In the discussion of John Locke's concept of property, which lies at the root of his political theory, controversy prevails. Laslett records as the conventional judgment of Locke's view of property that it "described a natural, inalienable right"; this Laslett himself finds "exactly wrong." It has been suggested that Locke used the term "property" in two senses, both in the narrow one of "material belongings" and in a more extended sense including such ideal benefits as liberty and honor; but this distinction has been contested. With regard to the acquisition of property there is some lack of clarity concerning the significance of the labor theory of value ascribed to Locke.

As a contribution to the explanation of Locke's theory of property I propose in this paper to discuss his view on the acquisition of property. His opinion in this respect has to be seen against the background of the doctrines of the great teachers of natural law in the seventeenth century. We know that Locke possessed the works of Grotius and Pufendorf on the law of nature and made use of them. He especially admired Pufendorf, whose great treatise De Jure Naturae et Gentium (1672) he described as "the best book of its kind," better than the work of Grotius on War and Peace (1625). Hobbes was of less importance for Locke.

Pufendorf usually followed Grotius. His general view on the law of nature and the origin of rights is on the whole the same as that of Grotius. But regarding the right of property there

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4Laslett, 74, 137, 142f.
are some differences of opinion which are not without significance for our subject.

I. The Views of Grotius and Pufendorf.—The starting point for Grotius and Pufendorf was the assumption of the original liberty of man. Liberty implied equality. Everybody was sovereign within his own sphere. But he must not encroach upon the sphere of others. To do so constituted an iniuria. The fundamental precept of the law of nature (the will and commands of God) was to accord to everybody what belonged to him: suum cuique tribuere. This was not a command to exert oneself on behalf of others. The precept had a purely negative significance: to refrain from causing injury to one’s fellow men. That was to act justly. Grotius says that justice consists entirely in abstaining from taking that which belongs to others (alieni abstinentia).7

Thus each individual was supposed to possess, in the state of nature, a sphere of his own. By Grotius this sphere was called the suum, that which belongs to oneself. Every infringement on the suum was an iniuria. The consequence of an iniuria was that the principle of alieni abstinentia was no longer applicable in favor of the aggressor. Without committing an injury the offended person could now use violence against him to avert the attack, to recover what he had lost, or to extract compensation. The reaction need not be proportionate to the damage caused or threatened by the attack. If it was necessary to prevent an injury, even of the most trifling kind, the assailant might be killed.8

Everybody was, so to speak, surrounded by an invisible fence which marked off his sphere against others. If an intrusion was made or attempted, the invader forfeited the sacredness of his own person. He lost the protection of the fence and was nakedly exposed to the violence of the offended party. But in the state of nature existence was precarious. Society was formed for the purpose of protecting the suum.9 The participants to the compact forswore the license of using force themselves. Vindicating the suum was entrusted to the community acting on behalf of injured parties under the direction of the courts, exception being made only for situations where the community could not intervene.

8Grotius, 1,2,1,5; Pufendorf, De iure naturae et gentium, cited from the Frankfort ed. (1744) by G. Mascovius, 2,5,3.
9Grotius, 1,2,1,5.
As will be seen, the two great principles governing relationships in the state of nature were the sacredness of the *suum*, on the one hand, and the license to react with violence against injuries, on the other. The same principles obtained in society. But force had now to be used, on principle, by the community alone. The pivot of the system was the *suum*. Everything depended on how it was circumscribed. This was what gave substance to the principle *suum cuique*. We shall now see how Grotius and Pufendorf defined the *suum*. Since there was a certain difference of opinion between them, we had better first discuss Grotius alone.

1. *The suum according to Grotius.* — In the language of Grotius the term *suum* (*meum, nostrum*) denotes that which "belongs" to a person. An equivalent expression was "to be proper" to somebody (*alicui proprium esse*). In the state of nature that which belonged to an individual was, in the first place, his life, limb, and liberty, but also his reputation and honor. Consequently, every attack on the life, limb, liberty, reputation, or honor of somebody was an injury to him. Furthermore the *suum* included one's own actions. They were coordinated by Grotius with body, limbs, reputation, and honor. Therefore they were counted as belonging to a person in the same sense as his life and limb, etc.¹⁰

The positive content of liberty (*libertas*) was the power one had over one's own actions (*potestas in se*). But the power over a certain action could be transferred to another person. In this way the *suum* of one person could be diminished and that of another correspondingly enlarged. The transference implied the establishment of a *right* for one person over another. The means of effectuating the transference was an act of will. Since the power over one's own actions resided in the will and everybody was sovereign within his own sphere, the will alone could detach part of its power from itself and bestow it on somebody else. But acceptance was necessary. The will of the recipient must be active in order to include the transferred power within its own domain.

