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The Charitable John Locke

Steven Forde

Abstract: Locke's political philosophy, like any that centers on individual rights such as property rights, raises the question whether human beings have any duty to charity, or economic assistance, to the needy. Locke's works contain some strong statements in favor of such a duty, but in his definitive treatment of property, chapter 5 of the *Second Treatise of Government*, he is conspicuously silent on charity. Based on a reading of that chapter and other texts, I conclude that the basis of Lockean morality is not individual right per se, but concern for the common good. I compare Locke's theory of property to those of Aquinas, Grotius, and Pufendorf in order to shed light on Locke's view of property and charity. Finally, I argue that Locke has a tiered moral theory that separates justice from charity. His economic and political theories focus on justice, masking Locke's actual devotion to charity.

In 1704, the year of John Locke's death, his intimate Damaris Masham wrote that Locke considered civility a much more important moral duty than was generally thought.[1] By "civility" she understood, as did Locke himself,[2] an active sense of social benevolence. In his own life, she reports, the apostle of private property rights was solicitous of the deserving poor of his neighborhood, believing that the old and infirm were entitled not merely to subsistence but "comfort."[3] Even among his contemporaries, it appears, the friends of John Locke felt compelled to defend him against charges that his individualistic philosophy left him cold to the plight of others. His philosophy, and the philosophy of liberalism generally, has been contending with that charge ever since.

Classical liberalism was forged in the seventeenth century, by Locke and others, partially in opposition to the philosophies of classical antiquity and Christian Scholasticism. Those philosophies placed social duties at the center of political morality; liberalism elevated individual rights. This made it easy to secure private property rights and the liberty and economic development that flowed from them. Suddenly less secure, however, were duties to society and to others, including the duty of charity to those in need. According to a stereotypical view, classical liberalism exhorts us to accumulate as much property as possible, while relieving us of any duty to share.

[1]Related in Maurice Cranston, *John Locke: A Biography* (New York: Longmans, Green and Co., 1957), 426.

[2]See John Locke, *Some Thoughts Concerning Education* (in *John Locke on Politics and Education* [Roslyn, New York: Walter J. Black, 1947], 203–388), §§67, 143, 45.

[3]Cranston, *Biography*, 425.

The question of charity[4] is emblematic of a wider issue in Locke, and in liberalism. Does a philosophy that gives individual rights priority over social duties inevitably attenuate those duties to the vanishing point? Is Locke's such a philosophy? To what extent can a rights philosophy such as liberalism accommodate charitable duties to others, that is, duties that go beyond the simple duty not to steal from or otherwise harm others? There is a vast literature in contemporary liberal theory that grapples with this issue, but it is worth revisiting Locke on the question as well. On behalf of Lady Masham and others, the following reading of Locke on property and charity will argue that Locke's theory of property, and of individual right, is not hostile to social duties. In fact, I believe a close reading of Locke finds that his philosophy bottoms not upon individual right, but on a more communal concern for the common good. And yet, rights are obviously central to his political and economic philosophy. Sorting this out will yield a more nuanced understanding of Locke, and of his attitude toward sociable duties like charity.

The Charitable Locke

Any discussion of charity in Locke must begin with a well-recognized conundrum. While Locke's treatment of property in chapter 5 of the *Second Treatise of Government* does not mention charity or any duty to share, the *First Treatise* contains a very strong assertion of such a duty.[5] Since chapter 5 of the *Second Treatise* is Locke's seminal treatment of property, its silence on charity cannot simply be shrugged off. Earlier theories of property, such as those of Thomas Aquinas, Hugo Grotius, and Samuel Pufendorf, had charity and the rights of the destitute built into them, so to speak, as an internal part of their logical structure.[6] Locke's presentation of his own

[4]"Charity" is a term with broad and multiple meanings. This may lead to confusion, but I can find no better term to use in this context. In this essay, I use the term to mean a putative moral duty on the part of the well-off to share some of their material possessions with those in need. The "right of necessity" is a closely related concept that will surface later in our investigation. It refers to a putative right of the needy to seize what they need, if the well-to-do refuse to share.

[5]John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1989). The assertion of charity is in *First Treatise*, §42.

[6]More will be said about these authors below. For discussions of seventeenth-century theories of property that included charity, see Laura Brace, *The Idea of Property in Seventeenth-Century England: Tithes and the Individual* (Manchester: Manchester University Press, 1998), chaps. 2, 3, 5; Stephen Buckle, *Natural Law and the Theory of Property: Grotius to Hume* (Oxford: Oxford University Press, 1991), chaps. 1, 2; Thomas A. Horne, *Property Rights and Poverty: Political Argument in Britain, 1605–1834* (Chapel Hill: University of North Carolina Press, 1990), chaps. 1, 2; James Tully, *A Discourse on Property: John Locke and His Adversaries* (Cambridge: Cambridge University Press, 1980), chaps. 3–5; Richard Tuck, *Natural Rights*

theory in the *Second Treatise* does not. Since this presentation is clearly in conversation with the earlier accounts (e.g., §§25, 29, 31), his silence is pointed indeed.

Yet, the statement in favor of charity from the *First Treatise* is equally hard to dismiss:

> God the Lord and Father of all, has given no one of his Children such a Property, in his peculiar Portion of the things of this World, but that he has given his needy Brother a Right to the Surplusage of his Goods; so that it cannot justly be denyed him, when his pressing Wants call for it. . . . As *Justice* gives every Man a Title to the product of his honest Industry, and the fair Acquisitions of his Ancestors descended to him; so *Charity* gives every Man a Title to so much out of another's Plenty, as will keep him from extream want, where he has no means to subsist otherwise. (§42)

This call for charity is hedged with numerous qualifications, and the exact extent of the duty depends a great deal on how we understand key terms in this passage. Nonetheless, this is an unmistakable endorsement of a duty to share with those in need—stronger, in some respects, than found in his predecessors. Locke gives us a duty on the part of the well-to-do, and a "right" on the part of those in "extream want."[7] There is no explicit mention of a duty to repay, should the needy individual later be in a position to repay. Many earlier theories included such provisions.[8] The "title" to goods based on need is explicitly put on a plane with the title to property derived from labor, of which we learn in the *Second Treatise*. Yet they are at odds, potentially being titles to the same thing. How does Locke understand their relationship?

We may begin by looking at Locke's account of the title to private property in chapter 5 of the *Second Treatise*, with particular attention to any room that might be in it for charity. The property right in Locke is rightly regarded as the centerpiece of his individualist approach to morality—the emblem of his focus on individual right rather than social duties such as charity.[9] Yet, a

Theories: Their Origin and Development (Cambridge: Cambridge University Press, 1979), chaps. 1, 3, 8.

[7]It is true that Locke does not speak explicitly of a "duty" on the part of the prosperous in this passage. But I take Locke's statement that "it would always be a Sin, in any Man of Estate, to let his Brother perish for want of affording him relief out of his Plenty" and his reference to the "Relief, God requires him [who has plenty] to afford to the wants of his Brother" to be equivalent expressions (§42). These statements make clear, I believe, that this is a duty on the part of the prosperous and not, for example, a simple survival right on the part of the needy.

[8]See Horne, *Property Rights and Poverty*, 57, and my discussion of these theories, below.

[9]In what follows I will be using "property" to refer only to material possessions. Locke sometimes uses the term more widely, to include "life, liberty, and estate" (*Second Treatise*, §§87, 123, 173), but our concern here is property in the narrower sense.

close look at Locke's presentation of the right of property in the *Second Treatise* reveals a number of communal features at odds with a simply individualist theory.

In the opening of chapter 5, individualist right seems to be foremost. Locke says the root of the property right is that "Men ... have a right to their Preservation, and consequently to Meat and Drink, and such other things, as Nature affords for their Subsistence" (§25). Both reason and revelation inform us of our right to material possessions, as a means to our preservation. But what comes next seems strange: this right supposed, Locke says, it still leaves unexplained "how any one should ever come to have a *Property* in any thing" (§25). Does not the first statement explain exactly that? It does not, according to Locke, because that statement refers to a collective right—the statement is plural—and does not in itself confer any right on individuals. The goods of nature originally "belong to Mankind in common ... and no body has originally a private Dominion, exclusive of the rest of Mankind, in any of them" (§26). Locke repeats the refrain no fewer than six times in the first three paragraphs of this chapter (§§25–27; cf. 32, 44). He does not want us to mistake his point: the primitive or underlying right of property is collective, not individual.[10] A purely individualist theory would not likely begin this way.

Locke's argument is admirably suited to rebut Robert Filmer's claim that God gave the world to Adam alone, but its ramifications do not stop there. To begin with, it creates the difficulty just noted, of explaining how private property did arise. Locke solves this difficulty by means of a supposition: God, who gave the earth to men for their benefit, must be "supposed," he says, to have intended it not to remain common, for this would benefit no one. God must be supposed to have intended private property to replace the original grant in common (§34).

