity.³⁴

James Axtell writes that, for early explorers, it was necessary to 'civilize savages before they can be converted to Christianity and that in order to make them Christians, they must first be made men'.³⁵ In both cases of conversion, religious and political, the men in the former natural state would inevitably yield to the latter stage of civilization. Locke, like these explorers, assumed that natural man would, by virtue of his own reason, join civil society. This movement away from the state of nature to civil society was for Locke, not only inevitable but fairly rapid.

Thus Mankind, notwithstanding all the Priviledges of the state of Nature, being but in an ill

condition, while they remain in it, are quickly driven into Society. Hence it comes to pass, that we seldom find any number of Men live any time together in this State.³⁶

In essence, Locke adopts not only the underlying dichotomy of these travelogues between the darkness of pagan savagism and the lightness of Christian civility as the basis for his state of nature and civil society, respectively, but he also transforms the idea of religious conversion into the more political doctrine that the state of nature will inevitably yield to civil society. The Second Treatise is, in fact, an explanation of this transformation.

III - THE TRAVEL BOOKS: LOCKE'S OMISSIONS

While native Americans were the models for Locke's natural man and he garnered much of his information from accounts written by explorers in the new world, it is clear that Locke was selective in the 'facts' he chose to include about them. His exclusions can only be understood in terms of his overall objectives in writing the Two Treatises and his desire to understand and describe the rights and duties of Europeans, that is civilized men, and not those of his original subject, namely natural man. Locke also believed that history was only

useful to those thinkers who had already 'well settled' in their minds 'the principles of morality' and were using historical examples only to make 'judgements on the actions of men.'³⁷

Thus, Locke's descriptions of natural man, while drawn from accounts of native Americans, were forced into a theoretical framework demanded by both the needs of his political philosophy and his moral judgement of civil man; what did not fit was ignored. Let us consider Locke's exclusions in more depth.

Locke's state of nature proceeds through a series of stages. Beginning with nomadic life, natural man gradually developed a private system of cultivation which leads to the use of money, conflict and inequalities and the need for civil government. William Batz in his article, 'The Anthropology of John Locke', argues that Locke in fact borrowed this evolutionary process from Acosta's account of the Mexican natives.

Locke merely borrowed the order of Acosta's account, extracted the pattern from its Aztec embodiment, and so acquired the outline for his own developmental theory of political institutions.³⁸

Locke himself cites Acosta in the Second Treatise as providing supporting evidence for his state of nature.

And if Josephus Acosta's word may be taken, he tells us, that in many parts of America there was no Government at all. There are great and apparent Conjectures, says he, that these Men, speaking of those of Peru, for a long time had neither Kings nor Common-wealths, but lived in Troops...which have no certain Kings, but as occasion is offered in Peace or War, they choose their Captains as they please.³⁹

While Acosta does describe the invasion of the original peoples of Mexico, the barbarous and savage Chicmeco by the more civilized Nahuatlans who by dividing the land into fixed portions served to 'increase and beautify their commonwealth', there are some profound difficulties in Batz's conclusion that Locke used this description as a model for his own natural state. These problems demonstrate Locke's capacity to ignore factual accounts in favour of the logic of his own argument. We shall consider these omissions or errors in turn.

Firstly, Locke claims in the Second Treatise that the initial form of government is monarchy.

If we look back as far as History will direct us, towards the Original of Common-wealths, we shall generally find them under the Government and Administration of one Man.⁴⁰

In fact Acosta claims that the first form of government brought to the people of Mexico and Peru was that of 'comminalities' defined by Acosta as 'rule of the many'.

There was not in Peru in olde time, any king or lord to whome all obeyed, but they were comminalities...where they were governed by the advice and authoritie of many, which are as it were Counsellors.⁴¹

It was from within the commonality, that monarchy developed. In many tribes of the Indies beyond Peru itself, according to Acosta, no such king or sovereign was ever present:

Many nations of the Indies have not indured any Kings or absolute and soveraigne Lords, but live in comminalities.⁴²

Secondly Locke argues that monarchy not only existed first but was, being simple, the most suitable form of government for an early period of society.

It was no wonder, that they should pitch upon, and naturally run into that Form of Government, which from their Infancy they had been all accustomed to...To which, if we add, that Monarchy being simple, and most obvious to Men, whom neither experience had instructed in Forms of Government, nor the Ambition or Insolence of Empire had taught to beware of the Encroachments of Prerogative...but also best suited to their present State and Condition; which stood more in need of defence against foreign Invasions and Injuries, than of multiplicity of Laws.⁴³

Furthermore, in some cases for Locke, monarchy is 'no Form of Civil Government at all' but men still existing within the state of nature.⁴⁴ Acosta's account, on the other hand, not only states that monarchy was the last and most developed form of government but was the best. Thus he writes how explorers to Latin America have found three forms of government, the 'best' being a monarchy.⁴⁵

Thirdly, while Locke claims that civil government, including monarchy, was established by common consent, Batz himself admits that 'as Acosta relates it, the monarchy was established [by] 'some excellent men', most likely the aristocrats', and not by consent of the people as a whole.⁴⁶ This is particularly ironical, as in the Second Treatise,

Locke cites Acosta's account as specific evidence that civil government was established by men whose 'consent were all equal, till by the same consent they set Rulers over themselves. So that their Politick Societies all began from a voluntary Union.'⁴⁷

Finally, Locke claims that the monarchy was hereditary.

Conformable hereunto we find the People of America, who...enjoy'd their own natural freedom, though, caeteris paribus, they commonly prefer the Heir of their deceased King.'⁴⁸

Acosta points out as the characteristic feature of monarchies the fact they were elected, not hereditary. This was also the case with the Hurons where Sagard claims that monarchs were originally appointed through election.⁴⁹ While Locke admits at another point, that monarchies have been elective he fails to reconcile these origins with his own theory that nations evolve, as a child does from existing under paternal autocratic rule to the age of reason where they are free to choose, that is to elect, their own form of government.⁵⁰

Instead, he uses the fact of elected monarchies to attack Sir Robert Filmer's theory that monarchy was natural, linked in paternal authority to the original king, Adam. Stating that some men, meaning Filmer, have mistaken hereditary monarchy as

the natural form of government for all time, Locke argues that such monarchs exist only in the beginning of civil societies, when the people's understanding is immature and their only model until now of authority has been the father. This will necessarily evolve, with maturity, into other forms of government, including an elected monarch.

The Father's Pre-eminency might, in the first[my emphasis] institution of some common-wealths, give a rise to, and place, in the beginning, the Power in one hand; Yet it is plain, that the reason, that continued[my emphasis] the form of Government in a single person, was not any Regard, or Respect to Paternal Authority; since all petty Monarchies, that is, almost all Monarchies, near their Original, have been commonly, at least upon occasion, Elective.⁵¹

Locke thus argues that commonwealths may in the beginning, that is, in their immaturity, start as paternal monarchies, but 'continue' not in a hereditary manner but as an elected position. Once again Locke ignores his evidence, for Sagard makes clear that the tribes in Canada had in fact done the opposite to what Locke described, namely elected their monarchs first, but later followed a rule of inheritance.⁵²

The gap between Locke's theory and evidence arises from his decision to use 'fatherhood' as the framework within which the origins of government must be initially understood and the starting point to attack Filmer. Locke states:

Thus, whether a Family by degrees grew up into a Common-wealth, and the Fatherly Authority being continued on to the elder Son, every one in his turn growing up under it, tacitly submitted to it, and the easiness and equality of it not offending any one, every one acquiesced, till time seemed to have confirmed it, and settled a right of Succession by Prescription.⁵³

The monarch is thus described as a father who protects and educates his children throughout their infancy.

And unless they had done so, young Societies could not have subsisted: without such nursing Fathers tender and carefull of the publick weale, all Governments would have sunk under the Weakness and Infirmities of their Infancy, and the Prince and the People had soon perished together.⁵⁴

At the point, however, that children or nations reach the age of reason, Locke argues that they are no longer under any

obligation to their father or sovereign respectively. This is a direct attack on Filmer's theory of paternal right.

[There are] those, who would perswade us, that by being born under any Government, we are naturally Subjects to it...because our Fathers or Progenitors passed away their natural Liberty, and thereby bound up themselves and their Posterity to a perpetual subjection to the Government.⁵⁵

Locke argues instead that paternal authority is limited:

[One] cannot, by any Compact whatsoever, bind his Children or Posterity. For this Son, when a Man, being altogether as free as the Father, any act of the Father can no more give away the liberty of the Son, than it can of any body else.⁵⁶

Paternal authority is not, as Filmer claims, a derivative of Adam's divine rule over other men, through the institution of monarchy in perpetuity. Rather, for Locke, it is limited to the first immature stage of political and personal development. The lives, liberties and estates of individuals or nations who reach the age of reason are no longer under the authority of their fathers or princes unless consented to at that time. Central to this whole theory is the notion of consent.

In this discussion of the origins of political society, Locke is trying to achieve two basic ends. Firstly he is trying to undermine Filmer's notion of divine rule and hereditary paternal authority via Adam. Secondly, he is trying to establish that true government originates in consent between individuals of mature reason. Consequently, he is forced to argue that hereditary monarchy, arising from the model of paternal authority, is the most simple and primitive form of government. Nations, like children, mature and, contrary to Filmer's argument, must ultimately consent to political authority. Thus Locke's argument leads him to conclude that monarchy must, at this later stage, be established by consent, perhaps even by election.

In order to prove his point Locke ignores Acosta's claims that democracy was the first form of government in Mexico, that many provinces had no such monarchs, that monarchy was the most advanced and best form of government in the Indies, that it arose from democracy and not vice versa, that it was established not by common consent but by aristocrats; and that it was often elective from its inception and not constituted as such later on.

A second element of the Two Treatises which illustrates Locke's omission of certain aspects of native American life irreconcilable with the natural man demanded by his political philosophy is his state of war. Locke's state of nature

presupposes individual savages whose decision to enter into a state of war is contingent upon the protection of their individual property. In fact, most of the warfare which occurred between native Americans in the new world was tribal rather than individual. One of the greatest flaws of the state of nature device, when it is used as a mirror to European civilization, is its complete obliteration of any specific characteristics of the individuals themselves. Thus natural man belongs to no tribe and has no political or ethical codes associated with that collectivity. Rather he is an individual amongst an undifferentiated and ahistorical mass of non-European, non-civil savages.

War, as a consequence, must be explained in terms of private lives, liberties and properties rather than as a result of conflict between two nations as it might be in civil warfare. In creating such a natural state, Locke ignores the countless references to nationhood in his travelogues and more specifically the fact that tribes, not individuals, engage in war. Acuna writes:

All this new world, if we may call it so, is inhabited by barbarians, in distinct provinces and nations...they exceed one hundred and fifty all with different languages.⁵⁷

Acuna then goes on to describe each of these nations in some detail. Like all men and all countries, each have their own individual and collective characteristics. Moreover, nations rarely, if ever fight within themselves. Even the Cashibos, described as 'cannibals' who none would 'dare to venture amongst', 'will not kill someone within his own tribe'.⁵⁸

Hostilities were not caused either in Europe or the Americas by the lack of a common authority to adjudicate differences. Neither could they simply be explained as the result of individuals protecting their own self interests. The true state of war is more often than not groups of individuals with common identities and goals fighting against other groups either for access to a scarce common resource, or for their collective pride or glory or both. The theoretical consequence of such a state of war is to justify the forceful inception of natural men, such as native Americans into a civil state, as the latter is defined as preferable to the former. Locke clearly uses his formulation of the state of war as 'one great reason of Mens putting themselves into Society, and quitting the State of Nature'.⁵⁹

A third aspect of Locke's natural man is his failure to use his industry to produce maximum levels of agricultural or mineral goods. This is a common theme in Locke's Second Treatise and other writings and is linked to the Christian notion that man should develop the skills provided by God to

exploit the world's resources. Knowledge and industry must be improved, therefore, as an obligation to the Creator.

We may truly say, nature gives us but the seeds of it; we are born to be, if we please, rational creatures, but it is use and exercise only that makes us so, and we are, indeed so no farther than industry and application have carried us.⁶⁰

He goes on to say how such faculties are lacking amongst American Indians:

Tis rational to conclude, that our proper Employment lies in these Enquiries, and in that sort of Knowledge, which is most suited to our natural Capacities, and carries in it our greatest interest, i.e. the Condition of our eternal Estate...Of what Consequence the discovery of one natural Body, and its Properties may be to humane Life, the whole great Continent of America is a convincing instance: whose Ignorance in usefull Arts [denies them the use of] the Mineral of Iron.⁶¹

These views are reflected in the Second Treatise, in the chapter on property when he writes:

There cannot be a clearer demonstration of any thing, than several Nations of the Americans are of this, who are rich in Land, and poor in all the Comforts of Life; whom Nature having furnished as liberally as any other people, with the materials of Plenty, i.e. a fruitful Soil, apt to produce in abundance...yet for want of improving it by labour, have not one hundreth part of the Conveniences we enjoy.⁶²

This idea that native Americans are primitive in their use of land is prevalent amongst English explorers of this period.

As Karen Kupperman comments:

[There is an] assumption which was universal among Englishmen that their technology was obviously superior to that of the Indians.⁶³

Such a conception was essential to the idea of development from primitive forms of nomadic life to the civilized cultivation of land; the latter by definition must not only be superior to the former, it must supersede it. The problem however, is that such a theory disregards the fact that many English settlers in fact depended on the natives and their technology for food. Sheehan comments:

The native people of Virginia derived a major portion of their food from farming, a practice quickly noted and exploited by the English...although they occasionally acknowledged and regretted their dependence, the English failed utterly to see the incompatibility between reality and their conception of Indians as savage people. Even while subsisting on Indian corn, they stressed the scarcity that they believed inevitably afflicted those unable to transcend the savage condition.⁶⁴

This dependence on the natives for food was not only recognized but became a matter of concern amongst the English settlers. For years English technology simply was not as efficient as that of the natives. Thus, two early settlers write:

Writers from all areas tell of the Indians instructing them in planting and tending of Indian corn, but the Plymouth colonists complained that they still had smaller harvests than the Indians did.⁶⁵

It was common practise, as these writers point out, for native Americans to instruct settlers in the proper cultivation of

American crops. William Wood writes of New England natives in 1634:

Many wayes hath their advice and endeavour beene
advantagious unto us; they being our first
instructors for the planting of their Indian
corne, by teaching us to cull out the finest
seede, to observe the fittest season, to deepe
distance for holes, and fit measure for hills, to
worme it and weede it, to prune it and dresse it
as occasion shall require.⁶⁶

Why then does Locke choose to ignore these facts in his Second Treatise and instead continue to claim that native use of land was negligible while the Europeans improved its value ten, one hundred or a thousand times. First, it is crucial to Locke's whole argument about property that labour and industry develop in tangent with civil society, being in all ways superior to the natural state and closer to God. Secondly, the notion that native Americans did not properly use God's gifts, as Europeans did, was a common belief amongst those English involved in settling the new world. Locke clearly concurred with these views.

Although Locke's theory of property will be examined in great detail in chapter six, it is worth inquiring here, how Locke's analysis of property in the state of nature compares to that

of the Indians described in his travel books. First, his assertion that private property was essential to natural man from his inception would not be supported by most commentators. For example, Locke's description that natural men exist 'confining their desires within the narrow bounds of each man's small property' is irreconcilable with descriptions such as that of Robert Gray who wrote in 1609, 'These Savages have no particular propriety in any part or parcell of that Countrey, but only a generall recidence ...there is not meum and teum amongst them.'⁶⁷ As Gray and several others describe the attitude of native Americans, the notion of private possession was simply not part of their vocabulary. Using the earth's resources, through labour, did not imply ownership of those resources as Locke assumes.

Secondly, his assertion that cultivation of land is necessarily private again ignores practises of native Americans. The Hurons, described as 'socialistic in type' by later commentators owned and cultivated their property as a community. Thus Sagard comments, 'All the forests, meadows, and uncleared land are common property.'⁶⁸

Not only was property owned and cultivated in common but some tribes even traded as a community, establishing simple forms of social welfare. Thus Acuna describes the Chiquito tribe as follows:

[The Chiquitos] cultivate cotton and sugar cane. Their produce is sold for the benefit of the community, and a fund is formed for the relief of the infirm and aged...For manufacturing sugar, they fabricate their own copper boilers and they understand several trades.⁶⁹

Their level of industry is clearly fairly advanced in Lockean terms of development in the state of nature, and yet they continue to own, manufacture and sell their products as a collective entity. Families also often lived in collective units, as described in accounts such as those of M. de La Salle of Portage natives or Acuna's description of the Yoriman tribe.⁷⁰

Finally, Locke argues that the introduction of money allows natural man to store value, thus introducing inequalities between people when the limits set by natural law are transcended. Locke argues in this chapter that once something of value is discovered and known amongst men in the state of nature it will be used to store wealth. Locke states:

Thus in the beginning all the World was America, and more so than that is now; for no such thing as Money was any where known. Find out something that hath the Use and Value of Money amongst his

Neighbours, you shall see the same Man will begin presently to enlarge his Possessions.⁷¹

In fact some American Indians did produce metals that had 'the use and value of money' but chose not to use them to enlarge possessions. Acosta, quoted by Locke on a different subject in this chapter on property, writes:

We finde not that the Indians in former times used gold, silver, or any other mettall for mony, and for the price of things, but only for ornament...the maner of the Indians trafficke, and their buying and selling, was to exchanges, and give things for things.⁷²

Thus money is not something intrinsic to the state of nature or to natural man.

IV - CONCLUSION

In all of the examples given above, Locke chooses to ignore the accounts provided in his own books about the American Indian for very specific philosophical reasons. For example, in order to attack Filmer's theory of the natural law of monarchy and develop his own notion of popular consent, Locke

argues that hereditary monarchy is the initial form of government, followed by elective kings when a community reaches a certain point of maturity, to be replaced finally by a government based on popular consent, despite the fact that the European explorer he depends on most heavily for his information, namely Acosta, provides much evidence to the contrary. Similarly, Locke's arguments on the nature of war amongst natural men, their lack of industry and their propensity to own and cultivate land in a private fashion are all contradicted by the evidence at hand, of which Locke himself was aware. How could Locke be so selective in his evidence?

Locke's primary philosophical objective in writing the Second Treatise was to articulate the ends of civil, that is European, government. For Locke the most important of these ends is the preservation of property. In order to preserve individual property from both the vagrancies of other men and monarchs, it was necessary for Locke to posit that ownership of private property is, by nature, a right, based on individual cultivation. The American Indian was used to elucidate this theory and had to begin, therefore, to recognize, cultivate and own separate parcels of land before it could be considered that any type of social relations or society was established. Actual tribes which did not recognize this notion of ownership, or held land as a community, were thus irreconcilable with Locke's theory and

had to be ignored in the more important task for the philosopher of elucidating the rights of civil men. Locke's purposes, however, go beyond the purely philosophical, to the pressing colonial interests of England, which shall be discussed fully in the next three chapters.

Thus, Locke used his large collection of travel books to provide the empirical evidence of his natural man. From Sir Walter Raleigh's state of war to Sagard's 'primitive state of innocence', Locke had available to him the necessary requisites of natural man. Central to all of these descriptions was the fundamental dichotomy between the state of nature and civil society. Philosophically, the picture of the American Indian, which ultimately arose from Locke's selective use of his travel books, was a savage who had fallen from grace, who would eventually develop into civilized men in order to find salvation. In the meantime, he could be used as an inverted image of civil man and more importantly for Locke, as a natural being whose rights in nature could be used to justify the philosophical demands made of civil society, namely to protect and preserve the right of property.

The mythological dichotomy between civil and savage man, between good and evil, has thus come full circle. Beginning with the assumptions made by explorers to the new world in their travel books, translated by Locke in his philosophical treatise into a powerful political doctrine of civil

conversion, the Indian has found himself and will continue to be, for the next three centuries, a distorted inversion of civil society, and the ultimate victim of such myths.

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17. Father Gabriel Sagard Theodat, The Long Journey to the Country of the Hurons, The Chaplain Society, Toronto, 1939, pp. 210, 222., Acuna, p. 214; Sheehan, Savagism and Civility, p. 34.
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20. Ibid., p. 910.
21. Samuel Champlain, 'Voyage of Samuel Champlain', Hakluytus Posthumus or Purchas His Pilgrims, XVIII, p. 199.
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27. For a Locke's comparisons between children and the state of nature, see the Two Treatises, II, chapter 8.
28. Ibid., II, para. 101.
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30. Locke, An Essay Concerning Human Understanding, Book I, chapter II, para. 15.
31. Acuna, A New Discovery, p. 86.
32. Acosta, The Indies, p. 310.
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43. Locke, Two Treatises, II, para. 107.
44. Ibid., II, para. 90.
45. Acosta, The Indies, p. 426.
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Chapter 2: Colonialism and Natural Law

John Locke's state of nature and more particularly, his natural man, while derived empirically from the accounts of travellers to the Americas were created within a certain discourse peculiar to the late 17th century. Locke writes in the tradition of the natural law. Those commentators who have recognized this legacy in the Two Treatises, have nonetheless overlooked the extent to which 17th century natural law theorists were influenced by the colonial interests of their particular countries of origin. Natural law, which can be traced back to the time of Cicero and beyond, is transformed during the 1600's by the need to answer new questions posed, both on sea and land by the expanding colonial empires of Europe. Thus it is necessary to consider the natural law theorists who influenced Locke and the extent to which colonial concerns influenced both the questions that were posed and the answers they gave.

The two most important and influential thinkers to Locke's conception of natural law are Hugo Grotius and Samuel Pufendorf. Each shall be considered in turn in the context of the extraordinary changes occurring in Europe during this period, most particularly the impact of Dutch, Spanish and English colonial activities on the notions of natural law.

At the turn of the 17th century, European powers were exploring the far reaches of the globe. Each country differed in its approach to the world outside of Europe. Dutch and English

interests were represented mainly by private companies or groups of aristocrats to whom a proprietary patent would be issued, as manifest by the activities of the East Indies company or the early settlement of America. Others, such as the Spanish or Portuguese, colonized America through the auspices of church or state; yet others, such as Sweden, had very little colonial expansion outside of Europe. Having established a trading relationship or initial settlement in the Americas or East Indies, European monarchs or private companies would often defend jealously their new found wealth. Conflicts inevitably ensued.

I - COLONIALISM AND NATURAL LAW: HUGO GROTIUS

One particular example of relevance to our discussion was the conflict which arose between the Spanish, Portuguese and the Dutch East Indies company over trade in the Eastern Indies. The Spanish had a monopoly over trade in the area and the Dutch began exploratory journeys in order to secure their own trade. The Spanish and Portuguese reacted to the extent that one Portuguese ship was sunk and the booty was taken from it by the Dutch East Indies Company. Questions were raised about the right of trade generally and more specifically the taking of another ship's cargo. The East Indies company needed a defence. Hugo Grotius provided it in his treatise De Jure

Pradae (Law of Prize).¹ One commentator, Edward Dumbauld, explains the project and Grotius's role in it:

The question to be investigated is whether it is proper for the captors to receive as 'prize' the proceeds of property captured from the enemy...Certain shareholders...had questioned the propriety of the practise...Grotius was drawn into the dispute in 1604 when as a young lawyer of 21 he was retained by the directors of the Amsterdam Chamber of the East Indies Company to justify the practise of capturing enemy goods.²

It was not, however, just the question of appropriating an enemy's goods but the whole issue of the right to trade which was at stake for Grotius. Albert Hyma comments on this second purpose:

The greatest work of his youth, De Jure Pradae, was the direct result of his efforts to serve the East Indies Company. A part of its twelfth chapter became the famous booklet, Mare Liberum [Freedom of the Seas], the sole purpose of which was to prove to the world that the Dutch had as

much right to trade in the East Indies as did the Spanish and Portuguese.³

Mare Liberum was to be the only chapter to be published during Grotius' life, but the whole treatise provides the theoretical foundation upon which his later work would be based. Thus we shall consider De Jure Pradae in some depth and the relationship it reveals between the evolution of natural law and colonial practice.

Grotius himself reveals the purpose behind De Jure Pradae and the importance of colonial interests in writing it:

Some years ago when I saw that the commerce within India which is called East was of great importance for the security of the fatherland...I gave my attention to arousing the spirit of our countrymen to safeguarding bravely what had been so felicitously begun, since there had been put before my eyes the justice and equity of the case itself, the source from which in my opinion originated the confidence in law which has been handed down to us by the ancients. Therefore all the rights of war and prize and the history of those deeds of savagery and cruelty which the Portuguese

had perpetrated against our countrymen...I had detailed in a sufficiently complete Commentary which up to the present I have refrained from publishing.⁴

The chapter he did eventually publish, was done so because of Grotius's hope that he might,

...add courage to our countrymen not to withdraw a title from their manifest right and might find out whether it were possible to induce the Spaniards to treat the case a little more leniently.⁵

Grotius's arguments on natural right, particularly with regard to property, are thus firmly grounded in colonial goals. It is in this context that we shall review his subsequent thought.

In De Jure Pradae, Grotius draws a distinction between movable and immovable objects in order to create the basis for his claims about the freedom of the sea. Both Pufendorf and Locke, as shall be discussed, make similar distinctions. Appropriation, in the case of movable objects, is accomplished through 'attachment'. Immovable objects, on the other hand, cannot be acquired in the same way. Grotius argues that in this case some form of enclosure is necessary to claim property in land.

With respect to movables, occupancy implies physical seizure; with respect to immovables, it implies some activity involving construction or the definition of boundaries.⁶

It is important to note that Grotius is arguing that enclosure is necessary to private ownership in order to draw his conclusions about freedom of the sea. He argues that the sea cannot be enclosed or built on and therefore is open to all. No country has the right to stop others from sailing or trading thereon. Thus, enclosure, which Locke will ultimately use in his Second Treatise in relation to private appropriation of land, was originally incorporated into natural law and the origin of property in order to guarantee the common ownership of the sea. Each man's distinct colonial purposes allow him to draw his own conclusions from the same basic premises.⁷ Grotius also uses the famous ancient argument about theatre seats which states that while all seating is common to begin with and therefore open to all; a seat once taken and then left vacant by the occupier cannot be taken over by another.⁸

These arguments are neatly tailored to fit the needs of the European, specifically Dutch, colonizer. Grotius not only provides the freedom to reach the new world through his doctrine of Mare Liberum, and the justification for colonial acquisition in his theory of property, but now defends their

rights to claim dominion even if no longer occupying the piece of land. Richard Tuck comments:

Grotius had provided a useful ideology for competition over natural resources in the non-European world, [that is the] right to take what they wanted and protect against threats.⁹

The struggle over the right to trade in the East Indies became even more intense with the entry of England into the conflict. The Dutch now wanted to protect their interests and used similar tactics to that of the Spanish and Portuguese against their English counterparts. In 1611, the English presented a petition to the States General, claiming a national right under the doctrine of freedom of the sea to trade in the area. Grotius was chosen to represent Dutch interests as the head of a mission sent to England to resolve the issue. Ironically, Grotius argued on behalf of his employers, the Dutch East Indies Company, against an unqualified free trade on the seas. Albert Hyma points out the contradiction:

Grotius, in 1613, 'contradicts' the arguments of the Mare Liberum, which he composed in 1604. As the official spokesman for the Dutch East Indies Company in London, his aim is to show that the

English cannot expect to find a 'free sea' in the vicinity of the coveted Spice Islands.¹⁰

Grotius himself states,

Considering the great charge we were at in maintaining our trade there [East Indies], we tell the king that it is very hard that his subjects should trade in those parts, seeking a harvest at our expense, they escaping the cost.¹¹

Grotius recognized that natural law dictated the freedom outlined in his own Mare Liberum, but now the exigencies of Dutch colonial expansion forced him to argue that conventional law must be considered where the application of natural law is ambiguous. Thus in his response to the English he writes,

It must be recognized that many of the laws of nature...are indefinite...the monopolies which the Dutch had agreed with...the peoples of the East, thus, being founded on contract must be observed by others.¹²

Before these talks ended, Grotius had tried to persuade James I to join forces with the Dutch against the Spanish. His

endeavours ultimately failed and the two countries found themselves at war.

The wars between such colonial powers finally provoked Grotius to write his greatest piece of work, De Jure Belli and Pacis, which gives the most thorough view of Grotius's idea of the state of nature and natural law.¹³ Grotius begins this treatise by outlining the nature of war in his first book, turning to consider the specific reasons for conflict in the second. According to Grotius, the first legitimate cause of war is the protection of 'self and property'. It is necessary then for Grotius to define property and most particularly, 'the origin and development of the right of private ownership.'¹⁴ It is in this context, namely in defining private property, that he introduces his state of nature and explains how it evolves from one form to another over the course of history, giving rise to private appropriation.

Grotius' natural state was originally one of 'primitive simplicity', identified from the outset as that of Indians.

This primitive state...exemplified in the community of property arising from extreme simplicity, may be seen among certain tribes in America which have lived for many generations in such a condition.¹⁵

The state of nature has suddenly been profoundly transformed. Beginning with Grotius, and followed shortly by Thomas Hobbes and later John Locke and Jean Jacques Rousseau, the natural state, as it has developed in political and Christian thought from Cicero through Aquinas, is with the 17th century thinkers wholly grafted without consideration for its implications on to the European notion of America and its natives. Christianity and legal theory are fused and become, through natural law, the singular viewpoint for understanding the new world and its inhabitants.

Like the Christian Edenic myth, Grotius' natural state is quickly corrupted. Thus, he states:

But men did not however continue to live this simple and innocent life, but turned their thoughts to various kinds of knowledge, the symbol for which was the tree of knowledge.¹⁶

Natural law has also changed. For the first time, Grotius incorporates the idea of natural rights into his theory of natural law. Rights are defined as 'a moral quality of a person, making it possible to have or do something lawfully.'¹⁷ Grotius, it should be noted, is concerned primarily with the rights of nations or companies, rather than individuals.

Secondly, 'ius gentium' is redefined. Previously defined as the law of nations, that is those aspects of law common to all nations, Grotius's 'ius gentium' becomes the law between nations and Grotius, himself, becomes the founder of international law. Implicit in his analysis, as shall become explicit in Locke's, is that man under natural law in the state of nature is equivalent to European nations under the very same law, with the same natural rights. The state of nature becomes a metaphor for explaining the relationship between states which have no overarching authority beyond that of God and natural law. War is an assumed condition under these circumstances of colonial competition, and is also taken to be natural between the individuals in such a state.

Having outlined man's natural state, Grotius than turns to consider the origin of private property. He begins like Locke and Pufendorf with God's initial grant to all people of the world in common. Common ownership was for Grotius, positive, meaning that everybody owned everything, rather than the negative form of common ownership which posits that nobody owns anything. For Grotius, natural law did not need to explain how the notion of private ownership began, it only needed to decide who would get what portion of what they already owned as a community and on what basis. Grotius concluded that if any individual used something in this natural state he thereby owned it. Use arising from need was synonymous with appropriation.

God conferred upon the human race a general right over things...each man could at once take whatever he wished for his own needs...The enjoyment of this universal right then served the purpose of private ownership; for whatever each had thus taken for his own needs another could not take from him except by an unjust act.¹⁸

In terms of immovable objects, use was also the origin of property. While the appropriation of land was based, according to Grotius, on a 'certain compact or agreement', it nevertheless assumed a division of property into private hands. In other words the compact was, in essence, an official recognition by the community of that property which individuals had already appropriated to themselves as individuals by their use. Grotius writes,

As soon as community ownership was abandoned and as yet no division had been made, it is to be supposed that all agreed that whatever each one had taken possession of should be his property.'¹⁹

The agreement could allow only for 'private property', based on what each individual had 'taken possession of', not communally held property. Pufendorf, as will be discussed later, takes a

very different view. Grotius makes an exception to this right of appropriation in the case of the sea because, being limitless, it cannot be occupied. This echoes the argument he made in Mare Liberum on behalf of the East Indies company to protect their right to trade on the open seas. Grotius goes on to argue, as Locke is later to do, that lands which still lie 'unoccupied' are open to appropriation in accordance with natural law. Grotius, like Locke, believes that unoccupied land is that which is 'hitherto uncultivated'.²⁰

Land which is used for any other purpose is thus considered to be open for appropriation or, as Grotius comments:

If within a territory of a people there is any deserted and unproductive soil...it is the right for foreigners even to take possession of such ground for the reason that uncultivated land ought not to be considered occupied.²¹

Grotius is not referring to property within Europe which he would not consider to be waste or barren. Rather he is arguing that lands held as colonial acquisitions by European countries and not yet settled are still open for cultivation and by extension, appropriation. This embryonic form of the labour theory of property becomes central to Locke's theory of both natural law and rights and will be used to justify England's

right of property not only against other European countries, as Grotius claims, but against the American Indians' claims of occupancy by virtue of hunting or gathering.

Grotius is careful however in his analysis of vacant land to allow some space for a European king who has claimed ownership of a tract of land but has not yet cultivated it. Occupation of this type, that is by the whole community, where land remains uncultivated, is only legitimate for Grotius when the property is soon to be divided into private parcels. In this way, Grotius allows, by definition, that when there is an agreement on the division of property, only private forms of appropriation are legitimate. Thus, he opens the paragraph by referring to 'things which can be made subject to private ownership, but have not yet become private property.' This justifies the English and Dutch practise of claiming large tracts of land, which are later divided into smaller private parcels from the encroachment of other European powers.²²

Grotius turns from his conclusions about property to the issue which lies at the heart of his thesis, namely war. He begins by stating that a war may only be justly fought under certain given conditions: defence, recovery of property or punishment. The reasons for waging war will necessarily be reflected in that which may legitimately be acquired from it.

According to the law of nature, by a lawful war we acquire things which are either equal to that which, although it was owed to us, we could not otherwise obtain, or we inflict upon the guilty a loss that does not exceed an equitable measure of punishment.²³

It is the concept of punishment which is of particular importance and the only justification for war upon which he and Pufendorf depart company. Punishment is initially defined as 'an evil of suffering which is inflicted because of an evil of action'²⁴ and is based on 'the most ancient law', 'he who does evil shall suffer evil'.²⁵ Grotius also makes clear who the punishers will be and on what basis they may act, arguing that 'according to the law of nature those free from like offences may exact punishment' even when the offences are committed against others.²⁶

This position has profound implications when he applies it to the state's right to wage war.

Kings...have the right of demanding punishment not only on account of injuries committed against themselves or their subjects, but also on account of injuries

which did not directly affect them but excessively violate the law of nature.²⁷

Under the auspices of 'punishment', Grotius provides specific justification for war against native inhabitants of the Americas or East Indies by those who understand and are better followers of the natural law. Thus Grotius argues that war may be waged against 'men who are like beasts', most specifically 'those who feed on human flesh'. Such an argument, as Pufendorf acknowledges and therefore challenges Grotius on, would be used to justify attacks on all American Indians.²⁸ Moreover, should such a native population be conquered, they would have no just cause for retaliatory war, based solely on the wish to remove colonial rule. Grotius states: 'An unjust cause for war is the desire for freedom among a subject people.'²⁹

As one Grotian scholar has pointed out, this clause was needed, because it was based on the 'nascent empire' already established by European powers. Commenting on this doctrine, Professor B. Roling states:

This opinion may be associated with the fact that many peoples already had been subservient to European states.³⁰

E.H. Carr in his book, The Twenty Years Crisis, claims that Grotius' just war theory was an outgrowth of his views on imperialism. 'Modern international law was created by Grotius and his successors to meet the needs of the new nation-states.'³¹ To which Roling adds, 'Those needs were above all the legitimacy of expansion in a time when the European states set out to subject almost the rest of the world.'³²

Having outlined the just war, Grotius then turns to consider 'the first and most essential division of war [that of] public war, private war and mixed war.'³³ These two arguments, the case for the justice of war and the one for waging it by private companies rather than by governments, are, as one scholar notes, the two key theses of his treatise and clearly rooted in colonial aspirations of the Dutch in Grotius' day.

To justify the Company and pacify the Anabaptists it was necessary to prove that war was not opposed to the Christian religion, and that it was permitted to Christians to make what was called a 'just war'...it was [also] necessary to prove that a private company could make private war in its own defence before it had been converted into a public war. This was the double task of Grotius.³⁴

The importance of such Dutch colonial aspirations to the formulation of Grotius' natural law becomes all the more apparent when compared with an equally accomplished legal theorist whose political context is one of a European country whose colonial aspirations were far more limited.

II - COLONIALISM AND NATURAL LAW: SAMUEL PUFENDORF

Samuel Pufendorf was a student of Grotius and developed his theory in Sweden. Neither Sweden, nor his native Germany resembled Spain, England or Holland in colonial method. Pufendorf does not begin with war as a given and then consider the conditions under which it may be just, neither does he begin with the origins of property and then consider man's natural state. These are the premises of and the questions put to political theorists living within an aggressive colonial power. Pufendorf, unlike Grotius or Locke, is not attempting to reconcile natural law with his patron's colonial needs.

Pufendorf, it must be noted, was highly regarded by John Locke. The latter wrote, in his Thoughts Concerning Readings and Study, that Pufendorf's De Jure Naturae was the 'best book of that kind'.³⁵ He also recommended to Lord Mordaunt that he read Tully, Pufendorf, Aristotle and above all the New Testament. Laslett concludes from this evidence that, 'of the

writers he consulted when engaged on his book, Samuel Pufendorf was perhaps of the greatest use to him.'³⁶ It is important then to understand what Locke took from Pufendorf and what he left behind and why.

Unlike Grotius, Pufendorf begins his examination of the natural state not in the context of property but of moral science. Like Grotius, he considers man to be in a state of natural liberty but one which must be 'conditioned by a certain restraint of sound reason and natural law.'³⁷ Pufendorf derives the 'natural state' by stripping civil man of his civilities. He begins his discussion of natural man, thus:

By the natural state of man we [understand] that condition for which man is understood to be constituted, by the mere fact of his birth, all inventions and institutions either of man or suggested to him from above, being disregarded.³⁸

It is interesting to note the natural state for Pufendorf is something which existed only in a primitive time. He does not refer, unlike Locke, Hobbes and Grotius, to America or other parts of the colonial world as examples of contemporary natural states.³⁹ On the contrary, Pufendorf makes clear that he believes the inhabitants of the Americas are not atomised individuals within one great natural state, as Locke and

Grotius seem to believe, but members of nations who must be treated with the same respect as those of European states.

In particular, Pufendorf attacks Francisco Vitoria's justification for the Spanish treatment of American Indians by challenging each of the rights claimed by the author for Europeans arriving in the new world, concluding 'Franciscus a Victoria...does not win many to his position when he discusses the adequate grounds on which the Spaniards felt themselves entitled to subdue the Indians'.

