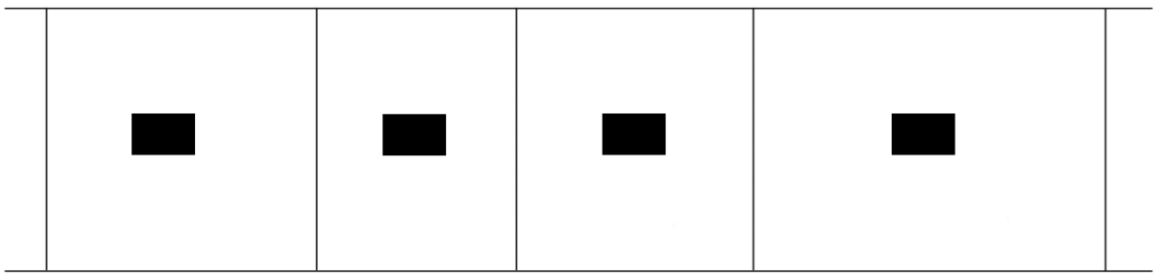
FROM MARX TO GROTIUS AND FROM GROTIUS TO MARX

Richard Gunn

The present paper abandons the safe ground of conceptual analysis and ventures into a hinterland where ideas and images, literal readings and metaphors, concepts and conceptions become inextricably mixed. The ground in this hinterland is proverbially treacherous, and political theorists – or, rather, analytical political theorists – have done their best to avoid it. My sense is that they do so at their peril because they turn their back on thought-processes and thought-patterns which colour the extant political world.

The subject-matter of my paper is a thought pattern of a half-metaphorical and half-conceptual kind. The thought pattern is that of bourgeois individualism. I open my paper with a diagram which indicates the pattern's overall shape:



In form, the diagram resembles a row of suburban bungalows in their gardens. Here, without offering general comment on whether the resemblance is telling, I draw upon it to explain how features in the diagram are to be seen. By each house or bungalow in the diagram I understand a human individual. The individuals see themselves as rights-bearers and, moreover, possessors of the rights they bear.[1] By each bungalow's garden I understand the conceptual and normative area covered by the individual's rights. Each line of division between gardens represents a boundary between the rights borne and possessed by the individuals concerned. I draw especial attention to

1 The terms *rights-bearing* and *rights-possessing* are conceptually distinct because an individual – say, a functionary – may bear rights which are not his or her own. Rights may be borne, or held, by an individual courtesy of someone or something – say, an institution – other than the individual concerned.

two features of the diagram, thus interpreted. First, direct communication between two adjoining bungalows takes place across two areas of garden and a division. (An alternative toute would be to go out into the roadway, but I am assuming that in suburbia there is no public space.) By analogy, communication between individuals involves exercising one set of rights and respecting another, and negotiating a normative distinction between the sets of rights that are in play. A question arises about whether such a picture is a useful starting point for discussing communication and the human self. And second, the garden the garden surrounding a bungalow is the bungalow-dweller's private property. (In suburbia, I am assuming, residents are owner-occupiers.) By analogy, individuals are not merely rights-bearers or, indeed, rights-possessors; in addition they *own as their property* the rights that they bear and possess.[2] A "bungalows" interpretation of my diagram brings to the fore currently unfashionable questions concerning possessive individualism.[3]

My paper sketches the development, in the history of images/ideas, of the pattern of thought which my diagram has illustrated. That is to say, it attempts to shed light on bourgeois individualism's development. In political theory, the *locus classicus* of the notion of bourgeois individualism is a passage from Marx's 'On the Jewish Question' (1843) and it is with this – in sections 1 and 2 – that my discussion begins. My chief aim in these sections is to present the pattern in clear-cut terms. In section 3, I step backwards in time to Grotius, whose *Rights of War and Peace* (1625) marks the start of the modern natural law tradition: with Grotius's speculations on the origins of property, I argue, the foundations of bourgeois/suburban thought are laid. Section 4 notes the extent to which subsequent natural law theorists echoed Grotius's views on property. Section 5 comments on Locke's reworking of the same stock of ideas. In section 6, chronological advance is interrupted by a discussion of possessive individualism. Resuming the advance, section 7 suggests that the middle decades of the eighteenth century were, for natural law, crises years. Exploring this crisis, section 8 presents Rousseau's *Discourse on the Origin of Inequality* (1755) as an assault on property-based thinking and section 9 sets alongside Rousseau a heretically-interpreted Adam Smith. In section 10, the paper carries the story of "alternative" thought (or thought outside the natural law tradition) a stage further by commenting on Hegel's writings during his Jena period. Discussion of Hegel as an "alternative" and – as will be argued – anti-possessive individualist theorist brings the paper full circle and section 11 indicates that the ground for 'On the Jewish Question' is prepared.

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2 Everyday language tends to blur notions of *possession* and *property* together. Perhaps it is right to do so. Here, however, I do not rely on this blurriness but suggest by means of my diagram and the metaphor or analogy of private gardens that questions concerning rights and questions concerning property are intertwined. See note 16, below.

3 On 'possessive individualism', see C.B. Macpherson's once influential but now widely ignored *The Political Theory of Possessive Individualism* (Oxford: Oxford University Press 1962). For contrasting assessments of political theory's move away from issues addressed by Macpherson, see J. Tully 'After the Macpherson thesis' in his *An approach to political theory: Locke in contexts* (Cambridge: Cambridge University Press 1993) and M. Bray 'Macpherson Restored? Hobbes and the Question of Social Origins' *History of Political Thought* Vol. XXVIII No. 1 (2007). The term 'possessive individualism' is discussed in section 6, below.

Besides attempting to sketch the history (or prehistory) of bourgeois individualism in general terms, my paper has three subsidiary aims. One is to establish beyond question that Marx was, in 1843, attacking a position that was widely held and had deep intellectual roots. Another is to suggest an intellectual provenance for Marx's anti-possessive individualist critique. A further aim is highlight questions about possessive individualism's relation to the modern natural law tradition – and to rights theory *per se*.

1. *Marx on the rights of man*

The thought pattern that I have referred to as *bourgeois individualism* is identified, and criticised, in the passage from Marx's 'On the Jewish Question'[4] dealing with the French Revolutionary rights of man. Two themes discussed in this passage are liberty (or freedom) and property, and I comment on each in turn.

The liberty or freedom which the French Revolution acknowledged is, says Marx,[5] 'the right to do and perform what does not harm others. The limits [*Grenze*] within which each person can move without harming others is defined by the law, just as the boundary [*Grenze*, again] between two fields [*Fielder*] is defined by the fence [*Zaunpfahl*: literally, fencepost]' (pp. 102-3). The freedom thus acknowledged is the freedom of a 'limited [*beschrankten*]' – confined or restricted – individual (p. 103). It is the freedom of a human subject not as a social being but as a withdrawn or isolated 'monad' (ibid.).

In quoting these formulations, I have rather pedantically noted the terms whicfh Marx employs: my aim is to make certain that an image which is crucial to their meaning is conveyed. The image is a spatial one. For Marx, an individual is free in the French Revolutionary meaning of the term[6] when he or she possesses a field or sphere of right which is uniquely his or her own, and which others may not (without permission or legitimate authority) enter. Marx's allusion to limits or boundaries, to fences and to 'barriers [*Barrieren*]' (p. 104), underline the notion of *areas of right* – each area having, it may be said, an individual at its centre. The extent to which an individual is

4 Marx's 'On the Jewish Question' was written in autumn 1843 and appeared in the short-lived *Deutsch-franzosische Jahrbucher* the following year. I have consulted two English translations: that by David McLellan in his edition of K. Marx *Early Writings* (Oxford: Blackwell 1971) – reprinted in D. McLellan, ed., *Karl Marx: Selected Writings* (Oxford: Oxford University Press 1977/2000) – and that in K. Marx and F. Engels *Collected Wtitings* [*CW*] (London: Lawrence and Wishart 1975) Vol. 3. Quoted passages and unreferenced page numbers in sections 1 and 2 are from the 1971 *Early Writings* edition. The German edition of 'On the Jewish Question' which I have consulted is that in K. Marx/F. Engels *Werke* [*MEW*] (Berlin: Dietz Verlag 1978) Bd. 1.

5 Marx's focus in 'On the Jewish Question' is, we may note, on the French Revolution's constitutional documents; nothing is said or implied about crowd activity in the Revolutionary episodes when 'a decisive factor was the mass intervention...of ordinary men and women': G. Rude *The Crowd in the French Revolution* (Oxford: Oxford University Press 1959) p. 9.

6 Which is not Marx's own meaning: without arguing the point here, I note that for Marx, as for Hegel, freedom is self-determination and exists in an uncontradicted or non-alienated form when mutual recognition – see later – obtains.

free depends (according to the French Revolution as discussed in 'On the Jewish Question') on the size of his or her area.[7]

What conception of social life is implied, it may be asked, if *right* is parcelled out into *areas* and if *areas of right* are added to one another in an aggregative sense? Marx offers a first answer to to this question when he comments that society appears 'exterior [*ausserliche*]' to individuals (p. 104): so to say, social relations appear to be relations of an external rather than an internal kind. A further step towards an answer is taken when we turn to Fichte who, writing in the 1790s, declares: '*I* ascribe to *myself* a sphere [*Sphare*] for my freedom from which I exclude the other, and ascribe a sphere *to the other* from which I exclude myself'.[8] In the passage just quited, Fichte appears to welcome such an arrangement; Marx takes a diametrically opposed view. Here, I quote Fichte's words because they bring to life an aspect of social life which (with critical rather than approving intent) 'On the Jewish Question' has in mind. A further and final step towards answering our question is taken when when the grounds of Marx's criticism are made explicit: in a society where *areas of right* are aggregated, there is a 'separation [*Absonderung*] of man from man' (p. 103). A conception of freedom which turns on boundaries and limits is – so Marx is contending – a conception which implies a solitary or monological view of the individual self. A society of monological individuals is a society where freedom is simply and solely freedom *from* other individuals. It is, in other words, a society where freedom may flourish not *socially* or *interactively* but only when others are absent from the face of the earth.[9]

Turning from the theme of freedom to that of property, a reader of 'On the Jewish Question' is brought face to face with one of the essay's most famous contentions: 'The practical application of the rights of man is the right of man to private property' (p. 103). This declaration can, I suggest, be understood in two non-mutually exclusive ways. It may be seen as contending that no list of rights is complete unless it includes a right to private property. Or it may mean that rights are themselves a form of priviate property.[10] Marx himself does not tell his reader which of these understandings (if either) he has in mind. However, his view of rights in terms of fields (with fenceposts) and demarcated ares comes very close indeed to picturing rights as private property and *vice versa*. Are not fields bounded tracts of land that

7 In suburbia, by analogy, bungalow-dwellers are free depending on the size of their gardens.

8 J.G. Fichte *Foundations of Natural Right* (Cambridge: Cambridge University Press 2000) p. 48. *Fields* as referred to by Marx and *spheres* as referred to by Fichte – together with *gardens* as referred to by Gunn – are the same thing.

9 My reference to 'freedom *from*' is an allusion to Isaiah Berlin amongst others: in Berlin's usage, the terms 'negative' liberty and 'positive' liberty refer to *freedom from* and *freedom to* respectively. See I. Berlin 'Two Concepts of Liberty ' in D. Miller, ed., *The Liberty Reader* (Edinburgh: Edinburgh University Press 2011) pp. 39, 43. References to *areas* – e.g. 'the area within which a man can act unobstructed to others' and 'a certain minimum area of personal freedom' (*Liberty Reader* pp. 34, 36) – are frequent in Berlin's discussion of how negative liberty is to be seen.

10 What sort of private property? In a note on 'Rights' in *Edinburgh Review* No. 77 (May 1987), I attempted to answer this question: 'That rights are not merely property, but mystical property, becomes clear when we notice that "Give us our rights" asserts that we still have the rights in question even when we have been deprived of them. The expropriation of our rights, unlike any other form of property, still leaves us in possession (legitimate possession) of the propriatorial field.' My note went on to suggest that 'the concept of rights instantiates itself' – suspiciously, miraculously – and involves a mystification similar to that in Anselm's "ontological proof".

might be privately owned? They are. Is there evidence that Marx, for his part, was thinking in terms of privately owned fields? There is. As indicated in note 4, above, Marx wrote 'On the Jewish Question' in the autumn of 1843; in October 1842, he wrote for the *Rheinische Zeitung* and article headed 'Debates on the Laws on Thefts of Wood' which discussed the eclipse of customary land-use by legislation affirming the forect-owner's proprietorial rights.[11] Whilst it is true that the article was written from a point of view that did not represent Marx's final political position,[12] it is no less undeniable that the 'parcellation of landed property [*Parzellierung des Brundbesitzes*]'[13] – the parcelling of land into privately owned areas[14] – is the target of the article's criticism.