Thus do we get the individual property right for which Locke is famous, but it now seems strangely tenuous. It is not an absolutely fundamental or foundational right. It is a supposed necessary means to something else. That something else, moreover, is not the preservation of individuals per se, but the common good of mankind. The difference is not trivial. God gave mankind the earth in common. He wished us collectively to prosper on it, and only for that reason conferred on individuals a right to appropriate

[10]To be sure, Locke is moving within a common trope here: many property theories of the seventeenth century supposed original common ownership, and sought to explain how private property arose out of it. See Richard Ashcraft, *Revolutionary Politics and Locke's Two Treatises of Government* (Princeton: Princeton University Press, 1986), 251, 256; Horne, *Property Rights and Poverty*, 10 and chap. 1. We shall examine some of these theories presently. The fact that Locke is dealing with a common problem, or takes a common departure point, does not of course excuse us from examining his solution on its own terms.

for themselves privately. The right is individual, but its underlying purpose, its raison d'être, is communal.[11]

This interpretation should not come as a complete surprise. It rather echoes the logic of natural law that Locke outlined at the beginning of the *Second Treatise.* Chapter 2 of the *Treatise* opened with a concise but comprehensive explication of natural law, including its foundation. The fundamental principle of the natural law, Locke there said, is the *"Preservation of all Mankind"* (§7; stated also in §6). "Reason, which is that Law," teaches us that, "being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions" (§6). Unlike Hobbes's natural law, which commands only one's own preservation and is based solely on individual right, Locke's natural law commands one not to harm others—and not only because this is conducive to self-interest. Locke rehearses three parallel derivations of natural law in this opening statement (§6), without once referring to rights. What we get are duties instead, duties based on the moral principle of the common good of mankind. Even self-preservation is presented here as a duty rather than a right. Rights appear in the immediate sequel (§7), but as things men are duty bound to respect in others.[12]

The point needs to be emphasized: the fundamental principle of Locke's natural law is not "that the rights of the individual should be protected," but "that the good of mankind should be served." Not the rights of the individual per se, but "the Peace and *Preservation of all Mankind*," is the foundation of natural law—or rather, its very identity (§7). Once again, these are not casual turns of phrase: Locke repeats the point tirelessly in the *Second Treatise:* the preservation of mankind at large is the root and purpose of natural law (§§6, 7, 8, 11, 128, 135, 182). The principle is woven into Locke's argument in ways that cannot be discounted. We have seen some of these in his treatment of property. Another is Locke's distinctive or "strange doctrine" that every man has executive power in the state of nature. The power of every man to punish violations of the natural law on behalf of mankind, whether he is directly affected by the violation or not, is traced by Locke to natural law's focus on the preservation of mankind at large (§§8–13). Nor is the *Second Treatise* the only work in which Locke characterizes the law of nature in these terms. *Some Thoughts Concerning Education* describes the fundamental principle of morality in this way: "[T]he preservation of all mankind, as much as in him lies . . . is everyone's duty, and the true principle to regulate our religion, politics, and morality by" (§116). Once again, the preservation of all mankind is made the core of everything moral, and it is associated with duties rather than rights.

[11]Compare Ashcraft, *Revolutionary Politics*, 208; Willmoore Kendall, *John Locke and the Doctrine of Majority Rule* (Urbana, IL: University of Illinois Press, 1965), 69, 72; Horne, *Property Rights and Poverty,* 29; Kim Ian Parker, *The Biblical Politics of John Locke* (Waterloo, Ontario: Wilfred Laurier University Press, 2004), 134–35; A. John Simmons, *The Lockean Theory of Rights* (Princeton: Princeton University Press, 1992), 39, 48, 243–44.

[12]Cf. Kendall, *Majority Rule*, 68.

If this is indeed Locke's foundational moral principle, we need to know how it functions in Locke's philosophical system. Let us return for a moment to the *First Treatise of Government*, whose teaching on charity seemed to contradict the *Second Treatise*'s. In the *First Treatise*, much of Locke's refutation of Robert Filmer hinges on his claim that the biblical injunction to "[b]e fruitful, and multiply, and replenish the earth and subdue it" addressed to the human race as a whole, and not to Adam alone, encapsulates God's plan for mankind.[13]

A set of passages in the *First Treatise* that traces this theme is especially important for our question. Throughout the work, Locke treats the biblical injunction as essentially the same as his natural-law principle enjoining the preservation of all mankind. The divine mandate "contains in it the improvement too of Arts and Sciences, and conveniences of Life," as Locke glosses it at one point (§33). Whether this is true to the meaning of Scripture is open to question. The divine grant of dominion over the earth, however, is easily assimilated to Locke's account of property (cf. §39). But Locke makes clear, eventually, that he is not relying exclusively, or even primarily, on Scripture in these matters. "The plain of the Case," he says in a crucial passage, is that God planted in man a "strong desire of Self-preservation, and furnished the World with things fit for Food and Rayment and other Necessaries of Life," pursuant to his design that "Man should live and abide for some time upon the Face of the Earth" (§86). It seems the individual desire, together with the earthly provisions, reflects God's providence to mankind as a whole. From these facts, Locke believes, individuals concluded that in appropriating things needful to them, they followed God's will. Man's reason, "*which was the Voice of God in him*," taught each man that he had a right to these things. This is true, Locke pointedly informs us, whether God ever literally spoke to anyone on this subject or not. Revelation, in this matter at least, is redundant.

We are interested primarily in the relation of the common good and individual right in Locke's argument. The passage just discussed seems to replicate the teaching we drew from the discussion of property in the *Second Treatise*, beginning with the common grant, and concluding with individual right. The logic of the argument is particularly interesting: from the facts of natural appetite and natural provision, we draw a moral and theological conclusion. In a closely following passage, Locke applies similar logic to a somewhat different set of circumstances. He asserts that God "Planted in Men a strong desire also of propagating their Kind" (§88) along with the desire for self-preservation. From this circumstance, Locke draws not a right to produce children (though that conclusion is no doubt valid), but rather a duty in parents to provide for these children, once produced: "Men are not Proprietors of what they have meerly for themselves, their Children have

[13]§33; cf. §§39, 59, 86, 88; Genesis 1:28–29, 9:1.

a Title to part of it."[14] We need to appreciate the logic at work here, for it casts light on the character of Locke's argument in both passages. When Locke says that from a strong desire we draw a moral title, it is not because the desire or the need in itself creates the title. Rather, when a desire is "wrought into the very Principles of their Nature," this is to be taken as a sign of some divinely sanctioned purpose for human beings (§88). Individual desire is implanted for the furtherance of that purpose, and stands as its emblem; the desire is not in itself the source of the moral principle. The desire for children, for example, does not in itself impose a duty on parents. Rather, the ingrained desire for children is a sign of the wider purpose to perpetuate the species, which purpose requires that a duty be imposed on parents. What is important to see is that the same logic applies to the simpler case of property. The desires for "Food and Rayment" do not in themselves confer a right to property. Rather, the existence of the desires in us and our placement in a world containing materials suitable to satisfy them signal a divine plan to perpetuate the species by entitling each individual to appropriate what he needs from the common. That is, they signal, in Locke's view, a plan to advance the common good of the species by conferring a private right of proprietorship upon each (proprietorship in which the children share, §88). The desire does not create the right; it rather indicates the intended means by which mankind as a whole is to be fruitful and multiply. In both cases—one the conferral of a right to proprietors, the other the imposition of a duty on parents—the same logic and the same end control.

When Lockean man listens to his reason, it teaches him these diverse lessons on the basis of its own defining principle, which is "the preservation of all mankind." In this respect, Locke's natural law is more like that of Richard Hooker or Thomas Aquinas, than that of Hobbes.[15] Lockean reason, the voice of the natural law, takes the point of view of the generality. It tells us of our duty to provide for our children, to respect the right of others,

[14]§88. Locke's subject here is the right of children to inherit from parents (hence all the children of Adam would have shared his goods). When Locke says in the *Second Treatise* (§72) that a father has a right to disinherit wayward children, this applies to grown children, and does not derogate from his duty to care for them in their nonage. Parenthood is one of the few themes in the *Second Treatise* that bring duty, rather than right, explicitly to the fore: see §§56, 58, 60, 184, 190.

[15]Richard Hooker, *Of the Laws of Ecclesiastical Polity* (*The Folger Library Edition of the Works of Richard Hooker*, ed. W. Speed Hill [Cambridge, MA: Harvard Belknap, 1977]), 1.7–9; Thomas Aquinas, *Summa Theologica* (in *Great Books of the Western World*, vols. 19 and 20 [Chicago: Encyclopedia Britannica, 1952]), 2.1.90.1–2; 2.1.94.1; Aquinas, *Summa Contra Gentiles* (in *Basic Writings of Saint Thomas Aquinas*, vol. 2, ed. Anton C. Pegis [Indianapolis: Hackett, 1997]), 3.112–13; cf. Thomas Hobbes, *Leviathan*, ed. C. B. Macpherson (New York: Penguin, 1975), chap. 14. This is not to deny that there are substantial differences between Locke and the earlier authors on the issues before us. Some of these will be addressed in the course of this essay.

and in general to preserve mankind at large, as well as telling us of our rights to property and liberty.[16] It is the voice of the common good within us.

If the common good is the grounding principle of Lockean property, the common good is the end to which private property is only a means. Locke's argument for property rights would then be essentially utilitarian.[17] This, in turn, would seem to open the possibility that, if property under certain circumstances failed to serve the common good, it could be modified, restricted, or even abolished. It might in particular be overridden by the kind of charitable duty identified in the *First Treatise*, where the common good of mankind seems to require that some goods of the wealthy should be transferred to those in dire need. In such circumstances, need would trump the property right. As we shall see, something like this argument was common in the natural-law tradition before Locke. But is it Locke's meaning?

There is one prominent line of argument in chapter 5 of the *Second Treatise* that seems to cut strongly against such a conclusion, and indeed against any utilitarian or instrumentalist interpretation of property. Despite the grant of the earth in common, Locke says, each man had a private and exclusive property in his own person (§§27, 44). His labor was his own, and external objects with which he mixed his labor therefore become his private property (§§27–30). This appears to ground property purely in personal right,

[16]It also tells us, famously, that we may prefer our preservation to that of others in case of conflict (*Second Treatise*, §6). But this does not make Locke a Hobbesian; such provisos are found in Cicero *De Officiis* (*Cicero*, vol. 21, trans. Walter Miller [Cambridge, MA: Harvard University Press/Loeb Classical Library, 1975]), 3.42; Aquinas (*Summa* 2.2.26.5); Hugo Grotius, *De Jure Belli ac Pacis* (henceforth *JBP*) (trans. Francis W. Kelsey [New York: Carnegie Classics of International Law, 1925]), 2.3.3.3, 2.1.3, 10–11; Samuel Pufendorf, *De Jure Naturae et Gentium* (henceforth *JNG*) (trans. C. H. Oldfather and W. A. Oldfather [Washington, DC: Carnegie Endowment for International Peace, 1934]), 2.4.2; and others. It would take an extreme moralist indeed not to admit this proviso.

[17]Simmons, *Theory of Rights*, has developed a version of this argument at significant length. I concur with much of what he says, though my argument is different in some key respects, which I will point out. Others who suggest a utilitarian interpretation of property are Ashcraft *Revolutionary Politics*, 264–65; Horne, *Property Rights and Poverty*, 59, 63; Kendall, *Majority Rule*, 72; E. J. Hundert, "The Making of Homo Faber: John Locke between Ideology and History," *Journal of the History of Ideas* 33 (January–March 1972): 11; Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 242; Tully, *Discourse on Property*, 99; cf. Stephen Buckle, *Natural Law and the Theory of Property: Grotius to Hume* (Oxford: Oxford University Press, 1991), 153. Richard Cumberland had published a treatise in 1672 that made property part of natural law, but grounded it entirely in a natural-law principle of the common good. He concluded that property should be regulated in ways that served the common good (*A Treatise of the Laws of Nature*, trans. John Maxwell [New York: Garland Publishing facsimile edition, 1978], 7.1–5, 9.6).

exclusive of any communal considerations. In principle, it would justify private property whether that property served the common benefit or not.