First is the European's right of travel through Indian lands. Pufendorf responds:

It is crude indeed to try to give others so indefinite a right to journey and live among us, with no thought of the numbers in which they come, their purpose in coming, as well as the question whether...they propose to stay but a short time or settle among us permanently.⁴⁰

Second is the right of Europeans to trade on these lands with whomever they please for whatever they wish. Pufendorf states, in response that he is,

not as yet able to discover such a freedom of trade as rulers cannot limit for their subjects if the well-being of the state demands it, much less a one as thrusts foreigners upon us without our permission and against our will.⁴¹

Finally, Vitoria claims that the Spanish have a right to share in the wealth of America because others already have. Grotius concurs with Vitoria's views stating, 'if foreigners are anywhere permitted to hunt, fish, snare birds or gather pearls...such rights cannot be denied to others.'⁴² Pufendorf argues that one must first consider the Spanish motives for trade suggesting that they may not act with justice or moderation. He argues this last point by employing a metaphor:

Suppose I had given some one of my neighbours the privilege of entering my garden as often as he wishes, and of sampling my fruit; when later another man burst in and decides to break down the trees, to expel me and make an uninvited stay in my garden, I will surely have the right to close my gate to him.⁴³

In this discussion, Pufendorf repeatedly refers to the nations of America which, he argues, must be treated with the same

respect as those of Europe. He concludes that Europeans enjoying the freedom of the seas may only legitimately arrive on foreign shores such as these because they were 'driven by storm' or are innocent guests.

Pufendorf challenges Hobbes's position that the state of nature is concurrently a state of war. Quoting 'the infallible authority of the sacred scriptures', Pufendorf concludes, 'the natural state of men was one of peace rather than war and that men were more like friends to one another than enemies'.⁴⁴ This natural peace is based on natural law but is 'a weak and untrustworthy thing and therefore...it is, without other safeguards but a poor custodian of man's safety.'⁴⁵

After concluding in this chapter on the natural state of man that he cannot live without law, Pufendorf turns to consider the content of natural law, which he considers 'universal' and 'perpetual'. His fundamental law of nature is,

Every man, so far as in him lies, should cultivate and preserve toward others a sociable attitude, which is peaceful and agreeable at all times to the nature and end of the human race.⁴⁶

Pufendorf then proceeds to discuss the specific duties and rights man is under both with regard to himself and others.

Unlike Grotius he does not use rights simply as a means to discuss the nature of nations at war, but rather individuals at peace. Finally in Book IV, having covered the more fundamental issues of man's natural state and the law he was under, Pufendorf turns to discuss the issue of property.

Like Grotius and Locke, Pufendorf believes that God gave the world to mankind in common but unlike his contemporaries, he does not perceive this to be a positive form of ownership. Pufendorf, himself, makes the distinction clear:

The term community is taken either negatively or positively. In the former case, things are said to be common...in the same sense such things are said to be nobody's [and] lie open to any and every person. But common things by the second and positive meaning, differ from things owned, only in the respect that the latter belong to one person while the former belong to several in the same manner.⁴⁷

Pufendorf makes clear that his notion of 'common' is a negative one; that is the world is not commonly owned by everyone as Grotius and Locke contend, but rather the world, while owned by nobody, is open for use by everyone. Ownership is thus detached from appropriation, the latter being simply the means

by which individuals sustain themselves in the natural negative community of things, the former being the result of an agreement within any given community.

The grant of God by which He allowed men the use of the products of the earth, is not the immediate cause of dominion... dominion presupposes absolutely an act of man and an agreement whether tacit or express.⁴⁸

It follows from Pufendorf's argument that simple use being natural to man and ownership conventional, any form of property, not just private is legitimate, as long as it is agreed to. Pufendorf argues this explicitly:

It is true that God allowed man to turn the earth, its products and its creatures, to his own use and convenience...yet the manner, intensity and extent of this power were left to the judgement and disposition of men; whether in other words they would confine it within certain limits or within none at all, and whether they wanted every man to have a right to everything, or only to a certain and fixed part of things, or to be assigned his definite portion with

which he should rest content and claim no right to anything else.⁴⁹

Thus, while consent was crucial to both Grotius's and Pufendorf's conceptions of property and was to be attacked directly by Locke, it nevertheless played profoundly different roles in each theorist's thought. For Grotius, the original community of things was positive in that each individual had the right to claim, through simple use, private ownership of a thing. An agreement by consent therefore, simply recognized those private possessions which individuals had already claimed as their own. Pufendorf, on the other hand, begins with a negative form of community where use implied no right of ownership and the agreement could give rise to any form of private or communal division of property.

Like Grotius, Pufendorf discusses the right of 'occupancy as a whole', but unlike Grotius he does not assume that such an occupancy, to be considered legitimate, must be divided ultimately into private parcels.⁵⁰ On the contrary, Pufendorf challenges Grotius directly on this point:

Regarding 'occupancy as a whole'...it is not necessary that all things which are occupied in this universal manner should be divided among individuals and pass into private hands.⁵¹

Unlike Grotius or Locke, Pufendorf claims, that 'vacant' or unoccupied land must not automatically be assumed open for appropriation even when there is no plans on the part of the people who claim it to divide it into parcels, for it is perfectly legitimate that an agreement amongst a group of people render the ownership of their property to be communal.

And so we have not sinned against the law of nature in entirely doing away with primitive community, nor have backward peoples in retaining to this day many of its features.⁵²

Thus, Pufendorf concludes:

Therefore if anything be discovered in such an area that is still without a private owner, it should not at once be regarded as unoccupied, and free to be taken by any man as his own, but it will be understood to belong to the whole people.⁵³

Towards the end of his treatise, Pufendorf considers the justifications for war. He provides three: 'to preserve and protect ourselves and our possessions against others who attempt to injure us', 'to assert our claim' or right being denied, and 'to obtain reparations for losses which we have

suffered by injuries.'⁵⁴ Unlike Grotius, punishment is not a just reason for war.

The evils inflicted by right of war have properly no relation to punishment, since they neither proceed from a superior as such, nor have as their direct object, the reform of the guilty party or others but the defence and assertion of my safety, my property and my rights.⁵⁵

Locke and Grotius both feel that the law of nature allows the right of punishment against those who breach it. According to Richard Tuck, the removal of the state's right to punish undermines the Europeans' claims to have the right to attack native tribes in the new colonies such as the Americas.⁵⁶

This becomes explicit when Pufendorf directly contradicts Grotius's claim that war can be waged against 'those who feed on human flesh', revealing an understanding that such arguments were often used to justify attacks on American natives as a whole.

Thus we cannot agree...that sufficient cause for waging war upon the Americans can be found in the fact that they can be held condemned by the very law of nature,

because it is their custom to sacrifice men and eat human flesh. On this matter we should carefully consider whether a Christian prince can attack the Indians, as men condemned by nature, merely because they eat the flesh of their own religion, or because they eat that of strangers. And in connexion with their treatment of strangers we must again inquire, whether those foreigners come to their shores as enemies and robbers, or come as innocent guests or driven by storms - for only in the last case does a right of war lie with those whose citizens are treated with such cruelty, not in the others.⁵⁷

Pufendorf rightly questions whether the breach in the law of nature is only of importance when Europeans are concerned. He also raises the question, as he did in his critique of Vitoria's claims for European rights in America, what the motives are of the foreigners who land on these peoples' shores, realizing that the colonizers of the new world have often had little respect for the natural rights of the inhabitants already there. Finally, he concludes that the native Americans are justified in attacking those individuals who land on their shores who neither arrive as innocent guests nor are driven there by storm.

III - COLONIALISM AND NATURAL LAW: JOHN LOCKE

Thus if we compare Grotius to Pufendorf over each of these aspects of the natural state and the law under which all men are bound, there are profound differences, explicable in part, especially with regard to Grotius, by their own countries' colonial interests. They also shed some light on the arguments made by Locke in his Second Treatise and the implications such colonial questions have for his political ideas. Let us examine the relationship between Grotius and Locke on their conceptions of natural law, comparing them, where appropriate, to Pufendorf's.

Man in his natural state is different in the theories of Grotius and Pufendorf and their conceptions of natural law reflect these differences. Grotius begins with war, a natural outgrowth of 17th century colonial competition, to determine the conditions under which it is legitimate. Defence of self and property being paramount, Grotius then turns to consider the origins of property - how does one gain dominion over the land and its produce. His conclusions regarding the right to wage just war, to punish others, to acquire property and to navigate freely on the seas provide the answers raised by Dutch colonial practise and European colonial warfare.

Similarly, Locke addresses property at the beginning of his treatise on government. Like Grotius and unlike Pufendorf, the introduction of property at such an early point in the Second Treatise, does not seem to follow the logical, philosophical line of argument. As Peter Laslett comments: 'Locke abruptly injects into the discussion the concept of property.'⁵⁸

Property came first for Locke because its origin was of paramount importance to his purposes. Not only did he want to defend the philosophical notion of natural rights based on the broad definition of property, but he concurrently wished to address some political issues of his day. The domestic political reasons, namely the arguments against Sir Robert Filmer, the divine right of kings, and in favour of exclusion and the Glorious Revolution have been discussed at length in the scholarship on Locke. What have been overlooked are the colonial reasons. Locke's theory of property addresses the question of how property may be claimed in land which lies in common; the very question which settlers to the new world needed to answer.

The starting point for Locke and Grotius is the same. Property is assumed to be given by God as a positive communal right of ownership. Nothing could reflect more clearly the aggressive colonialism of the Dutch and English than the assumption that we actually possess everything on earth and it is up to each individual person or nation to grab its claim before anyone else does.

Pufendorf, on the other hand believes that nobody owns anything but everyone is free to use, rather than possess, the world. The only question left to be decided in Grotius' and Locke's scheme is how it shall be divided. For Grotius, the answer was simply appropriation by use of the individual. In other words, to use something in the natural state is equivalent to owning it. The only legitimate form of ownership is consequently private and therefore essentially European. Locke adopts a similar position, as Karl Olivecrona comments:

Locke made use of the same idea of appropriation as Grotius employed, but on a far larger scale.⁵⁹

Locke, however is different from Grotius in one crucial respect. Rather than the general notion of 'use', it is labour which defines how much of the world each man can appropriate. For Locke, unlike Grotius, appropriation by labour necessarily precedes use. Thus Locke states in the Second Treatise that there must be 'a means to appropriate [things] before [my emphasis] they can be of any use'. The means is labour by individuals; in the case of animals by killing them, in the case of fruit by picking them, and in the case of land by cultivating it; none of these activities depend on the consent of others. Pufendorf on the other hand, argues that nobody owns anything until an agreement is reached between the

community members concerned. Consequently, private or communal ownership is allowable depending on the wishes of the people.

The settling of 'vacant' land by European powers was also central to colonial practise. Locke picks up one thread of Grotius' argument on property, that it is the cultivation of 'vacant' lands which provides a right of appropriation and expands it into his central thesis. Once again, Locke's emphasis reflects that of a theorist answering the questions posed by England's colonial interests in America.

Grotius also provides that European powers may hold land which is yet to be divided into private parcels, as a whole without interference by other European powers. The assumption that land was to be appropriated by individuals once again rules out the possibility of communal ownership and consequently claims by native peoples that they can occupy a piece of land as a whole. Pufendorf, on the other hand, argues that occupation as a whole is legitimate whether or not it is to be divided into private parcels. Locke follows Grotius in assuming that all property, by definition, will be rendered private and draws an explicit distinction in the Second Treatise between common property in civil society (England) and the natural state (America) to drive home his point.

Enclosure, as the means by which individuals may appropriate immovable objects, is employed by both Locke and Grotius for

different ends. While both contend it is one important criterion upon which individuals can claim territory in unoccupied land, Grotius uses enclosure as the premise by which he can argue that the sea is free and open, since it cannot be enclosed, to passage by any colonial power. Locke, on the other hand, concerned with the English settler's right to appropriate land in America, uses enclosure as the means by which the land used by Indians can be considered not yet appropriated. Enclosure for Locke is thus limited to a discussion of land in order to demonstrate the English right of private appropriation therein; for Grotius the same principle is applied to the sea, in order to prove a communal right of ownership and the Dutch right of access thereon.

IV - CONCLUSION

Thus Locke writes in the tradition of the natural law theorists and reflects in many respects, the views of the Dutch theorist, Grotius in terms of the nature of God's original grant, the definition of occupancy and the use of enclosure as the basis of private appropriation of land. Locke's admiration for Pufendorf's natural law, needed to be tempered by the exigencies of his own country's colonial interests.

Locke, however, created an original and profound natural law, which differed in essence from that of both Grotius and Pufendorf, on one central ground, namely the foundation of property. While Grotius and Locke agreed that God had granted to man a positive right of communal ownership, leaving open not how we could own the earth, for that was given, but only the question of how much each man would get and on what basis it would be acquired, Locke's fundamental premise that one must labour in order to even use the land or any product of it was a step further than Grotius' argument, which stretched back to the time of Cicero, that it was simply use or occupancy which determined property. Locke became aware that Indians in the new world could claim property by way of such ambiguous terms as 'use' or occupancy; consequently he developed a theory of agrarian labour which would specifically exclude certain groups, such as the American Indian from claiming such land. In coupling this theory of labour with a natural rights doctrine of individual liberty, Locke was able to defend England's colonial interests in the new world, couched in the traditional terms of natural law.

In order to understand how Locke adapted natural law for these purposes, it is necessary to first examine the general background of English colonialism in America and the evolving concepts of property and natural rights within that tradition.

Notes

1. Hugo Grotius, De Jure Pradae Commentarius I, Carnegie Endowment for International Peace, Oxford, 1950.
2. Edward Dumbauld, The Life and Legal Writings of Hugo Grotius, Oklahoma, 1969, p. 24.
3. Albert Hyma, The Dutch in the Far East, Ann Arbor, 1942. p. vi.
4. Grotius, Hugonis Grotii de Jure Pradae Commentaries, preface, cited in the introduction written by J.B. Scott, published by the Carnegie Endowment for International Peace, 1925, p. xi.
5. Ibid., p. xii.
6. Grotius, De Jure Pradae, p. 229, cited in Richard Tuck, Natural Right Theories: Their Origin and Development, Cambridge, 1979, pp. 61-62.
7. For Locke's discussion of enclosure see the Two Treatises, II, paras. 32-34.

8. Hugo Grotius, De Jure Belli ac Pacis Libri Tres, The Classics of International Law Series, edited by James Brown Scott, Volume Two (Translation by Francis Kelsey), Publication of Carnegie Endowment for International Peace, 1925, Book II, Chapter II, Section 2, para. 1. Theatre seat reference also used in De Jure Pradae, translated by G.L. Williams (Oxford, 1950) cited in Tuck, Natural Right Theories, p. 61.
9. Tuck, Natural Right Theories, p. 62.
10. For the history of this event, W.S.M. Knight, The Life and Works of Hugo Grotius, The Grotian Society Publications, 4, London, 1925, or Albert Hyma, The Dutch in the Far East, 1942.
11. W.S.M. Knight, The Life and Works of Hugo Grotius, p. 140.
12. Ibid., p. 141.
13. Grotius, De Jure Belli ac Pacis.
14. Ibid., Book II, Chapter I, Section 1, para. 3.
15. Ibid., Book II, Chapter II, Section 2, para. 1.
16. Ibid., Book II, Chapter II, Section 2, para. 2.
17. Ibid., Book I, Chapter I, Section 4.

18. Ibid., Book II, Chapter II, Section 2, para. 1.
19. Ibid., Book II, Chapter II, Section 2, para. 5.
20. Ibid., Book II, Chapter II, Section 4.
21. Ibid., Book II, Chapter II, Section 17.
22. Ibid., Book II, Chapter II, Section 4.
23. Ibid., Book III, Chapter VI, Section 1, para. 1. For the reasons given by Grotius for war, see Ibid., Book II, Chapter I, Section 2, para. 2.
24. Ibid., Book II, Chapter XX, Section 1, para. 1.
25. Ibid., Book II, Chapter XX, Section 1, para. 2.
26. Ibid., Book II, Chapter XX, Section 3.
27. Ibid., Book II, Chapter XX, Section 40, para. 1.
28. Ibid., Book II, Chapter XX, Section 40, para. 3.
29. Ibid., Book II, Chapter XXII, Section 11.

30. B.V.A. Roling, 'Jus Ad Bellum and the Grotian Heritage' in International Law and the Groatian Heritage, The Hague, 1985, p. 118-119.

31. E.H. Carr, The Twenty Year Crisis, cited in Ibid., p. 119.

32. Ibid., p. 119.

33. Grotius, De Jure Belli ac Pacis, Book I, Chapter III, Section 1, para. 1.

34. Introduction to De Jure Belli ac Pacis written by J.B. Scott, pp. xx-xxi.

35. Thoughts Concerning Readings and Study in Collected Works, III, 1801, p. 272, cited in Two Treatises, Laslett ed., Introduction, p. 75.

36. Ibid., p. 75.

37. Ibid., para. 105.

38. Samuel Pufendorf, De Jure Naturae, Book II, Chapter II, para. 1.

39. Pufendorf later speaks in his discussion of dominion about contemporary examples of people who have only just left this

primitive community. Nevertheless, unlike Locke and Grotius he does not speak of ancient tribes or people in his discussion of natural man and the state of nature as equivalent to American natives today. In conjunction with his attack on Vitoria and statements he makes about the necessity to respect American 'nations', his views on native Americans is qualitatively different from that of Grotius and Locke.

40. Pufendorf, De Jure Naturae, Book III, Chapter III, para. 9.

41. Ibid., Book III, Chapter III, para. 9.

42. Grotius, De Jure Belli ac Pacis, Book II, Chapter II, Section 22.

43. Pufendorf, De Jure Naturae, Book III, Chapter III, para. 9.

44. Ibid., Book II, Chapter II, para. 7.

45. Ibid., Book II, Chapter II, para. 12.

46. Ibid., Book II, Chapter III, para. 15.

47. Ibid., Book IV, Chapter IV, para. 2.

48. Ibid., Book IV, Chapter IV, para. 4.

49. Ibid., Book IV, Chapter IV, para. 4.
50. Ibid., Book IV, Chapter VI, para. 4.
51. Ibid., Book IV, Chapter VI, para. 4.
52. Ibid., Book IV, Chapter IV, para. 13.
53. Ibid., Book IV, Chapter VI, para. 4.
54. Ibid., Book VIII, Chapter VI, para. 3.
55. Ibid., Book VIII, Chapter VI, para. 7.
56. Paper Presented by Richard Tuck to PhD. Seminar, London School of Economics, November 1989.
57. Pufendorf, De Jure Naturae, Book VIII, Chapter VI, para. 5.
58. Locke, Two Treatises, introduction by Peter Laslett, p. 101.
59. Karl Olivecrona, 'Appropriation in the State of Nature: Locke on the Origin of Property', Journal of the History of Ideas, XXXV, 1974, p. 216.

Chapter 3: English Colonialism

John Locke not only lived in a country on the threshold of establishing a global colonial empire, but, like Hugo Grotius, he was, himself, immersed in both the political and intellectual questions raised by such colonization. In order to understand the impact this involvement had on his political thought, we must consider both the development of British colonialism in America as a whole, with particular reference to Carolina, and the colonial writings of Locke's day to draw the connections between his thought and the historical events and ideas which surrounded him.

I - ENGLISH COLONIALISM: TRADE vs SETTLEMENT

English exploration of America began in the 16th century giving rise to the first attempts at colonization in the 'new world'. Sir Walter Raleigh was granted the first charter in 1583 which, after repeated attempts, failed to establish any lasting settlement of Englishmen in America. This initial failure, however, was followed by the more successful endeavours of the Virginia Charter of 1606, the founding of Bermuda and Barbados, the Pilgrims settling of Plymouth and Massachusetts, followed by the remainder of New England, and latterly, Carolina. The reasons which lay behind the zeal for colonization which gradually emerged in the 16th and 17th centuries are numerous

and change with the evolution of England's involvement in the new world.

Initially and throughout much of the early colonial period, the penultimate reason given for colonizing America was religious. Thus Article 3 of the First Charter of Virginia calls for:

The propagating of Christian religion to such people as yet live in darkness and miserable ignorance of the true knowledge and worship of God.¹

The first governor of the Massachusetts Company states in a letter to Captain Endicott of Salem:

We trust you will not be unmindful of the main end of our Plantation, be endeavouring to bring the Indians to the knowledge of the Gospel.²

This is followed by more explicit instructions from the Company itself to the Captain and his council that 'the propagating of the Gospel is the thing we do profess above all to be our aim in settling this Plantation'.³ The first charter of Carolina, also refers to the the eight proprietors, 'being excited with a laudable and pious zeal for the propagating of the Christian faith.'⁴

Seventeenth century colonists and politicians clearly viewed conversion as the most noble of goals in colonization but one which too often became secondary to the other objectives of national glory or private gain. We shall return to the religious motives of colonization when we consider the implications of colonization for native Americans, but let us first consider the other forces behind the development of England's burgeoning empire.

As settlements were formed, the glorification of God through conversion of the heathens was often coupled with the expansion of England's empire. Most of the charters for English colonies followed a similar pattern; first a declaration regarding Christian conversion, like that of the Carolina charter cited above, directly followed by a second objective, in Carolina's case, 'the enlargement of our empire and dominions'.⁵

Expansion of the English empire is a goal always implicitly and often explicitly in competition with the aims of other European powers. Spain, in particular, was viewed as the country to beat in the new world. Thus, the Cambridge History of the British Empire states, 'among worldly motives [for colonization] hostility to Spain took a prominent place.'⁶

Oliver Cromwell stated in a speech to Parliament, cited by Captain John Smith of Virginia in his Description of Virginia, 'Truly God's great enemy is the Spaniard. He is a natural enemy.'⁷ Sir Walter Raleigh was particularly bitter in his

claims for British colonization aimed, 'against the ambitious and bloody pretences of the Spaniards who, seeking to devour all nations, shall be themselves devoured.'⁸

The antipathy towards the Spanish was strong in Carolina, being the colony closest to Spanish settlements in Florida and previously explored by the Spanish nation. Lord Ashley received a letter from William Owen in September 1670, stating that the English settlement should cease its defensive posturing towards the neighbouring Spanish settlements and recommending an offensive war against the Spaniards.⁹

Domination of trade against other European nations rather than settlement was the initial goal of colonial policy in England. A concise statement of this goal in Carolina is given by Robert Sanford who undertook an exploratory voyage for the Lords Proprietors in June 1666 in the area of Port Royall. He concludes his report by stating colonization of this region will ensure,

...a trade to the Kingdome of England as great as that shee has with all her Neighbours, and render Our Soveraigne Lord the King within his owne Dominions and the Land possessed by his Naturall English subjects universall Monarch of the Traffique and Commodity of the whole World.¹⁰

A third and most important objective in the colonization of the American continent was the potential private gains to be made by the individuals involved. Often this was conceived in monetary terms but there were other benefits to be won, including personal fame and honour. As Richard Hakluyt wrote to Sir Walter Raleigh of the first attempts to colonize.

Up then, go on as you have begun, leave to posterity an imperishable monument of your name and fame, such as age will never obliterate. For to posterity no greater glory can be handed down than to conquer the barbarian, to recall the savage and the pagan to civility, to draw the ignorant within the orbit of reason, and to fill with reverence for divinity the godless and ungodly.¹¹

Historians, such as Sir Charles Lucas, argue that while factors such as enlarging the English empire, balancing it against that of Spain, and spreading the gospel were often the ostensible reasons given for imperial pursuits, the nature of its development was really determined by private interests.

The actual course of English colonization dealt with lower motives and contented itself with more commonplace successes.¹²

In early colonial enterprises such as Virginia and Massachusetts where proprietary government was vested in a corporation, or Pennsylvania and Maryland where it was embodied in a sole proprietor, or Carolina with its eight Lords Proprietors, the interests of the individuals involved were often paramount. In the words of Sir Edward Coke on Massachusetts, 'The ends of private gain are concealed under cover of planting a Colony.'¹³

Locke himself benefited from the colonial expansion of England in America. As Cranston puts it, 'Locke's interest in the colonies was not purely theoretical and bureaucratic.'¹⁴ In 1672 Locke became a merchant adventurer in a new company of traders in the Bahamas. One of the other traders, Sir Peter Colleton, brother of Sir John Colleton, a Lord Proprietor of Carolina, wrote to Locke advising him against planting if he wanted to profit from his investment.

I find I am your partner in the Bahama trade which will turne to accompt if you meddle not with planting...if other men will plant there, I mean the Bahamas, hinder them not, they improve our province, but I would neither have you nor my lord [Shaftesbury] ingadge in it.¹⁵

Locke followed Colleton's advice and later sold out his stock at some profit. It is interesting to note that this land was basically lying 'waste', deliberately uncultivated, for the

sole purpose of bringing returns back to its owner, in this case John Locke.

John Locke was also made the first landgrave in Carolina, contrary to the King's Charter which stated that only inhabitants and not individuals living in England could be given such status. The proprietors also gave Locke 4,000 estates of land in the colony when he became a landgrave. Locke was thus very conscious of the private gains to be made through colonization.¹⁶

At first England's overall search for private gain took the form of trade and adventurers searching for gold, silver and other precious minerals. Raleigh, the first English colonizer was well known for his desire to strike it rich in the new world. 'Few men loved gold as Sir Walter Raleigh did or sought it more assiduously.'¹⁷ The oft failed attempts of these adventurers to find such treasures was one factor, amongst several others, for the transformation in the 17th century of English colonization from a pattern of trading, mining, and exploration to settlement and agriculture. As Osgoode remarks:

Though at the outset mines were sought, that soon became a subsidiary object, and agriculture, trade, and fishing commanded the chief attention...The reason for this is that the colonies...were passing through the early

stage of settlement, and that while in this condition they were under the control of parties who had undertaken to develop them as an investment.¹⁸

Gary Nash comments on these initial motives,

The early voyages were not primarily intended for the purpose of large scale settlement and agricultural production...The English were primarily interested in a mercantile relationship. Trade with the Indians, the search for gold and silver and discovery of the North West Passage were the keys.¹⁹

The shift from adventure and trade to agriculture and settlement was a profound one, both for the English settlers brought to America and those natives already living there. As Nash goes on to comment:

The crucial difference between the Roanoke colony of the 1580's and the settlement of James town in 1607 was that the latter...was planned as a permanent community. From this point onward, Englishmen came to America not merely to trade with the natives or to extract the riches of the land but to build an enduring

society...permanent settlement required
acquisition by whites of land - land which was
in the possession of the Indian.²⁰

'Settling' the new world brought with it new objectives for English imperialism, while extending the scope of the ones already mentioned. Spreading of the gospel and the empire was further facilitated by larger settlements based on agricultural plantations. The desire to settle rather than to trade opened a new debate over the right of ownership and sovereignty in these new lands. By the end of the 17th century, definitions for these two terms had been completely altered to facilitate the settling of America. Sovereignty was provided by the King's patent and almost entirely divorced from the right of ownership which derived from either purchasing title from the natives for land or applying industry to already vacant land. ²¹

II - AN EVOLVING DEFINITION OF PROPERTY

Both the definition of property and sovereignty had evolved in international law over the preceding centuries. In the 16th century, new lands were considered to be the property of those who first arrived without need of labour or purchase. Sovereignty and ownership were merged into a right of discovery. As Francis Jennings describes it, a 'vague "law of

nations" rationale gave all heathens and their territories to that Christian sovereign whose subjects had first made discovery or conquest'.²²

In 1580, this changed when the English government developed a law of property to challenge the Spanish claims of ownership by conquest. Now, discovery was not enough but possession, through purchase or settlement became the basis of a nation's right to exclude others. In subsequent disputes, such as the one between the England and Holland in 1619, agreement was reached by allowing each company to call its own that which it already possessed.²³ Settling of the land was England's legal argument against Spanish claims of prior ownership in areas such as Carolina. Indeed, this new definition of property formed the basis of many of England's claims in the new world, particularly in that land which had been claimed by other European powers, by virtue of prior discovery.

Settlement of the land was also defended in terms of private gain. Sugar in Barbados and tobacco in New England proved to be profitable crops. As James Merrell states:

Tobacco promised to make a man wealthy here and now, not in some remote land in some future time...so people set aside thoughts of the 'minerall country' and an important era in the history of Piedmont came to an end.²⁴

Arguments ensued in the 17th century between traders and settlers as to the best means for exploiting the wealth of the new world. Those defending the agricultural plantation argued that the creation of wealth lay in the establishment of a dependent colony and English overseers who held tight rein on the division of land in accordance with the industry provided by the settler in terms of servants and slaves.

In Carolina, letters between the Lords Proprietors in England and the councils in America reveal a relationship fraught with disagreement and tension.

The political history of the Colony during their government is one long story of efforts on the part of the citizens to administer their local affairs in their own way, met by the resistance of the Proprietors intent upon making some profit out of the lands they had granted, and upon keeping in power the office-holders who were subservient to their will.²⁵

A final new objective of British colonialism through settlement was the relief of unemployment in England. As the Cambridge History of the British Empire puts it:

Another motive for colonisation was to rid England of some of the surplus population from

which many folk then believed her to be suffering.²⁶

Richard Hakluyt writes in A Discourse Concerning Western Plantations: 'This enterprise will be for the manifold employment of numbers of idle men.' Similarly, Francis Bacon writes in Of Plantations, 'Colonies and foreign plantations [are] very necessary as outlets to a populous nation.'²⁷ The fact that no outlet was actually needed, that England could support its own population did nothing to discourage this myth. Sir Charles Lucas comments on the gap between reality and myth in this regard.

It is difficult to understand how the soil of England can have been overpopulated in the 16th century and yet the necessity for disposing of the unemployed was a stock argument with advocates of expansion.²⁸

The tenacity of the belief may be explained in part through the parallels drawn, by writers, including Locke himself in Chapter 5 of the 'Second Treatise, to a Biblical 'exodus' where a population of people exceeding their geographical limits are led, by God and his chosen prophet, to another unpopulated land, thus relieving pressure at home.²⁹ In order to fit the Biblical mold, for example, the story of Job and Lot in Genesis, it is necessary however for the population to be

overflowing at home. The belief in the need for an outlet was also fed, in part, by writers and politicians interested in the fate of the poor who argued, as Locke did in a paper prepared for the Board of Trade, that colonization could be a last resort for the problems of unemployment and petty crime.³⁰

Herman Lebovics, in an article entitled, 'The Uses of America in Locke's Second Treatise on Government', claims that a massive resettlement of the poor was the primary thesis underlying Locke's writing of the Second Treatise.

If one possessed neither adequate land nor gold and silver money in England - as were the circumstances of the vast majority of the nation - Locke offered America as the key which would give access to participation in the life of the commonwealth.³¹

While Locke used some of the myths surrounding the resettlement of the unemployed to sell the idea of the plantation to skeptics at home, it would be misleading to think that this was a primary motivation, as Lebovics argues, for Locke's defense of colonialism. His experience in Carolina and Barbados was of an enterprise aimed primarily at expanding private and national profit more than as a forum for social welfare. In 1671, Lord Ashley instructed Captain Halstead to collect people from

Barbados and take them to Carolina for settlement but to exclude poor people:

For we find ourselves mightily mistaken in endeavouring to get a great number of poor people there, it being substantial men and their families that most make the plantation...whereas others rely and eat upon us.³²

Beer comments,

Shaftesbury...recognized that England herself needed a larger population and favoured the encouragement of immigration. It was not as an outlet for England's surplus numbers that he and his associates founded Carolina, but...they sought both to increase the commerce of England and to create new sources of supply.³³

In reality the corporations and proprietors involved in settling America wished to attract those people who would guarantee a return on their investment. Since colonies were run more in the interests of profit than social welfare, the corporation or proprietors involved necessarily preferred individuals already productive at home. As George Beer comments:

The territorial acquisitions in America were ...not prized as possible homes for an overflowing population in England, but virtually solely as feeders for English commerce. In the eyes of the English government, colonial expansion was a subordinate, though vital, part of the larger movement of commercial progress.³⁴

Finally in order to have these 'industrious' people leave England and settle in America it was necessary to convince them of the benefits of making such a move. Thus, pamphlets began to appear in England expounding on the virtues of the new world. The promise of free land, as embodied in the head right system, was tempting but people needed to be convinced that settling would be easy. The proprietors of the American colonies began using the Garden of Eden metaphor in their pamphlets to sell their plots of land. The new world became one where nature was spontaneous and very little labour needed to be applied in order to garner the earth's fruits, but if Englishmen applied labour as they did in England, much greater returns could be made from the soil of America.

Locke, himself, was asked by Sir Peter Colleton to draft a description of Carolina in order to attract more settlers. The letter, dated November 3, 1671, reads in part:

If you would doe us the favour to draw a discourse to bee Added to this map in the nature of a description such as might invite people without seeming to come from us it would very much conduce to our speedy settlement.³⁵

Having considered the overall objectives of English colonialism in the period leading up to John Locke's penning of the Two Treatises on Government, we must now consider the implications such objectives had for English attitudes to 'natural man'.

III - COLONIALISM: IMPLICATIONS FOR THE INDIANS

The English attitudes towards the Indians were defined by the objective of the colonists concerned. Thus, imperial and private goals of national and individual gain had a different impact on the lives of native Americans depending on whether the European colonist was a trader/adventurer or a settler. The traders needed the Indians as facilitators of their own business. Similarly, adventurers looking for mines needed the Indians for information regarding the location of certain mountains and the possible bounty which might be discovered there. Thus they both learnt the necessary customs for doing business with the natives and were happy to leave them with

their own lands and religions as long as the deal could be done. Gary Nash comments:

Since trade was the key to success in these bold new adventures, a special incentive existed for seeing the Indian as something more than an intractable savage...it was only a friendly Indian who could be a trading Indian. If trade was the key to overseas development, then it is not surprising that English promoters suggested that the Indian might be receptive and generous.³⁶

The traders themselves reflected the desire to maintain friendly relations. Consequently, unlike the settlers, they had no vested interest in either displacing the Indians from their lands or converting them to Christianity. On the contrary, the traders were often willing to partake in Indian customs in order to secure their goods. James Merrell comments in his study of the Catawbas of Carolina:

For all their faults, traders generally had shown a willingness to abide by the rules native society laid down....Settlers hardly tried. Where a trader saw profits and a crown official saw allies, a planter tended to see nothing but trouble. To his mind, native

neighbours were good only for obstructing settlement, threatening life and property, and attracting other Indians to the area.³⁷

The conflict between settlers and traders in their attitudes to Indians can be illustrated by an incident in Carolina where a trader, named John Ellis had informed the Catawba Indians that colonists settling the area 'had no right to the Lands by them possessed and that even his Majesty had no right to those Lands.'³⁸ The response from the governor was prompt as he ordered that anyone making similar suggestions in the future would be arrested.

As James Merrell points out, Ellis and his fellow traders were trying to protect their livelihood from the threat of encroaching settlers.

[Ellis's] speeches may have had a serious purpose. Since he was a trader from Virginia, his words were probably designed to protect his livelihood against people threatening his Catawba partners...He was defending an entire way of life, a traders' way embracing both Indians and colonists.³⁹

Traders did not always respect and deal fairly with their Indian counterparts; frequently they did not but there was no

vested interest in undermining their claim to land or property or converting them to Christianity.

The English attitude towards the Indian changed with the transformation of their colonization from trade and exploration to settlement and plantations. In the first place, an emphasis on conversion of an ignorant but rational and peaceful Indian population became an important theme amongst the defenders of the plantations to convince Englishmen that settling in the new world would not mean living in a permanent state of war. In Virginia, for example,

The Virginia promoters recognized that if they were to induce investment in the enterprise and migration to the colony, they could tolerate nothing in their promotional literature casting doubts on their chances of success. The optimistic tone and rosy hue that generally pervade their propaganda are strikingly present in its references to the Amerindian.⁴⁰

Similarly Richard Eburne writes in 1624, in A Plain Pathway to Plantations that the 'exceedingly tractable' natives are 'ingenious to learn of us and practice with us most arts and sciences.'⁴¹

As settlement came to take on more importance in the English colonies, Indians became increasingly perceived in America itself as obstacles to colonial growth. The emphasis began to shift to include not only questions of conversion and civilization but also issues of property and land control. Francis Jennings draws the chronological distinction:

Change came with the discovery of tobacco's value as a staple commodity. Whereas the fur trade had required Indian trappers and hunters, tobacco could be produced more lucratively by the colonists themselves. Indians were transformed from participants in the old trade to hindrances upon the new trade.⁴²

Thus, the native American became an obstacle in America and with the settlement of New England and the need to attract both investment and settlers, questions and debates began in England regarding the Indian's natural right to property and under what conditions Europeans could occupy and settle these 'new' lands. Loren Pennington comments:

About the middle of the 16th century...there began to emerge a literature aimed at promoting [colonial] expansion. In much of it the native races were a major theme...The interest in the American Indian was especially intense because

in America it was proposed to put down in the natives' midst substantial groups of Englishmen. This raised the whole question of the right of displacement...in terms of native conversion.⁴³

This debate, increasingly intense in England, was not new. The Spanish had already faced similar questions at an earlier period in central and south America. In particular, Francisco Vitoria wrote a long treatise on the legitimate and illegitimate claims the Spanish had to Indian land in North America.⁴⁴ Under the former, Vitoria included the right of travel, propagation of Christianity and right of trade; where these rights were denied, war was justified and the seizure of goods and enslavement of the vanquished deemed legitimate. As has been discussed, Pufendorf launched a strong attack on Vittoria, in particular and the Spanish view, in general, that conquest was justifiable under such broadly defined conditions.⁴⁵

The English recognized two methods for expanding national wealth through imperialism. Charles Davenant, a contemporary of Locke, described the distinction in a discourse he wrote on English trade:

The Collective Body of a Nation has but two Courses of acquiring Wealth, either by Inroads

and Depredations upon its Neighbours, or by the Trade, Labour, Arts and Manufactures of its People.⁴⁶

The distinction here is between colonization through conquest versus labour or peaceful settlement. The latter course involves taking over land either considered vacant or bought from the local natives and then settled by working on it. For the English reader, conquest was considered to be the Spanish form of both converting the natives and extinguishing their land title. The English explorers, in their attempts to both denounce Spanish methods of conversion and encourage English colonization, chose to reject conquest by emphasizing the peacefulness of English methods of conversion and proprietorship instead. Thus, early explorers, such as Raleigh and Purchas used, according to Pennington, 'Spanish maltreatment of the American Indians as an important and direct argument for English activities in America.'⁴⁷

Similarly, the Virginia Company in its 'True Declaration of the Estate of the Colony of Virginia', wrote, 'As for...conquest, it was the method of Spain' and clearly not that of the English, for the declaration goes on to ask how it is possible, 'to set their soules at liberty, when we have brought their bodies to slaverie?'⁴⁸ Finally, Captain John Smith of Virginia, made the inevitable comparison, in his Description of

New England, between the Protestant English and Catholic Spanish with regard to the natives:

Religion above all things, should move us...to show our Faith by our works in converting those poor savages to the knowledge of God, seeing what pains the Spaniards take to bring them to their adulterated faith.⁴⁹

The English Protestant view of colonization through peaceful means rather than conquest became a paradigm for several other reasons as well. Firstly, the English settlers were not initially in a position to conduct warfare against the native tribes encountered in the colonies. Secondly, the use of 'vacuum domicilium' had been part of colonial and legal thinking since the discovery of America and was easily adapted to the English claim for land under peaceful terms. Thirdly, the recognition of native Americans' claims to lands made the English settlers' purchases more secure against both other Indian tribes and European powers. Finally, as has been mentioned, the English wanted to attract investment and settlers to the new world and needed to insist, at least initially, that settlement would be achieved peaceably through labour and not by virtue of a constant state of warfare.