When I commented on Marx's treatment of 'liberty' as understood in Revolutionary documents, I asked what conception of social life such an understanding implies. The same question can be asked regarding Marx's treatment of 'property' and answered in a parallel way. The right of man to private property 'leads man to see in other men not the realisation [*Verwirklichung*] but the limitation [*Schranke*] of his own freedom' (p. 103). Once again, the emphasis in the documents is on the monological notion of freedom *from* other individuals rather than the dialogical notion of a freedom enhanced through others and through the avenues of educative interaction which others represent. Freedom *from* others flourishes, we may say, when the to-and-fro flow of interaction is constrained or interrupted; but contrast, freedom *through* others flourishes when mutual recognition – the conceptual template in Hegel of Marx's notion of communist society – obtains.[15]

In Marx's account of the rights of man, the pattern of thought sketched at the start of my paper is presented. The individuals whom Marx discusses are rights-bearers and possessors of the rights they bear. The rights which they possess are pictured as forming an area or 'field' from which other individuals may be excluded. As in suburbia, where house-to-house communication takes place across areas of garden and a fence, so in the world which Marx criticises: individuals are externally (rather than internally) related and subsist in monadological – read: monological – isolation. As in suburbia, where bungalow-dwellers own their gardens, so – once more – in bourgeois society: not only do individuals possess the rights that they bear, but the

11 *CW*, 1, esp. pp. 229, 262.

12 In his 'Debates on the Laws on Thefts of Wood', those identified as the 'lowest, propertyless and elemental mass' and the 'elemental class of human society' (*CW*, 1, pp. 230, 234) are a 'mass' threatening to disappear under property-based legislation. By contrast, Marx's 'Critique of Hegel's Philosophy of Right: Introduction' – written at the end of 1843 or the beginning of 1844 – celebrates the proletariat, which 'is coming into being in Germany only as a result of the rising of *industrial* development', as the 'universal' class (*CW*, 3, pp. 186-7). Correspondingly, the article on the thefts of wood invokes the traditionally civic humanist figure of a wise and impartial legislator (*CW*, 1, pp. 235-6) whereas Marx's later appeal is to revolutionary action. The 1842 'Debates' and the 1843-44 'Critique' are, described schematically, past-oriented and future-oriented texts.

13 *CW*, 1, p. 224; *MEW*, 1, p. 109.

14 Marx is explicit that private property 'exclude[s] every other person...from ownership' (*CW*, 1, p. 228).

15 On 'mutual recognition, see G.W.F. Hegel *Phenomenology of Spirit* (Oxford: Clarendon Press 1977) pp. 112, 388, 392, 394-7, 408. For passages in Marx where the notion of mutual recognition underlies the notion of communist society, see 'On the Jewish Question' p. 104 (as quoted in note 18, below) and the closing lines of the *Communist Manifesto* Part II (*CW*, 6, p. 506).

'field' or area made up by an individual's rights *is the property* of the individual concerned.[16] The circumstance that *rights are property* reinforces individuals' monadological isolation not least because – see note 14 – private property exists in a mutually exclusive sense.

A note may be added to Marx's 1843 discussion. Individuals who own, as their property, the rights which they bear are in a metaphysically curious position. They stand above and beneath themselves. They stand *above* themselves because, as proprietors, they are sovereign of the rights which they survey; and these rights establish their identity. They stand *beneath* themselves because the rights which they own are, at the same time, the normative order which legitimises their actions and to which, in case of difficulty, they appeal. Their status as proprietors and their status as rights-bearers underwrite one another, in a manner that should give rise to suspicion. Bourgeois individualism, as seen by 'On the Jewish Question', is *either* a contradiction *or* a standing miracle – the standing miracle of a circle which, although vicious, escapes itself.

2. *Marx's discussion in context*

In the text of 'On the Jewish Question', discussion of the 'rights of man' (*droits de l'homme* or, in German, *Menschenrechte*) has, at its immediate context, concern with 'general human rights [*allgemeinen Menschenrechte*]' (p. 101); its broader context is an argument about civil society and the state. Such issues concern us here, albeit briefly, because one aspect of the context threatens to lessen the significance of what has so far been said.

The aspect is that which I have labelled “immediate”. When Marx introduces the theme of 'human rights', or 'human rights [*Menschenrechte*] in their authentic form' (p. 101), he draws a distinction between the rights concerned. Amongst 'human rights' there are, on the one hand, 'political rights' (which Marx also refers to as 'civil rights' or 'the rights of citizen'); such rights are 'exercised in community with other men' (ibid.). And there are, on the other hand, the 'rights of man' – our topic heretofore – in the specific meaning of the term. The 'rights of man', Marx goes on to say, 'are nothing but the rights of the member of civil society, i.e., egoistic man, man separated from other men and from the community' (p. 102). To the distinction – in

16 My argument, here, does not – I stress for clarity's sake – depend on verbal associations. I do not elide *possession* with *property*, and I do not ascribe such an elision to Marx. The point at which *questions about rights* generate *questions about property* is, I claim (and claim that Marx claims), the point at which the image or notion of *areas* is introduced. If a reader complains that I make controversy on possessive individualism depend on the presence or absence of a metaphor, he or she makes a point which is misguided but gets my meaning right. To such a reader, I respond as follows. First, I propose that in one form or another the metaphor of *areas* (if metaphor it is) is historically widespread and deeply ingrained – as my subsequent discussion helps to make clear. Second, I observe that the notion of *areas* (or its equivalent) is hard to dispense with in discussing rights or negative liberty: see note 9, above. Third, I raise the conceptual – as distinct from verbal or, indeed, metaphorical – question of whether *without the notion of property* the notion of rights-possession makes sense.

Marx's view, the *alienating* distinction – between the state and civil society there corresponds, in sum, a distinction between the two chief forms which human rights may take.

Such a distinction apparently lessens the significance of Marx's rights-of-man discussion because it suggests, or seems to suggest, that an appeal is possible from one set of rights which is problem-ridden to another which is problem-free. Might the notion of human rights be re-founded, or rehabilitated, by shifting its focus from the 'rights of man' and the view of the individual as an isolated monad to 'political rights' where a conception of communal existence is made plain?[17] For two reasons, I consider, a reading of this sort misjudges Marx's position.

The first reason is terminological: as a reader of Marx (and of my presentation of Marx) may have noted, the expression *Menschenrechte* does double duty in 'On the Jewish Question' referring to 'human rights' – McLellan's English translation – and to 'the rights of man'. Whilst it is true that 'general' human rights are mentioned separately from the *droits de l'homme*, the genus/species relation on which the English translation relies is much less firmly established in Marx's text than McLellan suggests is the case. Should the English-language distinction between 'human rights' and 'the rights of man' be regarded as a clarification of Marx's position, or should the use of the term *Menschenrechte* at both places in his argument be seen as a clue to what Marx intends? In the absence of a firm answer to this question, we must suspect that what Marx says about the *droits de l'homme* specifically sheds light on his view of rights in a generic sense. We may suspect, that is, that the notion of problem-free rights is for Marx a contradiction in terms.

The second reason concerns Marx's general argument, and emerges when it is asked how the rights of man and political rights are to be seen. Should we employ, for example, a historically traditional vocabulary and refer to political rights as "artificial" (i.e. as specific to "civil society")? And should we refer to the rights of man as "natural" (i.e. as obtaining even where a "state pf nature" is in play)? Such a usage would be misleading. Since political rights and the rights of man are, for Marx, grounded in the state and civil society respectively, both sets of rights are social or "artificial" – and are so, however "natural" one or other set may take itself to be. Since, moreover, a society with a state/civil society distinction is a society where alienation prevails,[18] 'general human rights' or rights *per se* betoken alienation and are

17 The question has a historical dimension: whereas the 'rights of man' are rights celebrated in the natural law tradition, 'political rights' draw upon civic humanist values.

18 Although I do not do not discuss the state/civil society distinction in the present article, I note the single passage in 'On the Jewish Question' where Marx glances forward to social existence where neither state nor civil society obtains: 'The actual individual man must take the abstract citizen back into himself and, as an individual man in his empirical life, in his individual work and individual relationships become a species-being; man must recognize his own forces as social forces, organize themselves and thus no longer separate social forces from himself in the form of political forces. Only when this has been achieved will human emancipation be completed' (p. 108). The passage is difficult to construe because, in it, Marx conceals the Hegelian basis of his thinking. Man at the level of the 'individual' (Marx) is man at the level of *particularity* (Hegel), and man at the level the 'abstract citizen' (Marx) is man at the level of *universality* (Hegel). For Hegel, *particularity* and *universality* come together in *individuality:* see

part and parcel of an alienated order of things. For Marx, there can be no question of an appeal from one set of rights to another; whichever set is invoked belongs in what, thirty years later, he terms the 'narrow horizon of bourgeois right'.[19]

3. *Grotius*

The configuration of images and concepts that I have referred to as "bourgeois individualism" has roots in the modern natural law tradition. This tradition I take (following Tuck) to open with Grotius.[20] I do not, here, engage with debate on broader issues concerning natural law but focus on a specific issue: that of property's beginning. In the *Rights of War and Peace* – with parallel passages in his *Commentary on the Law of Prize and Booty* (unpublished in Grotius's lifetime) and *The Free Sea* (1609) – there occurs a passage where origins and development of private property is considered;[21] the passage, on which the present section concentrates, exercised a profound influence on subsequent natural law theorists.[22]

The starting point of the passage which 'examine[s] into the Original [i.e. origins] of Property'[23] is a declaration to the effect that nature is a gift given by God to Man: 'Almighty GOD at the Creation, and again after the Deluge, gave to Mankind in general a Dominion over Things of this inferior World'.[24] The gift is, we note, a collective one: it is a gift not to an individual, or set of individuals, but to humankind as such. From this circumstance, it may appear from Grotius's words that God 'at the Creation, and again after the Deluge' introduces primimitive communism. Such a construal would be hasty, however. A gift, whether or not given to mankind in common, may be received in more than one way. Which way is fitting, in the case of God's gift to Man? A *common* gift may, no doubt, be received and made use of in a

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G.W.F. Hegel *Science of Logic* (London: George Allen and Unwin 1969) pp. 612ff. For the younger Hegel, and for Marx who here follows him, *individuality* comes into being when mutually recognitive interaction is achieved. The root idea is that alienated aspects of human individuality – here, particular and universal aspects – are integrated when, and only when, human subjects in the plural relate to one another in a non-alienated way.

19 K. Marx *Critique of the Gotha Programme* (Moscow: Progress Publishers 1971) p. 18.

20 Tuck's views on modern natural law are presented in R. Tuck *Natural rights theories: Their origin and development* (Cambridge: Cambridge University Press 1979); 'The "modern" theory of natural law' in A. Pagden, ed., *The Languages of Political Theory in Early-Modern Europe* (Cambridge: Cambridge University Press 1987); *Philosophy and govern ment 1572-1651* (Cambridge: Cambridge University Press 1993). For criticism, see P. Zagorin 'Hobbes without Grotius' *History of Political Thought* Vol. XXI, No. 1 (2000); J.P. Sommerville 'Selden, Grotius, and the Seventeenth-Century Intellectual Revolution in Moral and Political theory' in V. Kahn and L. Hutson, eds., *Rhetoric and Law in Early Modern Europe* (New Haven/London: Yale University Press 2001); B. Tierney *The Idea of Natural Rights* (Grand Rapids, Michigan: Wm. B. Eerdmans Publishing Company 1997) ch. XIII (on Grotius); T. Mautner 'Grotius and the Skeptics' *Journal of the History of Ideas* Vol. 66, No. 4 (2005).

21 H. Grotius *The Rights of War and Peace* [*RWP*] (Indianapolis: Liberty Fund 2005) pp. 420-7; *The Free Sea* (Indianapolis: Liberty Fund 2004) pp. 20-4; *Commentary on the Law of Prize and Booty* (Indianapolis: Liberty Fund 2006) pp. 315-20.

22 Ronald Meek notes that the passage, although brief, expressed 'views on the historical origins of property' which were 'destined to be developed by Pufendorf, Locke, and others': R. Meek *Social Science and the Ignoble Savage* (Cambridge: Cambridge University Press 1976) p. 14.

23 *RPW* p. 420.

24 Ibid. See, similarly, *Commentary* p. 317 ('For God had given all things, not to this or that individual, but to the human race') and *Free Sea* p. 22 ('God gave all things not to this man or that but to mankind').

common fashion: received in this fashion, a tradition of shared and common ownership would be the result. But there is an alternative possibility. A *common* gift may be received and made use of *individually*, in the sense that individuals may carve out their own portions from the gift – nature or the 'Things of this inferior World' – as a common store. Grotius takes it for granted that God's gift is most fittingly received in this latter manner: 'every man converted what he would to his own Use, and consumed what was to be consumed'.[25] Such a scenario of individual appropriation may indeed, in its early stages, have a communistic appearance – as Grotius indicates, when he goes on to say that 'such a Use of the Right common to all Men did at that Time supply the Place of Property'.[26] The scenario lacks, however, the crucial – crucial for communism – notion of shared use. Grotius sees sharply that individual appropriation (understood as a *reserving to onself* of what *once was common*) may be understood as a process through which private property's foundations are laid.