This was the import of a contract. The *force créatrice* in a contract was the will of the parties. But for practical reasons the inner action of will could not be sufficient in human relations. The will had to be made manifest in some appropriate way. A *signum* or *declaratio voluntatis* was necessary. A contract therefore was made up by two declarations of will, promise and acceptance. The promisor alienated part of his liberty (*particula libertatis*) and transferred it to the opposite party who took possession of it. The promisee thereby acquired a

¹⁰Grotius, 1,2,1,5: in the state of nature *vita, membra, libertas* were propria cuique, 2,17,2,1.
power over a certain action by the promisor. If the promisor, for instance, engaged to pay a sum of money, he lost the power of freely deciding whether or not to perform this act. The promisee could now request him, or command him, to do so. It then became necessary for the promisor to comply.\textsuperscript{11}

The necessity was not of a factual kind. The promisor could actually refuse payment. But it was morally necessary for him to pay. He had deprived himself of the inner freedom to choose between different modes of acting. He was morally speaking in a state of subjection to the promisee. The latter held a moral power over him, a \textit{qualitas} or \textit{facultas moralis}. This was the significance of a right, \textit{ius}, in the proper sense. All rights in the sense of moral faculties derived, directly or indirectly, from promises, that is, from acts of will through which parts of the original liberty were transferred to others. An exception was made only with regard to the right of parents over their children, which the parents possessed because they had generated the children.

In the state of nature there were no rights in the sense of moral faculties except in so far as agreements had been concluded and parents had rights over their children. Everybody simply had his sphere of \textit{suum} and was at liberty to vindicate it by force against actual or threatening aggression. But through agreements the sphere of the \textit{suum} could be extended so that it came to include more than life, limb, etc. Every \textit{facultas moralis} that one had acquired through an agreement also belonged to the \textit{suum}.\textsuperscript{12} The general rule of the consequences of an \textit{iniuria} was applicable. Disobedience to the request of the possessor of a moral faculty was an injury done to him, and he was entitled to react with force, in society with the help of the courts. The connotation of the term \textit{suum} was "that which belongs to the personality": life, limb, liberty, reputation, honor, and the moral faculties over other people acquired by agreements. The connotation of the word \textit{iniuria} was "attack on the personality" of somebody.\textsuperscript{13}

The right of property was a moral faculty used against other people in requesting them to refrain from interfering with the object owned and to restore it if they had taken it. This right, like every other right, rested on an agreement. God had given to mankind all things and animals on earth to use (Gen. 1:29, 30; 9:2). Originally all men possessed everything in common. The right of property was

\textsuperscript{11}Grotius, 2,11; Hägerström, 63ff.; \textit{Law as Fact}, 276ff.

\textsuperscript{12}Grotius, 2,17,2,1.

\textsuperscript{13}The usual translation of the maxim \textit{suum cuique tribuere} is "to render to every man his due." This suggests that the maxim enjoined the fulfillment of a duty towards others. Such was not its meaning according to Grotius. He interpreted it as saying that one should abstain from that which belongs to others—\textit{aleni abstinentia}. Pufendorf's interpretation was similar; see below, note 26.
introduced when this state of community of goods was found inconvenient. The agreement could either be an express compact to divide existing resources or a silent convention that everybody should have as his own what he had occupied.\textsuperscript{14} Evidently what one acquired in one way or other was included in the \textit{suum}. But even before the introduction of the right of property the sphere of the \textit{suum} could be enlarged. From God's original grant it followed that everybody could take for himself what he desired and could consume. This general practice, Grotius says, filled the role of the right of property. If somebody had appropriated an object it was an injury to deprive him of it.\textsuperscript{15}

This sort of appropriation is only briefly mentioned by Grotius. He does not enlarge on the subject. It would seem as if he only had in mind taking things needed for immediate consumption or else for personal use. He does not explain how the appropriation was accomplished. The verb that he employs is \textit{arripere}, not the technical \textit{occupare}. He obviously means "laying hold of" something, taking it to oneself. This could not give rise to the right of property: a \textit{facultas moralis} could only originate from an agreement. But the object possessed was included in the \textit{suum}.

Grotius here makes use of a natural and common idea. We can observe it in children. When a child has picked some strawberries, they are said to be "his" or "hers." If they are taken from the child by a naughty boy, this is acutely felt, not only because of the loss of the strawberries. The act is experienced by the child as an attack on itself, that is, on its personality. In this way we feel, all of us, with regard to objects that "belong" to us. They are supposed to be joined to ourselves. We have the feeling of our personality being in some inexplicable way extended to encompass the objects we own. Therefore, if anything is taken from us or damaged, we have the experience of an attack on ourselves. The feeling differs, of course, in strength depending on circumstances. It is especially pronounced with regard to cherished things in daily use or connected with memories. In the case of land it can rise to a high degree of intensity. If a farmer is deprived of the soil which he and his forefathers have cultivated for generations, he will feel it as a severe amputation.\textsuperscript{16}

2. Pufendorf on the acquisition of property.—Pufendorf gives very clear expression to the idea of uniting an object with one's personality. Discussing the transference of the right of property he stresses that the concourse of the will of both parties is necessary. The transferor's

\textsuperscript{14}Grotius, 2,2,1,5. \textsuperscript{15}Grotius, 2,2,2,1. 16William James has written a few striking pages on the extension of personality in his \textit{The Principles of Psychology} (London, 1891), I, 292f.
volition is not sufficient. The recipient must consent. The object is physically separated from me, he says, and it would be out of order if it should be, so to speak, adjoined to me unless I embrace it with my will and consent.\footnote{Pufendorf, 4,9,2.} The connection between my ego and the object is spiritual. To establish it an act of will is required. But Pufendorf does not make the same use as Grotius of the idea of appropriation. Like Grotius he holds that the right of property was introduced by a compact. But he differs from Grotius with regard to the preceding stage. He denies the possibility, assumed by Grotius, of uniting an object with the suum by means of simple appropriation. An antecedent agreement is always necessary. Pufendorf adheres rigidly to this principle.