In terms of land title, the English paradigm was of a dual nature based on the rights of occupying land lying vacuum

domicilium and the legal purchase of title. John Cotton explained in a response to the Rev. Roger Williams of Salem, who claimed that the King's patent gave no right of property to the English, how ownership, as opposed to sovereignty, derived not from the King's patent but from the two rights stated above:

It was neither the King's intendment, nor the English planters to take possession of the country by murder of the natives, or by robbery: but either to take possession of the voyd places of the country by the law of nature (for vacuum domicilium cedit occupanti) or if we took any lands from the natives, it was by way of purchase and free consent.⁵⁰

Let us consider each of these English claims in turn for they are central ideas employed in the colonization of America. Vacuum domicilium has, as John Dunn notes in his essay on 'The Politics of Locke in England and America', a long history in colonial thought.⁵¹

Thomas More was perhaps the first writer to use this term in relation to the Americas. Couched in both biblical and Platonic notions of the promised land or utopian republic, More drew a link between the vacant land on the one hand and the overflowing and industrious nation on the other.

And if the population throughout the island should happen to well above the fixed quotas, they enrol citizens out of every city and on the mainland nearest them, wherever the natives have much unoccupied and uncultivated land, they found a colony under their own laws...By their procedures they make the land sufficient for both, which previously seemed poor and barren to the natives. The inhabitants who refuse to live according to their laws, they drive from the territory which they carve out for themselves. If they resist, they wage war against them. They consider it a most just cause for war when a people which does not use its soil but keeps it idle and waste nevertheless forbids the use and possession of it to others who by the rule of nature ought to be maintained by it.⁵²

It was the claim that land was vacant which provided English settlers and their defenders with their justification for war. The first half of the 17th century bears witness to many similar written defences of England's right to settle in America.⁵³ These shall be considered in depth in the next chapter.

The second claim made by the English for their right of proprietorship was the purchase of land. A treaty to purchase land assumed the recognition by England of Indian claims to a natural right of property over particular parcels of land. The reasons for choosing either to accept or to deny some universal 'natural right' can only be understood in relation to the colonial goals which gave rise to its consideration.

IV - THE RECOGNITION OF INDIAN LAND RIGHTS

There were four basic reasons why a European power would recognize the Indian's natural right to land. First, as has been discussed, the English and Dutch wanted to distinguish themselves from the Spanish conquistador. Secondly, there was a need to make the European claim secure against Indian attack. This was more likely if the Indians were given trinkets or other desired objects in exchange for valuable pieces of land. Thus, instructions given by the Governor of the New England Company in London to Governor Endicott of Massachusetts in 1629 reveal that native Americans who 'pretend' to own certain lands governed by the patent, are to have their lands purchased in order to insure the security of the colony.

If any one of the savages pretend right of inheritance to all or any part of the lands

granted in our patent, we pray you endeavour to purchase their title that we may avoid the least scruple of intrusion. Particularly publish that no wrong or injury be offered to the natives.⁵⁴

As Pearce argues:

Indian lands were to be bought if local savages should pretend to ownership, but to be bought only as a means of keeping peace with those savages.⁵⁵

Thirdly, there was the need by one European country to prove to another that it owned a certain parcel of land. The Indians were used as a means to this end. When the basis of property was changed from discovery to occupation, the Dutch were the first to realize that, by ascribing the natural right of property to Indians through their occupation of the soil, it was possible to gain vast tracts of land through purchase. As Jennings points out:

The Dutch perceived possibilities in this formula: "Possession" did not have to coincide fully with "habitation". A few Dutchmen living in one town could "possess" the region of country surrounding the town. Legal possession

could be created out of material such as 'natural rights' by the simple process of manufacturing legal forms.⁵⁶

It is clear the the Dutch government's use of legal forms, was primarily aimed at the English love of written contracts and rule of law. For example, in 1663, Peter Stuyesant, a Dutchman, advised the West Indies Company to get an 'Acte, Commission, Patent or Letter' over Long Island as under Dutch jurisdiction because 'sealed with their High Mightinesses' Great Seal, at which an Englishman commonly gapes as at an idol, it would, in our opinion, help matters somewhat.'⁵⁷

Finally, there were some Europeans who sincerely believed that natives, unlike black slaves, had natural rights including that of property which could not without injury be taken from them. As we shall see however, from the capricious nature of England's recognition of Indian's rights in early Anglo-American relations, it is clear that the legitimacy of Indian rights were contingent on England's larger colonial goals.

Let us consider how the recognition of Indian land rights by England and her representatives, changed over the 17th century depending on the colonial interests of the parties concerned.⁵⁸ In 1632, the English refused to recognize Indian property rights in a conflict with the Dutch over navigation rights from North America. The English seized a Dutch ship while in

harbour in England for violating England's exclusive right, according to its law, of shipping goods traded with the Indians back to Europe. The Dutch replied that England could not prevent Dutch trading, 'in countries whereof his people have not taken, nor obtained actual possession from the right owners, [that is the Indians] either by contract or purchase.'⁵⁹ Colonial documents of New York reveal that 'The English crown entered a flat denial that Indians could be considered legal possessors of lands.'⁶⁰ Twelve years later the English changed their minds and recognized Indians as legitimate owners of the land when it served their interests in a dispute they were having with the Dutch.

Breaking with their own non-purchasing precedents, Plymouth's traders acknowledged Indian tenure rights in principle, and they turned the principle against the Dutch by choosing to recognize the right of a different Indian than the one from whom the Dutch had purchased.⁶¹

Four years later in Salem a famous conflict arose between the minister, Reverend Roger Williams, and the civil authorities in Massachusetts when Williams wrote a treatise questioning civil power in the new colony, in which he asserted:

The Massachusetts charter had no legal basis and that the King had no right to grant the lands on which the colony was founded since they belonged to the Indian tribes.⁶²

Williams was arrested and 'much of the trial court's time was spent on Williams's ideas about Indian rights.'⁶³ Williams reaffirmed his belief that it was a 'National sinne' to claim the right to Indian lands by virtue of royal patent.'⁶⁴ Ultimately:

The General Court responded with a series of new laws, the first of which was a ban on the purchase of Indian lands except when such purchase had prior approval from the court...it was a prerogative insisted upon, sooner or later, by the chief authority in every colony. Control of land distribution...was essential to European governments.⁶⁵

John Winthrop, Governor of Massachusetts, in a letter to the former Governor Endicott, regarding the Williams case, claimed that there were three ways in which the English title was good; by patent, 'vacuum domicilium' and 'good likinge of the natives'. But even if, as Williams claimed, none of these were legitimate, it is clear that, for Winthrop, natural right was

superseded, in any case, by God's right to grant land to his chosen people.

If God were not pleased with our inheriting these parts, why did he drive out the natives before us? And why dothe he still make room for us, by deminishinge them as we increase?...If we had no right to this lande yet our God hathe right to it, and if he be pleased to give it to us (takinge it from a people who had so long usurped upon him, and abused his creatures) who shall controll him on his termes?⁶⁶

Finally, it is clear that a distinction had developed between ownership of land and sovereignty over it. The King's patent certainly provided the latter. The former was secured by taking over vacant land or through purchase, as has been discussed. The relationship between these two concepts is important both in terms of Locke's writings and implications for native Indians. For while the latter could own property in their own right, sovereignty rested with the King of England if their land fell within the King's patent.

Thus, Indians' rights to land were recognized when they served the interests of the English colonizers to do so, that is, in order to distinguish themselves from the Spanish, to oblige the Indians and retain the peace, to ward off similar claims by

other European powers, and to assert control over disruptive colonists. At the same time, those who suggested that native Americans had prior rights to land which the English occupied by virtue of a royal charter, such as Reverend Williams in Salem, were summarily banished from the English settlement. Thirdly, it was the transformation of English colonization from trade to settlement which made the Indians less facilitators of English growth than obstacles in the way of its continuing colonial spread.

So far we have spoken mainly of land rights, but it is interesting to note that the English generally recognized the right of the Indian to life and liberty. In this sense the Indian had a profoundly different place in the English mind than that of the African slave. Colonial documents repeatedly refer to the outlawing of Indian slavery and where it was shown that traders or settlers were mistreating the neighbouring Indians, instructions were sent to colonists from England that native Americans were to be treated with justice. For example, Governor Craddock, the first governor of Massachusetts instructed Captain Endicott to act 'justly and courteous towards the Indians.'⁶⁷

As has been discussed, there were several reasons for the fair treatment of the Indians, including fear of retaliation, but there was, nevertheless, a profound difference in the attitude of English colonizers between the native peoples of Africa and

America. The difference lay in the belief that Indians were rational, educable and potentially Christian men. In essence they, unlike their black counterparts, were like Europeans at an earlier stage of development. It was, in fact, a commonly held belief that the Indians descended from the 10 lost tribes of Israel. Daniel Cookin discusses this in his 1674 treatise on the origins of the native Americans.⁶⁸ According to Roy Harvey Pearce, such a viewpoint was commonplace.

Almost universally it was agreed that the Indians were of the race of men, descendants, in order, of Adam, Noah and those Asiatic Tartars who had come to America by a land bridge from northern Asia.⁶⁹

Theologically, this provided the Indians with a much different standing than the African blacks in the minds of Christian European thinkers. Often Biblical stories were used to provide insight into the actions of the Indians. In essence, like the Biblical figures, American Indians were a primitive race who with the fullness of time would reach the status of 'civil' man. While the North American Indian was superior to the black, he was in no way, equal to the white. In colonial terms this meant that his rights were curtailed to that of a European dependent rather than a free man. For example, an Indian's right to trade was limited to those Europeans within whose

jurisdiction he happened to live. In Carolina, the Lords Proprietors stated in instructions to the council at Albemarle:

You are to take spetiall care to prohibite all trade and commerce between the Indians and any others that are noe freeholders of our Province of Carolina.⁷⁰

Secondly, as had been discussed, land had to be traded through the English proprietors and could not be sold without their approval. Finally, war against the Indians was treated as something qualitatively different than that against a European power. No clearer example of this can be given than at a meeting of the Committee of Trade and Plantations in the Council Chamber at Whitehall on the 25 January 1683 when Sir Peter Colleton, a correspondent of Locke's who lived in the Bahamas, was called in because the committee was wary of a clause in the patent which gave colonists the power to begin a war. The Committee was assured that such a clause would never be used to begin war against other European nations, only Indians.

Sir Peter Colleton one of the Proprietors of the Bahamas Islands being called in and asked concerning the clause in that Patent empowering them to make warr hee takes notice that the same is common to all Patents granted to

Proprietors and declaring that they doe not understand it otherwise than to make war with [the] Indians.⁷¹

Colleton confirmed that instructions were 'sent to all other Proprietors in the West Indies that they do not make any other use of that clause.'⁷²

V - CONCLUSION

Thus, 17th century England became increasingly absorbed by the colonial quest. The initial aim was to Christianize the natives, expand their empire, at the expense of the Spanish and Dutch, and, through investment, secure private economic gain and honour. The purpose and nature of colonization evolved from trading, mining and exploration at the beginning of the century to settlement and plantations by the end. The implications for the American Indians, as has been discussed, were profound and recognized as such by many at the time. As Wesley Craven has noted:

No one who takes the trouble to go through the basic records of the early colonies can fail to recognize that the problem of Indian relations loomed much larger in the life of our colonial

forebearers than the space allotted to the subject by modern writers would suggest. At the very outset, projections of American settlement were confronted with the same question of right and title that has challenged more modern imperialists...the question, of course, had to be answered, and no answer could have met the test without a more or less definite statement of the principles which were to guide English settlers in their relations with the native inhabitants.⁷³

Answers were in fact given as the debate raged over Indian rights not only in such famous trials as the Massachusetts minister Roger Williams and his interlocuter, Governor John Winthrop, but in natural law treatises (such as those of Vitoria, Grotius and Pufendorf) and in many colonial tracts (from Virginia to New England to Carolina). As the colonies grew and political tensions heightened, authorities in England attempted to impose some order on the activities of the settlers in America with limited success. From corporations to boards of trade, to councils for plantations, England attempted to maintain the colonies in a role which would insure profit for the mother country.

Having described the general background of English colonial activity during this period, it is possible now to consider

Locke's specific involvement in the colonial enterprise of Carolina and secondly, the particular intellectual debates which arose in England and America regarding the merit and legitimacy of the colonial enterprise itself, in order to discover how Locke's use of America and its native inhabitants in the Two Treatises not only reflects the general context within which he lived and worked, but advances, within the specific debates mentioned above, particular arguments on behalf of English colonial policy and its defenders.

Notes

1. Article 3, First Charter of Virginia (1606), cited in The Cambridge History of the British Empire, I, Cambridge, 1929, p. 193.
2. Letter From Governor Craddock (First Governor of Massachusetts Company) to Captain Endicott, February 16, 1628, Chronicles of the First Planters of the Colony of Massachusetts Bay (1623-1636), Alex Young, ed., Boston, 1846, p. 133..
3. Company's Instructions to Captain Endicott and his Council, April, 1629 in Ibid., p. 142.
4. 'The First Charter Granted by King Charles the Second, to the Lords Proprietors of Carolina', The Colonial Records of North Carolina, (1662-1712), William Saunders, ed., 1886, I, pp. 20-34.
5. Ibid., p. 21.
6. The Cambridge History, I, p. 110.
7. Oliver Cromwell, Speech to Parliament, September 17, 1656 cited in Sir Charles Lucas, Religion, Colonization and Trade: The Driving Forces of the Old Empire, London, 1930. p. 30.

8. The Cambridge History, I, p. 111.

9. Letter to Lord Ashley from William Owen (endorsed by John Locke), September 15, 1670, in Collections of the South Carolina Historical Society, V, Charleston, 1897, pp. 196-202.

10. Robert Sanford, (Secretary and Chiefe Register for the Right Honourable the Lords Proprietor) in The Port Royall Discovery in Ibid., p. 81.

11. R. Hakluyt, 'Epistle Dedicatory to Sir Walter Raleigh', The Original Writings and Correspondence of the Two Richard Hakluyts, II, London, 1935, p. 368.

12. Doyle, The English in America, cited by Charles Lucas, Religion, Colonization and Trade, p. 14.

13. Sir Edward Coke cited in 'Address' by Joseph W. Barnwell, Collections of the South Carolina Historical Society, V, p. iv.

14. Maurice Cranston, John Locke: A Biography, Oxford University Press, 1985, p. 155.

15. Letter to John Locke from Peter Colleton, May 28, 1673 in E.S. de Beer (ed.) The Correspondence of John Locke, 8 volumes Oxford, 1976-1983, I, Letter no. 270.

16. See Cranston, Locke, p. 120. and Edward McCrady, South Carolina under the Proprietary Government, 1670-1719, New York, 1901, p. 111 on the relationship between the Charter and Locke's grant.
17. The Cambridge History, p. 108.
18. Herbert Osgoode, The American Colonies in the 17th Century: The Chartered Colonies: Beginnings of Self-Government, I, New York, 1904, p.141.
19. Gary B. Nash, 'The Image of the Indian in the Southern Colonial Mind', William and Mary Quarterly, 3rd Ser., XXIX, 1972, p. 205.
20. Ibid., p.209.
21. For an analysis of how these definitions evolved see, Francis Jennings, 'Virgin Land and Savage People', in Early American History: Indians and Europeans: Selected Articles on Indian-White Relations in Colonial North America, Peter Hoffer, ed., New York, 1988.
22. Ibid., p. 110.
23. Ibid., pp. 110-111.

24. James Merrell, The Indians New World: Catawbas and Their Neighbours from European Contact Through the Era of Removal, University of North Carolina Press, 1989, p. 13.

25. Barnwell, 'Address', Collections of the South Carolina Historical Society, V, p. vii.

26. Cambridge History, p. 111.

27. Richard Hakluyt, 'Discourse Concerning Western Planting' in New American World, III, and Francis Bacon, Of Plantations, cited in Lucas, Religion, Colonization and Trade, pp. 5, 20.

28. Ibid., p. 5.

29. This notion of exodus was used by many writers defending the plantation, most particularly those justifying the take-over of Indian land and those defending plantations in terms of English trade - this shall be discussed at length in the following chapter.

30. Locke writes, 'Whoever shall counterfeit a pass shall lose his ears for the first time that he is found guilty thereof, and the second time he shall be transported to the plantations' in a scheme rejected by the Board of Trade, cited in Cranston, Locke, p. 425.

31. Herman Lebovics, 'The Uses of America in Locke's Second Treatise on Government', in Journal of the History of Ideas, XLVII, 1986, p. 577.
32. George Beer, The Old Colonial System, London, 1932, II, p. 183.
33. Ibid., pp. 186-187.
34. Beer, The Old Colonial System, I, p. 18.
35. Letter to John Locke from Peter Colleton, (early summer 1671), in de Beer (ed.), Correspondence, I, Letter no. 254.
36. Nash, 'The Image of the Indian', pp. 205-206.
37. Merrell, The Indians New World, p. 169.
38. Ibid., p. 167.
39. Ibid., p. 167.
40. Loren Pennington, 'The Amerindian in English Promotional Literature 1575-1625', in The Westward Enterprise: English Activities in Ireland, the Atlantic and America (1480-1650), Liverpool, 1978, p. 187.

41. Richard Eburne, A Plain Pathway to Plantations (1624) cited by James Axtell, The Invasion Within: The Conquest of Cultures in Colonial North America, Oxford, 1985, p. 153.
42. Jennings, Virgin Land, p. 101.
43. Pennington, 'The Amerindian', p. 177.
44. Francisco Vitoria, The First Reflection of the Indians Laterly Discovered, The Classics of International Law, Published by the Carnegie Endowment for International Peace.
45. Pufendorf, De Jure Naturae, Book VIII, Chapter VI, Para. 5.
46. Charles Davenant, 'On the Plantation Trade', Discourses on the Public Revenues and on the Trade of England, Part II, Discourse III, London, 1698, p. 196.
47. Nash, 'The Image of the Indian', p. 186.
48. Ibid., p. 187.
49. Smith, A Description of Virginia, cited in Lucas, Religion, Colonization and Trade, p. 23.
50. John Cotton, The Bloody Tenant Washed, London, 1647, cited in Chester E. Eisinger, 'The Puritans' Justification for Taking

the Land' in Essex Institute Historical Collections, LXXXIV, 1948, pp. 141-142.

51. John Dunn, 'The Politics of Locke in England and America', in John Locke: Problems and Perspectives, John Yolton, ed., Cambridge, 1969, p. 72.

52. Thomas More, Utopia, The Yale Edition of the Complete Works of St. Thomas More, IV, New Haven, 1965, p. 137.

53. William Strachey claims that the debate over England's claim to America is the strongest he has encountered on any issue. The Historie of Travaile into Virginia (1612), published by Hakluyt Society, London, 1849, p. 1.

54. Instructions given by the Governor of the New England Company to Governor Endicott in 1629 in Alex Young, Chronicles of the Pilgrim Fathers of the Colony of Plymouth (1602-1625), Boston, 1841, p. 259.

55. Roy Harvey Pearce, 'The "Ruines of Mankind": The Indian and the Puritan Mind', Early American History: Indians and Europeans: Selected Articles on Indian-White Relations in Colonial North America, 1988, p. 43.

56. Jennings, 'Virgin Land', p. 110.

57. New York Colonial Documents, II, p. 488, cited in Ibid., p. 111.

58. For an history of England's recognition and non-recognition of Indian property rights, see Jennings, 'Virgin Land', pp. 100-122.

59. New York Colonial Documents May 5, 1632, cited in Ibid., p. 111.

60. New York Colonial Documents May 23, 1632, cited in Ibid., p. 111.

61. Ibid., p. 112.

62. Cambridge History, pp. 163-164.

63. Jennings, 'Virgin Land', p. 116.

64. Ibid., p. 116.

65. Ibid., p. 115.

66. Letter from John Winthrop to John Endicott in Winthrop Papers, III, Boston, 1943.

67. Letter from Governor Craddock to Captain Endicott, February 1628, in Young, Chronicles of the First Planters, p. 133.

68. Daniel Cookin, 'Historical Collections of the Indians of New England', Massachusetts Historical Society Collections, I, 1792, pp. 141-226. For more on this, see Ralph Miller, 'American Nationalism as a Theory of Nature', in William and Mary Quarterly, XII, 1955 pp. 74-95.

69. Roy Harvey Pearce, Savagism and Civilization: A Study of the Indian and American Mind, California, 1988, pp.24-25.

70. 'Instructions given by us, the Lord Proprietors of Carolina unto the Governor and Councill of that Parte of our Province called Albemarle', in The Colonial Records of Carolina, I, p. 231.

71. British Public Records Office Colonial Entry Book No. 107, p. 113, cited in The Colonial Records of Carolina, I, p. 342.

72. Ibid., p. 342.

73. Wesley Craven, 'Indian Policy in Early Virginia', William and Mary Quarterly, 3rd Ser., I, 1944, p. 65.

Chapter 4: Colonialism - Economic and Ethical Debates

John Locke's passionate interest in England's colonial affairs is well documented. Maurice Cranston writes in his biography of Locke and his patron:

Locke was easily infected with Ashley's zeal for commercial imperialism, seeing as clearly as his patron saw the possibilities it offered for personal and national enrichment.¹

Locke was not only interested in the ideas but deeply immersed in the development of actual colonial policy as secretary to the Lords Proprietors of Carolina from 1668 to 1675, through his work for the 1672-1676 Council of Trade, and as Commissioner for the Board of Trade and Plantations (1695-1700). In each of these capacities, he played a dominant role in formulating the policies to be implemented. Let us consider each in turn.

The key figure in the Carolina project was Lord Shaftesbury and at his side was Locke. The latter's workload was enormous. From the colonial records of Carolina, one can see that all of the letters between the Lord Proprietors and the Council in Carolina were endorsed by Locke, some of the laws, including the Temporary Laws of 1674 were handwritten and sent by him, and copious notes summarizing the activities were recorded in his own hand. In addition, he wrote to senior officials in the colonies of the Bahamas and Carolina, including Joseph West,

Peter Colleton and Henry Woodward of his own accord during this time. He was also responsible, in conjunction with Shaftesbury, for penning the Fundamental Constitutions.

H.R. Foxbourne has claimed that Locke's role in the first of these colonial enterprises was of paramount importance.

His influence in [the colony's] detailed management seems to have been almost paramount, and the zeal shown by him in endeavouring to secure the property of the settlement was amazing. Down to the autumn of 1672, he continues his informal, but onerous, office of secretary to the proprietors.²

In the second, the Council of Trade, for which he was secretary from 1673-1675, the work was equally demanding. George Beer describes the work in the following terms:

The Council for Plantations and its enlarged successor had together a joint life of somewhat over four years, during which short period they greatly improved the entire system of imperial control. They held formal meetings on an average of at least twice a week.³

Finally, the third colonial enterprise with which Locke was involved was the 1695 Board of Trade. A.B. Keith concludes, 'It is clear that Locke dominated the first meeting and continued to dominate the board while his membership of it lasted'.⁴ Peter Laslett writes of Locke's role on this board, 'It is surely of great significance that colonial policy should have had such a man as one of its founders.'⁵ If not a founder, Locke can certainly be considered instrumental in the formulation of colonial policy, beginning long before the 1695 Board of Trade. From his appointment as secretary to the Lords Proprietors of Carolina in 1668 to his final days, Locke was a firm supporter of the colonization of America and was immersed in all of the debates which revolved around the American plantations, including both the debate over their economic benefit to England and the right of English settlers to take over Indian land.

Having considered the general background for the development of colonial policy and Locke's involvement in it, we must now turn to the specific content of the debates about colonization, in order to discover how the intellectual positions advanced there are reflected in his subsequent political theory.

The two most important questions being discussed at this time were cornerstones to the legitimacy of the whole colonial enterprise. The first and most basic issue was the value of having plantations at all. The second was the right of England

to plant itself in America, a land already occupied, at least in part, by another people. The first of these questions was debated almost exclusively in England as part of the discussion over England's economy as a whole. We shall consider the ideas of writers such as Thomas Mun, Cradocke, Sir Josiah Child and Charles Davenant in relation to those of Locke in this regard. The second question was addressed mainly by Englishmen living in America in a series of treatises on England's right to America. These too shall be discussed in relation to Locke's theories.

I - ENGLISH COLONIALISM: THE ECONOMIC DEBATE

The second half of the 17th century in England was a time of great economic hardship. The crises experienced in the 1660's and 1670's were due, in part, to the wars being waged by England against the Dutch. At the same time, the Great Plague of 1665 and the Fire of London in 1666, led to further drains on England's resources. As Patrick Kelly, the editor of Locke's economic papers, comments:

Yet war was by no means the only source of economic crisis in the seventeenth century: more frequent were natural disasters, such as plague and harvest failure, and the other forms

of political disruption, such as trade embargoes and currency manipulation.⁶

The growth of foreign trade was seen, by some, as the solution to these crises; by others as the cause. Locke, along with his patron Shaftesbury, were part of the group of Whig politicians who promoted the former line of argument. As Kelly comments, 'Locke argues that England has no option but to foster its foreign trade.'⁷ The debate over the alleged benefits of trade and settlement was fierce, but one in which Locke was deeply interested. Within his library, Locke created a category for his works on trade, which included eleven in all, several of them published in the late 1670's.⁸ Amongst them were works which analyzed the 'decay' of English trade in relation to that of Holland, and an account of France's 'usurption' of English trade. Locke also had a copy of the 1680 Britannia Languens in his library, which was the classic statement of opposition to American plantations.

Beyond his library, Locke kept abreast of the debate over trade through manuscripts and works available in Shaftesbury's own library. Kelly comments:

As [Locke's] notebooks and correspondence show, these [books in Locke's library] were far from constituting the sum total of his reading in the field. Other works were available to him

in Shaftesbury's library, and...the Council of Trade...had collections of books and maps as well as important manuscript material, a matter of some significance at a time when much economic writing circulated in manuscript before publication in print.⁹

Thomas Mun was one of the first defenders of England's foreign trade as the means by which to best accrue revenue. His influence on Locke was important:

Perhaps the most influential [works for Locke] were Mun's England Treasure by Forraign Trade, 1664...[it] was the first work of specifically economic, interest that Locke is known to have read.¹⁰

Mun begins by claiming that most Englishmen were opposed to the idea that trade would increase revenues, particularly if money had to be expended first.

This Position is so contrary to the common opinion, that it will require many and strong arguments to prove it before it can be accepted of the Multitude, who bitterly exclaim when they see any monies carried out of the Realm.¹¹

Trade, however, for both Mun and Locke is the essential key in increasing the value of money. Where Mun states 'Money begets trade and trade encreaseth money', Locke concludes: 'Trade then is necessary to the produce of Riches, and Money necessary to the carrying on of Trade'.¹² Money was invested into foreign trade during the 1660's but concern grew as England fell behind Holland in its trade with the new world. Such concern eventually caused the House of Commons in 1667, the House of Lords in 1668 and the King, himself, in 1669, to create their own committees, to 'consider of the causes and grounds of the fall of rents and decay of trade within this kingdom'.¹³

One of the solutions which was suggested, beginning with Mun and Cradocke in the 1660's but increasingly with Davenant and Child in subsequent years, was that settlement and cultivation of new lands, would be the foundation of riches. As Mun states:

The riches...of every Kingdome, State, or Commonwealth, consisteth in the possession of those things, which are needfull for a civill life. This sufficiency is of two sorts; the one is naturall, and proceedeth of the Territorie it selfe; the other is artificiall, and dependeth on the industrie of the Inhabitants.¹⁴

Cultivation of new ground was the key to England's wealth. Cradocke, an associate of Shaftesbury's in the early 1660's, comments:

Planting in...new Plantations throughout the whole Globe, would...multiply Commodity and Livelyhood, [and lead to] the imployment of innumerable poor...and the abundant encrease of our Shippin and Dominion on the Sea.¹⁵

It must be understood that during the mid-1600's, the majority of men who played a role in England's political affairs denounced the notion of colonization particularly in terms of plantations or settlements as an effective form for the production of wealth. As trade had been opposed, so too plantations were widely seen as a drain on the nation's wealth and resources. Some politicians, always in the minority, were vociferous defenders of the plantation as a means to increase the nation's wealth. Shaftesbury was amongst this number arguing that the two issues were virtually indivisible.

Shaftesbury, believing that questions of overseas possessions were inseparable from questions of trade...proposed their fusion in a single and more powerful body. The King agreed to this proposal, appointed a new Council of

Trade and Plantations and made Shaftesbury its President.¹⁶

In the second half of the 17th century, the official and prevailing view of the plantations was a fiercely negative one. The Commissioner of Customs wrote against them because:

the encouraging of people to remove to the plantations, as too many go thither, [will lead] to the unpeopling and ruin of the kingdom.¹⁷

Similarly, Britannia Languens, presented to the Parliament of England in 1680, a copy of which is in Locke's library, was, in the words of Sir Charles Lucas, 'a very wholesale condemnation of colonisation.'¹⁸ It stated in part:

These plantations may be considered as the true grounds and causes of all our present mischiefs; for, had our fishers been put on no other employment, had those millions of people which we have lost or been prevented of by the plantations continued in England, the government would long since have been under a necessity of easing and regulating our trade...the plantations affording room and hopes for men...they have deserted the nation

continually, and left us intricate and fettered in private interest and destructive constitutions of trade.¹⁹

This notion that plantations would undermine the kingdom was not limited to a few officials - it was, according to contemporary commentators, a widespread belief. Sir Josiah Child, who Locke responds to in his paper on trade and interest rates, claims in his famous, New Discourse on Trade that those in favour of plantations are but one in a thousand.

I do not agree that our people in England are in any considerable measure abated by reason of our foreign plantations; but propose to prove the contrary. This I know is a controverted point, and do believe that, where there is one man of my mind, there may be a thousand of the contrary.²⁰

Many of those who denounced colonization were leading public figures. For example Sir William Coventry, described by George Beer as 'one of the ablest of public men of the Restoration Era', wrote that the 'long continued directing of the Young and prolifick People to the Plantations' is the cause of England's decay.²¹ John Evelyn, the diarist and official commissioner to the 1672-1676 Council of Trade and Plantations, who swore in John Locke as secretary to the Council, wrote of 'the ruinous

numbers of our Men, daily flocking to the American Plantations.'²²

The need to defend colonialism against a general opinion which was at best skeptical and at worst hostile fell on the bodies which administered the policies concerned. As Sir Charles Lucas makes clear, Shaftesbury and Locke faced great opposition in their ideas favouring colonization.

Shaftesbury, with Locke behind him, was in favour of plantation, of forming new colonies. But most of his leading contemporaries were not of his way of thinking in this respect.²³

Throughout the period from 1660 to 1690, there were numerous responses and vociferous defenses of the plantation. William Penn argued:

Colonies are the seeds of nations, begun and nourished by the care of wise and populous countries, as conceiving them best for the increase of human stock and beneficial for commerce...With justice, therefore, I deny the vulgar opinion against plantations that they weaken England; they have manifestly enriched and so strengthened her.²⁴

Central to the concerns of those who opposed the plantations was not only the drainage from England of good people but also the fear that the colonies would become independent of the mother country and compete against her. New England was the worst example of this problem and its management was denounced by both supporters and opponents of plantations as something which was harmful to England's interests. John Evelyn wrote in 1671 that the Council was worried that New Englanders 'were able to contest with all other plantations about them, and there was fear of their breaking from all dependence on this nation.'²⁵ It is significant that these fears come to a head in 1663 over Carolina, as many in England believed this new province would become yet another drain and competitor to English trade. Roger Coke, grandson of Lord Justice Coke, wrote:

In this condition I leave to thee, reader, to judge, whether it will be yet so much more pernicious to the trade of this nation to endeavour a further discovery of new plantations; and that if the project of peopling Carolina from the residue of the men we have left in England, if it succeeds, will not so much more enfeeble this nation, and reduce the trade thereof to so much less proportion by how many men shall be withdrawn from it.²⁶

The fear that Carolina would 'enfeeble' the nation was so deeply felt that King Charles II published, within four days of opening up Carolina to settlement, through the 'Royal Declaration and Proposals to All that Will Plant in Carolina', a second proclamation reinforcing the idea that colonies were there only to serve the needs of England.

His Majesty and Privy Council, having maturely considered the importance of two acts lately made for the increase of shipping and navigation in relation to trade and revenue, and for keeping his plantations in constant dependence, commands the utmost diligence to be used for punctually observing the same.²⁷

The 'peopling of Carolina' was clearly a worry to those in England who felt it would create another New England.

Those who wrote in favour of the plantation understood that a successful colony needed to be closely circumscribed by a body in England to ensure a settlement of agrarian labourers, rather than one of adventurers, miners, or manufacturers. It was thought that the settlement should produce specific crops needed by England to offset their purchases from other European competitors and they should be shipped back home by English ships, exclusively. While Locke was secretary to the Council of Trade (1673-1675), he would have helped draft exactly this

type of colonial policy. Cranston writes in his biography of Locke:

The Council was chiefly preoccupied with foreign trade...The colonies were expected to contribute towards the economy of England, to supply England with raw materials, to buy English goods, and to abstain from competition with English industries. In return England accepted the responsibility of protecting the colonies...Various Acts of Trade were passed by Parliament to ensure that colonies fulfilled their share of the bargain. These Acts prescribed that certain 'enumerated' commodities, such as tobacco and sugar should come to England only, and that all goods leaving or entering colonial ports should be carried in English ships.²⁸

This idea of colonization in America and the need for its defense informs, as I shall hope to show, Locke's Second Treatise.

Amongst Locke's papers in the Lovelace Collection is a page of notes in preparation for an essay specifically on trade. Like Josiah Child, Charles Davenant and William Penn, Locke had developed several arguments in defense of the plantation

against the strong opposition it faced in England. Other works by Locke also defended English colonialism. In particular, Locke's 'For a Generall Naturalization' and Some Considerations of the Lowering of Interest and Raising the Value of Money both defend foreign trade, including settlement, as the source of England's future wealth. The latter was written, according to Maurice Cranston, as a reply to Josiah Child. Indeed Locke's library contains three of Child's works.²⁹ It is to Child that we turn first, then, to consider his defense of plantations as part of this larger discussion of trade.

II - THE PLANTATION DEBATE: JOSIAH CHILD AND CHARLES DAVENANT

In responding to 'some gentlemen, of no mean capacities, [who] are of the opinion, that his majesty's plantations abroad have very much prejudiced this kingdom by draining us of our people,' Child begins by claiming it is not the the richness of the land but the industry of the people which creates wealth in a nation.

First, I agree, that lands, though excellent, without hands proportionable, will not enrich any kingdom...Most nations in the civilized parts of the world are more or less rich or poor, proportionably to the paucity or plenty

of their people, and not to the sterility or fruitfulness of their lands.³⁰

He then proceeds to argue, contrary to public opinion, that plantations are profitable to England for several reasons. His first point is that the colonies will absorb many troublesome factions, such as the unemployed or criminals, who would not be contributing to England in any case. He goes on to argue that the best form of plantation is one based on agriculture rather than on trade, mining or conquest (the methods of other countries). Thus he attacks the Dutch for not having

...made any improvement by planting; what they do in the East Indies being only by war, trade, and building of fortified towns and castles upon the sea-coasts, to secure the sole commerce of the places and with the people whom they conquer, not [my emphasis] by clearing, breaking up of ground, and planting, as the English have done.³¹

Equally, the 'French...have made no considerable progress in planting'. Finally with regard to Spain, he writes, 'The English...have cleared and improved fifty plantations for one, and built as many houses for one the Spaniards have built.'³² The English were the best planters; other possible forms of

labour tried by English colonists were considered to be less beneficial to the nation's interests.

Mining and grazing, in particular, were often discouraged by supporters of the plantations. The former was not only seen as a means for private rather than national gain, but the intrinsic need to explore large areas of land, in the search for lucrative mines, also ran counter to the English nation's desire to settle people and populate small areas of land. Grazing, or raising cattle was discouraged because it tended to benefit inter-colonial trade within America rather than that between the colonies and England. While many colonizers did attempt to explore both of these avenues for producing private wealth, it was often actively discouraged by the English proprietors and thinkers like Child who had England's national interest at heart. The idea that cultivation rather than mining was in England's national interest was also based on the fact that the export of crops to England under the navigation laws would, in forbidding export on anything but English ships, create a great national navy and many more jobs in shipping. Mining simply made the adventurers rich and would not sustain, as the English plantations did, the same number of people on both land and sea. Child comments on all of these interconnected issues in his attack on Spain's obsession with mining in the new world.

The Spaniards' intense and singular industry in their mines for gold and silver...doth cause them to neglect in great measure cultivating of the earth...which might give employment to a greater navy, as well as sustenance to a far greater number of people by sea and land.³³

Agrarian activities were thus greatly encouraged, but dating back to the time of More, those who wished to settle many people favoured crop growing as an agrarian activity over grazing animals. More states in Utopia:

Crime, too springs from the...turning tillage into pasturage, for wool pays better than corn wherefore sheep 'devour whole fields, houses and cities', and the peasants thus expelled must beg or steal and be hanged.³⁴

James Axtell claims that this support for crop-growing was a feature of the views of both English proprietors and the church in 17th century settlement in America.