For Grotius, we may note, the notion of individual appropriation is all-important. In the *Rights of War and Peace*, this importance is underlined by a metaphor or 'Simile' drawn from Cicero: *'Tho' the Theatre is common for any Body that comes, yet the Place that everyone sits in is properly his own.*'[27] In the *Commentary* and *Free Sea*, Seneca is the source of an equivalent quote: 'The equestrian rows of seats belong to *all* the Roman knights; yet the place that I have *occupied* is my *own.*'[28] I shall comment in a moment on Grotius's image of seats or places. Before doing so, I note that individual appropriation thus pictured is, in Grotius's view, the first step in a brief and hypothetical *history of property* which runs from the Creation and/or the Deluge to the present. This history opens with an era when 'Men persisted in their primitive Simplicity' and 'lived together in perfect Friendship';'[29] the era is that referred to by classical poets as the 'Age of Gold'.[30] At this early historical stage, human wants – I fill out what I take to be Grotius's line of thought – were not extensive enough for scarcity to be an issue, and as a result individuals need not conflict with one another as they drew from what was still a common fund. At the end of this history, there stands the present when – as Grotius emphasises – there exists private property the 'essential characteristic' of which is that 'it belongs to a given individual in such a way as to be incapable of belonging to any other individual';[31] property which exists 'now' is modern, exclusive property or in other words property which 'so appertaineth unto one that after the same manner it cannot be another's'.[32] The development which led from the first of these eras to the second is, Grotius tells us, one where use-right gave way to exclusive ownership and where considerations which at first applied to objects of destruction-through-consumption (such as food) were extended to objects of a

25 *RWP* p. 421.
26 Ibid.
27 Ibid.
28 *Commentary* p. 318; see *Free Sea* p. 23.
29 *RWP* p. 421.
30 *Commentary* p 316; see *Free Sea* p. 21.
31 *Commentary* p. 317.
32 *Free Sea* p. 20.

more lasting kind. However the details of this development are to be pictured, events involved in it are seen by Grotius as happening 'not violently but little by little, nature showing the beginning'.[33] Or in the words of the *Commentary*: 'the present-day concept of distinctions in ownership was the result, not of any sudden transition, but of a gradual process whose initial steps were taken under the guidance of nature herself'.[34] A historical starting point which is naturally or divinely sanctioned is elaborated by, it seems, a process of a natural kind.[35]

Standing back, what should be our response to the Grotean passage or passages just indicated? My attempt to answer this question falls into two parts. *First*, I comment on Grotius's "theatre seats" image. And *second* I offer thoughts on the circumstance that the passage or passages quoted have a historical cast.

(i) Grotius's image of seats in a theatre (or in equestrian rows) is, as a reader will have observed, a spatial one. So too is Marx's image of 'fields'. The similarity between images can, I suggest, be pressed further to the point where the seats or 'places' envisaged by Grotius and the fields envisaged by Marx are, together with the suburban gardens of my opening diagram, homologous ideas. Grotius's seats and Marx's fields and my diagram's gardens are, alike, not merely *areas* in a general sense but *areas of right*. For Grotius, areas (or seats) are portions which individuals appropriate from God's collective gift. For Marx, areas (or fields) are regions whose privacy is sanctioned by the French Revolutionary rights of man. Although the content, so to say, of seats and fields differ, to some extent at least, the conceptual geography of the view expressed by Grotius and the view cricitised by Marx map on to one another; in outline, they are one and the same. Still-closer points of resemblance or of homology can be indicated. One is that Grotius's seats and Marx's fields both counts as areas where *rights* – rather than, merely, values taken generically – are in play.[36] Another is that, just as Marx discusses the notion of limits, Grotius refers to areas which have 'boundaries' or 'Bounds'.[37] In one respect, dissimilarity may have to be conceded: whereas Marx appears to view rights – *all* rights – as a species of property, Grotius in the passage under consideration deals with property rights, and property rights alone. Grotius's concern is with the origin of property specifically, rather than the origin of rights *per se*. I return to this dissimilarity, or seeming dissimilarity, later in the present section. Here, I note only that (notwithstanding my "conceded" point) similarities between property as

33 *Free Sea* p. 22.

34 *Commentary* p. 317.

35 Stephen Buckle has suggested that 'Grotius treats the law of nature as both innate and historical': S. Buckle *Natural Law and the Theory of Property* (Oxford: Clarendon Press 1991) p. 6. The inclusion of the phrase 'it seems' in the sentence here footnoted is meant to indicate uncertainty on my part about how the *a priori* and historical parts of Grotius's argument relate.

36 I am aware, when I say this, that there is considerable contoversy over whether *ius* in Grotius refers to rights and duties indiscriminately or rights primarily (see, for example, Zagorin as cited in note note 20, above). I take it, however, that rights are involved (whether or not alongside duties) in Grotius's conception of private property.

37 *Commentary* pp. 319-20; *RWP* p. 425. These references, it is true, occur in specific contexts: the theme of boundaries becomes relevant when questions about landownership and political territory are raised. What is striking, however, is that Grotius is thinking in terms of *areas which may have boundaries* – whether questions concerning boundaries arise in a given case.

discussed by Grotius and the rights of man as discussed by Marx are significant and real. Once images as well as ideas are brought into consideration by political theory, Grotius's writings count as a point of departure – doubtless, one point of departure among others – from which an account of bourgeois individualism may begin.

(ii) Not the least striking feature of the pages from Grotius that I have summarised is their concern with history: nowhere else in the seventeen hundred pages of the *Rights of War and Peace* – nowhere other than in the passage on property – does historical development serve a framework in which issues are to be seen. In the light of the pages' concern with history, a difficulty with Grotius's discussion can be indicated and a question concerning its implications raised. I comment briefly on each.[38]

The difficulty concerns vicious circularity. If the historical cast of Grotius's account of property is stressed, something approaching a conjuring trick appears to take place in the pages under discussion. If the pages set out property's origin, the notion of property is absent at their start and present once their end is reached. Where did property come from? Do the pages *presuppose* the notion of property? If so, at what point in the process traced is the notion of property introduced? Two lines of thought designed to calm worries about vicious circularity suggest themselves. Is the process traced by Grotius not a 'gradual' one, a process which takes place 'little by little'? It is: but a *gradual* process need not be *natural* and, furthermore, a miracle remains miraculous even when it takes time to perform. Is Grotius's account of a development in property relations – a development starting with objects of use and consumption and extending to objects that are fixed and relatively permanent – not one which appears plausible? Again it is, at any rate for the arument at least: but use-rights are not yet rights to full private property.[39] A historical account where use-rights grow into property-rights is an account where (it may be suspected) the notion of property is assumed.

My suggestion is that a reader of Grotius is right to suspect the presence of conceptual sleight of hand. My further suggestion is that the moment in Grotius's discussion when the notion of private property is introduced (the moment when, that is, the rabbit enters the conjuror's hat) is the moment when individual appropriation takes place. To this further suggestion I add a clarification. My proposal is not that, as theorists defending private property have frequently asserted, individual use in and of itself entails property as a category. As we have see, Grotius himself comes close to asserting such a view – a view which I reject. Even in the case of objects where

38 My comments on property and history in Grotius make no attempt to be exhaustive. Nothing is said, for example, on the pages' contribution to what later became known as "four-stages" theory: see Meek, loc cit., and – although the focus of the article is on Pufendorf rather than Grotius – I. Hont 'The language of sociability and commerce: Samuel Pufendorf and the theoretical foundations of "Four-Stages Theory"' in Pagden, ed., *Language of Political Theory* (also in I. Hont *Jealosy of Trade* Cambridge, Massachusetts/London: Harvard University Press 2010). My reason for remaining silent on four-stages theory, and thereby setting aside a current of thought which plausibly leads from Grotius to Marx, is that the Marx who may have been influenced by a four-stages account of history is the "sociological" Marx rather than the Marx of critique. For an attempt to contrast sociological and critical versions of Marxist theory, see R. Gunn 'Marxism and Contradiction' *Common Sense* No. 15 (1994).

39 The point is discussed in Buckle *Natural Law and the History of Property* ch. 1.

consumption involves *destruction*,[40] use – I consider – may be viewed as a shared (rather than a monologically isolated) activity. (To see that this is so, we need only step back a little and notice the context in which *use* takes place. This context includes other individuals. The social connectedness revealed by stepping back undermines temptions to view use and property as necessarily linked.) What, then, do I assert? For individual consumption to be seen in a way which generates private property, this consumption must (I claim) be pictured as a *carving out* and *reserving to oneself* of resources and/or wealth. It must be pictured as an activity which goes beyond use *simpliciter* and, besides use, involves property as a theme. Grotius himself pictures individual consumption and individual appropriation in this fashion. He *presupposes* the notion of property in the understanding which the *Rights of War and Peace* presents.

I turn from issues concerning vicious circularity to the question of what the historical cast of Grotius's discussion implies. At first sight, the pages which I have summarised concern themselves with property and nothing more. At first sight, Grotius's concern is with the origin of property rather than – as I have indicated – the origin of rights *per se*. Such a view of the pages may be misleading. When Grotius elects to give his discussion of property (and property alone) a historical framework, he elects to discuss together *property* and *humankind*. The period covered in the summarised pages gives an indication of how Grotean history – or, so to say, Grotean hypothetical history – is to be seen: opening with the Biblical Creation and/or the Flood, and closing with the present day, Grotius's account of property is modelled on the notion of a universal history or history of man. Read in this fashion, Grotius's pages shed light not merely on the idea of property but on the manner in which property and rights – or, more exactly, the property and humanity as a rights-bearing creature – intertwine. It is true, of course, that nowhere in the passages under consideration does Grotius declare that rights are property. It is no less true, however, that the passages *when read in the manner here suggested* treat the orgin (or 'Original') of property and the origin (or 'Original') of rights as closely allied and, indeed, virtually identical things.

4. *Property after Grotius*

In the seventeenth and eighteenth centuries, bourgeois individualism as encapsulated in Grotius's account of the origins of property became canonical in expositions of modern natural law. The modern natural law tradition – the tradition which, according to Tuck, is launched in Grotius's writings – nurtured the constellation of ideas that gave social thought in a capitalist world its characteristic form. The constallation was one which may, I have suggested, be summarised in the metaphor of seats or fields or gardens and where, less metaphorically stated, individuals are not merely rights-bearers but proprietors of the rights they bear.

40 Edible objects, for example.

An account of theories of property in the decades following Grotius threatens to launch itself on to controversial territory. Two topics in particular invite attention. One is the work of Hobbes: should Hobbes, as a natural law theorist, be regarded as following on from Hobbes[41] How should Hobbes's view of property be assessed?[42]The other is the English Civil War: what distinctive conception or conceptions of property emerged amongst radical Civil War sects?

In both cases, I hope to step around controversy. Hobbes, it seems to me, stands at one remove from the story that my paper tells. When Hobbes lists as a doctrine which 'tendeth to the Dissolution of a Common-wealthe' the view that '*every man has an absolute Propriety in his Goods; such, as excludeth the Right of the Sovereign*',[43] it is apparent that *Leviathan's* claims and Grotius's account of property's beginning belong in different conceptual worlds. In regard to the sects of the Civil War period, my reasons for avoiding controversy are different. Statements by radical figures calls for discussion that is impossible within the present short text. For example, Abiezer Coppe's notion of a 'true Communion among men' which 'is to have all things in common' seems to me to differ, in emphasis in least, from Gerrard Winstanley's notion of a 'free use of any commodity' which takes place 'without buying or selling or restraint to any'.[44] Winstanley's notion of 'free use' appears compatible with Groteian individual appropriation (although we cannot be certain, until the term 'restraint' is explained), whereas Coppe's notion of having all things in common points towards a non-Groteian conception of shared use (although much turns on how Coppe's term 'have' is to be seen). If this comment is justified, it is Coppe rather than Winstanley who supplies an alternative to emergent bourgeois individualism (and to natural law thought).[45] I stress this *if*, however. Here, I do not engage with questions of interpretation relating to texts of the Civil War period.

Instead, I shift the focus of my discussion to Samuel Pufenforf's massive *Of the Law of Nature and Nations* (1676).[46] Writing in the aftermath of Hobbes's intellectual challenge, Pufendorf restates the case for an account of natural law along broadly

41 As Tuck maintains, and as Zagorin (for example) denies. See note 20, above.

42 In his Introduction to the Penguin edn. of Hobbes's *Leviathan*, C.B. Macpherson argues that 'Hobbes was using a mental model of society which...corresponds only to a bourgeois market society': T. Hobbes *Leviathan* (Harmondsworth: Penguin Books 1968) p. 38. See also Macpherson's *Political Theory of Possessive Individualism* ch. II. Macpherson's claim that Hobbes was a possessive individualist is critically discussed in, for example, K. Thomas 'The Social Origins of Hobbes's Thought' in K.C. Brown, ed., *Hobbes Studies* (Oxford: Oxford University Press 1965). For a restatement of Macpherson's position – a restatement along lines developed in R. Brenner 'Agrarian Class Structure and Economic Development in Pre-Industrial Europe' (T.H.Aston and C.H.E. Philpin, eds., *The Brenner Debate*, Cambridge: Cambridge University Press 1985, pp. 10-63) – see Bray as cited in note 3, above.