There is lively debate over the meaning of Locke's assertion of self-ownership in his chapter on property, and its relation to other parts of Locke's argument. There is much at stake in this debate—in essence, whether individual right is at the center of Locke's moral philosophy, or the "transcendent" natural law rooted in the common good.[18] If human self-ownership is prior or absolute, it, rather than the common good, is the true justification of property for Locke, with important consequences for charity, among other things. What is acknowledged on all hands, is that absolute self-ownership is incompatible with at least two arguments Locke makes in his initial presentation of natural law in the *Second Treatise* (§6). In one, Locke asserts that human beings do not have a right to commit suicide, whereas he elsewhere equates ownership with the right to destroy.[19] He further asserts that human beings are the property of God. "[T]hey are his Property, whose Workmanship they are, made to last during his, not one anothers Pleasure" (§6).

The argument in favor of absolute self-ownership maintains that Locke puts forth these positions, and indeed his entire argument regarding a natural law rooted in the common good, as a provisional or even a decoy position, which he covertly replaces with self-ownership and individual right in the course of the *Second Treatise*.[20] This is a serious line of interpretation. There is no doubt that Locke does on occasion write esoterically, disguising his positions to make them appear more respectable, or traditional, than they are. There are reasons to think, however, that this is not what he is doing in the present instance. For one, Locke's natural-law teaching is not a simple copy of some traditional model, as one would expect if he were presenting it merely as a decoy. It is rather a novel combination of elements that achieves a distinctly Lockean purpose, as we shall see. Further, the idea that we are God's workmanship, and that this gives God ownership of us and authority over us, occurs repeatedly in Locke's writings, in contexts that are difficult to

[18]"Transcendent natural law" is the phrase of Michael Zuckert, who is one champion of the individual-right point of view. See Michael Zuckert, *Natural Rights and the New Republicanism* (Princeton: Princeton University Press, 1994), 210, 216, 233, etc.

[19]*First Treatise*, §39; see Gary D. Glenn, "Inalienable Rights and Locke's Argument for Limited Government: Political Implications of a Right to Suicide," *Journal of Politics* 46:1 (1984): 80–105; Tully, *Discourse on Property*, 62.

[20]See Patrick Coby, "The Law of Nature in Locke's *Second Treatise*: Is Locke a Hobbesian?" *Review of Politics* 49:1 (1987): 9–10; Thomas Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founders and the Philosophy of Locke* (Chicago: University of Chicago Press, 1988), 160; Strauss, *Natural Right and History*, chap. 5; Michael Zuckert, "The Recent Literature on Locke's Political Philosophy," *The Political Science Reviewer* 5 (1975): 303; *New Republicanism*, chaps. 7–9.

dismiss.[21] It is essential to the grounding of morality as Locke presents it in the *Essay Concerning Human Understanding*, the work in which Locke outlines his moral philosophy most completely. Here, Locke asserts that law requires a legislator, that those subject to law must be subordinate to the legislator, and that in the case of natural law that figure can only be God.[22] Locke did not need to put forth this position in order to make his teaching acceptable. He could have appealed to the authority of Hugo Grotius, an eminently respectable writer, had he wished to maintain that natural law or morality did not require divine legislation.[23] As things stand, we might say that, within the context of Locke's philosophy, self-ownership in the fullest sense is incompatible with the relation of subordination that natural law requires. Or more simply, full self-ownership would imply freedom from all moral restraint.[24]

Locke himself suggests a more straightforward way of reconciling his assertions of self-ownership and divine workmanship. In the *First Treatise*, he says that though men have indeed a right to property "in respect of one another," in respect to God, theirs is only a use-right (§39). Property is a genuine right, and absolute within the human sphere, but not absolute simply. In a similar way, human beings might be said to have property in

[21]See *Essay Concerning Human Understanding*, 2.28.8, 4.3.18, 4.18.5; *Questions Concerning the Law of Nature*, 8, 205, 213; *Second Treatise*, §§6, 56. See also Ashcraft, *Revolutionary Politics*, 258; Ruth W. Grant, *John Locke's Liberalism* (Chicago: University of Chicago Press, 1987), 21; John Marshall, *John Locke: Resistance, Religion and Responsibility* (Cambridge: Cambridge University Press, 1994), 206, 215, 267; Jeremy Waldron, *God, Locke, and Equality: Christian Foundations of John Locke's Political Thought* (Cambridge: Cambridge University Press, 2002), 80.

[22]Locke asserts that a divine legislator is necessary not only to "natural law," but to morality tout court (*Essay*, 1.3.6, 12, 2.28.6, 4.3.18). This would be a serious blunder if Locke's intent had been to undermine natural law, and replace it covertly with a non-theistic morality of rights. See also *Second Treatise*, §§6, 56; *Questions*, 117, 163, 203–207; Pufendorf, *JNG*, 1.2.6, 2.3.2. For the notion that God is necessary to morality in Locke, see Grant, *Liberalism*, 42; Steven Forde, "Natural Law, Theology, and Morality in Locke," *American Journal of Political Science* 45, no. 2 (2001): 398–99; Waldron, *God, Locke, and Equality*, 10–13, 79–81, 209, 228; Parker, *Biblical Politics of John Locke*, 126.

[23]Grotius, *JBP, Prolegomena* 11; 2.1.10.

[24]As Locke puts it in an unpublished fragment from around 1693, "If man were independent he could have no law but his own will, no end but himself" ("Law," in Mark Goldie, *Locke: Political Essays* [Cambridge: Cambridge University Press, 1997], 328). See also Tully, *Discourse on Property*, 36; Grant, *Liberalism*, 43; Waldron, *God, Locke, and Equality*, 83, 106. It could be argued that self-ownership is intrinsically moral because it implies respect for other self-owners, a kind of moral reciprocity (cf. Pangle, *Modern Republicanism*, 187, 264; Zuckert, *New Republicanism*, 277–78, 286). It is not clear to me that this would follow, rather than its Hobbesian or Spinozistic opposite; in any case, Locke does not make this argument in the passages under consideration, but rather the argument from divine legislation.

themselves—self-ownership—without denying that they are also property of or subject to God, in a wider sense.[25] This view of things makes sense of Locke's argument in the *Two Treatises*, from his statements regarding parental obligations to elements of his chapter on property.

If self-ownership were to be taken as the ground of property in an absolute sense, its only limit would be the limit of one's labor. Yet, Locke no sooner introduces self-ownership as a ground of property in the *Second Treatise*, than he imposes an external limit on it. Someone might object, he notes, that self-ownership and labor create a title to property by which any one may "ingross" as much as he will (§31). Not so, says Locke: accumulation of more property than an individual can use before it spoils, in the state of nature, is a violation of the law of nature (ibid.). This limit, spoilage, might be thought insignificant because, in the state of nature, it would be largely self-enforcing (few will waste their labor by gathering things that will spoil in their possession), and would be of little practical significance when there is plenty.[26] Nonetheless, spoilage is emphatically part of the natural law of property in the *Second Treatise*. Locke reminds us of it with surprising frequency (§§31, 33, 36, 38, 46, 48, 51).

Spoilage is a moral limit on the use of the individual's body and labor to make property. Where does it come from? The way Locke derives it actually reveals much about how he understands the natural property right. Locke begins, again, with the "communal" principle that the earth was given to men in common, for their benefit. This leads to the spoilage limit by a dual logic. First, the divine grant imposes a broad limit: it makes the earth ours to use, but not to waste (§31). This is a rather deep-cutting limitation of our property right, if we take it seriously. What it leaves us with might not be recognized as a true property right at all, by civil-law standards.[27] Second and more strikingly, Locke says that in the state of nature, one who takes "more than his share" takes what "belongs to others" (§31). It "belongs" to them by virtue of the fact that God's original grant is collective, it is a grant to mankind at large. Locke goes so far as to say that he who took more out of the common than he could use "robb'd" it of his fellow man (§46). Self-ownership, in other words, and the ownership of the labor of our bodies, is restricted if not trumped by the communal considerations we uncovered in the first part of our investigation of property.

[25]Cf. Simmons, *Theory of Rights*, 256–56.

[26]§§31, 36, 46, 48, 51; cf. Strauss, *Natural Right and History,* 237; Francesco Fagiani, "Natural Law and History in Locke's Theory of Distributive Justice," *Topoi* 2 (1983): 163–85—Reprinted in *Locke, Volume 2*, ed. John Dunn and Ian Harris, Great Political Thinkers Series (Lyme, CT: Edward Elgar, 1997), 166, 169; Zuckert, *New Republicanism*, 256.

[27]Cf. Kendall, *Majority Rule*, 72; Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 180; Tully, *Discourse on Property,* 62; Buckle, *Natural Law,* 181.

None of this is to deny that there is a natural, individual right of property for Locke, or that this right is more fundamental in his theory than in those of earlier theorists like Aquinas, Grotius, and Pufendorf—more on that in a moment. But we cannot avoid the conclusion, it seems to me, that it is less fundamental for Locke than is often thought. It is derivative from, and subordinate to, an overarching principle of common benefit to mankind. That is, God and nature authorize and legitimize individual appropriation in the form of property (or so, at least, we must suppose), but the authorization is justified and in some respects limited by its underlying purpose, the common good. At this level, the logic of Locke's argument is essentially the same as that of his predecessors Aquinas, Grotius, and Pufendorf. They, too, solidly defended private property, but on the basis of a prior and supervening principle of the common good. They found, on that basis, a duty to share with those in need. The duty was built into property ownership itself. Is this Locke's argument too?