To the preachers and politicians who supported them, industry meant farming and farming meant tillage, not grazing...as soon as the missionaries were able to establish themselves among the Indians they began to introduce the

idea of English style farming...the official English preference for tillage showed itself every time a new mission was founded.³⁵

Child proceeds to argue that colonies will benefit England only if they are kept in a dependent relationship to the mother country which involved, historically, two important components. Firstly, Navigation Acts had been implemented to insure that all goods produced in the colonies for export to Europe would go via English ships directly to the mother country. Secondly, incentives and legislation had been introduced to ensure that the right crops, that is the ones useful to England, were grown in the colonies. Specifically, England wanted commodities which would supplant those it now bought from southern European countries, such as wine, dried fruits, nuts and oil. Dependency ensured that the profits would return to England. Moreover, Child argues, the demand amongst plantations for basic manufactured commodities which could not be produced in the new world necessarily creates employment in England for those involved in their production. Thus, Child states, 'If we kept the trade of our said plantations entirely to England...one Englishmen [in America]...would make employment for four men in England'.³⁶

These views are echoed by another great defender of the plantation, Charles Davenant, who makes it clear that tilling the earth is the best form of development. Like Child,

Davenant argues that conquest is not a legitimate form of title, attacking the Turks as having, 'more enlarg'd their Dominions by Conquest, than by any Arts of Peace.'³⁷ According to Davenant, the enlargement of dominions by conquest or the search for gold undermines the health of an empire. The development and appropriation of property should be restricted by the English government or its representatives to that which can be cultivated.

As many Empires have been ruin'd by too much enlarging their Dominions and by grasping at too great an Extent of Territory, so our Interest in America may decay, by aiming at more Provinces, and a greater Tract of Land, than we can either cultivate or defend.³⁸

Thus, he attributes many of the problems in Virginia to the large tracts of land which were owned but not planted:

Many hundred thousand Acres are, as they call it, taken up, but not planted...these Practices are without doubt a chief Cause that our Colony in Virginia has had no better success.³⁹

The solution for Davenant is twofold. First, 'endeavour the rendring this Territory less extensive, but better Peopled, and consequently in a readier Condition to improve and defend it's

self.' Secondly, 'establish something like an Agrarian Law...to restrain such a fraudulent taking up of Land...as is a Bar to the Industry of Others.'⁴⁰ Davenant argues explicitly for farming over manufacturing in the colonies because the latter would compete with English companies exporting such products to the new world. Like Child, he believes that one of the great advantages to the plantations was the manufacturing jobs it created in England.

Tis true, if in New England or in other Parts there, they should pretend to set up Manufactures, and to cloath, as well as feed their Neighbours, their nearness, and low Price, would give 'em such Advantages over this Nation, as might prove of pernicious Consequence; but this Fear seems very remote, because new Inhabitants, especially in a large Extent of Country, find their Accompt better, in Rearing Cattle, Tilling the Earth, clearing it of Woods, making Fences, and by erecting Necessary Buildings, than in setting up of Manufactures.⁴¹

Agriculture, that is the clearing, tilling and planting of the land is not only the English method of claiming property but in the colonies it is the preferred form of labour for keeping the

colonies dependent on and out of competition with the mother country, particularly in the area of manufacturing.

III - LOCKE'S ECONOMIC VIEWS

Locke, in both his economic writings and the Two Treatises, defends the rights and economic benefits of the colonial plantation in America, consistent with the views of Child, Davenant and other leading commentators of trade at the time. While Locke's support for the colonial plantation, like these other thinkers, runs counter to the predominant opinion of his time, he uses every available forum to put his case. The correlation between his Two Treatises, his own economic writings, and the economic thinkers of his day needs to be considered in more depth.

Locke believes, as Child does, that it is industry, or in Locke's terms, labour, rather than quantity of land or its richness which determines the value of property. Thus Locke argues that labour not only begins the property, but 'makes the far greatest part of the value' of it, and 'a fruitful Soil, apt to produce in abundance...for want of improving it by labour' will have no real value.⁴² The labour theory of value is also articulated by Locke in his economic writings on trade,

where he states: 'In all manufactures the greatest part of the value lies in the labour'.⁴³

Like Child and Davenant, Locke speaks almost exclusively, in the Second Treatise, of labour in terms of crop-growing, agrarian activity rather than mining, grazing, manufacturing or other forms of industry which could theoretically provide an equal claim to proprietorship through labour. This will be demonstrated when we examine in detail the specific forms of labour which Locke describes in his chapter on property. Suffice it to say that, like Davenant who argues that settlers who engage themselves in agriculture over manufacturing or other forms of industry will 'find their accompt better' and serve English interests more, or Child who claims that agriculture provides 'sustenance to a far greater number of people' than any other industry, Locke will repeatedly assume a preference, to the near exclusion of all other forms of labour, for an exclusively crop-growing farmer.

That England excels over all other countries in this type of labour as Child argues in reference to countries such as Spain and France is something with which Locke concurs. In notes written by Locke on, 'Trade in Sweden, Denmark and New England', is the following observation on Swedish plantations, 'labour $\frac{1}{2}$ value to England.'⁴⁴ The relationship between labour and value accrued is central to the competition for colonial

riches and is also discussed at some length by Locke in his chapter on property.

Locke also concurs with Child's conclusion that a planter in America, far from draining England of employment, creates far more jobs in England through demand for the necessary manufactured tools and the development of shipping necessary to transport them. In his chapter on property in the Second Treatise, Locke discusses the value that labour brings to land. He uses as his example in this paragraph land in America stating that it is labour which brings value to the products of the land. He goes beyond the industry of those individuals in America to the manufacture of the tools, supplies and ships which would be needed to complete their task. Thus in order to harvest corn and make bread, Locke claims that a 'catalogue of things', which could be produced only in England, would be necessary, including 'all the Materials made use of in the Ship, that brought any of the Commodities made use of by any of the Workmen, to any part of the Work.' Of the materials listed in the Two Treatises, it is worth noting the similarity to the one given by Thomas Mun in his defense of England's trade through the economic benefits of navigation. Where Mun speaks of 'Timber, Planks, Boards, Pitch, Hemp, Tar, Flax, Masts, Cordage and other Ammunitions to make those multitude of ships', Locke lists amongst other things, 'Timber...Pitch, Tar, Masts, Ropes, and all the Materials made use of in the Ship'. Locke, like Mun, is arguing that the value of navigation and

all of its needs must be accounted for in calculating the worth of plantations and the labour expended on the 'Acre of Land...in America' mentioned at the beginning of the paragraph.⁴⁵

Locke articulates in this important paragraph of the Second Treatise, two central tenets in the defense of English trade, first advanced by the economic writers cited above. The first is that most manufactured commodities used by workmen in their labour in America would need to be shipped to them, that is, they would be made in England, not in America. This creates employment in the manufacturing centres in England. Secondly, the building and operation of the ships themselves, in order to transport these commodities from the old country to the new world, would further both the art of navigation and employment in shipping back home. Both of these tenets underlie the case that colonization in America benefits England if properly governed and controlled.

Thus the Navigation Act of 1660 has as two of its basic aims, 'to ensure the promotion of English shipping and seamanship' and 'to protect British mercantile interests.'⁴⁶ By shipping all of the manufacturers' commodities to America from England, on English ships, as Locke's argument in the Second Treatise suggests, the cultivation of the 'Acre of Land...in America' will lead to the beneficial results listed above and used by the defenders of English trade policy.⁴⁷

Locke, himself, states explicitly in notes prepared in 1674 for an essay on trade that 'trade is twofold'; the first aspect is 'manufacture...preparing commodities for yr consumption', the second is 'cariage i.e. navigacon and merchantship'.⁴⁸

Similarly, in an unpublished paper on naturalization, Locke states that foreign 'trade consists in two parts, manufacture and navigation'.⁴⁹ Thus, in paragraph 43 of the Second Treatise, referred to above, Locke begins with an 'Acre of Land' in America, and proceeds to show how through the manufacture of the bread and the shipping of it to the consumer, the value accrued will be great. It is these same two aspects of trade which Child and Davenant use for their own defenses of the English plantation in America. Indeed, amongst Locke's papers in the Lovelace Collection, is an essay entitled, 'Of the American Plantations', which links Child's defense to these same two tenets.

Sr Josiah Child in his printed book of trade affirms that the plantation imploy two thirds of our shipping, and did thereby, and by taking of our manufacturers give sustenance to near two thousand persons in England.⁵⁰

The need for shipment of manufactured goods in the new world is also something Locke was familiar with in his own colonial experience, having recieved on several occasions, letters asking for supplies of tools and clothing. Joseph West,

governor of Carolina and Sir Peter Colleton, in the Bahamas, both wrote to Locke, directly, about their 'Extream want of provisions'.⁵¹ In May 1674, the Lord Proprietors in replying to another request from Carolina respond, 'We have sent another supply of cloathes and tools'.⁵²

Child and Davenant's discouragement of other forms of industry are also reflected in the Two Treatises. While Locke mentions mining and grazing once or twice in his chapter on property, his almost exclusive emphasis is on American crops and their plantation, in keeping with the arguments in favour of colonialism at the time and the specific forms of labour preferred. His preference is rooted not only in the views of other thinkers but in his own colonial experience in Carolina where the implications of other forms of labour such as mining or grazing were well known.

In a letter signed by Locke responding to requests from settlers in Carolina for cattle, it is made clear that planting rather than grazing is the proprietors' preference.

Especially it being our design to have planters there not graziers for if our inclinations were to stock Carolina at that rate, we could do better by bailiffs and servants of our own, who would be more observant of our orders than you have been.⁵³

Locke's preference, in his chapter on property, for growing crops over other types of labour such as mining, grazing, or manufacturing is, therefore, consistent with both the economic writers and specific colonial experiences of his time.

Child's rejection of the Dutch method of conquest to claim land is also reflected in Locke's chapter on conquest where he is quite categorical, in a position he himself describes as a 'strange Doctrine', that victory over another people does not imply a right over their possessions.⁵⁴ The colonial arguments of the English which sought title to land either by cultivation of the waste or purchase from the Indians, that is peaceable rather than violent methods, are reflected both in Locke's economic writings and chapter sixteen of the Second Treatise. In Some Considerations, Locke writes:

There are but two ways of growing Rich, either Conquest, or Commerce...no Body is vain enough to entertain a Thought of our reaping the Profits of the World with our Swords, and making tle Spoil...of Vanquished Nations. Commerce therefore is the only way left to us...for this the advantages of our Situation, as well as the Industry and Inclination of our People...do Naturally fit us.⁵⁵

Once again Locke refers to industry or labour being the basis of 'Profits'. Thus, he concludes that 'securing our Navigation and Trade [is] more the Interest of this Kingdom than Wars or Conquest'.⁵⁶

It is the cultivation of land within the limits of one's industry, not military might, which also founds property for the English writers on trade. Davenant concludes that the plantation should reach only as far as 'we can...cultivate' and taking up of property should never become a 'Bar to the Industry of Others'.⁵⁷ Locke similarly limits appropriation to that which can be cultivated ensuring that it will not prevent access to others who are willing to expend a similar degree of industry.

Men had a right to appropriate, by their Labour, each one to himself, as much of the things of Nature, as he could use: Yet this could not be much nor to the Prejudice of others, where the same plenty was still left, to those who would use the same Industry.⁵⁸

Locke's concern with the taking up of too much ground, like Child's and Davenant's is again rooted in the experience of the colonies where too often land was appropriated in vast quantities and even enclosed without having the number of people necessary to cultivate the land therein. The principle

of limiting land to that which can be cultivated was a fundamental premise for those overseeing the colonies. This will be discussed at length when we examine Locke's chapter on property in detail.

Finally, central to the success of the plantation according to Child and the reason why the Spanish have failed is the preservation of liberty and property by the English overseers.

Though plantations may have drained Spain of people, it does not follow that they have or will drain England or Holland; because, where liberty and property are not so well preserved[my emphasis]...the profit of plantations...will not rebound to the mother kingdom, but to other countries...hence it follows, plantations thus managed prove drains of the people from their mother kingdom.⁵⁹

Locke similarly states after describing the great art of government as the right employing of land that it is liberty and the protection of property which must lie at the heart of this governance. Thus, he speaks in the next sentence of the 'Prince who shall be so wise and godlike as by established laws of liberty [secure] protection and incouragement to the honest industry of Mankind'.⁶⁰ For both Child and Locke, the

preservation of liberty and property had to be the foundation of English colonial rule.

Thus it was a very specific colonial enterprise in which Locke was so intimately involved, in both Carolina and on the Council of Trade, and for which he, his patron Shaftesbury and a few others had argued so vociferously throughout the last third of the 17th century. His ideas in the Second Treatise and amongst his notes on the subject, echo those of the economic writers defending the plantation to a largely skeptical audience in England. He consequently argues, like Mun, Cradocke, Child and Davenant, that foreign trade and settlement is the best solution to England's economic woes. Moreover, England will compete effectively against Holland and Spain only if she adopts a particular mode of colonization.

Like Child and Davenant, Locke assumes agrarian labour and denounces the practice of appropriating land by conquest. He argues, as the colonial defenders did, that appropriation must be limited, to that which one could cultivate and it was the government's duty to insure the protection of liberty and property by, in part, employing such lands efficiently. Finally, employment will be created at home, particularly in the manufacture of, in Locke's words, 'all the Materials made use of in the Ship'.

IV - THE ETHICAL DEBATE: ENGLISH vs INDIAN LAND RIGHTS

The second crucial debate occurring in England during this period with regard to the plantation; one often made by those opposed to the colonial enterprise was the right of England to land already occupied by another people. The Indian, once facilitator of England's trade had become an obstacle to its expansion. Many of those who defended the plantation, particularly those living in America itself, found it necessary to justify the right of England to lands already inhabited by American natives. Treatises such as Samuel Purchas's Virginia's Verger, Massachusetts Governor John Winthrop's General Considerations for Planting New England, Rev. Robert Cushman's 'Reasons and Considerations Touching the Lawfulness of Removing Out of England into the Parts of America', Robert Gray's A Good Speed to Virginia, Chief Newfoundland Adventurer William Strachey's The Historie of Travaile into Virginia, and Virginian First Secretary Sir George Peckham's, 'A True Report of the Late Discoveries' are all examples of the European's defense of their right to America. It should be noted that every one of these writers played an important role in early English colonial life.⁶¹

It is in this tradition and in response to similar questions put to the defenders of the plantation that Locke wrote. In order to draw the links between these thinkers and Locke

himself, we must first outline the arguments they made. There can be no doubt that Locke was fascinated by the native tribes of America, to the extent that many consider him to be an early anthropologist.

Locke is often said to be the first European fully to appreciate the new science of anthropology and to use it for advancing his doctrines.⁶²

Beyond the accounts of Indians contained in his travel books, colonial notes, and theories concerning human understanding, it is also clear from letters Locke wrote to colonists in America for more information on the natives that his interest was keen. For example, in a letter dated 4 September 1676, Joseph West, governor of Carolina writes to Locke,

Your letter of the 10th of June came...to hand which I answered by way of Bermuda and do now present you with the best account I can gett Concerning the Natives here hoping it may give you or any other Gentle Man some sattisfaction.⁶³

Another letter to Locke, dated November 12, 1675 from Dr. Henry Woodward, a colonist in Carolina who served as the liaison between the colonists and local tribes states:

I have made the best inquiry that I can
concerneing the religion and worship
Originall, and customes of our natives.
especeally among the Port Royall Indians
amongst whom I am best acquainted.⁶⁴

It shall be shown that Locke's conception of natural man in the
Two Treatises, and, more specifically, his labour theory of
property, reflect the arguments contained in the colonial
writing of Purchas, Winthrop, Strachey and the others. A
purpose of all these treatises, including Locke's, was to
justify England's right to appropriate American land.

The colonial writers all begin with a question or objection put
to them by those challenging England's right to be in America.
Purchas asks, 'What right can England then challenge to
Virginia?'; Winthrop queries, 'What warrant have we to take
that land, which is and hath been of long time possessed of
others the sons of Adam?'; Gray puts the question directly:
'The first objection is, by what right or warrant we can enter
into the land of these Savages, take away their rightfull
inheritance from them, and plant ourselves in their places?',
and, finally, Cushman states: 'Some will say, What right have I
to go live in the heathens' country?'⁶⁵

It was a question which dominates the debate about colonial
affairs throughout the 17th century. William Strachey, 1st

Secretary to the colony of Virginia, writes that there is no other issue which caused so much consternation.

[Of the] clayme which we make to this part of America...I have observed more in clamour (me thought) then at any tyme in force, to cry out still upon yt, calling yt an unnationall and unlawfull undertaking...Why? Because injurious to the naturalls; and...yt must then necessarily followe (saye they) that yt can be no other than a travaile of flat impiety, and displeasinge before God.⁶⁶

Perhaps the most important assumption made in these treatises is that America could be considered 'vacuum domicilium' or vacant land, open to all for appropriation. Samuel Purchas refers to the English who 'seeke habitations there in vacant places' or George Strachey who refers to 'the wast and vast uninhabited growndes of their(s)' or Cushman who describes America as simply 'empty'.⁶⁷ The vacant land of the writers on trade and economics takes on a perjorative connotation in these writings on Indian rights for it is the inhabitants who are not enclosing it properly or cultivating it adequately. It is not just vacant, but wasted, spoilt, or empty. While the characteristics of such common land vary from writer to writer, certain fundamental points are common.

Firstly, land is waste or vacant if there is no sign of private ownership. Thus Purchas concludes that the English may take over vacant land, 'especially where the people is wild and holdeth no settled possession in any parts.' Robert Gray of Virginia writes, 'these Savages have no particular proprietie in any part or parcell of that Countrey, but only a generall recidencie there'. John Winthrop writes, 'that which is common to all is proper to none. This savage people ruleth over many lands without title or property'.⁶⁸

Claiming proprietorship over a piece of land involved two elements for these writers; the first is to enclose it; the second, to cultivate it. Regarding the first element, Winthrop adds to his description, quoted above, of Indians owning no land, the following explanation, 'for they enclose no ground, neither have they cattle to maintain it,' and goes on to say that man 'appropriated some parcels of ground by enclosing.'⁶⁹ So deeply felt was this need for enclosure that colonial governments often forced native Indians to fence their lands, in order to prove ownership. Osgoode writes, 'Plymouth and Massachusetts...ordered that the corn lands of the Indians should be fenced... Connecticut sought the same objective by a general order.'⁷⁰

The second important element in one's claim over land is the application of industry, particularly agrarian cultivation. Winthrop writes:

The whole earth is the Lord's garden, and he hath given it to the sons of Adam to be tilled and improved by them. Why then should we stand starving here for places of habitation... and in the mean time suffer whole countries, as profitable for the use of man, to lie waste without improvement.⁷¹

Cushman's description of Indian land follows similar lines.

The country is yet raw; the land untilled; the cities not builded; the cattle not settled. We are compassed about with a helpless and idle people, the natives of the country, which cannot...help themselves, much less us.⁷²

The Massachusetts General Court made clear the importance of cultivation in consideration of the Indians' claim to a natural right of property. The Court, in its judgement,

manifestly proved that the Indians having only a natural right to so much land as they had or could improve, so as the rest of the country lay open to any that could and would improve it.⁷³

The vacancy of America, in these terms, was frequently linked to descriptions of an overflowing population in England and the desirability for people to move from the latter to the former. This theme of an empty America and a full England is often imbued, as has been discussed, with a theological significance. The authors discussing Indian land draw the same parallels to Biblical stories comparing Indians to nomadic natives in the early colonization of the Middle East. Filling the land thus takes on mythical proportions in line with exoduses described in the first few books of the Old Testament.

Roy Harvey Pearce, one of the leading commentators on English and Indian relations writes:

Demonstrating land tenure from theology had been simple even for Pilgrim precursors of the Puritans...the Indians were heathens and thus in need of conversion...Indians' lands were empty, English lands full, and the English therefore bound to go to the Indians and fill their lands.⁷⁴

Cushman articulates this juxtaposition of empty and full in his treatise on England's right to the 'heathen country'.

We ought...to endeavour and use the means to convert them; and the means cannot be used

unless we go to them, or they come to us. To us they cannot come, our land is full; to them we may go, their land is empty.⁷⁵

Robert Gray describes in his pamphlet on Virginia, the problems of overpopulation at home:

This should teach us of this kingdome and countrey, prudence and providence, the Lord hath blessed us, and we are growne to be a great people, so that one lot is not sufficient for us: Our multitudes like too much blood in the body, do infect our countrey with plague and povertie.⁷⁶

John White, author of The Planter's Plea, describes England in similar terms, offering America as the place to absorb the excess. 'The land affords void ground enough to receive more people than this state [England] can spare.'⁷⁷

Given that America is vacant and can absorb an 'overflowing' English populace, many of these writers turn to the Bible to provide the specific theological justification for such a move. The most commonly used example is that of Abraham and Lot, whose flocks have grown to such a size, 'the land was not able to bear them', search for new land. Lot goes to Jordan and Abraham arrives in Canaan where 'the Lord said unto

[him]...arise, walk through the land in the length and breadth of it; for I will give it unto thee.'⁷⁸

Samuel Purchas is probably the first to use this particular section of the Bible to justify the appropriation of land in America by the English:

The same reason giveth liberty to other men which want convenient habitation to seat themselves...especially where the people is wild and holdeth no settled possession in any parts. Thus the holy Patriarks [i.e. Abraham Lot and Jacob] removed their habitations and pasturages, when those parts of the world were not yet replenished: and thus the whole world hath been planted and peopled with former and later Colonies and thus Virginia hath roome enough.⁷⁹

Winthrop also makes specific reference to this Biblical passage:

And why may not Christians have liberty to go and dwell amongst them in their waste lands and woods...as lawfully as Abraham did amongst the Sodomites? (Genesis xiii)⁸⁰

Soloman Stoddard, another settler, uses the same reference:

There was some part of the land that was not purchased, neither was there need it should; it was vacuum domicilium...By God's first grant men were to subdue the earth. When Abraham came into the land of Canaan, he made use of vacant land as he pleased.⁸¹

Finally, Cushman also uses the same passage from Genesis to justify England's right to America:

As the ancient patriarchs, therefore, removed from straiter places into more roomy, where the land lay idle and waste and none used it, though there dwelt inhabitants by them, as Genesis xiii...so it is lawful now to take a land which none useth, and make use of it.⁸²

The use of Genesis 13 is significant, for Locke uses the same passage in his chapter on property to provide an example of vacant land which can be legitimately taken over in the state of nature when, like in the case of Abraham, one can use the space in another land.

For we see, that in that part of the World which was first inhabited, and therefore like

to be best peopled, even as low down as Abraham's time...when there was not room enough in the same place, for their Herds to feed together, they, by consent, as Abraham and Lot did, Gen. xiii 5. separated and enlarged their pasture, where it best liked them.⁸³

The principle is the same for Locke as for the other writers. It is not only lawful but pleasing to God that people who have been industrious and used all their own land and resources should move to another place which the inhabitants make no use of. The idea that God granted to Abraham the 'length and breadth' of the new land is not lost on these colonial writers or on the king who grants them their patents.

Another commandment often used in conjunction with the story of Genesis 13 is the famous Genesis 1:28, 'Be fruitful and multiply and replenish the earth and subdue it', the words spoken by God in the Bible when he grants the earth to humanity. This sentiment is echoed in all of the colonial writings. Winthrop states: 'The whole earth is the Lord's garden, and he hath given it to the sons of Adam to be tilled and improved by them'.⁸⁴ John Cotton, also quotes in his leaflet, God's Promise to His Plantations, the commandment from Genesis adding, 'Fulfill the earth and multiply: so that it is free from that common grant for any to take possession of vacant countries'.⁸⁵

Hugh Henry Brackeridge claims that this commandment, built on the notion of a vacant country, was the explicit justification Puritans used to take over America.

Can it be morally right for the white man to occupy land that was already occupied by the Indians? The Puritans had to answer this question in the affirmative. And they did, resting their argument on two not unrelated principles. The first was the idea that the American's land was vacuum domicilium and the Indians possessed it only by a natural right which was not valid. The second rested on the revealed word of God, in the Bible, ordaining that man occupy the earth, increase and multiply.⁸⁶

An excerpt from 'An Essay on the Ordering of Towns' by an anonymous Virginian author during Winthrop's administration links the King's patent to this same biblical text:

Improvement of all his said ground...is one of the principall clauses of that Grand Charter made by the Greate Lord of the wholl earth and King of the nations unto Adam: Replenish the earth and subdue it...Therefore I cannot yet see that any man hath theologicall right unto

any possession without a faithfull practicall
care of the performance of this principall
condition.⁸⁷

Locke devotes a chapter in the First Treatise to Genesis 1:28. He concludes, in his challenge to Filmer, that this text gives Adam no sovereignty over the world as the latter has argued, but rather it is limited to providing property, where property, Locke argues, is not the same as sovereignty.

If...Adam was made sole Proprietor of the whole Earth, what will this be to his Sovereignty? And how will it appear, that Property in Land gives a Man Power over the Life of another?⁸⁸

Locke goes on to argue that the property which God provides by this commandment is not private to Adam but communal to all men.

God who bid Mankind increase and multiply, should rather himself give them all a Right, to make use of the Food and Rayment and other Conveniences of Life.⁸⁹

Locke reiterates this view in his chapter on property where he speaks of, 'those Grants God made of the World to Adam', concluding in similar terms to those above,

God, who hath given the World to Men in common,
hath also given them reason to make use of it
to the best advantage of Life, and
convenience...no body has originally a private
Dominion, exclusive of the rest of Mankind.⁹⁰

Locke makes clear that the commandment in Genesis 1:28 does not
just mean a rudimentary dominion over the world but extends
itself into the exclusively European realm of the conveniences
of life through knowledge in arts and sciences.

This great and primary Blessing of God
Almighty, Be fruitful, and multiply, and
replenish the Earth...contains in it the
improvement too of Arts and Sciences and the
conveniences of Life.⁹¹

Given that Locke describes the native Americans as a people who
for want of labour, 'have not one hundreth part of the
Conveniences we enjoy', he, like the other colonial writers,
interprets this verse to mean God wants America improved by the
arts, sciences and conveniences of life which only Europeans
could bestow on it.⁹² This viewpoint, that native Americans
were not following the commandment given in Genesis 1:28 made
certain conclusions inevitable, as Pearce makes clear.

The fact that the Indians possessed their lands only as a natural right, since that possession existed anterior to and outside of a properly civilized state and since that possession was not in accordance with God's commandment to men to occupy the earth, increase and multiply; what followed, then, was that the land was technically vacuum domicilium, and that the English, who would farm the land and make it fructify, who would give it order, were obliged to take over.⁹³

'Farming the land' was of great importance. The English predisposition to agricultural activities in America over other forms of industry was central not only to those writing on trade, as has been discussed, but also to those defending England's right to take over Indian land.

Thus John White writes,

It were a great wrong to God to conceive He...tenders a gift that he never meant should be enjoyed: now how men should make benefit of the earth, but by culture and habitation cannot be imagined.⁹⁴

Above all, hunting or gathering on land provides no claim to the land only the fruits or animals which are picked or slain respectively. Stoddard states: 'There was some part of the land that was...vacuum domicilium... the Indians made no use of it, but for hunting'.⁹⁵

John Cotton's response to Roger Williams' claim that Indians owned the land by virtue of their right to hunting grounds ran along similar lines: 'We do not conceive this as a just title to so vast a continent, to make no improvement of millions of acres in it'.⁹⁶

The relationship between English and Indian industry was often described in terms of ratios. For example the land would yield ten or a hundred times more given the correct application of labour. These ratios are often coupled with a comparison between the fertility of American soil and the paucity of English and the necessary conclusion that it is industry which makes the difference. Purchas writes in exactly these terms,

They have not above 5000 men able to bear armes, which manured amd civilly planted might well nourish 1500000 and many many more; as appeareth by this our countrie [England], not having so rich a natural inheritance. [my emphasis]⁹⁷

Winthrop's ratios are decidedly lower and given in terms of labour but reflect a similar comparison between the application of industry in England versus America where yields would be 100 times better in the latter's fertile soil.

Many men spending as much labour and cost to recover or keep sometimes an acre or two of lands [in England] as would procure him many hundreds of acres, as good or better, in another place [namely Virginia].⁹⁸

Strachey, like Purchas puts the ratio at 1 to a 1000.

In the wast and vast uninhabited growndes of theirs, amongst a world of which not one foote of a thousand doe they either use, or knowe howe to turne to any benefitt.⁹⁹

What is common to all of these comparisons between English and Indian use of land is the element of industry or labour.

Cushman describes succinctly what Indians lack: 'They are not industrious, neither have art, science, skill or faculty to use either the land or the commodities of it'.¹⁰⁰

Winthrop ultimately draws the conclusion that it is industry which lies at the heart of English claims to property: 'Men

accounted nothing their own but that which they had appropriated by their own industry.'¹⁰¹

The final element in all of these authors' justifications for English claims in America is that they will cause the Indians no injury. Rather, the Indians will gain from the superior English knowledge, skills and technology. Firstly, there can be no injury because there is more than enough for the use of both English and Indians. Purchas comments:

And if a country be inhabited in some parts thereof, other parts remaining unpeopled, the same reason giveth liberty to other men which want convenient habitation to seat themselves, where (without wrong to others) they may provide for themselves.¹⁰²

Similarly, Winthrop gives as one of his reasons for why the English cannot injure the Indians: 'There is more than enough for them and us.'¹⁰³

Far from injuring the natives, many of these writers argue that English knowledge will be of benefit. Strachey states,

Nor is this any injurys unto them, from whome we will not forceably take of their provision and labours...but prepare and breake up newe

growndes, and therby open unto them likewise a
newe waye of thrift or husbandry.¹⁰⁴

One author asks:

What just cause of complaint may they
have?...God did create land, to the end that it
should by culture and husbandry yeeld things
necessary for mans life.¹⁰⁵

This argument is made to the point where a few of the colonial
observers conclude that the Indians will in fact welcome the
English into their lands in order to benefit from their
superior culture, religion and agricultural knowledge.

Francis Higginson, comments in his New England's Plantations:

[The Indians] profess to like well of our
coming and planting here...because there is
abundance of ground that they cannot possess
nor make use of.¹⁰⁶

Winthrop concurs: 'We shall come in with good leave of the
natives.' ¹⁰⁷

Ultimately, Winthrop argues, as Locke does, that all the world
was America. All once had a natural right to the soil and its

products but Europeans have progressed beyond that by enclosing the land into parcels providing these men with a qualitatively different right, which Winthrop unlike Locke calls a civil right, namely that of private property. The two stages described by Winthrop in his essay defending England's right to land in Virginia are echoed, as we shall see, in Locke's chapter on property. Winthrop states:

For God hath given to the sons of men a twofold right to the earth; there is a natural right, and a civil right. The first right was natural, when men held the earth in common, every man sowing and feeding where he pleased. Then, as men and cattle increased, they appropriated some parcels of ground by enclosing...and this in time got them a civil right.¹⁰⁸

V - CONCLUSION

Thus, Locke's involvement in the development of English colonial policy, drew him into the 17th century debates surrounding the new enterprise. For Locke, like the other liberal economic writers, there were, contrary to popular opinion, firm economic reasons for colonizing the new world, if

and only if the colonies concerned, followed certain rules.

For the plantations to succeed, England should only allow agrarian cultivation, must limit the size of farms to defensible proportions, and use English ships to transport all goods. The second and related debate, over England's right to take land occupied by another people, would have been of equal interest to Locke. Like the defenders of English plantations, Locke would eventually argue that Indians held the land in common only; it was English cultivation which would begin private property. These two sets of ideas, as we shall attempt to show, were ultimately incorporated into both Locke's practical ideas about current colonial interests and his more encompassing political theory.

The specific answers developed by Locke in response to these debates over the colonial enterprise can be discovered in a practical way in the form of the the blueprint he created, along with Shaftesbury for the plantation in Carolina. Before we consider his more theoretical reply in the Two Treatises, we turn first to consider this colony.

Notes

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2. H.R. Foxbourne, The Life of John Locke, I, London, 1876. p. 244.
3. George Beer, The Old Colonial System (1660-1754), New York, 1912, I, p. 249.
4. A.B. Keith, Constitutional History of the First British Empire, Oxford, 1930. p. 406.
5. Peter Laslett, 'John Locke, the Great Recoinage and the Origins of the 1695-1698 Board of Trade', in William and Mary Quarterly, 3rd Ser., XIV, 1957, p. 393.
6. Patrick Kelly, ed., Locke on Money, Two Volumes, Oxford, 1991, p. 39.
7. Ibid., p. 70.
8. John Harrison and Peter Laslett, The Library of John Locke, Oxford, 1971, list the books contained in Locke's library in accordance with his own cataloguing of them. Amongst the

eleven books listed by Locke under the heading of 'Trade' 'An Account of French Usurption on the Trade of England' by S. Bethel, London 1679; 'The Ancient Trades Decayed Repaired Again', London 1678; Britannia Languens or a Discourse of Trade shewing the Grounds and Reasons of the Increase and Decay of Land Rents, National Wealth and Strength, (W. Petyt), London, 1680.

9. Kelly, Locke on Money, pp. 97-98.

10. Ibid., p. 98.

11. Thomas Mun, England's Treasure by Forrain Trade, (1664), Oxford, 1949, p. 14.

12. Ibid., p. 15; Locke, Some Considerations of the Consequences of the Lowering of Interest and Raising the Value of Money, Locke on Money, pp. 223-224.

13. William Letwin, Sir Josiah Child: Merchant Economist, Boston, 1959, pp. 1-3.

14. Mun, 'A Discourse of Trade From England unto the East Indies', Purchas Pilgrims, V, pp. 295-296.

15. Cradocke, Wealth Discovered: Or An Essay Upon a Late Expedient for Taking Away All Impositions and Raising A Revenue Without Taxes, p. 22.

16. Cranston, Locke, p. 146.

17. The Commissioner of Customs, Collections of the South Carolina Historical Society, II, B.R. Carroll, ed., Charleston, 1858, p. 312.

18. Sir Charles Lucas, Religion, Colonization and Trade: The Driving Forces of the Old Empire, London, 1930, p. 48.

19. Britannia Languens or A Discourse of Trade Humbly Offered to the Consideration of this Present Parliament, (First Published 1680), Reissued for Richard Baldwin, London, 1689, p. 176. Locke had a copy in his library.

20. Sir Josiah Child, A New Discourse on Trade, (1689) London, 1804, p. 170. Sir Josiah Child published this work, anonmously in 1689-1690 under the title A Discourse About Trade. It included his original essay of 1668, 'Brief Observations concerning Trade and Interest of Money' which Locke responded to with his Some Considerations. William Letwein argues that Child composed the material for the second discourse between 1668 and 1670 but, like Locke, held off on publication. Locke's interest in Child's thinking makes it very likely that

he was familiar with Child's views on trade and plantations while Locke was involved in colonial work in the 1670's. Moreover, as Kelly argued, most economic manuscripts of this period would be circulated amongst key intellectuals, for years before they were actually published. For the discussion of Child's composition see William Letwin, Sir Josiah Child: Merchant Economist, Boston, 1959, pp. 31-32.

21. Sir William Coventry, 'Essay Concerning the Decay of Rents and their Remedies', cited in Beer, The Old Colonial System, I, pp. 21-22.

22. John Evelyn, Navigation and Commerce, (1674) p. 112. cited in Ibid., I, p. 22, note 2.

23. Lucas, Religion, Colonization and Trade, pp. 46-47. Ber also notes that in 1670, 'the imperialists of the day were put on the defensive and were forced to answer these current changes', p. 22.

24. William Penn, 'The Benefits of Plantations or Colonies', Select Tracts Relating to Colonies, British Museum 1029e, 15, No. 4, p. 26. cited in Lucas, Religion, Colonization and Trade, pp. 48-49.

25. John Evelyn, Diary, May 26, 1671 cited in Ibid., p. 47.

26. Roger Coke, A Discourse of Trade in Two Parts: The Reason of the Decay of the Strength, Wealth and Trade of England, London, 1670, p. 10.
27. Calender of State Papers Colonial Series: America and West Indies (1661-1668), London, 1880, pp. 155-156.
28. Cranston, Locke, p. 154;
29. Ibid., p. 116; John Harrison and Peter Laslett, The Library of John Locke.
30. Sir Josiah Child, A New Discourse of Trade, London, 1804, p. 167.
31. Ibid., p. 184.
32. Ibid., pp. 185-186.
33. Ibid., p. 190.
34. Thomas More, Utopia, The Yale edition of the Complete Works of St. Thomas More, E. Surtz and J.H. Hexter, eds., New Haven, 1965, IV, p. 94.
35. James Axtell, The Invasion Within: The Conquest of Cultures in Colonial North America, Oxford, 1985.

36. Josiah Child, A New Discourse of Trade, pp. 201-202.

37. Charles Davenant, Discourses on the Public Revenues and on the Trade of England, Part II, Discourse III, 'On the Plantation Trade', London 1698, p. 228. While Davenant published his work long after Locke composed his Two Treatises, it is still important to compare the two thinkers for both Locke and Davenant were composing their arguments at approximately the same time and in response to the same overwhelmingly critical view of English colonies. Moreover, both spring from Child's original theories. Consequently, it is not surprising that the Two Treatises are not only consistent with, but of striking similarity to Davenant's thought.

38. Ibid., p. 233.

39. Ibid., pp. 236-237.

40. Ibid., p. 237.

41. Ibid., pp. 226-227.

42. John Locke, Two Treatises, II, paras. 42 and 41.

43. Locke, 'For a General Naturalization', Locke on Money, p. 488.

44. Locke, 'Notes on Trade in Sweden, Denmark and New England', 1696, Bodleian Library, M.S. Locke c.30, folio 38.

45. Mun, England's Treasure, p. 78; Locke, Two Treatises, II, para. 43.

46. The Cambridge History of the British Empire, Volume 1, From the Beginnings to 1783, Cambridge, 1929, pp. 270-271.

47. Locke, Two Treatises, II, para. 43.

48. Locke, 'Notes for an Essay on Trade', 1674, Bodleian Library, M.S. Locke c.30, folio 18.

49. Locke, 'For A General Naturalization', p. 488.

50. 'Of the American Plantations', Bodleian Library, M.S. Locke d.7, p. 1. This document was added to the Lovelace Collection by Peter King on October 18, 1714.

51. Letter from Joseph West to Locke, June 28, 1673, The Correspondence of John Locke, De Beer, ed., Oxford, 1976-1982, I, Letter no. 272; Letter from Sir Peter Colleton to Locke, May 28, 1673, Correspondence, I, Letter no. 270.