43 T. Hobbes *Leviathan*, Penguin edn., p. 367. See also p. 297.

44 A. Coppe *A Second Fiery Flying Roule* in N. Smith, ed., *A Collection of Ranter Writings* (London: Junction Books 1983) p. 114 (see also pp. 112-3, 116); G. Winstanley *Law of Freedom* quoted in D.W. Petegorsky *Left-Wing Democracy in the English Civil War* (Stroud: Alan Sutton 1995) p. 216.

45 This comment parallels the argument of my '"The Only Real Pheonix": Notes on Utopia and Apocalypse' in *Edinburgh Review* No. 71 (1985), where the radicalism of early-modern apocalyptic thought is contrasted with the emphasis on social discipline which utopian thought contains.

46 My page references are to S. Pufendorf *Of the Law of Nature and Nations* [*LNN*] (London, 1729).

Grotiean lines.[47] Whereas Hobbes portrays human nature in dark terms, Pufendorf opts for a more gradated picture: he tells us that 'the natural State of Men...is not War, but Peace' but adds, in the same breath, that 'this Peace chiefly depends on...Laws and Conditions'.[48] The requisite laws involve an appeal to 'the Benevolence...of others' – but this appeal may itself be self-interested.[49] Turning more specifically to the notion of property, the notion of a gradated picture dovetails with Pufendorf's suggestion that humans embraced the notion of distinct properties 'not at the same time, and by one single Act, but by successive Degrees'.[50] Pufendorf's view of the human condition is, it seems, one where individuals respond to a less-than-utterly-dark natural situation by applying reason sequentially and as circumstances suggest.

Just as Pufendorf's overall aim is to re-establish natural law on a basis that had been endangered by Hobbesian pessimism, his discussion of property follows in the footsteps not of Hobbes but of Grotius. Like Grotius and in common with various seventeenth-century theorists, his starting point is the notion that nature is the 'Grant or Allowance' or, indeed, the 'Gift' of God.[51] Like Grotius, too, Pufendorf leaves it to humans who decide how this collective gift is to be received: God gave 'Man' an 'indefinite Right' to the fruits of the earth, but 'left it to their own Choice and Disposal, what Manner, what Degree, what extent they would fix to this Power' – the power, that is, to use natural things.[52] At this stage in his argument, Pufendorf introduces his most famous contribution: the 'Manner' in which humankind may choose to receive God's gift may be either 'negative' or 'positive'. A *negative* communion of goods is one where things count, indeed, as 'common' – but in a specific sense: 'things thus consider'd are said to be *No Body's*' and 'lie free for any Taker'.[53] Where a negative communion obtains, things are 'not yet assigned to any particular person' – which is not to say, as Pufendorf is careful to point out, that they 'are incapable of being so assigned'.[54] A *positive* communion of goods is one where things are owned in common and where, in consequence, an act of individual taking is (unless permission has been granted) an act of theft. How should we understand Pufendorf's positive/negative distinction? A common gift (such a God's gift of nature to humankind) may, as we noted whilst discussing Grotius, be received and made use of either in a *common* fashion – a fashion involving shared use – or in a fashion where individual appropriation is the key. If humankind opts at the dawn of history for the notion of positive communion, in Pufendorf's meaning of the terms,

47 Although my comments stress continuities between Grotius and Pufendorf, I am aware of possible differences. For example, Tuck – who sees Grotius as affirming the priority of rights over duties – quotes from *LNN* p. 260 to show that Pufendorf 'relied essentially on a new and important argument – nothing less than the "correlativity thesis"': Tuck *Natural Rights Theories* p. 159. Or again: Salter has stressed the role of converntion in Pufendorf's (as distinct from Grotius's) conception of property. See J. Salter 'Hugo Grotius: Property and Consent' *Political Theory* Vol. 29, No. 4 (2001) pp. 540-1. My paper does not discuss rights/duties; on convention see briefly note 59, below.

48 *LNN* p. 114.

49 Ibid.

50 *LNN* p. 367. For equivalent passages in Grotius, see text at notes 33 and 34, above.

51 *LNN* p. 357; similarly, pp. 134, 364, 379, 383. See also S. Pufendorf *On the Duty of Man and Citizen* [*DMC*] (Cambridge: Cambridge University Press 1991) p. 84 and Grotius at note 24, above.

52 *LNN* p. 364. See similarly *DMC* p. 84.

53 *LNN* p. 362.

54 Ibid.

communism is the outcome. If humankind opts for the notion of negative communion the resilt is a scenario where private property (premised on the idea of individual appropriation and taking) is the rule. Like Grotius, Pufendorf favours the latter historical course. Like Grotius, he pictures history as unfolding through a sequence of successive stages marked by a shift from use and consumption through property in movable objects to property in land (see note 50, above). Like Grotius, too, he draws upon the classical metaphor or simile of theatre seats which a (duly authorised) individual may 'appropriate' to him or herself.[55] If the metaphor/simile of seats or its equivalent is a cultural carrier of bourgeois individualism, as Marx later indicates, the chapter on property in *Of the Law of Nature and Nations* presents the notion of negative communion as bourgeois not merely in its implications but at source.

My reason for stressing Pufendorf's "bourgeois" imagery is that his notion of negative communion is easy to misconstrue. A situation where everyone may take what he or she wants from (so to say) nature's collective store or larder may, perhaps, be seen as one where a form of communism – "crude" communism, or communism merely of consumption, or communism which does not yet involve a 'return of man to himself as a *social* (i.e., human) being'[56] – obtains. For such to be the case, however, the situation must be clarified in a crucial way. The *taking from the larder* must be regarded as a prelude to shared use, however individual (and however involved in destruction-through-consumption) the use may be. If the *taking from the larder* is regarded as an act of *carving out from nature* or *reserving to oneself a portion of nature*, however, what is signified by the taking is not communism but private property's all-important first step.[57] In Pufendorf's case, a situation of 'negative' communion is one where everyone may take from the larder – and, at first sight, a form of communism may seem to be in operation. But a process of *carving out* or *reserving to oneself a portion* seems to be assumed in Pufendorf's discussion, as when he states – see text at note 54, above – that goods confronted in nature are capable of being individually assigned. In twenty-first century terms, nature in Pufendorf resembles less a lending library than a supermarket where (it so happens) produce is free. A note of potential ambiguity is struck (it is true) in *Of the Law of Nature and Nations* when it is declared that, before humans found it worthwhile to 'lay up a Stock for future Use',[58] a 'Covenant' which settled 'distinct Properties' upon individuals was needless and untrammelled negative communion might obtain.[59]

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55 *LNN* pp. 363, 364, 371.

56 Marx *CW*, 3, p. 296.

57 As it stands, this sentence is (I concede) ambiguous: who does the regarding? Is it the taker? Or is it the theorist who observes the taking? My assumption is that it is the latter; however, I do not engage with the question here.

58 *LNN* p. 366.

59 *LNN* p. 367. Reference to a 'Covenant' chimes in, we may note, with commentators' frequent insistence that Pufendorf (in contrast to Grotius) understands property in conventionalist terms. Such a contrast must not be overstressed, however. My claim in the present paragraph is that issues concerning private property are already (in Pufendorfian history) present when negative communion obtains – well before, that is to say, a contract regarding 'distinct Properties' enters the scene. A further point is that Salter's distinction between *rights* and *liberties* – a distinction through which, it is claimed, sheds light on Grotius's and Pufendorf's uses of the 'theatre' example – seems difficult to support: a *liberty which and individual has by right* and a *right* are, to all intents and purposes, the same thing. (On Salter see note 47, above.) A final point is that Grotius for his part sometimes expresses his views in conventionalist – or quasi-conventionalist – terms: see *RWP* pp. 426-7.

Because the clearest instance given of a 'distinct Property' is property in 'Land',[60] an impression might arise that, in Pufendorf's view, property became an issue only when land-enclosure came on the scene. My comments on *carving out* and *reserving a portion* are designed to indicate that an ascrption of property's origins to such a late stage in Pufendorfian history (and a concommitant equation of negative communiuty with primitive communism) relies on a misreading of Pufendorf's claims.

In the remainder of the seventeenth century and the early decades of the eighteenth, Grotius's and Pufendorf's views on property – here, I have stressed the continuities between them – possessed a virtually canonical force. In his notes on Pufendorf for Scottish university students, Carmichael presents *Of the Law of Nature and Nations'* distinction between a 'positive' and a 'negative' community of goods in a trenchant and succinct way.[61] In his *A Short Introduction to Moral Philosophy,* Hutcheson declares that 'all things were left by God to men in that community called *negative*, not *positive*'[62] – and his posthumously published *A System of Moral Philosophy* makes the same point, in almost identical words.[63] Book I, chapter IX, of Heineccius's *A Methodical System of Universal Laws* (translated by George Turnbull) follows in the same tradition, employing Grotius's and Pufendorf's 'theatre' example by way of illustration.[64] Although the modern natural law tradition may be surprisingly difficult to pin down,[65] in terms of the history of ideas, a fair generalisation regarding it is that Grotius's and Pufendorf's understanding of property – and, thence, the thought-pattern chararacteristic of bourgeois individualism – lies close to its core.

In a fashion which mirrors my ending in section 3, my final comment in the present connection concerns history. As in Grotius's *Rights of Peace and War,* Pufendorf's *Of the Law of Nature and Nations* adopts a historical perspective on its subject-matter only when property is its theme. Humankind as the bearer of of natural rights and duties acquires a historical dignity only when issues concerning property are addressed. A consequence of this is that, as in Grotius, a treatment of *rights to property* (the official topic of the patterns from Grotius and Pufendorf under discussion) and a treatment of *rights as property* threaten to coalesce. This is so for two reasons. First, what Pufendorf has to say regarding property brings questions of *beginnings* into view, and questions about *beginnings* are many-sided;[66] such questions include (if rights are to be considered) questions about rights *per se.* Second, a *historical* approach addresses, in principle if not in fact, all human issues: however specific a historian's topic, what counts as relevant is for the historian to decide. Seen from this second angle, issues concerning rights *per se* and property

60 *LNN* p. 367.
61 J. Moore and M. Silverthorne, eds., *Natural Rights on the Threshold of the Scottiswh Enlightenment: The Writings of Gershom Carmichael* (Indianapolis: Liberty Fund 2002) pp. 92-3.
62 F. Hutcheson *A Short Introduction to Moral Philosophy* (Indianapolis: Liberty Fund 2007) p. 142.
63 F. Hutcheson *A System of Moral Philosophy* (London/New York: Continuum 2005), Vol. 1, p. 330.
64 J. G. Heineccius *A Methodical System of Universal Laws* (Indianapolis: Liberty Fund 2008) p. 166n.
65 See Sommerville as referred to in note 20, above.
66 My comments on *beginnings* draw upon H. Arendt *On Revolution* (Harmondsworth: Penguin Books 1973) ch. 6.

(and not merely property-rights specifically) come into view. In their pages on property, that is to say, Grotius and Pufendorf provides a thumbnail sketch of how a deeply bourgeois version of universal history might look.

5. *Locke*

John Locke's *Two Treatises of Government*, written in the ealier part of the 1680s and published anonymously in 1689, at first sight represent a break in natural law thinking. In place of *areas of right*, which may be metaphorically represented as *fields* or *gardens* or *theatre seats*, a reader is presented with rights which appear to be imminent in the individual him or herself. In place of a choice on humanity's part between 'positive' and 'negative' modes of history – a choice which still, in effect, echoes in Carmichael and Hutcheson – the individual confronts nature and lets events take their course.

To what extent does Locke's work count as a fresh departure in natural law thinking? My suggestion is that, an appearance of novelty notwithstanding, much in Grotius's and Pufendorf's views remains intact. The essence of Locke's seemingly distinctive position is geven in his second treatise's most famous passage: 'Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a *Property* in his own Person. 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...he hath mixed his *Labour* with...and thereby makes it his *Property*'.[67] The passage contains, I concede, a distinctive emphasis: I explain this obsevation in a moment. In its main features, however, it conforms to an outline which earlier discussion attempts to make clear. I comment on two points.