The Natural-Law Background

On the subject of property and charity, Locke is engaged in a conversation that was already centuries old in his day. To some extent, his account is shaped by that conversation. A brief (and necessarily selective) look at three of his predecessors—Thomas Aquinas, Hugo Grotius, and Samuel Pufendorf—will clarify both his debts to them and where his innovations lie.[28]

Thomas Aquinas held that, in the strict sense, all external things belong to God. God alone has true property (*dominium*) in material things.[29] Human beings, however, have a "natural" *dominium* over them; in a sense, they were made for our use.[30] By natural law, which of course is ultimately God's law, men possess things in common. But it is lawful for men by agreement to divide this common into private property. Indeed, Aquinas says that the establishment of private property is "necessary to human life," rehearsing the arguments Aristotle uses against Platonic communism in the *Politics*.[31] Although the division of goods into private property is devised by human agreement rather than natural law, God and natural law smile on this development.[32]

Still, the underlying condition, as we might call it (there is no "state of nature" here), is common possession. Common possession reflects the

[28]More complete accounts of these authors on the subject of property may be found in the authors cited in note 6, above.

[29]Aquinas, *Summa Theologica* (http://www.newadvent.org/summa/), 2.2.66.1.

[30]Ibid.

[31]Aquinas, 2.2.66.2. Cf. Aristotle *Politics* 2.3.

[32]Ibid., 66.2.

divine intent that material nature serve mankind as a whole. Since common possession does not adequately serve this end, private property is established as a wholly legitimate and even necessary expedient to the same end. In accord with its utilitarian justification, private property can be suspended in cases where it conflicts with the common good. This is the case with what I am calling charity, which Aquinas refers to simply as need (charity being a much broader term in Christian theology). In cases of need, Aquinas maintains, there is a diffuse duty to share, on the part of those with plenty.[33] If this fails, it is lawful for those in need to take the possessions of another without consent. In such cases, Aquinas argues, the original natural-law condition of common ownership reasserts itself. Private property, which is of human institution, cannot derogate from its natural and divine ground. Whatever the possessors have "in superabundance" is owed to the needy by natural law; it becomes their property "by reason of that need" (ibid.). When they seize it, this is neither theft, nor a sin (ibid.).

Aquinas was able to rely in part on the tradition of Roman jurisprudence in asserting that common ownership was the condition established by natural law.[34] Hugo Grotius relies explicitly on these same sources in asserting that the original arrangement was the possession of the earth by mankind in common.[35] In this original condition, which Grotius conceives as an actual historical epoch, individuals could appropriate from the common stock to meet their needs (*JBP* 1.2.1.4; 2.2.2.1). This simple appropriation for use did not create or require property in the full sense: full property is not absolutely necessary to human existence. Full property rights and a division of titles became necessary, Grotius maintains, once men were no longer content to feed on roots and berries, and live in caves (*JBP* 2.2.2.4). That is, property rights are not absolutely necessary, but are necessary for any but the most primitive form of life for man. Only with property, says Grotius, could human "industry" arise (*JBP* 2.2.2.4), and all the advances that come with it. Still, while for Aquinas God and natural law clearly favor the institution of property, Grotius's natural law is neutral or indifferent. Once property is instituted, though, Grotius holds that natural law imposes a moral obligation to respect it (1.1.10.4). The way that property rights arise, as in Aquinas, is by consent or agreement among men. Locke was to find this position untenable (how could the consent of mankind have been secured? *Second Treatise* §29), but Grotius sees no other way out of the original, natural mandate of common ownership. Once common ownership was abandoned, Grotius

[33]Ibid., 2.2.66.7.

[34]See Justinian's *Institutes*, 2.1.1 (Fordham University: *Internet Medieval Sourcebook* http://www.fordham.edu/halsall/basis/535institutes.html).

[35]*JBP* 2.2.2.1. Grotius wrote an earlier work, *The Law of Prize*, which differs in some respects on issues relevant to us. I will rely exclusively on the later work, as Grotius's mature statement (*De Jure Praedae Commentarius*, trans. G. L. Williams and W. H. Zeydel [Oxford: Clarendon, 1950]).

supposes that the actual distribution of goods was based on present possession, or first occupancy (*JBP* 2.2.2.5). Consent transformed simple possession into true property.

Grotius is sure that the institution of property includes a provision for charity or assistance to those in need, but he is not certain why. It seems not to be the Christian law of love asserting itself (*JBP* 2.2.6.4). Rather, it must have been a part of the original compact establishing property. We must presume, says Grotius, that the original compactors, out of benevolence, included a clause providing for private possession to be suspended in case of sufficient need. We must presume that they intended the new institution not to violate natural equity, that they intended the primitive use-right to override property in case of conflict, in a kind of "right of necessity" (*JBP* 2.2.6.1–2).

For Grotius, unlike for Aquinas, this right is not an instance of natural law reasserting itself, reestablishing the original common ownership on behalf of the needy. In this and other instances, Grotius takes the position that natural law is of limited relevance to human conditions today, that civilized life requires us to supplement if not supersede natural law with human agreements. Property is one instance of this, but there are others. Though natural law establishes freedom and equality among men, for example, it does not stand in the way of absolute monarchy, if a society's founding compact so ordains it. A right of resistance may or may not exist, depending on the terms of the original compact.[36] In the light of this, Grotius's argument regarding charity or the right of need is somewhat odd. He makes essentially an a priori assumption concerning what the founders of property must have intended, or perhaps adopts a rule that the most benevolent interpretation of the property compact is to be preferred.[37] In any case, though charity or the right of necessity derives from human compact rather than from natural law, Grotius regards it to be a secure and binding moral rule.

[36]*JBP* 1.4. Grotius says that by the law of nature, men are born free, but this applies only to a state of affairs that "precedes all human conditions," and slavery may be instituted by men (*JBP* 2.21.11). In this, Grotius is following his Roman sources (cf. Justinian, *Institutes* 1.2, 3, 8; Zuckert, *New Republicanism*, 133–34). Once agreements concerning property, slavery, and other things are made, natural law stands behind them, partly by its principle, *pacta sunt servanda*—human beings must abide by agreements they have made.

[37]This is strange because the same interpretive procedure might have led Grotius to suppose that every society's founding compact bars absolutism, absent clear evidence to the contrary (he does make this argument, but refuses to apply it unequivocally: *JBP* 1.3.8). Perhaps the prevalence of tyranny in human history prevented Grotius from arguing thus, though it led Rousseau to brand him a friend to tyranny (*Social Contract* 1.4, 5). Buckle (*Natural Law*, 46) argues, with some plausibility, that in the matter of property and need, Grotius is deploying a pure *a priori* argument, disguised as an historical supposition.

Samuel Pufendorf, writing explicitly as a follower of Grotius, adheres mostly to the same line of argument. In the original condition, the earth belonged to mankind in common. Each had a right to appropriate for his needs, but this did not constitute a full property right.[38] True property or *dominium* arose by human agreement, an agreement favored but not required by God and natural law (*JNG* 4.4.4). Pufendorf differs from Grotius in the significant respect that even the primitive appropriation right was not secure until some form of agreement had supervened. In the original state, men had a right to appropriate goods; but others were just as free to wrest them away if they could.[39] Here Pufendorf follows Hobbes, whose writings had appeared in the interim. In Grotius's original condition, appropriation was enough to establish a right to exclude others; for Pufendorf, even this requires at least tacit consent (3.5.3). As Hobbes argued, therefore, it was absolutely imperative that men move beyond the original condition, to some kind of explicit compact establishing property. Accordingly, though the law of nature does not establish property, it strongly favors its establishment by men (*JNG* 4.4.6).

Pufendorf has another quarrel with Grotius, centering on charity or the right of necessity. Grotius and Pufendorf (like Aquinas) agree that the property convention includes a clause allowing the primitive right of appropriation to return in cases of necessity: those in dire need may take the goods of others without permission.[40] But Pufendorf is concerned that Grotius did not define the relevant circumstances narrowly enough. Grotius did not specify, for example, that the one in need must not be in need due to laziness or other fault of his own. Further, before seizing another's goods, Pufendorf stipulates that he must attempt to persuade the possessor to share. Finally, reparations should be made when possible for goods thus seized (*JNG* 2.6). Pufendorf is eager to narrow the operative conditions of the right of necessity partly because he is concerned, in a way that Grotius evidently was not, that this right could undermine many of the advantages that private property brings to human life. In the wake of Hobbes, Pufendorf emphasizes that stable property rights are vital to prevent conflict (*JNG* 2.6.5; 4.4.6, 7). But they serve another purpose as well: they are the precondition of commerce, and they stimulate human industry. They are essential in lifting the race above its primitive origins to the level of civilization we see today (*JNG* 2.6.5). Grotius had noted that private property was necessary for humanity to rise above the primitive condition. However, in Pufendorf's view, Grotius had evidently not quite appreciated this point. Pufendorf fears that Grotius's interpretation of the right of necessity may open the door to lazy

[38]Pufendorf, *JNG* 1.1.16; 2.2.3, 4.4. See also Cumberland, *Laws of Nature*, 7.2–3; Buckle, *Natural Law*, 78–79, 93.

[39]*JNG* 4.4.4, 5, 9, 14; cf. Grotius, *JBP* 2.2.2.1.

[40]Grotius, *JBP* 2.2.6.1-2; Pufendorf, *JNG* 2.6.

and otherwise undeserving individuals to take from the provident. It invites Aesop's grasshoppers to take from Aesop's ants, under cover of the "right of necessity." Not only would this be unjust, it would jeopardize the progress that comes from honest industry.[41]

The theories of Aquinas, Grotius, and Pufendorf demonstrate how the character and grounding of the property right affects one's view of the duty of charity and its counterpart, the right of necessity. Compared with these predecessors, Locke gives the personal property right more solid grounding. Individual property is not of human institution; it requires no man's consent. It is a creature of bare, unmodified natural law. Individuals create property by their first acts of sustaining themselves in the state of nature. Natural law commands others to respect property gained by simple appropriation.[42] Locke does follow his predecessors in one crucial respect: the original situation is one of common ownership. And, as we found earlier, its grounding is the same as the grounding of the original common—the moral imperative to serve the general good of mankind. We must give sufficient weight to the differences between Locke and his predecessors, but also to their agreement on this communal element. The limit of spoilage is one expression of this in Locke's thought. Is his elusive teaching on charity another expression of this element?