52. Letter from Proprietors, May 1674, in Collections of the South Carolina Historical Society, V, pp. 435-438.

53. Historical Collections of South Carolina, II, p. 334.
54. Locke, Two Treatises, II, para. 180.
55. Locke, Some Considerations, pp. 222-223.
56. Ibid., p. 232.
57. Davenant, Discourses, pp. 233, 237.
58. Locke, Two Treatises, II, para. 37.
59. Child, A New Discourse, pp. 177-178.
60. Locke, Two Treatises, II, para. 42.
61. Samuel Purchas was the author and editor of a definitive collection of travel volumes entitled Purchas's Pilgrims. John Winthrop was the first governor of New England. Robert Cushman was an important member and lay minister of Massachusetts. Robert Gray was the first person to write a pamphlet selling Virginia to perspective settlers in England. William Strachey was the first secretary to the colony of Virginia and Sir George Peckham was chief adventurer to Newfoundland. The works used are as follows: Samuel Purchas, 'Virginia's Verger' in Hakluytus Posthumous or Purchas's Pilgrims Contayning a History of the World in Sea Voyages and Lande Travells by Englishmen

and Others, XIX, Glasgow, 1906; John Winthrop, General Considerations for Planting New England(1629) in Alex Young, Chronicles of the First Planters of the Colony of Massachusetts Bay (1623-1636), Boston, 1846; Robert Gray, A Good Speed to Virginia, New York, 1937; Robert Cushman, 'Reasons and considerations touching the lawfulness of removing out of England into the parts of America', in Alexander Young, Chronicles of the Pilgrim Fathers of the Colony of Plymouth From 1602-1625, Boston, 1841; William Strachey, The Historie of Travaile into Virginia(1612), London, 1849; Sir George Peckham, 'A True Report of the Late Discoveries' in Hakluyt's Voyages, VIII, Glasgow, 1904.

62. Arthur J. Slavin, 'The American Principle from More to Locke', First Images of America, Volume 1, pp. 139-164, University of California Press, 1976, Fredi Chiapelli, ed., p. 159

63. Letter from Joseph West to Locke, September 4, 1676, Correspondence, I, Letter no. 318.

64. Letter from Dr. Henry Woodward to John Locke, November 12, 1675, Ibid., I, Letter no. 305.

65. Samuel Purchas, 'Virginia's Verger', p. 222; John Winthrop, General Considerations p. 275; Robert Gray, Good Speed, C3; Robert Cushman, 'Reasons', p. 242.

66. William Strachey, The Historie of Travaile, pp. 1-3.
67. Purchas, 'Virginia's Verger', p. 222; Strachey, The Historie of Travaile, p. 19; Cushman, 'Reasons', p. 243.
68. Purchas, 'Virginia's Verger', p. 222; Gray, Good Speed, C₃; Winthrop, General Considerations, pp. 275-276.
69. Winthrop, General Considerations, p. 276.
70. Herbert Osgoode, The American Colonies in the 17th Century, I: The Chartered Colonies: Beginnings of Self-Government, New York, 1904, p. 532.
71. Winthrop, General Considerations, p. 272.
72. Robert Cushman, 'Discourse: The State of the colony and the need of public spirit in Colonists', Chronicles of the Pilgrim Fathers, Alexander Young, ed., Boston, 1841, p. 265.
73. Chester E. Eisinger, 'The Puritans Justification for Taking the Land', in Essex Institute Historial Collections, LXXXIV, 1948, p. 136.
74. Roy Harvey Pearce, 'The "Ruines of Mankind": The Indian and the Puritan Mind', Early American History: Indians and Europeans, Selected Articles on Indian-White Relations in

Colonial North America, Peter Hoffer, ed., New York, 1988, p. 32.

75. Cushman, 'Reasons', p. 243.

76. Gray, Good Speed, B₃.

77. John White, The Planters' Plea, cited in Eisinger, 'The Puritans', p. 138.

78. Genesis 13.

79. Purchas, 'Virginia's Verger', p. 222.

80. Winthrop, General Considerations, p. 276.

81. Solomon Stoddard, 'An Answer to Some Cases of Conscience', The Puritans, P. Miller and T. Johnson, eds., New York, 1938, p. 457.

82. Cushman, 'Reasons', pp. 243-244.

83. Locke, Two Treatises, II, para. 38.

84. Winthrop, General Considerations, p. 272.

85. John Cotton, 'God's Promise to his Plantations' cited in Eisinger, 'The Puritans', p. 136.
86. Hugh Henry Brackeridge cited in Eisinger, 'The Puritans', p. 131.
87. Anonymous Author, 'Essay on the Ordering of Towns', in Winthrop Papers, III (1631-1637), Boston, 1943, pp. 182-183.
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89. Ibid., I, para. 41.
90. Locke, Two Treatises, II, para. 26.
91. Locke, Two Treatises, I, para. 33.
92. Ibid., II, para. 41.
93. Pearce, Savagism and Civilization: A Study of the Indian and American Mind, Berkeley, 1988, pp. 20-21.
94. White, The Planters' Plea, cited in Eisinger, 'The Puritans', p. 138.
95. Solomon Stoddard, 'An Answer to Some Cases of Conscience', The Puritans, p. 457.

96. John Cotton, The Bloody Tenant Washed, London, 1647, cited in Eisinger, 'The Puritans', p. 142.
97. Purchas, 'Virginia's Verger', p. 222.
98. Winthrop, General Considerations, p. 272.
99. Strachey, The Historie of Travaile, p. 19.
100. Cushman, 'Reasons', p. 243.
101. Winthrop, General Considerations, p. 276.
102. Purchas, 'Virginia's Verger', p. 222.
103. Winthrop, General Considerations, p. 277.
104. Strachey, 'Virginia', p. 19.
105. Peckham, 'A True Report', p. 120.
106. Francis Higginson, New England's Plantation in Alex Young, Chronicle of the First Planters, p. 257.
107. Winthrop, General Considerations, p. 277.
108. Ibid., p. 276.

Chapter 5: Carolina - A Colonial Blueprint

Having examined English colonialism in general during the latter part of the 17th century, and the debates which raged in England over the need for this new form of producing wealth, we shall now turn to look at Carolina specifically. Using documents written and endorsed by Locke on behalf of the Lords Proprietors of this colony, it will be shown that Locke was closely involved in the debates over colonization outlined in the previous two chapters.

What first emerges from the colonial records of Carolina between the years 1668 and 1675 is the degree to which Locke, as secretary to the Lords Proprietor, is involved in the most minute details of colonial life.¹ The amount of paperwork involved in administering Carolina and therefore, which passed through Locke's hands was, for the time, staggering. While much of this paper has been lost, it is possible to deduce from the documents that we do have, the amount of correspondence which passed between the settlers in Carolina and the Lords Proprietors in London. In 1670-1671, Locke wrote summaries of all the letters and documents sent by the colonists to the Lords Proprietors, which made requests or presented new proposals. Five of these summaries still exist. In November 1670, Locke lists the contents of twenty separate letters written to the Lords between September and November 1670. Similarly in November 1671, Locke registers the contents of twenty-six letters written to the Lords between August and September 1671, giving a total, in just over five months, of

forty-six letters all of which needed a reply. Of these forty-six letters listed by Locke, twenty-six are missing and therefore are not part of the documentary record cited above.²

Thus, the documents which will be referred to in the chapter represent a fraction of the work Locke actually did on behalf of his patron and the other Lords. It is clear, however, that Locke had an intimate day to day knowledge of Carolina and the problems the Lords Proprietors had in attempting to implement, often against the wishes of the colonists in America, their particular form of colonization. What also emerges from the colonial records is a clear picture of the problems faced by the young colony and the solutions posed by its champions, most notably the Earl of Shaftesbury.

One cannot underestimate the 'zeal', as Cranston describes it, of Shaftesbury in his colonial enterprise. Shaftesbury himself describes Carolina in a letter to Sir Peter Colleton, one of the other Lords Proprietors, on the 27th of November 1672, as 'a designe of soe faire hopes and soe greate consequence on which I have sett my minde...[for this is].. my Darling.'³

Like other English colonies there were deep religious connotations attached to the Englishman's role in the new world. In a letter, endorsed by Locke, from Dr. Woodward (the liaison in Carolina between the settlers and the Indians) to Sir John Yeamans in September 1670, the former claims that he has,

discovered a Country soe delitious, pleasant & fruitfull, yt were it cultivated doutless it would proue a second Paradize.⁴

In a similar letter from the Council to the Lords Proprietors in July 1670, Carolina is described in religious terms as the new promised land where nature is overflowing; all that was needed was the labour of Englishmen to bring it to fruition. The colonist's descriptions echo those of the earlier travelogues found in Locke's library, and the colonial defenders of England's right to the land.⁵

Amongst those who founded Carolina was the belief that it, of all the colonies, would become the jewel in England's crown. Sir Peter Colleton in a letter to Locke in May 1673, writes: 'Carolina will excell all other English plantations.'⁶ In an enterprise of such excellence and of 'soe greate consequence', it was essential to develop a clear idea of the exact steps necessary to make it a success. The documents demonstrate that the Lords Proprietors had just such a blueprint.

The first requirement of any colony is people, enough to ensure the stability of the settlement. Only then could other needs be considered. In a letter endorsed by Locke, Joseph Dalton, the Secretary of the Colony, writes to Lord Ashley:

The Collony is indeed safely settled and with a

very propertious aspect there only remains the preservation of it which consists chiefly in two things, carefull supplies and a wise politicke Government...By carefull supplies I meane a speedy peopling of this place.⁷

Locke, himself, writes, in a memorandum in November 1670, the following statement: 'Welfare of plantation depending upon the increase of peoples.'⁸ One of the key reasons for peopling the land quickly was to ensure that the Indians and Spanish were discouraged from encroaching on the Lords Proprietors' land. Sir George Carteret writes, in a letter endorsed by Locke:

The Indians were Spanish Indians with many Spaniards among them sent from St. Augustine...After Your Hon^r hath perused this I need not writte the want of more people.⁹

The Spanish settlements were a constant theme in the correspondence between the colonists of Carolina and their Lords Proprietors. Locke, himself, notes as early as September 1670 that the Spaniards are fighting against the English colony.¹⁰ Several conflicts between English settlers in Carolina and the Spanish colonizers to the south took place in the early 1670's.

The role of the Spanish colonies and their approach to the new world during this period, as we have discussed in the previous chapter, is fundamental to an analysis of the English method of colonization. This is particularly true for those settlements which were closest to Florida and Mexico, namely Carolina.

The Spanish approach to America and the Indians who lived there was based on the right of conquest, justified on several grounds including the Indians' refusal to obey 'natural law'. Moreover, settlement was not necessarily the aim of Spanish colonizers. In many cases they attempted to mine the land for precious metals or gems and then move on to other sites.

As we have seen, the English approach to colonization was different. The English colonizers, in the late 17th century, believed that one's claim to land could not be made simply by discovery or conquest ~~by~~ was legitimized by the peaceable agricultural industry of the colonizers on the land. There was a common view amongst the English that the Span~~i~~sh were there simply to plunder the land, through mining or other means, while simultaneously conquering and enslaving the natives in order to gain the riches of the new world. These views are true for Carolina as well, as revealed in the documentary record. William Owen, a leading settler in Carolina, states of the Spanish in a letter to Lord Ashley, and endorsed by Locke: 'It may be said that [the Spaniard] cares not for ye Land.' In another letter, also sent to Ashley

and endorsed by Locke in the same month, Joseph Dalton, Secretary to the Colony, writes:

We are here settled in the very chaps of the Spaniard whose clandestine actions both domesticke and forraigne are not unknown to your Lordshipp...they start bloud with a prick at a thousand miles distance.¹¹

The relationship between the Spanish and Indians was generally considered by the English colonists, to be one in which the rights of the latter were not respected by the former. Dalton goes on to say in the same letter:

The Indians that are under him [Spanish] dare not trust for his long continued tyranny among them has taught them how to desire liberty.¹²

All of these perceived elements in the Spanish method of colonization: the lack of concern for the land, the refusal to recognize the rights of Indians in terms of their lives and liberties, and the belief in colonization through conquest and the search for mines was rejected wholeheartedly by the English colonizers. Carolina, with Shaftesbury as its champion, provides a clear blueprint of the elements necessary to a successful English plantation. All of the elements of this blueprint can be extracted from the colonial record in

Carolina. They are consistent with, given some variation, the overall English idea of colonization provided in the last chapter.

Having peopled the land, the next necessary step in the founding of a healthy settlement was to ensure the cultivation of the land, keeping in proportion the amount of land enclosed to the number of people present. Secondly, one needed to establish towns so that trade could be done efficiently, between England and the new world. Thirdly, industrious individuals rather than the idle or poor were to be encouraged to settle in America. Fourthly, mining and other forms of 'plundering' for riches associated with the Spanish were rejected by the Lords Proprietors and were to be actively discouraged by the council in Carolina. Fifthly, the Indians' lives, liberties, and properties (as defined by English law) were to be respected; slavery under no conditions was to be allowed. Appropriation, therefore, was to occur by means of peaceable industry and purchase of land rather than through violent conquest. Finally, plantations would succeed only if there was a good government with correct laws obeyed by all. Each of these points will be taken in turn and examined in relation to the colonial records of Carolina, for they not only form the basis of the Carolina project but also underlie John Locke's chapters on property and conquest in the Second Treatise.

In September 1671, the Earl of Shaftesbury wrote to the colonists explaining how important it was that they settle in a small area centred around a town with just enough ground for each individual to cultivate, rather than laying claim to a much larger piece of property.

A Towne in a healthy Place will give more Reputation, Security and Advantage to us then ten times that number of People scattered about the countrey.¹³

Settlers, contrary to these instructions, often took up more land than they could actually cultivate and a constant theme in the Lords Proprietors' instructions to the councils in Carolina was that settlement be orderly and enclosed land should not exceed the amount which is allocated.

Thus the Lords Proprietors' instructions to Andrew Percival, Register and Secretary to the Province, in May 1674, were:

Yo^u are to grant land to none that comes to settle under yo^r Government, but upon condition they settle in Townships, and take up land according to ye draught herewth delivered yo^u.¹⁴

Similarly in a letter to the Council in the same month, the Lords Proprietors berate the settlers for failing to be:

...observant of our orders...[to] Take up noe more lands than what they had use for... [occupying] scattered Settlement and large Tracts of ground taken up not like to bee planted these many years, [and] exclude others from coming neare them.¹⁵

These instructions were even legislated by the Lords Proprietors under the conditions of the Temporary Laws for Carolina:

To prevent the taking up of great tracts of land sooner than they could be settled, it was provided that...each land and cacique [should have] but one barony [and] were to be required to have upon his barony 30 persons.¹⁶

By 1675, Shaftesbury was making specific conditions on land provided to the council. For example, in June of that year, 12,000 acres was given to a Mr. Sethell, 'on condition that within five years he build in it a Towne of at least Thirty Houses and have at least Six score people upon it.'¹⁷

The third important aspect of English colonial aspirations, namely the encouragement of the industrious, became increasingly important as the Lords Proprietors found the

plantation's productivity was not increasing over time and was gradually becoming nothing more than a steady drain on their resources. The Lords Proprietors began to conclude that the only explanation for why their great enterprise was failing to provide a sufficient return on their investment, given the great spontaneous nature of America's 'promised land', was that the settlers were not industrious enough. Locke writes in a memorandum in 1670, 'Governor and planters there somewhat sluggish.'¹⁸

'Industrious' thus became the key word to the Lords Proprietors for it was the labour of those who would work that brought value to the plantation. In a letter to Governor Joseph West in December 1671, Shaftesbury writes:

Wee intend from time to time soe to furnish our
Stores that Industriouse People...may be supplyd
with things they want...but doe not intend that
the Lazy or debauchd who will never be good for
themselves or the Plantation shall run farther
in our Debts.¹⁹

In a memorandum written shortly after, Locke describes six hundred people coming from New York as 'industrious people'.²⁰ In May 1674, the Lords Proprietors once again state their intentions to supply only industrious men not 'the idle'.²¹ The industry of the 'industrious' was, as has been discussed,

agrarian in nature. Thus, phrases like 'better Husbands [to the land] and more industrious', in correspondence between the Lords Proprietors and the council reflects the close connection between farming and the Lords' idea of labour.²²

Moreover, other forms of labour were actively discouraged. Shaftesbury went to great lengths to deter the search for precious metals amongst the settlers, fearing it would enrich the individual but undermine the plantation. In April 1671, he writes to Henry Woodward:

If those Inland Countrys have given you any knowledge or conjecture of Mines there I earnestly desire you not to give the least hint of it to anybody whatsoever For feare our People being tempted by the hopes of present gaine should forsake their Plantation.²³

In this letter, Shaftesbury suggests that Woodward use a pseudonym for gold and silver in case someone should come across the letters and take advantage of the information contained therein.

Give me some hint of it in Letters...Pray call gold always Antimony and Silver Iron by which I shall be able to understand you without any

danger if your Letters should fall into other hands.²⁴

Woodward followed instructions and used the term antimony for gold in a subsequent letter. A final letter from Ashley, but written in Locke's own hand to Governor William Saile in May 1671 contains another set of instructions ordering the council to use all possible measures to stop the settlers from searching for quick riches.

If you finde that any such report is got amongst the people that farther up in the country there are mines of gold and silver I desire you would endeavour to suppress it and put it out of their heads by all means you can.²⁵

The fifth element in the blueprint for Carolina's success as a colony is a respect for others rights and attempts to settle peaceably amongst those already established in the Americas rather than conquering them. One of the advertisements which Locke helped to draft in order to induce Englishmen to settle in Carolina promised liberty to all so long as they were:

...behaving themselves peaceable and quietly and not using this liberty to licentiousness nor the civil injury or outward disturbance of others.²⁶

In May 1670, a Mr. John Rivers, agent for Lord Ashley, was on a ship bound for Carolina when it hit a storm and went off course. Rivers' boat landed at St. Katherine, Florida and he and seven others were taken prisoner by the Spanish. Appeals were made on their behalf and finally in October 1670, a 'Memorial to the Spanish Ambassador', written in Locke's hand, was sent on behalf of the Lords Proprietors. Contained within it was their view of English colonization. It states:

And the said Lords &C having sent those persons with a designe only to plant and carry on the fore mentioned plantation without disturbing any others whatsoever...nor shall they allow any piracy nor permit any of their people to invade others with force or use any acts of hostility.²⁷

The Lords Proprietors' desire for peaceful relations also extended to the native Americans. In December 1671, temporary laws, written in Locke's own hand, were sent to the Governor and Council of Carolina forbidding the enslavement of native Americans under any circumstances.

Noe Indian upon any occasion or pretense whatsoever is to be made a slave [or] without his owne consent to be caried out of our Country.²⁸

This viewpoint was reiterated many times in correspondence from the Lords Proprietors to the Council in Carolina. In another letter, the Lords give specific instructions that the colonists are to 'observe the rules of strict justice, friendshipp and amity with the neighbour Indians.'²⁹ To insure the Indians are not being treated unjustly, the Lords asked the council to send back:

A true account of what tribute or payment are rendered by any of our people or officers from any of the Indians and upon what account such tribute or payment is demanded.³⁰

It should be noted that the 'just' treatment of Indians encouraged by the Lords was, as in other English settlements, partially based on an ontological distinction drawn between the native American as 'natural' pre-Christian man who, with the fullness of time, would be transformed from their natural state into civil Christian men, and the African black who was somehow less than human. In other words, the latter could be enslaved and the former could not and, consequently, Locke and his patron could simultaneously hold shares in the the African slave trade and author explicit instructions against slavery as quoted above.

Secondly and perhaps more importantly, the Lords hoped that through friendship, the Indians would be of service to, rather

than enemies of, the English. Colonial documents from Carolina clearly demonstrate this link between the extension of friendship to the Indian population and the belief that the Indians would offer their services and allegiance to the English colonists in return. England could, consequently, rule over the Indians without the need for the Spanish method of conquest or violence. Shaftesbury tells Stephen Bull, his deputy in Carolina, that it would be,

...very agreeable to our design...to get and continue the friendship and assistance of the Indians and make them useful without force or injury. Should be very glad that all the tribes of Indians round about had each an Englishman for their Cassique.³¹

In another letter, whose superscription is in Locke's hand, Shaftesbury commends one of the settlers for being made a cassique but reminds him where the greater power lies, namely in England and amongst the Lords Proprietors:

I am glad you have behaved yourselfe soe well towards the Indians that they have chosen you there Cassica...pray be careful to use them justly and kindly, and by none but faire ways endeavour to unite them with us. But if you answer my expectations in the management of my

affairs...I shall be able to make you a more considerable Cassique then any of the Indians there.³²

The final element for the English blueprint for colonization in Carolina was the need for a wise government and a set of sound laws obeyed by all. Such a constitution, would have as its two main objectives: the protection of the individual lives, liberties and properties of the colonists and the orderly management and division of the land by the government. It is clear that the latter objective, in the eyes of Carolina's founders, eventually superceded the former.

On the first objective, Shaftesbury writes to Joseph West in November 1670 that the new government and its laws must uphold the rights of the individual in terms of life, liberty and property vis a vis his neighbour.

We shall endeavour to establish our Government on strict rules of equity and Justice, and as we shall take care that noe body there shall be oppressed in his just rights and lyberties, soe we expect that noe body should offer to injure us by such fraud which we will not suffer him to use to his neighbour.³³

The Fundamental Constitutions also reflected this objective of insuring the rights of the individual citizens particularly in terms of their religious freedom.³⁴

Shaftesbury refers to the Fundamental Constitutions, in another letter to West, when it is clear that factions have formed within the new colony and power is no longer being wielded in the interests of the people. He begins by stating, 'I know how hard it is for Jealousy to be removed and Factions united when once begunn though amongst men.'³⁵ He tells the colonists to look to the 'Fundamentall Constitutions', or as he describes them, the 'Laws of liberty', to find and insure peace and stability within the colony.

I recommend...to keepe unbiassed to those rules
you will finde in our Fundamental
Constitutions...haveing binn soe carefull to
balance one anothers power to prevent the
ingroseing it into any one hand.³⁶

Thus, the defense of individual rights and liberties in a young colony such as Carolina is, in part, to insure the stability of the settlement as a whole. Shaftesbury is concerned with the potential for one neighbour to take up against another or for factions and jealousies to undermine the stability of the colony.

The second objective of the constitution, namely the peaceful and orderly division of land, became increasingly difficult to manage as factions developed and individual settlers appropriated ever greater tracts of land. The government of Carolina was encouraged to override the natural rights of the individual to property in the interests of the whole. For example, the local council was explicitly told to limit the rights of individuals who claim land they might cultivate through their own labour or buy from the Indians to an amount stipulated by the Lords Proprietors.

As early as 1663, the Lords Proprietors wrote to Sir William Berkeley, the Governor of Virginia and Carolina, about the importance of enforcing the allotment laws against those who might claim more land by virtue of labour or purchase. The last sentence in the following quotation reflects the Lords' awareness that many of the settlers could react against a government who so circumscribes their natural freedoms,

We understand that the people that are there have bought great tracts of land from the Indians, which if they injoye will weaken the plantation...wherefore it is our resolution and desire that you persuade and compell those persons to be sattisfyed with such proportions as we allot to others...more will but scatter the people and render them lyable to be easily

destroyed by any eneymyes soe that the fixing
the way our Instructions mentions wilbe the best
course of setling...Keepe this Letter and our
Instructions and proposealls private to your
selfe.³⁷

In May 1672, a letter from Locke to Captain Kingdon reiterates
the need to limit people to the lands provided under the
constitutions. Individuals are not to claim property through
their labour alone but as surveyed and granted by the laws
written by the Lords Proprietor:

Upon consideration this day had of the better
reducing the settlement of this Province to the
Rules of the Lords Proprietors instructions and
for disposing and preserving of an orderly
method therein to the sattisfaction of all men
as much as may be and for the prevention of
differences and inconveniences which hereafter
may happen for want of knowledge of the true
bounds and limitts of lands And...as divers
persons have taken up severall quantitys of land
in this Province which...have not yett been
surveyed or bounded...it is this day ordered by
the Grand Councill that all...possessed of any
lands not surveyed and fully bounded...forthwith

take out warrants for their lands so as the same
may be surveyed. 38

These five elements of the blueprint for English colonization in Carolina are similar to those of other colonies. The Lords' objectives, like those of other English colonists must be understood in contrast to the Spanish approach to the new world. The English believed that through their method of colonization, Spanish claims, founded on little more than discovery and conquest would fall into English hands, by virtue of the stability of their settlement. In the competition for America's riches, the English method was bound to win.

There is no clearer summary of all the elements of this English blueprint of colonization and their centrality to England's hoped for dominance in America than in a letter written in John Locke's own hand, on behalf of Lord Ashley to the Governor of Carolina, William Saile on May 13, 1671:

You are to take care...that you suffer not the people out of greedinesse to molest either the Spaniards on that side or any of our neighbour Indians in their quiet possessions...the people may goe noe farther up into the country then what shall be necessary to their planting. This you are to looke well after as you will answer it to his Majestie whose pleasure it is that we

should keepe our selves within the rules of the peace. Neither doe we thinke it advantageous for our people to live by rapin and plunder which we doe not nor will not allow Planting and Trade is both our designe and your interest and if you will but therein follow our directions we shall lay a way open to you to gett all the Spaniards riches in that Country with their consent, and without any hazard to yourselves, and therefore I must presse it upon you that you bind the peoples mind wholly to planting and trade, wherein if they will with industry and honestly imploy themselves they will not only answer his Majesty's and our ends of sending them thither but finde themselves with great safety and ease become masters of all that is desirable in those parts. 39

This is the English method of colonization, succinctly written by John Locke and covering each of the elements we have discussed at length in this chapter. The encouraging of agricultural cultivation of the land and trading through towns ('planting and trade is both our designe and interest'), the application of honest industry by settlers ('if they will with industry and honestly imploy themselves'), the rejection of plundering land for riches ('We think it disadvantageous for our people to live by rapin' and plunder which we doe not nor

will not allow'), the treating of Indians with respect, ('suffer not...to molest...our neighbour Indians') and finally the need for the rule of law, ('keepe ourselves within the rules of the peace') are all components in both the maintenance of the English colony and, without any need of conquest, the expansion into, and absorption of, Spanish riches.

Thus, Locke and Shaftesbury have, with their colonial blueprint for Carolina, provided the strongest and most practical response to the questions raging in England over both the need for colonies at all, and more particularly, England's right to claim a land already occupied by another people. It is this debate, as described in the previous chapter, and Locke's response to it, in the form of the colonial blueprint described above, which, as I shall argue in the next chapter, constitutes the basis for Locke's chapter on property.

Notes

1. The documents used in this chapter are from the collection of Shaftesbury's Papers deposited in the Public Records Office and collated in the Collections of the South Carolina Historical Society, V, Charleston, 1897. References will be given both to the location of the document in the P.R.O. and in the Collections.

2. Memoranda: 'Extracts 18 Letters from Carolina - 7 Pages In Locke's Hand Enclosed in Letters', November 1670; Shaftesbury's Papers, Public Records Office, Bundle 48, No. 95, Collections, pp. 256-266; Wants, November, 1671, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 77, Collections, pp. 346-356.

3. Letter from Lord Shaftesbury to Sir P. Colleton, November 27 1672, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 55, Collections, p. 416.

4. Letter from H. Woodward to Sir John Yeamans, September 10, 1670, endorsed by Locke, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 33, Collections, p. 186.

5. Letter from the Council to the Lords Proprietors, July 1670, endorsed by Locke, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 42, Collections, pp. 175-176.
6. Letter from Sir P. Colleton to Locke, May 28, 1673, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 90, Collections, p. 423.
7. Letter from Joeph Dalton (Appointed Secretary and Registrar for Colony) to Lord Ashley, September 9, 1670, endorsed by Locke, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 30, Collections, p. 182.
8. Memoranda, in Locke's hand, November 1670, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 95, Collections, p. 256-266.
9. Letter from N. Cateret to Sir G. Cateret, November 22, 1670, endorsed by Locke, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 51, Collections, pp. 238-239.
10. Letter from Council to Lords Proprietors, September 9, 1670, note written by Locke, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 31, Collections, pp. 179-181.
11. Letter from William Owen to Lord Ashley, September 15, 1670, endorsed by Locke, Shaftesbury's Papers, Public Records

Office, Bundle 48, No. 37, Collections, pp. 196-202; Letter from Joseph Dalton to Lord Ashley, September 9, 1670, endorsed by Locke, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 30, Collections, p. 183.

12. Ibid., p. 183.

13. Letter from Lord Ashley to Sir Jo. Yeamans, September 18, 1671, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 55, p. 94, Collections, p. 343.

14. Letter from Lords Proprietors to Andrew Percivall, May 23, 1674, Colonial Entry Book, XX, p. 93, Collections, pp. 439-440.

15. Letter from Lords Proprietors to Council at Ashley River, May 18, 1674, signatures by Locke, Colonial Entry Book, XX, p. 93; Collections, pp. 437-438.

16. Edward McCrady, South Carolina Under the Proprietary Government (1670-1719), New York, 1901, p. 141.

17. Letter from Shaftesbury to Council at Ashley River, June 11, 1675, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 55, p. 156, Collections, pp. 468-469.

18. Memoranda, in Locke's hand, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 95, Collections, p. 258.

19. Letter from Lord Ashley to Joseph West, December 16, 1671, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 55, p. 105, Collections, pp. 365-366.

20. Memorandum, in Locke's hand, February, 1672, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 84, Collections, pp. 388.

21. Letter from Lords Proprietors to the Governor and Council at Ashley River, signatures by John Locke, May, 1674, Colonial Entry Book, XX, p. 93, Collections, p. 435-438.

22. Letter from Captain West to John Locke, June 28, 1673, endorsed by Locke, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 91, Collections, p. 425.

23. Letter from Lord Ashley to H. Woodward, April 1671, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 55, p. 77, Collections, pp. 316.

24. Ibid., pp. 316-317.

25. Letter from Ashley to William Saile, in Locke's hand, May 13, 1671, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 55, p. 91, Collections, pp. 327-328.

26. Cited in Maurice Cranston, John Locke: A Biography, Oxford, 1985, p. 119.

27. Memorial to the Spanish Ambassador, in Locke's handwriting, October 1670, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 40, Collections, pp. 205-206.

28. 'Temporary Laws to be added to Instructions to Ye Governor and Council of Carolina', in Locke's handwriting, December 1671, Colonial Entry Book, XX, p. 79, Collections, p. 367.

29. 'Instructions given by us, the Lords Proprietors of Carolina unto the Governor and Councill of that Portion of our Provinced called Albemarle', May, 1676, The Colonial Records of North Carolina, I (1662-1712), 1886, p. 230.

30. Ibid. p. 230.

31. Letter from Shaftesbury to S. Bull, August 13, 1673, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 55, p. 136, Collections, p. 427.

32. Letter from Shaftesbury to Maurice Matthews, June 20, 1672, superscription in Locke's handwriting, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 55, p. 110, Collections, pp. 399.

33. Letter from Lord Ashley to Joseph West, November 1, 1670, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 55, p. 3, Collections, p. 209.

34. Fundamental Constitutions of Carolina, in The Colonial Records of North Carolina, I, pp. 187-206.

35. Letter from Shaftesbury to Mr. West and the Rest of the Counsell, June 20, 1672, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 55, p. 112, Collections, pp. 401.

36. Ibid., p. 401.

37. Letter from Lords Proprietors to Sir William Berkeley, September 8, 1663, in The Colonial Records of North Carolina, I, pp. 53-54.

38. Council Journals, May 16, 1672, Collections, p. 393.

39. Letter from Ashley to William Saile, May 13, 1671, written in Locke's hand, Shaftesbury's Papers, Public Records Office, Bundle 48, No. 55, p. 91; Collections, p. 327.

Chapter 6: Colonialism - Locke's Theory of Property

Property lies at the heart of John Locke's Two Treatises of Government. The creation of property and its protection constitute the foundation of the state of nature and civil society respectively. Property, its origin and protection are also central to England's colonial settlements in America, and by extension, to the Earl of Shaftesbury's Carolina. Locke's chapter on property, as I shall demonstrate, is, simultaneously, a philosophical treatise expounding the natural right to property as the basis of civil government, an exposition of the economic benefits of the English plantation, and a defense of England's right to American soil. While his basic schism between natural man and civil society reflects the accounts of America and its inhabitants contained in his library's travelogues, the specific chapter on property incorporates the more polemical arguments discussed in the preceding chapters regarding both the right and economic wisdom of England's settling in America. Consequently, Locke's chapter on property is an economic defense, like that of Josiah Child and Charles Davenant of England's colonial aims and methods in America. It is also, an ethical justification, like those of Samuel Purchas and John Winthrop, of England's appropriation of American soil. While following in the tradition of these defenders of the English plantation, Locke's chapter on property, as we shall see, provides, through incorporation of the new doctrine of natural rights, an original and forceful argument.

I - PROPERTY: PRELIMINARY REMARKS

Locke's definition of property has often been discussed by scholars, and many have concluded that he uses the term 'property' in at least two different ways: the first, or narrow definition, is land and objects external to the individual which are owned by him, and therefore closer to the definition we now use for the term. The second is the broader definition meaning the property within the individual as well, that is, his 'Life, Liberty and Estate'.¹

What is peculiar about his use of these two definitions is that, on examination, they are used in very specific sections of the Second Treatise. As Peter Laslett states, the broader definition is always used 'except in the chapter on property, and in other cases where it is clear that material possessions are meant.'² Of the twenty references to 'property' in the narrow sense, fifteen of them occur in the chapters, 'On Property' and 'Conquest'. None of the twelve references that Laslett has listed of property defined as 'Life, Liberty and Estate', occur in these two chapters. In other words, the two definitions seem to be mutually exclusive and are used by Locke in very specific places in his argument.

It is significant that he chooses to use land and its products as his definition of property chiefly in chapter five of the

Second Treatise because, as I hope to demonstrate, his argument there revolves around the issue of who has right to, specifically, land in America, and not the more philosophical question, reflected in the broader definition of natural rights, in terms of the person and his freedom, with which the rest of the Second Treatise is more concerned. This pattern becomes even more significant to our analysis when you combine it with the almost exclusive use Locke makes of American Indians in the same chapters.

The state of nature and its inhabitants, as philosophical concepts, are referred to throughout Locke's Second Treatise. American Indians, however, as examples of actual natural men, are referred to only in the chapters on conquest, the beginning of political societies and above all, on property. Half of the references to America or its inhabitants in the Second Treatise, are contained in the twenty six paragraphs of the chapter on property. Thus, chapter 5 is the meeting point in Locke's argument between property defined as land, and natural man defined as the American Indian.

Like the travelogue writers and the defenders of England's right to America, Locke equates the situation of early Biblical men with those living in America in his references to the state of nature. Thus at paragraphs 130 and 131 of the First Treatise, Locke equates the situation of a planter in the West Indies making war, with that of Abraham and Esau in the Bible.

In the chapter on property in the Second Treatise, Locke again refers, when he discusses the principle of labour as the basis for value in things, to Adam and his descendents in relation to the 'several Nations of the Americans'.³ Another example would be the famous line from this same chapter which echoes that of Genesis 'Thus in the beginning all the World was America'.⁴

Finally, Locke equates the 'first peopling of the World by the Children of Adam or Noah' with those who 'plant in some inland, vacant places of America'.⁵ Peter Laslett notes that, 'this passage is a direct statement of Locke's assumption that the state of nature in contemporary America can be assimilated to the conditions of patriarchal times.'⁶ Laslett is correct, but he fails to point out that such references are common currency for those who are travelling to the new world as colonizers and Christian missionaries or for those writers who are trying to defend the right of England to American lands. Locke is simply using the language of those who see the native inhabitants of the colonies as pre-civilized Europeans, waiting to be brought into the religious light of the new Testament and the political light of civilized England. Consequently the question, 'How was private property created by the first men?' is for the Locke the same question as, 'Who has just title to appropriate the lands of America now?'. The chapters on property and conquest reflect Locke's decision to answer both questions simultaneously.

The chapter on property begins with the premise that 'God...has given the Earth to the Children of Men, given it to Mankind in common.'⁷ The question of private property is immediately raised but in very specific terms. Locke writes, 'It seems to some a very great difficulty, how any one should ever come to have a Property in any thing.'⁸ The 'some' that Locke refers to includes Samuel Pufendorf, the natural law theorist. Locke's statement at the end of this paragraph that he hopes to show how men come to have a property in several parts of the 'common' 'without any express Compact of all the Commoners' is a clear reference to Pufendorf's insistence that property can only be made private when consented to by all.⁹ As James Tully concludes in reference to this paragraph:

Who are the some who find difficulties with this particular problem of individuation of common property?...one member of the 'some' is clearly Pufendorf.¹⁰

Thus, Locke's initial discussion of common and how property comes to be private is written, as Tully argues, in the tradition of natural law. Sir Robert Filmer, in his Observations Concerning the Original of Government, concludes that natural law is 'a logically inconsistent foundation for political theory.'¹¹ It is Locke's desire to criticize Filmer, according to Tully, which sparks his decision to use natural law as the basis for his chapter on property.

The presence and widespread awareness of Filmer's critique renders a consistent natural law theory of property a necessary precondition for Locke's major goal, a convincing resistance theory.¹²

Locke is indeed engaged in an argument based on natural law. However, his purpose, like that of Francisco Vitoria, Hugo Grotius and Samuel Pufendorf, is not simply in reference to domestic politics as Tully claims.¹³ Natural law, as has been argued in a previous chapter, is firmly rooted in the colonial expansion of Spain, Holland and England. Vitoria, Grotius, and Locke are all using natural law to reach positions which will justify their country's claims in disputes over colonization in the new world.

Locke begins his chapter on property, as Grotius did, with the idea of man's common ownership of the world as a positive thing. If everybody owns everything it is necessary to find the basis for denying someone else's claim to the same fruit that you are about to use. 'There must of necessity be a means to appropriate them some way or other before they can be of any use, or at all beneficial to any particular Man.'¹⁵ Founding property is the right to deny other individuals' claims as Locke makes clear when he first introduces the American Indian in his argument.

The Fruit, or Venison, which nourishes the wild Indian...must be his and so his, i.e. a part of him, that another can no longer have any right to it, before it can do him any good for the support of his Life.¹⁶

The question that both Locke and Grotius are addressing and upon which their positive community is based is: Upon what criterion can one individual claim to own anything vis a vis his neighbours and thereby deny them the right to use the same object? While the answer given by Grotius, as has been shown, is a defense of Dutch colonial aspirations on the sea, Locke's response constitutes a similar colonial defense, only of English interests on the land.