The first concerns the sense in which, for Locke, rights are imminent in the individual. Locke regards an individual as bearing and possessing rights to the extent that he or she *owns*, or *is the proprietor of*, him or herself. For a reader of the *Treatises*, questions arise (we may note) about how this self-ownership or self-proprietorship is to be understood. Is the “property” in the notion of “self-property” to be seen in the fully “modern”, individual and exclusive-of-others, sense?[68] Or is something closer to a potentially shared use-right intended? Such questions are the more difficult to answer because, in the seventeenth century, the term 'property' might have more than one shade of meaning.[69] This is so especially where the (highly infrequent) term 'self-property' is concerned.[70] Related to such questions is an

67 J. Locke *Two Treatises of Government* (Cambridge: Cambridge University Press 1988) pp. 287-8; see also p. 298.

68 For references to property in is excluive-of-others meaning, see note 14 (on Marx) and notes 31 and 32 (on Grotius), above. See further Pufendorf *LNN* pp. 362, 378.

69 See I. Hampshire-Monk 'The Political Theory of the Levellers: Putney, Property and Professor Macpherson' *Political Studies* Vol. XXIV, No. 4 (1976) p. 409.

70 In his *New Law of Righteousnes*, Winstanley describes 'self-property' as 'the curse and burden which the Creation groans under' – see *The Works of Gerrard Winstanley*, ed. by G.H. Sabine (Ithaca: Cornell University Press 1941) p. 200 – and, here, the reference is to property in a seemingly exclusive-of-others sense. When, however, Richard

ambiguity in Locke's presentation: does an individual who has '*Property* in his own Person' belong to himself or to God? The first of these possibilities seems to be indicated by the passage quoted at note 67. Elsewhere, however, we are told that men are the 'Workmanship of one Omnipotent, and infinitely wise Maker'; as such, they are 'his [God's] Property'.[71] In a reading of the *Treatises*, how much weight should be given to such issues? Here, I note them in passing but rightly or wrongly set them to one side. For Locke, I shall assume, *property* is property in its exclusive-of-others meaning; and individuals who are seen as having *property in their own persons* are individuals who are seen as belonging (in an exclusive-of-others meaning) not to God but to themselves. The difficulty which I wish to raise regarding Locke's notion of self-proprietorship is of a different order, and to it I now turn.

The difficulty arises in connection with boundaries. In my article's initial diagram, the issues of boundaries was (a reader will recollect) emphasised. In section 1, further, a distinction was drawn between the notions of freedom in *spite of* others and freedom *in and through* others – others, that is, with whom mutually recognitive relations obtain. Freedom in the former case ("negative" freedom) involves boundaries, or lines of demarcation, between individuals. Freedom in the latter case – so to say, "communist" freedom – turns on the notion of distinct cognitive and interactive viewpoints and does not so much dismiss the notion of boundaries but set it out of play. What implications might such considerations have for an understanding of Locke? At first sight, it may seem as though a notion of rights as *imminent in the individual* and *grounded on self-property* dispenses with boundaries as an issue. If such is the appearance it is, I propose, misleading. Rather than setting aside the issue of boundaries, Locke's declaration that 'every Man has a *Property* in his own Person' changes the place at which boundaries are to be drawn. The nature of this change may be explained by returning, briefly, to the "bungalows" interpretation of the diagram presented in my opening remarks. The interpretation equated houses or bungalows with human individuals, and bungalows' gardens with the *areas of right* which individuals – at any rate, "bourgeois" individuals – possess. Viewed in such terms, Locke's appeal to the notion of self-ownership shifts the boundary of the individual – or, more exactly, the individual "self" – from the outer walls of the bungalow as a built structure to the garden fence. Everything within what Fichte regards as an individual's 'sphere' of right and freedom (see note 8, above) is construed as internal to the individual him or herself. How conceptually radical, it may be asked, is such a shift of boundaries? My reply is that little is achieved. If it is asked, without reference to the notion of self-ownership, where the outside limits of a rights-defined individual lie, imponderable issues are raised. Are the limits the edge of the individual as a biological entity – or the edge of the 'sphere' where the individual possesses rights?[72]

Overton's Leveller pamphlet *An Arrow against all Tyrants* refers to a 'selfe property' without which an individual 'could...not be himself' – see G.E. Aylmer, ed., *The Levellers in the English Revolution* (London: Thames and Hudson 1975) p. 68 – it is much less certain that an exclusive-of-others sense is intended. The notion of 'selfe property' may have retained connotations of shared use in a commons, and Leveller thought as a whole may be more communitarian and less "libertarian" than twentieth-century commentators have thought.

71 *Two Treatises* p. 271.

72 Hegel gives this question a possessive-individualist twist when he notes in 1805-5 that, where property exists,

Does prestige in suburbia rest on house-size or garden-size? The unanswerability of such questions leads me to conclude that Locke's introduction of self-ownership is less an innovation than an exercise in conceptual tiding up. Approached thus, the roots in Grotius and Pufendorf of the familiar passage quoted at note 67, above, are plain to see.

The second of my points concerns the 'positive' community/'negative' community distinction. Does Locke place himself outside the intellectual current which includes Grotius and Pufendorf and Carmichael and Hutcheson and to which, seemingly, the 'postive'/'negative' distinction is all-important? My answer is that he does not. While it is true that the distinction is not explicitly invoked in the *Treatises'* chapter on property, the claim that a mixing of '*Labour*' with a hitherto-unowned object *results in property* is a claim directly in the tradition of individual appropriation in Grotius's understanding of the term.[73] More specifically still, it belongs in the tradition which takes 'negative' communion (together with the history of private property which flows from it) as the most worthwhile and fitting response to what is seen as God's gift. In making this observation, there is no need – I note in passing – to portray Locke as a property theorist of an implaccably self-interested kind. James Tully has reminded us that there are passages in Locke where God's 'Grant' is seen as grounding a 'right in common with all Mankind';[74] in such passages, Tully observes, Locke stipulates a 'right to use the world for support, a right not to be excluded from such use'[75] – a right, in short, of an inclusive-of-others sort. Locke, says Tully, arrives at 'a concept of property, or exclusive right, within a framework of common property consistent with natural law'.[76] However it is to be phrased, the the point of interpretation is telling and is reinforced if Locke's well-known "use" limitation and "as-much-and-as-good-for-others" limitation are stressed.[77] Locke is, it seems, not merely a theorist who thinks in terms of negative communion and individual acquisition; his conception of property is one which has a positive-communion-inspired tinge. This said, my aim here is not to decide whether Locke counts as an individually proprietorial or a more communitarian writer. It is to point out that, whichever reading is favoured, a distinction between 'negative' communion and 'positive' communion is never far from the surface of Locke's discussion.

I have suggested that the passage on man's '*Property* in his own person' and labour-

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damage to an individual's property counts as an injury reaching to the 'essence' of the individual him or herself: see L. Rauch, ed., *Hegel and the Human Spirit: A translation of the Jena Lectures on the Philosophy of Spirit (1805-6) with commentary* (Detroit: Wayne State University Press 1983) p. 114.

73 Questions which may point towards a difference can, of course, be raised. Is laying claim to, say, a tract of land in the state of nature sufficient to generate property? Is occupation of the tract required? How is occupation to be defined? Does a claim (whether or not it involves occupation) generate *property* only when something resembling a social contract has been agreed? Rightly or wrongly, I regard such questions as of secondary importance. The picture which is central both to Grotius's and Locke's account of property is that of a monological individual who confronts nature in its raw state.

74 Locke *Two Treatises* p. 157

75 Tully *An approach to political theory: Locke in contexts* pp. 110-1.

76 *An approach* p. 117.

77 On the "as-much-and-as-good" limitation, see *Two Treatises* pp. 288, 291. On the "use" limitation, see *Two Treatises* pp. 290, 295.

mixing has a distinctive emphasis. Although we are now in a position to say that *what* is emphasised is scarcely original, the emphasis itself calls for comment.

As so often in political theory, the emphasis may be summarised in an image: it is the image of an individual who stands before nature in much the same stark and immediate sense as a builder or sculptor confronts to-be-worked-upon living rock. The image is arresting. Although much is assumed about a 'negative' (rather than a 'positive') disposition of property, and although the issues concerning an *area of right* (whether "inside" or "around" the individual) are not explicitly addressed, Locke dramatizes the notion of an individual and his or her actual or potential property in unforgettable terms. On the blasted heath of a state of nature, monologically-construed (or monadologically-construed) individuals become property owners and, in the same movement, objects that are hitherto unappropriated become monologically owned. So to say, the circumstance that the modern natural law tradition favours a monological view of the individual is fused in Locke's image with the circumstance that property *per se* presents itself, and misleadingly "appears", in monological (rather than social) terms.[78] Locke, for his part, assumes the trustworthiness both of property's immediate "appearance" and the natural law tradition's conception of the individual. His achievement is less one of pioneering a new theoretical synthesis than one of underlining already familiar claims.

6. *A note on possessive individualism*

If the lines of seventeenth and early eighteenth century thought which culminate in bourgeois individualism are as I have described them, can the modern natural law tradition usefully be described as having a possessive individualist cast? I propose that it can. In order to see past an evident objection to this proposal, a passage where Macpherson in effect defines the notion of possessive individualism needs to be interrogated.

For Macpherson, the 'possessive quality' of possessive individualism lies in 'its conception of the individual as essentially the proprietor of his own his own person or capacities'.[79] As it stands, this statement equates possessive individualism with the notion of self-ownership – and, in so doing, invites the objection that only some modern natural law theorists (for example, Locke) and not others (for example, in our discussion, Grotius or Pufendorf) endorse the notion of self-ownership in unequivocal terms.[80] For Macpherson's general claim to be plausible, the statement gives

78 My comment regarding private property needs, of course, supporting argument. Here, I note only that it is a generalisation from what Marx says on fetishisation. In a property-based world, says Marx, social relations 'appear as what they are, i.e. they do not appear as direct social relations between people...but rather as material [*dinglich*] relations between persons and social relations between things': K. Marx *Capital* Vol 1 (Harmondsworth: Penguin Books 1976) p. 166. In such a world, self-presentations (or spontaneous "appearances") are both misleading and socially real.

79 Macpherson *Political Theory of Possessive Individualism* p. 3.

80 Macpherson's discussion focuses, we may note, on English seventeenth-century writers; Grotius is mentioned only

possessive individualism an excessively narrow meaning. This said, there is – in the light of our comments on Locke – a sense in which implausibility may be lessened. Does bourgeois individualism locate the edge of the self at the outermost limits of the biological individual (who is pictured as surrounded by an *area of right*) or at the outermost limit of the individual's *area of right* itself? Does an individual possess property, or is the individual *the property* which he or she possesses? There is, we have seen, no real answer to such questions. If this is the case, are the notions of *an individual who is 'the proprietor of his own person'* and *an individual surrounded by rights* not indistinguishable? Does any substantive issue turn on the difference? Whatever may be or final response to these questions, the narrowness (or seeming narrowness) of the quoted passage cannot be taken as a reason for ruling issues concerning possessive individualism out of court.

How, then, should we regard issues concerning possessive individualism and the modern natural law tradition? Discussion at two places in my discussion calls for comment here. The first is in section 1, footnote 16, where it is suggested that the notion of *possessing* rights (as distinct from *bearing* rights) is difficult to understand unless a conception of *property* is presupposed. The second is in section 3, closing paragraph (the same point being made in the closing paragraph of section 4) where it is suggested that a conception of *history* as a *history of property* makes assumptions about property colour the manner in which rights *per se* are viewed. Both places are ones where an argument is suggested which, if valid, makes the notion of property and the intellectual current under discussion conceptually linked. I stress the term *conceptually* because my paper points to links that are not normally of this kind. Most frequently, I point to a link which (I claim) obtains historically – *historically*, that is in a history of ideas sense. My references to image/ideas and to metaphors and similes are to be taken in this spirit. So too is my claim is that "possessive individualism" remains a live issue, and that arguments pioneered by Macpherson call for further and more extensive debate. This said, however, a question arises about why *unless property and rights are conceptually related* a history-of-ideas link of the sort which I emphasise should exist. Stated differently, a question arises about why (in the absence of a conceptual connection) the themes of property and rights should be so closely intertwined in European thought. If the intellectual history of Europe as it is, a suspicion emerges that the modern natural law tradition and rights-theory more generally is incapable – conceptually incapable – of dissociating itself from property-based ideas and views.

If this is so, is there a problem? Suppose rights-theory turns out to be possessive-individualist: is a weakness thereby diagnosed? My reply is that there *is* a problem,

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in passing. My own comments relate the notion of possessive individualism to the notion of the modern natural law tradition *per se*. As applied even to English writers, however, the passage is questionable: Hobbes nowhere explicitly declares that he favours self-ownership, and Overton's reference to 'selfe propriety' (in whichever sense, and regardless of the polemical point being made) – see note 70, above – is atypical in Leveller texts.

not merely in a social and political but in a conceptual sense. At the end of sectiion 1, above, it was indicated that an individual who is owner of the rights which he or she bears is *either* a walking miracle *or* a contradiction in terms. On the one hand, the individual is positioned "below" the rights which he or she bears and possesses; the rights count, for the indidual, as the criterion according to which situations and actions are assessed. On the other hand, and at the same time, the individual is positioned "above" the rights concerned: this is so because the individual is, as owner, monarch of the normative area which he or she surveys. So to say, the possessive individualist believes that he or she combines top-down (or Masterful) and ground-up (or Slavish) moral views.[81] Such a belief underpins – it may be suggested – notions of self-sufficiency associated with individualism in its bourgeois sense.