The argument was as follows. If simple appropriation were really sufficient to make the object mine, this could only be so in consequence of the terms of the original grant. It would presuppose that God had given men in common a right in a positive sense to all things on earth. Pufendorf's meaning is that God must have given men a common facultas moralis with regard to everything on earth. But this was not the case. The things on earth were given to mankind in the sense only that all men were allowed to use them. Nobody had more right to them than another. Community of goods existed only in this negative sense (Pufendorf, 4, 4, 2).

It was indeed impossible that men could have a facultas moralis in common over things on earth. For a facultas moralis is a power over another man's actions. The force of the right of property (vis dominii) is such that we are masters over things that belong to us and can prohibit others from using them. God did not give the things to mankind in this sense. An indication of this is that God allowed the animals to use and consume things (Gen. 1:30). But there is no right of property for animals. If one animal puts something away for the future, the others are not prohibited from taking it (Pufendorf, 4, 4, 5). Pufendorf also adduces the case of Adam. He was allowed to make use of everything. But he had not the right of property to anything because there was nobody over whom he could have a facultas moralis. Therefore, if one of his sons collected more apples than he was permitted to, he did not steal; he was only disobedient to his father (Pufendorf, 4, 4, 12).

In this way Pufendorf shows that no facultas moralis could be directly derived from the original grant to mankind. It was left to men's own judgment how special rights were to be established (Pufendorf, 4, 4, 4). An agreement among them was necessarily required. Since men were equal it was impossible to understand how the mere physical act of occupation could have the effect of excluding others from an
object. An agreement must first be concluded if occupation were to create an individual right to an object (Pufendorf, 4, 4, 5). This is why it was necessary to assume that the right of property had been introduced by the human will.

When speaking of the introduction of property Pufendorf has in mind the general establishment of property rights. But like Grotius he discusses the situation on the earlier stage when community of goods prevailed. Men could not make use of the fruits of the earth without collecting them. But it would be useless to collect the fruits if others were permitted to take them away. Therefore, the first convention among mortals is understood to have been to the effect that if someone had taken possession of things with the intention of making use of them, nobody should take them from him. If there had been no such convention, men would have had to abstain from using anything at all (Pufendorf, 4, 4, 5; 4, 4, 13).

At this pristine stage the community of goods was "tempered." There was a mixture of community of goods and right of property. The substance of things was common to all. But the fruits belonged to him who had collected them. The oak belonged to nobody. But if I picked up an acorn, it became mine (Pufendorf, 4, 4, 13). This followed from the primaeval convention. Only gradually were separate rights of property established by compacts, in response to the requirements of changing conditions (Pufendorf, 4, 4, 6 and 12).

To sum up, Pufendorf's argument is that the good things on earth could be of no use to men unless they acquired a right of property in them; that this right could not be directly derived from God's original grant; that it could not be created solely through occupation; and that an agreement among men was necessary to give rise to the right of property. He draws the conclusion that the principle of suum cuique did not become applicable with regard to things until it had been determined through a convention what belonged to whom (Pufendorf, 4, 4, 14).

Thus Pufendorf did not accept the idea of Grotius that the suum could be extended to encompass external objects without a preceding convention (Pufendorf, 4, 4, 9).

3. Locke on the acquisition of property.—Locke makes the same general assumptions as Grotius and Pufendorf. Men are naturally "in . . . a State of perfect Freedom to order their Actions, and dispose of their Possessions, and Persons as they think fit" (II, 4); Man is "absolute Lord of his own Person and Possessions" (II, 123). There is "a State also of Equality, wherein all the Power and Jurisdiction is reciprocal, no one having more than another" (II, 4).

But the state of nature, though a state of liberty, is not a state of
license. It has "a Law of Nature to govern it, which obliges every one: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions" (II, 6). This is the principle suum cuique tribuere. At the same time as being the dictates of Reason, the law of nature is the will and commands of God (II, 135).

The law of nature is violated when somebody makes an attack on the life, liberty, or possessions of another. The consequence is that he exposes himself to the reaction of the offended party. He forfeits the protection of the law of nature. Locke's mode of expressing this is that the offender puts himself into a state of war. He "declares himself to live by another rule than that of reason" (II, 8). He has "declared War against all Mankind, and therefore may be destroyed as a Lyon or a Tyger" (II, 11). He "has exposed his life to the others Power to be taken away by him [the offended party], or any one that joyns with him in his Defence" (II, 16).