Since property was conventional for Grotius and Pufendorf,[43] they had to argue that a duty of charity in extremis must have been included in the original convention. To support this interpretation, they had to suppose that the underlying motivation for the property convention was to advance both a common good as well as the private good of proprietors. Locke does not need such a supposition regarding the original compact. His law of nature authorizes property with the first appropriation—but also as an instrument of the common good. If Locke had wanted to follow his predecessors' lead on the issue of charity, he would then explicitly stipulate that, as the natural law establishes property in the name of the common good, it simultaneously establishes the duty of charity or the right of necessity, as an exception to that institution in cases of need. He would do this, moreover, in his one systematic presentation of the property right, in chapter 5 of the *Second Treatise*. This is precisely what he fails to do, all the more conspicuously in

[41]On this general point, see Buckle, *Natural Law*, 117. Pufendorf suggests that government should proscribe laziness, while supporting the deserving poor (*JNG* 7.9.11).

[42]Though this clearly distinguishes Locke from Grotius and Pufendorf, the case of Aquinas is somewhat ambiguous, because Aquinas is not much concerned with an original condition or state of nature in the seventeenth-century sense. It is enough for Aquinas that humans adopt a property regime at some point in the distant past, as God and natural law intended. Still, neither God nor natural law instituted private property.

[43]For simplicity, I will henceforth refer to Aquinas, Grotius, and Pufendorf simply as Locke's "predecessors" in the arguments he is making.

light of what we have seen of his predecessors. Does Locke give any indication that he is, nonetheless, in agreement with his predecessors on the issue of charity?

A case can be made that the passage on charity in the *First Treatise* shows this to be the case. There, we recall, he says that the property right of any man is not so absolute "but that [God] has given his needy brother a right to the surplusage of his goods; so that it cannot justly be denied him, when his pressing wants call for it" (§42). The condition of extreme need stipulated here echoes the condition postulated in the earlier tradition for this scenario. The right Locke gives to the man in need is equal to anything offered by his predecessors; the duty imposed on the man with plenty is, if anything, stronger.[44] And what is the ground of this right and this duty? Suggestively, Locke prefaces this part of his argument with an allusion to the seminal moral principle of the *First Treatise:* God's design is for mankind as a whole to *increase* and *multiply* (§41). Robert Filmer had claimed that the blessing "be fruitful and multiply," and the accompanying grant of dominion over the material world, applied to Adam alone. Locke's claim, systematically developed throughout the *First Treatise*, is that the blessing and the grant apply to mankind as a whole. As we noted earlier, Locke interprets it as the biblical equivalent of his argument in the *Second Treatise* that divine and natural law looks to the common good of mankind. In this passage of the *First Treatise*, therefore, as in the writings of Locke's predecessors, the right of necessity seems to be traced to the common good as the supreme moral principle. In cases of conflict, private property must yield to the broader imperative to meet human needs.

One might on this basis say that Locke follows his predecessors on charity or the right of necessity. But this does not quite satisfy. For again, if Locke were conscientiously following these predecessors, he would give us a systematic account of charity or the right of necessity, with its theoretical background, not something we have to patch together. We would expect this to be an explicit theme, rather than a point made almost as an afterthought in the *First Treatise*. Above all, we would expect to see it in his thematic treatment of the property right, in chapter 5 of the *Second Treatise*.[45] Why is Locke so reticent concerning this particular moral principle?

[44]It is stronger because the duty appears to lie on a particular individual rather than being diffuse. This may be due to the context: Filmer's Adam is the hypothetical case here—one man who possesses title to all earthly goods, and who would therefore have sole duty to share.

[45]This is why I cannot agree with interpreters who assert or presume that charity is implicit in chapter five, on the basis of Locke's statement in *First Treatise*, §42, or his grounding of property in the common good. See Tuck, *Natural Rights Theories*, 172; Tully, *Discourse on Property*, 131–32; Simmons, *Theory of Rights*, 327–28.

The Uncharitable Locke

Hugo Grotius is a path-breaking figure in the history of political thought because of his novel understanding of natural law. Pufendorf follows him, and Locke, by at least one account, is the culmination of this new tradition.[46] Grotius's new natural law shifts the basis of morals decisively toward individual right, defining justice for the first time not as a general state of affairs, a proper distribution of goods and honors, but as respect for the personal integrity of the individual.[47] Grotius infused the traditional definition of justice, "the perpetual and constant will to render to each his due,"[48] with new meaning. Whereas before, under the aegis of classical philosophy, the task of justice was to identify the proper order for society as a whole and to arrange its parts accordingly—this is what was due to each—it now became the safeguard of what belonged to each, the individual *suum*. This *suum* included life and liberty, as well as such things as chastity and honor—whatever cannot be violated without violating a person's fundamental integrity or right. It included goods one had appropriated from nature, and it included one's property, once property was established.[49]

This new understanding of things clearly provided the platform from which liberalism was launched—it moved individual right to the center of social morality, and with it self-interest.[50] As elaborated by Grotius and

[46]Jean Barbeyrac, "An Historical and Critical Account of the Science of Morality" (introduction to Pufendorf, *Of the Law of Nature and Nations, Eight Books*, ed. Jean Barbeyrac, trans. Basil Kennett [London, 1729], 3–88), 79–82; cf. Tuck, *Natural Rights Theories*, 174–75; Tully, *Discourse on Property*, 5–6.

[47]Grotius, *JBP* 1.1.4–8; Tuck, *Natural Rights Theories*, chap. 3; Buckle, *Natural Law*, chap. 1; Zuckert, *New Republicanism*, chap. 5. There is a budding presence of "subjective" or individual right in the late-scholastic contemporary of Grotius, Francisco Suárez (*On Laws and God the Lawgiver*, in *Selections from Three Works*, trans. Gwladys L. Williams, Ammi Brown, John Waldron, and Henry Davis, S. J. [Oxford: Oxford University Press, 1944], 1.2, 2.17; cf. Tully, *Discourse on Property*, 65–67, 80). On the moral centrality of the *suum* as an innovation, see Karl Olivecrona, "Appropriation in the State of Nature: Locke on the Origin of Property," *Journal of the History of Ideas* 35:2 (1974): 211–30—Reprinted in *Locke, Volume I*, ed, Dunn and Harris, 211; Tuck, *Natural Rights Theories*, chap 1.

[48]Aquinas accepts this formulation, borrowed from Justinian's *Institutes (Summa Theologica* 2.2.58.1; *Institutes* 1.1). See also Tuck, *Natural Rights Theories*, chaps. 1–2.

[49]Grotius, *JBP*, 1.1.4–5, 1.2.1.5, 1.2.5.7; Pufendorf, *JNG* 3.1, 2.5, 7.8.4. These thinkers provide an interesting beginning-point from which to consider the very contemporary issue of what should be included in individuals' "right," and why. See Buckle, *Natural Law*, 29, 77; Olivecrona, "Appropriation," 211–18; Tuck, *Natural Rights Theories*, 16–17.

[50]Buckle, *Natural Law*, 51; Michael Zuckert, "Do Natural Rights Derive from Natural Law? Aquinas, Hobbes, and Locke on Natural Rights," in Zuckert, *Launching Liberalism: On Lockean Political Philosophy* (Lawrence, KS: University Press of Kansas, 2002), 185.

Pufendorf, however, it was not fully liberal, because the basic individual rights were held to be neither inalienable nor indefeasible. Both Grotius and Pufendorf held that an individual can cede all his rights and contract himself into slavery. Entire peoples can do the same.[51] Individual rights are not indefeasible for Grotius partly because he incorporates a Ciceronian element of *sociability* into his natural law. Natural law derives partly from man's social nature, and so in certain key instances the social good trumps individual right.[52] Pufendorf makes a similar argument: natural law is rooted in the requirements of sociability, which are the requirements of man's rational nature. Government in that sense is "natural" (*JNG* 2.2.4). Once government and sovereignty are established, they acquire a kind of higher-order right that can prevail against individual right.[53] We could almost say that Grotius and Pufendorf retain elements of the old understanding of the political community as a *corpus mysticum*.[54]

I have argued that Locke grounds natural law in the common good, but there are key differences between his approach and that of Grotius and Pufendorf. One thing that becomes clear as we place Locke beside Grotius and Pufendorf is that Locke is studiously refusing to appeal to sociability as an independent element of human nature, or as a source of natural law.[55] One consequence of this in his political thought is that government can have no more power than individuals had in the state of nature; the whole is not greater than the sum of its parts. Accordingly, the common good is nothing more than the sum of individual goods.[56] The status of individual right vis-à-vis government authority becomes correspondingly stronger in Locke, as opposed to these predecessors. But the issue we confront is somewhat different. It has to do not with government authority, but the strength of the property right vis-à-vis claims of need in other individuals. Do Locke's stronger individual right and silence on sociability affect his view of charity?

[51]See Grotius, *JBP* 1.3.8; Pufendorf, *JNG* 7.6.5, 7.8.6. Pufendorf, influenced by Hobbes, maintains that the law of nature intends the ruler to be unfettered (*JNG* 2.2.4).

[52]*JBP* 1.1.6, 1.1.12.1, 1.2.1, 1.4.2.1, 2.1.9.2; Tuck, *Natural Rights Theories*, 72–73, 81; Buckle, *Natural Law*, 19; Zuckert, *New Republicanism*, 136–38.

[53]*JNG* 2.2.4, 2.2.8, 2.3.5, 3.3.3, 3.4.4, 3.5.3, 7.8.5. This theme is somewhat hedged by Pufendorf, or leavened with a dose of Hobbesian individualism. See also Marshall, *Resistance, Religion, Responsibility*, 201; Tuck, *Natural Rights Theories*, 78–79.

[54]Some medieval thought viewed society as a *corpus mysticum*, a mystical whole that was greater than the sum of its parts. Thus, some rights belonged to sovereignty that could never belong to individuals apart from society, such as the power to punish, to make war, or to rule. This notion seems partially to have been borrowed from Aristotle. See Aquinas, *Summa Theologica* 2.2.90.2, 2.2.96.4; Suárez, *On Laws and God the Lawgiver*, 1.6.18, 2.14.18, 3.2.

[55]Cf. Zuckert, *New Republicanism*, 205, 286.

[56]Cf. *First Treatise*, §92.