7. *Eighteenth-century crisis*

At first sight, the phrase "eighteenth-century crisis" may appear oxymoronic: is the eighteenth century not paradigmatically the era when enthusiasm – whether sceptical or religious – was mistrusted and the figure of disinterested reason appeared? Does the term "crisis" not suggest an uncertainty and instability at odds with what, in the mid-eighteenth century, European thought had achieved? The present paper does not argue systematically in favour of what seems to me a fairer estimation of the period: major theorists – at least, major social and political theorists – could find themselves clutching at straws. A tone of desparation is easy to pick up, behind the century's rounded periods. Demons which European thought had confronted in the *crise pyrrhonienne* of the late sixteenth and early seventeenth centuries[82] remained active, however confidently an age of untroubled reason was proclaimed.

Rather than offering further general comment on the eighteenth century, my paper confines itself to discussion of natural law. In the aftermath of Grotean and Pufendorfian and Lockean theorising, the natural law tradition might be expected to be a heyday and such was, to an extent and for a period, the case.[83] The extent was, however, limited by the critiques of natural law – the very different but, in the end, complementary critiques of natural law – presented in the works of Rousseau and Hume. For Rousseau, the key weakness of the (modern) natural law tradition is its involvement with property: see section 8, below. For Hume, the weakness is epistemological. I briefly note the issues concerned here.

Historians of political theory sometimes ask whether modern natural law rests on

81 My terms "Masterful" and "Slavish" are intended as an allusion to Hegel's Master-Slave dialectic (*Phenomenology of Spirit* pp. 112-9) – not discussed here although referred to in section 10, below.

82 On the impact of Pyrrhonism – or philosophical scepticism – on European sixteenth- and seventeenth-century thought, see especially R.H. Popkin *The History of Scepticism from Erasmus to Descartes* (Assen: Van Gorcum 1964).

83 For an account of the Scottish version of these events, see my 'Scottish Political Theory: From Natural Law to Common Sense' (http://www.richard-gunn.com).

secular foundations.[84] One reason for suspecting secularism is Grotius's declaration that obligations under natural law would be identifiable 'though we should even grant, what without the greatest Wickedness cannot be granted, that there is no God'.[85] Elsewhere, however, Grotius equates natural law with 'What God has shown to be His Will'[86] and tells his reader that 'the Mother of Natural Law is human Nature itself'.[87] Putting these quoted passages together, the result is – I suggest – a view according to which natural law rests on theistic foundations but may be read off from nature (which God creates).[88] Be this as it may, theorists in the century following Grotius emphasised natural law's reliance on religion. Numerous passages in Pufendorf make the reliance explicit.[89] Carmichael turns to natural theology (to which Calvinists of previous generations harboured severe doubts) to place natural law on a sure basis.[90] Hutcheson presents natural law as resting on the circumstance that the '*Divine Being*' is not only omnipotent but benevolent and good.[91] If the case for natural law was not religious (or directly religious) in Grotius, it had become so by the time when in 1739-40 Hume's *Treatise of Human Nature* appeared.

Although the epistemological and sceptical arguments of Hume's *Treatise* do not have the natural law tradition as an immediate target, there can be no doubt that, if valid, they undermine the tradition's claims. Is natural law grounded in 'human Nature' (Grotius)? Hume's account of the self makes Thomas Reid think not of divine workmanship but of 'an inchanted castle, imposed upon by spectres and apparitions'.[92] Is there a God, who is omnipotent and benevolent and upon whom the nontion of natural law may rest? For Hume, Hutcheson's position is unacceptable in that it sees nature as 'founded on final Causes' – and the notion of final or teloeological causation 'seems to me pretty uncertain & unphilosophical'.[93] A cause must be efficient (rather than final or anything else) if it is to count as a cause.[94] Such an abolition of final causality undercuts theistically-based arguments for natural law. Arguably, the abolition cuts deeper still in that an entirely mechanistic world – a world governed by efficient causality alone – is unlikely to be one where moral standards are inscibed in the nature of things. Hume's arguments impinge, it seems, not merely on religiously-based natural law but on secular natural law as well. Such an implication is

84 See, for example, literature cited at note 20, above.
85 *RWP* p. 89.
86 *Commentary* p. 19; cf. *RWP* p. 75.
87 *RWP* p. 93.
88 The view here ascribed to Grotius has roots in a variety of Christian writers. For example, it resembles Calvin's view of natural law in his *Institutes of the Christian Religion*.
89 For example, *LNN* pp. 3, 4, 16, 18, 19, 60, 69, 122, 133, 141. The list could be extended.
90 See *Natural Rights on the Threshold of the Scottish Enlightenment: The Writings of Gershom Carmichael* pp. 227-32.
91 Hutcheson *System of Moral Philosophy* Vol. 1 pp. 175ff.
92 T. Reid *An Inquiry into the Human Mind on the Principles of Common Sense* (Edinburgh: Edinburgh University Press 2000) p. 22. Compare Hutcheson, according to whom the self's 'inward constitution' is 'obviously contrived for the universal good' (*System of Moral Philosophy*, Vol. 1, p. 179). In Norton's terminology – see D.F. Norton *David Hume: Common-Sense Moralist, Sceptical Metaphysician* (Princeton: Princeton University Press) p. 19 – Hutcheson endorses, and Hume rejects, providential naturalism.
93 Hume, letter to Hutcheson of c. September 1739, quoted in E.C. Mossner *The Life of David Hume* (Oxford: Oxford University Press 1980) p. 135.
94 See D. Hume *A Treatise of Human Nature* (Oxford: Oxford University Press 1978) p. 171.

strengthened when we find the *Treatise* arguing that a 'connexion betwixt causes and effects' is, however seemingly 'necessary', rooted in an experience of constant conjunction; in general, 'necessity is something, that exists in the mind, not in objects'.[95] If nothing in nature corresponds to the idea of 'necessity', a doctrine of natural law (whether religious or secular) is hurled to the winds.[96]

In the present short section, I have concentrated on a challenge to which the modern natural law tradition was exposed. What justifies this concentration is that the modern natural law tradition is bourgeois individualism's chief cultural carrier. A further contributory factor to what I see as a crisis in natural law's development is Rousseau's critique of commercial society – a critique which brings property as an issue (and thereby bourgeois individualism as an issue) more specifically on stage.

8. *Rousseau and civil society*

For Rousseau, commercial society *is* civil society: at the end of a history marked by self-division and self-betrayal, market competition obtains. Rousseau regards history as a process which leads from amoral and animal-style innocence to a situation – a social situation – where human actions have moral status.[97] Just conceivably, the situation may be one where actions are "good" and virtuous: this outcome is explored in his *Social Contract*. The much more likely outcome, and the outcome which prevails in practice, is that actions are "bad" and corrupt. The *Discourse on the Origin of Inequality* (1755) explores the latter possibility and traces humanity's decline from the aboriginal innocence of the state of nature to the corruptions of Rousseau's own eighteenth-century day. The point which concerns us in the present connection is that, for Rousseau, the moment in history when corruptions take root is the moment when private property comes on the scene.

To this observation regarding Rousseauian history and private property, a suggestion may be be added. It is to the effect that, in his discussion of private property, Rousseau has not only the evils of existing society but the evils of the natural law tradition in mind. Not only does Rousseau write with the tradition (as exemplified by Grotius and Pufendorf) in mind;[98] he writes in the conviction that society exists in the manner which natural law believes is the case. Stated differently, he views the

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95 *Treatise* p. 165. Cf. pp. 155, 266.

96 Is such a conclusion too hasty? Might a notion of natural law be grounded not on 'nature' – a grounding made problematic by Hume's view of causality – but on, say, individual desire? Such an attempt (it may be suggested) invites objections of a "free rider" kind.

97 See, for discussion, L. Colletti 'Rousseau as Critic of "Civil Society"' in his *From Rousseau to Lenin* (London: New Left Books 1972) esp. pp. 149-51.

98 On Grotius see, for example, J.-J. Rousseau *A Discourse on Inequality* [cited as *Discourse*] (Harmondsworth: Penguin Books 1984) p. 118. Cf. *RWP* p. 427. (These references show that Rousseau, while writing the *Discourse*, is thinking about *the very same chapter in Grotius* as the present paper has discussed.) On Pufendorf, see R. Wokler 'Rousseau's Pufendorf: Natural Law and the Foundations of Commercial Society' *History of Political Thought* Vol. XV, No. 3 (1994).

modern natural law tradition as the appropriate and fitting ideology of the world wherein he lives. When Rousseau criticises existing society, he criticises modern natural law – and *vice versa*.[99] My suggestion is that Rousseau is the first major critic of the possessive individualism – the reliance on property-based thinking – which characterises the modern natural law tradition. Rousseau's 1755 *Discourse* opens the conceptual way to Marx's 1843 critique of bourgeois individualism.

My comments throw a well-known passage from Rousseau into relief. It is the passage with which the *Discourse's* second part begins:

> The first man who, having enclosed a piece of land, thought of saying 'This is mine' and found people simple enough to believe him, was the true founder of civil society. How many crimes, wars, murders, how much misery and horror the human race would have been spared if someone had pulled up the stakes and filled in the ditch and cried out to his fellow men: 'Beware of listening to this imposter. You are lost if you forget that the fruits of the earth belong to everyone and the earth itself to no one!'[100]

Not the least significant feature of the passage is its place in Rousseau's text: whereas Part One of the *Discourse* deals with (broadly speaking) the state of nature, Part Two discusses social developments. The moment at which 'a piece of land [*un terrain*]' is first enclosed is, for Rousseau, the moment when civil society comes into being. Everything which follows in the *Discourse* goes forward on the assumption that private property is in play. History, as presented by Rousseau, resembles a garden of forking paths where the chief "fork" is the choice between proprietorial and non-proprietorial routes. The choice *is* a choice – someone might, but did not, have pulled up the demarcating stakes – but property once chosen holds humanity in a ratchet or a vice.[101]

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99 The question of whether Rousseau writes as an exponent or a critic of natural law is discussed in Wokler op. cit..

100 *Discourse* p. 109. Cf. J.-J. Rousseau *Discours sur les sciences et les arts; Discours sur l'origine de l'inegalite* (Paris: Garnier-Flammarion 1971) p. 205.

101 If humanity's choice of property operates with a ratchet effect, Rousseau's statement (in his *Discourse on Political Economy*) that 'the right of property is the sacred of all the rights of citizenship' – see G.D.H. Cole's edition of J.-J. Rousseau *The Social Contract and Discourses* (London: Dent 1973) p. 138 – becomes intelligible. Especially if we assume that a dose of Rousseauian irony is present, the statement declares that *de facto* we inhabit an ineluctably proprietorial world. Notice that, even in the *Social Contract* which describes a virtuous society, Rousseau proposes the abolition of property-based inequality rather than the abolition of private property as such: see J.-J. Rousseau *The Social Contract* (Harmondsworth: Penguin Books 1968) pp. 68, 98. I take this to mean not that Rousseau favours private property but that history's ratchet effect *bites so deeply* that – despite wars, murders, misery and horror – the route out a property-based world remains unclear. Rousseau is a revolutionary – but a despairing and pessimistic revolutionary. Rightly or wrongly, he sees no way forward. Even the ideal world of the *Social Contract* is tainted – and can only be tainted – by what exists.

The Rousseauian moment at which an 'imposter' first encloses land is, I propose, the Grotian and Pufendorfian and Lockean moment when an individual first appropriates property. It is the moment, that is, when a human being first acts on the assumption of a 'negative' rather than a 'positive' community of goods: by acting in this manner, he or she carves out an individual portion of nature – the *very first* individual portion of nature – and launches a history of private property (rather than shared use) on its course. At the instant when a choice of private propery is made – at the moment, that is, when an individual enclosure is established (and others accredit the proprietorial claim thereby made) – the outlines of the "suburban" diagram which forms my point of departure start, however faintly, to appear.