II - THE INDIAN'S DEER: PROPERTY IN THE EARTH'S PRODUCTS

The criterion Locke develops as the basis for private ownership of property is, of course, labour. Again, he refers to the Indian in making his point.

Thus this Law of reason makes the Deer, that Indian's who hath killed it; 'tis allowed to be his goods who hath bestowed his labour upon it,

though before, it was the common right of every one.'¹⁷

This initial premise that labour founds property echoes John Winthrop in his General Considerations for Planting in New England, where he states, 'Men accounted nothing their own but that which they had appropriated by their own industry.'¹⁸ This premise will form the basis of Winthrop's defense of England's right to 'take land, which is and hath been of longtime possessed of others [i.e. the Indians].'¹⁹ Labour is used by other theorists in their analysis of property. For example Locke's friend and colleague, Tyrell discusses labour at some length, using Indians to demonstrate his principle of labour in relation to the fruits of the earth.²⁰ Unlike Locke, however, Tyrell uses labour as the means to retain property once taken rather than as the way by which it is founded. As Peter Laslett comments of Tyrell:

Following Grotius, he refers to the Stoic axiom about seats in the theatre, and cites many other arguments about property, ignored by Locke: for him the labour proposition is not the one rational method of making use of the earth's produce, but rather a ground for retaining property acquired.²¹

For Locke, labour, defined as agrarian cultivation, is the only rational method of appropriating the products of the earth.

Unlike Pufendorf and Filmer, the consent of the commoner is not required in the state of nature to begin property through labour:

And will any one say he had no right to those Acorns or Apples he thus appropriated, because he had not the consent of all Mankind to make them his?...If such a consent as that was necessary, Man had starved, notwithstanding the Plenty God had given him. ²²

It should be noted that on this important matter of the necessity of consent to appropriate from the common, Locke will distinguish between English and American property held in common when he discusses land rather than simply that which exists upon it.²³ For Locke, while the individual in America need not have the consent of his fellows to appropriate property, he is required to do so in England. This will be discussed in greater detail when we consider the issue of land specifically.

What is clear from this initial section on the fruits of the earth and the beasts which live upon it is that the right of Indians to ownership of the spontaneous products of nature is equivalent to that of the English or civil man. There are no comparisons here, as we shall see in his argument regarding land, between the industriousness of the native American and

the Englishman. The defense of the Indian's right to his venison is completely consistent with the colonial viewpoint.

Amongst the travel books and the writings of those defending England's right to take over American soil, are the constant themes of nature's spontaneous bounty in America and the Indians right to use it.²⁴ The basic needs of Indians for subsistence, namely the fruits and beasts of the earth, did not interfere with English colonial aims, and therefore, as has been noted in previous chapters, English proprietors often defended the right of Indians to claim the products of the earth so long as they did not claim the land itself.

While Locke's defense of the Indian's right to the deer is consistent with the views of England's colonizers, he believes, like them, that the crux of the issue lay not in the land's products but in the soil itself. Thus he quickly turns in his chapter on property to the 'chief matter of Property', which Locke concludes is 'not the Fruits of the Earth [nor] the Beasts that subsist on it, but the Earth it self.'²⁵

III - PROPERTY IN LAND: CULTIVATION AND ENCLOSURE

Immediately after introducing the question of land, Locke asserts that the principle which governs private appropriation

of the products of nature also applies to the soil itself. 'I think it is plain, that Property in that too [the Earth itself] is acquired as the former [the fruits and beasts].'²⁶ Labour is thus the basis of appropriation of land but it is a very specific form of labour, namely agricultural cultivation.

Locke continues in the next sentence, 'As much Land as a Man Tills, Plants, Improves, Cultivates and can use the Product of, so much is his Property. He by his Labour does, as it were, inclose it from the Common.'²⁷ These two factors, cultivation and enclosure, determine private property for Locke. Each will be considered in turn in terms of their use in chapter 5 of the Second Treatise and the colonial writings of his day.

Throughout Locke's chapter on property are references to the agrarian cultivation of land. At paragraph 35, he speaks of 'cultivating' the earth; at 36, of 'plough, sow and reap'; at 37, of 'improvement, tillage or husbandry'; at 38, of he who 'tilled and reaped'; and at 42, of 'Pasturage, Tillage' and 'Planting'.²⁸ When discussing the cultivation of soil in this chapter, Locke often uses for his examples crops native to America. In paragraphs 36, 37, 43 and 48, he speaks of corn, the crop which Spanish author D'Acosta, quoted by Locke in the Second Treatise, describes as peculiar to the Americas.

In our discourse of plants wee will beginne with those which are proper and peculiar to the

Indies...Mays [corn] holds the first place and with reason...God hath imparted to ev'ry region what is needfull...to the Indians he hath given Mays.²⁹

Locke also refers, in paragraph 40 to tobacco, the most important crop of New England, and sugar, the staple crop of Barbados, in which Locke once had shares.³⁰

Thus, like Child, Davenant, Purchas, and Shaftesbury, Locke concludes, in the Second Treatise, that agrarian labour, as opposed to hunting or mining, considered to be the Indian and Spanish methods, respectively, is the only legitimate basis for claiming property. Locke's defense of argrarian cultivation develops, in chapter 5, a distinctly Christian dimension.

God, when he gave the World in common to all Mankind, commanded Man also to labour...He that in Obedience to this Command of God, subdued, tilled and sowed any part of it, thereby annexed to it something that was his Property, which another had no Title to.'³¹

It is worth noting the term 'subdued', in the text, has Biblical overtones. Locke is echoing the words of Genesis I, 28, 'Be fruitful and multiply and replenish the earth and subdue it'. As has been discussed, many of the writers

defending England's right to America refer to this specific Biblical verse. Both John Winthrop, the governor of New England and John Cotton use this quotation from Genesis for their defense of England's right to American soil.³²

From subduing the land, Locke makes the inevitable leap, that Winthrop and his fellow writers do, to claiming dominion. God, consequently, not only commanded the English in America to cultivate the land, in accordance with Genesis I, 28, but to appropriate and hold dominion over it as well.

In language strikingly similar to Locke's, Sir George Peckham draws the Christian connection, in his defense of England's right to American soil, between subduing and agrarian labour, when he states, 'Since the nativitie of Christ, mightie and puissant empourers and kings have performed the like, I say to plant, possess and subdue.'³³ Locke comments:

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 sudue, gave Authority so far to appropriate.³⁴

The second aspect to Locke's initial definition of property in land is enclosure. The term 'enclosure' is used repeatedly by Locke. Like his use of 'cultivation' throughout this chapter

on property, Locke reintroduces enclosure with each aspect of his argument. At paragraph 33, enclosure is discussed in relation to injury of other rights, at paragraph 38 in relation to spoilage, and at 48 in the context of the use of money. Enclosure is clearly something which the individual does in order to begin property and thereby prevent other individuals from encroaching upon it.³⁵

Enclosure, as has been discussed, was central to the English notion of property in the new world. The headright system in Carolina depended on the surveying and marking out boundaries to individual pieces of property. Moreover, the colonial record makes clear that Indians rarely enclosed land and only complied with English views on enclosure when commanded to do so by English courts.³⁶ Similarly, Purchas, Winthrop and the defenders of England's right to American soil refer to the Indians as without claim to property for 'they enclose no ground', and proprietorship as well as value can only be brought to land when it is enclosed and cultivated by the English.³⁷

Locke clearly concurs with this idea, arguing that it is the act of enclosure, along with that of cultivation which brings value to the land. He uses ratios, like the other writers, to make his point.

The provisions serving to the support of humane life, produced by one acre of inclosed and cultivated land, [my emphasis] are...ten times more, than those, which are yielded by an acre of Land, of an equal richnesse, lyeing wast in common.³⁸

Because land cultivated in common cannot be considered appropriated or of any value until it is enclosed by the individual, native Americans engaged in agricultural activities as a collective unit, rather than as individuals within enclosed ground, will have no exclusive right to their property. Thus the Indian nation, in Locke's theory of property, can have no authority over their land, until they adopt a European form of agrarian labour. Title to property, that is the right to exclude others from it, can only be claimed, by definition, by the individual.

Thus, property is begun in land by individual cultivation and enclosure. Locke is quick to argue that such appropriation is not unlimited. One can only appropriate land under two well-known conditions; if there is enough for everyone else and if it does not spoil. The first condition is not an issue in America because there is enough for everyone. The second limitation, namely spoilage, is of more consequence in the American context. Locke states explicitly that the law of nature which prevented spoilage in the products of the soil,

'governed the Possession of Land too'.³⁹ Once again Locke's views echo those involved in trade to the new world. Where Davenant concludes that the plantation should extend only as far as 'we can...cultivate' and taking up property should never become a 'bar to the industry of others,' Locke states that one 'had a Property in...all that his Industry could extend to' (i.e. without spoilage); to cultivate more 'robb'd others'.⁴⁰

If either the Grass of his Inclosure rotted on the Ground, or the Fruit of his planting perished without gathering, and laying up, this part of the Earth, notwithstanding his Inclosure, was still to be looked on as Waste, and might be the Possession of any other.⁴¹

Thus, it is not only the grass or fruit which is again open to appropriation but the land itself. Consequently, Indians are limited to that which they may immediately consume: if there is any spoilage, their land may be appropriated, according to the law of nature, by those who can avoid such spoilage.

IV - PROPERTY: THE ROLE OF TRADE AND COMMERCE

The argument is taken a step further by Locke when he introduces the notion of money as a means to transcend this

second limitation. While Locke's ostensible reason for introducing money is the need to overcome the waste or spoilage of too much appropriation, Locke fails to point out that money, in the form of 'a little piece of yellow metal', namely gold, was not necessary to his purpose; the Indians themselves had means to avoid spoilage through barter or trade in other forms of currency.⁴² As Herman Lebovics argues,

If Locke's main concern had been purely the divine and human abhorrence of spoilage and waste, he did not have to provide a money economy to avoid this violation of natural law. Barter was practised by many of the peoples about whom Locke read in his books of voyage and travel. Moreover, one can store valuable things in excess of needs in many forms other than gold and silver coins.⁴³

Locke needed gold and silver, not so much a means to overcome the spoilage limitation, as the only avenue by which vast acres of land could be appropriated and cultivated in America and the goods sold to the rest of the world. The Indians, without gold and silver, were incapable of this task. Locke states that the 'Inhabitants thereof not having joyned with the rest of Mankind, in the consent of the Use of their common Money' have left, 'great Tracts of Ground [lying] waste'. Locke goes on to argue that without access to the world market to sell their

products, the Indians, themselves, would never appropriate these lands beyond what was necessary for subsistence.

What would a Man value Ten Thousand, or an Hundred Thousand Acres of excellent Land...of the in-land Parts of America, where he had no hope of Commerce with other Parts of the World, to draw Money to him by the Sale of the Product? It would not be worth the inclosing, and we should see him give up again to the Wild Common of Nature, whatever was more than would supply the Conveniences of Life to be had there for him and his Family.⁴⁴

Locke thus uses money based on a silver or gold standard as the means by which he can both limit the Indian's right to property and define the remaining land as 'waste' and therefore open to appropriation by others. As Martin Seliger comments,

[Locke] bestowed upon the developed states, the states amongst which 'the silver money of Europe' is current the right to determine what was more land than the inhabitants could make use of.⁴⁵

The people who could appropriate soil beyond that accrued by their labour and need for subsistence, namely the 'ten thousand or an Hundred Thousand Acres of excellent land' are, thus, not the Inhabitants who labour on it, but those who have money and

can engage in commerce with the rest of the world, namely the English colonists. Josiah Child and Charles Davenant, in writing about the relationship between plantations and trade, use this conclusion as the first premise in their defense of English colonies and the Royal Charters, which often involved hundreds of thousands of acres, like the one granted to Shaftesbury and his colleagues in Carolina.⁴⁶

It is the potential to exchange the wealth of the land through trade in hard currency with other countries which both fuels and justifies the massive appropriation of land by English colonial interests. As Locke writes in notes he wrote for an essay on trade, 'The chief end of trade is riches and power...riches consist in plenty of moveables that will yield a price to foraigner...espetially in plenty of gold and silver.'⁴⁷

Labour thus begins property for the Indian only in the products of the soil and small parcels of land. The use of money begins property for the Englishman in everything else. Locke explicitly states that it is those with money who have a right to greater possessions. 'The Invention of Money...introduced (by Consent) larger Possessions, and a Right to them.' [my emphasis] Moreover, Locke claims, it was the agreement to use 'gold and silver', which makes 'plain', 'that Men have agreed to disproportionate and unequal Possession of the Earth', that is, the entire globe.⁴⁸

V - VACUUM DOMICILLIUM: WASTE LAND

Throughout Locke's discussion of spoilage, he often refers to land in America lying 'waste'. Vacuum domicillium, as has been discussed, is central to the defense of England's colonial claims in the 17th century; for example, Purchas's reference to 'vacant places' in America or George Strachey's 'wast and vast uninhabited growndes.'⁴⁹ It is also a term used repeatedly in Locke's chapter on property, particularly as an antonym for cultivation and enclosure. Locke explicitly defines waste at paragraph 42, by simultaneously imparting a perjorative connotation to land lying in common and invoking a direct, inverse correlation to European forms of cultivation.

Land that is left wholly to Nature, that hath no improvement of Pasturage, Tillage or Planting, is called, as indeed it is, wast; and we shall find the benefit of it amount to little more than nothing.⁵⁰

Waste is defined as the antonym of cultivation again at paragraphs 36 and 37. Similarly, Cushman makes the same connection between vacant land and the need for tillage when he states, 'the country is yet raw [and] the land untilled.'⁵¹

This notion of waste or vacant land is used both in the descriptions of America given in Locke's travelogues, and, more importantly, to underpin the defense of England's right to American soil amongst colonizers in the new world. Thus, Samuel Purchas, George Strachey, Robert Cushman, Robert Gray, and John Winthrop all begin their defenses of England's right to American soil with the premise that the land is vacant or wasted.⁵²

While 'vacant' land seems to be that which has not yet been touched by human hands, waste can also be defined as soil which has not been properly tended to. Thus Locke refers to a piece of 'neglected, and consequently waste Land'.⁵³ Locke's use of neglect is important for it implies that one can judge in the case of property which has been used by other people, whether they have in fact neglected the land and thereby made it nothing more than waste and available again for appropriation through the labour of others. The sentence referred to above concludes that neglected land may be appropriated by he, who is willing to cultivate it. Locke thus talks about the individual who 'by his Industry on neglected and consequently waste Land [increases] the stock of Corn.'⁵⁴

This notion of waste land also plays an important role in Locke's theory of conquest which he, himself, describes as, 'at first sight...a strange Doctrine, it being so quite contrary to the practice of the World.' Locke's 'strange doctrine' asserts

that while a conqueror has 'an absolute power over the Lives' of those he conquered, 'he has not thereby a Right and Title to their Possessions'.⁵⁵

VI - CONQUEST AND PROPERTY

In his chapter on 'Conquest', Locke explicitly states that conquest provides neither individuals nor nations with any right to the land of the vanquished, but only to an amount of the land's products proportional to the reparations due.

The right then of Conquest extends only to the Lives of those who joyn'd in the War, not to their Estates, but only in order to make reparation for the damages received...The destruction of a Years Product or two...is the utmost spoil, that usually can be done.⁵⁶

This argument is completely consistent with the case made by the defenders of the English plantation that the agricultural settlement rather than mining or conquest was the better method of colonization. The two methods were often directly compared, as when Charles Davenant states:

The Collective Body of a Nation has but two Courses of acquiring Wealth, either by Inroads and Depredations upon its neighbours, or by the Trade, Labour, Arts, and Manufactures of its People.⁵⁷

Amongst Locke's papers in the Lovelace Collection is a representation to the Lord Justices, signed by Locke, which claims that the Spanish are engaged in the the first method of acquiring wealth, namely, depredations upon their neighbours, 'by alluring away their inhabitants with hopes of mines and treasures'.⁵⁸

For both Davenant and Locke, only the second method, namely labour and trade should be the basis of England's creation of wealth. In a letter in Locke's own handwriting are the following instructions to colonists in Carolina:

Neither doe we thinke it advantageous for our people to live by rapin and plunder which we doe not nor will not allow. Planting and Trade is both our designe and your interest and...shall lay a way open to gett all the Spaniards riches.⁵⁹

Locke places an important condition on this rule that a conqueror cannot acquire the land of others when he states that it does not hold true where land is lying waste:

The Damages of War can scarce amount to the value of any considerable Tract of Land, in any part of the World, where all the Land is Possessed and none lies waste [my emphasis]...[that is] equally cultivated. ⁶⁰

The only time where land may be appropriated, according to Locke, is not when a people is conquered but, consistent with English colonial policies, when their land is lying waste, that is, uncultivated.

Where there being more Land, than the Inhabitants possess, and make use of, any one has liberty to make use of the waste.⁶¹

It is English labour rather than Spanish war which will, in Locke's own words, 'lay a way open to gett' all of America's riches. While anyone may have the liberty to make use of the 'waste', Locke makes clear who, according to God's command, will ultimately acquire it. Where Winthrop states, the 'earth is the Lord's garden and he hath given it to the sons of Adam to be tilled and improved by them'; ⁶² Locke claims,

God gave the World to Men in Common; but...it cannot be supposed he meant it should always remain common and uncultivated. He gave it 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.⁶³

The 'Industrious and Rational' shall inherit the earth, or at least America; but what do these two terms mean? Let us consider each in turn.

VII - 'THE INDUSTRIOUS AND RATIONAL'

For both Locke and defenders of England's right to America, waste or common land in America is associated with neglect or an absence of industriousness, and those who can bring labour to the land can, thereby, appropriate it to themselves. The argument runs as follows: America is wasted or neglected because the inhabitants have not cultivated or enclosed land and therefore have not used the labour which God has commanded them to use; the English, by contrast, have already exhibited a level of industry which would make the land in America ten or a hundred times more valuable and thereby fulfill the commandments of God. In the words of Robert Cushman, 'So it is lawful now to take a land which none useth and make use of.' Thus, the industrious English will appropriate the land.

Locke makes this argument that the Englishman is more industrious than the Indian in several different ways when he

moves from the premise that labour begins property in land to the proposition that it is also the measure of land's value. First he draws the connection between Indians and waste; where Cushman states the Indians 'are not industrious...to use either the land or the commodities of it',⁶⁴ Locke claims:

There cannot be a clearer demonstration of any thing, than several Nations of the Americans are of this, who are rich in Land...yet for want of improving it by labour, have not one hundreth part of the Conveniencies we enjoy.⁶⁵

Having asserted the idleness of the Indians, Locke then claims that the English are a hundred times more industrious, using a ratio very common to the colonial writings of his day. Where Winthrop speaks of men 'spending as much labour and cost to [keep] an acre or two of lands [in England] as would procure him many hundreds of acres [in America]', and Strachey, of land where 'not one foote of a thousand doe they...knowe howe to turne to any benefitt',⁶⁶ Locke writes:

For I aske whether in the wild woods and uncultivated wast of America left to Nature, without any improvement, tillage or husbandry, a thousand acres will yield the needy and wretched inhabitants as many conveniences of life as ten

acres of equally fertile land doe in Devonshire
where they are well cultivated?⁶⁷

It is clear from Locke's discussion of the relationship between the value of property and labour that it is the English who will win title to such lands if judged in accordance with his 'industrious' criterion, but what about the 'rational'? What does it mean to be rational and who qualifies under the given criteria?

Industry, on its own, can be defined as the cultivation of land, but God's grant to the 'rational' incorporates the application of that rationality beyond simply the cultivation of the ground to the improvement of human life through European forms of culture and education. Thus at paragraph 33 of the First Treatise, Locke states:

This great and primary Blessing of God Almighty,
Be fruitful, and multiply and replenish the
earth...contains in it the improvement too of Arts
and Sciences and the conveniences of Life.(my
emphasis)⁶⁸

It is through the application of rational thought that one both develops arts and sciences and, thereby, improves the conveniences of life. The American Indian, consequently, has only '100th part of the conveniences' the English do, because

they have not developed their rational thought. If, according to Locke's argument in the Essay Concerning Human Understanding, they had applied themselves to the understanding of the principle of things, they would, have come to learn two sets of principles. Firstly, the existence of God to be as 'great a truth as any [which] can enter into the mind of men and [deserving of] the first place amongst all practical principles,' and secondly, they would have developed derivative principles, in the form of arts and sciences, already known by the 'more improved Englishman'. The relationship between this primary principle, the existence of God, and the secondary principles, arts and sciences, is, for Locke, a very close one, and the failure amongst the Indians to recognize the first is inextricably linked to failure to develop the second.

[There are] whole Nations...amongst whom there was to be found no Notion of a God, no Religion...These are Instances of Nations where uncultivated Nature has been left to it self, without the help of Letters, and Discipline, and the Improvements of Arts and Sciences.⁶⁹

While arts and sciences, that is the principles of English education and culture, are always linked in Locke's Essay with the recognition of the Christian God, both are arrived at via the same path, namely, due application of rational thought.

I doubt not but to shew, that a Man by the right use of his natural Abilities, may, without any innate Principles, attain the Knowledge of a God, and other things that concern him. God having endued Man with those Faculties of knowing which he hath, was no more obliged by his Goodness, to implant those innate Notions in his Mind, than that having given him Reason, Hands, and Materials, he should build him Bridges, or Houses; which some People in the World [want]...The reason in both cases being, That they never employ'd their Parts, Faculties, and Powers, industriously that way, but contented themselves with the Opinions, Fashions, and Things of their Country, as they found them, without looking any farther.⁷⁰

Thus, the reason why the Indians have no conveniences, like bridges and roads, nor the science to build them, and do not recognize the existence of a unitary Christian God is the same; they have not applied themselves to the question nor exercised their rational faculties far enough but instead adopted the ways of their own country. According to Locke, we are born with only the potential for rationality and it will grow, only if we exercise it.⁷¹

Thus, for Locke, the Indian, like the Englishman, has a seed of rationality. Unlike the English, however, rationality and

understanding will only be achieved by the Indian, when he goes beyond the 'ways, modes and notions' of his own people to adopt the God, arts and sciences of another, 'more improved' people, namely the English. Such a process, once the seed of rationality has been nurtured, is inevitable.

Had the Virginia king Apochancana, been educated in England, he [would be] as good a Mathematician, as any in it. The difference between him, and a more improved English-man, lying barely in this, That the exercise of his Faculties was bounded within the Ways, Modes, and Notions of his own Country...And if he had not any Idea of a God, it was only because he pursued not those Thoughts, that would have led him to it.⁷²

In essence, Locke is not excluding native Americans from the 'industrious and rational' criterion. On the contrary, when the Indian adopts an agrarian form of labour, a sedentary lifestyle and private appropriation while recognizing the Christian God and developing English forms of education and culture, he will qualify under both criteria and be worthy of God's gift.

VIII - PROPERTY AND INJURY

Having provided the justification for England's right to claim land in America, Locke attempts to prove why taking over such land would cause no injury to the current inhabitants. The first argument given by the defenders of England's right to American soil, against the claims that injury is being done to the native inhabitants by English settlements, is that there can be no injury when there is enough for all. In the words of John Winthrop, 'There is more than enough for them and us.'⁷³ Locke echoes this sentiment when he makes the case that injury cannot be done in the state of nature when land and its products are more than enough for its inhabitants. At paragraph 33, Locke states,

No Body could think himself injur'd by the drinking of another Man, though he took a good Draught, who had a whole River of the same Water left him to quench his thirst. And the Case of Land and Water, where there is enough of both, is perfectly the same.⁷⁴

Locke provides as the clear contemporary example of a country with such abundance that no injury could possibly be done to its inhabitants, inland America. He concludes that Englishmen planting in America do not injure the native inhabitants.

In some in-land, vacant places of America, we shall find that the Possessions [a planter] could make...would not...prejudice the rest of Mankind, or give them reason to complain, or think themselves injured by this Man's Incroachment.⁷⁵

While the Englishman planting in America will not injure the Indian, the Indian, still governed by the law of nature and therefore forbidden from appropriating more than is immediately useful to him, will only injure others if he breaks this natural law and attempts to appropriate larger pieces of land. Locke makes this point during the course of his argument on injury:

The measure of Property, Nature has well set, by the Extent of Mens Labour, and the Conveniency of Life: No Mans Labour could subdue, or appropriate all: nor could his Enjoyment consume more than a small part; so that it was impossible for any Man, this way, to intrench upon the right of another...This measure did confine every Man's Possession, to a very moderate Proportion.⁷⁶

Moreover, native Americans' lack of money and trade also limits their property to limited amounts; they cannot legitimately appropriate the amount of vacant land available to them that Englishmen can.

From Locke's argument we can conclude that the only injury which can be done to the Indian would involve interfering with the products of nature that he actually has in his hands or the small pieces of land which he needs to maintain this level of subsistence. On the other hand, natural man, or Indians, will injure others if they go in any way beyond this limited amount. The real potential for injury arises when Locke considers the possibility of it being done to civil men, or the English, namely those who cultivate and enclose larger pieces of land, as the English did on settling America. Once land has been settled by agrarian labour, the Indian who might attempt to claim this land back on the basis of his hunting or gathering will clearly cause injury to the Englishman.

He that...subdued, tilled and sowed any part of it...another had no Title to, nor could without injury take from him.⁷⁷

The vast majority of land in America could thus be taken without injury from that which was used by the Indians in America, but not from the Englishmen, once settled.

Locke finally argues, like Winthrop and other colonial writers, that, far from injuring the natives, appropriation of land by those with the money and industry to cultivate such property will in fact benefit the world, including America's inhabitants. Thus Locke states:

He that incloses Land and has a greater plenty of the conveniencys of life from ten acres, than he could have from an hundred left to Nature, may truly be said, to give ninety acres to Mankind.⁷⁸

Locke goes further to claim that the inhabitants will in fact be obliged to the English for increasing the amount of products which the soil will yield. Like George Strachey who claims 'Nor is this any injurys unto them [for] whome we will...prepare and breake up new growndes, and thereby...a new way of thrift or husbandry', Locke states, 'the Inhabitants [will] think themselves beholden to him, who, by his Industry on...waste Land, has increased the stock of Corn, which they wanted.'⁷⁹

IX - COMMUNAL PROPERTY: ENGLAND vs AMERICA

Thus far we have spoken only of title to property being given to individuals, but property can also be owned by groups or even nations. This is also a form of common ownership but unlike the initial form of common property granted by God, it cannot be claimed by all men but only those, the group or nation, who have agreed to its joint ownership. Locke clearly recognizes such a possibility in his description of the English manorial system. Why does Locke not allow for the possibility

that land in America can be held in common as a compact between a group of people, an Indian 'tribe' for example? It must be possible to make and honour such a compact, given his adamancy, unlike Hobbes, that agreements made in the state of nature are as binding as those in civil society, 'For Truth and keeping of Faith belongs to Men, as Men, and not as Members of Society.'⁸⁰

This question is never answered by Locke who instead simply claims that property held in common has a different meaning in England than America. Locke makes this distinction explicit at paragraph 35, beginning with common land in England:

'Tis true, in Land that is common in England, or any other Country, where there is Plenty of People under Government, who have Money and Commerce, no one can inclose or appropriate any part, without the consent of all his Fellow-Commoners: Because this is left common by Compact, i.e. by the Law of the Land, which is not to be violated. And though it be Common, in respect of some Men, it is not so to all Mankind; but is the joint property of this Country, or this Parish.⁸¹

Whereas in the latter, that is the state of nature or America:

It was quite otherwise. The Law Man was under, was rather for appropriating. God Commanded, and his

Wants forced him to labour. That was his Property which could not be taken from him where-ever he had fixed it. 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.⁸²

This passage underlines certain assumptions Locke makes about the nature of land in America versus England. 'Common' now has two different meanings. In America, land is held in common as an original gift from God; in England it is the result of a compact between a certain group of men. Consequently, land held in common in England, 'is not so to all Mankind', but only to the members of the 'Parish' or 'Country'. Moreover, while land held in common in England is of value to its co-owners, land in America, is not. Locke explicitly claims that those who held land in common in America did not value it.

Whence it is plain, that at least, a great part of the Land lay in common; that its Inhabitants valued it not [my emphasis], nor claimed Property in any more than they made use of.⁸³

In Peter Laslett's comments on the distinction between common property in civil society and the state of nature, he claims

that Locke is simply using the manorial system to explain the notion of 'common'. Locke, however, is making a far more profound argument regarding the definition of property in England versus America and his use of the word 'country' in this paragraph, and Laslett's misinterpretation of it, is instructive in this regard. Let us consider this issue in some detail.

Laslett/ concludes that Locke is simply using the manorial system to explain the notion of 'common', but has difficulty explaining the passage, 'And though [land in England] be Common in respect of some Men, it is not so to all Mankind; but is the joint property of this Country, or this Parish.' [my emphasis]⁸⁴ Laslett argues that 'country' is 'presumably' being used 'in its older meaning of locality', and wonders why it and the word 'parish' are used when, as Laslett says, 'manor might be expected.'⁸⁵ Locke however uses the word 'country' elsewhere in the Second Treatise, not to mean 'locality' as Laslett claims here, but to mean, as we might expect, 'nation'. Thus, at paragraph 9 of the Second Treatise, Locke describes the right of a 'Prince or State' to put to death a foreigner, 'for any crime he commits in their Country [my emphasis].'⁸⁶ The meaning here is clearly one of a prince's or state's nation.

It is consistent therefore to argue that Locke uses 'country' in the same manner, three chapters hence, when discussing the

notion of common property in England. Locke is not making an argument about property held in common limited to the manorial system of property. Rather he is trying to distinguish between one country, namely England and another, namely America and define the rights to common land in each. In essence Locke is arguing that although land may be held in common in England by the 'country' or state (in places such as the parliament buildings or common parks), or by a smaller group within the nation, such as a 'parish', there is no common land left in England which can be considered still available for appropriation.

Having claimed in the previous paragraph that land held in common is open to appropriation by those who are prepared to labour on it, he needs to distinguish between land held in common in England as a whole and compare this to land held in common in America for which appropriation was 'the law man was under'. Thus common property in England is not available to 'all mankind' as it is in America but only to those who have joint ownership as members of either 'the country', that is other Englishmen, or 'the parish', a smaller, geographically defined group of Englishmen. Parallels can be drawn in America to the Indian nation as a whole or particular tribes respectively, but Locke claims neither of these groups exercise the same right as Englishmen in claiming exclusive access to common property in America. Thus, while Englishmen, as a country or parish, may agree through compact, to hold

property in common and exclude all others from its use, American Indians have no such rights. Moreover, those Englishmen who are part of this compact can only enclose property with the consent of their fellow commoners. On the other hand, anyone can go to America and enclose or appropriate land needing no consent of the inhabitants already there.

American natives, unlike their English counterparts, live under the 'law' for 'appropriating' as commanded by God and those who act in accordance with this law in America, will clearly have, through their agricultural labour, dominion over that land. God himself, through his commandment to subdue the land, has also given 'Authority so far to appropriate.' Thus Locke encourages his European readers, at paragraph 36, to cultivate the wastelands of America:

Let him plant in some in-land, vacant places of America, we shall find that the Possessions he could make himself...would not...give them reason to complain.⁸⁷

X - PROPERTY IN CIVIL SOCIETY

While Locke has argued that property is begun by labour, and it is labour which gives the individual a natural right to

exclude others from it, several commentators have concluded that this is true only in the state of nature and not in civil society. In the latter, it is argued, Locke claims property is decided not by one's labour but by laws and therefore is a conventional rather than natural right.

Thomas Scanlon states:

Locke clearly distinguishes between the natural property rights that he sees as holding in a state of nature antecedent to [positive law] or social convention and the systems of property that arise later with the introduction of money and the creation of government.⁸⁸

This view is based on several passages in the chapter on property which refer to property in civil society. For example, in paragraph 30 Locke states:

Amongst those who are counted the civiliz'd part of Mankind, [were] made and multiplid postive Laws to determine property.⁸⁹

And again at paragraph 50 Locke states, 'For in Governments the Laws regulate the right of property, and the possession of land is determined by positive constitutions.'⁹⁰ It is these two passages which lead James Tully to conclude:

His express statement that property under government is conventional contradicts the standard, but not exclusive interpretation of Locke's analysis of property. Locke is normally taken to have attempted to justify private property by showing that it is natural. This interpretation is held in the face of his repeated assertion that whatever property men have in political society is conventional.⁹¹

Tully is challenging theories, like Robert Nozick's Anarchy, State and Utopia, where property rights derived from Locke's theory are defined as natural and can, thereby, be used to constrain the powers of the state.⁹² In order for Nozick to claim that private property in society is natural rather than conventional, it is necessary for him, according to Tully, to ignore the difficult passages he mentions above.

In an otherwise critical article, Jeremy Waldron, concurs with Tully on this point, concluding that there are several passages in Locke's chapter on property, including the ones given above which have 'always been understood to pose difficulties for the traditional view', that is the view that private property in civil society is founded on natural right.⁹³

These passages, which appear to claim that it is the law rather than labour which founds property in civil society, include,

according to Tully and Waldron, the following paragraphs: 30, 'laws determine property'; 35, 'Land that is common in England...is left common by Compact'; 38, 'Laws within themselves settled the Properties of those of the same Society'; 45, 'several Communities...by laws within themselves, regulated the Properties of the private Men of their Society'; and 50, 'in Governments the Laws regulate the right of property, and the possession of land is determined by positive constitutions.'⁹⁴

Firstly, as Waldron points out, Locke uses terms such as 'settle', 'determine', and 'regulate' to describe the relationship between law and property in society. Nowhere does he say that laws found or re-create property in civil society. While labour or industry first began property everywhere, now a distinction can be drawn between the 'civilz'd part of mankind', namely the English who in England, settle their property on the basis of law rather than industry and the Indians who have no such laws and whose property therefore, is still founded and determined by labour. Englishmen in England or Indians in America provide clear examples of property determined by civil and natural law respectively, but what happens, as with colonization when the Englishmen settle in America; which law prevails?⁹⁵

Locke clearly wants to claim that labour founds property in all cases, but when the English begin a settlement on American soil

(like the one in Carolina), and thereby establish a civil society, the natural right of begining property through labour or money must be circumscribed by government. It is the law that must settle, regulate or determine property in such civil societies. It is this underlying argument based on Locke's colonial experience which provides a full answer to the questions perplexing both Tully and Waldron in the references made by Locke to the settlement of property by law in civil society. Let us consider this argument in some depth in relation to each of the paragraphs cited.

Locke argues, like the other defenders of England's right to American soil, that it is through the Englishman's labour and access to money and commerce that he begins the right to property in America. However, once the colony is settled, and civil society has taken root in Carolina, it is the civil laws which determine or regulate property. These laws however, as Locke makes clear in paragraph 45, do not found property; they settle or regulate that which the labour of Englishmen, as a whole, has already begun.

Several communities settled the Bounds of their distinct Territories, and by Laws within themselves, regulated the Properties of the private Men of the Society, and so, by Compact and Agreement, settled the Property which Labour and Industry began.⁹⁶

Locke, as secretary to Shaftesbury, observed in Carolina the need to impose laws to insure that the settlers did not take too much land, which tended to undermine the plantation itself. As Child and Davenant argue in their defense of the plantation, it was necessary that the authorities in England maintain a close rein over the appropriation of land in America, if the enterprise was to succeed at all. Locke concurs, stating in notes composed in 1674 for an 'Essay on Trade' that the 'promotion' as opposed to the 'hindrance' of trade, depended on, amongst other things, the 'register or certainty of property'.⁹⁷ Amongst settlers in the new world, it was necessary to insure that property in a civil society is no longer determined, settled or regulated by the rights of nature, that is by right of labour or purchase which could be capricious and damaging, but rather by the more certain edicts of government.⁹⁸

This fear had been proven by some colonizers in the new world who had taken up, through purchase from the Indians, much more property than could be defended and had consequently, put at risk the survival of the plantation. Thus, as has been discussed, Carolina forbade the purchase of land by settlers from Indians, because it was the Lords Proprietors right to settle and determine property in the interests of the plantation as a whole.⁹⁹

In a letter from the Lords Proprietors to the new colony, the former expressed concern that the settlers buying great tracts of land from the Indians, would 'weaken the plantation' and instructed the settlers 'to be sattisfyed with such proportions as we allot...more will but scatter the people.'¹⁰⁰ The Lords Proprietors conclude that their instructions 'wilbe the best course of setling.'¹⁰¹ In other words, the natural right to property through labour or purchase must, in civil society, be circumscribed by the regulations of government in order to insure the survival and defense of the community or plantation as a whole. In the words of Charles Davenant, 'Many Empires have been ruin'd by too much enlarging their Dominions, and by grasping at too great an Extent of Territory.'¹⁰²

Locke uses similar language to make the same point when he states:

Numbers of men are to be preferd to largenesse of dominions, and that the increase of lands and the right imploying of them is the great art of government.¹⁰³

This theme of maintaining or controlling numbers of men through government regulation is a constant theme in writers on trade. Locke himself, in the notes written in 1674 in preparation for the 'Essay on Trade' states, 'The chief end of trade is riches

and power...power consists in numbers of men and ability to maintain them.'¹⁰⁴

The way in which the settlers, and therefore the plantations, are to be controlled or maintained in the new world is through the just enforcement of particular laws.¹⁰⁵ While Davenant argues for a just 'agrarian law', Child concludes that the preservation of 'liberty and property' in English law will ensure that English colonies are far better off than Dutch colonies.¹⁰⁶ Similarly, Shaftesbury refers in Carolina to his 'laws of libery' as the means by which 'jelousy' is 'removed and factions united'.¹⁰⁷ Locke follows the same words as Child and Shaftesbury when he states immediately following his comments about the 'right imploying' of lands:

And that Prince who shall be so wise and godlike, as by established laws of liberty to secure protection and incouragement to the honest industry of Mankind against the oppression of power and narrowness of Party will quickly be too hard for his neighbours.¹⁰⁸

Locke seems to be referring amongst other issues, to the problems in Carolina in this passage. Firstly, the Lords Proprietors established what they themselves described as 'laws of liberty' and encouraged the settlers to abide by the Fundamental Constitutions and their instructions regarding the

allocation of property to avoid factions and settle quarrels which arose.¹⁰⁹ Secondly, these instructions repeatedly referred to the Lord Proprietors' wish to 'give all reasonable encouragement to honest and industrious men'.¹¹⁰ That these laws became too 'hard' for the settlers and they instead began to form narrow factions is made clear by memoranda written by Locke including one which states the settlers 'depend lazily on the Proprietors' supplies', and become 'divided amongst themselves'.¹¹¹

Each of the passages mentioned above (paragraphs 30, 35, 38, 45, and 50) can be explained in terms of this colonial need to insure that Englishmen living in America, that is civil men surrounded by the state of nature, are still subject to the laws of civil society and their property must be determined by these laws.