Every one has "a right to punish the transgressors of [the Law of Nature] to such a Degree, as may hinder its Violation" (II, 7). In one passage Locke claims that the reaction has to be proportionate to the transgression (II, 8). But later this limitation seems to be discarded. I may kill a thief, Locke says, "when he sets on me to rob me, but of my Horse or Coat" (II, 19).

The state of nature is, however, unsafe. Men will not accept the law of nature as "binding to them in the application of it to their particular Cases." Moreover there are no independent judges; everybody is a judge unto himself. But he may lack the power to give due execution to the law of nature (II, 124).

These are the reasons why men are willing to quit the state of nature. They unite "for the mutual Preservation of their Lives, Liberties and Estates," which Locke calls "by the general Name, Property" (II, 123). The preservation of their property is "the great and chief end" of "Mens uniting into Commonwealths, and putting themselves under Government" (II, 124).

This corresponds to the statement by Grotius that society has been formed with the object of preserving the suum for everybody. What Grotius calls the suum Locke calls a man's property. Originally he used the term "propriety," though he later exchanged it in most places for "property."18 "Propriety" seems to have been the usual word in the seventeenth century. It was employed by Hobbes, Filmer, and others. The connotation was primarily "that which is proper to a

18 Laslett, 101 and notes to 213 and 310.
person” (= proprium alicui, suum) or “that which belongs to somebody.”

What “belonged” to a person was not in the first place physical things. It was his life, limb, and liberty. In the Second Treatise Locke says: “By Property I must be understood here, as in other places, to mean that Property which Men have in their Persons [emphasis supplied] as well as Goods” (II, 173). This was in accordance with seventeenth-century usage. “Of things held in propriety,” Hobbes says, “those that are dearest to a man are his own life, and limbs; and in the next degree (in most men), those that concern conjugal affection; and after them riches and means of living.” Laslett records that Locke’s contemporaries could talk of the Protestant religion established by law as their “property.”

Richard Baxter, writing before 1680, said that every man was born “with a propriety in his own members, and nature giveth him a propriety in his Children, and his food and other just acquisitions of his industry”; he also said that “men’s lives and Liberties are the chief parts of their propriety.”

Locke too regarded life, limb, and liberty as the core of one’s property (II, 123). But just as Grotius did, he thought that the sphere of property, or suum, could be extended to encompass physical objects. The problem of the acquisition of property was the problem of how such enlargement could be achieved. The solution was presented in the famous ch.V of the Second Treatise.

As mentioned above, it has been suggested that Locke used the term “property” in two meanings, both as signifying “material possessions” or “units of the conveniences or necessities of life,” and—in an extended meaning—as “Lives, Liberties and Estates.” (Laslett, 84, 101, and Viner above, note 3.)

Locke’s use of the word is not consistent. There are two connotations which are not distinguished by Locke himself. One is “that which belongs to a person” or “that which is a person’s own.” In this sense the word “property” refers to the objects included within the spheres of the suum. The other connotation appears, for instance, when Locke talks of how property in “the Earth itself” is acquired (II, 32). Here “property” signifies a right to land, not the object of that right.

The “extended” meaning suggested by Viner refers to the denota-

19Hobbes gives a translation of the adage suum cuique tribuere. Referring to the “ordinary definition of justice in the Schools” that justice is “the constant will of giving to every man his own,” he says: “And therefore where there is no own, that is no propriety, there is no injustice. . . .” (Leviathan, ed. M. Oakeshott [Oxford, 1951], ch. 15). Here is direct evidence that “propriety” was used as the English word for suum.

20Leviathan, ch. 30.

21Laslett, 101.

22Laslett, 101 and note to 305. cf. OED, v. propriety.
tition of the word “property” when used in the former sense. But it is turning things upside down to say that the meaning is “extended” when life and liberty are comprised within a person’s property. Life, limb, and liberty are from the beginning his property. But the sphere of his property can be extended to encompass material things.

II. The biblical foundation.—The ultimate ground why men could acquire things as their own was the original grant of God to mankind. This was the common assumption of Grotius, Pufendorf, and Locke. Only by the will of God could men have come to possess any things on earth as belonging to themselves.

Therefore, the terms of the original grant were of fundamental importance. Since they were set out in Gen. 1:28, 29 and 2:9, the interpretation of these passages was decisive for the basis of the doctrine of property.

On this point there is no discernible difference of opinion between Grotius and Pufendorf, on the one hand, and Locke, on the other. All of them held that God had given all animals and things on earth to men “in common” without any special right for anybody. Locke had therefore no occasion to argue against Grotius or Pufendorf concerning God’s grant. But Filmer had a different opinion concerning its terms. Locke in his First Treatise put forward his arguments against Filmer.

Filmer interpreted Gen. 1:28 as implying that Adam by donation from God “was made the general lord of all things” with “private dominion to himself” and the right of “donation, assignation or cession.” At the time of the Flood Noah was left the sole heir of the whole world. It is not probable, Filmer says, that God abrogated his donation to Adam and instituted a community of all things between Noah and his sons, as Selden would have it. Filmer finds it most reasonable that “Noah himself, as lord of all, was the author of the distribution of the world, and of private dominion.”