In the context of the present discussion, details in Rousseau's account history and property (as given in *Discourse* Part Two) need not detain us. The already-quoted passage on the foundations of property suffices to make Rousseau's parallel with Grotius *et al.* – or, rather, his visceral disagreement with Gorius *et al.* – plain. This said, a line of continuity between property's origin and later existence may be noted. In Rousseau's account of the beginning of property, exclusion of others (by enclosure, and by stakes and ditches) is – as has been indicated – a central theme. The same theme is present in Rousseau's discussion, later in the *Discourse,* of a competitive and market-oriented individual for whom virtue is irrelevant; all that matters to such an individual is how his or her virtue appears.[102] The themes of *exclusiveness* and *competitiveness* point towards one another in the sense that a competitive individual has a lively sense of his or her boundaries whilst, conversely, individuals who exclude others are individuals amongst whom competition may take place. To employ terms introduced earlier in my paper: competitive-*cum*-exclusive individuals think in terms of freedom *in spite of others*. In Rousseau's view, in contrast, a virtuous republic is one where freedom *in and through others* may obtain.[103]

To my comments on *exclusion of others* as (in Rousseau's view) a characteristic of property-based society, a clarificatory note may be added. For Grotius and for Pufendorf, property in its most fully-developed form is certainly exclusive;[104] and, as we have see, ownership in land (as distinct from ownership in objects of consumption) appears at a relative late historical stage. This being so it is, perhaps, tempting to read the passage at note 100, above, *not* as a discussion of the moment when 'negative' (as distinct from 'positive') communion was chosen *but* as a discussion of the much later moment when 'negative' communion was already established, when property in use values was current and when landed property came on the scene. If the passage is read in this fashion, Rousseau's state of nature (discussed in *Discourse* Part One) is equated with negative communion – and the notion of private property is presupposed by everything the *Discourse* says. My

102 *Discourse* pp. 118-9.

103 Rousseau's term for such freedom, which he counterposes to freedom in a state of nature, is 'moral freedom' (see *Social Contract* p. 65). The notion of freedom *in and through others* is implicit in Rousseau's conception of a pact of association involving 'the total alienation by each associate of himself and all his rights to the whole community' (*Social Contract* p. 60).

104 See references given in note 68, above.

response to such a reading is to view it with suspicion. One reason for suspicion is the care – a care unusual in eighteenth-century writers – which Rousseau devotes to banishing circular arguments and "presuppsed" assumptions from his social and political work.[105] If the universal rule of private property is presupposed, is the presupposer more likely to be the follower of the proposed reading or Rousseau himself? A second reason concerns Grotius and Pufendorf. Both writers do indeed regard property in land as a relatively late-in-arriving form of property: but the seeds of this form are, so to say, sewn at a much earlier stage. This is so in the sense that Grotius and Pufendorf champion a notion of individual where shared or common use is excluded, and where the idea of carving out an excusive territory (however temporary and miniscule) is never far away. Grotius and Pufendorf ground property on what they see as fitting according to a natural order, whereas in Rousseau's view a natural foundation does not exist.

9. *Adam Smith*

In different but (I have suggested) complementary fashions, Hume and Rousseau point to difficulties in the natural law tradition. The theorist who took the next step in the direction opened by Hume and Rousseau was Adam Smith. Smith's *Theory of Moral Sentiments* took the epoch-making step of establishing a conceptual base-camp that was independent of natural law and located in what (from the standpoint of natural law) counted as uncharted terrain. I have suggested that, in the modern natural law, ideas associated with bourgeois individualism were developed and transmitted. In the context of my paper's argument, Smith's significance is that he indicates a basis on which a critique of bourgeois individualism may rest.

In the two and a half centuries that have elapsed since the *Theory of Moral Sentiments'* appearance, Smith has come to be seen as a champion of private property, as a precursor of liberal individualism and as a theorist who upholds and enriches the notion of natural law. My suggestion regarding the step taken by Smith flies in the face of these widely held views. Clearly, a short section in a more general article is not the place for a controversial discussion. However, before turning to the *Theory of Moral Sentiments* and the base-camp which (I propose) it establishes, I note some passages where Smith comments on property in perhaps-surprising ways.

Not the least surprising aspect of the passages are that they point in divergent directions. In the *Wealth of Nations*, Smith refers to the property 'which every man has in his own labour' and describes such property as 'the original foundation of all other property'; a number of further passages present the notion of property in a

105 If, in the state of nature, humans (who are all-but-indistinguishable from animals) make use of nature as they choose, this in Rousseau's view carries no implications for humankind in a social state. In fact, *nothing* of ethical significance can according to Rousseau be validly inferred from merely natural existence. This I take to be the main claim that Rousseau makes in his unpublished 'The General Society of the Human Race': *Social Contract and Discourses* (Cole edn.) pp. 155-62.

similarly Lockean way.[106] In Smith's *Lectures on Jurisprudence*, by contrast, the notion of property is based – as Fleischacker notes – on the idea of 'reasonable expectation':[107] if, to take Smith's example, I have gathered some wild fruit, 'it will appear reasonable to the spectator that I should dispose of it as I please'.[108] In this latter view of property, the figure of the spectator is all-important: whether an expectation of continuing use is 'reasonable' is decided by someone other than the gatherer him or herself. Who, then, counts as a morally and epistemologically competent spectator? Smith's answer – that an 'impartial spectator' is required[109] – invites a further question: how should the notion of an impartial spectator be understood? A tempting view is, perhaps, that the voice of an impartial spectator and the voice of natural law are one and the same. Against such a view stands, however, the circumstance that Smith introduces the notion of an impartial spectator whilst discussing how interaction is to be seen.[110] A reader influenced by stereotypes may be disquieted to learn that Smith calls upon private property to justify intself in an interactive (rather than a Lockean or natural-legal) way.

This point may be developed in two directions. Reasons of space forbid anything more than mentions in passing here. First, it may be noted that Locke's account of property's origin involves a single individual whereas at least two – a potential property-owner and an observer or spectator – are required if Rousseau's and Smith's discussions are to make sense. Rousseau and Smith approach the topic of property dialogically, whereas Locke remains faithful to the monological cast of thought which characterises the modern natural law tradition *per se*. Second, commentators point to the circumstance that topics in the 1762-3 and 1766 versions of Smith's lectures on jurisprudence are differently ordered; Brown rightly notes that Smith for his part relates the change to 'the issue of the character of property rights'.[111] Is the reason for the change linked to what I propose is Smith's move away from natural law and the dialogical basis of his thinking? Without supplying supporting argument, I suggest that this is the case.

From Smith's comments on property I turn to his *Theory of Moral Sentiments* (1759 and subsequent editions). At the core of the work lies a conception of human

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106 A. Smith *An Inquiry into the Nature and Causes of the Wealth of Nations* (Indianapolis: Liberty Classes 1981) p. 138. For references to the further passages, and for discussion of the issues raised in the present paragraph, see S. Fleischacker *On Adam Smith's Wealth of Nations* (Princeton: Princeton University Press 2004) pp. 192-3, 303 (note 16).

107 A. Smith *Lectures on Jurisprudence* [henceforth *Lectures*] (Indianapolis: Liberty Classics 1982) p. 17; see Fleischacker as referred to in note 106, above.

108 *Lectures* p. 459.

109 See *Lectures* p. 17.

110 A. Smith *The Theory of Moral Sentiments* [*TMS*] (Oxford: Oxford University Press 1976) *passim.* (but see esp. pp. 116, 130-1). It is true that when, for example, Smith refers to the impartial spectator as a 'man within' or as a 'demigod within the breast' (p. 131) he appears to imagine a God-like figure who imposes himself on interaction rather than a figure – a conceptual figure – subsisting through interaction itself. But a reader must recollect that the book in his or or hands is a book about interaction and what interaction might achieve. Whatever Smith chose to add in later editions of *TMS*, especially the sixth, nothing substantive is withdrawn or deleted from earlier interaction-based claims.

111 V. Brown *Adam Smith's Discourse* (London: Routledge 1994) pp. 116-9 (esp. p. 118); K. Haakonssen *Natural Law and Moral Philosophy* (Cambridge: Cambridge University Press 1996) pp. 129ff. See *Lectures* p. 401.

interaction – a conception according to which a human individual *knows other individuals in consequence of his or her self-knowledge* and *possesses self-knowledge thtough his or her knowledge of other selves.*[112] An implication of this conception is that selves do not merely happen to interact; rather, selfhood itself is to be understood in an interactive (or social, or intersubjective, or dialogical) way.[113] An implication of this implication is that the self is not, for Smith, an entity with fixed boundaries or limits. The self is not defined in terms of an *area of right*; rather, an individual's identity lies in a distinctive viewpoint (or distinctive perspective) which may or may not be accredited as interaction proceeds. In the argument of the *Theory of Moral Sentiments*, nothing corresponds to fences dividing fields or gardens, to the edges of Grotian or Pufendorfian seats, to the outermost limits of the Lockean '*Person*' or to the surface of Fichtean spheres. The idea of bourgois individualism, as understood in the present paper, has – like the diagram in which the idea is summarised – no application whatever in the conceptual world which the *Theory of Moral Sentiments* presents. If Smith's comments on property are (from a stereotypical viewpoint) disquieting, a still more significant point is that his most extensive discussion of the individual proceeds independently of property-based thought.

Interaction as understood in the *Theory of Moral Sentiment* is the conceptual base-camp which (I have propsed) Smith establishes independently of natural law. Why "base-camp"? My expression draws justification from a line of thought which may only be indicated here. In the early seventeenth century, modern natural law emerged – so it is sometimes suggested[114] – as a response to scepticism's challenge. Whether or not this historical claim is valid, and whether or not natural law succeeds in holding scepticism at bay, Smith sees interaction as refuting relativism and providing a basis in human practice on which moral claims and judgements may rest.[115] In effect, Smith proposes his own solution of the problem that modern natural law sought to resolve. Here I do not ask whether Smith's solution is successful. I note merely that solutions to problems of relativism and/or scepticism give moral values their own grounding – in Smith's case, a grounding in interaction – and the notion of a position that supplies its conceptual resources is a main part of what my "base-camp"

112 The argument that an individual *knows others in consequence of his or her self-knowledge* is given in the opening pages of *TMS* Part I: 'sympathy' in Smith's sense involves imagining what it would be like *for oneself* to be in another person's situation. The argument that an individual *possesses self-knowledge through his or her knowledge of others* is given in *TMS* Part III: crucially, the individual must look into others' eyes and learn how (by others) he or she is seen (see esp. *TMS* p. 110). For a more rounded presentation of Smith's view of interaction, see my 'Adam Smith and Friends' (www.richard-gunn.com) section 1.

113 This implication becomes mandatory if selfhood is seen as involving self-consciousness or self-perception. Such a view may, at first sight, seem excessively subjective. Note, however, that Smith's way of understanding this involvement is to place an individual (and what an individual *is*) at issue in the to-and-fro flicker of gazes that individuals exchange. (For clarity's sake, I add that the term "exchange " – my term rather than Smith's – is not here intended in a market sense.)

114 By Tuck in, e.g., *Philosophy and government* pp. 50-1, 83-5, 172-9.

115 So to say, Smith thinks of interaction as a conversation where not merely the issue of *what counts as praise in a given community* but issue of *what counts as praiseworthy* may competently be addressed (*TMS* pp. 113-7, 127). A full discussion of interaction's capacities as seen by Smith would explore the notion of impartial spectatorship (see note 110, above).

metaphor attempts to convey.[116]

One effect of my comments on Smith's views on property and interaction is to draw the Smith and Rousseau more closely together than is commonly the case. Both theorists, it seems to me, distance themselves from the modern natural law tradition and reject or avoid what I have referred to as property-based thought. I end the present section by emphasising the frequently-underestimated Roouseau-Smith connection. A starting point for rethinking problems in Smith might be the review of Rousseau's *Discourse on the Origins of Inequality* written by Smith in 1755 and published the following year.[117] The review tends to point a present-day reader in a misleading direction, in that it describes the *Discourse* as 'a work which consists entirely of rhetoric and description'.[118] The term 'rhetoric' has, today, come to carry negative connotations. However, Smith's phrase may be seen as declaring that Rousseau's descriptions of commercial society have vivid and compelling force.[119]

10. *Hegel*

My sketch of bourgeois individualism's history or pre-history ends with Hegel because Marx, when he criticises a state/civil society separation, writes in response to Hegel's claims. Commentary on Hegel brings my discussion full-circle. This said, it is necessary to stress that more than the "plot mechanics" of my article lie behind my argument's Hegelian turn. Consideration of Hegel dovetails closely with what has been said and, further, a line of thought – a line labelled by my introductory remarks "alternative" thinking – leads from Rousseau through Smith and Hegel to Marxian critique.

My comments on Hegel fall into two parts. In the first, I point to a critique of possessive individualism which Hegel's Jena writings contain. In the second, I note

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116 Besides issues raised in the present section there are, of course, numerous ways in which Smith's view of interaction may be debated. For example, Griswold claims that the passages on interaction in *TMS* 'dovetail...with skepticism' (C.L. Griswold, Jr., *Adam Smith and the Virtues of Enlightenment*, Cambridge: Cambridge University Press 1999, p. 162) whereas Rasmussen sees the same passages as arguing that – *pace* Rousseau – appearances, or how an individual is seen by others, can have a socially beneficial effect (D.C. Rasmussen *The Problems and Promise of Commercial Society: Adam Smith's Response to Rousseau*, Pennsylvania: Pennsylvania State University Press 2008, *passim.*). In effect, Rasmussen (unlike Griswold) reads the passages on interaction merely as first-order social reportage: in so doing, he ascribes to the Smith of *TMS* a socially conservative (or pro-commercial-society) position. My response to this difference between commentators is to side with Griswold in ascribing to the "interaction" passages a more than first-order significance – Rasmussen seems to me to miss *TMS's* intellectual challenge – but to disagree that a sceptical standpoint is implied. Rather than advocating scepticism, the passages concerned present interaction as a practical and, at the same time, conceptual foundation or basis on which judgements may stand.