Let us return to his treatment of property in chapter 5 of the *Second Treatise*. There, Locke describes the transition from common to individual property in this way:

> God gave the World to Men in Common; but since he gave it them for their benefit, and the greatest Conveniencies of Life they were capable to draw from it, it cannot be supposed he meant it should always remain common and uncultivated. 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 Quarrelsom and Contentious. He that had as good left for his Improvement, as was already taken up, needed not complain, ought not to meddle with what was already improved by another's Labour. (§34)

We are familiar with the first argument. God's overarching purpose is human benefit and convenience. Common ownership is God's initial provision, but it must be modified in order to fulfill that purpose. Locke differs from Grotius and Pufendorf in holding that the original provision was necessarily inadequate, that full-blown private property is necessary in order for human life to continue. His position is somewhat disingenuous, in light of the fact that Grotius and Pufendorf had provided for this situation with their simple appropriation-right.[57] They agree that an Indian picking an apple in the state of nature has a right to it; it is Locke who insists that this Indian will starve unless we grant him full-blown property rights over the apple.[58]

For Locke, unlike for Grotius or Pufendorf (or Aquinas), property rights are secured by a purely natural process ordained by natural law, and require no human agreement. Why, in the face of the preceding accounts that were very well known to him, did Locke make this novel argument?[59] The way Locke states his case in the passage above indicates part of his motivation. It was God's intent not only that man subsist in the world, but that he draw the greatest possible "Conveniences of Life" from it. He wished us not only to gather the spontaneous fruits of the earth, but to "cultivate" it. As Locke asserted in the *First Treatise*, God's injunction to mankind to "be fruitful and multiply, and replenish the earth . . . contains in it the improvement too of

[57]Cf. Tully, *Discourse on Property*, 95–98.

[58]*Second Treatise*, §§26–27. Horne (*Property Rights and Poverty*, 52–54, 59) argues that this is just a use-right, true property being established by consent, on the model of Grotius and Pufendorf, once money is introduced. But Locke does not describe the transition to money in these terms, and seems to treat property as a full right from the first appropriation. See also Olivecrona, "Appropriation," 223, Tully, *Discourse on Property*, 72, 112.

[59]Locke's position is not entirely novel; a few others had argued for a property right by nature, independent of any convention. For brief accounts of some of these, see Peter Laslett, introduction to John Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 1960), 102; Tuck, *Natural Rights Theories*, chap. 8.

Arts and Sciences, and the conveniences of Life" (§33). Grotius and Pufendorf agreed that the improvement of human life beyond a primitive level required private property, but they did not believe that the law of nature in itself provided for that property, or that progress. We could say that Locke's law of nature is more provident.

Or, we could say that Locke's law of nature is more demanding. The material progress that was merely a possibility in the earlier thinkers becomes an imperative for Locke, a divine command. Property receives a correspondingly higher status. Individual property rights are not merely one way to serve the common good of mankind, or the preferred way, as for the earlier thinkers. They represent the sole, divinely mandated way. This is a rather large claim; it is not only economic, it is theological. Part of its justification is Locke's new argument concerning the virtues of property, which he puts on display in chapter 5 of the *Second Treatise*. The outlines of this argument are familiar. Human labor is the principal source of wealth, so the general level of wealth depends on how much labor humans expend.[60] General prosperity will be increased by stimulating human labor, for which there are certain preconditions. The securing of property rights, to secure the materials and the rewards of labor, is the first of these. The second is the expansion of those rights to potentially limitless accumulation. This happens in Locke's account after the introduction of money, which unleashes the power of human labor for the first time on a grand scale (§§36–40). Thus, if God's command to be fruitful and multiply "contains in it the improvement too of Arts and Sciences, and the conveniences of Life" (*First Treatise* §33), we would have to say that God mandates not merely property rights, but the establishment of money as well.[61]

Locke recites this economics lesson in part as justification for his claim that property rights must be ordained by nature and by God. As a moral argument, it has two features that we must particularly note, for they seem to cut in opposite directions. First, the argument is fundamentally utilitarian, in the way we noted before—property and money are ordained because

[60]Locke does not hold to a simple "labor theory of value," though the schematic argument of chapter 5 can give that impression. I follow the schematic here, but for a more subtle accounting of Locke's economics, see Karen Iversen Vaughn, *John Locke: Economist and Social Scientist* (Chicago: University of Chicago Press, 1980), especially chap. 2. See also Waldron, *God, Locke, and Equality*, 323.

[61]Unlike property per se, money cannot be a direct creation of natural law. Being essentially conventional, it can only be created by consent. Nonetheless, for the reasons given, it seems that Locke's God and natural law make the creation of money virtually a human duty. I do not intend to imply that material prosperity is the sole aim of Locke's God and his natural law. The inclusion of "arts and sciences" hints at the richer view of the human good that stands behind Locke's natural law. See Peter C. Myers, *Our Only Star and Compass: Locke and the Struggle for Political Rationality* (New York: Rowman and Littlefield, 1998), 248–49.

they lead to the general prosperity of the race. This seems to render property somewhat tenuous, of only instrumental importance. But second, private property is the sole approved or allowed means to the end indicated. God gave the earth to men in common; this is the token that his providence encompasses the race as a whole. But he intends it to begin passing immediately into private hands, and eventually to ground the development of more advanced economic activity. Locke makes the reasonable assumption that God is aware of basic economic principles. God is aware that, if the love of money is the root of many evils, it is also a source of general good. In all its honest forms, he smiles on this love. He knows that the pursuit of one's own interest is not the expression of a corrupt or fallen nature but a benign, indeed useful attribute. He commands man to labor, pursuant to his design for the race as a whole. But he also knows that commanding alone will produce indifferent results, that providing rewards for that labor is the only reliable means to elicit it. Finally, he knows that placing moral limits on accumulation through labor, once money has fully unleashed the power of labor, will only harm the common good of mankind.

It would be a mistake to think that Locke is driven to this set of conclusions, in spite of himself, by his discovery of free-market principles. The centrality of self-interest is not confined in his understanding to *homo economicus*. In the *Essay Concerning Human Understanding*, Locke tells us that human beings are motivated exclusively by a desire for personal happiness.[62] Even more strongly, the desire for personal happiness motivates not only human nature, but every rational nature (2.21.49–52). It is inseparable from rational consciousness per se (2.27.17, 26). The primacy of self-concern and self-interest is the mark not of a corrupted nature, but a rational one. Any laws or commands laid on a rational creature must, therefore, be matched with incentives—rewards or punishments or both—if compliance is to be reasonably expected. Locke's God knows this and provides incentives for his natural law; indeed, he knows that a law without such personal incentives would be "utterly vain" (1.3.6, 2.28.6). This might be reason enough for Locke's refusal to identify sociability as an independent part of human nature, or a root of natural law. It moves him closer to Hobbes than Grotius, at least, would find acceptable.[63]

In a sense, Locke's scheme of economics and property replaces traditional Christian charity with Baconian charity—good brought to the human race by technical means, as it were, rather than by the milk of human kindness.[64]

[62]*Essay*, 1.3.13, 2.7.3–4, 2.20.2, 2.21.41–42, 61. See also the essay "Morality" (in Goldie, *Locke*, 267–69).

[63]Pufendorf is somewhat ambiguous on this score, since his duty of sociability appears to be based not on Ciceronian reason, but on Hobbesian reason backed by divine command (*JNG* 2.2.4, 9, 3.3.1, 3.4.4).

[64]See Francis Bacon, *New Organon*, ed. Fulton Anderson (Indianapolis: Bobbs-Merrill, 1960), Proemium, Preface; cf. Locke, *Essay*, 4.12.11.

By the same token, the scheme would seem to leave little room for charity in the sense at issue here. If Pufendorf was worried that Grotius's right of necessity could undermine the social progress that property produces (*JNG* II.6), Locke's psychological and economic analyses compound that concern. If prosperity depends upon allowing the industrious to accumulate limitlessly, and to keep their gains, saddling them with a duty to share may harm the common good. Promulgating a strong duty to charity could even stigmatize the acquisitive drive upon which the machinery of the general good depends. Certain it is that Locke's chapter on property, where the self-interested foundation of his argument is most fully on display, makes no provision for charity. That silence seems more vocal now than ever.[65] Even the deserving poor, however defined, are completely unprovided for in Locke's account of property in the *Second Treatise*.[66]

Justice and Charity

This may go a long way toward explaining why Lady Masham felt compelled to defend Locke's charitable nature. But what case can be made for her position on Locke's writings themselves? And if Locke did believe that charity, in the sense we have been using the term, was a moral duty, how did he reconcile it with the strong elements of self-interest in his own thought, and especially his account of property?

A clue might be found in the passage on charity in the *First Treatise*. Locke there says, we recall, that God "has given no one of his Children such a Property ... but that he has given his needy Brother a Right to the Surplusage of his Goods" (§42). He then explains:

> As *Justice* gives every Man a Title to the product of his honest Industry, and the fair Acquisitions of his Ancestors descended to him; so *Charity* gives every Man a Title to so much out of another's Plenty, as will keep him from extream want, where he has no means to subsist otherwise. (§42)

This explanation hinges on a distinction between "justice" and "charity." These two moral principles are at odds, yet both of them are valid. Locke's

[65]This, again, is why I cannot agree with those who read a strong duty of charity into the *Second Treatise* (e.g., Tuck, *Natural Rights Theories*, 172; Tully, *Discourse on Property*, 131–32; Simmons, *Theory of Rights*, 327–28). Locke's silence on charity is driven partly by concern that such a duty might benefit the "Quarrelsom and Contentious"(§34), and undermine the command to labor and industry.

[66]This is why I believe it is not quite enough to say that Locke ignores charity in his treatment of property because he believes that his new engine of prosperity will virtually eliminate poverty (cf. Buckle, *Natural Law*, 149–50, 157, 161; Waldron, *God, Locke, and Equality*, 177; Strauss, *Natural Right and History*, 243). Locke does have great and justified faith in that engine. But there will always be the old, the infirm, the unlucky—those to whom he directed his own charity, in Lady Masham's report.

formulation makes clear that he is aware of the tension between them, yet assigns each of them a place. The line of thought suggests that the account of property in the *Second Treatise* is an account of "justice," whose silence on "charity" might be explained and excused by the division between the two moral domains. Is this the explanation for which we have been looking? If so, it answers some questions, but raises others. We would need to know, for example, how the two separate moral domains are related, and, of course, which principle prevails in case of conflict.