Locke refutes this theory by applying a principle of the common law to the original grant (I, 85). The argument is that if God had made a personal donation to Adam of the whole world, Adam’s rights could not have been inherited by his children; for a “positive grant” must be interpreted strictly in accordance with the express words used and cannot confer any right beyond that. Therefore, at Adam’s death the donation would have reverted to God. This, Locke obviously thinks, would be an unacceptable conclusion.

Filmer has nothing more of a positive kind to say on the origin of property. Locke had therefore no reason to argue any more against him on that question in the First Treatise. As we shall presently see,

Patriarcha, 63ff.
there is a brief reference to Filmer in the *Second Treatise*. For the rest Filmer's doctrine is without importance for Locke's theory of property.

Laslett contends that Locke's chapter on property was written with Filmer's works in mind, and as a direct refutation of them. This is unlikely. In Laslett's opinion Locke had in mind a passage in *Patriarcha* where Filmer argues against the theory that the right of property was introduced by a compact. The passage runs as follows (273):

> Certainly it was a rare felicity, that all men in the world at one instant of time should agree together in one mind to change the natural community of all things into private dominion: for without such a unanimous consent it was not possible for community to be altered: for if but one man in the world had dissentied, the alteration had been unjust, because that man by the law of nature had a right to the common use of all things in the world; so that to have given a propriety of any one thing to any other, had been to have robbed him of his right to the common use of all things.

This is one of the many arguments which Filmer proffers against Grotius' assumption of the original community of goods. Filmer wants to show that if community of goods had really existed from the beginning, it could not have been replaced by private property through a compact. For this would have required consent by every man on earth, which, Filmer implies, could never have been obtained. Therefore, the theory of original community of goods is false. This theory Filmer held to be "an error which the heathens taught" (*Patriarcha*, 262).

If Locke had intended to refute Filmer's doctrine in ch. V of the *Second Treatise*, he would have argued in support of his own theory that God had given the earth to men in common. But there is nothing in ch. V on that point besides a few words in the beginning (II, 25).

As regards Filmer's argument against Grotius that the right of property could not have been instituted by a compact, Locke could have had no objection. He reasoned in a similar way. It would have been impossible, he thought, to obtain the consent of all men on earth (II, 28).

III. Locke's problem.—Locke starts his exposition on the origin of property by stating his fundamental thesis that God had given the earth to mankind in common (II, 25). This is evident both from reason and revelation. Reason tells us that men, being once born, have a right to their preservation and consequently to such things as nature affords for their subsistence. Revelation is very clear to the effect that God, as King David says (and he might be supposed to understand
the donation, I, 28) “has given the Earth to the Children of Men” (Psalm 115).

Locke further brushes aside Filmer’s theory, criticized in the First Treatise, that God gave the world to Adam and his “Heirs in Succession” to the exclusion of “all the rest of his Posterity.” On that supposition only a universal monarch could possess property, which Locke plainly finds absurd. But there was another, far more serious difficulty in the demonstration of origin of private property in things. If the earth had been given to men in common, how had it come to be that the community of goods thus established had been replaced by private property rights? Unless valid titles to private rights could be shown, the actual distribution of possessions would seem to rest on robbery; and justice would require the return to the community of goods. Locke had no intention of acceding to such claims.

Grotius and Pufendorf had solved the difficulty by deriving the institution of private property from a compact through which the community of goods had been set aside. But there was another reason too for them to require an agreement as the foundation of the right of property. Dominium, as every other right, was a facultas moralis. It was a moral power in the owner over the minds of all other men to request them to abstain from the object and restore it if they had gained possession of it without the consent of the owner. No facultas moralis of one man over another could, however, be established without his consent.

Locke rejects the compact theory of Grotius and Pufendorf. His argument is as follows. Like Pufendorf Locke holds that men in the state of nature must be able to “appropriate” things necessary for their sustenance. “ Appropriation,” which is a word frequently employed by Locke in his chapter on property, literally means “making a thing proper to oneself,” that is, making it one’s own. “Fruits” and “Beasts,” Locke says, “being given for the use of Men, there must of necessity be a means to appropriate them some way or other before they can be of any use, or at all beneficial to any particular Man” (II, 26).

The idea is that a man cannot use a thing for his own benefit without injury to others unless that thing, being by nature common to all, has first been made his own. God cannot have put man on earth under such conditions that he would be unable to support himself without breaking the law of nature, God’s own will. Therefore, God must have instituted a means of appropriating the necessities of life. But appropriation cannot have presupposed general agreement. It would have been patently impossible to obtain the consent of all men on earth. Consequently, “if such a consent as that was necessary, Man had starved, notwithstanding the Plenty God had given him” (II, 28).
This is a retort to Pufendorf, who, without exception, had required general consent for appropriation in the state of nature. This compact theory cannot be upheld, Locke thinks.