To take each in turn, the Englishman in Carolina would be, in the words of Locke at paragraph 30, 'amongst those who are counted the Civiliz'd part of Mankind' and have therefore 'multiplied positive Laws to determine Property'. rather than those who determine property on the basis of labour or trade with the Indians.¹¹²

Paragraph 35 has been discussed at some length and distinguishes the 'common' in civil society, namely England

from that of the natural state (or America), leaving these latter lands open to the 'laws of appropriation'.¹¹³

The next paragraph (38) provides us with a description of the settlement of Carolina:

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 limits between them and their Neighbours, and by Laws within themselves, settled the Properties of those of the same Society.¹¹⁴

Paragraph 45 has two references which can be accounted for by this argument. The first sentence refers to 'regulation' and settling of property in society after it has been first begun by 'labour and industry'.¹¹⁵ This is the classic formulation of the defense of England's plantations in America (through labour) followed by the conditions necessary to ensure its survival (the civil law).

In the second part of paragraph 45, Locke refers to the determination of property between societies rather than individuals within any particular society. He refers to:

the Leagues that have been made between several States and Kingdoms...disowning all Claim and Right to the Land in the others Possession, have by common consent [and so] by positive agreement, settled a property amongst themselves, in distinct Parts and Parcels of the World: yet there are still great Tracts of Ground to be found, which...lie waste. [my emphasis]¹¹⁶

Clearly what Locke is referring to here is the colonial division of the world between several European nation states, not individuals within a particular society, as Tully claims of all these references.

The final problematic paragraph (50) can be explained in terms of the Fundamental Constitutions of Carolina, written by Locke, which included an elaborate system of property rules, and further instructions given to the settlers circumscribing the settlers' natural right to property through labour or purchase by positive law. So Locke concludes his chapter on property with the following statement defending the power of positive constitutions, such as the one he established in Carolina, to determine property in civil society.

For in Governments the Laws regulate the right of property, and the possession of land is determined by positive constitutions.¹¹⁷

XI - CONCLUSION

Locke's theory of property in the state of nature thus both reflects and defends England's colonial enterprises in Carolina and America in general. Locke begins by defending the Indian's right to the fruits and beasts of the earth, for it is their labour which makes it theirs. True to Shaftesbury's blueprint for Carolina and the defenders of English colonization, Locke clearly believes that the Indian's life and liberty are to be respected and their subsistence provided. It is only when he moves to his discussion of the 'Earth itself' that his argument with reference to the Indian versus the Englishman changes.

His definition of labour and thereby the founding of property in land is that of the Englishman in America tilling, planting and subduing the soil. Through cultivation and enclosure, the English colonizer can legitimately claim the property formerly used for its fruits and beasts, by the Indian, and bring value to land previously left waste or neglected. By cultivating the ground, the Englishman fulfils the commandment of God that the 'industrious and rational' have dominion over the earth, their standard of labour being ten or a hundred times better than that of the Indians. Even if Indians decide to cultivate the ground in larger quantities like the English, Locke ensures by his argument that they are still limited by natural law to relatively small parcels. He argues that without money, which

does not spoil, or access to international commerce with which they could make some sales, the Indians' increased goods would either spoil and thereby break the law of nature against spoilage or not be worth enclosing. Either way, the Indian has neither the right nor the need to own the land in the quantities that the English do. Furthermore, given that cultivation is the only way to own property, injury in terms of taking over land can only be done against those who actually cultivate, namely the English. The English in coming to America, not only do not injure the Indians but will find, according to Locke, the inhabitants beholden to them for increasing their stock of crops.

The originality of Locke's argument on property, which will be discussed in greater depth in the following chapter, is that colonization is justified, not just because God or natural law has commanded it, as Purchas, Winthrop and the others have argued, but because each colonist has a natural right within himself, through his labour, to appropriate land. One might argue that Locke is, by definition, excluding the Indian from any right to property in land. He is not. The doctrine of natural rights allows that anyone may lay claim to the soil of America if he adopts a settled agrarian style of life, joins the rest of mankind in the use of money and commerce, establishes laws of liberty, and recognizes the Christian God to be the first principle of understanding. By founding his theory of property on natural rights, Locke provides, as shall

be discussed in the next chapter, a powerful, original and attractive argument for the early thinkers of the new confederation of United States in their development of policy towards the Indians and their lands.

Notes

1. For discussion about Locke's use of property, S.B. Drury, 'Locke and Nozick on Property', Political Studies,, XXX, 1; Karl Olivecrona, 'Locke on the Origin of Property', 1974, Journal of the History of Ideas, XXXV, 2, 1982; Gordon Schochet, ed., Life, Liberty and Property: Essays on Locke's Political Ideas, California, 1971; James Tully, A Discourse on Property: John Locke and his Adversaries,, Cambridge, 1980.
2. Peter Laslett, ed., John Locke, Two Treatises of Government, Cambridge, 1988, p. 102. Laslett lists the examples of the wider definition in the note to Treatise II, paragraph 87.
3. Locke, Two Treatises, I, paras. 130-131; II, paras. 38-41.
4. Ibid., II, para. 49.
5. Locke, Two Treatises, II, para. 36.
6. Ibid., note on II, para. 36.
7. Locke, Two Treatises, II, para. 25.
8. Ibid., II, para. 25.

9. Ibid., II, para. 25.
10. Tully, A Discourse on Property, p. 95.
11. Robert Filmer, Observations concerning the Original of Government upon Mr. Hobs Leviathan, Mr Milton agsint Salmasius, H. Grotius De Jure Belli, London, 1652.
12. Tully, A Discourse on Property, p. 55.
13. Each of these natural law theorists are discussed at some length in chapter 3.
14. Samuel Pufendorf, De Jure Naturae, Book IV, Chapter IV.
15. Locke, Two Treatises, II, para. 26.
16. Ibid., II, para. 26.
17. Ibid., II, para. 30.
18. John Winthrop, General considerations for Planting in New England, in Chronicles of the First Planters (1623-1636), Boston, 1846, p. 276.
19. Ibid., p. 275.

20. James Tyrell, Patriarcha non Monarcha, London, 1681.
21. Locke, Two Treatises, II, note, para. 27.
22. Ibid., II, para. 28.
23. Ibid., II, para. 35.
24. For a good review of this see Bernard Sheehan, Savagism and Civility: Indians and Englishmen in Colonial Virginia, Cambridge, 1980.
25. Locke, Two Treatises, II, para. 32.
26. Ibid., II, para. 32.
27. Ibid., II, para. 32.
28. Ibid., II, paras. 35, 36, 37, 38, 42.
29. Joseph D'Acosta, The Naturall and Morall Historie of the West Indies, I, pp. 228-232.
30. Locke, Two Treatises, II, para. 40.
31. Ibid., II, para. 32.

32. Winthrop, General Considerations, p. 272, and John Cotton, 'God's Promise to his Plantations' cited in Chester Eisinger, 'The Puritans Justification for Taking the Land', in Essex Institute Historical Collections, LXXXIV, 1948, p.136.
33. Sir George Peckham, 'A Ture Report of the Late Discoveries' in Hakluyt's Voyages, VIII, Glasgow, 1904, p. 101.
34. Locke, Two Treatises, II, para. 35.
35. Locke, Two Treatises, II, paras. 33, 38, 48.
36. Plymouth, Massachusetts and Connecticut all ordered that the corn lands of the Indians be fenced. Herbert Osgoode, The American Colonies in the 17th Century, I:The Chartered Colonies: Beginnings of Self Government, New York, 1904, p. 532.
37. Winthrop, General Considerations, p. 276.
38. Locke, Two Treatises, II, para. 37.
39. Ibid., II, para. 38.
40. Ibid., II, para. 46.
41. Ibid., II, para. 38.

42. Ibid., II, para. 37.

43. Herman Lebovics, 'The Uses of America in Locke's Second Treatise of Government' in Journal of the History of Ideas, XLVII, 1986, p. 573.

44. Locke, Two Treatises, II, paras. 45, 48.

45. Martin Seliger, The Liberal Politics of John Locke, London, 1968, p. 115.

46. Sir Josiah Child, A New Discourse on Trade (1672) London, 1804, and Charles Davenant, Discourses on the Public Revenues and on the Trade of England, Part II, Discourse III, 'On the Plantation Trade', London, 1698.

47. 'Notes for An Essay on Trade', 1674, Bodleian Library, M.S. Locke c.30, folio 18.

48. Locke, Two Treatises, II, paras. 36, 50.

49. Purchas, 'Virginia's Verger', p. 222, William Strachey, The Historie of Travaile intor Virginia, 1612, London, 1849, p. 19.

50. Locke, Two Treatises, II, para. 42.

51. Robert Cushman, 'Discourse: The State of the Colony and the need of public spirit in the Colonists', in Alexander Young, Chronicles of the Pilgrim Fathers of the Colony of Plymouth (1602-1625), Boston, 1841, p. 265.

52. This issue was discussed in chapter 4.

53. Locke, Two Treatises, II, para. 36.

54. Ibid., II, para. 36.

55. Ibid., II, para. 180.

56. Ibid., II, paras. 182, 184.

57. Davenant, Discourses, p. 196.

58. 'Copy of a Representation to the Lord Justices Relating to the Designs of the Scotch India Company, upon the Isthmus of Darien in America', August 10, 1697, Bodleian Library, M.S., Locke c.30, folio 49.

59. Letter from Lord Ashley to William Saile, May 13, 1671, written in Locke's hand, Shaftesbury Papers, Public Record Office, Bundle 48, No. 55, p. 91.

60. Locke, Two Treatises, II, para. 184.

61. Ibid., II, para. 184.
62. Winthrop, General Considerations, p. 272.
63. Locke, Two Treatises, II, para. 34.
64. Cushman, 'Reasons and Considerations touching the Lawfulness of Removing out of England into the Parts of America', Chronicles of the Pilgrim Fathers, Alexander Young, ed., p. 243.
65. Locke, Two Treatises, II, para. 41.
66. Winthrop, General Considerations, p. 272; Strachey, The Historie, p. 19.
67. Locke, Two Treatises, II, para. 37.
68. Locke, Two Treatises, I, para. 33.
69. John Locke, An Essay Concerning Human Understanding, Oxford, 1975, Book I, Chapter IV, section 8.
70. Ibid., section 12.
71. Ibid., sections 9-12.

72. Ibid., section 12.

73. Winthrop, General Considerations, p. 277.

74. Locke, Two Treatises, II, para. 33.

75. Ibid., II, para. 36.

76. Ibid., II, para. 36.

77. Ibid., II, para. 32.

78. Ibid., II, para. 37.

79. Strachey, The Historie, p. 19; Locke, Two Treatises, II, para. 36.

80. Locke, Two Treatises, II, para. 14.

81. Ibid., II, para. 35.

82. Ibid., II, para. 35.

83. Ibid., II, para. 38.

84. Ibid., II, para. 35.

85. Ibid., II, note, para.35.

86. Ibid., I, para. 9.

87. Ibid., II, para. 36.

88. Thomas Scanlon, 'Nozick on Rights, Liberty and Property' in Philosophy and Public Affairs, (1976-1977), VI, 1, p. 23.

89. Locke, Two Treatises, II, para. 30.

90. Ibid., II, para. 50.

91. Tully, A Discourse on Property, p. 99.

92. Robert Nozick, Anarchy State and Utopia, Oxford, 1974.

93. Jeremy Waldron, 'Locke, Tully and the Regulation of Property' in Political Studies, 1986, XXXII, p. 100.

94. Locke, Two Treatises, II, paras. 30, 35, 38, 45 and 50.

95. Ibid., II, para. 30.

96. Ibid., II, para. 45.

97. Locke, 'Notes for An Essay on Trade', 1674, Bodleian Library, M.S. Locke c.30, Folio 18.

98. There are repeated references in the correspondence between the Council in Carolina and the Lords Proprietors to the need for residents to abide by the laws of property or the entire plantation would fail as discussed in a previous chapter.

99. This has been discussed in chapter 5.

100. Letter from the Lords Proprietors to Sir William Berkeley, September 1663, in The Colonial Records of Carolina, I, p. 55.

101. Ibid., p. 55.

102. Davenant, Discourses, p. 233.

103. Locke, Two Treatises, II, para. 42.

104. Locke, 'Notes for An Essay on Trade', 1674, Bodleian Library, M.S. Locke c.30, Folio 18.

105. This was the argument behind the Fundamental Constitutions of Carolina and Carolina's temporary laws. See Edward McCrady, South Carolina Under Proprietary Government, New York, 1901.

106. Child, A Discourse, pp. 177-178.

107. Letter from Shaftesbury to Mr. West and the Rest of the Counsell, June 20 1672, Collections of the Historical Society of South Carolina, V, Charleston, 1897, pp. 401.

108. Locke, Two Treatises, II, para. 42.

109. Op cit., pp. 400-402.

110. Letter from the Proprietors to the Governor and Council at Ashley River, May 18, 1674, with signatures in Locke's hand, Collections of the Historical Society of South Carolina, V, p. 437.

111. Memorandum in John Locke's handwriting, Ibid., p. 248.

112. Locke, Two Treatises, II, para. 30.

113. Ibid., II, para. 35.

114. Ibid., II, para. 38.

115. Ibid., II, para. 45.

116. Ibid., II, para. 45.

117. Ibid., II, para. 50.

Chapter 7: Locke, Jefferson and the American Indian

The extent to which John Locke has influenced the political development of the United States, particularly during the revolutionary period has been analyzed in great depth. While some scholars claim Locke to be a singular and all powerful influence on the early American republic, others claim his role to have been much more limited.¹ The debate, like similar ones on every other aspect of Locke's political theory, has centered on the implications for civil man and his society, most particularly in the United States on the separation of legislative and executive powers within government and the conditions under which it may be dissolved, rather than the implications for natural man and his community. This singular focus is particularly strange in scholarship on the United States for Locke himself constantly refers to the Indian in America in his examples of the natural state in the Two Treatises of Government.

Before we consider how Locke's theory shaped early American policies towards the Indian, it is necessary to make clear that this chapter on the history of ideas in America, while important, can only be a limited addendum to the analysis which precedes it. The implications of Locke's thought for the development of ideas and policies towards the native Americans themselves is an important final step in the thesis I have been trying to develop; however, it is not intended to be an exhaustive analysis of this period of

American history due to the complexity of the subject and the limitation of space.

It is beyond scholarly doubt that John Locke's Two Treatises of Government was used in the early years of the history of the United States to justify Americans taking over land claimed by the Indians. Even John Dunn, in an article which otherwise dismisses the importance of Locke in 18th century America, concludes that the attempt to undermine Indian claims to land provides the single example of an application of Locke's Second Treatise in the new world.

In what was probably the only sustained application of Locke's theory of property to American circumstances, the moral dignity of labour was deployed to give powerful embellishment to the expropriation of the Indians by the labourious and God fearing people of New England.²

Dunn argues, however, that this application of Locke's theory is limited to an article by Rev. John Bulkley which 'was presumably of local and practical interest' only, and, moreover, Locke added nothing original to this debate regarding white versus Indian title; the Two Treatises was simply a recapitulation of older colonial arguments.

There was nothing original in the substance of this claim. It stretches back at least as far as Thomas More...and it remained a major strain of apologetic throughout much of subsequent Indian-white relations.³

Dunn is mistaken on two counts. Firstly, he is wrong to say that Rev. Bulkley's sermon was of local interest only. Other preachers, as well as politicians and legal theorists, used Locke for similar purposes, as shall be demonstrated shortly. Secondly, while some of the tenets adopted by Locke in his political theory, such as the idea of vacant land and God's commandment to multiply are taken from previous arguments defending England's right to Indian land, as has been discussed, Locke's conclusions are wholly original in that he bases his theory on the natural right to life, liberty and property and defines both the origin of property and the value of land in terms of agricultural labour only.

The former aspect of this argument is innovative for it concludes that land can be claimed by Europeans not only because one is obeying the law of God, as had been previously argued, but also because one has the inherent right through labour to do so. For a country whose constitution was based on the idea of rights, Locke's

development of the colonial argument was both original and very powerful.

However, the most important and original aspect of Locke's political theory with reference to the American Indians was the placement of agrarian labour at the heart of private property. Preachers, legal theorists and politicians all used Locke's theory of property to define the cultivation of land by American citizens as the only legitimate means to claim property. Occupancy for thousands of years was suddenly and dramatically superceded by Locke's distinctly English form of labour as the basis of holding land.

The yielding of occupancy to labour was a crucial turning point in the history of the idea of property. Occupancy as the foundation of property had a long history in natural law theory. From the time of Cicero through to Grotius and Pufendorf, it was argued that any unoccupied area, such as the famous theatre seats, only had to be occupied in order for it to be considered one's own. England had adopted the notion of discovery and occupancy as the basis for its claims in the new world when it first landed on American shores, but the theory became problematic when England began to settle in America and the Indians proceeded to claim the right to large tracts of land, wanted by the English, on the basis of their prior right of occupancy. The later 18th century British colonies and the early American republic

thus needed a new foundation for property, which would go beyond simple occupancy, in order to claim the land in their proposed settlements for their own. Locke's theory of property, based on agrarian labour, provided that new foundation. Moreover, these same players on the American stage could, and in fact did, argue that until the Indians transformed their labour from hunting and gathering into agrarian cultivation, they could not be considered as the ultimate owners of the soil. Not only did they lose the land they claimed by virtue of past occupancy, but until they transformed their lifestyle into that of the sedentary Europeans, they could claim next to nothing in the future.

Thus, while scholars of Locke, like Dunn, have concluded that Locke's theory provides no original ideas regarding the ownership of American soil and, moreover, they are limited to questions of local concern, other scholars, most notably those studying the history of Indian-European relations consider Locke to be the original starting point for a powerful new thesis used throughout America in the late 18th century, which claimed that the Indians and their nomadic, communal lifestyle must ultimately yield to civil society based on the linkage between the private right of property and agrarian labour. Wilbur Jacobs identifies Locke's Two Treatises as the origin of this school of thought.

The argument that nomadic hunters could be forced to alter their economy by an agricultural or pastoral people had first...been advanced by John Locke who saw a relationship between cultivation of the soil and ownership of property.⁴

I - THE PREACHERS

Let us turn then to consider exactly how Locke's thought was disseminated in the young American nation. Perhaps the first group to adopt Locke's theory of property for their defense of American citizens' rights were the preachers of New England. Clinton Rossiter, in an article on Rev. Jonathan Mayhew of Boston, claims that Locke became a virtual oracle to the puritan pastors in revolutionary America.

It was in this period that Locke was elevated to the status of major prophet by the clergy of Massachusetts and Connecticut, and Mayhew did as much as any other preacher to introduce his ideas to the colonial audience.⁵

It is perhaps not suprising that Locke would be so easily adapted to the sermons of this period for the theological

roots of the Two Treatises, are clearly reconcilable with the Puritan work ethic advocated by the clergy in the new world. As Issac Kramnick and Quentin Skinner argue, it is this Protestant ethic which lies at the heart of the Second Treatise.

Locke's Second Treatise and its chapter 'Of Property' with its very Protestant God enjoining industrious man to subdue the earth through work ...is, as Quentin Skinner insists, 'the classical text of radical Calvinist politics'. The kinship of work-ethic Protestant discourse to Locke has less to do with the juristic discourse of rights than with the Protestant theme of work.⁶

Locke was used in varying degrees in the evolving theology of the American state. Some, such as Rev. Simeon Howard, in a sermon preached to the artillery company in Boston simply refer to Locke in claiming the natural right of individuals to their life, liberty and property.

In a state of nature...God has given to everyone liberty to pursue his own happiness in whatever way...provided he keeps within the bounds of the laws of nature. Within these bounds, he may govern his actions and dispose of his property

and person, as he thinks proper - See Locke on government.⁷

Others, such as Jonathan Mayhew, use his theory to defend the idea that civil society is preferable to the natural state because in it private property is secured.

[Government] is instituted for the preservation of men's persons, properties and various rights against fraud and lawless violence, and that by means of it, we may both procure and quietly enjoy those numerous blessings and advantages, which are unattainable out of society.⁸

Mayhew is referring to the natural state of the American Indian. It follows, as it does in Locke's theory that natural man should want to avoid the 'fraud and lawless violence' of their state in favour of 'those numerous blessing and advantages' of civil society.

There are several important preachers who go further in adopting Locke's theory into their own thought and, in turn, question the Indian claims to certain tracts of land. We can begin with Rev. John Witherspoon, President of the College of New Jersey (which was soon to become Princeton University) and signatory of the Declaration of Independence. He opens his argument by supposing man to be

in a state of nature with certain natural rights, 'the right to life', the 'right to employ his faculties and industry for his own use' and the 'right to personal liberty' amongst others. Like Locke, he claims that while 'some say there is no trace or record of [a] contract in the beginning of any society', it is not possible to conclude that no such contract exists in any society, just because, 'their beginning is not observed'.⁹ Witherspoon goes on to claim that colonial expansion, such as the English coming to America, provides us with an ideal example of the founding of civil society amongst a natural state. 'In migrations and planting of colonies...we see evident traces of an original contract.'¹⁰ Having described the state of nature, he turns, as Locke does to discuss slavery and property. Of the latter he states:

The next step in...the principles of the social state, is to consider the foundation, establishment and extent of Property.¹¹

Like Locke, it is property which lies at the heart of Witherspoon's natural state and in turn must be the end for which government is established. Property, following the Lockean argument, is founded on occupancy and labour.

The original ways of acquiring property may be reduced to these two, 1) Prior occupation, 2) our own industry.¹²

Of the two foundations of property, Witherspoon favours the latter, arguing that those existing in vacant land, such as the American Indians, cannot possibly claim large tracts of land to themselves. Rather they are governed by the principle of utility which limits their appropriation to that which will provide for their present needs. He states this in the form of a rhetorical question.

In vacant lands must I take only what I and my present following can sufficiently occupy or may I touch a continent and call it mine?¹³

While Witherspoon never makes a direct reference to Locke throughout his lectures on moral philosophy, the debt, as Francis Broderick concludes in his article on the President of Princeton, is great.

Witherspoon makes no acknowledgement of his direct debt to Locke...but that debt is apparent all through his system.¹⁴

Another preacher, referred to previously, who uses Locke in his own treatise on American rights to the soil, is Reverend

John Bulkley of Connecticut. In an article published in a book by Roger Wolcott, Governor and Chief Justice of Connecticut, Bulkley, like Witherspoon, questions whether property can be based on the right of occupancy as claimed by defenders of the Indian claims. He concludes that unless the land is cultivated, the Indians have no right to claim the property as their own.

To Assert their Right...to extend to all Lands in the Country, whether Cultivated by them or not; is what I never could, nor yet can see any Sufficient reason for.¹⁵

Basing his claims on Locke's Two Treatises, Bulkley contends that it is labour which is 'the Cause and Original of all Property'. Therefore, 'as far as Labour extends...so far the Right of Property must extend' also. He concludes that the Indians' lack of agrarian cultivation leaves them with very little property, only that which provides for their basic subsistence; the remainder is open to appropriation by Europeans.

Now from what I have thus said concerning the way of Original or Primary Impropriation in the state of Nature, it can't be difficult to determine the Extent of the properties of the Aborigines of this country...they had really

good Right or Title, but to here and there a few spots of it, viz only to so much as by means above mentioned they had separated and inclosed from the rest of the Country.¹⁶

Bulkley's application of Locke's theory to divest the Indians of their land is one, according to Dunn, of 'which Locke would have approved'.¹⁷

A final application of Locke's theory by the theologians is contained in a sermon by Ezra Stiles, President of Yale College, which outlines the reasons why the United States will 'ascend into high and distinguished honour among the nations of the earth.'¹⁸ He begins by claiming America's 'system of dominion and civil polity' is the key to its 'ascension', where 'dominion is founded in property'.¹⁹ Like Locke, Stiles claims that the best state is the one which protects and preserves its citizens' property by insuring that the acquisition of territory is limited, in accordance with natural law, to that which an individual can cultivate; 'large territorial property vested in individuals is pernicious to society.'²⁰ Thus he argues, like Witherspoon and Bulkley, that property must be founded on the basis of labour rather than occupancy.

The body of a people may have it in their power,
by industry, to become possessed of
real...estate. [My emphasis]²¹

Stiles goes on to argue, like Locke, that labour not only founds property but gives value to the land. In words strikingly similar to Locke's own, he claims that the European farmer has increased 'tenfold' the value of land previously claimed by Indian inhabitants. Moreover, the Europeans' use of the land has benefited the Indians by increasing the revenue their land may produce.

Industry, is necessary towards giving value to land...the publick weal requires [its] encouragement...A very inconsiderable value arose from the spare, thin settlement of the American aboriginals...the protestant Europeans have generally bought the native right of soil, as far as they have settled, and paid value tenfold; and are daily increasing the value of the remaining Indian territory a thousand fold: And in this manner we are a constant increasing revenue to the Sachems and original Lords of the Soil.²²

He concludes his argument by claiming that beyond the limited Indian 'settlements' and certainly into land claimed

by the native Americans for hunting, America is still open for appropriation, likening God's bequest to European settlers of continental America to a similar gift of the European continent to Japhet, Noah's son, in the Bible.

Heaven hath provided this country, not indeed derelict but only partially settled, and consequently open, for the reception of a new enlargement of Japhet; America is settling from Europe.²³

The political implications of these sermons were not lost on the preachers who made them. In the early days of the United States of America, religious and political thinking often went hand in hand; thus preachers and politicians attempted to convince each other of their views based on both natural law and biblical reference. The ministers often chose to give certain political sermons before an audience which included governors and/or assemblies of particular states.

For example, Rev. Mayhew preached his sermon in the presence of the Governor and House of Representative of Massachusetts, Rev. Stiles in the presence of the Governor and General Assembly of Connecticut, and John Bulkley's sermon was published in a book edited by the Governor of Connecticut. This contiguity between the development of

religious and political thought can be found no closer than in the person of John Witherspoon who simultaneously preached the religious views described above while engaging in the debates about and eventually signing the Declaration of Independence.

Despite this closeness in thought between religious and political writers, there was emerging amongst the latter an emphasis on purely natural, as opposed to theological underpinnings of the citizen and his state. Thus, while the Christian roots of Locke's argument made the Two Treatises of Government particularly appealing to the preachers of the new world, it was his emphasis on natural law and individual rights which opened up its use to the more powerful legal and political realms within America. The politicians, in particular, were shaped not only by a direct reading of Locke but by the writings of legal and philosophical scholars who incorporated Locke's thought, particularly his theory of property, into their own analysis.

II - THE JUDICIARY

Foremost amongst these scholars was Sir William Blackstone, who quotes Locke at length in his Commentaries on the Laws of England.²⁴ In the first volume of the Commentaries,

Blackstone uses Locke's political theory to explain the contractual nature of government and the conditions under which it may be dissolved. John Hargrave, the editor of Blackstone's views on civil liberty, draws the connection to the Two Treatises.

Mr. Locke's description of civil liberty is generally considered the best and it certainly embodies all the essentials of English liberty.²⁵

'English liberty', needless to say, is based on the right of property. Blackstone begins the second volume of the Commentaries with a discussion of property. Like Locke, he centres his analysis around the state of nature in order to ascertain the natural rights of men outside of society. His examples, like those of Locke, include American Indians and ancient Europeans. He describes the state of nature in the following terms:

A state of primeval simplicity: as may be collected from the manners of many American nations when first discovered by the Europeans; and from the antient method of living among the first Europeans themselves.²⁶

Like Locke, Blackstone argues that appropriation in this natural state involved the products of the soil only, followed by, with the development of man's condition, the appropriation of land.

And there can be no doubt, but that moveables of every kind became sooner appropriated than the permanent substantial soil.²⁷

Blackstone thus turns to consider property in the soil itself. Using the same Biblical reference as that used by Locke in his chapter on property, Blackstone claims that it is the need for more soil which drives people on to occupy and claim 'other lands'.

The soil and pasture of the earth remained still in common as before, and open to every occupant...when the multitude of men and cattle had consumed every convenience on one spot of ground, it was deemed a natural right to seize upon and occupy...other lands. This practice is still retained among the wild and uncultivated nations...We have also a striking example...in the history of Abraham and his nephew Lot.²⁸

Colonies, such as the English developed in America, are justified along the same grounds, given that property can be claimed wherever land is still common.

Upon the same principle was founded the right of migration, or sending colonies to find out new habitations, when the mother country was overcharged with inhabitants.²⁹

The question immediately arises: Upon what criterion can such land be claimed? In a crucial passage, Blackstone concludes, like Locke, that the basis of the right to both moveable and immoveable property is labour.

Bodily labour [my emphasis] of the occupant...bestowed upon any subject which before lay in common to all men, is universally allowed to give the fairest and most reasonable title to an exclusive property therein.³⁰

George Sweet, editor of second volume of the 1844 edition of the Commentaries challenges Blackstone's argument with reference to the foundation of property, concluding that it is occupancy rather than labour which founds an individual's right.

To say that a man has acquired a right to a piece of land because he has occupied it, does not perhaps establish or illustrate his right any better than to say that he has the right because he has bestowed labour in acquiring it; yet if a choice is to be made...it must be allowed that the advocates of occupancy have the best of the argument. For where A. first takes possession of a spot by driving a few stakes around it, and B. then comes and digs every part of it and tills it, it is admitted that the property remains in A....which plainly shews that priority of occupation, and not labour, is the criterion of ownership.³¹

Sweet bases his argument, in part, on David Hume's critique of the labour theory of property. Hume argues that there are cases where occupancy of land is assumed to provide the right to property without any significant additional labour, such as grazing.

Some philosophers account for the right of occupation by saying, that every one has a property in his own labour; and when he joins that labour to anything, it gives him the property of the whole; but...there are several kinds of occupation where we cannot be said to

join our labour to the object we acquire, as where we possess a meadow by grazing our cattle upon it.³²

Hume and Sweet, in their critiques, reveal the agrarian heart of the Two Treatises' theory of labour, for Locke, as has been discussed, believed that the plantations in the new world would only survive and grow if they were based on tilling of the soil, rather than grazing or mining. Moreover, basing property on European tillage served to supersede Indian claims to occupancy through hunting on certain tracts of land. It is this agrarian aspect of Locke's concept of labour which is incorporated into Blackstone's Commentaries, and was subsequently adopted by judges, lawyers and politicians in America to justify their own belief in the agrarian basis of dominion over land.

The importance of Blackstone's Commentaries in the development of ideas in 18th century America has, until recently, been underestimated. Donald S. Lutz argues that Blackstone is second only to Montesquieu in the number of times he is quoted by American writers during this period.

In a survey of all the published American political writing in the founding era, the period from 1760 to 1805, finds that Montesquieu and Blackstone were by far the most commonly

cited sources but that the next common were Locke and Hume.³³

This exhaustive survey on early American political thinking reveals that Locke's thought was disseminated through channels other than his own work. Lutz comments:

[Blackstone and Hume] also become vehicles for extending Locke's visibility indirectly. Blackstone himself cites Locke a number of times, and certain of his institutional and procedural concepts seem to be grounded in Locke...Hume, on the other hand, was one of Locke's most severe critics. To a certain extent, his work is in opposition to Locke and can be viewed as running contrary to some of the implications contained in Locke's writing.³⁴

The 'institutional and procedural concepts', 'grounded in Locke', were not the only aspects of the Two Treatises adopted by Blackstone in his Commentaries nor indeed were they the only aspects of both men's writings absorbed by political thinkers in America. The analysis by Blackstone of property, as discussed above, was also used by 18th century American writers to justify their land claims vis a vis the Indians. A notable example is Hugh Henry Brackenridge.

Brackenridge, a judge in the Supreme Court of Pennsylvania, was educated at Princeton under the tutelage of none other than John Witherspoon. He established the first newspaper in Pittsburgh, was a member of the State Assembly from 1786-7 and became a leading force in the Republican party. He wrote and published a number of articles on the limitations of Indian rights to American soil, but his most extended treatise on the subject is contained in a book responding to Blackstone's Commentaries. Brackenridge begins by discussing Blackstone's notion of dominion over land, applying it specifically to the American Indians.

Of the right of dominion there is some evidence...in favour of such as cultivate the earth; because it is ameliorated or made more productive, by the skill and labour of such. But as to savages who do not cultivate the soil, or sustain themselves to much extent, by that means they are in the same situation as to this evidence of right, with the beasts.³⁵

He argues, like Blackstone and Locke, that a distinction can be drawn between the state of nature in its earlier stage where there is no competition for resources and later stages where the opportunity for injury against one another is great. In the first stage, people may well live by the

products of nature alone or even by grazing animals on the soil.

I acknowledge in the early times the cultivation of the earth was not so immediately enjoined as necessary; for the few inhabitants might live by pasturage...[or] they might subsist by hunting.³⁶

As population increases, however, it will be necessary to claim land through agrarian cultivation. Those who improve it, thus have the right to claim dominion over it. Moreover, Brackenridge argues, as Locke did, that there is a necessary connection between the evolution of agriculture and the improvement of human reason generally, as manifest in the development of the arts and sciences.

It will easily appear that the mode of life by pasturage or hunting, requires a more extensive territory than by agriculture; and at the same time...the power of genius are inactive, the arts and sciences remain unknown.³⁷

Brackenridge introduces, with this argument, an important implication of Locke's argument which will be used by politicians in their policies towards the Indians, namely the idea that land claimed by agrarian cultivation will be

much more limited than that which is claimed by virtue of occupancy or hunting. Ultimately, Brackenridge argues that the latter claim has no validity, and, like Locke, concludes that natural men, that is the Indians of America, must limit their claims on the soil to that which provides them with subsistence. Cultivation is the key.

The aborigines of this continent can therefore have but small pretence to a soil which they never cultivated. The most they can with justice claim, is a right to those spots of ground where their wigwams have been planted, and to so much soil around them as may be necessary to produce grain to support them [and] their families.³⁸

This conclusion regarding the native right of soil leads inevitably to the claim that Europeans had the right to the land because they were willing to labour on it.

The continent of North America may therefore on first discovery of coast, by any civilized European nation, be considered as, the greater part of it, a vacant country and liable to become the property of those who should take the trouble to possess it.³⁹

While the foundations of past American claims to land are thus sound, Brackenridge argues that the labour theory of property also provides some direction to the development of policy towards the Indians in the future. While war is ruled out, limiting Indians lands to that which is necessary to their subsistence and encouraging them to take on an agrarian form of life is clearly the implication.

I do not mean to justify the waging an unnecessary war against the natives...but yet I would justify encroachment on the territory claimed by them, until they are reduced to smaller bounds, and under the necessity of changing their unpolished and ferocious state of life, for fixed habitations and the arts of agriculture.⁴⁰

This conclusion, which follows logically from Brackenridge's argument is a justification for the conversion of natural man, that is the Indians, to a civilized, European way of life, and the relinquishing of land, by the former, to the latter as part of this process. Thus, like Locke, Brackenridge believed property should not be taken by virtue of conquest, that is by 'an unnecessary war'. It could, however, be made available for peaceful appropriation if the American government reduced the Indians' lands from the

large tracts necessary for hunting to the more limited grounds required for farming.

Other legal theorists in the old world concurred with this view of property. In France, Emeric de Vattel adopted Locke's thesis on property for his own classic treatise on the principles of natural law. He begins his analysis by claiming that cultivation of the soil is an obligation for every nation under the law of nature. Those who do not lead such a life and choose instead to hunt and gather leave their land open for appropriation by cultivators.

The cultivation of soil...is...an obligation imposed upon man by nature...Every nation is therefore bound by the natural law to cultivate ...There are [some] who in order to avoid labour, seek to live upon their flocks and the fruits of the chase...Those who still pursue this idle mode of life occupy more land than they would have need of under a system of honest labour, and they may not complain if other more industrious Nations, too confined at home, should come and occupy part of their lands.⁴¹

Vattel concludes that the colonies established in North America are justified by this natural law because the colonizers cultivated the soil which previously lay wasted.

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 of cultivating 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 continuous use of, they may lawfully take possession of them.⁴²

While Vattel begins with natural law, he also makes clear, like Locke, that natural right, begins in labour and most particularly, the labour involved in farming.

The earth belongs to all mankind...All men have a natural right to inhabit it and to draw from it what is necessary for their support...but when the human race became greatly multiplied in numbers the earth was no longer capable of supporting its inhabitants without cultivating its soil and this cultivation could not be carried on properly by the wandering tribes...hence it was necessary for these tribes

to settle somewhere and appropriate to themselves certain portions of the earth...such must have been the origin, as it is the justification of the rights of property.⁴³

William Paley is another European thinker who influenced the development of ideas in revolutionary America. Wilson Smith claims, in his article on Paley, that his 'books on moral philosophy and natural theology...were once as well known in American colleges as...the readers of...Noah Webster in the elementary schools.'⁴⁴ Paley was on the reading list of many of the major law schools including Yale where Ezra Stiles introduced Paley's thought to his students in 1791. Like Brackenridge, Paley adopted Locke's theory of property for his own analysis of rights in the state of nature. He begins by stating that 'Natural rights are, a man's right to his life, limbs, and liberty; his right to the produce of his personal labour.'⁴⁵ He elaborates on this last right by referring to Locke explicitly on his theory of property.

Each man's limbs and labour are his own exclusively; that, by occupying a piece of ground, a man inseparably mixes his labour with it; by which means the piece of ground becomes thenceforward his own...this is Mr. Locke's solution; and seems indeed a fair reason.⁴⁶

He concludes that the American Indian fails to fulfil the requirements of this natural right by virtue of his lack of agrarian labour in the soil, making comparisons similar to Locke between the output of the Indian hunter versus the English farmer.

The earth...produces little without cultivation
...A nation of North-American savages,
consisting of two or three hundred, will take
up, and be half-starved upon, a tract of land,
which in Europe, and with European management,
would be sufficient for the maintenance of as
many thousands.⁴⁷

Paley's version of Locke's theory of property was useful to American scholars, as Smith points out:

Paley played the Lockean tune of man's natural right to property ('the produce of his personal labour') in what proved to be a most beguiling arrangement for American scholars.⁴⁸

One of the politicians who picked up on all of these arguments is Richard Bland. Speaker of the House of Burgesses and later the House of Delegates in Virginia, Bland has been described by the Dictionary of American Biography as the 'best authority of the time' on Virginia's

history.⁴⁹ Thomas Jefferson, a contemporary of Bland, once described him as 'the most learned and logical man of those who took prominent lead in public affairs'.⁵⁰ Bland wrote a number of articles which together describe his theory of natural rights. He begins by assuming a state of nature in which men 'are absolutely free and independent of one another'.⁵¹ Property is founded upon labour and once claimed, on this basis, cannot be taken from an individual without injury.