The distinction between justice and charity, and their relationship in Locke's mind, is illuminated in a short meditation he wrote in 1695 (after the *Two Treatises*), entitled "Venditio."[67] Locke never published the piece, but it has received attention in recent years because of the light it sheds on our question. Its subject is the just or fair price in commerce, which Locke asserts to be the market price. Justice condemns any attempt to force the seller to sell below that price (340, 342). It is legitimate for a seller to realize a windfall profit if he finds a market where, due to shortage or any other influence (it could be the whim of fashion), his wares sell dear. This is true, Locke says, even if the shortage is a famine and the merchant is selling food. Of course, justice does not require that the seller take his windfall; but if he sells below market price to accommodate the need of another, this is not justice, but charity. Charity, we conclude, is a more demanding moral standard than justice, but one to which the merchant cannot be held. It is praiseworthy, but not morally required.

If our merchant happens upon a starving town, however, where the people cannot afford to pay the famine-inflated market price for his food, the situation changes. Here, Locke says, the merchant "offends against the common rule of charity" if he insists on the market price (342). If he carries away his goods, and any of the people subsequently starves, Locke pronounces, he is "no doubt guilty of murder" (342). This is strong language, and more than a little paradoxical. This merchant has abided by all the rules of justice, he has demanded no more than the market price, and yet he is charged by Locke with murder!

In both this and the passage on charity in the *First Treatise*, Locke is very precise in his language: though charity is a duty, it is not a duty of "justice."[68] Justice, in matters of property, is concerned only with respecting the possessions of others and with fair rules of trade, a standard relatively easily reconciled with self-interest. Charity is a more exacting moral standard, but one to which people cannot strictly be held—except in certain circumstances. We seem to have a two-tiered moral theory, with justice occupying

[67]This piece can be found in John Dunn, "Justice and the Interpretation of John Locke's Political Theory," *Political Studies* 16 (February 1968): 84–87; and Goldie, *Locke*, 339–43. Page references in the text are to the Goldie edition.

[68]Cf. Dunn, "Justice," 74, 82–83; Fagiani, "Distributive Justice," 164.

the lower (morally less demanding) tier. This in itself would not be novel. Thomas Aquinas did not go beyond moral common sense when he distinguished between perfect duties, which were morally obligatory, and imperfect ones, denoting actions that were praiseworthy but not obligatory—above and beyond the call of duty, as it were (*Summa* 2.2.99.6).

More pertinent to Locke is the two-tiered theory developed by Grotius. As part of his new natural law, Grotius redefined justice or right "in the strict sense," as a minimal moral standard. Justice in this sense was confined to the "not unjust," injustice being what was "utterly repugnant to a rational and social nature" (*JBP* 1.2.1.3; cf. 1.1.3.1). Justice thus allowed all but grossly antisocial behavior. Grotius acknowledged the validity of other, more expansive moral principles, including Aristotelian distributive justice, but denied that they were obligatory, or part of justice in the strict sense.[69] Accordingly, sociability amounted in the first instance to no more than a minimal duty to respect the rights of others, a rule of "no harm."[70] But sociability for Grotius led also to higher moral imperatives, which could trump the lower. Individual rights could be eclipsed by the superior right of society, in certain cases (*JBP* 1.1.6, 1.2.1.2, 1.4.2). For Grotius, therefore, a pioneer of the morality of individual rights, those rights reflected a new and lower moral standard, but one which could and should be supplemented by higher moral concerns connected with the common good. The lower standard, protection of the individual *suum*, was the core concern of government, though again, sociability provided an entrée for others.

Locke's *Second Treatise* may be read as a work resting almost entirely on Grotius's lower ground, on justice defined in the minimal sense of respect for the rights of others. This minimalism is signaled at the outset, in the way Locke defines natural law. The basis of that law, he tells us, is the preservation of all mankind—a principle with charitable implications, as we saw earlier (§6). But the morality Locke draws from the principle is the slightest that could possibly be drawn from it: men are duty-bound only to refrain from harming or destroying one another. In chapter 5, certain limits are placed on the accumulation of property, limits rooted in the principle of the common good. Yet these limits too—spoilage, and the "enough and as good" proviso—are duties only to do no harm, and include no duty to assist those in need.

Locke has his reasons for adopting this approach in the *Second Treatise*: he wishes to render rights secure in the political and economic realms, in a way they had not been for Grotius. This requires that they be largely immune from

[69]*JBP* 1.1.8–10, 1.2.1.3, 1.2.6.2; cf. Locke, *Second Treatise* §54; Buckle, *Natural Law*, 31; Zuckert, *New Republicanism*, 139–41; Steven Forde, "Hugo Grotius on Ethics and War," *American Political Science Review* 92, no. 3 (1998): 640–41.

[70]1.2.1.5, 2.1.4.1; cf. Pufendorf, *JNG* 2.2.9; Tuck, *Natural Rights Theories*, 72; Tully, *Discourse on Property*, 86; Buckle, *Natural Law*, 71.

eclipse by other, higher-level or sociable moral principles—for such principles can too readily be invoked to violate individual rights, as the example of Grotius himself showed. Justice deals with individual right exclusively; defending justice, thus understood, becomes the sole, or almost the sole, purpose of government. As Locke has it in the *Essay Concerning Human Understanding*, "[W]here there is no property, there is no injustice," property being understood broadly as individual right (4.3.18). And as he says in the *Second Treatise of Government*, the protection of property is the raison d'être of civil government (§§3, 87–8, 123, 124, 127, 131, 138). Taken together, these elements provide the recipe for classical liberalism and its distinctive individualism.

And yet, the basis of all of this for Locke remains the higher-order moral imperative to further the good of mankind as a whole. This is the origin of our paradox of charity, which now appears as part of a larger issue in Locke. We concluded earlier that Locke's defense of property was ultimately utilitarian, property being instrumental to a larger good. Property rights were rendered secure by the fact that they were the only approved means to that good. A parallel logic leads us now to the suggestion that Locke's defense of rights overall has the same character: in politics, the common good is best served by government that is confined to defending individual right, and that can make no claims against individual right based on a higher-order communal claim. One result of this is that rights, even though they are grounded in the prior principle of the common good, become essentially indefeasible. This is Locke's innovation within the tradition inaugurated by Grotius. Though rights are not the bedrock of Locke's moral system, they remain largely immune from infringement in the name of the kinds of sociable principles that Grotius, for example, allowed. It is his conclusion that the common good, in politics and economics both, is much better served by this immunity than by any other approach. If Locke's system of rights-under-natural-law is utilitarian, we would at least have to call it "rights utilitarianism."[71]

[71]Cf. Simmons, *Theory of Rights*, 54–55, 61, 78, 337; Strauss, *Natural Right and History*, 235 n. Utilitarianism is typically differentiated from liberalism by the fact that it allows the sacrifice of individual interests if that advances overall social utility. "Rights utilitarianism" is the theory that a regime of largely indefeasible individual rights leads to the greatest social good, even though in isolated instances the respect for rights will lead to a socially harmful result. I do not mean to imply too close a relationship between Locke and later utilitarians. His full moral theory has more the character of deontology. See Nathan Tarcov, *Locke's Education for Liberty* (Chicago: University of Chicago Press, 1983); Simmons, *Theory of Rights*, 40, 45, 57–58, 100; Myers, *Only Star and Compass*, 12, 248–49; Peter Berkowitz, *Virtue and the Making of Modern Liberalism* (Princeton: Princeton University Press, 1999), 81.

Some interpreters have used something like my line of argument to claim that Locke is not devoted to individual rights at all, granting virtually unlimited power to the

The arguments just reviewed are largely confined to Locke's political and economic thought, giving that thought its distinctly uncharitable character. When we look at Locke's writings as a whole, though, we are struck by how atypical is the *Second Treatise* in this respect. Two other works that are central to Locke's philosophical project illustrate the point. Coming from the *Second Treatise* (as most modern readers do), one is struck upon reading the *Essay Concerning Human Understanding* and *Some Thoughts Concerning Education* at the virtually complete silence of these two works on the subject of rights. The *Essay* lays out Locke's philosophical groundwork, including a theory of consciousness and the human person, while saying almost nothing of rights. As we noted earlier, it adopts the profoundly individualist premise that the "pursuit of happiness" is the sole, and legitimate, motive of rational consciousness (2.21.50; cf. 48, 51–52, 2.27). But the *Essay* presents this less as a right than a duty, the duty to seek happiness properly, that is, prudently and within the bounds of the natural law.[72] Morality as a whole is presented much more in terms of duty than of rights in the work (e.g., 1.3.12, 2.28.4–8, 4.3.18). The *Essay*'s crucial chapter on identity and consciousness—part of whose purpose is to ground moral responsibility—is devoid of references to rights (2.27). It is safe to say that a "rights theorist" in today's mold would devote such a discussion to uncovering the nature and sanctity of the "rights-bearing subject." Locke instead finds the essence of moral agency to be capability of subjection to a law.[73] Even with allowances for anachronism, the contrast with Locke is striking. In a word, the rights morality of the *Second Treatise* is far from central to the moral argument of the *Essay*. This does not mean that the two works are incompatible, so long as we understand the limited character of the *Second Treatise*.

community (Macpherson; Laslett; Kendall, *Majority Rule*; Tully, *Discourse on Property*, 99, 161–65; cf. Grant, *Liberalism*, 99). My argument is that Locke gives individual rights much higher status, as the *sole* means to the common good in politics and economics. I also differ from Simmons, whose parallel "rule-consequentialist" interpretation allows property rights to be more easily overridden by charity (*Theory of Rights*, 50–51, 223, 291, 327–36). Simmons mentions the possibility that Locke's theory is tiered in the way I argue, but does not develop the point (328–29; cf. 63). He accuses Locke of being less charitable than his philosophic principles require (331).

[72]Locke, *Essay* 2.21.42–70; Peter Schouls, *Reasoned Freedom: John Locke and the Enlightenment* (Ithaca, NY: Cornell University Press, 1992), 63, 111, 125, 152.

[73]Locke, *Essay* 2.27.26; cf. 1.3.14, 3.11.16, 4.3.18. We might note that religious liberty too seems as much a duty as a right for Locke, the duty of each individual to come to his religious convictions thoughtfully (*A Letter Concerning Toleration*, trans. William Popple and ed. James H. Tully [Indianapolis: Hackett, 1983], 26; *Essay* 4.19, 20). See also Robert P. Kraynak, "John Locke: From Absolutism to Toleration," *American Political Science Review* 74, no. 1 (1980): 66.