The real problem for Locke was, therefore, how to explain the origin of property without interposing a fictitious compact. The solution was facilitated for him because there was a significant difference between his concept of a right and that of Grotius and Pufendorf. Locke did not adopt the concept of facultas moralis. It was not a basis of his reasoning as it was for Grotius and Pufendorf. As far as I know he never criticized this concept. But he ignored it. In the Two Treatises it is never mentioned or presupposed. This difference is highly important. It made it easier for Locke to explain the origin of private property without assuming a compact. Still the problem remained. How could the original community of goods have been superseded by private rights to land and goods without an agreement to divide the common or to allow occupation? This must have been brought about without inflicting injury on anybody. Locke had to steer between the Scylla of the compact theory of property and the Charybdis of robbery.

IV. Appropriation.—To solve the problem Locke made use of the same idea of appropriation as Grotius employed, but on a far larger scale. Grotius allowed appropriation without the consent of others only in the earliest stage of the world and presumably for very limited purposes; it lost its importance with the introduction of dominium by way of convention. Locke, on the contrary, made appropriation the beginning and foundation of the right of property. In immediate continuation of his statement that there must be some means of appropriating the necessities of life Locke explains by an example what appropriation implies. "The Fruit, or Venison, which nourishes the wild Indian, who knows no Inclosure, and is still a Tenant in common, must be his, and so his, i.e., a part of him [emphasis supplied], that another can no longer have any right to it, before it can do him any good for the support of his Life" (II, 26).

Here we have a most unequivocal expression of the idea that the personality is extended to encompass physical objects. The deer that the Indian has killed is his in the sense that it is a part of himself. Locke is not encumbered by the notion that dominium is a moral faculty against all other men. He only maintains that the object is included within the sphere of the personality, or within the suum, as Grotius would have said, by being appropriated. But when the object has been included within that sphere, it will be an injury to the possessor to deprive him of it. For his own person is exclusively his own. "Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a Property in his own Person. This no Body has any
Right to but himself” (II, 27). Therefore, an attack on that which belongs to the personality constitutes an injury; and the injured party is licensed to react with violence.

Locke goes on to explain the concept of appropriation. His idea is that I infuse something of my personality into an object in spending some “labour” on it. For a man’s labor is his own (II, 27):

The Labour of his Body, and the Work of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joined to it something that is his own, and thereby makes it his Property. It being by him removed from the common state Nature placed it in, it hath by this labour something annexed to it, that excludes the common right of other Men. For this Labour being the unquestionable Property of the Labourer, no Man but he can have a right to what that is once joyned to, at least where there is enough, and as good left in common for others.

The “labourer” has mixed his labor with the object; he has joined something to the object that is his own; by his labor something has been annexed to the object. In this way the object has been removed out of the state of nature. It contains something more than it does by nature alone because the personality of the laborer has been infused into it. Therefore, it has become the property of the laborer. Since the labor is the unquestionable property of the laborer, no other man can have any right to that to which his labor has been joined. The exertion through which a thing is made my own need not necessarily be labor in the usual sense of the word. If “the wild Indian” kills a deer with his arrow it becomes his. The case would be the same if he picks an acorn from the ground: this act makes the acorn his own. “Labor” is = action (II, 44). The term corresponds to actio in the language of Grotius and Pufendorf.

The example with the acorn is especially illuminating. Locke borrowed it from Pufendorf (4,4,13). But he makes use of the example against Pufendorf in order to show how things unquestionably can be made our own by apprehension without preceding compact between all men. It is his chief example in this respect. Locke says (II, 28):

He that is nourished by the Acorns he pickt up under an Oak, or the Apples gathered from the Trees in the Wood, has certainly appropriated them to himself. No Body can deny but the nourishment is his. I ask then, When did they begin to be his? When he digested? Or when he eat? Or when he boiled? Or when he brought them home? Or when he pickt them up? And 'tis plain, if the first gathering made them not his, nothing else could. That labour put a distinction between them and common. That added something to them more than Nature, the common Mother of all, had done; and so they became his private right.

24Laslett, note to 306.
What Locke here calls "labour" is mere apprehension of an object. The acorn becomes the property of the collector when he picks it from the ground. This is the moment when something of his personality is infused into the acorn. Locke sums up his theory in the following expressive words (II, 44):

From all which it is evident, that though the things of Nature are given in common, yet Man (by being Master of himself, and Proprietor of his own Person, and the Actions or Labour of it) had still in himself the great Foundation of Property.

Man's power over his own person and actions (his potestas in se in the language of Grotius and Pufendorf) is the great fountain of his right of property in things given by God in common to all; for by laying hold of a thing under certain circumstances in the state of nature he mixes something of himself with the object, removes it out of the state of nature, and makes it his own. "He that so employed his Pains about any of the spontaneous Products of Nature, as any way to alter them [emphasis supplied], . . . by placing any of his Labour on them, did thereby acquire a Propriety in them" (II, 37).

V. Apprehension and enclosure.—Locke never states with exactitude how the act of appropriation is to be performed. He only gives a few examples. They indicate, however, when it seems natural to him to say that an object has been "appropriated" by somebody. Appropriation in Locke's sense is definitely not to be identified with "occupation" in current natural law doctrine. Occupation could only take place with regard to things that belonged to nobody (res nullius), except when people had made an agreement that common things might be occupied by individuals. But Locke had to show how things could be made one's own without preceding agreement.