No man can enjoy even the shadow of freedom if his property, acquired by his own industry and the sweat of his brow may be wrested from him at the will of another.⁵²

If such an attempt at taking property through force occurs, the original owner may claim, as Locke insists in his chapter on Conquest, through himself or in future generations the right of property back from the conqueror.

Power, abstracted from right, cannot give a just title to dominion. If a man invades my property, he...puts himself into a state of war with me...my son, or his son, may, when able, recover the natural right of his ancestor, which has been unjustly taken from him.⁵³

The only way to secure property under such conditions is through civil society. Thus Bland argues that government must preserve for men 'the fruits of their own labour with a security only liberty can impart.'⁵⁴

Clinton Rossiter claims that Bland followed Locke in a religious way, using him to justify his position in much the same way as he used the Bible.

Bland's faith in the teachings of Locke...was like his faith in the teachings of Jesus. They were 'true certain and universal', not to be improved upon.⁵⁵

III - THE FARMERS

An important political implication of Locke's theory of property in the United States was its use as a defense of agrarian forms of labour. This was sometimes translated into a treatise on behalf of the rights of the farmer, over the landholder, to claim property. For example, an article in the New York Post uses Locke's theory to defend the rights of New Jersey farmers stating:

[The earth may] be appropriated by every individual. This is done by the improvement of any part of it lying vacant, which is thereupon distinguished from the great common of nature and made the property of that man who bestowed his labour on it; from whom it cannot afterwards be taken, without breaking thro' the rules of natural justice; for thereby he would acutally deprived of the fruits of his industry.⁵⁶

George Logan, in Letters Addressed to the Yeomanry of the United States, also uses the cultivation of soil as the basis of the natural right of individuals which must, in turn, be adequately secured by a 'firm established government'.⁵⁷

Whenever the population of a country becomes so great as to render the cultivation of the soil necessary for the support of its inhabitants, then a firm, established government becomes equally necessary to support each individual citizen in the right of soil and the advantages and profits arising from his labour.⁵⁸

The agrarian basis of Logan's theory of property and his philosophy of government, is openly Lockean. As Chester Eisenger says of Logan, 'Clearly here is the complete Locke

in the garb of a Philadelphia agrarian.'⁵⁹ Finally, Ethan Allen, described as the 'philosopher-theologian to a generation of American revolutionaries', also uses Locke to defend the rights of farmers.

The backwoodsman from Vermont had taken John Locke into his own hands and had appropriated his political theory to meet the needs of a people determined to defend its property.⁶⁰

The basis of Allen's defense of the Vermont farmers was Locke's theory of property. His analysis, however, also provides a new twist to Locke's theory of government.

Ethan Allen in his political tracts was one of the most enthusiastic exponents...of the agrarian myth which he thoroughly incorporated into the framework of Lockean political theory. We find him arguing that organized government into which man enters from a state of nature, is the servant, not of those who hold property in general but specifically of the 'labouring men that support the world of mankind', of the 'farmers [who] in reality uphold the state.'⁶¹

Thus, the ministers, legal theorists, judges and farmers all incorporated Locke's Two Treatises into their own theories

of property. Through them, Locke's theory of agrarian labour was disseminated throughout the American republic. By the end of the 18th century, it formed the basis of the American government's position towards the Indian. No figure better illustrates this final development than the third president of the United States, Thomas Jefferson.

IV - THOMAS JEFFERSON

The degree to which Jefferson was influenced by John Locke is a matter of debate amongst American historians, particularly the influence of the Two Treatises on the composition of the Declaration of Independence. What has been overlooked, however, in the course of this debate, is the degree to which Locke, and most particularly his theory of agrarian labour as the basis of property, may have shaped, Jefferson's policy towards the Indians. Locke's theories were known to the President through his reading of the Two Treatises as well as its adaptations in the work of Blackstone, Vattel, Bland and others.

It is clear that Jefferson thought most highly of John Locke, stating in a letter to John Trumball in February 1789, that he considered Locke, Bacon and Newton to be 'the greatest men that ever lived without any exception.'

Jefferson went on to commission a painting of the three men together. He writes again, twenty years later, in a letter dated January 16, 1811 that 'Bacon, Newton and Locke...were my trinity of the three greatest men the world has ever produced.'⁶²

Jefferson clearly believed that Locke was worth reading on virtually any subject, recommending in a letter to Peter Carr that he read Locke on both morality and religion, and requesting in September 1789, that a copy of 'Locke on education' be sent to Trumbull.⁶³ With regard to politics, Jefferson considered the Two Treatises to be one of the best books ever written on the subject, and advised that considerable time should be devoted to its study. Jefferson recommends that one hour a day from noon to one p.m. should be devoted to the study of politics, 'beginning with Locke and Sidney'.⁶⁴

In a letter to John Norwell, dated June 14, 1807, Jefferson lists Locke as the first author he would recommend on government.

I think there does not exist a good elementary work on the organization of society into civil government: I mean a work which presents in one full and comprehensive view the system of principles on which such an organization should

be founded...For want of a single work...I should recommend Locke on Government, Sidney, Priestly's Essay on First Principles of Government, Chipman's Principles of Government and the Federalist.⁶⁵

While it is the best of its kind, Jefferson clearly believes that the Two Treatises of Government, is limited in some way. Thus he says in a letter to Thomas Mann Randolph Jr., dated May 30, 1790 that Locke's essay on government, 'is perfect as far as it goes.'⁶⁶ In other words, there is nothing flawed about the analysis as it stands; the problem is that Locke simply did not follow through far enough in his thought.

It seems that Jefferson believed that Locke's analysis of natural rights was perfect, but his views on the actual mechanics of government were incomplete. Consider the following statement from Thomas Jefferson's writings, recorded in the 'Minutes of the Board of Visitors, University of Virginia':

Resolved that it is the opinion of this Board that as to the general principles of liberty and the rights of man, in nature and in society, the doctrines of Locke in his 'Essay Concerning the true original extent and end of civil

government' and of Sidney...may be considered as those generally approved by our fellow citizens ...and that on the distinctive principles of the government...the best guides are to be found in 1. The Declaration of Independence...2. The book known by the title of 'The Federalist'.⁶⁷

Thus, to go from the theory of rights by nature into the practical implications of this for the character of government, one must move from Locke to other books on the subject. Jefferson states in the letter to Randolph immediately after recommending Locke's work as 'perfect as far as it goes', that 'descending from theory to practise', presumably of government, 'there is no better book than the Federalist.'⁶⁸

One can conclude that while Jefferson thought Locke's analysis of government was incomplete, he agreed fully with his 'general principles of liberty and the rights of man'; that is, the principles underlying the state of nature, and, for the purposes of this thesis more particularly, his theory of property.⁶⁹

Like Locke, Jefferson believes that the Indians should be considered to exist in a state of nature without government or law. Thus he states in his Notes on the State of Virginia, that Indians of America, for the most part, 'never

submitted themselves to any laws, any coercive power, any shadow of government.'⁷⁰ He compares this natural state with that of civil society, claiming in a letter to James Madison in January 1787 that there are three forms of society in the world: those without formal government, like the Indians; those with government and 'a degree of liberty', like the United States, and those with government based on force.⁷¹

Central to Jefferson's conception of societies without government compared to those with, is the inevitable transformation, described in the Two Treatises, of the former into the latter. In other words, there is a strong current throughout Jefferson's thought, which will form the backbone of his administration's policy, that Indians will inevitably yield to the ways of civilized man and will give up their own 'habits' and natural state for a civilized society based on a sedentary life, property, and 'regular government'. This idea of conversion or assimilation shall be considered in greater depth shortly. First we shall consider Jefferson's view of property more generally.

In A Summary View of the Rights of British America, Jefferson adopts the Lockean premise that property is based on natural right, in order to challenge the view that property in America belongs by virtue of divine right to any King of England or his descendents. His purpose, like

Locke's in the First Treatise, is to undermine the proposition that all property belongs to the King as a result of an original grant by God to Adam.

We shall at this time also take notice of an error in the nature of our landholdings which crept in at a very early period of our settlement...a general principle...was introduced that 'all lands in England were held either mediately or immediately of the crown.'⁷²

Jefferson takes particular exception to this principle when it is applied to those who migrated to America, for he believes it was their labour on plantation farms which gave them rights to the lands which had previously been vacant. The King of England, therefore, has no right to claim the land for himself, rather it is up to the people in America to form a government and decide between themselves, how property will be governed in their civil state.

It is time therefore for us to lay this matter before his Majesty and to declare that he has no right to grant lands of himself.⁷³

Like Locke, Jefferson argues that civil society, once formed, may allot property, since government is based on the consent of the people rather than the will of the King. The

community itself, or its body of representatives, thus decides on how land is allotted. In the natural state, land is still open to appropriation by all, and individuals, by virtue of their natural right through occupancy and labour may appropriate such land that is still left 'vacant'.

From the nature and purpose of civil institutions, all the lands within the limits [of any particular society] are assumed by that society and subject to their allotment only. This may be done by themselves...or by their legislature...and if they are allotted in neither of these ways, each individual of the society may appropriate to himself such lands as he finds vacant.⁷⁴

As Merrill Peterson comments in a book on Thomas Jefferson and the New Nation, regarding Jefferson's Summary View, 'Jefferson's well developed principles of land tenure... stemmed from the Lockean theory of the natural right to land.'⁷⁵ The implications of this theory of property, used in part to justify America's right to declare its independence from England, was also used to great effect in undermining the Indians' claim to land by virtue of occupancy.

President John Adams, to whom Jefferson was Vice-President, explicitly uses Locke's three natural rights, 'life, liberty and property' as the grounds upon which the Indian could be limited to that which supplies a simple subsistence.

Shall we say that a few handful of scattering tribes of savages have a right of domain and property of a quarter of this globe capable of nourishing hundreds of millions of happy human beings? The Indian has a right to life, liberty and property [my emphasis] in common with all men; but what right to domain or property beyond these? Every Indian has a right to his wigwam, his arrow, his utensils; where he had burned the woods around him and planted his corns and beans...will you infer from this, that he had rights of exclusive domain and property of immense regions of uncultivated wilderness that he never saw, that he might have the exclusive privilege of hunting and fishing in them, which he himself never expected or hoped to enjoy.⁷⁶

Amongst notes taken by Jefferson in reference to a dispute between Pennsylvania and Connecticut over the location of borders, is the following summary of the latter's final position in the case:

Indian title can give no certainty and certainty is necessary in the establishment of property. We ought to consider the natives of America as they were. Cultivation or industry appear to me the only just criterion of property.⁷⁷

Clearly, one major argument in favour of American rights during this period rested in the Lockean idea of labour. Peterson concludes that Jefferson's views on the origin of property, fall within this tradition: 'Individuals might themselves take title to land...after the manner of John Locke's theory of property.'⁷⁸ By the beginning of the 19th century, the balance of power lay firmly in the hands of the white immigrants. Jefferson, as President, began to use Locke's theory, to take the government's policy toward the Indians one step further. Not only was it used to legitimize further encroachment on territory claimed by Indians by virtue of occupancy, but it began to be the basis for encouraging the transformation of Indians in their natural state into becoming citizens of American society. This transformation, like that described in the Second Treatise, was both inevitable and good. Central to his plan was the need to change Indian labour from hunting to tillage. In a letter to James Pemberton in November 1807, Jefferson writes that Indians need 'habits of industry, easy subsistence and attachment to property'.⁷⁹ For Jefferson, agrarian labour lay at the heart of property and in turn of

civil society. In January 1802 the President tells a visiting delegation of Indians that the United States will,

...with great pleasure see your people become disposed to cultivate the earth, to raise herds of the useful animals and to spin and weave, for their food and clothing, these resources are certain; they will never disappoint you, while those of hunting may fail.'⁸⁰

The emphasis on agrarian labour was also linked to the American government's need to limit Indian land in relation to the expanding population of white Americans, as Brackenridge had argued. Gradually land would be limited and the Indians would move, in a Lockean fashion, from their primitive state through agrarian labour to a civilized state in need of government. In January, 1803 Jefferson writes:

In order...to provide an extension of territory which the rapid increase of our numbers will call for, two measures are deemed expedient. First, to encourage them [the Indians] to abandon hunting, to apply to the raising stock, to agriculture and domestic manufactures, and thereby prove to themselves less land and labour will maintain them in this...leading them thus to agriculture, to manufactures and civilization

and in preparing them ultimately to participate in the benefits of our government.⁸¹

As time goes by, Jefferson is periodically encouraged by the changing activities of the Indians, in that they begin to give up those lands they are not cultivating, namely 'waste' for the use of others who are willing to labour on them.

Our Indian neighbours are advancing...beginning to engage in the pursuits of agriculture and household manufacture, they are becoming sensible that the earth yields subsistence with less labour and more certainty than forests and find it in their interest from time to time to dispose of parts of their surplus and waste [my emphasis] lands for the means of improving those they occupy.⁸²

For Jefferson, like Locke, one could only be considered subject to government, after one had adopted farming and individual ownership of property as a way of life, as Jefferson makes clear to a group of Cherokee Indians:

You propose...that your part...shall be placed under the government of the United States, become citizens thereof and be ruled by our laws...Are you prepared for this...to leave off

hunting for you living, to lay off a farm for each family to itself, to live by industry?⁸³

The inevitable conclusion for Jefferson's administration was to pose a choice for the Cherokee nation. On the one hand, they could become part of civil society by adopting both agrarian cultivation ('leave off hunting...live by industry') and private property ('a farm for each family to itself'); both of which were considered, in accordance with Locke's Two Treatises of Government, the necessary requisites of civil society and government. Or, on the other hand, they could choose to continue living in their natural state, but would be removed to west of the Mississippi River, to continue hunting and holding property in common.

Jefferson's message to the whole delegation took note of the distinction between those Cherokees who wished 'to remain on their [ancestral] lands and 'betake themselves to agriculture' and those who 'retaining their attachment to the hunter life...are desirous to remove across the Mississippi.'⁸⁴

It is clear however that Jefferson believed that in the long term, the Cherokee nation would only survive if it chose the former route, namely transforming itself from its natural state into civil society with the requisite Lockean

conditions of agrarian labour, private property and regular law. Thus, in a message to the Cherokee people dated January 9, 1809, Jefferson writes:

I sincerely wish you may succeed in your laudable endeavours to save the remains of your nation by adopting industrious occupation and a government of regular law.⁸⁵

V - JUDGE MARSHALL vs LOCKE AND JEFFERSON

Right of property based on labour rather than occupancy as articulated by the legal thinkers, preachers, and politicians described above was at its peak in the United States in the late 18th and early 19th century. By the middle of the 19th century, Locke's theory of property, based on agrarian labour, had lost much ground.

In the early 1800's, several famous cases, fought all the way to the Supreme Court of the United State of America illustrate in stark terms the fate of the Lockean argument.⁸⁶ In the 1823 case of Johnson and Graham's Lessee v. M'Intosh, those who argued against Indians claims before this supreme tribunal used, in their testimony, the standard Lockean argument that cultivation was necessary in order to

claim property in land. As James Tully comments on this case:

Counsel for the defendants presented the Lockean argument, that the amount of land anyone can acquire by natural law is limited by their capacity to put it to use. As a consequence, the aboriginals of America have acquired no property in the land over which they wandered or hunted, any more than they do over the water they fish, but only a right in the products. So the land was not occupied in such a way 'as to prevent it being appropriated by a people of cultivators'.⁸⁷

John Marshall, chief justice of the Supreme Court of the United States, wrote a precedent-setting decision, which began by dismissing the idea that agricultural labour gives right to land which is deemed vacant because it is being used for hunting or other similar activities, concluding that the English only had right to the land they claimed because they had conquered the Indians.

We will not enter into the controversy, whether agriculturists, merchants and manufacturers have a right, on abstract principles to expel hunters from the territory they possess, or to contract

their limits. Conquest [my emphasis] gives a title which the courts of the conqueror cannot deny, whatever the private and speculative opinions...may be, respecting the original justice of the claim.⁸⁸

While rejecting the cultivation argument as a legitimate basis for claiming rights over Indian land, Marshall simultaneously dismisses the standard Lockean notion of America being, primarily, the home of 'natural' men roaming around in a state of nature without society or government, into which the more developed and civilized nations of Europe descend. Because Jefferson and Locke both posited consent, founded on one's natural right to life, liberty and property, to be the basis for government, it was theoretically impossible to consider that natural men could have any type of organic sense of nationhood, without having first acquired the requisites, that is private property and agrarian labour, to establish the social contract. Marshall disagreed, concluding that the American Indians, like their European counterparts, were split into nations of their own, each with their own languages and forms of government.

America, separated from Europe by a wide ocean, was inhabited by a distinct people, divided into separate nations, independent of each other and of the rest of the world, having institutions of

their own and governing themselves by their own laws.⁸⁹

Marshall's judgements were important, not least because they became the foundation for all subsequent decisions on Indian land claims, but also, for the purposes of this thesis, because they completely undercut the Lockean view of the Indians in two ways.

First, the distinction between the natural state of Indians where individuals roamed without property, government, laws, societies, nations or institutions and European civil society which could boast of all these things was summarily dismissed. Those theoreticians, like Locke, who had adopted the state of nature in order to make claims about rights of men in civil society had imposed upon the Indians of North America, the mantle of a natural man simply irreconcilable with their real existence, for, as Marshall points out, there were distinct nations of people in the Americas, who did indeed govern themselves in accordance with their own laws and institutions. What Locke had been able to ignore in his own readings of the American Indian, Marshall could not.

Secondly, Marshall makes clear that it was not peaceful labour or purchase which gave Europe the right to Indian land but sheer force. It was unnecessary, therefore, to

discuss whether 'agriculturists' have the right to expel 'hunters' at all, according to Marshall, for this argument, while providing those who made it with some rational and ethical justification for taking over the land, simply obfuscates the real basis of the Europeans' right, namely 'conquest'. In other words, the hard reality of international law is that he who conquers wins the land of the vanquished; those who have justified it in any other way, like Jefferson and Locke, have merely cloaked the bloody spoils of war in a more palatable vision of the just deserts of natural right or law.

Moreover, Marshall argues that once conquered, not only does the land but the people become subject to the victorious government. Because in America the Indians often resisted such subjugation, they had to be, according to Marshall, ultimately 'united by force to strangers.'⁹⁰ It was not reason than that brought the Indians to civil life in America, but force.

VI - CONCLUSION

Locke and Jefferson, above all else in the world, believed in reason. Thus, Locke did not believe, as Marshall did, that conquest, or force, was a legitimate basis for the

right of property. Locke says himself in his chapter, 'On Conquest', that although it is a 'strange doctrine', no significant piece of land can be legitimately appropriated as the result of war. Rather than through force or coercion, both he and Jefferson believed that it was only by simple labour that land could be appropriated, by their own consent that people could be governed, and ultimately by reason that man could be perfected. In all cases, if the choice were to be between force and reason, the latter should always prevail.

Jefferson describes a scene in one of his letters to Dr. Benjamin Rush which illustrates how he believed reason rather than force, distinguished his own thought as well as Locke's from that of his contemporaries and those who had governed before. Having told Alexander Hamilton that Locke was one of the three greatest men who ever lived, Jefferson was surprised when Hamilton responded that Julius Caesar would be his own choice for the same exalted position. Upon reflection, Jefferson concluded that such a choice revealed the essence of Hamilton's politics as opposed to his own. While Locke, and indeed Jefferson himself, vested power in the governed, trusting their reason to choose the right course of action and leaders for a nation, Hamilton through his choice of Caesar seemed to be saying that it was the force of the governor which must prevail in order to keep

the people in line. Jefferson concludes of Hamilton's choice:

Hamilton was honest as a man, but as a politician, [he believed] in the necessity of either force or corruption to govern men.⁹¹

Jefferson contrasts in this example, those individuals who believed in force over reason and vice versa. Both Locke and Jefferson believed that politics could be free of both force and corruption if based on the reasoned consent of those who are governed. Moreover, reason lies at the heart of both Locke's transition from the state of nature into civil society, and Jefferson's basic policy that Indians must become like Europeans. In both cases, natural men will never need to be forced into adopting civil society, as Marshall later claimed, because they will, by virtue of their own reason, inevitably choose it for themselves. Both Jefferson and Locke argue that Indians have chosen to stay hunters and natural men even after being exposed to the superior European civilization only because they are too attached to the habits of their ways. Thus, where Locke criticizes the Indian for being 'bounded within the ways, modes and notions of his own country', Jefferson denounces the Indian who 'maintains the ascendancy of habit over the duty of improving [their] reason.'⁹² In time, reason will prevail; for just as the force of Julius Caesar was not

required to keep the governed in line, so coercion will not be necessary to transform the Indians, and civil society, as revealed by reason, will eventually reign supreme.

This transition from the state of nature to civil society is Jefferson and Locke's theoretical ideal, but by imposing it on a group of people already existing in America, the theoretical parameters leave the Indians with little real choice. They may either retain their own 'habits', 'ways, modes and notions' and lose their lands or take the seemingly inevitable path of reason and adopt private property, the industry of agriculture and government of regular law and lose themselves. As Bernard Sneehee comments of Jefferson's America:

This Jeffersonian vision engulfed the real Indian, whose existence was defined not by the categories of natural history but by a historically derived culture, in an overwhelming and supposedly inevitable process from which there was no escape....For Jefferson...the practical success of philosophy could be measured by the degree to which the Indian ceased to be an Indian...In the end both philosophy and policy proved futile. The Indian changed but he did not disappear and he remained an Indian.⁹³

Thus, Locke's Two Treatises of Government had an enormous impact on the late 18th, early 19th century attitudes in America towards the Indian, that is natural man. While Locke's theory, rooted in theological doctrine and natural law, first appealed to the preachers of the new world and their view that labour was the basis of God's first commandment to mankind, it was Locke's original belief in the natural right to property coupled with the idea that agrarian labour lay at the heart of this right which provided his theory of government and natural society with such an increasingly large and important audience.

Revs. Witherspoon, Bulkley, Stiles all used Locke's theory of property to justify their own views on the American government's right to Indian land. These religious views coupled with the adaptation of Locke's natural law theories in such thinkers as Blackstone, Vattel, and Paley lead eventually to the political incorporation of Locke's philosophy into policy about the Indians. Thus Americans like Hugh Henry Brackenridge, Richard Bland, and John Adams all justified, in accordance with Locke's theory of property, the limiting of Indians' lands to that which could provide their subsistence.

This argument was given its most important and consistent voice by Thomas Jefferson. Jefferson not only argued, as those before him had, that Indian land could, by virtue of

Locke's interpretation of natural right and labour, be limited, he took his conclusions one step further to claim that Indians not only had no right to the vast tracts of land they currently claimed by virtue of hunting in the past, but until they changed from their natural state into civil society, by adopting private property and agrarian labour, they would hold none in the future either. It was in fact the idea of reason which informed both Locke's Two Treatises and Jefferson's Indian policy. In both cases, the move from the natural state to civil society, both for ancient times in Europe and current day in America, ultimately bettered mankind. As Jefferson comments in a letter to George Washington about the possibility of bringing Indians into civil society:

To deny that...it could be accomplished, is to suppose the human character...incapable of melioration or change - a supposition entirely contradicted by the progress of society from the barbarous ages to its present degree of perfection.⁹⁴

It is perhaps lucky that Marshall's decisions cut short Locke and Jefferson's progress towards the perfection of human reason and by extinguishing the idea of natural man gave his real life counterpart the chance to live.

Notes

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3. Ibid., p. 72.

4. Wilbur Jacobs, Dispossessing the American Indian: Indians and Whites on the Colonial Frontier, New York, 1972, p. 141.

5. Clinton Rossiter, 'The Life and Mind of Jonathan Mayhew', William and Mary Quarterly, 3rd Ser., VII, 1950, p. 545.

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15. Poetical Meditations by Roger Wolcott, Esq. with Preface by Rev. Bulkley of Colchester, 1725, p. xvi.
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18. Ezra Stiles, The United States Elevated to Glory and Honour, A Sermon Preached before Jonathan Trumball, Governor of Connecticut and the General Assembly of Connecticut, May 8, 1783, Worcester, Mass., 1785.

19. Ibid., pp. 9-10.

20. Ibid., p. 10.

21. Ibid., p. 10.

22. Ibid., p. 11.

23. Ibid., pp. 11-12.

24. Sir William Blackstone, Commentaries on the Laws of England, 21st Edition, in Four Books, with the Last Corrections of the Author and Notes, London, 1844.

25. Ibid., Book I, p. 126; note by editor, John F. Hargrave.

26. Ibid., Book II, p. 3.

27. Ibid., Book II, p. 4.

28. Ibid., Book II, pp. 5-6.

29. Ibid., Book II, p. 6.

30. Ibid., Book II, p. 4.

31. Ibid., Book II, p. 8(n). It should be noted that Blackstone himself, while considering labour to be the basis of property, as quoted in note 30 above, had little time for the type of scholarly argument advanced by Sweet over the emphasis to be put on occupancy as defined by Grotius and Pufendorf versus Locke, concluding that it is, 'a dispute that savours too much of nice and scholastic refinement', p. 8.

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40. Ibid., p. 125.

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56. Anonymous Article in the New York Weekly Post Boy, in Documents Relating to the Colonial History of the State of New Jersey, ser. 1, XII, New Jersey, 1895, pp. 308-309.

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66. Jefferson, 'Letter to Thomas Mann Randolph Jr.', May 30, 1790, in Papers, XVI, pp. 448-450.
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2) The Cherokee Nation v. The State of Georgia (1831), 5 Peters 1, Reports of Decisions IX, pp. 178-235; The American Indian, IV, pp. 2554-2602.

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Conclusion

The world known as America is, in the Two Treatises of Government, the same world as that inhabited by natural man. Previous scholarship has largely argued that these two worlds have had, if anything, a tangential relationship, which is of use to philosophers only to the extent that it reveals the basis of civil society. John Locke, according to this school of thought, has referred to America only to fulfill an empirical need for evidence of 'natural man', and natural man, in turn, is nothing more, to Locke, than a logical abstraction, useful for the elucidation of one's fundamental liberties and obligations under civil law.

Locke has always been recognized as a philosopher who writes, in part, for political reasons. But while many commentators have recognized the importance of the Earl of Shaftesbury's domestic politics to Locke's developing political theory, few have even considered the impact of foreign politics and most particularly, the colonization of America, on these same ideas. Thus, traditional scholarship, from MacPherson to Dunn, has concluded that Locke's state of nature is singularly devoid of any historical content such as might be provided by life in the Americas. By taking seriously Locke's claim that America and its natives are living examples of natural man, it was necessary to examine both the reasons for and implications of this decision. Thus, between the American native and his land in the new world and John Locke, the colonial philosopher, in the old, is a gap which this thesis has sought to bridge.

We began by examining the sources Locke uses to provide concrete evidence of his natural man. The numerous volumes on America within his own library were clearly employed by Locke to illustrate the character of man in his natural state. The single most important element contained in these books which Locke incorporated into his own theory, was the fundamental division between the 'savagism' of the new world and the 'civility' of the old. Locke translated this profound dichotomy into the state of nature and civil society, respectively.

Having adopted this basic division between American savagery and English civility, Locke has his own more precisely defined concepts of each. Civil man for Locke is industrious, rational and ruled by a government based on the rule of law. Savage man is idle, superstitious and ruled by neither government nor civil law. It is essential to Locke's colonial purposes of proving that natural man has no right to own property to characterize the two forms of human life in this way. As a result, his use of historical examples are selective, for 'savage' or natural men who exhibit behaviour inconsistent with Locke's theory would make it impossible to draw the conclusions he eventually does about their rights to land in America.

For example, Locke virtually ignores the fact that many settled forms of government existed amongst many American Indian communities, because the former must be, by definition, aspects

of civil society. Similarly, those Indians who were skilled enough in their labour to teach Englishmen how to cultivate their land were also ignored, for they could not be encompassed in the more fundamental idea of an idle and irrational man. Finally, the idea that a highly sophisticated community of Indians would reject private ownership of land and its produce in favour of a communally based economy and society was inconceivable to a philosopher who placed as both the origin and end of natural law in civil society the founding and protection of private property. Locke, consequently, used his empirical evidence in a most selective fashion, in order to illustrate his picture of natural man as one which was initially nomadic but social, who lacked industry and reason, but had potential for both and knew little about cultivating the land or governing himself. Finally, like the authors of the travel books contained in his library, Locke not only created his own version of natural man and imposes it on the American Indian, but of equal importance, he adopted the commonly-held assumption that the state of nature must eventually yield to civil society.

Having considered Locke's idea of natural man and the ways in which he selectively used the evidence provided by his travel books, we turned to consider the colonial goals of England as a whole and Carolina in particular. The initial aim of English colonization was to convert the natives to Christianity and engage in trading for goods. By the middle of the century,

Englishmen, including the Earl of Shaftesbury had become increasingly interested in the settlement of America itself, rather than simply trading with its natives. The definition of property evolved with the changing modes of colonialism, from ownership through discovery or conquest to actual possession and occupation of a territory. The implications of English colonialism for the American Indians were felt most strongly with the decision of Englishmen to settle in America. The Indians, once seen as indispensable to trade, were now seen as obstacles to colonial growth. Debates arose regarding Indians' claims over certain tracts of land. By what right could England claim land in America? It was argued that England must differentiate itself from the Spanish method of conquest and plunder, by embracing the right to claim property only through purchase of land from the Indian or appropriation of vacant or waste land. The English colonists, in the initial stages of settlement, began to recognize some claims of the Indians to land, in order either to purchase those lands, or to define what land still lay vacant. The disputes over property and colonialism as a whole intensified in the last half of the 17th century as the numbers settling in America mushroomed. It is within the context of this fierce debate over England's colonization of America that Locke wrote. Three different currents in the stream of colonial thought were identified as being significant to the development of Locke's thought: the natural law theorists, the economic writers defending England's

plantations, and the colonial writers justifying the ethical superiority of England's land claims in America.

Natural law theory in the 17th century reflected the new issues raised by the colonization of Asia and America: the definition of property and the rules governing conquest were of particular interest. While Hugo Grotius, employed by the East Indies Company, defended Holland's right in common with all, to the sea; Locke and his patron Shaftesbury were more interested in the defense of England's private rights to American soil. It was argued that natural law allowed land to be appropriated only through cultivation rather than occupation. Thus, lack of private ownership of the seas and the beginning of such ownership in the lands formed the fundamental bases for the laws of nature posited by Grotius and Locke, respectively. Samuel Pufendorf, on the other hand, with no colonial master, founds his theory of natural law on an 'sociable attitude'.

Both Locke and Grotius perceived the initial common right to the world to have been positive, that is, everybody owned everything. Like the East Indies Company, or the Lords Proprietors of Carolina, Grotius and Locke only needed to discover the principle upon which it had been divided into unequal private parcels. It was assumed by both that private appropriation was the only possible mode for the utilization of land. Pufendorf argued, conversely, that a communal ownership

of property was legitimate as long as it was agreed to by all members of that community.

Unlike Locke, Grotius believed along with his fellow Dutchmen, that conquest was a legitimate means of claiming property. He argued that one even had a right to war against men simply because they 'acted like beasts'. Pufendorf challenged both Grotius and the Spanish legal theorist Francisco Vitoria on the right of entering new lands, claiming that the Indians of the Americas have greater rights, by natural law, than either of these colonial powers had yet granted them. Pufendorf most pointedly rejected the notion of a natural state of nomadic and solitary figures amongst the American Indians, in order to claim that Indian nations, like those of Europe, have an equal right to defend themselves from the encroachment of others. Following the argument of English colonists at the time, who believed that the English method of peaceful settlement was preferable to the Spanish method of plunder and conquest for colonizing America, Locke vehemently disagreed with Grotius on this point, arguing that conquest gave no right to the land of the vanquished. How Locke's own version of the natural state and most particularly, his theory of property were shaped by England's colonialism depended very much, as Grotius's views did, on the exact nature of the colonial enterprise embarked upon and the involvement of the author in its success.

The second aspect of 17th century colonial thought considered were the works of English economic writers defending the financial viability of trade with the American plantation. The two thinkers in this tradition which were considered were Josiah Child and Charles Davenant. The expansion of the embryonic English empire had caused great debate in England over the wisdom of the enterprise. The initial forms of colonial activity which included mainly mining and trading with Indians for goods harvested by them had caused relatively little opposition amongst the politicians in England. However, when the enterprise turned its energy towards the plantation, that is settling groups of Englishmen in America, many Englishmen argued that such plantations would drain the old country of its best young men while creating wealth only for those who moved to the new world. Opposition grew with the increasing hostility of the Indians to the English appropriation of land.

Davenant and Child attempted to defend the English plantation mainly in economic terms against this overwhelmingly sceptical English audience. Both thinkers believed that the English plantation would succeed if agrarian cultivation rather than conquest or any other form of labour was the basis of claims to property in the plantations, if land was limited to private parcels that would allow no spoilage or waste, and if laws like the 1660 Navigation Act were followed. This last piece of legislation benefited England economically by protecting

English farmers from competition abroad, while creating employment in the shipping industries at home. Locke concurred with these views, as his draft notes for an essay on trade in the Lovelace Collection and the Two Treatises makes clear. Locke not only eschewed conquest in favour of cultivation as the basis of property, and limited appropriation by the spoilage proviso, he also listed 'the catalogue of things' necessary to build the ship carrying goods to the market.

The third stream of thought which shaped Locke's ideas on property was the English settlers' defense of their right to parcels of land already claimed, through their prior occupation, by the native people. They began by claiming that land in America was lying waste and the people were idle; Englishmen, who like Abraham, Lot and Jacob in the Bible needed more room for their overflowing families, could use such land for their own cultivation. The argument was based on the authors' interpretation of the book of Genesis, such that God would be pleased if people went out and multiplied and replenished the earth through their cultivation of its soil. Many of the thinkers, like Locke, used ratios to compare the idleness of the Indians with the heaven blessed industriousness of the English. Finally, these thinkers claimed that the Indians would suffer no injury as a result of settlement.

All of these theoretical issues were given practical expression, for Locke, in the concrete problems encountered

during his time as secretary to the Lords Proprietors in Carolina. In analyzing the documents written and endorsed by Locke in the administration of Carolina, a clear and practical blueprint of how a colony should develop can be discerned. Foremost was the need to encourage the enclosure and cultivation of land, keeping in proportion the number of people to the acreage enclosed; secondly, industrious Englishmen rather than the idle or poor were encouraged to settle in America; thirdly, methods associated with the Spanish colonists, such as mining, plundering and conquest were rejected; fourthly, Indians' lives and liberties, if not their claims to property, were to be respected by the settlers; and finally, a good government based on liberal and tolerant laws was to be developed. This blueprint in conjunction with the views summarized above underlay John Locke's views of natural man, property and the rights of civil society as expressed in his famous Two Treatises of Government.

While couched in terms of the debate surrounding the American plantation, Locke's theory nevertheless provides an original case for England's claims in two ways. First, it is the natural right of labour which begins property. Discovery and occupation, having stood as the foundations of property in natural law for centuries, were no longer sufficient. In America, land claimed by the French, Dutch or Spanish, by virtue of first discovery, conquest or prior occupation only, became, according to Locke's theory, open to appropriation by

any who could labour on it. Moreover, Indian lands which were occupied but uncultivated could also be appropriated by Englishmen who were willing to labour on them. It is, consequently, the natural right of the individual through his labour, rather than the laws of economics, states or God, which anchors England's claims to property in America.

Secondly, Locke's definition of labour was very specifically agrarian. The founding of property in land was that of the Englishman, enclosing and cultivating the soil. Indians who chose not to follow the European forms of labour thereby relinquished any claim they may potentially have had to the land. This form of labour carried with it, as Locke was quick to point out in his chapter on the subject, the development of money, commerce, international trade and finally the laws of liberty and government necessary to protect and preserve the property claimed by the original act of labour.

These two fundamental aspects of Locke's argument regarding property, namely the right of the individual through labour to claim land, and the definition of labour on land as agricultural cultivation were indeed used to justify both the appropriation of land by the English and the conversion of Indians to agrarian labour. In the final chapter of this thesis, we discussed the ways in which Locke's arguments had been incorporated into the thinking of early American ministers, jurists and politicians. It was shown that Locke's

views on property were disseminated not only through his own works on government but through the writings of other important thinkers, most notably Sir William Blackstone. American judges, such as Hugh Henry Brackenridge, then used the natural right of property, as articulated by Locke through Blackstone, to justify the new American republic's claims as well as policies directed at transforming the Indians into farmers. Similarly, Richard Bland, Speaker of the House in Virginia, used William Paley's adaptation of Locke's theory of property to reiterate America's right to land through labour. Locke's view of the natural state also entered the religious sphere. Pastors in New England, such as Mayhew, Bulkley and Witherspoon all incorporated Locke's thesis into their sermons.

The ultimate expression of Locke's theory, however, was provided by the third President of the United States, Thomas Jefferson. While much debate had arisen, amongst American historians, over the extent of Locke's contribution to the composition of the Declaration of Independence, little had been said of Locke's role in the formulation of Jefferson's Indian policy. Jefferson, in adopting Locke's theory of natural rights, took the argument in America beyond simply justifying the European's rights to the land. Instead, Jefferson used Locke's theory that natural man could never remain in the natural state for ever to explain how the Indians would inevitably agree to be incorporated into the United States. Like Locke, Jefferson argued that agrarian labour leading to

private property was the key to making Indians civil. Thus, the main thrust of Jefferson's policies towards the Indians was to convince them of the need for a settled, agrarian way of life before they could be considered citizens and their land could be secured. Both Locke and Jefferson believed that no force would be necessary to effect this change, for the Indians' reason would lead them to relinquish their natural habits in favour of the benefits of civilization.

The argument has come full circle. The basic dichotomy of the savage and civil states, first spoken of in the 16th century travel books becomes the basis of Jefferson's Indian policy. In both cases, conversion is inevitable but the means by which the transformation will occur, has changed. This thesis has shown that it was John Locke's Two Treatises of Government which provided an original argument upon which to base one's claims over property. From the end of the 17th century until Justice Marshall's decisions in 1823, the distinction between natural and civil man, centred, like Locke's theory of property itself, on the concept of agrarian labour. As it is defined by Locke, 'labour' creates a new avenue, through which both the English colonists justify the appropriation of Indian land, and the Americans of the new republic legitimize the assimilation of their native population. Both transformations were as inevitable as that of the natural state becoming civil society in the Two Treatises of Government.

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