Its limited character becomes even clearer when we contrast the *Second Treatise* with *Some Thoughts Concerning Education.* The latter details a proper upbringing as Locke sees it, including especially moral education and the shaping of character. The work accepts the postulate of the *Essay* that happiness or pleasure is the motive of human action (§§54, 115, 143). Yet, also like the *Essay*, it is remarkably reticent about rights.[74] The true rule of virtue, Locke here says, is subjection to the moral law, which is the law of God (§61). The work reiterates, with even greater emphasis than the *Second Treatise*, that the basis of that law is the general good. "The preservation of all mankind, as much as in him lies," Locke tells us, "is everyone's duty, and the true principle to regulate our religion, politics, and morality by."[75] The *Second Treatise* drew from this a very minimal set of duties to respect the rights of others. *Some Thoughts Concerning Education* teaches a more explicitly benevolent or charitable morality. In matters of property, Locke does speak of rights, but he is more eager to teach his pupil the virtue of liberality, a willingness to share possessions freely and cheerfully (§110). Among the few books explicitly recommended to the pupil are Cicero, Grotius, and Pufendorf (§§185–86), all of whom held sociability to be a source of duty. Locke may have declined to enlist sociability per se, but this work's moral education culminates in a trait or collection of traits Locke calls good breeding, a kind of benevolent (quasi-)sociability whose basis is a sincere concern for the well-being of others.[76]

None of this implies that the reliance on rights in the *Second Treatise of Government* is a falsification of Locke's views. What it does show, I believe, is that Locke's moral teaching in that treatise is a truncated version of his moral philosophy. It reflects Locke's view that government is limited, that the moral domain of politics is largely the restricted one of justice. It does not show that this justice is the limit of morality for Locke. This point is made clearly enough in another of Locke's political works, the *Letter Concerning Toleration*. Locke's argument in the *Letter* turns on a sharp distinction between the political and the religious realms, with the political confined to the this-worldly interests of "Life, Liberty, Health, and Indolency of Body,"

[74]I believe there are only two references to "rights" (in the relevant sense) in this work. In the first, an understanding of the "rights" of people to their property is said to require sophisticated concepts beyond the grasp of children (§110). In the other, Locke assigns Pufendorf to his pupil, so as to give him an understanding of the "natural rights of men" (§186). These references are clearly significant, but we must also acknowledge that the vast bulk of Locke's moral education passes without reference to "rights."

[75]Locke, *Essay* §116. Or, as Locke puts it in *A Third Letter for Toleration*, the law of nature is a rule "whereby every one is commissioned to do good" (*The Works of John Locke*, vol. 5 [London: Routledge/Thoemmes—facsimile reprint of the 1794 T. Longman edition], 213).

[76]§§93, 141–44; Tarcov, *Education for Liberty,* 137–41, 193–97.

as well as material possessions (26). The distinction turns out to be a bit more broad than that, however. The power of the magistrate to enforce virtue itself is strictly confined:

> Covetousness, Uncharitableness, Idleness, and many other things are sins, by the consent of all men, which yet no man ever said were to be punished by the Magistrate. The reason is, because they are not prejudicial to other mens Rights, nor do they break the publick Peace of Societies. (44)

The gist of this passage, for our purposes, is this: Locke's restrictions on government action exclude it not only from religious affairs, but much of what Locke considers legitimate morality—including charitableness in individuals. Government's role is limited to safeguarding rights and keeping the public peace, but Locke is far from believing that these are the limits of morality itself. The morality of "Rights," as he describes it here, is a partial morality. For the public good, government is to be largely confined to enforcing this part of morality. "Largely" is not "wholly"—Locke's proposals on the Poor Law suggest a limited role for government in relief of the needy, and he might well have favored enforcement of some other individual duties by the magistrate, particularly family-related ones.[77] Still, when writing of politics and economics, Locke writes within a limited moral horizon, which is neither his own moral horizon, nor his final word on the natural law (cf. *Questions*, 2, 125–27). Readers who know Locke primarily from his political works risk getting a false impression of him, the impression that Lady Masham strove to rebut.

One way of clarifying what is at stake here is to raise the question, What is "liberal morality"? We are inclined to limit it to the circle of moral precepts enforceable by the liberal state. Citizens within that state may have broader moral beliefs, such as religious convictions, but these cannot be part of liberal morality (and may even interfere with that morality). Locke's example challenges that view, to the extent that he believed he had found a set of moral precepts, objectively sanctioned by natural law, that went beyond the limits of justice as enforced by the liberal state. For Locke, moral principles, beyond those of the liberal state, are not simply optional, nor are they a matter of idiosyncratic preference. They may not be enforceable by the state, but they are duties nonetheless.[78] As *Some Thoughts Concerning*

[77]Locke drafted a model Poor Law in 1697 that makes provision for the poor a government responsibility (in Goldie, *Locke*, 182–98). In other respects the proposal is quite harsh. Simmons (*Theory of Rights*, 335) correctly points out that we must be wary of drawing too much from this essay, as it was commissioned of Locke in an official capacity, which may have dictated its parameters. In *A Third Letter for Toleration*, Locke suggests some power in the magistrate to punish "corrupt manners" and "debaucheries" (416; 116–19, 202–24, 469).

[78]In a similar vein, Tarcov (*Education for Liberty*, chap. 3) draws a list of Lockean virtues out of *Some Thoughts Concerning Education*. Like the "civility" and "good

Education makes clear, he thought a good liberal citizen (we can assume that Locke regards the product of his education to be a model liberal citizen) would be benevolent toward others in ways that went beyond merely respecting their rights. Charity, for the most part, falls into this category.

Thus does Lady Masham's worry, that Locke's devotion to civility was not sufficiently appreciated, become understandable—both Locke's devotion to civility, and the underappreciation. The part of his philosophy devoted to public and economic affairs is deliberately built on a partial and minimal moral foundation. This foundation intentionally leaves many important moral precepts out of account, because such an arrangement best serves the common good. This gives us an answer on the level of principle to our quandary regarding Locke and charity. But it still leaves some questions unanswered. One, of great interest to contemporary liberals, concerns whether government has any right or duty to be charitable on behalf of society, to engage in wealth redistribution. That issue is tangential to our topic.[79] Another question, which neither Lady Masham, nor, I believe, Locke's own writings fully resolve, is, just how extensive he regards the individual's charitable duties to be, indeed how exactly they fit into his theory.[80] Locke has established that moral principles must be legislated, and enforced

breeding" of that work, these are not for the most part perfect duties, but are moral charges nonetheless. See also Marshall, *Resistance, Religion, Responsibility*, 294, 296–98, 446, 453; Myers, *Only Star and Compass*, 138, 152; Parker, *Biblical Politics*, 15, 56; Schouls, *Reasoned Freedom*, 135–37; Strauss, *Natural Right and History*, 213–14. This is one reason why Locke can be classified as a "perfectionist" liberal (Myers, *Only Star and Compass*, chap. 1). My analysis here does not answer (or even raise) the question whether Locke believed parts of natural-law morality over and above justice to be necessary to the health of the liberal state, though this is an important topic in liberal theory today (see, among many others, William Galston, *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State* [New York: Cambridge University Press, 1991]; Stephen Macedo, *Liberal Virtues: Citizenship, Virtue and Community in Liberal Constitutionalism* [New York: Oxford University Press, 1990]; Berkowitz, *Making of Modern Liberalism*; Thomas Spragens, *Civic Liberalism: Reflections on Our Democratic Ideals* [Lanham, MD: Rowman and Littlefield, 1999], chap. 8).

[79]This essay has focused on the duty of charity at the individual level, and its place in Locke's moral universe. There is no shortage of writing on Locke and the welfare state. A sampling: Laslett, introduction, 105–6; Marshall, *Resistance, Religion, Responsibility*, 377–83; Vaughn, *Economist and Social Scientist*, 112–19; Pangle, *Modern Republicanism*, 169; Zuckert, *New Republicanism*, 271; Waldron, *God, Locke, and Equality*, 7, 152–55. One might approach this question by considering that though "charity" is not part of "justice," it becomes obligatory under certain circumstances.

[80]Fagiani ("Distributive Justice") proposes some rules of charity derived from Locke, tending to a minimal interpretation of the duty. Tuck (*Natural Rights Theories*, 171–72) and Marshall (*Resistance, Religion, Responsibility*, 324, 377) propose more expansive rules. These deductions have merit, but are necessarily speculative.

by divine rewards and punishments, in order to be valid. If there are duties that are imperfect or optional, how are they enforced by God? In itself, this is no more problematic in Locke than in other theories that envisage both perfect and imperfect or supererogatory duties. The Scholastics had such a scheme; presumably their god rewards those who do more than duty requires, while punishing only those who fail to perform their perfect duties. Locke never makes his own understanding clear.

A more serious question for Locke stems from his differences with the Scholastics. If charity can interfere with the engine of prosperity—if charity and the common good are somehow at odds—how can charity be any part of natural law or God's intent? This problem was not entirely absent from Christian theology: to the extent that one recognizes the advantages of private property and commerce, as the Scholastics did, one realizes that a universal renouncement of worldly goods in the name of charity would not benefit mankind. The two must be balanced somehow. Similarly, though Locke strikes the balance between property and charity quite differently, though he believes that too great an emphasis on charity will interfere with the engine of prosperity, he nowhere indicates that prosperity requires the complete renouncement of charity. Lady Masham's recollections of Locke's private charitableness were based on his generosity toward the deserving poor, particularly the old and infirm who had led productive lives. They had "a right to live comfortably in the world," as she related Locke's view.[81] Such charity would hardly threaten the industry of the hale and hardy. What is unclear is how forcefully Locke might have pressed others to join him in this charity. If charity is a virtue, Locke never specifies what degree of it is a duty in individuals. The two places where Locke elaborates on this duty, "Venditio" and our passage from the *First Treatise*, are hard to generalize. They both involve cases that are at once extreme and easily remedied: dire need on one side and readily available relief on the other (see also *Questions*, 10, 223). How strong a duty of individual charity might exist in more nuanced cases? Here, Locke falls silent.

Simmons (*Theory of Rights*, 291, 328, 332) finds very strong charitable duties, but in my opinion does not take adequate account of the tiered nature of Locke's argument.

[81]Cited in Cranston, *Biography*, 425. See also Marshall, *Resistance, Religion, Responsibility*, 179, 325.