In the case of movables Locke obviously thought that appropriation could be achieved by apprehending an object for one's use. He works with the vague notion of taking possession of something. A reflex of the legal doctrine of possession is evident when he talks of "the Grass my Horse has bit: the Turfs my Servant has cut" as being mine (II, 28). The taking of possession through an intermediary like a servant is a well-known proposition of law. Physical apprehension was not always necessary. "Even amongst us the Hare that any one is Hunting, is thought his who pursues her during the Chase" (II, 30). Locke adopts the opinion of the country gentlemen of his time. Other examples are drawing water from a common fountain (II, 29) and catching fish "in the Ocean, that great and still remaining Common of Mankind" (II, 30). Locke appeals to the reader: can anyone deny that the water in the pitcher becomes his who has drawn it and the fish his who has caught it? The argument is throughout of this kind. It con-
sists in referring to certain common and natural, but not strictly legal, ways of looking at things and speaking about acquisition. The prototype of such reasoning is Cicero’s saying that the theater is common to all, but a seat belongs to him who has occupied it.\(^{25}\)

Having thus explained the appropriation of movables (II, 26–31) Locke turns his attention to “the chief matter of Property,” which is “the Earth itself; as that which takes in and carries with it all the rest” (II, 32). It is plain, he thinks, that property (= the right of ownership) in land is acquired in the same manner as property in movable things. This means that a piece of land becomes a man’s own when he cultivates it. He then lays out “something upon it that was his own, his labour,” he “thereby annexed to it something that was his Property, which another had no Title to, nor could without injury take from him” (II, 32). The basic idea is the same as with regard to movables. One infuses something of oneself into the land by cultivating it. Thereby it is removed out of the state of nature and joined to the personality of the cultivator. To deprive him of it is an injury.

In this connection the word “labour” seems to have its usual connotation. Much is made of man’s labor on the earth for its improvement. God commanded man to labor, and the penury of his condition required him to do so. Therefore both “God and his Reason commanded him to subdue the Earth, i.e. improve it for the benefit of Life” (II, 32). This makes it quite obvious that the land, in the state of nature, becomes the property of him who lays out his labor on it by cultivating it. “God, by commanding to subdue, gave Authority so far to appropriate” (II, 35).

But Locke has another idea too of how land was appropriated. There must be a limit to the appropriation made by one man through his work. On this question Locke says (II, 32): “As much Land as a Man Tills, Plants, Improves, Cultivates, and can use the Product of, so much is his Property. He by his Labour does, as it were, inclose it from the Common.” Here the work on the land is represented as accomplishing enclosure. In the same paragraph “appropriating” is expressly equated to “inclosing” (“he cannot appropriate, he cannot inclose”). The identification of “inclosing” and “appropriating” recurs in II, 35 (“inclose or appropriate”). The “wild Indian” knows “no Inclosure,” that is, no private property rights to land (II, 26). On the measures governing the possession of land it is said: “Whatsoever he tilled and reaped, laid up and made use of, before it spoiled, that was his peculiar Right; whatsoever he enclosed, and could feed, and make use of, the Cattle and Product was also his” (II, 38). In the inland parts of America, where there could be no hope of commerce

\(^{25}\)De finibus bonorum et malorum 3,20,67.
with other parts of the world, the land would not be worth "the in-
closing" (II, 48).

As Laslett points out, Locke is using the language of agrarian en-
closure in England.26 The lords of manors, profiting from a dubious
rule of the common law, appropriated parts of the manorial "waste"
or "common" by enclosing it for their own benefit.27 This method of
acquiring private rights of property in common lands Locke trans-
planted to an early age. Doing so is a typical example of his way of
using familiar ideas and customs to substantiate his contention that
private rights of property could be acquired in the state of nature
without preceding agreement. The underlying meaning must have
been that a man annexed a piece of land to his personality by enclos-
ing it.

VI. Avoiding injury.—The theory of appropriation needed a com-
plement. Appropriation presupposed that no injury was inflicted on
others. How could that be explained? If all things on earth were com-
mon, taking something for one's own use would seem to imply an
injury to all fellow-men. The answer is very simple. No injury is com-
mited when there is enough left for others. Considering "the plenty
of natural Provisions there was a long time in the World, and the few
spenders," there could be then "little room for Quarrels or Conten-
tions" about property (II, 31). No man could consume more than a
small part; "so that it was impossible for any Man . . . to intrench
upon the right of another." That measure "did confine every Man's
Possession, to a very moderate Proportion, and such as he might
appropriate to himself, without Injury to any Body in the first Ages
of the World" (II, 36). The sphere of "mine" could be extended so as
to include both land and movables as long as other people could do
the same without colliding.