117 'Letter to the *Edinburgh Review*' in A. Smith *Essays on Philosophical Subjects* (Indianapolis: Liberty Classics 1982) pp. 242-56.

118 Smith 'Letter' p. 251.

119 A detailed discussion of Smith's 'Letter' is given in Rasmussen's recent *Problems and Promise of Commercial Society* (see note 116, above). My own estimation of the piece is very different. A central source of disagreement is Rasmussen's failure (as I see it) to appreciate that *TMS's* passages on interaction may be read in a "foundational" way.

that interaction as understood by Smith, recognition (*Anerkennung*) as understood by Hegel and social relations as viewed by Marx are interwoven themes.

(i) The circumstance that Hegel's Jena writings have an anti-possessive individualist dimension is doubly hidden. It stands in contradiction (or seeming contradiction) to Hegel's later celebration of private property as the will made external to itself;[120] and it is eclipsed (or appears to be eclipsed) by developments in Hegel's thought which prevailed in the *Phenomenology of Spirit's* section on Master and Slave. Here, I do not discuss Hegel's later writings: my comments under (ii), below, indicate why it strikes me as unsurprising that property should come to be presented in an affirmative way. The relation between possessive individualism and the motif of Mastery and Slavery calls for comment, however. What follows is an all-too-brief attempt to rescue an archeologically lost Hegelian theme.

In Hegel's writings during his period at Jena (1801-7), the motif of lordship and bondage or Mastery and Slavery makes a number of appearances.[121] When it does, Hegel writes as though a number of potentially related issues are present in his mind – and different issues (or different combinations of issues) are highlighted in different Master-Slave passages. The issues concerned are (a) the transition from kinship-based to bourgeois society, (b) private property including bourgeois private property and (c) the origin of social or, in Hegel's terminology, recognitive relations. Issue (a) focuses on conflict concerning family property and family honour, the *family* concerned being one which exists in a 'prelegal'[122] or 'patriarchal'[123] – in short, a pre-bourgeois – sense. Issue (b) brings questions of possessive individualism into view. (An important justification for the inclusion of issue (b) on my list is, we may note, that there is no textual reason to see Hegel's comments on family property as applying solely to the pre-bourgeois family. The Hegel of the Jena period does not say or assume that bourgeois society is beyond reproach.) Issue (c) is the issue on which the *Phenomenology's* Master-Slave section concentrates. It is likewise the issue raised in Hegel's 1805-6 comments on a transition from a state of nature to recognitive existence:[124] the passage concerned anticipates the *Phenomenology's* discussion.

My comments on issues that may have been present in Hegel's mind have a limited purpose. Their aim is to indicate that an emphasis on one issue may mean that others are eclipsed.[125] The issue which wish to rescue from oblivion is that of property and, specifically, Hegel's closeness to what may be referred to as “Rousseauesque” themes.

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120 G.W.F. Hegel *Philosophy of Right* (Oxford: Oxford University Press 1967) paras. 45-6.

121 See G.W.F. Hegel *System of Ethical Life and First Philosophy of Spirit* (Albany: State University of New York 1979) pp. 124-5, 137-8, 235-42; Rauch, ed., *Hegel and the Human Spirit* pp. 110-8; G.W.F. Hegel *Phenomenology of Spirit* (as cited in note 81, above).

122 R.R. Williams *Hegel's Ethics of Recognition* (Berkeley: University of California Press 1997) p. 96; see also p. 98.

123 H.S. Harris, editor's note in Hegel *Sysyem of Ethical Life and First Philosophy of Spirit* p. 235.

124 Rauch ed. *Human Spirit* pp. 110-1.

125 This is not, of course, to say that I regard all three issues as equally important: of the issues mentioned, I view (a) with greatest suspicion. Does a reader of Hegel have sufficient grounds for considering that Master-Slave passages are concerned solely with past-oriented, feudal-to-bourgeois days?

On two points in particular, common ground between Hegel's Jena writings and Rousseau's *Discourse* can be indicated. First, Rousseau and Hegel relate the origin of property to society's beginning. As we have seen, Rousseau considers that 'civil society' comes into being when the first enclosure of a piece of land – strictly, the first popularly accepted enclosure of a piece of land – takes place. Hegel for his part comments on the origin of property[126] and does so whilst discussing how a transition from a pre-recognitive and (in effect) pre-human state of nature to society may take place.[127] So far, the common ground indicated between Rousseau and Hegel may appear to be shared with writers in the natural law tradition. However, just as Rousseau points to the catalogue of horrors which private property entails, so Hegel sees private property as precipitating a 'life-and-death struggle' where universal danger together with 'Force [*Gewalt*], Lordship and Servitude' rule.[128]

Why, in Hegel's view, private property should precipitate life-and-death struggle becomes apparent when we turn to the second point which Rousseau's and Hegel's discussions share. For Rousseau, as is evident from his "first enclosure" passage, private property and social exclusion go hand in hand. The same feature of property is emphasised in Hegel's presentation. In 1803-4, Hegel writes of the excluding agency that property involves.[129] In 1805-6, he repeatedly refers to the 'exclusion [*Ausschliessen*]' – the active excluding and the condition of being excluded – involved in property relations.[130] The notion that private property involves exclusion is not, it is true, original to Rousseau or Hegel;[131] what does count as new is the anchoring of the notion in a social account of a vivid and specific kind. In Rousseau, the account (I refer to the drama of marking out an enclosure with stakes or a ditch, and ensuring acceptance) is impressionistic and given in passing. In Hegel, the account is more carefully argued: before the notion of property comes into being, an individual exercises a quasi-Hobbesian right 'to take possession of as much as he can'[132] – and the exclusivist character of property ensures that just such a right is re-asserted when proprietorship obtains. Carried to its limits, a society based on property generates Master-Slave conflict or, stated differently, a war of each against all.

Rousseau, I have suggested, challenges the property-based (or possessive

126 He does so when, tacitly referring to Locke, he declares that 'an existent thing is shown to be mine by means of some *sign*, e.g., my very working on it' (*Human Spirit* p. 113). This tacit reference to Locke is not, of course, to be taken as implying that Hegel endorses Locke's claims. Far from it: Hegel goes on to point out difficulties in Locke's labour-mixing view: 'in the case of a cultivated field or tree I have worked on, where does the imposed form begin and where does it end? The inner side of each clod of earth is left untouched, or moved very slightly, and similarly with the underside, [it is] not moved much, etc.' (ibid.).

127 Hegel's discussion of a state of nature at *Human Spirit* pp. 110-1 can usefully be compared with Rousseau's conception of the state of nature as (in effect) a pre-human and thereby ethically insignificant zero point. See notes 97 and 105, above.

128 *Human Spirit* pp. 117-8; G.W.F. Hegel *Gesammelte Werke* [*GW*] (Hamburg: Felix Meiner 1975-6) Bd. 8 pp. 221-2.

129 *System of Ethical Life and First Philosophy of Spirit* p. 237; *GW*, 6, p. 308.

130 *Human Spirit* pp. 110, 112, 114-5; *GW*, 8, pp. 214, 216, 218-9.

131 See note 68, above.

132 *Human Spirit* p. 112; cf. Hobbes *Leviathan* p. 202.

individualist) thinking of the modern natural law tradition. The Jena Hegel, I propose, argues in a parallel way.

(ii) Early in his philosophical career, Hegel took issue with Fichte's notion of spheres of freedom[133] – and thereby with a tradition of thought which pictured *right* as an *area*. (As we have seen, such a picture became canonical in natural law theorising; today – see note 9, above – it remains fundamental when notions of negative liberty are stressed.) Declaring against Fichte's notion of spheres, Hegel's *Difference between Fichte's and Schelling's Systems of Philosophy* (1801) protests that 'If the community of rational beings were essentially a limitation of true freedom, the community would be in and for itself the supreme tyranny'.[134] For Hegel, it may be proposed, freedom is achieved *through* other individuals – rather than *in spite of* other individuals, as accounts of *freedom as an area* and philosophies of negative liberty maintain. I have suggested (in note 103, above) that the notion of freedom through others is present in Rousseau's notion of a social contract: is this another instance of Rousseauian influence? Be this as it may, it is the case that interaction with others is the practical terrain on which Hegel considers freedom may be achieved.
Stated in terminology favoured by Hegel, freedom may be achieved through recognition. Because humans are not merely desiring but recognitive beings, non-alienated freedom (which subsists when mutual recognition is in play) is in humanity's reach. Although the immediate source of Hegel's term 'recognition [*Anerkennung*]' is Fichte, and although Fichte pictures recognition as *recognition of an individual's area of freedom*,[135] the root of the notion of recognition lies – as Hegel emphasises – in unconstrained interaction.[136] For Hegel, what is recognized (interactively recognized) is not an individual's area of freedom but his or her self-determining action.

Clearly, the themes of freedom and recognition in Fichte and Hegel require extensive discussion. Here, I touch on them only to bring the notion of interaction into focus. Once recognition's roots in interaction are made plain, a number of theoretical perspectives – perspectives which I list rather than debate – become available. First, the line of thought in the history of ideas which leads from Smith and Rousseau through Hegel springs to view.[137] Second, recognition (on the one hand) and a critique of possessive individualism (on the other) count not as conceptual alternatives but as complementary themes. (If recognition is linked to the notion of spheres or areas, as

133 See note 8, above.

134 G.W.F. Hegel *The Difference Between Fichte's and Schelling's System of Philosophy* (Albany: State University of New York 1977) p. 145.

135 This phrase oversimplifies a necessarily complex discussion. For a more detailed treatment (and one which is at odds with my schematically suggested reading) see D. James 'Applying the Concept of Right: Fichte and Babeuf' *History of Political Thought* Vol. XXX, No. 4 (2009).

136 For what I see as a clearly "interactive" passage in Hegel, see *Phenomenology of Spirit* p. 110 (para. 177 in A.V. Miller's numbering).

137 The suggestion that such a line of thought or influence exists is strengthened when it is noted that, in the eighteenth century, Smith's *Theory of Moral Sentiments* was twice translated into German: see I.S. Smith *The Life of Adam Smith* (Oxford: Oxford University Press 1995) p. 194. Although Hegel's knowledge of the *Wealth of Nations* is easier to document than his knowledge of *TMS*, there is nothing in the least far fetched in the idea that Hegel (in common with various late-eighteenth century German intellectuals) saw *TMS* as an important conceptual resource.

appears to be the case in Fichte, the notions of property and recognition reinforce one another: perhaps Hegel reverts to such a Fichteian view when in his later workings, he proposes that property is the will made external to itself: see note 120, above. If, by contrast, recognition is seen in terms of an interaction which determines its own course, recognition may run beyond the boundaries of property-based theory and practice and a realm of freedom may be attained.) Third, a specific view of Hegel's intellectual development suggests itself: does the interaction-based thought of Hegel's Jena period (including the *Phenomenology of Spirit*) give way to a later, politically more cautious outlook where social institutions compatible with bourgeois individualism (and bourgeois property) are the order of the day? Is the *Philosophy of Right* of 1821 the *locus classicus* of the in effect less critical approach? If these questions are answered affirmatively, then – fourthly and finally – it becomes possible to understand how Marx may draw theoretical sustinance from Hegel while, at the same time, rejecting the *Philosophy of Right's* conservative claims.

11. *Concluding remarks and clarifications*

At the core of my discussion has been the notion of individuals who are possessors of the rights which they bear. This possession of rights is, it seems to me, difficult to conceptualise *other than* by imagining individuals who hold as their property the rights concerned. At the start of my discussion, I presented the notion of rights-bearing and rights-possessing individuals by means of a diagram – a diagram which, I proposed, makes the proprietorial (or "possessive individualist") overtones of such an individuality difficult to miss. In the body of my paper, I argued that my diagram finds numerous resonances and equivalents in the history, from the seventeenth century onwards, of European thought. Where these resonances and equivalents are present, I proposed, "bourgeois individualism" is in process of development. When, in the eighteenth century, European thought sets out a fresh shoot that leads away from its natural law mainstream, a way is opened that leads towards Marx.

I end with two points of clarification. The first is that my paper does not attempt to study bourgeois individualism from every aspect: much can be said (I am aware) about bourgeois estrangement which a history of ideas focusing on Grotius and Pufendorf cannot reach. My aim in the paper is not to present a rounded theory but to drag to the surface assumptions which present-day political theory are reluctant to admit.

My second clarification is, perhaps, needless: my article does not argue that *Marx needs a Grotean supplement* or that *Marx must be approached via Grotius.* Instead, it maintains that the Marx of 1843 is sensitive to alienations implicit in two centuries of European theorising. If the article may be summarised in a slogan, "Back to Grotius" misses the point. A summing up that captures the article's spirit more faithfully might be "Beware of the Grotius in ourselves!"

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