VII. Enlarging property.—So far Locke has explained how men
could appropriate the fruits of the earth, animals, and the soil itself
in the state of nature. He referred to the first few centuries of the
world, when there was still a plentiful supply of everything man
needed (including some parts of the world, such as America, where the
situation was still the same). But the explanation was patently not
capable of justifying the actual distribution of property in a densely
populated country like England. Undoubtedly it was Locke's inten-
tion to show that this distribution of property was not contrary to the
law of nature.

Locke, of course, did not contend that the titles of English land-
owners could be traced back to original enclosure in the state of

26 Notes to 306, 308.
nature. He reasoned in the abstract on how property in material things could be justly enlarged beyond the narrow limits set by the requirement that enough should be left for others. The argument proceeded in three steps.

First, he put another limit on appropriation besides the requirement that enough should be left for others. This was that one must not appropriate more than was needed for one’s own use. “Nothing was made by God for Man to spoil or destroy” (II, 31). To let something spoil was to offend against the common law of nature, and the culprit was liable to be punished (II, 37). (Somewhat illogically Locke adds that “he invaded his Neighbour’s share, for he had no Right, farther than his Use called for any of them [Fruits and Venison].” The neighbor’s share was not necessarily invaded because a man collected more fruits than he could consume; there might be enough left for others to collect as much as they could make use of.)

Secondly, the limitation by usefulness became in fact the means for Locke to extend the possibility of acquiring goods. For later on Locke gave a wide meaning to “making use of.” It was not restricted to personal consumption (including needs of the family, we must suppose). A man could “use” things by bartering them away for other things before they spoiled (II, 46):

He that gathered a Hundred Bushels of Acorns or Apples, had thereby a Property in them; they were his Goods as soon as gathered. He was only to look that he used them before they spoiled; else he took more than his share, and robb’d others [the same illogicality]. And indeed it was a foolish thing, as well as dishonest, to hoard up more than he could make use of. If he gave away a part to any body else, so that it perished not uselessly in his Possession, these he also made use of. And if he also bartered away Plumbs that would have rotted in a Week, for Nuts that would last good for his eating a whole Year, he did no injury; he wasted not the common Stock; destroyed no part of the portion of Goods that belonged to others, so long as nothing perished uselessly in his hands.

A man could only have gathered and hoarded very limited amounts of acorns, or fruits, or grain, etc. But he could exchange such goods for durable things that could be preserved indefinitely without inconvenience. Locke continues by saying:

Again, if he would give his Nuts for a piece of Metal, pleased with its colour; or exchange his Sheep for Shells, or Wool for a sparkling Pebble or Diamond, and keep those by him all his Life, he invaded not the Right of others, he might heap up as much of these durable things as he pleased; the exceeding of the bounds of his just Property not lying in the largeness of his Possession, but the perishing of any thing uselessly in it.

The third step in the argument is that men have made the in-
equality of possessions practicable by introducing the institution of money. Locke held the metallistic theory of money; he identified a monetary unit, as the pound sterling, with a quantity of precious metal, gold or silver. Money is a lasting thing that can be kept without spoiling, he says. The tacit agreement of men has put a value on it (II, 36, 50). By mutual consent men take it in exchange for “the truly useful, but perishable Supports of Life” (II, 47). Thus the invention of money gave men the opportunity to continue and enlarge their possessions. No limits were set to this. Gold and silver may be hoarded “without injury to any one, these metalls not spoiling or decaying in the hands of the possessor” (II, 50). Therefore a man might acquire more land than he can use himself. For he can sell the surplus of its produce for money that he might keep without inflicting injury on anybody else.

VIII. Compact theory revived.—Locke says that men have agreed “to disproportionate and unequal Possession of the Earth” by the introduction of money because money “has its value only from the consent of Men” (II, 50). This “inequality of private possessions” men have made practicable irrespective of the formation of society (“out of the bounds of Societie”) and “without compact.” It has been achieved “only by putting a value on gold and silver and tacitly agreeing in the use of Money” (II, 50).

Locke persists in rejecting the compact theory concerning the origin of property, because he negates the existence of a direct agreement as to the division of the earth. But indirectly an agreement is nevertheless taken to be the basis of the actual distribution of property, namely, the agreement to use money. The inequality of possessions is expressly grounded on that agreement. Moreover, in society the property of private men has been regulated by laws (II, 45, 50). But the laws derive their binding force from the social compact. Indirectly, therefore, the distribution of property is based on agreement. In this sense the compact theory is ultimately revived. The distribution of property through the introduction of money and through positive law has superseded that distribution which derived from apprehension and enclosure in the state of nature.

Now this investigation has reached its end. But there is a prominent feature in Locke’s theory of property that has not been examined here: the emphatical assertions that the value of things is mostly due to the labor spent on them. It is labor indeed “that puts the difference of value on every thing,” Locke says (II, 40). This contention is evidently connected with the theory of property. But the nature of the connection is problematical. The usual interpretation is that Locke’s

28Cf. my The Problems of the Monetary Unit (New York and Uppsala, 1957), 81ff.
theory of property is based on the labor theory of value. For my own part I cannot share this view. I have come to the conclusion that the relationship between the value propositions and the theory of property must be defined in a different way. But the question is rather complicated. To discuss it would require a separate article.

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